

**PARTIALLY DISSENTING OPINION OF THE**  
**JUDGE PATRICIA PEREZ GOLDBERG**  
**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF MINA CUERO v. ECUADOR**  
**JUDGMENT OF SEPTEMBER 7, 2022**  
***(Preliminary objections, Merits, Reparations and Costs)***

With full respect for the majority decision of the Inter-American Court of Human Rights (hereinafter referred to as "the Court" or "Court"), I issue this partially dissenting opinion<sup>1</sup> to explain why, in this case, it was appropriate to establish the international responsibility of the State for the violation of Article 23 of the American Convention on Human Rights (hereinafter referred to as the IACHR, the Convention, or the Treaty) and not additionally declare the violation of Article 26 of the aforementioned Treaty.

As stated in the judgment, in the disciplinary proceedings that led to the separation of Mr. Mina Cuero, a series of violations of due process occurred, which led to the declaration of international responsibility of the State of Ecuador for the violation of Articles 8(1), 8(2), 8(2)(b), and 8(2)(c) of the IACHR (Inter-American Commission on Human Rights) in relation to Article 1(1) of the same international instrument, and Article 8(2)(h) of the Convention, in relation to Article 2 of the Treaty, to the detriment of the victim.

For the sake of organization, I will separately address Articles 23 and 26 of the IACHR.

**I. The application of Article 23 of the Convention in accordance with the principle of *iura novit curia*.**

1. First, it is necessary to point out that neither the victim's representative nor the Commission alleged a violation of Article 23(1)(c) of the Convention, which does not prevent the Court, by virtue of the principle *iura novit curia*, from establishing the applicable law in the specific case.
2. As it is known, this principle has its roots in Roman law and has had a significant impact on procedural aspects of continental legal systems. This is understood because it is inherent to the judicial function to have the "power-duty" to identify the relevant regulations or principles for deciding a case when the absence of

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<sup>1</sup> Article 65(2) of the Rules of Procedure of the Inter-American Court of Human Rights: "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 Presidency 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."

invocation of these regulations by any of the parties could lead to an erroneous decision or a potential denial of justice.

3. In the field of international adjudication, the application of this principle has not been consistent. However, the Inter-American System's case law stands out for its frequent utilization of this principle. The dissolved Permanent Court of International Justice,<sup>2</sup> the International Court of Justice,<sup>3</sup> and the European Court of Human Rights<sup>4</sup> have also reflected on the scope of the aforementioned principle.
4. Multiple judgments of this Court have reasoned around this jurisdictional tool.<sup>5</sup> Thus, already in the case *Velásquez Rodríguez v. Honduras*, in which the Commission did not expressly allege a violation of Article 1(1) of the Convention, the Court stated that this did not prevent its invocation "since this provision constitutes the generic foundation for the protection of the rights recognized by the Convention and because it would be applicable anyway

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<sup>2</sup> *Case of Lotus*. Judgment No. 9, 1927, Series A, No. 1, page 31.

<sup>3</sup> *Case of Fisheries Jurisdiction (United Kingdom v. Iceland)*. Judgment of July 25, 1974, paras. 17-18; *Case of Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. Judgment of June 27, 1986, paragraph 29.

<sup>4</sup> *Case of Handyside v. United Kingdom*. Judgment of December 7, 1976, Series A No. 24, paragraph 41; *Case of Guerra et al. v. Italy*. Judgment of February 19, 1998, Reports 1998-I, p. 13, paragraph 44; *Case of Philis v. Greece*. Judgment of August 27, 1991, Series A No. 209, p. 19, para 56; *Case of Powell and Rayner v. United Kingdom*. Judgment of February 21, 1990, Series A No. 172, p. 13, para. 29; *Case of Scoppola v. Italy (No. 2)*. Judgment of September 17, 2009, p. 17, paragraph 5; *Case of Celikbilek v. Turkey*. Judgment of May 31, 2005, paragraphs 100-105.

