ORGANIZACIÓN DE LOS ESTADOS AMERICANOS
WASHINGTON, D.C. 2 0 0 0 6 EEUU

August 2, 2011

Ref.: Case No. 12,600
Hugo Quintana Coello et al. (Supreme Court of Justice)
Ecuador

Mr. Secretary:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights to submit to the jurisdiction of the Honorable Inter-American Court of Human Rights, Case No. 12,600, *Hugo Quintana Coello et al. v. Republic of Ecuador* (hereinafter "the State of Ecuador", "the Ecuadorian State" or "Ecuador"), which concerns the arbitrary dismissal of 27 judges of the Supreme Court of Ecuador[1] through parliamentary resolution on December 8, 2004, in the absence of a clear legal framework regulating the grounds and procedures for their removal from office and disregarding the constitutional norms under which they were appointed with respect to the indefinite nature of their appointment and the cooption system as a means of filling possible vacancies. The victims were denied even minimal guarantees of due process, were not granted a hearing, and had no opportunity to defend themselves. Nor was any effective judicial remedy available to them to oppose the arbitrary action of the National Congress. These events occurred in a tense political context, in which Ecuador's judicial institutions were fragile.

The State ratified the American Convention on Human Rights on December 28, 1977, and accepted the contentious jurisdiction of the Court on July 24, 1984.

The Commission has designated Commissioner Luz Patricia Mejía, and Executive Secretary Santiago A. Canton, as its delegates. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, attorneys with the Executive Secretariat of the IACHR, have been designated to serve as legal advisors.

Mr. Pablo Saavedra Alessandri, Secretary
Inter-American Court of Human Rights
Apartado 6906-1000
San José, Costa Rica

Attachments

[1] *Hugo Quintana Coello, Alfredo Contreras Villavicencio, Teodoro Coello Vásquez, Santiago Andrade Ubidia, José Julio Benítez Astudillo, Armando Bermeo Castillo, Eduardo Brito Mieles, Nicolás Castro Patiño, Galo Galarza Paz, Luis Heredia Moreno, Estuardo Hurtado Larrea, Ángel Lescano Fiallo, Galo Pico Mantilla, Jorge Ramírez Álvarez, Carlos Riofrío Corral, José Vicente Troya Jaramillo, Rodrigo Varea Avilez, Jaime Velasco Dávila, Miguel Villacís Gómez, Gonzalo Zambrano Palacios, Milton Moreno Aguirre, Arturo Donoso Castellón, Ernesto Albán Gómez, Hernán Quevedo Terán, Jorge Andrade Lara, Clotario Salinas Montaño, and Armando Serrano Puig.*

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission is enclosing with this communication a copy of report No. 65/11 prepared in compliance with Article 50 of the American Convention, as well as a copy of the entire file before the Inter-American Commission (Appendix 1) and the annexes used in the preparation of Report 65/11 (Annexes). The merits report was notified to the State by a communication dated May 2, 2011, which was given two months to report on the implementation of the recommendations made therein. On May 20, 2011, the State requested an explanation of what implementation of the recommendations implied. Following instructions from the Plenary Commission, on June 24, 2011 a communication was sent to the State containing a number of clarifications regarding the scope of the recommendations made in the report (see Appendix 1. File before the Inter-American Commission). On July 15, 2011, the State of Ecuador submitted a report, which did not reveal any substantial progress on implementation of the recommendations.

The Commission is therefore submitting this case to the jurisdiction of the Inter-American Court in order to get justice for the victims.

As regards the recommendations to **"Reincorporate the victims, if they so wish, in the Judiciary, in a position similar to that they had held (…) or, alternatively, if, on well-founded grounds, reincorporation is not possible, proceed to pay reasonable compensation to the victims or, where applicable, their successors,"** the Commission notes that the State of Ecuador mentioned the recent establishment of a new transitional Council of the Judiciary, without specifying how that has a bearing on compliance with the recommendation. The State provided no information regarding concrete steps toward compliance with this item.

Concerning the recommendation to "**Pay the victims the salaries and labor and/or social benefits they did not receive from the time they were dismissed until the time their reincorporation takes effect or else the alternative compensation referred to in the foregoing recommendation,"** the Commission notes that the State indicated that it was performing calculations to assess the situation of each of the victims. However, to date, no more precise information has been provided regarding the length of time it will take to complete those calculations and proceed to make the corresponding payments.

Regarding the recommendation to "**Adopt measures to prevent a recurrence of what had happened, including measures to ensure that domestic rules and regulations and relevant practices are governed by clear criteria and provide guarantees with respect to the appointment, term, and dismissal of judges, in accordance with the norms established in the American Convention,"** the Commission notes that the State referred in general terms to the Organic Code of the Judiciary, which entered into force in 2009. However, the State did not explain how that code and its actual implementation make it possible to regard the defects that gave rise to the facts of the instant case as overcome.

The Inter-American Commission is submitting to the jurisdiction of the Court the full facts and human rights violations as set out in merits report 65/11 and asks the Court to adjudge and declare the international responsibility of the State of Ecuador for:

> Violation of the rights to a fair trial, freedom from ex post facto laws, and judicial protection established in Articles 8, 9, and 25 of the American Convention, in conjunction with the obligations set forth in Articles 1.1 and 2 of the same instrument, to the detriment of Hugo Quintana Coello, Alfredo Contreras Villavicencio, Teodoro Coello Vásquez, Santiago Andrade Ubidia, José Julio Benítez Astudillo, Armando Bermeo Castillo, Eduardo Brito Mieles, Nicolás Castro Patiño, Galo Galarza Paz, Luis Heredia Moreno, Estuardo Hurtado Larrea, Ángel Lescano Fiallo, Galo Pico Mantilla, Jorge Ramírez Álvarez, Carlos Riofrío Corral, José Vicente Troya Jaramillo, Rodrigo Varea Avilez, Jaime Velasco Dávila, Miguel Villacís Gómez, Gonzalo Zambrano Palacios, Milton Moreno Aguirre, Arturo Donoso Castellón, Ernesto Albán Gómez, Hernán Quevedo Terán, Jorge Andrade Lara, Clotario Salinas Montaño, and Armando Serrano Puig.

Consequently, the Commission is asking the Inter-American Court to order the following reparations:

> a) Reincorporate the victims, if they so wish, in the Judiciary, in a position similar to that they had held, with the same salary, social benefits, and rank that they would have today had they not been dismissed. If, on well-founded grounds, reincorporation is not possible, the State should pay reasonable compensation to the victims or, where applicable, their successors.
>
> b) Pay the victims the salaries and labor and/or social benefits they did not receive from the time they were dismissed until the time their reincorporation takes effect or else the alternative compensation referred to in the foregoing recommendation.
>
> c) Adopt measures to prevent a recurrence of what happened, including measures to ensure that domestic rules and regulations and relevant practices are governed by clear criteria and provide guarantees with respect to the appointment, term, and dismissal of judges, in accordance with the norms established in the American Convention.

In addition to the need to obtain justice for the victims, the IACHR stresses that the instant case raises issues of inter-American public order.

Specifically, the events occurred in a context characterized by the fragile state of the Judiciary, evidenced by the dismissal by the legislature not only of the Supreme Court, but also of the Constitutional Court and the Supreme Electoral Court. These dismissals of Ecuador's supreme courts were followed by the activation of mechanisms designed to prevent access to justice by the judicial officers affected. Therefore, the instant case affords an opportunity for the Inter-American Court to consolidate its case-law on the principle of judicial independence and its implications for due process, by applying the relevant standards to circumstances other than those on which it has so far pronounced.

Moreover, for the first time, the instant case incorporates analysis of the lack of clarity in procedures and grounds for the dismissal of judges under the principle of freedom from ex post facto laws set forth in Article 9 of the American Convention. Accordingly, the Court will be able pronounce in greater depth on strict compliance

with that norm as a corollary to the principle of judicial independence in proceedings to penalize officers of the court.

Since these matters significantly affect the inter-American public order of human rights, pursuant to Article 35.1(f) of the Rules of Procedure of the Inter-American Court, the Commission offers the following expert's statement:

1. Expert to be informed, who will make a deposition on the principle of judicial independence under international human rights law and the implications of strict compliance with that principle for guarantees of due process and freedom from ex post facto laws. The expert will also refer to the requirements needed for a constitutional or legal framework regulating the dismissal of judges to be compatible with the guarantees of due process and freedom from ex post facto laws that are a corollary to the principle of judicial independence. Finally, the expert will discuss the application of these standards in situations in which the Judiciary is being reorganized or restructured.

The *curriculum vitae* of the expert proposed by the Inter-American Commission will be included in the annexes to merits report 65/11.

Finally, the name of the organization that served as petitioner in the case before the Commission and its particulars are as follows:

Clínica de Derechos Humanos
Facultad de Jurisprudencia
Pontificia Universidad Católica del Ecuador
Represented by David Cordero Heredia y Ramiro Ávila Santamaría

Bloque II, 5to Piso
Av. 12 de Octubre s/n y Ladrón de Guevara
Quito, Ecuador
Fax: 593-2-562-381

Upon notification of merits report 65/11, the petitioners updated their contact information as follows:

Address: Panzaleos S9-115 y Catamayo, Quito, Ecuador
E-mail: [redacted]
Telephone: [redacted]
Fax: [redacted]

Furthermore, the Commission has been receiving communications from Mr. Eduardo Brito by virtue of which Mr. Hugo Quintana Coello has given his authorization for Mr. Brito "to have access to the proceedings underway, in accordance with the Commission's Rules." The contact information that the Commission has for Mr. Eduardo Brito is the following:

[redacted]

Please accept renewed assurances of my highest regards.

Signed in the original

Elizabeth Abi-Mershed
Deputy Executive Secretary

REPORT No. 65/11
CASE 12.600
MERITS
HUGO QUINTANA COELLO AND OTHERS
"JUSTICES OF THE SUPREME COURT"
ECUADOR
March 31, 2011

I. SUMMARY

1. On December 30, 2004, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a complaint lodged by Hugo Quintana Coello and another 26 former justices of the Supreme Court of Ecuador, alleging the violation of several provisions of the American Convention on Human Rights (hereinafter "the American Convention," "the Convention," or "the ACHR") by the Republic of Ecuador (hereinafter "the Ecuadorian State," "the State," or "Ecuador"). The petitioners allege that on December 8, 2004, the National Congress irregularly and arbitrarily terminated them in their duties as Supreme Court justices. According to the petitioners, the termination resolution was issued in breach of the procedures constitutionally and legally established for the purpose, without guarantees of due process, and without access to judicial remedies.

