

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF SCOT COCHRAN V. COSTA RICA

JUDGMENT OF MARCH 10, 2023

(Preliminary objections and merits)

In the case of *Scot Cochran v. Costa Rica*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:*

Ricardo C. Pérez Manrique, President,
Eduardo Ferrer Mac-Gregor Poisot, Vice President,
Humberto Antonio Sierra Porto,
Verónica Gómez,
Patricia Pérez Goldberg, and
Rodrigo Mudrovitsch,

also present,

Pablo Saavedra Alessandri, Registrar, and
Romina I. Sijniensky, Deputy Registrar,

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

* Judge Nancy Hernández López, a Costa Rican national, did not take part in the deliberation and signature of this judgment pursuant to the provisions of Article 19(1) and (2) of the Court’s Rules of Procedure.

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I INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* On June 6, 2021, the Inter-American Commission on Human Rights (hereinafter also “the Commission” or “the Inter-American Commission”) submitted to the jurisdiction of the Inter-American Court the case of *Scot Cochran with regard to the Republic of Costa Rica* (hereinafter also “the State” or “Costa Rica”). The Commission indicated that the case related to the alleged international responsibility of Costa Rica for the presumed violation of the right to information on consular assistance of Thomas Scot Cochran in the context of the criminal proceedings instituted against him.

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

- a) *Petition.* On December 6, 2005, the Commission received the initial petition submitted by Thomas Scot Cochran (hereinafter also “Scot Cochran,” or “the alleged victim”).
- b) *Admissibility and Merits Report.* The Commission adopted Admissibility and Merits Report No. 380/20 (hereinafter also “Admissibility and Merits Report” or “Report No. 380/20”) on December 15, 2020, in which it reached a series of conclusions and made several recommendations to the State.
- c) *Notification to the State.* Report No. 380/20 was notified to the State on January 6, 2021, granting it two months to provide information on compliance with the recommendations. The Commission granted an extension of the original time frame. On May 5, 2021, the State forwarded a report contesting the Commission’s conclusions and recommendations and did not request a further extension.

3. *Submission to the Court.* On June 6, 2021, the Commission¹ submitted to the jurisdiction of the Court all the facts and the alleged violations of the rights established in Articles 7(4) and 8(2) of the American Convention in relation to Article 1(1) of this instrument, “taking into account the need to obtain justice for the [alleged] victim.” The Court notes with concern that more than 15 years elapsed between the lodging of the initial petition before the Commission and the submission of the case to the Court.

4. *The Commission’s requests.* The Commission asked the Court to conclude and declare the international responsibility of Costa Rica for the violations indicated in the Admissibility and Merits Report, and to order the State, as measures of reparations, to comply with the recommendations included in Report No. 380/20.

II PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representatives.* The Court notified the Commission’s submission of the case to the State and to the representatives of the alleged victim in communications of July 12, 2021.

¹ The Commission appointed Commissioner Julissa Mantilla Falcón as its delegate before the Court and then Deputy Executive Secretary, Marisol Blanchard Vera, and then lawyers of the Commission’s Executive Secretariat, Jorge Humberto Meza Flores and Ignacio Bollier, as its legal advisers.

6. *Brief with pleadings, motions and evidence.* The representatives of the alleged victim (hereinafter “the representatives”)² presented their brief with pleadings, motions and evidence (hereinafter “the pleadings and motions brief”) on September 12, 2021. In this brief they included arguments on the violation of Articles 7(4), 8(1) and 8(2)(h) of the American Convention in relation to Articles 1(1) and 2 of this instrument. The document did not contain any requests or the offer of evidence.

7. *Answering brief.* The State presented its brief answering the Commission’s submission of the case and Admissibility and Merits Report, and also the pleadings and motions brief (hereinafter “the answering brief”)³ on November 11, 2021, pursuant to Article 41 of the Court’s Rules of Procedure. In this brief it set out three preliminary objections, and asked the Court to declare that it was not internationally responsible for the alleged violations and that it was not appropriate to order the reparations claimed.

8. *Observations on the preliminary objections.* In briefs of January 5, 2022, both the representatives and the Commission presented their observations on the preliminary objections proposed by the State. Additionally, the Court received a communication from the alleged victim on January 5, 2022, in which Scot Cochran made his own observations on the preliminary objections.

9. *Public hearing.* In an order of October 5, 2022,⁴ the President call the State, the representatives and the Commission to a public hearing to receive their final oral arguments and observations on the preliminary objections and possible merits, reparations and costs, as well as to receive the statement of the alleged victim, *ex officio*. The public hearing took place on November 9, 2022, during the Court’s 154th regular session which was held at its seat.⁵

10. *Final written arguments and observations.* On November 17, 2022, the State presented its final written arguments, together with a series of annexes. On December 9, 2022, the Commission and the representatives presented their final written observations and arguments, respectively.

11. *Observations on the annexes.* On December 22, 2022, the State forwarded its observations on the annex presented by the representatives. On January 13, 2023, the Commission and the representatives forwarded their observations on the annexes presented by the State together with its final written arguments.

12. *Deliberation of the case.* The Court deliberated on this judgment virtually on March 7, 9 and 10, 2023, during its 156th regular session.

² During the initial processing of this case before the Inter-American Court, the alleged victim was represented by Ana Briceño Ramírez, Francisco José Aguilar Urbina and Carlos Hernán Robles Macaya. However, as of May 4, 2022, he was represented by the Maricel Gómez Murillo and Tomás Poblador Ramírez, inter-American public defenders.

³ The State appointed Natalia Córdoba Ulate and Patricia Solano Castro as its agents in this case.

⁴ *Case of Scot Cochran v. Costa Rica*. Order of the Inter-American Court of Human Rights of October 5, 2022. Available at: https://www.corteidh.or.cr/docs/asuntos/scot_cochran_05_10_22.pdf

⁵ There appeared at this hearing: (a) for the Inter-American Commission: Erick Acuña Pereda, and Karin Mansel; (b) for the representatives: Maricel Gómez Murillo, Tomás Poblador Ramírez and Hugo Solís Álvarez, and (c) for the State: Patricia Solano Castro, Natalia Córdoba Ulate, Carlos Jiménez González, José Carlos Jiménez Alpízar, Ricardo Salas Porras, Adriana Masis Carpio and Steven Orozco Fonseca.

III JURISDICTION

13. The Court has jurisdiction to hear this case pursuant to Article 62(3) of the Convention because Costa Rica has been a State Party to the American Convention since April 8, 1970, and accepted the contentious jurisdiction the Court on July 2, 1980.

IV PRELIMINARY OBJECTIONS

14. In the case *sub judice*, the State filed three preliminary objections; these are described and examined below.

A. Preliminary objection concerning the alleged violation of the principle of procedural equality and the right of defense

A.1. Arguments of the parties and of the Commission

15. The **State** argued that procedural equality and its right of defense had been violated because it considered that the Commission had substantiated the case improperly. It indicated that the Commission had forwarded the initial petition to the State on December 28, 2011, together with a series of briefs subsequently presented by the petitioner which had modified the initial petition.

16. In the State's opinion, the existence of numerous expansions of the original petition gave rise to uncertainty as to its purpose. It added that, when requesting a report, the Commission had not advised the State of the aspects on which it required information, and this infringed the right of defense because the Commission had initiated a procedure "without advising [...] which aspects it would be examining; [...] without indicating whether any of the allegations made [by the alleged victim] related to matters regarding which that organ had competence."

17. The State indicated that, when forwarding a petition, the Commission should include a minimum of criteria that would allow the State to determine, with the required precision, the aspects that would be examined at an initial stage, such as that of admissibility. It argued that this did not happen in the instant case because the Commission forwarded a petition that evolved over time. It added that the Commission had merely forwarded the documentation accumulated during the initial processing, without any page numbering that would have given some order to the file which, consequently, did not contain an appropriate, express, clear, precise and detailed account of the facts or conducts that were attributed to it.

18. Lastly, it contested the consolidation of the admissibility and merits stages owing to the lack of certainty that existed in relation to the purpose of the litigation, and argued that the State's position had not been taken into account forcing it to defend itself from numerous different claims over time.

19. The **Commission** argued that the State had not indicated clearly the allegation or aspect of the petition regarding which it was unable to present a defense. Moreover, it had not demonstrated that its rights had been violated during the processing of the petition, given that the Commission had forwarded the initial letter of complaint presented by the petitioner to the State together with all the documents that the petitioner subsequently sent to the Commission. It therefore considered that the State

had had numerous possibilities of exercising its right of defense, which it did by presenting a series of documents answering the petitioners' allegations, together with official documents relating to the judicial proceedings against the alleged victim. The Commission added that Admissibility and Merits Report No. 380/20 indicated that it had accepted the State's position in relation to some aspects of the petition and declared that certain rights alleged by the petitioner had not been violated. It therefore considered that the State had been able to exercise its procedural rights during the procedure before the Commission, and that it had not been able to prove that a "grave error" had been committed that would render the case inadmissible. Consequently, the Commission held that the State's request for the control of legality was unwarranted.

20. The **representatives** argued that the purpose of the petition was always clear because the factual framework of the case had always been the criminal proceedings and the numerous procedural violations that had occurred. Also, the Commission had processed "everything indicated in the petitioner's briefs and their annexes, and the information held by the State, without exception." Furthermore, they asserted that the State had not specified why the consolidation of the admissibility and merits stages violated its rights. They added that the procedural complexity alleged by the State did not exist because there had always been certainty in relation to the elements and purpose of the petition.

A.2. Considerations of the Court

21. This Court has repeatedly indicated that, pursuant to the American Convention, the Inter-American Commission has autonomy and independence in the exercise of its mandate and, in particular, in relation to the processing of individual petitions.⁶ The Court has the authority to conduct a control of legality when the parties make a substantiated request for this, justifying that a grave error had been committed that violated the right of defense and distorted procedural equality.⁷

22. The Court has required that the party arguing that the Commission's actions have violated its rights must prove this prejudice and that it is not sufficient merely to argue a disagreement with the criteria or actions of the Commission for the Court to declare that this preliminary objection is admissible.⁸

23. In such cases, the Court must review the Commission's actions when substantiating the petition to ensure that the requirements of admissibility, and also

⁶ Cf. *Control of Due Process in the Exercise of the Powers of the Inter-American Commission on Human Rights (Articles 41 and 44 to 51 of the American Convention on Human Rights)*. Advisory Opinion OC-19/05 of November 28, 2005. Series A No.19, first and third operative paragraphs; *Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2007. Series C No. 172, para. 32, and *Case of Olivera Fuentes v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of February 4, 2023. Series C No. 484, para. 18.

⁷ Cf. *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2006. Series C No. 158, para. 66, and *Case of Baraona Bray v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2022. Series C No. 481, para. 23.

⁸ Cf. *Case of the Saramaka People v. Suriname, supra*, para. 32, and *Case of Baraona Bray v. Chile, supra*, para. 23.

the adversarial principle, procedural equality, and legal certainty have been complied with.⁹

24. The Court does not observe that, in its arguments, the State has specifically indicated how the situation violated its right of defense, or in what way it was prevented from asserting its arguments during the procedure, and any possible prejudice caused.

25. In addition, on reviewing the file of the procedure before the Commission, the Court does not note that, at any time, procedural equality was infringed, or that the State was prevented from accessing elements of the petition, or from setting out its defense. The State was able to raise objections and express its position when it deemed this pertinent during the procedure before the Commission.

26. The case file shows that, although the Commission forwarded the State a series of communications received from the petitioner at various times, all of them were sent in a single communication and formed an integral part of the petition. Furthermore, the State was given the opportunity to present its observations on all the communications and, therefore, the State was not left defenseless. Consequently, the Court rejects this preliminary objection.

B. Fourth instance objection

B.1. Arguments of the parties and of the Commission

27. The **State** argued that the alleged victim and his representatives were using the inter-American system as a “fourth instance,” particularly in relation to the alleged violation of the right to be heard by an impartial judge. In the State’s opinion, this violation was presented by the alleged victim for the first time in a brief of November 5, 2012 (approximately seven years after his initial petition); whereas the Third Chamber of the Supreme Court of Justice decided that this defect did not exist on February 15, 2013. According to the State, the Court only has competence to decide on the content of judicial decisions that arbitrarily contravene the rights protected by the Convention. It added that the representatives were seeking for the Court to review, *ex officio*, the ruling of the Third Chamber of Costa Rica’s Supreme Court, without indicating specific elements or errors to substantiate this. It also indicated that this point was expressly excluded by the Commission in its Admissibility and Merits Report.

28. The **Commission** indicated that, in Report No. 380/20, it had not found the Costa Rican State responsible for the violation of the judicial guarantees established in Article 8(1) and, in particular, the guarantee of an impartial judge. It added that the allegations of this violation were included by the petitioner, both during the processing of the petition before the Commission and in the pleadings and motions brief filed before the Court. It indicated that, in this specific case, the allegations made by the petitioner related to a possible violation of the guarantee of the impartiality of the judge established in Article 8(1) of the American Convention.

29. The **representatives** indicated that they did not want the Court to function as a fourth instance. Moreover, they argued that the Court had allowed an alleged victim’s representatives to allege the violation of rights other than those mentioned by the

⁹ Cf. *Case of Grande v. Argentina. Preliminary objections and merits*. Judgment of August 31, 2011. Series C No. 231, para. 46, and *Case of Moya Chacón et al. v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of May 23, 2022. Series C No. 451, para. 18.

Commission and also that the Court is able to declare the violation of rights that have not been alleged by the parties under the *iura novit curia* principle.

30. They added that they were not asking the Court to review the rulings to find an incorrect assessment of the evidence, the established facts, or the application of domestic law; rather, they were alleging precise violations of the victim's rights, such as the right to information on consular assistance (Articles 7(4) and 8(2) of the American Convention); the right to be heard by an impartial judge (Article 8(1) of the American Convention), and the right to appeal a ruling before a higher court (Article 8(2)(h) of the American Convention). In summary, they considered that this preliminary objection was based on the argument that no human rights had been violated in this case, when this was precisely the issue that would be debated at the merits stage of the case. Therefore, they considered that the State's position could not be the subject of a preliminary objection.

B.2. Considerations of the Court

31. In its consistent case law, the Court has indicated that, to determine whether the actions of judicial organs constitute a violation of the State's international obligations, it may be necessary to review the domestic proceedings merely to establish their compatibility with the American Convention.¹⁰ Thus, this Court does not act as a fourth instance for judicial review, because its review is limited to examining the conformity of domestic judicial decisions with the American Convention, rather than with domestic law.¹¹

32. In the instant case, the Court notes that both the Commission and the representatives have alleged violations of rights established in the American Convention supposedly perpetrated by the State, specifically related to domestic proceedings. To decide whether the alleged violations really occurred, it is essential to examine the actions of the government authorities and the rulings made by the different jurisdictional authorities to verify their compatibility with the State's international obligations. This is a matter that relates to the merits of the case and cannot be decided by means of a preliminary objection; therefore, the Court rejects this preliminary objection.

C. Preliminary objection concerning the alleged failure to exhaust domestic remedies

C.1. Arguments of the parties and of the Commission

33. The **State** argued that, regarding the facts associated with the violation of Article 8(2)(h) of the Convention, use was not made of the special review mechanisms by which a person who has received a final judgment may obtain a review of the judicial ruling. It indicated that the remedy of cassation was available to the petitioner and, subsequently, the procedures for the review of judgment. Also that, between 2006 and 2012, he would have been able to file the remedies established in Law 8503, "Opening of Criminal Cassation," and Law 8837, "Creation of the remedy of appeal against a judgment, other reforms to the appeals system, and implementation of new rules on

¹⁰ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 222, and *Case of Baraona Bray v. Chile, supra*, para. 31.

¹¹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra*, para. 222, and *Case of Baraona Bray v. Chile, supra*, para. 31.

orality in criminal proceedings,” Transitory Provision III of which established a special review procedure.

34. The State also argued that, in *Amrhein et al. v. Costa Rica*, this Court had determined that Transitory Provision I of Law 8503 was an appropriate remedy to exhaust domestic remedies, and that the remedy established in Transitory Provision III of Law 8837 should have been exhausted in the instant case, because that law entered into force on December 9, 2011, while the Admissibility and Merits Report was adopted on December 15, 2020.

35. The **Commission** indicated that the State had filed this objection during the admissibility stage and, therefore, reiterated its considerations in the section on the petition’s admissibility in Admissibility and Merits Report No. 380/20. It stressed that the alleged victim had filed a remedy of cassation against the first instance judgment convicting him, and this was declared “unfounded” by the Third Chamber of the Supreme Court of Justice in a ruling of February 28, 2005. Thus, in the Commission’s opinion, pursuant to the Costa Rican criminal procedural laws in force at the time of the facts, the filing of this remedy exhausted the ordinary domestic remedies available to the alleged victim.

36. In addition, the Commission emphasized that Admissibility and Merits Report No. 380/20 had noted that the remedies established in Transitory Provision I of Law 8503 and Transitory Provision III of Law 8837 were special remedies and, consequently, it was not compulsory for the petitioner to exhaust them. Despite this, the alleged victim filed three review procedures, one of them while Law 8503, Opening of Criminal Cassation, was in force and another when Law 8837 was in force.

37. The Commission also argued that the State of Costa Rica had not complied with the burden of proving that the remedies filed by Scot Cochran were suitable and effective to resolve his specific situation. Therefore, it considered that the objection of failure to exhaust domestic remedies filed by the Costa Rican State was inadmissible.