<sup>5</sup> *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988; *Case of Godínez Cruz v. Honduras*. Judgment of January 20, 1989; *Case of Blake v. Guatemala*. Judgment of January 24, 1998; *Case of Durand and Ugarte v. Peru*. Judgment of August 16, 2000; *Case of Hilaire, Constantine et al. v. Trinidad and Tobago*. Judgment of June 21, 2002; *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999; *Case of Cantos v. Argentina*. Judgment of November 28, 2002; *Case of Five Pensioners v. Peru*. Judgment of February 28, 2003; *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003; *Case of Maritza Urrutia v. Guatemala*. Judgment of November 27, 2003; *Case of Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004; *Case of Juvenile Reeducation Institute v. Paraguay*. Judgment of September 2, 2004; *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005; *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005; *Case of the Girls Yean and Bosico v. Dominican Republic*. Judgment of September 8, 2005; *Case of Mapiripan Massacre v. Colombia*. Judgment of September 15, 2005; *Case of García Asto y Ramírez Rojas v. Peru*. Judgment of November 25, 2005; *Case of Sawhoyamaxa Indigenous Community v. Paraguay*. Judgment of March 29, 2006; *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006; *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006; *Case of Bueno Alves v. Argentina*. Judgment of May 11, 2007; *Case of Kimel v. Argentina*. Judgment of May 2, 2008; *Case of Heliodoro Portugal v. Panama*. Judgment of August 12, 2008; *Case of Bayarri v. Argentina*. Judgment of October 30, 2008; *Case of González et al. ("Cotton Field") v. Mexico*, request for inclusion of alleged victims and denial of referral for documentary evidence, January 19, 2009; *Case of Escher et al. v. Brazil*. Judgment of July 6, 2009; *Case of Usón Ramírez v. Venezuela*. Judgment of November 20, 2009; *Case of Vélez Looor v. Panama*. Judgment of November 23, 2010; *Case of Vera Vera et al. v. Ecuador*. Judgment of May 19, 2011; *Case of Contreras et al. v. El Salvador*. Judgment of August 31, 2011; *Case of Grande v. Argentina*. Judgment of August 31, 2011; *Case of Furlán and family v. Argentina*. Judgment of August 31, 2012; *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*. Judgment of November 20, 2012; *Case of Suárez Peralta v. Ecuador*. Judgment of May 21, 2013; *Case of Hermanos Landaeta et al. v. Venezuela*. Judgment of August 27, 2014; *Case of Expelled Dominican and Haitians v. Dominican Republic*. Judgment of August 28, 2014; *Case of Human Rights Defender et al. v. Guatemala*. Judgment of August 28, 2014; *Case of Rochac Hernández et al. v. El Salvador*. Judgment of October 14, 2014; *Case of Cruz Sánchez et al. v. Peru*. Judgment of April 17, 2015; *Case of Peasant Community of Santa Barbara v. Peru*. Judgment of September 1, 2015; *Case of Kaliña and Lokono Peoples v. Suriname*. Judgment of November 25, 2015; *Case of I. V. v. Bolivia*. Judgment of November 30, 2016; *Case of Acosta et al. v. Nicaragua*. Judgment of March 25, 2017; *Case of Lagos del Campo v. Peru*. Judgment of August 31, 2017; *Case of Vereda La Esperanza v. Colombia*. Judgment of August 31, 2017; *Case of San Miguel Sosa et al. v. Venezuela*. Judgment of February 8, 2018; *Case of Women Victims of Sexual Torture in Atenco v. Mexico*. Judgment of November 28, 2018; *Case of Muelle Flores v. Peru*. Judgment of March 6, 2019; *Case of Rodríguez Revolorio et al. v. Guatemala*. Judgment of October 14, 2019; *Case of Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina*. Judgment of February 6, 2020; *Case of Hernández v. Argentina*. Judgment of November 22, 2019; *Case of Cuyo Lavy et al. v. Peru*. Judgment of September 28, 2021; *Case of Former Employees of the Judiciary v. Guatemala*. Judgment of November 17, 2021, and *Case of Casierra Quiñonez et al. v. Ecuador*. Judgment of May 11, 2022.

under the general principle of law, *iura novit curia*, which international jurisprudence has repeatedly relied upon, meaning that the judge has the power and even the duty to apply the relevant legal provisions in a case, even if the parties do not expressly invoke them."<sup>6</sup>