2. In turn, the State of Ecuador claimed that the petitioners were not dismissed or removed from their positions, but rather that they were simply terminated because they were not covered by the either the tenure regime or the cooptation system. According to the State, those mechanisms are only regulated by the Constitution that came into force on August 10, 1998, and are thus not applicable to justices, such as the petitioners, who were appointed in 1997. Ecuador adds that consequently neither the guarantees of due process or the freedom from ex post facto laws are applicable, since they were not sanctioned for any shortcoming but merely "terminated." In addition, the State holds that the petitioners did not appeal to the domestic judicial authorities to assert their rights and, consequently, there was no breach of the right to judicial protection. Finally, the State contends that the facts do not establish any violation of the rights enshrined in Articles 23 and 24 of the Convention.

3. On February 27, 2007, the Commission adopted Report No. 8/07, in which it found itself competent to hear the petition and ruled it admissible with respect to the possible violation of the rights enshrined in Articles 8, 9, and 25 of the Convention, in conjunction with the obligations set out in Articles 1.1 and 2 thereof.

4. After analyzing the positions of the parties, the Inter-American Commission concluded that the State of Ecuador was responsible for violating the rights to a fair trial, to the freedom from ex post facto laws, and to judicial protection, enshrined in Articles 8, 9, and 25 of the American Convention, in conjunction with the obligations set out in Articles 1.1 and 2 thereof, with respect to Hugo Quintana Coello, Alfredo Contreras Villavicencio, Teodoro Coello Vásquez, Santiago Andrade Ubidia, José Julio Benítez Astudillo, Armando Bermeo Castillo, Eduardo Brito Mieles, Nicolás Castro Patiño, Galo Galarza Paz, Luis Heredia Moreno, Estuardo Hurtado Larrea, Ángel Lescano Fiallo, Galo Pico Mantilla, Jorge Ramírez Álvarez, Carlos Riofrío Corral, José Vicente Troya Jaramillo, Rodrigo Varea Avilez, Jaime Velasco Dávila, Miguel Villacís Gómez, Gonzalo Zambrano Palacios, Milton Moreno Aguirre,[2] Arturo Donoso Castellón, Ernesto Albán Gómez, Hernán Quevedo Terán, Jorge Andrade Lara, Clotario Salinas Montaño, and Armando Serrano Puig. In addition, the IACHR issued the corresponding recommendations.

[2] Died in March 2007. See: Death certificate dated March 26, 2007. (Annex to petitioners' submission, received on March 11, 2008.)

II. PROCESSING BY THE IACHR

5. The initial petition was received on December 30, 2004. Developments taking place between the presentation of the petition and the adoption of the admissibility decision are set out in the admissibility report adopted on February 27, 2007.[3]

6. On March 15, 2007, the Commission notified the parties of that report, informed them that the petition had been registered as Case No. 12.600, and, under Article 38.1 of the Rules of Procedure then in force, set a two-month deadline for the petitioners to submit additional comments on the merits. Similarly, in compliance with Article 48.1.f of the American Convention, the Commission made itself available to the parties with a view to reaching a friendly settlement of the matter.

7. On May 24, 2007, the petitioners submitted their additional comments on the merits of the case and requested a hearing. Their submission was forwarded to the State on that same date, along with a one-month deadline for it to return its comments. On June 21, 2007, the IACHR informed the petitioners that the hearing had not been granted on that occasion, on account of the large number of hearing requests received.

8. On March 10, 2008, the IACHR held a hearing on the merits of the case. On that same date, the Ecuadorian State lodged a submission containing its additional comments on the merits. On May 28, 2008, the petitioners submitted their comments, which were duly forwarded to the State.

III. POSITIONS OF THE PARTIES

A. Petitioners

9. The petitioners submit that they were appointed in October 1997, in strict compliance with the will of the people expressed in the 1997 referendum, the Constitution then in force, and the legally established procedures for the assessment, selection, and election of justices. They explain that in accordance with the applicable regulations, justices of the Supreme Court were elected for an indefinite period and that vacancies were to be filled by means of the cooptation system – in other words, by the Court itself.

10. They claim that by means of decision that was in breach of the legal and constitutional provisions in force at the time, on December 8, 2004, the National Congress, in summary proceedings and without being competent to do so, terminated them in their positions and arbitrarily appointed other individuals as justices of the Supreme Court. According to the petitioners' narrative, that occurred after President of the Republic Lucio Gutiérrez convened, on December 5, 2004, a special session of Congress in order to "analyze and resolve the legal and constitutional situation of the judicial branch."

11. The petitioners submit that there were no proceedings of a judicial or other nature and that "the course of action taken by Congress was not provided for in law. Thus, the justices were not notified by means of any suit or petition, they were not accused of having broken any law, and they were not given the opportunity to be heard or the possibility of offering a defense."

[3] IACHR, Report No. 8/07 (Admissibility), Petition 1425-04, Hugo Quintana Coello and others, Ecuador, February 27, 2007, paras. 5 and 6.

12. They add that on account of the legal invalidity of the Congressional Resolution, the justices of the Supreme Court refused to leave their offices and, as a result, on December 9, 2004, the National Police removed the Chief Justice from the Supreme Court's premises, along with a number of other justices, and also forcibly prevented several other justices and employees from entering.

13. They contend that seeking legal relief would have been futile in light of the context of the events and, given the denial of justice suffered by the judges of the Constitutional Court, they decided to take their case to an international venue.

14. The petitioners hold that these facts constituted violations of the rights enshrined in Articles 8, 9, 23, 24, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof. The following sections summarize the petitioners' claims with respect to those articles.

15. Regarding the **right to a fair trial, enshrined in Article 8 of the Convention**, the petitioners contend that this right applies to "procedural agencies" in general, including the determination of rights and obligations of a civil, labor, fiscal, or any other nature. In the petitioners' view, the wording "competent tribunal" and "for the determination of rights" refer to any public authority –administrative, legislative, or judicial – that in its resolutions determines an individual's rights and obligations. Specifically, the petitioners contend that:

- The State violated the guarantee of a "competent tribunal" in that the Ecuadorian Constitution specifically lists the functions of the National Congress, which do not include terminating justices of the Supreme Court or electing new justices.
- The State violated the guarantee of an "independent tribunal" in that their dismissal took place by means of a procedure that was not previously established and the executive branch pressured Congress to dismiss the Supreme Court justices. In particular, it created a majority in line with its political interests and, once that majority was established, it convened a special session on a matter in which it did not have competence. Moreover, in the petitioners' view, the absence of guarantees of due process in their termination is also an indication of the lack of independence of the National Congress, which did not impeach the justices.
- The State violated the guarantee of an "impartial tribunal" in that it simultaneously was a judge and a party in the proceedings. They add that prior to voting, Congress had already decided on the punishment. They also claim that the congressional record of the special session indicates that the majority had a direct interest in the decision.
- The State violated the right to be heard with due guarantees and the right of defense in that in the President of the Republic's call for a special session, and at the session itself, held on December 8, 2004, the parties were denied the possibility of being heard, the decision was adopted in summary fashion after 45 minutes, it was not duly grounded, and, as a result, the justices were unable to defend themselves either personally or through representatives of their own choosing. They add that the unreasonably short time in which the decision was made denied them any possibility of defense. They also contend that since the procedure whereby they were terminated was not regulated, neither were they able to file appeals against their dismissals.
- Consequently, they hold, the State violated the rights enshrined in Articles 8.1, 8.2 (b), (c), (d), (h), and 8.4 of the American Convention.

16. Regarding the **freedom from ex post facto laws enshrined in Article 9 of the American Convention**, the petitioners submit that in accordance with the precedents set by the

Inter-American Court, that principle is applicable to administrative matters, in that they represent the State's exercise of punitive power. They add that the freedom from ex post facto laws entails not only that actions and omissions be identified as offenses, but also that the procedure and possible penalty be defined. Specifically, the petitioners submitted the following arguments:

- There was no action or omission that constituted an offense in law. Although it was claimed that a transitory provision was applicable, it was in no way admissible with respect to the justices of the Supreme Court. They note that the transitory provision in question, No. 25 in the Constitution, spoke exclusively of public officials with fixed terms of office.
- The arguments used by some members of Congress for pursuing their termination at the special session were alleged "acts of corruption and political clientelism." Both accusations entail offenses for which complaints could have been filed with the Public Prosecution Service for regular proceedings to be pursued. The resolution adopted by the National Congress does not, however, indicate what accusations were made against the Supreme Court justices.
- The procedure was summary in nature and did not even follow the established format for impeachments. Thus, neither the resolution, nor the authority that adopted it, nor the way in which it was reached were provided for in the Constitution or in law.

17. Regarding the **right to judicial protection enshrined in Article 25 of the Convention,** the petitioners state that the *amparo* constitutional relief provided for in the Ecuadorian Constitution meets the requirements of a "simple, prompt, and effective recourse" set out in that article. They note that as the Court has ruled, such remedies must serve to protect the rights set out both in the Convention and in states parties' constitutions and laws. The petitioners' arguments on Article 25 of the Convention can be summarized as follows:

- Although the *amparo* was applicable, a decision made by the Constitutional Court ruled that the only permissible action against Congressional resolutions to terminate officials in their posts was a constitutionality suit. Such suits are regulated by Article 277 of the Constitution, which sets requirements that are difficult to meet, such as being brought by certain authorities or by one thousand members of the public. In addition to not meeting the requirement of simplicity, such suits do not offer prompt recourse because no specific deadlines for resolving them are established.
- Regarding the effectiveness requirement, the petitioners submit that although Ecuadorian law provides for *amparo* relief and, in theory, it could be filed to challenge the effects of the Congressional resolution, to reinstate the Supreme Court justices in their positions, and to end the violations of their rights, in practice it is not an effective remedy. They explain that this can be seen in the denial of and inadmissibility rulings given against the *amparo* relief actions presented by the judges of the Constitutional Court, who were terminated in their duties some days earlier in similar circumstances.
- This "certainty regarding the uselessness of the remedy" is also indicated by the lack of independence and impartiality on the part of the judges who would hear the application. They report that at the request of President of the Republic, the Constitutional Court ordered the *amparo* suits closed, and one member of Congress threatened criminal action against the judges hearing the *amparo* filings lodged by the Constitutional Court's judges, which would point to a similar reaction were the justices of the Supreme Court to file for the remedy. They add that in any case, the judges of the Constitutional Court who would have heard the *amparo* suits on final appeal were, on account of their appointments and commitment toward the government, lacking in independence.