38. The **representatives** argued that Law 8503 had been officially published after the judgment convicting Scot Cochran and did not establish the possibility of individuals who had received a final judgment making use of the remedy contained in the law. They also argued that, in the first communication in which it alleged the failure to exhaust domestic remedies, the State only referred to the procedure derived from Law 8837 and not to the procedure derived from Law 8503; therefore, this preliminary objection should be rejected because it had not been cited opportunely. Regarding the remedy established in Transitory Provision III of Law 8837, they indicated that, in a communication of May 9, 2013, addressed to the Inter-American Commission, the State had accepted that Scot Cochran had indeed filed this remedy. They also argued that the Third Chamber’s rulings of December 12, 2007, and February 15, 2013, noted that a comprehensive review of the judgment had been requested before the appellate courts in order to access to a wide-ranging remedy that enabled a comprehensive and integral analysis or examination of all the matters debated and analyzed by the lower court; however, the remedy was declared inadmissible.

C.2. Considerations of the Court

39. According to Article 46(1)(a) of the American Convention, admission by the Inter-American Commission of a petition is subject to the remedies under domestic law having been pursued and exhausted in accordance with generally recognized principles

of international law.¹² This Court's consistent case law has indicated that objections based on the failure to exhaust domestic remedies must be filed at the proper procedural moment¹³ – at the admissibility stage – and that, at that time, the State must indicate the remedies that must be exhausted and their effectiveness.¹⁴

40. According to the file of the procedure before the Commission, this objection was presented at the appropriate procedural moment because the State filed it in its initial brief of May 2, 2012,¹⁵ and reiterated it in a brief of July 24, 2012.¹⁶

41. A review of the case file reveals that, during the domestic proceedings, the following were filed: a remedy of cassation,¹⁷ and three appeals for review.¹⁸ In addition, at least fifteen applications for habeas corpus were filed and these were decided by rulings: 2003-14758,¹⁹ 2004-00293,²⁰ 2004-01184,²¹ 2004-01644,²² 2004-

¹² Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1 para. 85, and *Case of Olivera Fuentes v. Peru, supra*, para. 23.

¹³ Cf. *Case of Velásquez Rodríguez v. Honduras, supra*, para. 88, and *Case of Angulo Losada v. Bolivia. Preliminary objections, merits and reparations*. Judgment of November 18, 2022. Series C No. 475, para. 21.

¹⁴ Cf. *Case of Velásquez Rodríguez v. Honduras, supra*, para. 88, and *Case of Angulo Losada v. Bolivia, supra*, para. 21.

¹⁵ Cf. Communication of the State of Costa Rica to the Inter-American Commission of May 2, 2012 (evidence file, folios 6567 to 6597).

¹⁶ Cf. Communication of the State of Costa Rica to the Inter-American Commission of July 24, 2012 (evidence file, folios 6633 and 6634).

¹⁷ Cf. Remedy of cassation filed by the lawyers MCZ and MSB, on behalf of Scot Cochran, before the Trial Court of the First Judicial Circuit of San José on September 6, 2004, against judgment No. 851-04 of the Trial Court of the First Judicial Circuit of San José (evidence file, folios 5 to 19).

¹⁸ Cf. First review procedure filed on June 14, 2004, against judgment No. 851-04 delivered by the Criminal Trial Court of the First Judicial Circuit of San José on August 17, 2004 (evidence file, folios 114 to 156, and folios 2343 to 2368), decided by Ruling No. 2007-01464 of the Third Chamber of the Supreme Court of Justice of December 12, 2007 (evidence file, folios 24 to 36); Second review procedure of April 28, 2009, filed against judgment No. 851-04 delivered by the Criminal Trial Court of the First Judicial Circuit of San José on August 17, 2004 (evidence file, folios 158 to 211) decided by Ruling No. 01373-2010 of the Third Chamber of the Supreme Court of Justice of November 30, 2010. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0034-504556>, and Third review procedure of February 10, 2012, filed by Scot Cochran against judgment No. 851-04 delivered by the Criminal Trial Court of the First Judicial Circuit of San José on August 17, 2004 (evidence file, folios 213 to 231) decided by Ruling No. 2013-00211 of the Third Chamber of the Supreme Court of Justice of February 15, 2013 (evidence file, folios 38 to 40).

¹⁹ Filed on November 27, 2003, against the Court and Tribunal of the First Judicial Circuit of San José, requesting modification of the precautionary measure, which was denied. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-260051>

²⁰ Filed on December 31, 2003, against the Department of Social Adaptation, arguing that he had not been taken to receive medical treatment; rejected, however. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-260051>

²¹ Filed on January 27, 2004, against the Criminal Cassation Court, contesting the extension of pre-trial detention because it violated the right to life; however, this was rejected because the Constitutional Chamber found that the legal and constitutional requirements for the precautionary measure had been met. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-260276>

²² Filed on February 16, 2003, against the Ministry of Justice and Mercy, arguing alleged non-compliance with the decision of the Criminal Judge of the First Judicial Circuit of San José, ordering the applicant's transfer to a center where he could receive the treatment he required. The Constitutional Chamber reiterated that the application for habeas corpus was not appropriate to file this request and rejected the remedy outright. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-262695>

01898,²³ 2004-03158,²⁴ 2004-03926,²⁵ 2004-00783,²⁶ 2004-05187,²⁷ 2004-10125,²⁸ 2004-11324,²⁹ 2005-01676,³⁰ 2005-02002,³¹ 2010-015970,³² and 2011-017126.³³ In addition, ten applications for amparo were filed, which were decided by Rulings: 2003-

²³ Filed on February 23, 2004, against the Criminal Court of the First Judicial Circuit of San José, arguing that the alleged victim was suffering from a terminal illness and therefore a less burdensome measure should be imposed pursuant to article 260 of the Code of Criminal Procedure. The Constitutional Chamber considered that, basically, the applicant disagreed with the decision extending his pre-trial detention, a matter that had already been heard and decided in Ruling 2004-01184. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-263890>

²⁴ Filed on March 4, 2004, against the Minister of Justice, and the Department of Social Adaptation. The Constitutional Chamber admitted the arguments of these authorities and gave special significance to the visit made by the investigating magistrate who verified that none of the alleged victim's rights were being violated, and therefore decided to declare the remedy unfounded. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-266028>

²⁵ Filed on April 12, 2004, against the Minister of Justice, the Director General of Social Adaptation, and the Criminal Court of the First Judicial Circuit of San José, and also against the Director General and the Medical Director of the La Reforma Institutional Penal Center, arguing physical and mental deterioration due to placement in the prison system. The Constitutional Chamber noted that the facts alleged by Scot Cochran had already been examined during a previous application for habeas corpus (2004-03158) and that the alleged victim was in acceptable conditions; it therefore decided to ratify the ruling made in the previous application. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-266335>

²⁶ Filed on January 27, 2004, against the deputy director of La Reforma Institutional Penal Center, because he had written to the National Criminology Institute seeking to relocate the applicant. The Chamber rejected the remedy because his transfer had not been ordered; it was merely a request to authorize this. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-276471>

²⁷ Filed on May 12, 2004, against Director of the Clinic of La Reforma Institutional Penal Center and the Minister of Justice and Mercy, based on the same arguments as the remedy filed on April 12, 2004, and decided in Ruling 2004-03926. It was verified that the applicant had received treatment and was receiving on-going treatment for his ailment; therefore the application was rejected. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-273086>

²⁸ Filed on September 2, 2004, against the Criminal Court of the First Judicial Circuit of San José and the Public Prosecution Service of San José, for failing to allow access to certain acts and elements of the evidence file. The Constitutional Chamber noted that the applicant's defense had had access to the evidence against him at all procedural stages and, therefore, declared the remedy unfounded. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-290925>

²⁹ Filed on October 7, 2004, against the of the Criminal Court of the First Judicial Circuit of San José, repeating the arguments of the preceding remedy. Therefore, the Chamber declared it unfounded, reiterating the facts decided in Ruling 2004-1012543, which had already been analyzed. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-291665>

³⁰ Filed on February 17, 2005, against the Criminal Court of the First Judicial Circuit of San José. The Constitutional Chamber indicated that it had already examined the arguments submitted during an application for habeas corpus that had been admitted; therefore, it was inappropriate to process another remedy, and the file was closed. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-306972>

³¹ Filed on February 12, 2005, against the Trial Court of the First Judicial Circuit of San José, arguing that, despite the remedy of cassation filed (which was being heard by the Third Chamber) the Trial Court, without jurisdiction, had extended the pre-trial detention; therefore, the alleged victim's immediate release was requested. The Constitutional Chamber considered that the measure was reasonable, confirmed that the Trial Court was competent to extend the pre-trial detention, and declared the remedy unfounded. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-303316>

³² Filed on September 11, 2010, against Transitory Provision III of Law 8837; however, the Constitutional Chamber considered that an application for habeas corpus was unsuited to attack elements of the law that were possibly unconstitutional. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-492846>

³³ Filed on December 7, 2011, against the Special Criminal Court of San José, requesting a review of the criminal proceedings; however, the Constitutional Chamber indicated that the arguments did not relate to a matter that could be examined in that jurisdiction; rather they were the responsibility of the Third Chamber, and it therefore rejected the remedy. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-530280>

13271,³⁴ 2004-03704³⁵, 2004-04510³⁶, 2004-06484³⁷, 2004-12478³⁸, 2009-05278³⁹, 2011-10913⁴⁰, 2011-12405⁴¹, 2012-000084⁴², and 2019-023038⁴³. Finally, an action of unconstitutionality was also filed.⁴⁴ An appeal for review was filed by Scot Cochran on February 10, 2012,⁴⁵ based on Transitory Provision III of Law 8837. This situation was acknowledged by the State in a communication sent to the Commission on May 9, 2013.⁴⁶ Thus, the Court notes that the remedies invoked by the State were effectively filed on behalf of Scot Cochran; therefore it rejects this preliminary objection.

³⁴ Filed on September 9, 2003, against the Hospital Care Unit of La Reforma Institutional Penal Center, arguing that he had not received the medicines required for his treatment. The request for damages was rejected, and the authorities concerned were advised not to repeat this. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-259703>

³⁵ Filed on April 5, 2004, against the Ministry of Justice, owing to the alleged detention conditions; however, it was rejected because the facts described were already being examined by the Chamber under another application for habeas corpus filed in favor of the applicant. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-272136>

³⁶ Filed on April 5, 2004, against the Minister of Justice owing to the detention conditions; it was rejected because the Constitutional Chamber in Ruling 2004-4333 had referred to the same complaints by the applicant; the prison had been inspected, and it had been verified that no circumstances existed that violated his human rights. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-271540>

³⁷ Filed on May 27, 2004, against the Notary Court requesting the investigation of a notary who had allegedly prejudiced him; however, since a copy of the complaint stamped "received" was not provided, the remedy was rejected outright. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-274610>

³⁸ Filed on October 7, 2004, against the Criminal Court of the First Judicial Circuit of San José and the Lawyers' Professional Association, for allegedly failing to authorize the transfer to a private oral hearing, and because the Association advised him that he should take steps to be represented by a lawyer. The remedy was rejected because jurisdictional rulings are not subject to control of constitutionality via amparo. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-293900>

³⁹ Filed on February 18, 2009, against the director of the Cocorí Institutional Penal Center in Cartago, arguing that, allegedly, the prison's public telephones were restricted and could not receive international calls; the remedy was rejected. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-441976>

⁴⁰ Filed on August 5, 2011, arguing that the provisions of the Vienna Convention on Consular Relations had been violated; that the detainee had not been advised of his right to contact a consular officer and inform him that he was in the custody of the State. The Constitutional Chamber indicated that the matter should be examined by the criminal court that was processing the case in question, and therefore rejected the remedy outright. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-526951>

⁴¹ Filed on August 23, 2011, requesting clarification of Ruling 2011-010913 issued by the Constitutional Chamber, alleging inconsistency between the petition and the said judgment. The Constitutional Chamber rejected the remedy because the claim was inadmissible. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-523023>

⁴² Filed on December 20, 2012, requesting additions to and clarification of Ruling 2011-017126 issued by the Constitutional Chamber, alleging inconsistency between the petition and the said judgment. The Constitutional Chamber considered that there were no grounds that warranted admitting this request and therefore rejected it. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-533298>

⁴³ Filed on November 22, 2019, against the Minister of Justice and Peace for the alleged failure to appraise the length of the criminal sentence handed down at his trial; the remedy was declared partially admissible. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-951748>

⁴⁴ The action of unconstitutionality decided by Ruling 2020-003979, was filed on February 20, 2020, against paragraph (2) of article 57 bis of the Criminal Code. The Constitutional Chamber rejected the remedy because it did not comply with requirements of form and content and due to the inappropriate use of the action of unconstitutionality. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-963975>

⁴⁵ Cf. Third review procedure of February 10, 2012, filed by Scot Cochran against judgment No. 851-04 delivered by the Criminal Trial Court of the First Judicial Circuit of San José on August 17, 2004 (evidence file, folios 213 to 231).

⁴⁶ Cf. Communication sent by the State of Costa Rica to the Commission, DJO-635-13, dated May 9, 2013 (evidence file, folios 6754 to 6762).

V EVIDENCE

A. Admission of the documentary evidence

42. The Court received diverse documents presented as evidence by the Commission and the State attached to their principal briefs. As in other cases, the Court admits the probative value of those documents presented by the parties and the Commission opportunely (Article 57 of the Rules of Procedure),⁴⁷ the admissibility of which was not contested or challenged and whose authenticity was not questioned.

43. The State presented two types of documents with its final written arguments: (a) annexes 1, 2 and 3 related to the alleged victim's health,⁴⁸ and (b) annex 4 with minutes of a meeting of the Superior Council of the Judicature.⁴⁹ The representatives indicated that the annexes were time-barred and irrelevant for deciding the case; therefore, they asked the Court to reject them.

44. The Court reiterates that evidence forwarded outside the appropriate procedural opportunities is inadmissible, unless the exceptions established in Article 57(2) of the Rules of Procedure apply, namely: *force majeure*, grave impediment or in the case of a fact that occurs after the said procedural moments. Given that annexes 1 and 2 refer to facts that occurred after the corresponding procedural stage and that they respond to questions raised during the public hearing, they are admitted pursuant to the exceptions established in Article 57(2) of the Rules of Procedure. In the case of annex 3, which refers to facts or situations before the presentation of the answering brief and considering that the State did not allege any of the exceptions established in Article 57(2) of the Rules of Procedure, those documents are not admitted because they are time-barred. Lastly, the Court admits annex 4 provided by the State, because it was forwarded in response to a request made by the President based on Article 58(a) of the Rules of Procedure, as he considered the information useful for deciding this case.

B. Admission of the statement and the expert evidence

45. The Court deems it pertinent to admit the statement made by Scot Cochran by videoconference during the public hearing and the opinion provided by expert witness Sandra Babcock in an affidavit, insofar as they are in keeping with the purpose defined by the President in the order requiring them,⁵⁰ and the purpose of this case.

⁴⁷ In general and pursuant to Article 57(2) of the Rules of Procedure, documentary evidence may be presented together with the briefs submitting the case or with pleadings and motions, or with the answering brief, as applicable. Evidence forwarded outside these procedural occasions is not admissible, subject to the exceptions established in the said Article 57(2) of the Rules of Procedure (*force majeure* or grave impediment) or in the case of a supervening fact – that is, one that occurred after the said procedural moments.

⁴⁸ Annex 1 contains a medical epicrisis dated October 26, 2022, describing Scot Cochran's health; Annex 2 dated October 25, 2022, contains a description of the diet provided to Scot Cochran in the prison, and Annex 3 contains a forensic psychological report of October 26, 2016, with a statement by Scot Cochran.

⁴⁹ Annex 4 contains Minutes No. 019-2002 of the Superior Council of the Judicature of a meeting during which the Consular Convention between the United States of America and Costa Rica, and the Vienna Convention on Consular Relations were analyzed.

⁵⁰ *Case of Scot Cochran v. Costa Rica*. Order of the Inter-American Court of Human Rights of October 5, 2022. Available at: https://www.corteidh.or.cr/docs/asuntos/scot_cochran_05_10_22.pdf

VI FACTS

46. In this chapter, the Court will establish the facts that will be considered proved in this case, based on the body of evidence that has been admitted and in keeping with the factual framework established in the Admissibility and Merits Report. In addition, it will refer to the facts described by the parties that explain, clarify or reject that factual framework. The chapter is divided as follows: (A) the criminal proceedings against Scot Cochran; (B) the system of appeals against the criminal judgment and the remedies filed, and (C) relevant legal framework.

A. The criminal proceedings against Scot Cochran

47. Thomas Scot Cochran is a citizen of the United States of America.⁵¹ Starting in 1999, he entered and left Costa Rica on several occasions.⁵² At the time of his arrest he was renting an apartment in San José and worked in that city.⁵³

48. On January 18, 2001, the Public Prosecution Service received a complaint against Scot Cochran filed by the National Child Welfare Agency (PANI)⁵⁴ owing to his alleged participation in activities against the sexual integrity of minors. On March 12 and September 14, 2001, Casa Alianza Internacional (a non-governmental organization that combats child sex abuse) filed additional complaints.⁵⁵ The Domestic Violence and Sexual Crimes Prosecutor received additional complaints on February 5, 2002.⁵⁶

49. Based on the complaints received and the evidence gathered,⁵⁷ a court order was issued at 5:00 p.m. on January 17, 2003,⁵⁸ ordering the raid and search of Scot Cochran's residence, and the seizure of any evidence found there. The court order stated that the raid would be conducted that day at 9:00 p.m., because the inquiries made indicated that the criminal activity investigated was carried out during nighttime hours.⁵⁹ However, this order was subsequently expanded at 8:00 p.m. the same day and then at 10:30 p.m. on January 19, 2003.⁶⁰ This was because the police authorities who had conducted the investigation advised that, on January 17, Scot Cochran had

⁵¹ Cf. Record of preliminary statement before the Special Unit for Sexual Crimes and Domestic Violence of the Public Prosecution Service in San José dated January 20, 2003 (evidence file, folio 927).