5. However, the Court's authority to utilize this principle does not exempt it from justifying its application and doing so in a moderate and cautious manner. In this regard, it is relevant, on one hand, to take into account that the facts<sup>7</sup> always establish a limit to the right, in the sense that the task of identifying and applying rights must be based on the factual framework established in the merits report and, on the other hand, that it must be ensured that the principle of equality of arms is not affected and, in particular, the right of defense of the States.
6. In line with these ideas, and as Judge Sierra Porto has expressed in his partially dissenting opinion in the case of *Lagos del Campo v. Peru*,<sup>8</sup> it is a power that must be used under certain criteria of reasonableness and relevance, such as when "the violation of human rights is evident or when the representatives or the Commission have committed a serious omission or error, so that the Court can remedy a possible injustice, but this principle should not be used to surprise a State with a violation that it did not foresee in the slightest and had no opportunity to dispute, not even regarding the facts."
7. Understood that the principle of *iura novit curia* allows for the determination of applicable law - as long as it falls within the Court's jurisdiction - the facts submitted to the knowledge of this Court constitute a violation of the victim's right to access public functions in their country on equal terms. Indeed, as expressed, the case relates to the international responsibility of the Ecuadorian State for a series of violations committed within the disciplinary process that led to the dismissal of Mr. Mina Cuero from his position as a police officer, which, by its nature, constitutes a public function.
8. In the Case of *Yatama v. Nicaragua*, the Court stated, regarding Article 23 of the Convention, that this provision enshrines the rights to participate in the conduct of public affairs, to vote, to be elected, and to have access to public functions, which must be guaranteed by the State under conditions of equality,<sup>9</sup> and to have access to public functions, which must be guaranteed by the State under conditions of equality. The State must create the necessary conditions and mechanisms to ensure that these rights can be effectively exercised.<sup>10</sup> Furthermore, it was indicated that the right to have access to public functions on equal terms protects access to a direct form of participation in the design, implementation, development, and execution of state political guidelines through public functions, these general conditions of equality encompass both access to public functions through popular election and through appointment or designation.<sup>11</sup> In the Case *Reverón Trujillo v. Venezuela*, it added that Article 23(1)(c) does not establish the right to access a public position, but to do so in "general conditions of equality." This means that the respect and guarantee of this right are fulfilled when "the criteria and procedures for appointment, promotion, suspension, and dismissal [are] reasonable and objective" and that "individuals are not subjected to discrimination" in the exercise of this right.<sup>12</sup>
9. Although neither the Commission nor the representatives alleged a violation

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<sup>6</sup> Cf. Paragraph 163.

<sup>7</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, Merits, Reparations, and Costs*. Judgment of November 16, 2009. Series C No. 205, para. 32.

<sup>8</sup> Position reiterated in their votes regarding the cases of *Rodríguez Revolorio et al. v. Guatemala and Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina*.

<sup>9</sup> Cf. Paragraph 194.

<sup>10</sup> Cf. Paragraph 195.

<sup>11</sup> Cf. Paragraph 200.

<sup>12</sup> Cf. Paragraph 138.

of Article 23 of the Convention, the facts - as recorded in the Merits report- allowed for the observation that Mr. Mina Cuero claimed to have been subjected to arbitrary treatment regarding his right to remain in his position on a basis of equality. Subsequently, from the analysis of the evidence received by the Court, it was possible to establish the effectiveness of that allegation, which constituted a manifest violation of Article 23(1)(c) of the Convention. Additionally, it is worth noting that the Court had already interpreted that the guarantees contained in the mentioned treaty provision are applicable to all individuals who hold public functions. Therefore, when the tenure of a person in the exercise of such functions is arbitrarily affected, their political rights are ignored.<sup>13</sup>

## **II. This Court's lack of jurisdiction to declare the autonomous violation of the right to work based on Article 26 of the Convention.**