18. Regarding the **obligations established by Article 2 of the American Convention,** the petitioners contend that the Ecuadorian legal system does not regulate administrative sanctions for individuals or public officials who violate the Constitution. Consequently, they claim, what occurred with the Supreme Court of Justice has been repeated in recent years by those in power. They add that the Constitution does not provide for a situation in which all the justices are terminated, nor does it offer a mechanism for resolving such a situation. Neither does it offer any possibility of appeal against Congressional decisions. In addition to the above, they claim that Article 2 of the Convention was violated as a consequence of the adoption of measures in breach of the Convention, such as calling for special sessions, the termination resolution, ordering the security forces to enforce an unconstitutional decision, and the Constitutional Court's disallowance of the *amparo* remedy filings.

19. Finally, during the merits stage the petitioners continued to submit arguments on the alleged violation of the rights enshrined in Articles 23 and 24 of the American Convention, even though in the admissibility phase, the Commission found that the facts described did not tend to establish violations of those provisions.[4]

20. Regarding **Article 23 of the Convention**, they contend that Ecuador's Constitution recognizes the right of both access to and performance of public positions and functions. In the petitioners' view, the termination resolution adopted by the National Congress prevented them from the continued exercise of their right to perform public functions. Regarding Article 24 of the American Convention, the petitioners claim to have received different and unjustified treatment on two occasions: (i) when the National Congress maintained four Supreme Court justices in their positions, and (ii) when the resolution of the Constitutional Court left the Supreme Court justices and the Constitutional Court judges in a state of termination, as the only citizens who could not file for *amparo* constitutional relief to defend their human rights. According to the petitioners, no objective or reasonable grounds were given for this treatment.

B. The State

21. The State disputes "all the considerations of fact and of law submitted by the petitioners." Specifically, it contends that the arguments related to the creation of parliamentary majorities supporting the national government in order to bring about the irregular restructuring of several agencies and appoint individuals favorable to that alliance have not been proven. In the State's words, there is no "documentary, testimonial, or indicative evidence whatsoever" of those claims, which are "simple unproven assumptions and hypotheses."

22. The Ecuadorian State contends that the country's last three Supreme Courts of Justice have not been immune from questions regarding their origins, composition, and operations. The State noted that those Courts' members included "emissaries of political interests, with close ties to senior leaders of political parties or even members thereof." In this regard, the State named both the "Court of 1997" and its successor, known as the "Pichi Court."[5] The State acknowledged that the appointment of the "Pichi Court" was marked by "inceptional defects" but, it stressed, that did not constitute acceptance of reparable damage inflicted on the petitioners, since their termination by the National Congress was justified.

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[4] See: IACHR, Report No 8/07, Petition 1425-04, Admissibility, Hugo Quintana Coello and others, Justices of the Supreme Court, Ecuador, February 27, 2007, paras. 40 to 42 and operative paragraph 2.

[5] The Commission understands that the State refers to the Supreme Court of Justice appointed in substitution of the victims in the instant case.

23. According to the State's narrative, Article 202 of the Constitution adopted in Ecuador on August 10, 1998, established the principle that Supreme Court justices were not subject to limits in their term of office, along with the cooptation system for filling any vacancies that arose. Thus, the National Congress, pursuant to its constitutional and legal powers, interpreted Transitory Provision No. 25 of the Constitution and, in a resolution of December 8, 2004, decided to terminate the justices of the Supreme Court in their positions, on the grounds that "the tenure in office of those justices had concluded in January 2003, and so, by December 2004, they were exercising their duties under an expired mandate."

24. The State submits that the "Ecuadorian Constitution of 1998 stipulates that judges of the judicial branch shall not be subject to a fixed term of office, and that said constitutional provision is not retroactive, but is applicable in the future." In the State's view, the petitioners were appointed one year earlier and so are not entitled to invoke that rule.

25. The State stresses that an international agency is not empowered to examine the legislature's interpretation of constitutional precepts dealing the organization and functioning of a state's political bodies, since were it to do so, it would be acting as a fourth instance.

26. Specifically, as regards the rights enshrined in Articles 8 and 25 of the American Convention, the State submits that the petitioners are confusing removal and dismissal from a position with termination. The State refers to the "political origin of the appointment of the Supreme Court justices," which did not involve a public competition. In the State's view, the petitioners' arguments recognizing the National Congress as the authority responsible for nominations and failing to recognize it as the "agency responsible for constitutional interpretations and for terminating the duties of former justices" are contradictory.

27. The State holds that a removal or dismissal must ensure due process in order to establish and prove the commission of the offense for which a public official is sanctioned. The case at hand, according to the State, is neither a removal or a dismissal; instead, "albeit somewhat tardily, the termination mechanism was simply enforced," a mechanism that can occur following a voluntary resignation or when, with the passage of time, the official's functions come to an end. It submits that in such circumstances, it is not necessary to begin proceedings, nor do the right of defense and the guarantees of a natural judge, impartiality, and legality apply, since the petitioners were not accused of any offense constituting grounds for dismissal.

28. It adds that the justices did not have to be given "prior notification in detail of the proceedings or charges made against them, because there simply were none." In the State's words, "termination (…) represents no punishment, either administrative, political, or civil, and much less criminal. Consequently, it is unacceptable to claim a violation of Article 9 of the Convention."

29. The State contends that even if the alleged victims' rights had been violated "no mechanism for domestic civil or administrative redress has been invoked, since the petitioners have not taken their case to the courts." In the State's view, if the petitioners did not file for remedies with the Ecuadorian courts, then no violation of Article 25 of the American Convention can be alleged.

30. Finally, the State submits that the facts set out do not establish violations of the rights enshrined in Articles 23 and 24 of the American Convention.

IV. PROVEN FACTS

A. Background

1. The referendum of April 7, 1997, and the constitutional amendments of July 23, 1997

31. On April 7, 1997, by means of Executive Decree No. 201, the President of the Republic called for a referendum.[6] The referendum dealt with an array of topics. Of relevance to the case at hand was question No. 11, which asked:

> Do you think it is necessary to modernize the judicial branch, to reform the system for appointing justices of the Supreme Court so they are taken from the judiciary itself; appointments without fixed durations that observe the guidelines of professionalization and the judicial career established by law?[7]

32. The consultation on this question returned an affirmative result. On that basis, and as described below, a constitutional provision established the election of Supreme Court justices through the cooptation system and provided them with indefinite tenure in their positions.

33. Thus, on July 23, 1997, the National Congress enacted the amendments to the Constitution of Ecuador.[8] On the requirements to be nominated justice of the Supreme Court, the reforms established:

> Article 8. Article 128 is replaced by the following:
>
> 'Article 128. To serve as a justice of the Supreme Court of Justice, the following requirements shall be met:
>
> a) Ecuadorian by birth;
> b) In enjoyment of the rights of citizenship;
> c) Older than forty-five years of age;
> d) In possession of the title of Juris Doctor;
> e) Exercise with noted probity of the profession of attorney, judge, or university lecturer in law for a minimum period of twenty years; and,
> f) Compliance with the other requirements for suitability established by law.'

34. With respect to the period of office and the mechanism to fulfill vacancies, the reforms established:

> Article 9. Article 129 is replaced by the following:
>
> 'Article 129. The members of the Supreme Court of Justice shall not be subject to a limited tenure of office. Their termination shall be on the grounds prescribed by the Constitution and by law.

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[6] Petitioners' additional comments on the merits, submitted on May 24, 2007. The petitioners refer to Executive Decree No. 201, published in Official Register No. 38 of April 7, 1997. This document is not available to the Commission; however, the State does not dispute the fact.

[7] Newspaper article of May 12, 1997. Referred to at: http://www.explored.com.ec/noticias-ecuador/preguntas-de-la-consulta-popular-1997-112217-112217.html.

[8] **Annex 2.** Amendments to the Constitution of the Republic of Ecuador, issued on July 23, 1997, published in Official Register No. 120 of July 31, 1997. (Annex to petitioners' submission, received on May 23, 2006.) This document is incomplete in the case record. The full text may be found at: http://constituyente.asambleanacional.gov.ec/documentos/biblioteca/1978-codificada-en-1997.pdf.

When a vacancy arises, for whatever reason, the plenary of the Supreme Court of Justice shall appoint the new justice by a vote in favor of at least two thirds of its members, with due consideration to the criteria of professionalism and judicial career as provided for by law.

(…)

35. There were also included transitory provisions which entitled the National Congress to appoint the justices of the Supreme Court of Justice, for one time and to the end of the entry into force of the reforms. The transitory provisions included a detailed regulation on the procedure of appointment, including the groups of society entitled to present lists of candidates as well as the creation of a Qualifying Committee, among other procedural aspects[9].

2. Designación de los integrantes de la Corte Suprema de Justicia

36. In accordance with these transitory provisions issued on July 23rd, 1997, on October 1, 1997, the Committee charged with qualifying the candidates for Supreme Court justices, set up

[9] **Annex 2.** Amendments to the Constitution of the Republic of Ecuador, issued on July 23, 1997, published in Official Register No. 120 of July 31, 1997. (Annex to petitioners' submission, received on May 23, 2006.) This document is incomplete in the case record. The full text may be found at: http://constituyente.asambleanacional.gov.ec/documentos/biblioteca/1978-codificada-en-1997.pdf. The transitory provisions are the following:

'FIFTEEN. To allow immediate enforcement of the principles approved in the referendum of May 25, 1997, the periods for which the current justices of the Supreme Court were appointed are hereby ended; they shall, however, remain in the positions until replaced in the fashion indicated in the following transitory provision.'

'SIXTEEN. The National Congress shall appoint, on this occasion, the thirty-one justices of the Supreme Court, from a list composed of at least four and not more than ten candidates proposed by the following nominating entities of civil society: 1. The former constitutional presidents of the Republic; 2. The Ecuadorian Episcopal Conference; 3. The former Chief Justices of the Supreme Court of Justice; 4. The National Bar Federation of Ecuador; 5. The human rights associations; 6. The deans of the university law schools and the members of the National Council of Universities and Polytechnic Colleges (CONUEP); 7. The National Association of Newspaper Directors, the Ecuadorian Association of Television Networks, and the Ecuadorian Broadcasting Association; 8. The judges of the Superior Courts of Justice, District Tax Courts, and Administrative Tribunals, and the National Federation of Judicial Employees and Officials; 9. The general unions, campesino organizations, and teachers and educators organized under the UNE and FENAPUPE; 10. The indigenous and Afro-Ecuadorian peoples' organizations of Ecuador; 11. The Consortium of Provincial Councils of Ecuador and the Association of Municipalities of Ecuador; and, 12. The Chambers of Production and Small Industry.