⁵² Cf. Statement made before the Inter-American Court by Scot Cochran during the public hearing held on November 9, 2022.

⁵³ Cf. Record of preliminary statement before the Special Unit for Sexual Crimes and Domestic Violence of the Public Prosecution Service in San José dated January 20, 2003 (evidence file, folio 927).

⁵⁴ Cf. Complaint No. 5068 of the National Child Welfare Agency dated January 18, 2001 (evidence file, folio 7288).

⁵⁵ Cf. Complaints filed by Casa Alianza Internacional on March 12 and September 14, 2001 (evidence file, folios 7290 and 7291).

⁵⁶ Cf. Domestic Violence and Sexual Crimes Prosecutor, complaint received at 10:45 a.m. on February 5, 2002, (evidence file, folio 974).

⁵⁷ Cf. Ruling of the Criminal Court of San José at 5:00 p.m. on January 17, 2003, ordering the raid, search and seizure (evidence file, folio 7293).

⁵⁸ Cf. Ruling of the Criminal Court of San José at 5:00 p.m. on January 17, 2003, ordering the raid, search and seizure (evidence file, folio 7293).

⁵⁹ Cf. Ruling of the Criminal Court of San José at 5:00 p.m. on January 17, 2003, ordering the raid, search and seizure (evidence file, folio 7294).

⁶⁰ Cf. Ruling of the Criminal Court of San José at 5:00 p.m. on January 17, 2003, and additional rulings at 8:00 p.m. on January 17, 2003, and at 10:30 p.m. on January 19, 2003 (evidence file, folios 7293 to 7297).

"entered his home alone."⁶¹ The execution of the court search warrant was therefore postponed to a later date because the purpose of the raid was to find him *in flagrante delicto*, which would not have occurred on the initial date established for the procedure.

50. The police authorities reported that at 9:45 p.m. on January 19, 2003,⁶² Scot Cochran had entered his residence accompanied by a minor. Therefore, the pertinent arrangements were immediately made to conduct a raid, and this finally took place in the early morning hours of January 20, 2003.⁶³

51. The judge ordered entry at 10:50 p.m. on January 19, 2003,⁶⁴ and according to the record of the raid, the procedure ended at 4:25 a.m. on January 20, 2003.⁶⁵ The record of the raid indicates that the sexual crimes prosecutor, a public defender, and officials from the Judicial Investigation Department were present.⁶⁶ The record indicates that, when they entered Scot Cochran's residence, they found him "semi-naked" with a 16-year-old who was discovered "hidden" in the same room.⁶⁷ Scot Cochran was detained at the request of the Public Prosecution Service and taken to the cells of the Second Judicial Circuit at 5:00 a.m. on January 20, 2003.⁶⁸ The police proceeded to arrest the petitioner and seized various documents and audiovisual material presumably related to the crimes that were being investigated.

52. On January 20, 2003, following Scot Cochran's arrest and transfer to the judicial facilities, a preliminary statement was taken at the Special Unit for Sexual Crimes of the Public Prosecution Service. The statement was supposed to be taken at 11:00 a.m.; however, it was postponed in order to contact the lawyer appointed by Scot Cochran and to ensure the presence of a translator; it resumed at 3:10 p.m.⁶⁹ During this procedure, the alleged victim was questioned to establish his identity and, in the presence of his lawyer and a translator, he was informed of the offenses with which he was charged. However, Scot Cochran refused to provide a statement; therefore, only his personal data was noted.

53. At the request of the Public Prosecution Service, on the afternoon of January 20, 2003, the Special Criminal Court of San José ordered the pre-trial detention of Scot Cochran on charges of criminal responsibility for the crimes of "paid sexual relations with [a minor and] supplying drugs."⁷⁰ Pre-trial detention was required to ensure that the adversarial proceedings could take place and that their success was not altered by

⁶¹ Ruling of the Criminal Court of San José at 8:00 p.m. on January 17, 2003, adding the search warrant (evidence file, folio 7296)

⁶² Cf. Expansion of the report on the raid of Scot Cochran's residence dated January 20, 2003 (evidence file, folio 7305).

⁶³ Cf. Record of the raid on Scot Cochran's residence (evidence file, folio 7304).

⁶⁴ Cf. Expansion of the report on the raid of Scot Cochran's residence dated January 20, 2003 (evidence file, folio 7306).

⁶⁵ Cf. Record of the raid on Scot Cochran's residence (evidence file, folio 7304).

⁶⁶ Cf. Record of the raid on Scot Cochran's residence (evidence file, folio 7301).

⁶⁷ Cf. Record of the raid on Scot Cochran's residence (evidence file, folio 7301).

⁶⁸ Cf. Expansion of the report on the raid of Scot Cochran's residence dated January 20, 2003 (evidence file, folio 7307).

⁶⁹ Cf. Record of preliminary statement before the Special Unit for Sexual Crimes and Domestic Violence of the Public Prosecution Service in San José dated January 20, 2003 (evidence file, folio 927).

⁷⁰ Ruling of the Criminal Court of San José, at 6:55 p.m. on January 20, 2003, ordering six-months pre-trial detention for Scot Cochran (evidence file, folios 42 to 49).

the destruction or manipulation of evidence.⁷¹ The judge considered that there was the required degree of probability that Scot Cochran was the author of the wrongful act attributed to him, because the Judicial Investigation Department had conducted a series of procedures and received witness statements to this effect. In addition, he considered that there was a latent risk of flight because he was a foreign national and his family lived in the United States of America and this, added to his income, could facilitate his departure from the country."⁷²

54. In this decision, the judge expressly ordered that an official communication be sent to the Embassy of the United States of America informing it of Scot Cochran's detention,⁷³ based on the rule established by session 19-02 of the Superior Council of the Judicature, which obliged judicial operators to notify the consular authorities when one of their nationals was arrested. The judicial order for pre-trial detention and the communication addressed to the consular authorities of the United States of America were notified to Scot Cochran the same day at 8:30 p.m., and his signature recorded.⁷⁴ The communication with information on the court order was addressed to the Embassy and contained an error in Scot Cochran's name, but the court order with the correct name was attached.⁷⁵

55. The communication addressed to the Embassy of the United States of America included information on the arrest, the case number, the crimes for which Scot Cochran was investigated, and the order requiring his pre-trial detention, in order to advise the diplomatic representation of the situation.⁷⁶

56. On May 7, 2003, Scot Cochran stated that an official from the Consulate of the United States of America had called him to verify whether he had received his medicines because he suffered from a chronic sexually transmitted disease for which he received regular treatment.⁷⁷ Also, on March 18, 2003, an official from the United States Consulate sent Scot Cochran a copy of a letter from his sister by local mail.⁷⁸

57. The case file also contains two communications from Scot Cochran's doctor at the detention center addressed to an officer of the United States Consulate; one dated May 8, 2003, concerning Scot Cochran's medication,⁷⁹ and the other dated May 13 that

⁷¹ Cf. Ruling of the Criminal Court of San José, at 6:55 p.m. on January 20, 2003, ordering six-months pre-trial detention for Scot Cochran (evidence file, folio 44).

⁷² Cf. Ruling of the Criminal Court of San José, at 6:55 p.m. on January 20, 2003, ordering six-months pre-trial detention for Scot Cochran (evidence file, folio 47).

⁷³ Cf. Ruling of the Criminal Court of San José, at 6:55 p.m. on January 20, 2003, ordering six-months pre-trial detention for Scot Cochran (evidence file, folios 48 and 49).

⁷⁴ Cf. Notification of the ruling that orders informing the Embassy of the United States of America in Costa Rica of Scot Cochran's situation (evidence file, folio 7337).

⁷⁵ Cf. Ruling of the Criminal Court of San José, at 6:55 p.m. on January 20, 2003, ordering six-months pre-trial detention for Scot Cochran (evidence file, folios 42 al 49).

⁷⁶ Cf. Note addressed to the Embassy of the United States of America in Costa Rica dated January 20, 2003, advising that pre-trial detention had been ordered against Scot Cochran, and also with regard to his alleged crimes (evidence file, folio 7339).

⁷⁷ Cf. Official communication JSM-CAISH No. 052-03 of the Ministry of Justice, Medical Services, CAI, San José dated May 7, 2003 (evidence file, folio 7476).

⁷⁸ Cf. Copy of the fax sent by an official of the Consular Section of the Embassy of the United States of America in Costa Rica, dated March 19, 2003, addressed to the deputy director of the CAI La Reforma (evidence file, folios 7472 and 7473).

⁷⁹ Cf. Copy of the fax sent by Dr. AS to the consular officer of the United States of America on May 8, 2003, with regard to Scot Cochran's medical treatment (evidence file, folios 7468 and 2499).

year concerning a transfer owing to his pathology and treatment.⁸⁰ The evidence file also contains a letter of September 25, 2003, from the United States Embassy indicating that, in recent months, Scot Cochran's medical condition had worsened and requesting his transfer to a place where he could be treated.⁸¹ There is also a letter of September 10, 2003, in which the United States Embassy urges the Costa Rican authorities to take the necessary steps with regard to his medical treatment.⁸² In addition, the record of the hearing before the criminal court on November 1, 2003, notes that Scot Cochran provided "copies of evidence from the Embassy."⁸³

58. In addition to the aforementioned complaints (*supra* para. 48), during 2003 and in the months following his arrest, other complaints were filed against Scot Cochran based on alleged actions against the sexual integrity of minors.⁸⁴

59. On July 17, 2003, the alleged victim's pre-trial detention was extended for three months;⁸⁵ a decision that was confirmed by a ruling of August 11 that year issued by the Criminal Trial Court of the First Judicial Circuit of San José.⁸⁶ Furthermore, on October 20, 2003, the criminal court again extended the pre-trial detention for a further three months,⁸⁷ a decision confirmed by the Criminal Trial Court of the First Judicial Circuit of San José in a ruling of November 14, 2003.⁸⁸ In response to this last ruling, the alleged victim filed a request to end his pre-trial detention by applying article 260 of the Procedural Code. Consequently, the court verified, by consulting the medical reports, that the accused suffered from a chronic sexually transmitted disease; however, the court indicated that this conditions did not constitute a terminal illness and, during the oral hearing, the pre-trial detention was again extended on January 19, 2004⁸⁹ and on July 30, 2004,⁹⁰ by the Criminal Cassation Court of the Second Judicial Circuit of San José.

⁸⁰ Cf. Copy of the fax sent by Dr. AS to the consular officer of the United States of America on May 13, 2003, with regard to Scot Cochran's medical treatment (evidence file, folio 7470).

⁸¹ Cf. Diplomatic note No. 167 from the Embassy of the United States of America to the Ministry of Foreign Affairs requesting the transfer of Scot Cochran (evidence file, folios 2617 and 2618).

⁸² Cf. Diplomatic note No. 158 from the Embassy of the United States of America to the Ministry of Foreign Affairs dated September 10, 2003, urging it to take the necessary measures in relation to Scot Cochran's medical treatment (evidence file, folios 2621 and 2622).

⁸³ Record of hearing before the Criminal Trial Court of the First Circuit of San José on November 13, 2003, recording that Scot Cochran "provides copies of evidence from the Embassy" (evidence file, folio 7465).

⁸⁴ Cf. Complaints of January 23, 2003 (evidence file, folio 944), January 24, 2003 (evidence file, folio 948), February 7, 2003 (evidence file, folio 979), February 12, 2003 (evidence file, folio 983), March 3, 2003 (evidence file, folio 1016), March 7, 2003 (evidence file, folio 1022) and March 25, 2003 (evidence file, folios 1041 and 1043).

⁸⁵ Cf. Ruling of the Criminal Court of the First Judicial Circuit of San José of July 17, 2003, extending pre-trial detention for three more months (evidence file, folios 51 to 53).

⁸⁶ Cf. Ruling No. 235-03 of the Criminal Trial Court of the First Judicial Circuit of San José of August 11, 2003, confirming the appealed ruling (evidence file, folios 55 to 58).

⁸⁷ Cf. Ruling of the Criminal Court of the First Judicial Circuit of San José of October 20, 2003, extending the precautionary measure of the pre-trial detention of Scot Cochran for three more months (evidence file, folios 60 to 62).

⁸⁸ Cf. Ruling 1048-03 of the Criminal Court of the First Judicial Circuit of San José of November 14, 2003, rejecting the appeal filed (evidence file, folios 64 to 67).

⁸⁹ Cf. Ruling No. 2004-0018 of the Criminal Cassation Court of the Second Judicial Circuit of San José of January 19, 2004, authorizing the extension of the pre-trial detention of Scot Cochran for four more months (evidence file, folios 69 to 74).

⁹⁰ Cf. Ruling No. 2004-0774 of the Criminal Cassation Court of the Second Judicial Circuit of San José of July 30, 2004, authorizing the extension of the pre-trial detention of Scot Cochran for one more month (evidence file, folios 76 and 77).

60. Finally, on August 17, 2004, the Criminal Trial Court of the First Judicial Circuit of San José, a collegiate court composed of the judges, LGBG, OWW and AMD, declared by the unanimous vote of the three judges in judgment No. 851-04 that Scot Cochran was responsible for the crimes of: "violation of the law on narcotics, psychotropic substances, drugs of unauthorized use, and related activities, under the heading of supplying minors, committed against public health [...]; manufacture or production of pornography and dissemination of pornography, both committed to the detriment of [a number of minors]][...]; paid sexual relations with minors, and corruption"; all these crimes committed concurrently (*en concurso material*). Consequently, the defendant was sentenced to 154 years' imprisonment, which, under the rules for concurrent crimes established in article 22 of the Criminal Code, resulted in 45 years' imprisonment.⁹¹

61. The case file reveals that, when his residence was raided⁹² and when his initial statement was taken,⁹³ Scot Cochran was offered a public defender, but he appointed private defense counsel. Also, he had at least five different private defense counsel before the trial stage began.⁹⁴ Subsequently, at the trial stage, he appointed two new defense counsel,⁹⁵ and at the appeal stage, he was represented by at least six lawyers.⁹⁶

B. The system of appeals against the criminal judgment and the remedies filed

B.1. Remedy of cassation

62. On September 6, 2004, Scot Cochran's lawyers filed a remedy of cassation against the criminal judgment sentencing him to 45 years' imprisonment. Subsequently, on October 5, 2004, the petitioner presented a document entitled "cross-appeal for cassation."⁹⁷ Scot Cochran's private defense counsel argued that there had been four formal errors regarding: the date of the alleged victim's entry into the country; the lack of documents proving the identity of some of the victims; the absence of a psychosocial report on some of the victims, and the unreliability of several psychosocial reports. They also argued a substantial error in relation to the disregard, or erroneous application, of articles 21, 22, 74 and 75 of the Criminal Code, considering that there was a "*concurso*

⁹¹ Cf. Judgment No. 851-04 of the Criminal Trial Court of the First Judicial Circuit of San José of August 17, 2004 (evidence file, folios 7363 to 7461).

⁹² Cf. Expansion of the report on the raid of Scot Cochran's residence (evidence file, folio 7306).

⁹³ Cf. Record of preliminary statement before the Special Unit for Sexual Crimes and Domestic Violence of the Public Prosecution Service in San José dated January 20, 2003 (evidence file, folios 927 and 928).

⁹⁴ Lawyer GP was appointed initially (evidence file, folio 42), and was then replaced by AGR (evidence file, folio 927), who was, in turn, replaced by lawyer APG on April 21, 2003 (evidence file, folio 1315); lawyer JMG was appointed co-defender with the latter on June 25, 2003 (evidence file, folio 1302). The former of these two renounced and was replaced by RGS (evidence file, folio 1397) and, subsequently, RQL was appointed co-defender on October 21, 2003 (evidence file, folio 3249).

⁹⁵ Lawyers MCZ and MSB were appointed on May 28, 2004 (evidence file, folios 1719, 1727 and 1734).

⁹⁶ Layers MCZ and MSB filed the remedy of cassation (evidence file, folio 2039). Lawyer JCC filed an application for habeas corpus in favor of Scot Cochran (evidence file, folio 2322) and later filed an appeal for review (evidence file, folio 2343). He also had a public defender, FAH, for another of the appeals for review (evidence file, folios 24 and 29) and lawyer ABR for the last appeal before the Third Chamber (evidence file, folio 38).

⁹⁷ Cf. Adhesion to the remedy of cassation filed by MCZ on behalf of Scot Cochran on October 5, 2004, against judgment No. 851-04 delivered by the Criminal Trial Court of the First Judicial Circuit of San José on August 17, 2004 (evidence file, folios 84 to 112).

ideal" of crimes [Note: when a single act or omission violates various legal provisions], with regard to each victim and this would result in a lesser sentence.⁹⁸

63. In ruling 2005-00126 of February 28, 2005, the Third Chamber of the Supreme Court of Justice rejected the appeals that had been filed. First, it held that the acts of which the petitioner had been convicted took place between 1999 and 2003, during which time it had been proved that Scot Cochran was already living in Costa Rica. In addition, the Third Chamber considered that the fact that the investigation file did not include the birth date or certificate of some of the victims was not an error that invalidated the judgment. Also, regarding the arguments on possible errors in the assessment of the evidence, the Third Chamber noted that the decision of the court *a quo* was not based exclusively on the statements of the victims of the acts, but also on numerous elements of proof such as photographic and audiovisual records. Regarding the application of the rules on the concurrence of crimes, the Third Chamber stated that, even though the rules of "*concurso ideal*" had been applied in relation to the acts defined as "paid sexual relations," this did not alter the length of the sentence imposed, because those acts also took place concurrently [*en concurso material*] with other crimes, including the "supply [of narcotics] to minors," and the maximum punishment for this was used in order to make the calculation because it was the most serious of all the crimes involved pursuant to article 76 of the Criminal Code.⁹⁹

B.2. First review procedure

64. On June 14, 2005, a review procedure was opened before the Third Chamber of the Supreme Court of Justice in which, first, the violation of the right to a second hearing was argued. The appellant also indicated that the State's organs had carried out certain unlawful actions during the investigation that had had an impact on the chain of custody of the probative elements used as evidence of guilt. He also argued the existence of three new pieces of documentary evidence that, in the defense's opinion, would invalidate most of the testimonial evidence and, lastly, he asserted that there had been violations of due process in the case because, during the investigation and the oral hearing, Scot Cochran had not had an effective defense counsel who provided him with appropriate assistance.¹⁰⁰

65. On December 12, 2007, the Third Chamber decided this appeal in Ruling 2007-1464 and declared the review procedure unfounded. The grounds for this decision cited the judgment of the Inter-American Court in *Herrera Ulloa v. Costa Rica*, and indicated that there was no evidence in the processing of the case against Scot Cochran that would allow it to conclude: that the remedy of cassation had been decided with excessive formalist rigor; that some of the appellant's arguments had not been decided, and that access had been denied to a review of the determination of the facts, or of the way in which the evidence had been assessed. Regarding the seizure of documentation from Scot Cochran's office, the Chamber ruled out that this had been done in violation

⁹⁸ Cf. Remedy of cassation filed by MCZ and MSB, on behalf of Scot Cochran, before the Trial Court of the First Judicial Circuit of San José on September 6, 2004, against judgment No. 851-04 delivered by the Trial Court of the First Judicial Circuit of San José (evidence file, folios 5 to 19).