1. In light of the previous reflections and those that will be presented below, it is incorrect to assert, as stated in the judgment, that "the arbitrary separation of Mr. Mina Cuero from his position as a police officer and the lack of access to justice and effective judicial protection also constituted a violation of his employment stability as part of the right to work of which he was the holder."<sup>14</sup> As expressed, the relevant provision, in this case, is that of access and tenure in public functions under conditions of equality and not, additionally, Article 26 of the Convention - understood as establishing an autonomous right to work - regarding which this Court lacks jurisdiction, as I will explain in the following paragraphs.
2. Indeed, on this occasion, as I expressed in my partially dissenting opinion in the case of *Guevara Díaz v. Costa Rica*, I reiterate my position regarding the lack of jurisdiction of this Court in matters of social, economic, cultural, and environmental rights.
3. As known, treaty law refers to the obligations that arise from the express consent of States. If the wills of the States converge on a particular matter, such consent must be expressed in the manner established by Article 2(a) of the Vienna Convention on the Law of Treaties (hereinafter referred to as VCLT).<sup>15</sup>
4. Under such international agreements, States may agree to the establishment of courts to apply and interpret the provisions contained therein and, through subsequent instruments, may extend the jurisdiction of such bodies. Therefore, international courts must exercise their jurisdiction within the framework established by the relevant treaties. Such legal instruments constitute both the foundation and the limit of their actions. From a democratic perspective, the above statement is consistent with the proper respect for internal deliberative processes that take place in relation to the ratification of a treaty and with the type of interpretation developed by international courts. This hermeneutical work is carried out with regard to norms of international law and is not of a constitutional nature.
5. In light of these considerations, and given that in this case, the Court declares

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<sup>13</sup> Cf. *Case of Moya Solís v. Peru. Preliminary objections, Merits, Reparations, and Costs*. Judgment of June 3, 2021. Series C No. 425, para. 109.

<sup>14</sup> Cf. Paragraph 135.

<sup>15</sup> "The term 'treaty' means an international agreement concluded in writing between States and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation may be."

the violation of the right to work based on Article 26 of the Convention, it is worth asking whether or not the Court has jurisdiction to proceed in this way. The response to this query is negative. Article 1(1) of the Convention clearly provides that the States Parties "undertake to respect the rights and freedoms recognized **herein** and to ensure their free and full exercise of those rights and freedoms, to all persons under their jurisdiction without discrimination [...]". Correspondingly, the rules on jurisdiction and functions of the Court are also clear in stating that the Court is subject to the provisions of the IACHR (Inter-American Commission on Human Rights). Indeed, Article 62(3) states that "the Court has jurisdiction to hear any case concerning the interpretation and application of the provisions **of this Convention** which is submitted to it [...]" and, similarly, Article 63(1) stipulates that "If the Court finds that there has been a violation of a right or freedom protected **by this Convention** [...] the Court shall rule that the injured person be ensured the enjoyment of his or her right to freedom that was violated."

6. Additionally, Chapter III of the Convention, entitled "Economic, Social, and Cultural Rights," contains a single article, Article 26, on "Progressive Development." In line with its title, under the aforementioned provision "the States Parties undertake to adopt **measures**, both internally and through international cooperation, especially those of an economic and technical nature, **with a view to achieving progressively**, by legislation or other appropriate means, the full realization of the rights deriving from economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires Protocol."<sup>16</sup>
7. A reading of this provision will find that, in contrast to what happens with the civil and political rights identified and developed in Chapter II of the ACHR, here an obligation is established for states parties to adopt the "measures"—that is, actions, measures, or public policies—necessary to "progressively" achieve full realization of the rights derived from the norms of the OAS Charter, "subject to available resources." In other words, each state party has an obligation to be formulating definitions and moving decisively forward on these issues, in accordance with their domestic deliberative procedures.
8. Conceiving of Article 26 of the Convention as a norm referencing all ESCER (Economic, Social, Cultural, and Environmental Rights) covered in the OAS Charter ignores the commitment adopted by the states parties and opens up a path of uncertainty regarding the catalog of rights justiciable before the Court, affecting the legitimacy of its actions.
9. Furthermore, articles 76(1) and 77(1) of the Convention<sup>17</sup> provide for a system agreed upon by the states to modify the agreement, either through an amendment or an additional protocol. It was precisely under this last provision that the "Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, Protocol of San Salvador" of 1988 (hereinafter referred to as "the Protocol") was adopted, with the purpose of progressively including other rights and freedoms in the

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<sup>16</sup> Bolding added for emphasis.

<sup>17</sup> Article 76(1): "Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General." Article 77(1): "In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection."