Any other civil society organization or person may submit their nominations to the Constitutional Committee for Judicial Affairs.The persons or institutions mentioned in this provision shall have eight days, counted from the publication of these amendments to the Constitution in the Official Register, in which to submit a list of nominees to Congress.

All candidates thus nominated must meet the requirements set out in Article 128, as amended, of the Constitution.

A Qualifying Committee shall be created, which shall be composed of three parliamentarians appointed by the Speaker of the National Congress and three representatives of civil society selected by the nominating entities, who shall designate a seventh member, who shall not be a parliamentarian, as chair of the Committee. This Committee shall qualify those nominees who meet the requirements set out in Article 128, as amended, of the Constitution, and who also satisfy the conditions of probity, suitability, experience, and capacity.

To that end, after it receives the list of candidates, the Committee shall arrange for its publication on a single occasion, so as to enable natural and legal persons to present, with documentation and in a confidential manner, objections to any of the qualified candidates. When 10 days following the date of the aforementioned publication have elapsed, the Committee shall submit its report for the consideration of the National Congress, which shall designate the 31 justices of the Supreme Court of Justice in the following manner: (a) Twenty-four from the candidates put forward by the 12 nominating bodies and qualified by the Committee; and, (b) Seven from the candidates proposed by any other civil society organization or person, who have been qualified by the Committee according to the same criteria set for the other candidates.

Should any other of the nominating entities or persons fail to submit candidacies within the time limit established in this transitory provision, then the National Congress shall designate the justices, selecting them from the rest of the nominees.

The Justices thus appointed shall take office before the Speaker of the National Congress (…).

under the 16th Transitory Provision of the constitutional amendments published in Official Register No. 120 on July 21, 1997, submitted its report to Congress.[10]

37. That report set out the procedure[11] followed to select the candidates from among the people who met the requirements set in the Constitution. The Qualification Committee selected 51 of the members of the list[12]. On October 2, 1997, the National Congress appointed the alleged victims to serve as justices of the Supreme Court. They took office on October 6, 1997.[13]

3. The Constitution adopted by the National Constitutional Assembly in 1998

38. Article 129 of the constitutional amendments issued on July 23, 1997, cited at xx, *supra*, was essentially reproduced in Article 202 of the Constitution adopted by the National Constitutional Assembly in 1998. Thus, for the appointment and tenure of justices of the Supreme Court, it provided that they would enjoy unlimited tenure and that the cooptation system would be used to fill vacancies, in the following terms:

> Article 202.
>
> The members of the Supreme Court of Justice shall not be subject to a limited tenure of office. Their duties shall be terminated for the reasons set down in the Constitution and in law.
>
> When a vacancy arises, the plenary of the Supreme Court of Justice shall appoint the new justice by a vote in favor of at least two thirds of its members, with due consideration to the criteria of professionalism and judicial career as provided for by law.
>
> Appointments shall be made, alternately, from professionals who have served in the judiciary, as university lecturers, or in free professional exercise, in that order.[14]

39. Similarly, the principle of judicial independence was enshrined in Article 199 of the Constitution, in the following terms:

> Article 199.

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[10] **Annex 3.** Report of the Qualifying Committee to the National Congress, dated October 1, 1997. (Annex to the initial petition received on December 30, 2004.)

[11] Pursuant to that procedure, the candidates were first asked to accept their nomination, for which purpose a public invitation was made in the press on September 18, 1997. Following that date, the Qualifying Committee received communication from several people "refusing, renouncing, or declining their candidacies." Compliance with the formal requirements was then verified with respect to the candidates who agreed to participate. The Qualifying Committee asked the General Secretariat of the Supreme Court of Justice to provide information on judicial officers who had been punished with dismissal or removal for incorrect acts or failures in their duties. The Complaints Commission of the Supreme Court of Justice was also asked for information of any serious offenses in judicial functions contained in their case files. On September 24, 1997, the press published lists of the candidates who had declined, those nominated after the deadline, and those regarding whom comments or challenges from the public were invited. During the period for challenges to be received, the Qualifying Committee examined each candidate's documents and made a preliminary selection. It was agreed that candidates "regarding whose inclusion on the list at least five of the seven committee members were in agreement" would be deemed to have passed the preliminary selection. The Committee then examined the challenges, complaints, and objections filed regarding the preliminary selection candidates. Almost all the challenges involved members of the public expressing their disagreement with judicial decisions they considered illegal or arbitrary. Regarding these challenges, the Qualifying Committee said that "in matters of this kind it is impossible for formulate an opinion, either because the legal value of the decision cannot be assessed without seeing the case documents, or because examining whether a decision is correct or not falls solely to the court or judge hearing the appeal or motion to annul, as applicable."

[12] **Annex 3.** Report of the Qualifying Committee to the National Congress, dated October 1, 1997. (Annex to the initial petition received on December 30, 2004.)

[13] **Annex 4.** Statement of Hugo Quintana Coello, given on May 14, 2007, to the 23rd Notary of the canton of Quito. (Annex to petitioners' submission, received on May 24, 2007.)

[14] **Annex 5.** Extracts from the Constitution of Ecuador adopted by the National Constitutional Assembly in 1998. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

> The agencies of the judicial branch shall enjoy independence in the exercise of their duties and powers. No function of the State may interfere in matters of their competence.
>
> Justices and judges shall be independent in the exercise of their jurisdiction and powers, even with respect to other agencies of the judicial branch; they shall be subject to the Constitution and to law alone.[15]

40. In light of the regulatory grounds used by the National Congress to terminate the alleged victims (see *infra,* para. 54), it should be noted that the Constitution's transitory provisions provided:

> Twenty-five. The officers and members of agencies appointed by the National Congress and the Comptroller General of the State appointed for a four-year period as of August 10, 1998, under the provisions of this Constitution, shall remain in those positions until January 2003.[16]

41. The information available indicates that at the time, no regulations were in place for the grounds whereby Supreme Court justices could be terminated, nor for the cooptation system for filling vacancies. The following sections describe how the members of the Constitutional Court and the Supreme Electoral Court were removed from their positions, prior to the termination of the alleged victims in the instant case.

4. Resolutions terminating the members of the Constitutional Court and of the Supreme Electoral Tribunal

42. On November 25, 2004, Congress adopted Resolution No. R-25-160, whereby it decided "to rule that the full judges of the Constitutional Court and their deputies were appointed illegally and to proceed to appoint them as ordered by the Constitution of the Republic and by law, from the shortlists of three names received in due course by Congress." In this way, it appointed "the two full judges of the Constitutional Court and their deputies that the National Congress is empowered to appoint (…) The appointees (…) shall remain in their positions until they are legally replaced in January 2007."[17]

43. In addition, it resolved to "declare the termination of the duties of the full judges of the Supreme Electoral Tribunal and of their deputies, on the grounds that they were appointed without observing the provisions of Article 209 of the Constitution of the Republic as regards the method of their appointment; and to proceed to appoint them in accordance with that constitutional provision and with the electoral results of October 20, 2002 (…) The appointees (…) shall remain in their positions until they are legally replaced in January 2007."[18]

44. On November 25, 2004, the National Congress issued resolutions R-25-161, 162, 163, 164, 165, 166, 167, 168, and 169, whereby it appointed, from shortlists of three names submitted by the President of the Republic and by the Supreme Court of Justice, four full judges and four deputy judges of the Constitutional Court. It also appointed one full judge and one deputy judge of the Constitutional Court from the shortlist of three names submitted by mayors and

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[15] **Annex 5.** Constitution of Ecuador, adopted on June 5, 1998. Available at: http://pdba.georgetown.edu/Constitutions/Ecuador/ecuador98.html.

[16] **Annex 5.** Constitution of Ecuador, adopted on June 5, 1998. Available at: http://pdba.georgetown.edu/Constitutions/Ecuador/ecuador98.html.

[17] **Annex 6.** National Congress Resolution No. R-25-160, dated November 25, 2004. (Annex to the initial petition received on December 30, 2004.)

[18] **Annex 6.** National Congress Resolution No. R-25-160, dated November 25, 2004. (Annex to the initial petition received on December 30, 2004.)

provincial prefects, one full judge and one deputy judge of the Constitutional Court from the shortlist of three names submitted by workers', campesino, and indigenous organizations, and one full judge and one deputy judge of the Constitutional Court from the shortlist of three names submitted by the commercial chambers. In addition, two full judges and two deputy judges of the Constitutional Court were appointed directly. In those resolutions, the National Congress invoked Articles 130.11 and 275 of the Constitution of the Republic.[19]

45. On November 26, 2004, the National Congress issued resolutions R-25-170, 171, 172, 173, 174, 175, and 176, whereby it appointed seven full judges and seven deputy judges of the Supreme Electoral Tribunal. In those resolutions, the National Congress invoked Articles 130.11 and 209 of the Constitution of the Republic.[20]

5. Decision of the Constitutional Court on the inadmissibility of the amparo actions

46. On December 2, 2004, the Constitutional Court issued a ruling in response to a request made by the President of the Republic "to prevent trial judges from admitting for processing constitutional *amparo* actions against Parliamentary Resolution 25-160, adopted by the National Congress on November 25, 2004." The Constitutional Court resolved:

> To rule that to suspend the effects of a parliamentary resolution, such as No. 25-160, adopted by the National Congress on November 25, 2004, for an alleged violation of the Constitution, in substance or in form, the only action admissible is an unconstitutionality suit, which must be placed before the Constitutional Court, in line with the resolution of the Supreme Court of Justice adopted on June 27, 2001, and published in Official Register No. 378 on July 27 of that year; and that any *amparo* remedy lodged with the country's courts in connection with the aforesaid resolution must be rejected outright and ruled inadmissible by the judges, since to do otherwise would to be admit proceedings against express law, which would lead to the corresponding judicial actions.[21]

47. The Supreme Court's resolution of June 27, 2001, referred to by the Constitutional Court in its decision of December 2, 2004, was a ruling to clarify the guidelines applicable in matters of constitutional *amparo*. The Constitutional Court's December 2, 2004 decision cites Article 2.a of the aforesaid resolution from the Supreme Court of Justice, which reads:

> In particular, *amparo* action is not admissible and shall be rejected outright when brought with respect to:
>
> (a) Regulatory provisions issued by a public authority, such as organic and ordinary laws, decree laws, decrees, ordinances, statutes, regulations, and generally binding (*erga omnes*) resolutions, since in order to suspend their effects because of a violation of the Constitution, in substance or in form, an unconstitutionality suit lodged with the Constitutional Court must be brought.[22]

6. Amparo remedies lodged by several terminated members of the Constitutional Court

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[19] **Annex 7.** National Congress Resolutions R-25-161, 162, 163, 164, 165, 166, 167, 168, and 169, dated November 25, 2004. (Annex to the initial petition received on December 30, 2004.)