⁹⁹ Cf. Ruling No. 2005-00126 of the Third Chamber of the Supreme Court of Justice of February 28, 2005, deciding the cassation remedy. Available at: <https://nexuspi.poder-judicial.go.cr/document/sen-1-0034301797>

¹⁰⁰ Cf. First review procedure of June 14, 2004, filed against judgment No. 851-04 delivered by the Criminal Trial Court of the First Judicial Circuit of San José of August 17, 2004 (evidence file, folios 114 to 156 and 2343 to 2368).

of constitutional guarantees because the package with the documentation was opened in the presence of the criminal judge and the prosecutor in the case. And, regarding the raid on Scot Cochran's residence, the court had stated that it was conducted during nighttime hours because it was probable that a crime was being committed at that time. Lastly, the Third Chamber concluded that it had not been proved that the defendant's defense counsel had acted with evident negligence or against his interests, and that the examples of defenselessness presented by the appellant constituted a list of discrepancies with the adverse result of the proceedings.¹⁰¹

B.3. Second review procedure

66. On April 28, 2009, Scot Cochran filed a second review procedure, arguing that, during the proceedings, his right to due process of law had been violated because the State authorities had not advised him of his right to request consular assistance based on his situation as a foreign citizen residing in Costa Rica.¹⁰² This review procedure was declared unfounded by the Third Chamber of the Supreme Court of Justice in Ruling 2010-1373 of November 30, 2010. The Court stated that, according to Article 36(1)(b) of the Vienna Convention on Consular Relations, "if the defendant [in a criminal case] considers that he needs consular assistance, he should ask the competent State offices to communicate his situation to the [corresponding] consulate." Thus, and after summarizing various procedural acts documented in the case file, the Chamber indicated that neither Scot Cochran nor his lawyers had ever requested this assistance.¹⁰³

B.4. Third review procedure

67. Finally, Scot Cochran filed a third review procedure in a brief of February 10, 2012,¹⁰⁴ in which he repeated his arguments regarding the violation of his right to be informed about consular assistance, his right of defense, the unlawfulness of the raid, and the procedural rights of victims. He also presented new arguments in relation to the violation of the guarantee of an impartial judge because the same judge had taken part in both the confirmation of the order for pre-trial detention issued against him, and in the trial court that heard the case that culminated in his prison sentence. This appeal was declared inadmissible by the Third Chamber of the Supreme Court of Justice in Ruling 2013-00211 of February 15, 2013.¹⁰⁵ Regarding the impartiality of the judge, the Third Chamber indicated that a review of the ruling of August 11, 2003, that confirmed the pre-trial detention did not reveal any suggestion of partiality because there was no indication that the judge had assessed the body of evidence. It also noted that the appellant had not indicated how his right of defense had been infringed and, regarding the raid, it reiterated that this had been conducted at night because it was

¹⁰¹ Cf. Ruling No. 2007-01464 of the Third Chamber of the Supreme Court of Justice of December 12, 2007, deciding the first appeal for review (evidence file, folios 24 to 36).

¹⁰² Cf. Second review procedure filed by Scot Cochran on April 28, 2009, against judgment No. 851-04 delivered by the Criminal Trial Court of the First Judicial Circuit of San José on August 17, 2004 (evidence file, folios 158 to 211).

¹⁰³ Cf. Ruling No. 01373-2010 of the Third Chamber of the Supreme Court of Justice of November 30, 2010, deciding the second review procedure. Available at: <https://nexuspi.poder-judicial.go.cr/document/sen-1-0034-504556>

¹⁰⁴ Cf. Third review procedure filed by Mr. Scot Cochran on February 10, 2012, against judgment No. 851-04 delivered by the Criminal Trial Court of the First Judicial Circuit of San José on August 17, 2004 (evidence file, folios 213 to 231).

¹⁰⁵ Cf. Ruling No. 2013-00211 of the Third Chamber of the Supreme Court of Justice of February 15, 2013, deciding the third review procedure (evidence file, folios 38 to 40).

then that the unlawful activities took place. Lastly, regarding the alleged failure to notify the right to consular assistance, the Chamber referred back to its ruling of November 30, 2010.¹⁰⁶

C. Relevant legal framework

68. At the time of the facts, Costa Rica was a party to the Vienna Convention on Consular Relations, and it was in force in the country.¹⁰⁷ Article 36 describes communication with nationals of sending States as follows:

ARTICLE 36. Communication and contact with nationals of the sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation.

They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

69. In addition, article VII of the Consular Convention between the United States of America and Costa Rica (No. 1129),¹⁰⁸ in force for Costa Rica as of February 11, 1950, establishes:

ARTICLE VII

[...]

2 (b) A consular officer shall be informed immediately by the appropriate authorities of the receiving State when any national of the sending State is confined in prison awaiting trial or otherwise detained in custody within his consular district by such authorities.

3. A national of the sending State shall have the right at all times to communicate with a consular officer of the sending State.

70. At the time of the facts, the requirements and way in which house raids should be conducted were regulated by the Costa Rican Code of Criminal Procedure. The code is still in force, but several sections and some norms applicable to this case have been

¹⁰⁶ Cf. Ruling No. 01373-2010 of the Third Chamber of the Supreme Court of Justice of November 30, 2010, deciding the second review procedure. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0034-504556>

¹⁰⁷ Vienna Convention on Consular Relations. Un Doc. A/CONF.25/12) (1963) of April 24, 1963. Law 3767 of Costa Rica, published in the gazette on November 9, 1966.

¹⁰⁸ Legislative Assembly of Costa Rica, *Consular Convention between the United States of America and Costa Rica* in force since February 11, 1950, published in the gazette on February 1, 1950, adopted by Law 1129 of January 25, 1950.

amended or partially rescinded; therefore, the following were the main elements in force at the time of the facts.

Article 193: House raid and search. When the search is to be conducted in a place that is inhabited, in its outbuildings, business premises or office, the raid and search shall be conducted in person by the judge and he must initiate it between 6:00 a.m. and 6:00 p.m. It can be conducted at any time when the resident or his representative consents or in extremely serious and urgent cases. The order authorizing the raid shall indicate the urgent situation.

Article 195: Content of the order requiring the raid. The order requiring the raid shall contain:

- a) The name and position of the official who authorizes the raid and identification of the proceedings in which it is ordered.
- b) The precise identification of the place or places to be searched.
- c) The name of the authority that will conduct the search, if the procedure will be delegated to the Public Prosecution Service or the police, in order to proceed pursuant to the provisions of this Title.
- d) The reason for the raid.
- e) The date and time that the procedure should be conducted.

71. Both articles are in force currently. Also, regarding procedures to challenge the decision to order pre-trial detention, at the time of the facts, the Code of Criminal Procedure established:

Article 256: Appeal. During the preparatory and intermediate proceedings, the order that first requires pre-trial detention or, after the first three months, rejects an alternative measure, may be appealed without suspensive effect.

In addition, decisions that impose any other precautionary measure, or reject an alternative measure may be appealed, without suspensive effect, when they are issued during the preparatory and intermediate proceedings, in the absence of the cases described in the first paragraph.

In those cases, the parties shall be summonsed for twenty-four hours and, once this has elapsed, the higher court shall rule, without any procedures. To this end, only the essential items to take a decision shall be sent to the court and the procedure established to process the remedy of appeal shall not apply.

72. In addition, the limitations to an order of pre-trial detention due to questions of health are regulated in article 260, in force currently, and establish:

Article 260: Limitations. Pre-trial detention shall not be ordered for persons of more than seventy years of age or valetudinarians, if the court considers that, if convicted, they will be sentenced to less than five years' imprisonment. In addition, it shall not be ordered for persons suffering from a serious and terminal illness. In such cases, if it is essential to restrict their liberty, house arrest shall be ordered or placement in a medical or geriatric center [...].

73. With regard to challenging judges, at the time of the facts articles 57 to 61 of the Costa Rican Code of Criminal Procedure stipulated:

Article 57: Challenges of the judge. The Public Prosecution Service and the parties may challenge the judge when they consider that there are reasons why he should recuse himself.

Article 58: Time and form of challenges. On submitting the challenge, the grounds on which it is based and the pertinent evidence shall be indicated in writing, at the risk of inadmissibility. The challenge shall be made within twenty-four hours of becoming aware of the grounds on which it is based. During the hearings, the challenge shall be presented orally, under the same admissibility conditions as the written presentations and a record shall be made of the grounds.

Article 59: Challenge procedure. If the judge admits the challenge, he shall apply the procedure established for disqualification. To the contrary, he shall forward the challenge brief and his report to the competent court or, if the judge is a member of a collegiate court, he shall request that the other members also reject it. If it is considered necessary, a date shall be established to hold a hearing to receive evidence and inform the parties. The competent court shall decide the incidental plea within twenty-four hours, and no appeal is allowed.

Article 60: Challenge of secretaries and collaborators. The same rules shall apply to secretaries and those who fulfill any judicial assistance role in the proceedings. The court before which they act shall verify briefly the grounds cited and shall take the corresponding decision. When the recusal or challenge has been admitted, the official shall be separated from the matter.

Article 61: Effects. Once the recusal has occurred or the challenge has been admitted, any actions taken by the separated official shall be ineffective. The disqualification of the officials shall be final, even if, subsequently, the grounds for their separation cease to exist.

74. All the foregoing articles remain in force, with the exception of article 58 which was amended by article 1 of Law 8837 "Creation of the remedy of appeal against a judgment, other amendments to the challenge regime, and implementation of new rules for orality in criminal proceedings" of May 3, 2010, which has been in force since December 9, 2011.

75. Regarding the relevant norms in relation to the right to a review of an adverse judgment, article 443 of the Code of Criminal Procedure in force at the time of the facts established that "the remedy of cassation shall be admissible when the ruling failed to observe a legal principle or applied it erroneously. When the legal principle that is cited as having been disregarded or applied erroneously constitutes a procedural defect, the remedy shall only be admissible if the interested party has opportunely claimed its rectification or has advised that he will appeal against it by cassation, except in cases of absolute defects and those that occur after the debate has ended."

76. In addition, at the time of the facts, article 369, subsequently rescinded, listed the causes that justified cassation, namely:

Defects in the judgment. The following defects in the judgment shall justify cassation:

- a) The accused has not been sufficiently identified;
- b) The detailed determination of the fact that the court found proved is lacking;
- c) It is based on probative means or elements that have not been incorporated into the trial lawfully or incorporated by a reading in violation of the rules established in the Code;
- d) The reasoning of the majority of the court is lacking, is insufficient or is contradictory, or the rules of sound judicial discretion were not respected in relation to decisive probative means or elements;
- e) Essential elements of the operative paragraphs are absent;
- f) The date of the act is absent and it is not possible to establish this or, the signature of one or more of the judges is missing and it is not possible to determine whether they have taken part in the deliberation, except in cases of the exceptions established by law;
- g) Failure to respect the established rule for the deliberation and drafting of the judgment;
- h) Failure to respect the rules in relation to the correlation between the judgment and the charges;
- i) Failure to respect or erroneous application of substantive law.

77. With regard to the formal rules for filing the remedy of cassation, article 445 of the Code of Criminal Procedure at the time of the facts established that this remedy should be filed before the court that had delivered the contested judgment "by a reasoned brief which shall clearly cite the legal provisions that it is considered have not been respected or have been applied erroneously, and which sets out the claim," and that "no other reasons may be alleged outside of this opportunity." Subsequently, pursuant to former articles 446 and 447, the case file would be forwarded to the competent court of cassation, which was responsible for determining the admissibility of the request and the need to call for a hearing.

78. Regarding the appellant's possibility of presenting new probative elements, article 447 in force at the time of the facts, authorized the court of cassation to order the reception of new evidence when deciding on the admissibility of the appeal and to

require the appellant to correct his substantiation if it found this to be insufficient. Furthermore, former article 449 established that "evidence may be offered when the remedy is based on a defect of procedure or when it is alleged that an act was executed contrary to what was indicated in the proceedings, the record of the debate, or the judgment."

79. In the case of the procedure for the review of final judgments, at the time of the facts, article 408 of the Code of Criminal Procedure established that this was admissible in the following situations:

- a) When the facts held to be the grounds for the sentence are irreconcilable with those established by another final criminal judgment.
- b) When the judgment has been founded on false evidence.
- c) When the judgment has been delivered as the result of malfeasance in office, bribery, violence or any other offense or fraudulent machination, the existence of which has been declared in a subsequent final ruling, except in the cases established in the following subparagraph.
- d) When it is proved that the judgment was unlawful as a direct consequence of a serious violation of his duties committed by a judge, even though it is impossible to proceed due to a supervening circumstance.
- e) When, following the judgment, new evidence or new facts supervene or are discovered that, alone or together with those already examined during the proceedings, prove that the act did not occur, that the person convicted did not commit it, or that the act committed falls under a more favorable law.
- f) When a subsequent law declares that the act that was previously considered punishable is no longer punishable or when the law that served as the grounds for the conviction has been declared unconstitutional.
- g) When the judgment has not been delivered in keeping with due process or failed to provide an opportunity for defense.

80. Furthermore, articles 410 and 411 of the Code of Criminal Procedure established that the request for review must be filed in writing before the competent court of cassation. And, at that stage, it was not possible for the appellant to raise "matters that had already been discussed and decided in cassation, unless they were based on new reasons and new evidence."

81. On April 28, 2006, Law 8503 on "Opening of Criminal Cassation" was enacted and under this several amendments were made to the legal framework for the remedy of cassation contained in the Code of Criminal Procedure. This was published and entered into force on June 6, 2006. First, new grounds were added to article 369 of the Code of Criminal Procedure to the effect that "the judgment has not been delivered in keeping with due process or failed to provide an opportunity for defense."

82. Second, and in relation to the scope of the examination made by the court of cassation, Law 8503 incorporated article 449 *bis* to the Code of Criminal Procedure, and this established:

Article 449 bis: Examination by the court of cassation. The court of cassation shall determine the admissibility of the claims cited in the remedy and their grounds, examining the actions and the records of the hearing, in order to evaluate the way in which the trial judges assessed the evidence and substantiated their decision. If there are insufficient records to be able to make this determination, the court may replicate in cassation the oral evidence of the trial that it considers necessary to determine the admissibility of the claim, and shall evaluate it in relation to the other actions.

It may also assess, directly, the written evidence that was presented during the trial.

83. Lastly, Transitory Provision I of Law 8503 authorized "[a]nyone convicted of a criminal act prior to this law who has been unable to file a remedy of cassation against

a judgment owing to the rules that regulated its admissibility” to now be able “to require the review of the judgment before the competent court, citing in each case the prejudice caused and the factual and legal aspects that could not be examined in cassation.”

84. On June 9, 2010, Law 8837 was published on “Creation of the remedy of appeal against a judgment, other reforms to the appeals system, and implementation of new rules on orality in criminal proceedings.” This law, in force since December 9, 2011, regulated the admissibility of the remedy of appeal as follows:

Article 459: Admissibility of the remedy of appeal. The remedy of appeal against a judgment shall permit the full examination of the judgment, when the interested party alleges discrepancy with the determination of the facts, the incorporation and assessment of the evidence, the legal reasoning, or the establishment of the penalty. The higher court shall rule on the points that are expressly raised before it, but shall declare, even *ex officio*, any absolute defects and breaches of due process that are found in the judgment.

85. Finally, regarding the situation of those persons whose judgments were already *res judicata* before its enactment, Transitory Provision III of Law 8837 established:

In all those cases in which a final judgment has been delivered when this law enters into force, and in which the violation of Article 8(2)(h) of the American Convention on Human Rights has previously been alleged, the person convicted shall have the right to file, once, during the first six months, a review procedure that shall be heard in accordance with the competences established in this law, by the former courts of cassation or the Third Criminal Chamber. In cases in which judgment is pending, and in which the violation of Article 8(2)(h) of the American Convention on Human Rights has been alleged previously, the appellant shall be granted two months to adapt his remedy of cassation to a remedy of appeal, which shall be filed before the former courts of cassation or the Third Chamber, as applicable, which shall forward the case file to the new courts of appeal for their ruling. The prejudice caused must be specifically described, at the risk of inadmissibility.

VII MERITS

86. In the instant case, the Court will examine the scope of the State’s international responsibility for the alleged violation of Scot Cochran’s right to information on consular assistance within the framework of the criminal proceedings instituted against him. It will also examine whether the judicial decision declaring him guilty was adopted by an impartial court and whether he was allowed to file appropriate judicial remedies against his sentence.