- protection regime of the Convention.
10. However, despite the fact that the aforementioned Protocol recognizes and develops a set of ESCER in its text,<sup>18</sup> Article 19(6), concerning Means of Protection, assigns jurisdiction to the Court to address potential violations only with respect to two rights: the right to organize and join trade unions and the right to education. This provision establishes that in the event that such rights "are violated by an action directly attributable to a State party to this Protocol, such a situation could give rise, through the participation of the Inter-American Commission on Human Rights, and when appropriate of the Inter-American Court of Human Rights, to the application of the system of individual petitions regulated by Articles 44 to 51 and 61 to 69 of the American Convention on Human Rights."
  11. Therefore, in light of the treaty (composed of two instruments: the Convention and its Additional Protocol),<sup>19</sup> the Court lacks jurisdiction to declare an autonomous violation of the right to work.
  12. I reiterate that asserting the lack of direct justiciability of ESCER before the Court does not imply disregarding the existence or the immense importance of such rights, the interdependent and indivisible nature they have in relation to civil and political rights, nor does it mean that they lack protection or should not be protected. It is the duty of the States to allow the autonomy of individuals to be realized, which means that they should have access to primary goods (wider than those defined in the realm of political philosophy by John Rawls),<sup>20</sup> that make the development of their capabilities possible, this includes access to economic, social, and cultural rights.<sup>21</sup>
  13. It is necessary, then, to distinguish between two -related- but distinct levels. One is at the national level, where, through democratic procedures, citizens decide to translate ESCER into their respective legal systems, also incorporating international law on this matter, as is the case in the vast majority of member states of the Inter-American Human Rights System. In this context, it is the national courts that -within the scope of their jurisdiction- exercise their powers regarding the interpretation and justiciability of these rights, in accordance with their Constitutions and laws.
  14. Another, different level, is the international one. As an international court, the role of the Court at this level is to determine whether the State, whose responsibility is claimed, has violated one or more of the rights established in the treaty. As explained, in light of the normative design of this and in accordance with Article 26, the Court is empowered to establish the international responsibility of the State if it has failed to comply with the obligations of progressive development and non-regression, not of the ESCER considered individually. In this context, nothing prevents the court from considering the economic, social, and cultural dimensions of the rights recognized in the treaty norms and exercising its adjudicative jurisdiction through related matters. The Court has used this approach in previous cases

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<sup>18</sup> The right to work, to fair and equitable working conditions, labor rights, the right to social security, to health, to a healthy environment, to food, to education, to the benefits of culture, to the establishment and protection of the family, to childhood, to the protection of the elderly, and to the protection of persons with disabilities[sic].

<sup>19</sup> According to Article 2(a) of the Vienna Convention on the Law of Treaties, a treaty might be embodied in a single instrument or in two or more related instruments.

<sup>20</sup> For RAWLS, primary goods are a set of goods necessary "for the elaboration and execution of a rational life plan," such as liberty, opportunities, income, wealth, and self-respect, "A Theory of Justice" (1995:393).

<sup>21</sup> Pérez Goldberg, "Las mujeres privadas de libertad y el enfoque de capacidades" (2021:94-109).

before the judgment delivered in the case of *Lagos del Campo v. Peru* (2017) as occurred, for example, in the *Case of Ximenes Lopes v. Brazil* (2006)<sup>22</sup>; *González Lluy et al. v. Ecuador*<sup>23</sup> (2015) and *Chinchilla Sandoval v. Guatemala* (2016)<sup>24</sup> and that establishes the correct doctrine to be followed. Since *Lagos del Campo*, the Court has been upholding the direct justiciability of ESCER based on Article 26, except in cases like *Rodríguez Revolorio v. Guatemala* (2019) and *Martínez Esquivia v. Colombia* (2020).