[20] **Annex 8.** National Congress Resolutions R-25-170, 171, 172, 173, 174, 175, and 176, dated November 26, 2004. (Annex to the initial petition received on December 30, 2004.)

[21] **Annex 9.** Decision of the Constitutional Court, dated December 2, 2004. (Annex to the initial petition received on December 30, 2004.)

[22] **Annex 10.** Resolution of the Supreme Court of Justice, dated June 27, 2001. (Annex to the initial petition received on December 30, 2004.)

48. On December 7, 2004, the Tenth Civil Court of Pichincha ruled in the *amparo* suit filed by Luís Vicente Rojas Bajaña, one of the members of the Constitutional Court who had been terminated. This decision "denied the processing of this constitutional remedy" pursuant to the Constitutional Court's resolution of December 2, 2004, "leaving an unconstitutionality suit before the Constitutional Court open for the case."[23]

49. Similarly, on December 13, 2004, the First Civil Court of Pichincha handed down a decision in the *amparo* suit filed by Miguel Ángel Camba Campos, one of the members of the Constitutional Court who were terminated, against National Congress Resolution No. R-25-160. That resolution states that "it is public knowledge that the National Congress, on Wednesday, December 8 of the current year, proceeded with the impeachment of the members of the Constitutional Court (...) by a majority of its members, in an action that is eminently legal and legitimate in that it is provided for by the Constitution and thus enjoys full legal effect, including the censure caused by immediate dismissal of the official."[24] It also cites the Constitutional Court's resolution of December 2, 2004, and concludes that "based on the content of the above 'whereas' clauses, the *amparo* action is inadmissible and must be rejected outright, without examining the merits of the matter."[25]

50. Similarly, on December 14, 2004, the Tenth Civil Court of Pichincha ruled inadmissible the constitutional *amparo* suit lodged by Mauro Leonidas Terán Cevallos, one of the terminated members of the Constitutional Court.[26]

51. Likewise, on December 15, 2004, the Tenth Civil Court of Pichincha ruled inadmissible the constitutional *amparo* suit lodged by Simún Bolívar Zabala Guzmán, one of the terminated members of the Constitutional Court.[27] On that same date, the Eighth Civil Court of Pichincha ruled on the *amparo* suit brought by Mr. Freddy Oswaldo Cevallos Bueno, a terminated member of the Constitutional Court. Based on Article 2.a of the Supreme Court's resolution of June 27, 2001, and on the Constitutional Court's resolution of December 2, 2004, it ruled the *amparo* action inadmissible.[28]

B. The termination of the Supreme Court justices

1. The call for a special session by the President of the Republic and the National Congress's termination resolution

[23] **Annex 11.** Decision of the Tenth Civil Court of Pichincha, dated December 7, 2004. (Annex to the initial petition received on December 30, 2004.)

[24] **Annex 12.** Decision of the First Civil Court of Pichincha, dated December 13, 2004. (Annex to the initial petition received on December 30, 2004.)

[25] **Annex 12.** Decision of the First Civil Court of Pichincha, dated December 13, 2004. (Annex to the initial petition received on December 30, 2004.)

[26] **Annex 13.** Decision of the Tenth Civil Court of Pichincha, dated December 14, 2004. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[27] **Annex 14.** Decision of the Tenth Civil Court of Pichincha, dated December 15, 2004. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[28] **Annex 14.** Decision of the Eighth Civil Court of Pichincha, dated December 15, 2004. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

52. On December 5, 2004, President of the Republic Lucio Gutiérrez Borbúa called for Congress to meet in a special session. Citing Articles 133[29] and 171.8[30] of the Constitution and Article 6[31] of the Organic Law of the Legislative Branch, the call was made in the following terms:

> Sole Article. The Honorable National Congress is called to meet in a special session on Wednesday, December 8, 2004, at 11:00 a.m., to hear and resolve the following matters: (1) Voting in the impeachment of the former members of the Constitutional Court. (2) Analysis of a resolution on the constitutional and legal situation of the judicial branch; and (3) Voting on the amendment to the Organic Elections Law dealing with the right of proportional representation of minorities in multi-candidate elections.[32]

53. On December 8, 2004, the National Congress issued Resolution No. R-25-181, terminating the entire Supreme Court of Justice in the following terms:

> **TO TERMINATE** the functions of the justices of the Supreme Court of Justice, and their respective deputy judges, who failed to resign from office in January 2003, as provided for in Transitory Provision 25 of the Constitution in force; and **TO APPOINT**, in their stead, the jurists identified below, who will take oath before the Second Vice President of the National Congress, will not be subject to fixed terms for the duration of their office, and shall be subject to termination on the grounds prescribed by the Constitution and by law:
>
> (…)
>
> Within a period not exceeding fifteen days, the National Council of the Judicature shall be restructured and it shall submit, to the National Congress, shortlists of three names for electing the Minister Prosecutor General of the Nation, the Superior Courts of Justice, and the provincial prosecutors.
>
> This resolution shall enter into effect immediately, irrespective of its publication in the Official Register.[33]

54. The resolution's whereas clauses included the following:

> That the current Constitution of the Republic, in force since August 10, 1998, provides, in its 25th Transitory Provision, that: 'The officers and members of agencies appointed by the National Congress and the Comptroller General of the State appointed for a four-year period as of August 10, 1998, under the provisions of this Constitution, shall remain in those positions until January 2003';
>
> That the current justices of the Supreme Court were appointed by the National Congress under the 16th Transitory Provision of the previous Constitution of the Republic, published in the supplement to Official Register No. 142 of September 1, 1997, and so are currently under an expired mandate for not having resigned in January 2003;

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[29] The article reads as follows: "During recess periods, the President of Congress or the President of the Republic may convene special sessions of the National Congress, to address exclusively the specific matters indicated in the convocation. The President of the National Congress may also convene such special sessions at the request of two-thirds of its members."

[30] The article reads as follows: "The following shall be the powers and duties of the President of the Republic: (…) 8. Convene the National Congress for special periods of sessions. The convocation shall indicate the specific matters to be examined during those sessions."

[31] The article reads as follows: "The President of the National Congress, the President of the Republic, or two-thirds of the members of Congress may call for special periods of sessions. Such convocations shall be made by means of publication in the largest selling newspapers in the country, with at least twenty-four hours notice. When Congress is convened for a special session, it shall abide by the same rules established for its regular periods and it shall not elect new officers."

[32] **Annex 15.** Transcription of the recording of the regular permanent morning session of the National Congress of December 8, 2004. Deed 24-001-IV. (Annex to petitioners' submission, received on May 24, 2007.)

[33] **Annex 16.** Resolution No. R-25-181 of the National Congress, dated December 8, 2004. Included in Official Register No. 485, dated December 20, 2004. (Annex to the initial petition received on December 30, 2004.)

> That the Constitution currently in force does not establish a procedure for electing the 31 justices of the Supreme Court and merely provides, in Article 202, a procedure for appointing a justice when a vacancy arises. That Article 12 of the Organic Law of the Judicial Branch currently in force appoints the National Congress as the authority for nominating the justices of the Supreme Court of Justice;
>
> That it is the duty of the State to uphold the democratic system and the administration of justice in the absence of corruption (...).[34]

55. After the adoption of this resolution, the national government "recognized that the new justices of the Supreme Court will temporarily discharge their duties until the legislature is able to examine and resolve the mechanism for appointing justices to a new Supreme Court of Justice."[35]

56. Throughout its submissions to the IACHR, the State of Ecuador has acknowledged that this procedure was followed without the involvement of the Supreme Court justices, who were not heard in issuing either the call for a special session or the resolution.[36]

57. The justices of the Supreme Court refused to abandon their offices, holding that the National Congress's resolution "had no legal value." Consequently, on December 9, 2004, the National Police proceeded to evict the Chief Justice from the Supreme Court building, along with various other justices who were with him at the court's premises. In addition, other justices and employees were denied entry.[37] That same day, Chief Justice Hugo Quintana Coello was taken to the Metropolitan Hospital for emergency treatment for the effects of tear gas and high blood pressure.[38] Following the police operation, the justices appointed by Congress on December 8, 2004, took office.

2. The complaint lodged with the Court of Honor of the Pichincha Bar Association

58. On December 14, 2004, Hugo Quintana Coello, Teodoro Coello Vásquez, Santiago Andrade Ubidia, José Julio Benítez Astudillo, Galo Galarza Paz, Luis Heredia Moreno, Estuardo Hurtado Larrea, Ángel Lescano Fiallo, Camilo Mena Mena, Galo Pico Mantilla, Rodrigo Varea Avilés, Jaime Velasco Dávila, Miguel Villacís Gómez, Arturo Donoso Castellón, Ernesto Albán Gómez, Hernán Quevedo Terán, Jorge Andrade Lara, Armando Serrano Puig, and Clotario Salinas Montaño lodged a complaint with the Court of Honor of the Pichincha Bar Association.[39] In their filing, they contended that:

> The National Congress adopted, on Wednesday, December 8 of this year, an unconstitutional and illegal resolution seeking to terminate our functions, currently serving legally as justices of the highest court of law in Ecuador. Subsequently, Congress has proceeded to set up a new,

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[34] **Annex 16.** Resolution No. R-25-181 of the National Congress, dated December 8, 2004. Included in Official Register No. 485, dated December 20, 2004. (Annex to the initial petition received on December 30, 2004.)

[35] **Annex 17.** Executive Decree No. 2752 of April 15, 2005, issued by President of the Republic Lucio Gutiérrez Borbúa. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[36] **Annex 4.** Statement of Hugo Quintana Coello, given on May 14, 2007, to the 23rd Notary of the canton of Quito. (Annex to petitioners' submission, received on May 24, 2007.)

[37] **Annex 4.** Statement of Hugo Quintana Coello, given on May 14, 2007, to the 23rd Notary of the canton of Quito. (Annex to petitioners' submission, received on May 24, 2007.)

[38] **Annex 4.** Statement of Hugo Quintana Coello, given on May 14, 2007, to the 23rd Notary of the canton of Quito. (Annex to petitioners' submission, received on May 24, 2007.)