87. The Court will examine the arguments on the merits in the following order: (i) the right to personal liberty and judicial guarantees, in particular the right to information and effective access to consular assistance, in relation to the obligations to respect and to ensure rights; (ii) the right to judicial guarantees, in particular to be tried by an impartial judge, and (iii) the right to appeal the judgment before a higher court in relation to the obligations to respect and to ensure rights and to adopt domestic legal provisions.

88. The Court considers it essential, as it has in other cases,¹⁰⁹ to reiterate that it is not a court that examines the criminal responsibility of the individual. Therefore, in this case, the Court will not issue an opinion on the guilt or innocence of Scot Cochran; but rather, on the conformity with the American Convention of the acts of certain public

¹⁰⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 134, and *Case of Angulo Losada v. Bolivia, supra*, para. 76.

officials during his detention, the criminal proceedings, and the appeals filed in the case.¹¹⁰

VII-1
RIGHT TO PERSONAL LIBERTY¹¹¹ AND JUDICIAL GUARANTEES,¹¹² IN PARTICULAR THE RIGHT TO INFORMATION AND EFFECTIVE ACCESS TO CONSULAR ASSISTANCE, IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE RIGHTS

A. Arguments of the parties and observations of the Commission

89. The **Commission** alleged that Scot Cochran had never been informed of his right to request consular assistance, because the officials who arrested him failed to mention anything regarding this right, even though they were aware that he was not a Costa Rican national. The Commission also argued that neither was Scot Cochran informed of his right to request consular assistance on the morning of January 20, 2003, when his preliminary statement was taken in the Special Unit for Sexual Crimes of the Public Prosecution Service.

90. The Commission indicated that although the case file contains a letter dated January 20, 2003, signed by the criminal judge and addressed to the Embassy of the United States of America in Costa Rica, in which the judge advises that he has decided to order six-months pre-trial detention for Scot Cochran, this notification was not sufficient to consider that Scot Cochran's right to information on consular assistance had been complied with, because that right signifies the right of any foreigner who is arrested to be informed immediately that he may request the consular services of his country of origin. The Commission indicated that there was no record that the Costa Rican judicial authorities had informed Scot Cochran of his right to information on consular assistance and, during the international proceedings, the State of Costa Rica had not presented any evidence in this regard. Consequently, it asked the Court to declare the violation of the rights established in Articles 7(4) and 8(2) of the American Convention.

91. The **representatives** argued that, by not informing Scot Cochran of his right to "consular access," Costa Rica had failed to comply with the obligations imposed by Article 36(1) of the Vienna Convention on Consular Relations and, consequently, had withheld guarantees of due process contained in the American Convention.

92. The representatives also argued that, when Scot Cochran was detained, the Costa Rica police and judicial authorities were well aware that he was a foreigner and, when entering the residence, they should have informed him of his right to request and obtain consular assistance. They underscored that this failure had had serious consequences, because the consular officers could have provided him with "protection, support and assistance," collaborating in the preparation of his defense and, particularly in obtaining a competent lawyer.

¹¹⁰ Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 37, and *Case of Ruano Torres et al. v. El Salvador. Merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 303, para. 115

¹¹¹ Article 7(4) of the American Convention.

¹¹² Article 8(2) of the American Convention.

93. The representatives also argued that the letter of January 20, 2003, addressed to the United States Embassy did not comply with the formal requirements to consider that the right to consular assistance had been ensured, because it was addressed to a body that did not have competence to provide consular protection, and contained errors in the identification of the alleged victim, referring to Scot Cochran erroneously as "Scott Tomas Tochson." They also considered that it could not be claimed that consular assistance had existed because, "never, over the last 20 years, has any United States diplomatic or consular authority communicated with the victim," and that the criminal case file only shows that, on March 19, 2003, the Consulate of the United States of America in San José forwarded a copy of a letter that Scot Cochran's sister had sent to them inquiring about his health and that, on September 10 that year, the United States Embassy sent an official communication to the Ministry of Foreign Affairs in which it asked for a guarantee that he was receiving adequate treatment for his ailment. Therefore, they asked the Court to declare the violation of "Articles 5 and 36 of the Vienna Convention on Consular Relations, and 7(4) and 8(1) of the American Convention."

94. The **State** contested the allegations of the Commission and the representatives, arguing that the information they provided was imprecise and incomplete. This was because the criminal case file contained several documents showing that Scot Cochran had communicated with the Embassy of his country, and this also "reveals that not only was he aware of his right to consular assistance, but also that he effectively put this in practice, requesting assistance and receiving it, without the State of Costa Rica imposing any restriction."

95. The State also indicated that it was an uncontested fact, supported by evidence, that "on the day he was arrested" the Embassy of his country was informed of his situation. Furthermore, it indicated that the day of Scot Cochran's arrest, judicial control was exercised over this measure that deprived him of his liberty; a criminal judge decided the request for the precautionary measure of pre-trial detention and, "when issuing the ruling, he was advised that the Consulate of his country would be informed of his situation so that he could have consular assistance if he so wished and he could enter into real and effective contact with the United States Embassy."

96. The State insisted that, when issuing the order for pre-trial detention, Scot Cochran was advised that his country's Consulate would be informed of the precautionary measure adopted and, in this way, his right to consular assistance was realized and, as of that time, he entered into real and effective contact with the United States Embassy. The State added that "[a]lthough it is true that the notification document does not expressly note that the alleged victim has the right to communicate with the Consulate, it cannot be considered that this proves the contrary, taking into consideration that subsequent facts show that he was aware of that right and exercised it fully." Consequently, according to the State, this document records that Scot Cochran was informed of his right to information on consular assistance. It added that, as of that time, the United States diplomatic representation had maintained communication, thus implementing the right to consular assistance.

97. It also argued that the representatives sought to attribute responsibility to the State "because none of Scot [Cochran's] defense counsel contacted the United States Consulate 'on their own initiative,' which was evidently an error, because the State's obligations are to advise the consulate of the situation and the accused of his right, and not to obstruct any communication that it is sought to establish." The State also indicated that "it is unable to provide [further] evidence of the exchange of

'communications between the alleged victim and the United State Consulate [because] such communications are private.'" However, it insisted that there was evidence of the exercise of the right "of Scot [Cochran] to communicate with the consulate of his country at any time."

98. The State also argued that, during the second review procedure, when examining the claim of the lack of consular assistance, the Third Chamber analyzed the scope of the right and indicated that, if the alleged victim had not received the said assistance, it was because he had not requested this. It indicated that the first time that this claim was made was in the appeal for review filed on April 28, 2009, decided by the Third Chamber of the Supreme Court of Justice in a ruling of November 30, 2010. It indicated that the Commission and the representatives were seeking the application of a standard developed after that ruling was issued. Despite this, the State's actions were in keeping with the standards established by the Inter-American Court in judgments delivered in 2010.

B. Considerations of the Court

99. On numerous occasions, this Court has ruled on the essential content of Article 7 of the American Convention describing this as the protection of the liberty of the individual against any arbitrary or unlawful interference by the State.¹¹³ The Court has emphasized two types of very different regulations contained in this article, one general and the other specific. The specific regulations, which encompass a series of guarantees, are set out in paragraphs 2 to 6 of the article and are: the right not to be deprived of liberty unlawfully (Article 7(2)) or arbitrarily (Article 7(3)), to be informed of the reasons for the detention and the respective charges (Article 7(4)), to judicial control of the deprivation of liberty (Article 7(5)) and to contest the lawfulness of the detention (Article 7(6)).¹¹⁴

100. In its case law, the Court has determined that foreigners who are detained are in a particularly vulnerable situation because they are in a different social and legal environment from their own, often with a language they do not know; therefore, this situation may result in the person detained being unaware of the reasons why he has been deprived of liberty and the charges against him. To avoid this, the Court has insisted that the right to information on consular assistance responds to the need to ensure that there is real access to justice, guaranteeing the existence of equal conditions for the foreigner who is detained, so that he may benefit from due process of law and, consequently, all the judicial guarantees established in Article 8(2) of the American Convention.¹¹⁵ The Court has also stressed the need to ensure the effective defense of the individual's interests which, in light of the conditions of real inequality, make it obligatory to take compensatory measures that help reduce or eliminate the

¹¹³ Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of June 7, 2003. Series C No. 99, para. 84, and *Case of Aroca Palma et al. v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of November 8, 2022. Series C No. 471, para. 78.

¹¹⁴ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 51, and *Case of Aroca Palma et al. v. Ecuador, supra*, para. 79.

¹¹⁵ Cf. *The Right to Information on Consular Assistance Within the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99, October 1, 1999. Series A No. 16, para. 119, and *Case of Vélez Loo v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2010. Series C No. 218, para. 152.

obstacles and problems arising from this inequality.¹¹⁶ The right to request consular assistance seeks to protect the interaction of the person deprived of liberty with his country's consular authorities so that they can assist him, thus seeking to reduce the unequal conditions that being a foreigner may generate.

101. The counterpart to this right is the obligation of the State authorities to notify the foreigner who has been detained of his right to consular assistance. This Court's case law has indicated that, when a foreigner has been arrested, at the moment of being deprived of his liberty and before he provides his first statement to the authorities, he must be notified of his right to establish contact with a consular officer.¹¹⁷ In the Advisory Opinion on *The Right to Information on Consular Assistance Within the Framework of the Guarantees of the Due Process of Law*,¹¹⁸ the Court established unequivocally that the right of a foreign national who is detained to information on consular assistance established in Article 36 of the Vienna Convention on Consular Relations¹¹⁹ is an individual right and a basic guarantee protected under the inter-American system.¹²⁰

102. The Court has also indicated that the person deprived of liberty should be notified of his right to request consular assistance at the time of arrest and before he provides his first statement because, if he requests consular assistance, the consular officer can assist the detainee in different defense actions, such as providing or retaining a lawyer, obtaining evidence in the country of origin, verifying the conditions under which legal assistance is provided, and monitoring the situation of the accused while he is in prison.¹²¹ The Court has also indicated that the individual right to request consular assistance from the country of origin should be recognized and considered to be one of the basic guarantees to provide foreign nationals with the opportunity to prepare their defense adequately and to have a fair trial,¹²² because "disregard for, or the obstruction of, the right [of the person detained] to this information infringes judicial guarantees"¹²³ and may result in a violation of Article 8(2) of the American Convention.

103. The Court has also indicated that, from the perspective of the rights of the person detained, the State Party must guarantee three essential elements: (i) the right to be notified of his rights under the Vienna Convention; (ii) the right of effective access to communication with a consular officer, and (iii) the right to the assistance itself.¹²⁴

¹¹⁶ Cf. *Advisory Opinion OC-16/99, supra*, para. 119; *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, September 17, 2003. Series A No. 18, para. 121, and *Case of Vélez Loor v. Panama, supra*, para. 152.

¹¹⁷ Cf. *Advisory Opinion OC-16/99, supra*, para. 106, *Case of Chaparro Álvarez and Lapo Íñiguez, supra*, para. 164, and *Case of Vélez Loor v. Panama, supra*, para. 154.

¹¹⁸ Cf. *Advisory Opinion OC-16/99, supra*, para. 124, and *Case of Vélez Loor v. Panama, supra*, para. 151.

¹¹⁹ Article 36.1.b) of the Vienna Convention on Consular Relations.

¹²⁰ Cf. *Advisory Opinion OC-16/99, supra*, para. 124, and *Case of Vélez Loor v. Panama, supra*, para. 151.

¹²¹ Cf. *Advisory Opinion OC-16/99, supra*, para. 86; *Case of Chaparro Álvarez and Lapo Íñiguez, supra*, para. 164, and *Case of Vélez Loor v. Panama, supra*, para. 154.

¹²² Cf. *Advisory Opinion OC-16/99, supra*, para. 122; *Case of Chaparro Álvarez and Lapo Íñiguez, supra*, para. 164, and *Case of Bueno Alves v. Argentina. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 164, para. 116.

¹²³ *Advisory Opinion OC-16/99, supra*, para. 129; *Case of Acosta Calderón v. Ecuador. Merits, reparations and costs*. Judgment of June 24, 2005. Series C No. 129, paras. 125 and 126, and *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, paras. 195 and 196.

¹²⁴ Cf. *Case of Vélez Loor v. Panama, supra*, para. 153.

Specifically, the rights of the foreign detainee oblige the State Party, if asked by the detainee, to act as a faithful channel¹²⁵ and, consequently: to inform the competent consular post of the detainee's situation, and to transmit, immediately, "any communication addressed to the consular post" by the detainee.¹²⁶ Lastly, the Vienna Convention places in the hands of the detainee the decision on whether or not to be visited by the consular officer.¹²⁷

104. The Court must determine whether the State effectively informed Scot Cochran of his right. The case file reveals that the State proceeded to advise the United States Embassy of Scot Cochran's detention on January 20, 2003, the day of his arrest, when the Special Criminal Court of San José ordered notification of the decision ratifying the order of pre-trial detention,¹²⁸ and subsequently issued an official communication in order to provide this notification.¹²⁹ The Court understands that, as the State argued, this notification was served within the framework of a bilateral agreement on consular relations between Costa Rica and the United States of America¹³⁰ and that the respective consulate was indeed informed of Scot Cochran's detention.¹³¹ In addition, the Court considers that, when the judicial decision was presented to him for his signature, Scot Cochran was aware of his right to receive consular assistance, and this occurred when his pre-trial detention was ordered a few hours after his arrest.

105. Based on the above, the Court notes that, in the instant case, Scot Cochran was informed of his right to receive consular assistance only a few hours after his detention and the Court also notes that, during that lapse, no actions were taken that infringed his rights. Indeed, the only scheduled procedure was the reception of his unsworn statement, which did not take place because Scot Cochran refused to provide this. Consequently, the alleged victim was aware of his right to receive consular assistance before he gave his first statement in the proceedings, pursuant to the standards established by this Court (*supra* paras. 100 to 102).

106. Furthermore, even though the letter sent to the United States Embassy contained an error in the alleged victim's name, the letter was accompanied by the judicial decision ordering the pre-trial detention of Scot Cochran and this contained his personal details.¹³² This Court also notes that, even though Scot Cochran stated that he had not read the document in which the consular authorities were notified of his detention,¹³³ the case file records that he received it and both he and his lawyer signed

¹²⁵ Article 36.1.b) of the Vienna Convention on Consular Relations.

¹²⁶ Article 36.1.b) of the Vienna Convention on Consular Relations.

¹²⁷ The relevant part of Article 36.1.c) of the Vienna Convention on Consular Relations indicates that "consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action."

¹²⁸ Cf. Ruling of the Criminal Court of San José, at 6:55 p.m. on January 20, 2003, ordering six-months pre-trial detention for Scot Cochran (evidence file, folios 7329 to 7337).

¹²⁹ Cf. Notification of the decision requiring that the United States Embassy in Costa Rica be informed of the situation of Scot Cochran (evidence file, folio 7339).

¹³⁰ Cf. Legislative Assembly of Costa Rica, *Consular Convention between the Republic of Costa Rica and the United States of America*, in force since February 11, 1950, adopted by Law 1129 of January 25, 1950.

¹³¹ At the time of the facts, the Consulate of the United States of America occupied the same building as the Embassy and all correspondence was received there.

¹³² Cf. Ruling of the Criminal Court of San José, at 6:55 p.m. on January 20, 2003, ordering six-months pre-trial detention for Scot Cochran (evidence file, folios 42 al 49).

¹³³ Cf. Statement made before the Inter-American Court by Scot Cochran during the public hearing held on November 9, 2022.

it on the evening of the same January 20, 2003.¹³⁴ It is also on record that the said signed document was delivered to the consular authorities and that, in this way, in the official communication of January 20, 2003, the State complied with the formality of informing the country of origin that Scot Cochran had been detained.¹³⁵

107. Although it is not incumbent on the Court to examine the scope or manner of the consular assistance provided by the country of origin, a series of facts confirm that this existed but that, based on an autonomous decision, the consulate of the country of origin only provided humanitarian assistance and not legal assistance. The case file shows that, on May 7, 2003, Scot Cochran indicated that an officer of the United States Consulate had called him to verify whether he had been provided with the medicines he required for his illness.¹³⁶ It also shows that previously, on March 19, 2003, the same consular officer forwarded Scot Cochran a copy of the letter sent to the consulate by his sister.¹³⁷ The Court has also been able to verify that the consulate of Scot Cochran's country of origin was in direct contact with the doctor who supervised his treatment in the prison, and there were at least two communications, one on May 8, 2003,¹³⁸ and another on May 13, 2003.¹³⁹ The State also received requests from the Consulate and the Embassy of the United States of America concerning Scot Cochran's medical condition on September 10, 2003,¹⁴⁰ and September 25, 2003,¹⁴¹ in which the consular authorities asked for a review of the Scot Cochran's medical treatment and a medical transfer. Lastly, it is on record that Scot Cochran was able to provide "copies of evidence" to officers of the United States Embassy.¹⁴²

108. Based on the foregoing, it is evident that Scot Cochran was in contact with the consular authorities and had various interactions with them after being deprived of his liberty. Most of these interactions and the actions of the United States consular authorities took place while he was in pre-trial detention, at the start of the judicial proceedings that culminated in the judgment of August 17, 2004.¹⁴³ The Court finds that these probative elements confirm that Costa Rica enabled Scot Cochran to interact with the consular authorities of the United States of America and that it complied with its obligation of being a faithful channel as this Court has described above (*supra* para.

¹³⁴ Cf. Notification of the decision requiring that the United States Embassy in Costa Rica be informed of the situation of Scot Cochran (evidence file, folio 7337).

¹³⁵ Cf. Note addressed to the Embassy of the United States of America in Costa Rica dated January 20, 2003, advising that pre-trial detention had been ordered for Scot Cochran (evidence file, folio 7339).