15. Regarding the system of interpretation applicable to treaty norms, the rules of interpretation of the VCLT (Vienna Convention on the Law of Treaties) must be followed, which entails considering elements of interpretation such as good faith, the ordinary meaning of terms in the context of the treaty, and the object and purpose of the treaty. From this last element – as Cecilia Medina teaches – two specific criteria of the hermeneutics of human rights treaties emerge: their dynamic nature and *pro persona*, allowing judges to have a "broad scope for highly creative interpretation."<sup>25</sup>
16. One of the most relevant norms of interpretation in international human rights law is evolutionary interpretation. Thus, for example, in the case of the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, the Court interpreted that Article 21 of the Convention, concerning the right to private property, protected the special characteristics of communal property rights of indigenous peoples. Such evolutionary interpretation is faithful to the intention of the States parties. However, in this case, the Court does not apply that interpretative criterion but rather exercises its jurisdiction in matters that the respective instruments have not conferred upon it, that is, without the consent of the States parties. In other words, it is an error to use these hermeneutical tools as a basis for expanding the jurisdiction of the Court when there is an explicit norm that clearly sets its limits.
17. The judgment makes reference to a single provision of the Protocol: the right to work established in Article 6 (paragraph 131), but omits any mention of an essential norm, Article 19, concerning the protection mechanisms for the rights recognized in the agreement.
18. This omission is relevant because Article 19 defines two types of protection mechanisms. One general mechanism - applicable to all rights recognized in the Protocol - consists of the examination, observations, and recommendations that various bodies of the Inter-American System can make regarding the reports that States must submit concerning the progressive development of ESCER. And another one - provided solely in relation to the rights of organization and trade union affiliation, and the right to education - which allows a possible violation of these rights to be brought before the Inter-American Court.

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<sup>22</sup> Ximenes Lopes died in a psychiatric facility, approximately two hours after being medicated by the clinical director of the hospital, without being evaluated by any medical professional. He did not receive appropriate care and, due to the lack of supervision, was exposed to all kinds of aggression and accidents that could endanger his life. The Court established state responsibility for the violation of the right to life and humane treatment.

<sup>23</sup> In this case, which involved a girl who was infected with the HIV virus due to a blood transfusion, the Court protected the right to health of the victim through its connection with the rights to life and humane treatment. The Court declared a violation of "the obligation to oversee and supervise the provision of health services, within the framework of the right to humane treatment and the obligation not to endanger life."

<sup>24</sup> The victim was a woman deprived of liberty with a physical disability who did not receive adequate healthcare regarding the multiple illnesses she suffered from, and who ultimately died in the prison facility. This lack of health care resulted in the Court declaring a violation of the right to life and humane treatment.

<sup>25</sup> Medina, "The American Convention on Human Rights" (2018:115).

19. In the judgment, the Inter-American Court declared the State's responsibility by considering that the arbitrary dismissal of Mr. Mina Cuero from his position as a police officer and the lack of access to justice and effective judicial protection constituted a violation of Articles 8(1), 8(2), 8(2)(b), 8(2)(c), 23(1)(c), and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same international instrument; and also, the Court considered a violation of Article 8(2)(h) of the Convention, but, it acknowledged the existence of a violation of his employment stability, as part of the right to work to which he was entitled. I agree with the considerations expressed in the judgment, with the exception of those related to the direct violation of the right to work based on Article 26, as previously mentioned.
20. It is worth noting that in paragraphs 107 to 111 of the judgment, it is reasoned that Mr. Mina Cuero's termination disregarded due process guarantees, which arbitrarily affected his tenure in the position of a police officer. The above undoubtedly violates the State's duty to prohibit all forms of discrimination in the exercise of every person's right to access public functions in conditions of general equality in their country. But the same fact is classified as a violation of the right to work that Mr. Mina Cuero would supposedly be entitled to, without specifying any other factual circumstance that, on its own, would violate the right protected by Article 26 of the Convention. It is not questioned that the State's conduct fails to comply with the duty of non-discrimination and the duty to adopt measures for the exercise of the right of every person to have access to public functions under general equal terms, but the judgment does not explain how that conduct autonomously resulted in a violation of the victim's right to job stability. In conclusion, the judgment establishes the violation of the right to work based on the same facts and grounds used to establish the violation of the right to access public functions under general equal terms, placing us within the same scope of protection. Certainly, the same event can lead to the violation of one or more rights under the Convention, but for such violations to be declared, it is necessary for those rights to be justiciable before the Court.
21. In conclusion, unfortunately, as Medina and David have expressed, "the majority's position undermines the effectiveness not only of the San Salvador Protocol but also of Article 26 itself,"<sup>26</sup> a conventional provision with a specific content that the Court can and should develop in the cases it is called upon to adjudicate.
22. This approach affects the legal certainty that an international court should guarantee and the legitimacy of its decisions, since the argument provided simply ignores a norm that does not grant the Court jurisdiction to address potential violations of the right to work.

Patricia Pérez Goldberg  
Judge

Pablo Saavedra Alessandri  
Registrar

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<sup>26</sup> Medina and David, "The American Convention on Human Rights" (2022:28). The translation is its own.