[39] **Annex 18.** Resolution of the Court of Honor of the Pichincha Bar Association, dated March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

> spurious Court, thus violating the terms of Art. 202 of the Constitution of the Republic, and that is the case of the 30 jurists who have accepted those illegal and unconstitutional appointments and who have taken office.[40]

59. The applicants then requested that the Pichincha Bar Association prosecute those lawyers and punish them by suspending their exercise of the profession.[41]

60. On March 29, 2005, the Court of Honor of the Pichincha Bar Association stated that "although (…) it is not competent to assess and judge the legislative actions of the National Congress, in order to determine the existence or otherwise of the alleged violations we must analyze whether the legislative branch was legally empowered to terminate the APPLICANTS and to appoint, by means of a resolution, the RESPONDENTS as justices of the Supreme Court."[42] On this point, it found that:

> Following a thorough legal analysis of the constitutional provision and of the documents in the proceedings, pursuant to Article 273 of the Constitution and after due study of it, there is no legal provision that empowers the National Congress to dismiss or terminate the functions of the Supreme Court justices and much less to appoint new justices.
>
> (…)
>
> The Constitution itself, in Articles 198, 201, and 202, sets out with absolute clarity the requirements, duration, termination, and method of election of the justices of the Supreme Court of Ecuador.
>
> According to the Constitution, the justices of the Supreme Court are not subject to fixed terms of office and may only be terminated for the reasons set out therein. Vacancies are to be covered by means of COOPTATION, for which the criteria of professionalism and the judicial career will be observed, in accordance with law.
>
> To dismiss the serving Supreme Court justices, the 51 legislators invoked their interpretation of Transitory Article 25 of the Constitution, including them among the public officials appointed by Congress for a fixed term and arguing that they were elected by Congress in 1997 for a period of four years, pursuant to Article 173 of the Organic Law of the Judicial Branch and, consequently, were serving under an expired mandate.
>
> That interpretation of the Transitory Provision was not in line with Article 284 of the Constitution, which provides that should doubt arise regarding the scope of a constitutional provision, Congress may offer an obligatory interpretation, following the same procedure as used to enact a law: in other words, with the assent of two-thirds of the total congressional membership (67 deputies). This interpretation was made with the assent of 51 legislators.
>
> In addition, Article 69 of the Organic Law of the Legislative Branch stipulates: 'The name "resolutions" shall be given to decisions that represent regulated actions and that regulate procedural matters.' Resolution No 25-181, whereby the APPLICANTS were terminated and the RESPONDENTS were appointed as justices of the Supreme Court, modifies and extinguishes rights – functions for which a law is required.

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[40] **Annex 18.** Resolution of the Court of Honor of the Pichincha Bar Association, dated March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[41] **Annex 18.** Resolution of the Court of Honor of the Pichincha Bar Association, dated March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[42] **Annex 18.** Resolution of the Court of Honor of the Pichincha Bar Association, dated March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

> In interpreting the transitory provision, the deputies abided by Article 173 of the Organic Law of the Judicial Branch without taking account of Article 272 of the Constitution of the Republic, which provides that all organic laws, ordinary laws, and resolutions must abide by its provisions and shall be void of effect if they contradict or alter its terms. The Constitution was amended when a majority of the Ecuadorian people stipulated, in the 1997 referendum, that the justices of the Supreme Court 'shall not be subject to a fixed term in office,' and that mandate was enshrined in Article 202 of the Constitution.
>
> (…)
>
> It can be held that there was a violation of the Constitution in Resolution No. 25-191 of December 2004, that said action caused a *de facto* situation, and that abiding by such violations either as the adopter or beneficiary of the decision means a breakdown in the constitutional order, which is prohibited to all those who believe that the best political system is democracy.[43]

61. In consideration whereof, the Court of Honor of the Pichincha Bar Association resolved to sanction those jurists who accepted and assumed the office.[44]

C. Events following the terminations at the Ecuadorian high courts

62. The terminations at the Supreme Electoral Tribunal, the Constitutional Court, and the Supreme Court of Justice triggered a political and social crisis marked by institutional instability.[45]

63. Once installed, the new Supreme Court of Justice – called *de facto* by several sectors of Ecuadorian society – adopted a series of decisions with major political impact. Among those decisions were the annulments of the proceedings against former Presidents of the Republic Abdalá Bucaram and Gustavo Noboa, and against former Vice President Alberto Dahik.[46]

64. As noted by the United Nations Rapporteur on the independence of judges and lawyers after his visit to Ecuador on July 11 to 15, 2005, those decisions "aggravated the social and political tensions in the country, and the crisis spread to all institutions."[47]

65. In that context, on April 15, 2005, President of the Republic Lucio Gutiérrez issued Executive Decree No. 2752, dismissing the Supreme Court of Justice elected on December 8, 2004. The grounds cited in the Decree included the following: "The National Congress has to date not resolved the termination of the current Supreme Court of Justice, which is creating severe domestic unrest (…) it is therefore vital to obey the pronouncements of the citizens of Quito and of

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[43] **Annex 18.** Resolution of the Court of Honor of the Pichincha Bar Association, dated March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[44] **Annex 18.** Resolution of the Court of Honor of the Pichincha Bar Association, dated March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[45] **Annex 19.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, E/CN.4/2005/60/Add.4, Preliminary Report on the Mission to Ecuador, March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.) See also: Statement of Hugo Quintana Coello, given on May 14, 2007, to the 23rd Notary of the canton of Quito. (Annex to petitioners' submission, received on May 24, 2007.)

[46] **Annex 19.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, E/CN.4/2005/60/Add.4, Preliminary Report on the Mission to Ecuador, March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[47] **Annex 17.** Executive Decree No. 2752 of April 15, 2005, issued by President of the Republic Lucio Gutiérrez Borbúa. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.) See also: **Annex 19.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, E/CN.4/2005/60/Add.4, Preliminary Report on the Mission to Ecuador, March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

the Republic rejecting the operations of the current Supreme Court of Justice." Consequently, the President of the Republic decreed:

> Art. 2. Given the express mandate and sovereign will of the Ecuadorian people and in compliance with the State's duty of recognizing and ensuring the right to legal security enshrined in Art. 23, section 26, of the Constitution of the Republic, the justices of the current Supreme Court of Justice, appointed by means of Resolution 25-181 of December 8, 2004, are hereby terminated in their functions.[48]

66. The same Executive Decree also declared a state of emergency in the city of Quito.[49] The following day, April 16, 2005, the President of the Republic issued Executive Decree No. 2754, stating that "the cause of the domestic unrest and turmoil in the city of Quito created by the crisis in the Supreme Court of Justice has been overcome" and consequently declaring "an end to the state of emergency in the Metropolitan District of Quito, province of Pichincha."[50]

67. At the same time, on April 17, 2005, Congress voided the resolution of December 8, 2004, regarding the appointment of the new Supreme Court of Justice. It did not, however, order the reinstatement of the justices who had been removed from office.[51]

68. All this increased the "rising wave of tension and violence, particularly in the capital," as a result of which on April 20, 2005, Congress declared that President Lucio Gutiérrez had abandoned his duties. Pursuant to the constitutional order of succession, Vice President Alfredo Palacio took office as President of the Republic.[52]

69. In the preliminary report on his mission to Ecuador, dated March 29, 2005, United Nations Special Rapporteur on the independence of judges and lawyers Leandro Despouy spoke of the termination of the members of the Supreme Electoral Tribunal, the Constitutional Court, and the Supreme Court of Justice.[53] With regard to the Supreme Court, he said that:

> The incident which has had the greatest impact was the dismissal of the Supreme Court judges elected in 1997 and the action of the National Congress at the same session in appointing a new Court, displaying manifest irregularities as to the manner in which the former judges were dismissed and the appointment of the present judges. Despite the fact that a referendum in 1997 expressly removed from the National Congress its competence to appoint and dismiss members of the Supreme Court, and enshrined the principle of co-optation, and despite the fact that in the same year a constitutional reform laid down that the

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[48] **Annex 17.** Executive Decree No. 2752 of April 15, 2005, issued by President of the Republic Lucio Gutiérrez Borbúa. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[49] **Annex 17.** Executive Decree No. 2752 of April 15, 2005, issued by President of the Republic Lucio Gutiérrez Borbúa. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.) See also: **Annex 19.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, E/CN.4/2005/60/Add.4, Preliminary Report on the Mission to Ecuador, March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[50] **Annex 20.** Executive Decree No. 2754 of April 16, 2005, issued by President of the Republic Lucio Gutiérrez Borbúa. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[51] **Annex 19.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, E/CN.4/2005/60/Add.4, Preliminary Report on the Mission to Ecuador, March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[52] **Annex 19.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, E/CN.4/2005/60/Add.4, Preliminary Report on the Mission to Ecuador, March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[53] **Annex 21.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/60/321, Civil and political rights, including the questions of independence of the judiciary, administration of justice, impunity, August 31, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

> Congress would appoint the members of the Court for the last time, the Congress arrogated to itself that double power in December 2004.[54]

70. In that same report, the Rapporteur said that "the events described above have led to serious unrest in the country, which threatens to worsen if the normal working of the institutions is not restored."[55] Consequently, the Rapporteur formulated the following recommendations:

> It is vital and urgently necessary to secure the full restoration of the rule of law.
>
> (…)
>
> The country should immediately arrive at a formula to govern the appointment of a Supreme Court which will include the following elements:
>
> a) Independence of judges;
> b) Co-optation, as a guarantee that there will be no external interference in the future composition of the Court;
> c) A system for the election of judges which will guarantee their suitability and probity;
> d) Machinery to ensure transparency in the selection of judges and enable members of the public to be aware of the candidates and express their opinions about them.[56]

71. On April 26, 2005, Congress adopted an amendment to the Organic Law of the Judicial Branch in order to "permit the restructuring of the Supreme Court of Justice."[57] The new Organic Law of the Judicial Branch established an *ad hoc* mechanism for overseeing the process of assessing and appointing the new justices of the Supreme Court and their deputies. This *ad hoc* mechanism entailed the creation of a Qualifying Committee to "compensate for the impossibility of implementing the constitutional clause dealing with the principle of cooptation because of the nonexistence of the agency empowered to carry it out"[58] – in other words, the Supreme Court of Justice itself.