¹³⁶ Cf. Communication JSM-CAISH No. 052-03 of the Medical Services of the Ministry of Justice, CAI San José of May 7, 2003 (evidence file, folio 7476).

¹³⁷ Cf. Copy of the fax sent by an officer of the Consular Section of the Embassy of the United States of America in Costa Rica, dated March 19, 2003, addressed to the deputy director of the CAI, La Reforma (evidence file, folios 7472 and 7473).

¹³⁸ Cf. Copy of the fax sent by Dr. AS to the consular officer of the United States of America on May 8, 2003, with regard to Scot Cochran's medical treatment (evidence file, folios 7468 and 2499).

¹³⁹ Cf. Copy of the fax sent by Dr. AS to the consular officer of the United States of America on May 13, 2003, with regard to Scot Cochran's medical treatment (evidence file, folio 7470).

¹⁴⁰ Cf. Diplomatic note No. 158 from the Embassy of the United States of America to the Ministry of Foreign Affairs dated September 10, 2003, urging it to take the necessary measures in relation to Scot Cochran's medical treatment (evidence file, folios 2621 and 2622).

¹⁴¹ Cf. Diplomatic note No. 167 from the Embassy of the United States of America to the Ministry of Foreign Affairs requesting the transfer of Scot Cochran (evidence file, folios 2617 and 2618).

¹⁴² Cf. Record of hearing before the Criminal Trial Court of the First Circuit of San José on November 13, 2003, noting that Scot Cochran "provides copies of evidence from the Embassy" (evidence file, folio 7465).

¹⁴³ Cf. Judgment No. 851-04 of the Criminal Trial Court of the First Judicial Circuit of San José of August 17, 2004 (evidence file, folios 7363 to 7461).

103). The Court also notes that, on the aforementioned occasions, the consular authorities of Scot Cochran's country of origin had the possibility of providing assistance in matters relating to his defense, and that one of the Costa Rican State's obligations was not to interfere in such interaction. In the Court's opinion, the State complied with this obligation.

109. For all these reasons, the Court finds that it has been sufficiently proved that there was constant communication between Scot Cochran and the consulate of his country of origin and that, based on this communication, he obtained assistance. It is not the purpose of this case to assess whether the consular assistance provided by the country of origin was sufficient or adequate as this exceeds this Court's competence.

110. The Court emphasizes that although the representatives, and Scot Cochran himself,¹⁴⁴ have stated that the failure to notify his right to be assisted by his consular authorities violated his right of defense, this violation was not argued during the proceedings, and no probative elements were provided that verified this violation. As this Court has indicated *supra*, the case file shows that Scot Cochran was offered a public defender at the time of the raid on his residence¹⁴⁵ and when his first statement was taken. The alleged victim rejected this offer and appointed a private defense counsel.¹⁴⁶ Similarly, during the proceedings, he had at least five different private defense counsel; at the trial stage he appointed two new defenders, and at the appeals stage he had at least six different lawyers. The Court therefore finds that, in the instant case, Scot Cochran had extensive possibilities of organizing his defense and that the case file does not reveal that he had any limitations to appointing and replacing those who represented him throughout the proceedings or to exercising the other guarantees established in Article 8(2) of the Convention, such as requesting rebuttal evidence and questioning witnesses.

111. In addition, in the proceedings instituted against Scot Cochran, it is possible to observe that the State took steps to facilitate equal conditions in the proceedings. For example, the records show that his initial statement was suspended in order to provide him with a translator¹⁴⁷ and, throughout the proceedings, the State offered to provide him with the services of a translator, but Scot Cochran himself rejected this indicating that he had sufficient knowledge of the Spanish language.¹⁴⁸ Similarly, on numerous occasions, Scot Cochran was offered access to public defense owing to his complaints regarding the actions of his private defenders.

¹⁴⁴ Statement made before the Inter-American Court by Scot Cochran during the public hearing held on November 9, 2022: "I could have found out about the legal procedures that would take place during the proceedings before experiencing them; hearings and things that happened; I had no idea about this; I think I could have found out about that; I think I could have discovered the differences between public and private defenders and how to choose them, or the difference between a technical and a material defense – at least that it did not exist anywhere at the time; also, there are many legal terms that one faces in the system that were not part of my vocabulary; for example, pre-trial detention, isolation, disqualification [...]."

¹⁴⁵ Cf. Record of the raid on Scot Cochran's residence (evidence file, folio 7301), and Expansion of the report on the raid on Scot Cochran's residence dated January 20, 2003 (evidence file, folio 7307).

¹⁴⁶ Cf. Record of preliminary statement before the Special Unit for Sexual Crimes and Domestic Violence of the Public Prosecution Service in San José dated January 20, 2003 (evidence file, folio 927).

¹⁴⁷ Cf. Record of preliminary statement before the Special Unit for Sexual Crimes and Domestic Violence of the Public Prosecution Service in San José dated January 20, 2003 (evidence file, folio 928).

¹⁴⁸ Cf. Record of the debate of the Criminal Court of the First Judicial Circuit of San José of May 3, 2004 at 2:20 p.m. in the case against Scot Cochran and MPC (evidence file, folio 1617).

112. The Court also notes that, following the facts of the instant case, the State made an effort to guarantee and adapt the notification mechanisms of the right to consular assistance and that, by Circular 136-2012, judges, the Public Prosecution Service, the Public Defense Service, and the Judicial Investigation Department were informed of the case law criterion and the appropriate procedure when foreign nationals were deprived of liberty and how they should be notified of the right to receive consular assistance.¹⁴⁹

113. Based on the above, the Court concludes that the State is not responsible for the violation of the rights to personal liberty and to judicial guarantees, in particular the right to information on, and effective access to, consular assistance established in Articles 7(4), and 8(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Scot Cochran.

VII-2

RIGHT TO JUDICIAL GUARANTEES, IN PARTICULAR AN IMPARTIAL JUDGE,¹⁵⁰ IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE RIGHTS¹⁵¹

A. Arguments of the parties and observations of the Commission

114. The **Commission** determined that it had no evidence that would allow it to argue that Scot Cochran's right to be heard by an impartial judge had been violated.¹⁵²

115. The **representatives** indicated that, on analyzing the criminal proceedings, they had verified that one of the judges who was a member of the trial court violated the guarantee of impartiality by failing to disqualify himself from the case. They argued that LGBG, as a judge of the Criminal Court of the First Circuit had issued Ruling 253-03 of August 11, 2003, deciding the appeal filed by the technical defense against the pre-trial detention. The same judge had subsequently been a member of the court that delivered Ruling 851-04 of August 17, 2004, convicting Scot Cochran. They therefore considered that "he had already advanced his opinion on the same case only one year previously." Consequently, they asked the Court to declare the violation of Article 8(1), in relation to Article 1(1) of the American Convention.

116. The **State** endorsed the arguments presented by the Commission in the Admissibility and Merits Report, and insisted that the precautionary measure did not

¹⁴⁹ Cf. Superior Council of the Judicature. Circular No. 36-2012: *Sobre el Recurso de Hábeas Corpus No. 12-008371-0007-CO, y Sentencia de la Sala Constitucional No. 2012009170* (evidence file, folio 7482)

¹⁵⁰ Article 8(1) of the American Convention.

¹⁵¹ Article 1(1) of the American Convention.

¹⁵² The Commission indicated that the dispute stemmed from the intervention of a judge at the investigation stage who was subsequently also a member of the trial court that found Scot Cochran criminally responsible. In the Commission's opinion, the analysis made when determining pre-trial detention differs from that required to convict a person; therefore, it did not find that Judge LGBG had prejudged the matter in any way in the ruling of August 11, 2003. It considered that he merely found proved that, based on the progress made in the criminal investigation at that date, there was a positive probability, although not a certainty, that Scot Cochran was responsible for the crimes of which he was accused. The Commission also indicated that the judgment of August 17, 2004, was delivered unanimously by the three members of the Criminal Trial Court of the First Judicial Circuit of San José. Thus, both the result of the oral trial, and the petitioner's deprivation of liberty as a result of this, were not exclusively due to the actions of Judge LGBG. The decision depended on the opinion of three judges, two of whom had had no prior participation in the criminal proceedings against Scot Cochran, and whose impartiality was not questioned by the petitioner. The Commission added that the petitioner had not proved that he had used the procedural mechanism to challenge judges established in articles 57 to 61 of the Costa Rican Code of Criminal Procedure in force at the time of the facts.

constitute an assessment of Scot Cochran's criminal responsibility, because "it merely noted the concurrence of the procedural causes to issue the measure, which in no way compromised impartiality." It also argued that Judge LGBG formed part of a collegiate court, which also consisted of two other judges and that the judgement handed down was based on that court's unanimous ruling.

B. Considerations of the Court

117. The Court has reiterated that, to be impartial, the judicial authority responsible for deciding a case must approach the facts of the case objectively and free of all prejudice and also offer sufficient objective guarantees to exclude any doubt as to a lack of impartiality.¹⁵³ Judges must act only in accordance with – and on the basis of – the law.¹⁵⁴ As part of this guarantee of impartiality, the members of a court should neither have a direct interest, a preconceived position, or a preference for any of the parties, nor be involved in the dispute.¹⁵⁵

118. The Court has also determined that personal or subjective impartiality should be presumed unless there is evidence to the contrary. This evidence could, for example, be some demonstration of the partiality or the prejudices that the members of the court have against the litigants. The evidence must be objective because it is necessary to determine whether the authority challenged "has provided guarantees sufficient to exclude any legitimate doubt" or well-grounded suspicion regarding his partiality.¹⁵⁶ The Court has also indicated that, as a procedural instrument, the challenge mechanism protects the right to be tried by an impartial organ, and its purpose is to guarantee the credibility of the judge and of the role performed by the jurisdiction.¹⁵⁷

119. The Court has been able to verify that: (i) on January 20, 2003, Judge IBA, in charge of the Special Criminal Court of San José, issued the ruling that imposed six months pre-trial detention on Scot Cochran;¹⁵⁸ (ii) on July 17, 2003, Judge FSF, criminal judge of the Criminal Trial Court of the First Judicial Circuit of San José, extended the pre-trial detention of the alleged victim for three months;¹⁵⁹ (iii) on August 11, 2003, Judge LGBG, criminal judge of the Criminal Trial Court of the First Judicial Circuit of San José, decided an appeal filed against the extension of the precautionary measure that had been imposed and confirmed the said measure;¹⁶⁰ (iv) according to the judgment of August 17, 2004, in which Scot Cochran was declared responsible for numerous

¹⁵³ Cf. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary objection, Merits, reparations and costs.* Judgment of August 5, 2008. Series C No. 182, para. 56, and *Case of Nissen Pessolani v. Paraguay. Merits, reparations and costs.* Judgment of November 21, 2022. Series C No. 477, para. 64.

¹⁵⁴ *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra*, para. 56, and *Case of Nissen Pessolani v. Paraguay, supra*, para. 64.

¹⁵⁵ Cf. *Case of Palamara Iribarne v. Chile. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 135, para. 146, and *Case of Nissen Pessolani v. Paraguay, supra*, para. 64.

¹⁵⁶ Cf. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra*, para. 56, and *Case of Nissen Pessolani v. Paraguay, supra*, para. 65.

¹⁵⁷ Cf. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra*, para. 63, and *Case of Nissen Pessolani v. Paraguay, supra*, para. 65.

¹⁵⁸ Cf. Ruling of the Criminal Court of San José, at 6:55 p.m. on January 20, 2003, ordering six-months pre-trial detention for Scot Cochran (evidence file, folios 42 to 49).

¹⁵⁹ Cf. Ruling of the Criminal Court of the First Judicial Circuit of San José of July 17, 2003, extending the pre-trial detention for three more months (evidence file, folios 51 to 53).

¹⁶⁰ Cf. Ruling No. 235-03 of the Criminal Trial Court of the First Judicial Circuit of San José of August 11, 2003, confirming the ruling appealed (evidence file, folios 55 to 58).

crimes, this was delivered by the Criminal Trial Court of the First Judicial Circuit of San José composed of three judges, one of whom was Judge LGBG.¹⁶¹ In summary, the dispute stems from the fact that LGBG had decided the appeal against one of the decisions that extended the pre-trial detention and had then been a member of the collegiate court that convicted Scot Cochran and, in particular, whether LGBG, when acting as an appellate judge, examined the grounds for extending the precautionary measure, because such an assessment of the facts could give rise to partiality pursuant to this Court's precedents.

120. Apart from the decisions that indicate the participation of Judge LGBG in the review of the precautionary measure and then in the collegiate court that handed down the judgment against Scot Cochran, the parties did not provide any other probative elements as evidence of some type of partiality in the actions of the judicial official. Furthermore, the Court notes that no challenge was filed against the judge, nor was his partiality alleged at any stage of the trial prior to the delivery of the judgment.

121. The Court finds that there are three elements that are crucial for its assessment of the impartiality of the judge in this case: (i) the object and scope of the decision issued by Judge LGBG on the appeal against the measure of deprivation of liberty, which merely verified the existence of the legal requirements for the measure and did not assess the merits of the matter; (ii) the decision to convict Scot Cochran was taken by a collegiate court, where LGBG was only one of three judges, and the vote was unanimous; thus, even without the participation of LGBG the result would have been a conviction – since the other two judges had not been challenged, and (iii) even though the possibility existed of challenging LGBG as a member of the collegiate court, neither Scot Cochran nor his representatives filed this challenge.

122. Regarding the participation of LGBG in the collegiate court after he had decided the appeal on the ruling that extended the measure of detention, the Court considers that, although the participation in the trial court of a judge who has previously examined the case may have an impact on the guarantee of impartiality, it should be underscored that, in this case, this participation occurred at the investigation stage and not to order pre-trial detention; rather it was to decide the appeal against the precautionary measure. This Court has already ruled in a similar situation in relation to the Costa Rican State. In particular, in *Amrhein et al. v. Costa Rica*, it did not consider that the right to be tried by an impartial judge had been violated because the judge in question did not “enter into the merits of the matter, but had examined the elements required to order pre-trial detention.”¹⁶² In addition, in its recent case law, the Court has indicated that determination of pre-trial detention is not “an element susceptible of violating the right to the presumption of innocence contained in Article 8(2) of the Convention.”¹⁶³ The fundamental purpose of the decision on the appeal was to verify that the previous judge who, in turn, had only extended the length of the pre-trial detention, had complied with the formal requirements for such a measure. Thus, it cannot be considered that the assessment made at this stage by the appeals judge had been sufficient to influence a subsequent determination of responsibility and guilt.

¹⁶¹ Cf. Judgment No. 851-04 of the Criminal Trial Court of the First Judicial Circuit of San José of August 17, 2004 (evidence file, folios 7363 a 7461).

¹⁶² *Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of April 25, 2018. Series C No. 354, para. 417.

¹⁶³ *Case of Tzompaxtle Tecpile et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 7, 2022. Series C No. 470, para. 101.

123. Second, this Court notes that the court that took the final decision on the responsibility of Scot Cochran was a collegiate court composed of three judges, and LGBG was only one of them. Therefore, the fact that one member of the collegiate court decided the appeal on the extension of a precautionary measure of deprivation of liberty did not necessarily violate judicial guarantees,¹⁶⁴ particularly when, in this case, the adverse judgment was adopted unanimously. Moreover, no questions have been raised before this Court, nor can they be seen in the evidence provided in the domestic remedies, in relation to the impartiality of OWW and AMD, the other two judges who composed the court. Furthermore, it has not been argued or proved that LGBG was able to influence the vote of the other two judges.

124. The Court also notes that, even though the possibility of filing a challenge was available at the time of the facts, this was not filed against Judge LGBG during the criminal proceedings that culminated in the adverse judgment. Moreover, the representatives did not indicate the reason why this mechanism was not used. In addition, during the domestic proceedings, the argument of lack of impartiality was not alleged in the remedy of cassation, or in the first two appeals for review, or in any of the constitutional appeals; rather, it was submitted for the first time during the third review procedure on February 10, 2012.¹⁶⁵ This remedy was examined and decided by the Third Chamber of the Supreme Court of Justice and, in its ruling, it found that there was no suspicion of partiality because there was no evidence that the judge had assessed the body of evidence when deciding the appeal against pre-trial detention.¹⁶⁶

125. Based on the arguments set out above, the Court considers that the guarantee of an impartial judge was not violated in this specific case. However, it notes that, *mutatis mutandis*, this is the same situation noted in *Amrhein et al. v. Costa Rica* in relation to the participation of judges in courts in charge of determining the criminal responsibility of the accused, when those judges have already acted in the adoption and review of precautionary measures of deprivation of liberty. Although the relevant laws were not examined in *Amrhein et al. v. Costa Rica*, or in this case, in light of the situation, the State should take the necessary measures to further strengthen the guarantee of an impartial judge.¹⁶⁷

126. Consequently, the Court finds that the State did not violate the right to an impartial judge established in Article 8(1) of the American Convention, in relation to its Article 1(1), to the detriment of Scot Cochran.

¹⁶⁴ Cf. *Case of Amrhein et al. v. Costa Rica*, *supra*, para. 391.

¹⁶⁵ Cf. Third review procedure filed by Scot Cochran on February 10, 2012, against judgment No. 851-04 delivered by the Criminal Trial Court of the First Judicial Circuit of San José on August 17, 2004 (evidence file, folios 213 to 231).

¹⁶⁶ Cf. Ruling No. 2013-00211 of the Third Chamber of the Supreme Court of Justice of February 15, 2013, deciding the third review procedure (evidence file, folios 38 to 40).