72. It should be noted that after the approval of the rules of procedure of the Qualifying Committee, the United Nations Rapporteur on the independence of judges and lawyers noted his concern regarding the fact that some of the provisions "would entail violations of certain constitutional provisions and the international standards governing the exercise of the legal profession." The Rapporteur said that there could be an impact on the "free practice of the legal profession and the right of defence, including principles such as non-discrimination and non-identification of lawyers with their clients."[59]

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[54] **Annex 19.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, E/CN.4/2005/60/Add.4, Preliminary Report on the Mission to Ecuador, March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[55] **Annex 19.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, E/CN.4/2005/60/Add.4, Preliminary Report on the Mission to Ecuador, March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[56] **Annex 19.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, E/CN.4/2005/60/Add.4, Preliminary Report on the Mission to Ecuador, March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[57] **Annex 19.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, E/CN.4/2005/60/Add.4, Preliminary Report on the Mission to Ecuador, March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[58] **Annex 19.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, E/CN.4/2005/60/Add.4, Preliminary Report on the Mission to Ecuador, March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[59] **Annex 19.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, E/CN.4/2005/60/Add.4, Preliminary Report on the Mission to Ecuador, March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

73. The main cause for concern was that on account of the institutional crisis the country was facing, there was no body with competence for "addressing the unconstitutionality of some of the legal and regulatory provisions of the process whereby justices were assessed." That was because all the members of the Constitutional Court had been dismissed and it was legally impossible to set up a new Constitutional Court until the Supreme Court of Justice was installed and could submit a shortlist.[60] In light of those concerns, the chairman of the Qualifying Committee had ruled that both the regulations and the law would be applied in accordance with the Constitution and with the international treaties ratified by Ecuador.[61]

74. As a result, Ecuador remained without a Supreme Court of Justice for approximately seven months.[62]

IV. ANALYSIS OF LAW

A. Preliminary matters

75. Before embarking on its analysis of the parties' claims under the provisions of the American Convention, the Commission reiterates that in Admissibility Report 8/07 of February 27, 2007, dealing with this case, it concluded that the facts set out did not tend to establish a possible violation of the rights enshrined in Articles 23 and 24 of the American Convention. Although at the merits stage both parties continued to submit claims regarding those rights, the Commission finds no reason to deviate from its admissibility ruling and, consequently, the analysis of the merits will address the rights enshrined in Articles 8, 9, and 25 of the American Convention, in light of the obligations set out in Articles 1.1 and 2 thereof.

76. The Commission notes that the crux of the dispute in this case is whether the termination of the entire Supreme Court of Justice under the National Congress's resolution of December 8, 2004, was in accordance with the terms of the American Convention. Given the judicial nature of Supreme Court positions, the Commission believes it must first offer a series of preliminary considerations on the principle of judicial independence, since that principle informs the entire subsequent analysis on the scope of the guarantees to which the alleged victims were entitled. In addition, and because the congressional resolution terminated the Supreme Court of Justice appointed in 1997 on the grounds that all the justices had exceeded their term in office, the Commission will analyze the regulatory framework to which the Supreme Court of Justice was subject at the time of the facts. The Commission will then determine whether the international responsibility of the State of Ecuador was triggered with respect to the rights established in Articles 8, 9, and 25 of the American Convention.

B. The principle of judicial independence and its effects on the analysis of the case

77. This principle is set out in Article 8.1 of the American Convention and represents one of the basic pillars of a democratic system. On this point, the Inter-American Court has stated that one of the principal purposes of the separation of public powers is to guarantee the

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[60] **Annex 19.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, E/CN.4/2005/60/Add.4, Preliminary Report on the Mission to Ecuador, March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[61] **Annex 19.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, E/CN.4/2005/60/Add.4, Preliminary Report on the Mission to Ecuador, March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.)

[62] **Annex 4.** Statement of Hugo Quintana Coello, given on May 14, 2007, to the 23rd Notary of the canton of Quito. (Annex to petitioners' submission, received on May 24, 2007.)

independence of judges.[63] Although the principle of judicial independence is regulated by the American Convention as a right enjoyed by persons facing prosecution or appearing before the courts to resolve their disputes, the duty of respecting and ensuring that right has implications that are directly related to the procedures whereby judges are appointed and removed – issues regarding which consolidated international standards exist, as will be indicated below.

78. In this regard, the Inter-American Court has ruled that:

> Judges, unlike other public officials, have reinforced guarantees due to the necessary independence of the Judicial Power, which the Court has understood as "essential for the exercise of the judicial function."[64] Said autonomous exercise shall be guaranteed by the State both in its institutional aspect, that is, with regard to the Judicial Power as a system, as well as in connection with its individual aspect, that is, with regard to the specific judge as an individual. The objective of the protection lies in avoiding that the justice system in general and its members specifically be submitted to possible improper restrictions in the exercise of their duties by bodies foreign to the Judicial Power or even by those judges that exercise duties of revision or appeal.[65] Additionally, the State has the duty to guarantee an appearance of independence of the Magistracy that inspires legitimacy and enough confidence not only to the parties, but to all citizens in a democratic society.[66]

79. The Inter-American Commission and Court, in line with the constant jurisprudence of the European Court, have repeatedly held that the principle of judicial independence gives rise to a series of guarantees: appropriate appointment procedures,[67] fixed terms in office,[68] and guarantees against external pressure.[69]

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[63] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 67. Citing: *c.f. Case of the Constitutional Court v. Peru*, *Merits, Reparations, and Costs*, Judgment of January 31, 2001, Series C No. 71, para. 73; and *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. 55.

[64] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 67. Citing: *c.f. Case of Herrera Ulloa v. Costa Rica*, *Preliminary Objections, Merits, Reparations, and Costs*, Judgment of July 2, 2004, Series C No. 107, para. 171; and *Case of Palamara Iribarne v. Chile*, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 135, para. 145.

[65] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 67. Citing: *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. 55.

[66] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 67. Citing: *c.f. Case of Herrera Ulloa v. Costa Rica*, *Preliminary Objections, Merits, Reparations, and Costs*, Judgment of July 2, 2004, Series C No. 107, para. 171.

[67] IACHR, Application to the Inter-American Court of Human Rights, Case 12.565, *Reverón Trujillo v. Venezuela*, November 9, 2007, para. 75; IACHR, Application to the Inter-American Court of Human Rights, Case 12.556, *Chocrón Chocrón v. Venezuela*, para. 69; I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 70. Citing: *c.f. Case of the Constitutional Court v. Peru*, *Merits, Reparations, and Costs*, Judgment of January 31, 2001, Series C No. 71, para. 75; and *Case of Palamara Iribarne v. Chile*, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 135, para. 156; ECHR, *Langborger Case*, Decision of January 27, 1989, Series A No. 155, para. 32; and ECHR, *Campbell and Fell*, Judgment of June 28, 1984, Series A No. 80, para. 78; Principle 10 of the United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan, Italy, August 26 to September 6, 1985, and confirmed by the General Assembly in resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985; hereinafter "the Basic Principles on the Independence of the Judiciary."

[68] IACHR, Application to the Inter-American Court of Human Rights, Case 12.565, *Reverón Trujillo v. Venezuela*, November 9, 2007, para. 75; IACHR, Application to the Inter-American Court of Human Rights, Case 12.556, *Chocrón Chocrón v. Venezuela*, para. 69; I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 70; *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, para. 75; and *Case of Palamara Iribarne v. Chile*, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 135, para. 156; ECHR, *Langborger Case*, Decision of January 27, 1989, Series A No. 155, para. 32; ECHR, *Campbell and Fell*, Judgment of June 28, 1984, Series A No. 80, para. 78; and ECHR, *Le Compte, Van Leuven and De Meyere*, Judgment of June 23, 1981, Series A No. 43, para. 55. No. 12 of the Basic Principles on the Independence of the Judiciary.

[69] IACHR, Application to the Inter-American Court of Human Rights, Case 12.565, *Reverón Trujillo v. Venezuela*, November 9, 2007, para. 75; IACHR, Application to the Inter-American Court of Human Rights, Case 12.556, *Chocrón Chocrón v. Venezuela*, para. 69; I/A Court H.

80. In the case of *Reverón Trujillo v. Venezuela*, the Inter-American Court specified the content of these guarantees and their implications for state decisions on the organization of public power. Specifically, regarding the existence of appropriate appointment procedures, the Court listed several applicable international rulings:

> The Basic Principles highlight as preponderant elements in the appointment of judges their integrity, ability with appropriate training or qualifications in law.[70] Likewise, the Recommendations of the Council of Europe evoke a framework criterion of usefulness in this analysis when it states that all the decisions regarding the professional career of the judges shall be based on objective criteria, namely the judge's personal merits, his qualifications, integrity, ability, and efficiency, all of which are the preponderant elements to be considered.[71]
>
> (…)
>
> The Human Rights Committee has stated that if the access to the public administration is based on merits and equal opportunities, and the stability in the position can be ensured, the liberty from all political interference or pressure is guaranteed.[72] In a similar sense, the Court points out that all appointment processes shall serve the purpose not only of appointment according to merits and qualifications of those who aspire, but to assurance of equal opportunities in the access to the Judicial Power. Therefore, the judges must be selected exclusively based on their personal merits and professional qualifications, through objective selection and continuance mechanisms that take into account the peculiarity and specific nature of the duties to be fulfilled.[73]

81. Regarding fixed terms in office, the Court noted Nos. 11, 12, 13, 18, and 19 of the Basic Principles on the Independence of the Judiciary and referred to the rulings of the Human Rights Committee in the following terms:

> The Basic Principles state that "the term of office of judges shall be adequately secured by law"[74] and that "judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists."[75]
>
> On the other hand, the Universal Principles also state that "promotion of judges, wherever

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R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 70; *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, para. 75; and *Case of Palamara Iribarne v. Chile*, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 135, para. 156; ECHR, *Langborger Case*, Decision of January 27, 1989, Series A No. 155, para. 32; ECHR, *Campbell and Fell*, Judgment of June 28, 1984, Series A No. 80, para. 78; and ECHR, *Piersack*, Judgment of October 1, 1982, Series A No. 53, para. 27. Nos. 2, 3, and 4 of the Basic Principles on the Independence of the Judiciary.

[70] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 71. Citing: No. 10 of the Basic Principles on the Independence of the Judiciary.

[71] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 71. Citing: Principle I.2.c of Recommendation No. R (94) 12 of the Committee of Ministers to the Member States on the Independence, Efficiency, and Role of Judges adopted by the Committee of Ministers on October 13, 1994, at the 518th meeting of Ministers' Deputies.

[72] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 72. Citing: United Nations, Human Rights Committee, General Comment No. 32, Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial, CCPR/C/GC/32, August, 23 2007, para. 19.