¹⁶⁷ In its recent case of *Tzompaxtle Tecpile et al. v. Mexico*, this Court stated that the adoption of a precautionary measure that restricts personal liberty, such as pre-trial detention, does not have an impact on the responsibility of the accused because "it should be taken by a different judge or judicial authority from the one that finally takes the decision on the merits of the case"; this gives greater assurance to the guarantee of an impartial judge and the presumption of innocence. *Case of Tzompaxtle Tecpile et al. v. Mexico*, *supra*, para. 102, *mutatis mutandis Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of July 2, 2004. Series C No. 107, para. 174, and *Case of Romero Feris v. Argentina. Merits, reparations and costs*. Judgment of October 25, 2019. Series C No. 391, para. 95.

VII-3
RIGHT TO APPEAL THE JUDGMENT BEFORE A HIGHER COURT,¹⁶⁸ IN
RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE RIGHTS,¹⁶⁹
AND TO ADOPT DOMESTIC LEGAL PROVISIONS¹⁷⁰

A. Arguments of the parties and observations of the Commission

127. The **Commission** did not find the State responsible for the violation of the right to obtain a comprehensive review of the judgment established in Article 8(2)(h) of the American Convention.¹⁷¹

128. The **representatives** argued that, at the time the facts were tried and then forwarded to the Criminal Cassation Chamber, there was no remedy that guaranteed the right to appeal the judgment and to analyze the merits of the case. They added that Scot Cochran, in the exercise of his technical and material defense, had filed three appeals for review, which were rejected without further analysis of the factual and legal issues. They argued that most remedies of cassation were not admitted because they did not conform to the admissibility requirements established in article 468 of the Code of Criminal Procedure. They also argued that the Criminal Cassation Chamber, in order to authorize admissibility, had imposed limitations and a series of formalities on the remedy of cassation, so that the formalistic guidelines made it impossible for the purpose of the remedy to be assessed. Therefore, they asked the Court to declare the violation of Article 8(2)(h), in relation to Articles 1 and 2 of the American Convention.

129. The **State** argued that the Commission had declared that the State was not responsible for the violation of Article 8(2)(h) of the Convention because, when hearing of the remedy of cassation, the Third Chamber had re-examined the assessment of the evidence made by the court *a quo* and exercised control over the way in which the substantive criminal law had been interpreted and applied. It added that the appeal for review constituted an opportunity for Scot Cochran to raise different complaints related to matters of both fact and evidence, such as the application of the substantive criminal law, and that these were duly decided in the judicial rulings.

¹⁶⁸ Article 8(2)(h) of the American Convention.

¹⁶⁹ Article 1(1) of the American Convention.

¹⁷⁰ Article 2 of the American Convention.

¹⁷¹ The Commission indicated that, after Scot Cochran had been sentenced to 45 years' imprisonment on August 17, 2004, a remedy of cassation was filed before the Third Chamber of the Supreme Court of Justice which was declared "unfounded" on February 28, 2005. Subsequently, three review procedures were filed and these were also declared "unfounded." The Commission also indicated that, in the ruling of February 28, 2005, the Third Chamber re-examined the way in which the court *a quo* had assessed the body of evidence in the case and agreed with the trial court as regards the certainty of the presence of Scot Cochran in the country at the time of the facts; it also placed value on the existence of documentary and audiovisual evidence that proved the existence of the wrongful act. The Commission stressed that, in the judgment of August 17, 2004, the Third Chamber also exercised control of the way in which the trial court had interpreted and applied the substantive criminal law. Specifically, it ruled out that, in the case of Scot Cochran, there had been a *concurso ideal* of crimes, because there was a clear temporal individualization between the acts for which the petitioner had been sentenced that made them objectively different. It also indicated that, as a result of the reform of the Costa Rican appeals system, individuals whose sentence was *res judicata*, including Scot Cochran, were able to file a special appeal for review. It indicated that, in rulings of November 30, 2010, and February 15, 2013, the Third Chamber of the Supreme Court of Justice had decided all the grounds for annulment filed by the petitioner and, to that end, on both occasions, it had made its own analysis of the judgment, and set out the reasons why its annulment was not in order. Therefore, it did not reject Scot Cochran's arguments *in limine*; rather, it examined the main issues that were in dispute in the proceedings and made its own analysis of them.

B. Considerations of the Court

130. This Court has frequently and extensively addressed the importance and the content of Article 8(2)(h) of the American Convention, and has clarified the standards that should be observed to ensure the guarantee of the right to appeal a judgment before a higher court. Thus, it has indicated that this right is a basic guarantee that must be respected within the framework of due process of law in order to permit the review of an adverse judgment by a different higher judge or court, establishing that “it must be respected as part of due process of law so that a party may appeal to a higher court for review of an adverse judgment.”¹⁷² In light of the fact that the judicial guarantees seek to avoid arbitrary decisions, the Court has indicated that the right of appeal would not be effective if it were not guaranteed for every person who has been convicted, because the sentence is a manifestation of the State’s punitive power.¹⁷³

131. The Court has considered that the right to appeal a judgment is one of the basic guarantees enjoyed by anyone subject to criminal proceedings. Therefore, it has emphasized that the main purpose of this right is to protect the right of defense, and this is achieved by allowing an appeal to be filed to prevent a judicial decision from becoming final if it has been adopted in flawed proceedings, or proceedings with errors or interpretations that would cause undue prejudice to the interests of the defendant.¹⁷⁴ Therefore, this right should be guaranteed before the judgment becomes *res judicata*. This right makes it possible to correct errors or injustices that may have been committed in first instance decisions, since a two-stage judicial ruling gives greater credibility to the State’s judicial actions, while providing greater security and protection to the rights of the convicted person. Accordingly, in order for there to be twofold judicial conformity, it is important that the remedy guarantees the possibility of a full review of the decision being challenged.¹⁷⁵

132. In addition, the Court has indicated that Article 8(2)(h) of the Convention refers to an ordinary, accessible and effective remedy; in other words, it should not involve complexities that make this right illusory. Thus the requirements for the admission of the remedy should be minimal and should not constitute an obstacle for the remedy to meet its purpose of examining and deciding the complaints presented by the appellant.¹⁷⁶

133. The Court has also indicated that those remedies that, owing to the general conditions of the country, or even the particular circumstances of a specific case, are illusory cannot be considered effective.¹⁷⁷ The regulations that States establish in their respective appeals systems must ensure that all the conditions are present to ensure that the right to contest a judgment is effective. This means that it is necessary to guarantee a prompt appeal procedure that avoids excessive delays or unjustified

¹⁷² *Case of Herrera Ulloa v. Costa Rica, supra*, para. 158, and *Case of Valle Ambrosio et al. v. Argentina. Merits and reparations*. Judgment of July 20, 2020. Series C No. 408, para. 42.

¹⁷³ *Cf. Case of Baena Ricardo et al. v. Panama. Merits, reparations and costs*. Judgment of February 2, 2001. Series C No. 72, para. 107, and *Case of Valle Ambrosio et al. v. Argentina*, para. 42.

¹⁷⁴ *Cf. Case of Amrhein et al. v. Costa Rica, supra*, para. 256.

¹⁷⁵ *Cf. Case of Amrhein et al. v. Costa Rica, supra*, para. 257.

¹⁷⁶ *Cf. Case of Rico v. Argentina. Preliminary objection and Merits*. Judgment of September 2, 2019. Series C No. 383, para. 88, and *Case of Pavez Pavez v. Chile. Merits, reparations and costs*. Judgment of February 4, 2022. Series C No. 449, para. 157.

¹⁷⁷ *Cf. Case of Amrhein et al. v. Costa Rica, supra*, para. 257, and *Case of Pavez Pavez v. Chile*, para. 157.

postponements.¹⁷⁸ In addition, procedural rules should be established that permit the appellant to exercise his right of defense adequately and to present all the necessary evidence to support his arguments. This effective remedy also means that the analysis of a judicial remedy by the competent authority cannot be reduced to a mere formality; rather the said authority must examine the reasons cited by the appellant and expressly refer to them.¹⁷⁹

134. In the specific case of Costa Rica, this Court has ruled twice on the appeals system. In *Herrera Ulloa v. Costa Rica*, the Court established that, in that specific case, the remedies of cassation “did not satisfy the requirement of a liberal remedy that would permit the higher court to make a thorough analysis or examination of all the issues debated and analyzed in the lower court.”¹⁸⁰ Therefore, the Court declared that the State had violated Article 8(2)(h) of the Convention in relation to Articles 1(1) and 2 of this instrument, and ordered Costa Rica to “adapt its domestic laws to the provisions of Article 8(2)(h). of the American Convention, in relation to Article 2 thereof.”¹⁸¹

135. Subsequently, in *Amrhein et al. v. Costa Rica*, the Court again had occasion to examine the appeals system in Costa Rica particularly the one developed in Law 8503 on the “Opening of Criminal Cassation” under which, using the cause for review created by Transitory Provision I, a person convicted of a criminal offense could obtain a comprehensive review of the judgment that included both factual and legal aspects;¹⁸² and in Law 8837, which entered into force on December 9, 2011, and created a remedy of appeal that would allow for a comprehensive examination of the adverse judgment, thus providing individuals with pending appeals for cassation and review with access to a comprehensive remedy.¹⁸³ On that occasion, the Court found that, owing to reforms introduced by Laws 8503 and 8837, the State had rectified the deficiencies in the application of the rules for appeals.¹⁸⁴

136. That said, the Court must analyze the criminal appeals filed by the alleged victim in order to determine whether the appeals system guaranteed a comprehensive review of the judgment against Soct Cochran.

137. As already mentioned, the following remedies were filed in the instant case: (i) a remedy of cassation, and (ii) three appeals for review once the appeals system had been amended. The formal and substantial arguments presented on each occasion were not always the same, but the Court has been able to verify that, in all cases, the Third Chamber responded to all the appellant’s claims and substantiated its rulings appropriately.

138. The Court underlines that, in Ruling No. 2005-00126 deciding the remedy of cassation, the Third Chamber re-examined the way in which the evidence had been

¹⁷⁸ Cf. *Case of Mohamed v. Argentina. Preliminary objection, Merits, reparations and costs.* Judgment of November 23, 2012. Series C No. 255, para. 101, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus and their family members v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of July 15, 2020. Series C No. 407, paras. 230 and 231.

¹⁷⁹ Cf. *Case of López Álvarez v. Honduras. Merits, reparations and costs.* Judgment of February 1, 2006. Series C No. 141, *supra*, para. 96, and *Case of Baraona Bray v. Chile, supra*, para. 148.

¹⁸⁰ *Case of Herrera Ulloa v. Costa Rica, supra*, para. 167.

¹⁸¹ *Case of Herrera Ulloa v. Costa Rica, supra*, para. 198 and fifth operative paragraph.

¹⁸² Cf. *Case of Amrhein et al. v. Costa Rica, supra*, para. 262.

¹⁸³ Cf. *Case of Amrhein et al. v. Costa Rica, supra*, para. 263.

¹⁸⁴ Cf. *Case of Amrhein et al. v. Costa Rica, supra*, para. 265.

assessed and juxtaposed the trial court's decision with the probative elements.¹⁸⁵ This ruling also referred in a detailed and substantiated way to all the formal and substantial claims made by the representatives. The Court notes that the ruling: (i) verified that Scot Cochran was already living in Costa Rica when the facts occurred; (ii) considered that the documents that the defense had argued were incomplete because they omitted the birth date of some of the victims did not constitute a defect that invalidated the judgment; (iii) ruled on the alleged flaws in the assessment of the evidence and noted that the decision of the court *a quo* was not based exclusively on the statements of the victims of the acts, but on a body of evidence that included photographic and audiovisual records, and (iv) regarding the application of the rules concerning the concurrence of crimes, asserted that, even though the rules of *concurso ideal* had been applied with the regard to the acts defined as "paid sexual relations," the length of the sentence imposed was unaltered, because those acts also took place concurrently with other crimes [*en concurso material*], including the "supply [of narcotics] to minors," and the maximum punishment for this was used when making the calculation.

139. Similarly, the Court was able to verify that all the decisions made in the rulings of the Third Chamber comprehensively reviewed the arguments on which Scot Cochran and his defense counsel based their appeals: (i) in ruling 2007-01464 of December 12, 2007,¹⁸⁶ the Third Chamber found that there was no evidence that would allow it to conclude that the remedy of cassation had been decided unduly, because that remedy had not been decided with excessive formalistic rigor; none of the appellant's arguments had been left undecided, access was not denied to the review of how the facts were determined, and the evidence was not assessed erroneously. The Third Chamber also ruled out the violation of Scot Cochran's privacy and the arguments concerning the unlawful nature of the raid. Furthermore, it concluded that it had not been proved that the defendant's defense had been exercised with evident negligence or against his interests, and that the examples of defenselessness presented by the appellant constituted a list of discrepancies with the adverse result of the proceedings; (ii) in ruling 01373-2010 of November 30, 2010,¹⁸⁷ the Third Chamber reviewed the procedural acts relating to Scot Cochran's right to request consular assistance and, after examining the case file, determined that neither Scot Cochran nor his lawyers ever requested this assistance and that, according to Article 36.1.b of the Vienna Convention on Consular Relations, if the defendant in a criminal case considers that he needs consular assistance, he should request the competent state authorities to communicate his situation to the corresponding consulate, and (iii) lastly, in ruling 2013-00211 of February 15, 2013,¹⁸⁸ the Third Chamber decided that no suspicion of partiality could be noted because there was no evidence that the judge challenged by the appellants had assessed the body of evidence and, in relation to the alleged failure to notify the right to consular assistance, the higher court reiterated its considerations following its analysis of this issue in its ruling of November 30, 2010.

¹⁸⁵ Ruling No. 2005-00126 of the Third Chamber of the Supreme Court of Justice of February 28, 2005, deciding the remedy of cassation. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0034-301797>

¹⁸⁶ Ruling No. 2007-01464 of the Third Chamber of the Supreme Court of Justice of December 12, 2007, deciding the first appeal for review (evidence file, folios 24 to 36).

¹⁸⁷ Ruling No. 01373-2010 of the Third Chamber of the Supreme Court of Justice of November 30, 2010, deciding the second review procedure. Available at: <https://nexuspj.poder-judicial.go.cr/document/sen-1-0034-504556>,

¹⁸⁸ Ruling No. 2013-00211 of the Third Chamber of the Supreme Court of Justice of February 15, 2013, deciding the third review procedure (evidence file, folios 38 to 40).

140. Thus, this Court has been able to verify that the higher court did examine and make its own unrestricted analysis of the issues raised in the different appeals, substantiating this analysis, responding to all the appealed issues, and assessing the evidence to support its arguments. The Court notes that the subsequent amendments to the appeals system permitted Scot Cochran to file additional remedies in which he was able to question the facts, the evidence and the application of the substantive criminal law. The issues raised were reviewed and the higher court reached the same conclusions as the trial court.

141. Consequently, this Court finds that the State did not violate the right to appeal the judgment established in Article 8(2)(h) of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Scot Cochran.

VIII OPERATIVE PARAGRAPHS

142. Therefore,

THE COURT

DECIDES,

unanimously:

1. To reject the preliminary objection concerning the alleged violation of the principle of procedural equality and the right of defense, pursuant paragraphs 21 to 26 of this judgment.
2. To reject the preliminary objection of fourth instance, pursuant to paragraphs 31 and 32 of this judgment.
3. To reject the preliminary objection concerning the alleged failure to exhaust domestic remedies, pursuant to paragraphs 39 to 41 of this judgment.

DECLARES,

unanimously that:

4. The State is not responsible for the violation of the rights to personal liberty and to judicial guarantees, in particular the right to information and effective access to consular assistance, in relation to the obligation to respect rights, established in Articles 7(4) and 8(2) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Scot Cochran, pursuant to paragraphs 99 to 113 of this judgment.

By four votes to two, that:

5. The State is not responsible for the violation of the right to judicial guarantees, in particular the guarantee of an impartial judge, in relation to the obligation to respect rights, established in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Scot Cochran, pursuant to paragraphs 117 to 126 of this judgment.

Dissenting Judge Eduardo Ferrer Mac-Gregor Poisot and Judge Patricia Pérez Goldberg.

Unanimously that:

6. The State is not responsible for the violation of the right to appeal a judgment before a higher court established in Article 8(2)(h) of the American Convention on Human Rights, in relation to the obligations to respect and to ensure rights, and to adopt domestic legal provisions established in Articles 1(1) and 2 of this instrument, to the detriment of Scot Cochran, pursuant to paragraphs 130 to 141 of this judgment.

AND ESTABLISHES

unanimously that:

7. The Secretariat of the Court shall serve notice of this judgment to the Republic of Costa Rica, the representatives of Scot Cochran, and the Inter-American Commission on Human Rights.

8. This case is closed.

DONE, at San José, Costa Rica, on March 10, 2023, in the Spanish language.

Judge Eduardo Ferrer Mac-Gregor Poisot and Judge Patricia Pérez Goldberg advised the Court of their partially dissenting opinion.

I/A Court HR. *Case of Scot Cochran v. Costa Rica*. Preliminary objections and merits. Judgment of March 10, 2023.

Ricardo C. Pérez Manrique
President

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Verónica Gómez

Patricia Pérez Goldberg

Rodrigo Mudrovitsch

Pablo Saavedra Alessandri
Registrar

So ordered,

Ricardo C. Pérez Manrique
President

Pablo Saavedra Alessandri
Registrar

PARTIALLY DISSENTING OPINION OF JUDGES

EDUARDO FERRER MAC-GREGOR POISOT AND PATRICIA PÉREZ GOLDBERG

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF SCOT COCHRAN V. COSTA RICA

JUDGMENT OF MARCH 10, 2023

(Preliminary objections and merits)

1. With the usual respect for the majority decision of the Inter-American Court of Human Rights (hereinafter, “the Court” or “the Inter-American Court”), we issue this opinion¹ in order to express our position on the admissibility of establishing the international responsibility of the State of Costa Rica for the violation of the right to judicial guarantees, in particular the guarantee of an impartial judge, based on Article 8(1) of the American Convention on Human Rights in relation to Article 1(1) of this instrument.

2. To this end, we will refer, first, to the right to be tried by an impartial judge as part of due process of law and then analyze the merits of the dispute in order to set out the arguments that support our position.

I. The right to be tried by an impartial judge as part of due process of law

3. Article 8(1) of the American Convention indicates the following:

Article 8. Right to a Fair Trial

1. 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.

4. Several standards developed in the Inter-American Court’s case law have been derived from this provision and, based on them, the so-called “due process of law” – a guarantee that establishes the right to be tried by an impartial judge – has been articulated and provided with content.² Thus, the Court has asserted that, in a democratic society, the guarantee of judicial impartiality allows the courts of justice to inspire the necessary trust and confidence in the parties to a case, as well as in the general public.³

5. Consistent with the case law of the European Court of Human Rights (hereinafter, “the European Court”), the Inter-American Court has indicated that judicial impartiality has two aspects: one subjective and the other objective.⁴

¹ Article 65(2) 65(2) of the Rules of Procedure of the Inter-American Court: “Any judge who has taken part in the consideration of a case is entitled to append a separate reasoned opinion to the judgment, concurring or dissenting. These opinions shall be submitted within a time limit to be fixed by the President so that the other judges may take cognizance thereof before notice of the judgment is served. Said opinions shall only refer to the issues covered in the judgment.”

² *Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs.* Judgment of January 29, 1997. Series C No. 30, para. 74.

³ *Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of July 2, 2004. Series C No. 107, para. 171.

⁴ *Cf. Case of Herrera Ulloa v. Costa Rica, supra*, para. 170.

6. On the one hand, the subjective aspect signifies that the Court must be free of personal prejudices when undertaking the hearing and deciding of a case.⁵ In this context, the existence of impartiality must be determined on the basis of the personal conviction of a particular judge in a given case.⁶

7. On the other hand, the objective aspect refers to the duty to provide sufficient guarantees to ensure that no legitimate doubt can exist in relation to the right in question.⁷ Thus, the objective is to eliminate any doubt that the defendant or the community may entertain regarding the absence of impartiality.⁸ From this perspective, it must be determined whether, quite apart from the judge's personal conduct, there are ascertainable facts that may raise doubts as to his impartiality.⁹ Thus, the judge must appear to act without being subject to any influence, inducement, pressure, threat or interference, direct or indirect, and only and exclusively in accordance with – and on the basis of – the law.¹⁰

8. Bearing in mind the foregoing, the purpose of this dissent focuses on the presumed responsibility of the Costa Rican State for the violation of the guarantee of an impartial judge from its objective perspective. We will refer to this aspect in the following section.

II. Analysis of this specific case

9. Regarding the deliberations conducted in this case concerning the right to judicial guarantees, in particular to an impartial judge in relation to the obligations to respect and to ensure rights, it will be useful to briefly describe the crucial point of these deliberations.

10. As indicated in paragraph 119 of the judgment, the dispute is rooted in determining whether or not the fact that Judge LGBG ruled on the appeal against one of the decisions extending Scot Cochran's pre-trial detention and, subsequently, became a member of the collegiate court that convicted him resulted in a situation of lack of impartiality in this specific case because, according to the representatives, the judge "had already advanced his opinion on the same case just one year previously."¹¹

11. In the course of the aforementioned deliberations, most members of the Court chose to reject the State's responsibility for the alleged violation of the right to judicial protection established in Article 8(1) of the American Convention in relation to its Article 1(1), to the detriment of Scot Cochran.¹²

12. To reach this conclusión, the Court indicated the following:

The Court finds that there are three elements that are crucial for its assessment of the impartiality of the judge in this case: (i) the object and scope of the decision issued by Judge LGBG on the appeal against the measure of deprivation of liberty, which merely verified the existence of the legal requirements for

⁵ Cf. *Case of Herrera Ulloa v. Costa Rica*, *supra*, para. 170.

⁶ Cf. *ECHR Hauschildt v. Denmark*, no. 10486/83, Judgment of May 24, 1989, para. 46.

⁷ Cf. *Case of Herrera Ulloa v. Costa Rica*, *supra*, para. 170.

⁸ Cf. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary objection, Merits, reparations and costs*. Judgment of August 5, 2008. Series C No. 182, para. 56.

⁹ Cf. *ECHR Hauschildt v. Denmark*, *supra*, para. 48.

¹⁰ *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, *supra*, para. 56; *Case of Duque v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of February 26, 2016. Series C No. 310, para. 162.

¹¹ Paragraph 115.

¹² Cf. Paragraph 126.

the measure and did not assess the merits of the matter; (ii) the decision to convict Scot Cochran was taken by a collegiate court, where LGBG was only one of three judges, and the vote was unanimous; thus, even without the participation of LGBG the result would have been the same – since the other two judges had not been challenged, and (iii) even though the possibility existed of challenging LGBG as a member of the collegiate court, neither Scot Cochran nor his representatives filed this challenge.¹³

13. Bearing in mind these three elements used by the Court to establish the absence of State responsibility for the alleged violation of judicial impartiality, we will now set out the reasons why we believe that, in this specific case, the said international responsibility was verified. To this end, we will refer to each of the elements described in the Court’s majority decision.

14. First, we consider that the reason set out in paragraph 122 of the judgment is not correct when it finds that “although the participation in the trial court of a judge who has previously examined the case may have an impact on the guarantee of impartiality, it should be underscored that, in this case, this participation occurred at the investigation stage and not to order pre-trial detention; rather it was to decide the appeal against the precautionary measure.” To support this thesis, the Court cites *Amrhein et al. v. Costa Rica* in which it did not consider that the right to be tried by an impartial judge had been violated because the judge did not enter into the merits of the matter, but rather merely examined the elements required to order pre-trial detention.¹⁴ Consequently, the majority decision concluded that “[t]hus, it cannot be considered that the assessment made by the appeals judge at this stage had been sufficient to influence a subsequent determination of responsibility and guilt.”¹⁵ However, we believe that this argument is erroneous for at least two reasons.

15. First, it should be recalled that the standard cited by the majority in the case of *Amrhein et al. v. Costa Rica*, was re-examined recently in *Tzompaxtle Tecpile et al. v. Mexico*.¹⁶ And, according to the latter decision, when examining pre-trial detention and its elements, specifically in relation to the substantive assumptions relating to the existence of the wrongful act and the participation of the person being processed, the Court indicated that this premise should be “understood taking into account that, in principle and in general, this decision [of the admissibility of pre-trial detention] should not have any effects in relation to the responsibility of the accused, because it should be taken by a **different**¹⁷ judge or judicial authority to the one that eventually takes a decision on the merits.”¹⁸

16. We believe that this criterion should not be interpreted alone, but rather it must necessarily be understood as a way of effectively implementing the right to be tried by an impartial judge within the framework of domestic law. Thus, it is not possible to provide adequate guarantees of impartiality and of the absence of uncertainty for the procedural subjects, unless it is ensured, at least, that the aforementioned decisions are decided by different judges.

¹³ Paragraph 121.

¹⁴ Cf. Paragraph 122.

¹⁵ Paragraph 122.

¹⁶ It should be recalled that in *Herrera Ulloa v. Costa Rica*, the Court had already indicated that “the justices of the Third Chamber of the Supreme Court of Justice should have abstained from taking cognizance of the two cassation remedies filed to challenge the November 12, 1999, judgment because [...] when deciding the remedy of cassation to challenge the May 29, 1998, acquittal the same justices examined the merits and ruled on not merely the form.” Cf. Paragraph 174.

¹⁷ Bold added.

¹⁸ *Case of Tzompaxtle Tecpile et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 7, 2022. Series C No. 470, para. 102.

17. Second, we should not lose sight of the European Court's findings in a similar case to this one.¹⁹ In this situation, it noted that "the mere fact that a trial judge or an appeal judge [...] has also made pre-trial decisions in the case, including those concerning detention on remand, cannot be held as in itself justifying fears as to his impartiality."²⁰ Thus, it asserted that:

The application of the [law regulating the admissibility of detention on remand) requires, *inter alia*, that the judge be satisfied that there is a "particularly confirmed suspicion" that the accused has committed the crime(s) with which he is charged. This wording has been officially explained as meaning that the judge has to be convinced that there is "a very high degree of clarity" as to the question of guilt [...]. Thus, the difference between the issue the judge has to settle when applying this section and the issue he will have to settle when giving judgment at the trial becomes tenuous. The Court is therefore of the view that in the circumstances of the case the impartiality of the said tribunals was capable of appearing to be open to doubt and that the applicant's fears in this respect can be considered objectively justified.²¹

18. Based on those arguments, the European Court considered that there had been a violation of the right to be heard by an impartial court, as established in Article 6(1) of the European Convention on Human Rights.²² This matter is very similar to the judgment that is the subject of this opinion. Thus, the judge's satisfaction referred to in the European Court's judgment regarding the existence of "a very high degree of clarity" as to guilt, when ordering pre-trial detention, is an aspect that is also present in the facts of the Scot Cochran case. Indeed, in the instant case, when the judge of appeal decided on the extension of the precautionary measure, he explicitly considered that: "... regarding the evidence proving the charges, this case has sufficient evidence that at least supports a **strong probability of the participation** of the accused Scott Cochran in these facts."²³

19. Accordingly, as is clear from the factual framework and indicated in the judgment of the Inter-American Court, when issuing the order for pre-trial detention, "the judge considered that there was the required degree of probability that Scot Cochran was the author of the wrongful act attributed to him, because the Judicial Investigation Department had conducted a series of procedures and received witness statements to this effect."²⁴ Consequently, as in the case heard by the European Court, the distinction between what was decided by the judge in the context of pre-trial detention (either initially, in the context of a review and extension of the pre-trial detention, or in the context of an eventual appeal) and the matter that had to be decided when handing down a judgment in the main trial becomes tenuous. This issue becomes more relevant, especially given the existence of probative elements gathered during the investigation stage relating to Scot Cochran's participation in the wrongful act.

20. The foregoing also reveals the insufficiency of the second argument; that, since the vote was unanimous and the court was collegiate, the result would also have been a conviction.²⁵ In this context, it is necessary to recall our observation in the first section of this opinion; that the central purpose of objective impartiality is to eliminate any doubt that the defendant or the community could have as to the absence of impartiality.²⁶ Thus, it is difficult to inspire adequate confidence in the system of justice if, at the same time, the possible flawed

¹⁹ We are grateful to Esteban Oyarzún for his contribution as research assistant for this opinion.

²⁰ Cf. ECHR, *Hauschildt v. Denmark*, *supra*, para. 50.

²¹ ECHR, *Hauschildt v. Denmark*, *supra*, para. 52.

²² Cf. ECHR, *Hauschildt v. Denmark*, *supra*, para. 53.

²³ Ruling No. 235-03 of the Criminal Trial Court of the First Judicial Circuit of San José of August 11, 2003, signed by Judge LGBG, confirming the decision appealed against (evidence file, folios 55 to 58).

²⁴ Paragraph 53.

²⁵ Cf. Paragraph 123.

²⁶ Cf. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, *supra*, para. 56.

composition of a jurisdictional organ is not challenged on the grounds that, anyway, “the result would have been a conviction.”

21. When examining objective impartiality, the European Court has indicated that, when doubt exists as to the lack of impartiality of one of the judges who composes a court, in view of the secrecy of the deliberations, it is impossible to ascertain a judge’s actual influence in that context.²⁷ Therefore, “the impartiality of that court could be open to genuine doubt,”²⁸ and this led that court to conclude that there had been a violation of Article 6(1) of the European Convention on Human Rights.²⁹ Consequently, in such contextual circumstances, similar to those of the instant case, any reasonable observer would consider that a judge who had decided aspects related to pre-trial detention and had, subsequently, ruled on the merits of the same case, would inevitably inspire legitimate misgivings in the defendant regarding the guarantee of the court’s impartiality. Moreover, it goes without saying that, during the deliberations, each member of the court sets out reasons aimed at persuading the other members in one way or the other so that the final decision is the best and most appropriate for the case in question. Judges do not act as separate entities in sealed compartments. The decision taken as a result of the deliberations is an act that is the outcome of dialogic reasoning and, due to its nature, this is collective. Consequently, it is not enough to eliminate the judge implicated to automatically deduce that the opinion of that judge had no impact on the decision of the majority. It is precisely because the final ruling is the result of a decision of the court as a whole, adopted in the context of secret deliberations, that it is not possible to identify and isolate the influence of the opinion of one of the judges. Asserting the contrary would mean ignoring the value, importance and impact of this collegiate procedure.

22. Lastly, regarding the third argument, the Court indicated that “even though the possibility of filing a challenge was available at the time of the facts, this was not filed against Judge LGBG during the criminal proceedings that culminated in the guilty verdict [...] rather, it was submitted for the first time during the third review procedure, [in which it was] found that there was no suspicion of partiality because there was no evidence that the judge had assessed the body of evidence when deciding the appeal against pre-trial detention.”³⁰

23. Here, we consider it necessary to recall the Inter-American Court’s considerations in relation to the mechanism of challenge:

[T]he Court considers that the mechanism granting the right to challenge judges has a twofold purpose; on one hand, it works as a guarantee for the parties to the proceedings, and on the other hand, it aims at providing credibility to the role performed by the jurisdiction. Indeed, challenging gives the parties the right to move for the exclusion of a judge when, regardless of the personal conduct of the questioned judge, there are proven facts or convincing elements that lead to grounds for misgivings or legitimate suspicions regarding his partiality, thus impeding his decision from being seen as made based on reasons in conformity with the law; therefore, the functioning of the judicial system is distorted. Challenging should not necessarily be seen as a judgment on the moral rectitude of the challenged official, but rather as a tool to build trust in those resorting to the State for the intervention of bodies that are and appear to be impartial.³¹

24. Despite the foregoing, we should not forget that, in addition to the possibility of

²⁷ Cf. ECHR, *Case of Otegi Mondragon and Others v. Spain*, nos. 4184/15, Judgment of November 6, 2018, para. 67.

²⁸ ECHR, *Case of Otegi Mondragon and Others v. Spain*, *supra*, para. 67.

²⁹ Cf. ECHR, *Case of Otegi Mondragon and Others v. Spain*, *supra*, para. 69.

³⁰ Paragraph 124.

³¹ *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, *supra*, para. 63; *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 302, para. 224.

procedural subjects availing themselves of challenges in the case of a possible situation of lack of impartiality, this guarantee must be respected by judges or judicial authorities *ex officio*.³² Thus, "the judge or court must withdraw from a case submitted to their consideration when there is some reason or doubt that has an adverse impact on the integrity of the court as an impartial body."³³

25. The foregoing is in keeping with the assertion of the European Court that "even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public, including the accused. Accordingly, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw."³⁴

26. In this regard, European case law has added that "it is the responsibility of the individual judge to identify any impediments to his or her participation and either to withdraw or, when faced with a situation in which it is arguable that he or she should be disqualified, although not unequivocally excluded by law, to bring the matter to the attention of the parties in order to allow them to challenge the participation of the judge."³⁵

27. Consequently, in this specific case, above all, it was incumbent on the judges or judicial authorities involved in deciding the matter to refrain from hearing it or to inform those intervening in it of the possibility of challenging their participation in the clear existence of reasonable doubts about a lack of impartiality. This, in order to crystallize the necessary trust that the administration of justice must instill in procedural subjects and in the general public.

III. Final considerations

28. The foregoing reasons show that, by failing to take measures to avoid the same judge being involved in the pre-trial stage of the wrongful act and Scot Cochran's participation in this and, subsequently, being called on to decide on his guilt during the criminal trial, the State violated the guarantee of the impartiality of the court recognized in Article 8(1) of the American Convention. Indeed, in this case, the judge who decided the appeal, confirming the continuation of pre-trial detention, clearly considered the existence of evidence gathered during the investigation stage related to Scot Cochran's participation in the wrongful act. Evidently this makes the distinction between the elements taken into account when deciding on the precautionary measure and those assessed to deliver the judgment on the merits extremely tenuous.

29. It is not correct to found the decision not to declare this violation on the precedent in *Amrhein et al. v. Costa Rica* because, on November 7, 2022, the Court re-evaluated the said criterion in *Tzompaxtle Tecpile et al. v. Mexico* indicating that the judges who hear the precautionary measures and those who hear the merits of a case should be different.

30. The preceding conclusion is supported by the fact that the judgment recommends that, "owing to the situation [that a same judge had taken part in the decision on pre-trial detention and on the merits of the case], the State should take the necessary measures to further

³² Cf. *Case of Palamara Iribarne v. Chile. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 135, para. 147.

³³ *Case of Palamara Iribarne v. Chile, supra*, para. 147.

³⁴ ECHR *Castillo Algar v. Spain*, no. 28194/95, Judgment of October 28, 1998, para. 45. Similarly: ECHR *Škrlj v. Croatia*, no. 32953/13, of July 11, 2019, para. 43.

³⁵ ECHR *Sigríður Elín Sigfúsdóttir v. Iceland*, no. 41382/17, Judgment of February 25, 2020, para. 35.

strengthen the guarantee of an impartial judge.”³⁶ It is our understanding that, in order to rectify this structural problem, it would have been better and clearer to declare the violation of this guarantee directly.

31. As Lord Hewart said, “justice should not only be done, but should manifestly and undoubtedly be seen to be done.”³⁷ Thus, the form is important. The participation of a judge in the conditions described above may detract from the perception that not only the defendant, but also society as a whole, should have concerning the impartiality of a court.

Eduardo Ferrer Mac-Gregor Poisot
Judge

Patricia Pérez Goldberg
Judge

Pablo Saavedra Alessandri
Registrar

³⁶ Paragraph 125.

³⁷ *Rex v. Sussex Justices*, [1924] 1 KB 259.