[73] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 72.

[74] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 75. Citing: No. 11 of the Basic Principles on the Independence of the Judiciary.

[75] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 75. Citing: No. 12 of the Basic Principles on the Independence of the Judiciary.

> such a system exists, should be based on objective factors, in particular on ability, integrity and experience."[76]
>
> Finally, the Basic Principles state that the judges "shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties" and that "all disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct."[77] Similarly, the Human Rights Committee has pointed out that the judges may only be removed for grave disciplinary offenses or incapacity and according to fair procedures that guarantee objectivity and impartiality according to the constitution or law.[78] Additionally, the Committee has expressed that "the dismissal of judges by the Executive Power before the expiration of the term of office for which they were appointed, without giving them a specific reason and without having an effective judicial protection to appeal the dismissal, is not compatible with judicial independence."[79]

82. Regarding this requirement, the European Court has ruled that the guaranteed permanence of judges for as long their mandate lasts has to be seen as a corollary to the judicial independence enshrined in Article 6.1 of the European Convention on Human Rights and Fundamental Freedoms.[80]

83. In line with those principles, the Court has said that the authority in charge of the process for the dismissal of a judge must act independently and impartially in the proceedings established for that purpose and allow the exercise of the right of defense.[81] As the Court has stated, the free removal of judges fosters an objective doubt in the observer regarding the effective possibility they may have to decide specific controversies without fearing retaliation.[82]

84. It is worth to mention that within the context of the Inter-American System, the institution of *impeachment* (juicio político) has been recognized as a legitimate mechanism of control. In the case of the *Constitucional Tribunal v. Peru,* the Inter-American Court stated that:

> Under the rule of law, the impeachment proceeding is a means of controlling senior officials of both the Executive and other State organs exercised by the Legislature. However, this control does not mean that the organ being controlled – in this case the Constitutional Court – is subordinate to the controlling organ – in this case the Legislature; but rather that the intention of the latter is that an organ that represents the people may examine and take decisions on the actions of senior officials[83].

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[76] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 76. Citing: No. 13 of the Basic Principles on the Independence of the Judiciary.

[77] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 77. Citing: Nos. 18 and 19 of the Basic Principles on the Independence of the Judiciary.

[78] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 77. Citing: United Nations, Human Rights Committee, General Comment No. 32, Article 14, para. 20.

[79] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 77. Citing: United Nations, Human Rights Committee, General Comment No. 32, Article 14, para. 20.

[80] ECHR, *Campbell and Fell*, Judgment of June 28, 1984, Series A No. 80, para. 80; ECHR, *Engel and Others*, Judgment, Series A No. 22, pp. 27-28, para. 68.

[81] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 78. Citing: *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, para. 74.

[82] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 78. See also: Nos. 2, 3, and 4 of the Basic Principles on the Independence of the Judiciary.

[83] I/A Court H. R., *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, para, 63.

85. In that case, the Court considered that the institution of *impeachment* must observe due process in order to ensure the principle of judicial independence with respect to the high ranking magistrales subjected to that procedure[84].

86. From the above, it is clear that the various international human rights agencies and courts agree that heightened stability in the tenure of judges, and the resultant ban on their free removal, is an essential part of the principle of judicial independence. As the Inter-American Court has said, if a State fails to abide by those guarantees, it would be failing in its obligation of upholding judicial independence.[85] Similarly, the Inter-American Commission has stated that the guarantee of stability in the positions of judges must be reinforced – a requirement that arises from the need to establish mechanisms to ensure their independence from the other branches of government.[86] The Commission highlights the Inter-American Court's comments on prohibiting the free removal of judges:

> To the contrary the States could remove the judges and therefore intervene in the Judicial Power without greater costs or control. Additionally, this could generate a fear in the other judges, who observe that their colleagues are dismissed (...). Said fear could also affect judicial independence, since it would promote that the judges follow instructions or abstain from contesting both the nominating and punishing entity.[87]

87. To summarize, the principle of judicial independence – together with the associated state obligations of upholding and guaranteeing it – requires that judges have appropriate appointment and promotion procedures, that they are guaranteed stability in their positions during the mandates for which they are appointed, and that they can be removed from office solely for the commission of disciplinary offenses that are previously and clearly set out in the Constitution or domestic law, and in strict compliance with the guarantees of due process. On the basis of those standards, the Commission will first address the regulatory framework applicable to the Supreme Court justices at the time of the facts and will then examine the alleged victims' removal from their positions in light of Articles 8, 9, and 25 of the American Convention.

C. Compatibility of the regulatory framework governing the Supreme Court justices with the American Convention

88. According to the information available in the case file, the Commission has established that on April 7, 1997, a referendum was held in which the questions included one regarding a change in the appointment system for Supreme Court justices, whereby they would be selected from the judiciary – cooptation - and not be subject to term limits. That proposal was answered affirmatively by the Ecuadorian electorate and, consequently, on July 23, 1997, constitutional amendments were enacted including the following addition to Article 129:

> The members of the Supreme Court of Justice shall not be subject to a limited tenure of office. Their termination shall be on the grounds prescribed by the Constitution and by law.
>
> When a vacancy arises, for whatever reason, the plenary of the Supreme Court of Justice shall appoint the new justice by a vote in favor of at least two-thirds of its members, with due consideration to the criteria of professionalism and judicial career as provided for by law.

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[84] I/A Court H. R., *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, para, 84.

[85] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 79. See also: Nos. 2, 3, and 4 of the Basic Principles on the Independence of the Judiciary.

[86] IACHR, Application to the Inter-American Court of Human Rights, Case 12.556, *Chocrón Chocrón v. Venezuela*, para. 72.

[87] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 81.

89. It also included a procedure for the one-time appointment of the Supreme Court justices by Congress. And it was by means of that procedure, through a Qualifying Committee that examined shortlists proposed by different agencies and sectors of society that, according to the available information, the alleged victims in the case at hand were appointed in October 1997.

90. The State argued that neither the regime of indefinite appointments nor the use of the cooptation system to fill vacancies applied to the alleged victims. According to the State, those mechanisms were regulated by the Constitution that came into force on August 10, 1998, and so could not be implemented retroactively. However, the State of Ecuador has remained silent regarding the constitutional amendments enacted on July 23, 1997, prior to the appointment of the justices of the Supreme Court. As already noted, those amendments already included indefinite appointments and the use of the cooptation system, under a text was reproduced almost identically in the Constitution promulgated on August 10, 1998.

91. Thus, and without examining the suitability of those systems, the Commission believes that the State's argument regarding the regime that applied to the Supreme Court of Justice is without merit and that, on the date that the alleged victims were appointed, the provisions establishing the fixed term of their mandates were already in force, along with the rule stipulating their "termination on the grounds prescribed by the Constitution and by law", as well as the fulfillment of the vacancies through the system of cooptation.

92. Now, although the regime of indefinite mandates and the cooptation system were already in force at the time of the appointment of the members of the Supreme Court of Justice who were later terminated on December 8, 2004, the Commission has no information on how those constitutional provisions were regulated.

93. The Commission is aware of the existence of an Organic Law of the Judicial Branch;[88] however, that law predated the constitutional amendments relating to the indefinite mandates of Supreme Court justices and to the use of the cooptation system to fill vacancies, and so its regulation was based on the previous regime of appointments, terms of office, and removal of Court members. As stated by several members of Congress during the session of December 8, 2004, bills existed both to amend the Organic Law of the Judicial Branch and to regulate the cooptation system. At the time the functions of the alleged victims were terminated, those provisions had not yet passed into law. Neither were there any regulations covering the Supreme Court's disciplinary system, the grounds for the removal of justices, the procedure to be followed, or the competent authority for doing so. It should be noted that the regulations in force at the time of the facts did not allow for the possibility of impeaching justices of the Supreme Court.

94. The Commission notes that at the hearing on the merits held on March 10, 2008,[89] the parties spoke of the existence of a legal vacuum on those points.

95. In consideration whereof, the Commission concludes that at the time of the facts in the case at hand, although the Constitution stipulated the duration – indefinite- of a Supreme Court justice's mandate and established the system to be used to fill vacancies, there were no legal regulations dealing with those systems or with the substantive and procedural disciplinary regime applicable to justices of the Supreme Court. According to the standards described in the previous section, that situation was incompatible *per se* with the principle of judicial independence. In

[88] Available at: http://www.oas.org/juridico/spanish/mesicic2_ecu_anexo47.pdf.

[89] **Annex 22.** IACHR, Public hearing held on March 10, 2008, at the 131st regular session, Case 12.600, Hugo Quintana Coello and others. Audio available at: http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES.

addition to fueling doubts about the independence of the judiciary, the absence of clear rules on the grounds and procedure for removing judges from office can lead to arbitrary abuses of power, with direct repercussions for the rights of due process and of freedom from *ex post facto* laws. The following paragraphs analyze the effects of the lack of clarity in the regulations governing the victims' tenure and removal from office in light of those rights.

D. Right to a fair trial and to freedom from ex post facto laws (Articles 8 and 9 of the American Convention)

96. The relevant part of Article 8 of the American Convention provides:

> 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.
>
> 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
>
> (b) prior notification in detail to the accused of the charges against him;
> (c) adequate time and means for the preparation of his defense;
>
> (...)
>
> (h) the right to appeal the judgment to a higher court.

97. Article 9 of the American Convention establishes:

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

98. Article 1.1 of the American Convention stipulates:

> The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

99. Article 2 of the American Convention establishes:

> Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

100. The Commission recalls the Court's repeated rulings that the freedom from *ex post facto* laws enshrined in Article 9 of the American Convention is one of the principles that govern the actions of all bodies of the State in their respective fields, particularly when the exercise of its punitive power is at issue.[90] In terms of its scope, the Court has ruled that the freedom from *ex post facto* laws applies not only to criminal matters, but also to administrative sanctions.[91]

101. Similarly, the Court has stated that "although Article 8 of the American Convention is entitled 'Judicial Guarantees' [in the Spanish version – 'Right to a Fair Trial' in the English version], its application is not strictly limited to judicial remedies, but rather the procedural requirements that should be observed [...] so that a person may defend himself adequately in the face of any kind of act of the State that affects his rights."[92]

102. In addition, the Court has said that although that article does not establish minimum guarantees in matters relating to the determination of rights and obligations of a civil, labor, fiscal, or any other nature, the full range of minimum guarantees stipulated in its second paragraph are also applicable in those areas and, therefore, in this type of matter, the individual also has the overall right to the due process applicable in criminal proceedings.[93]

103. The petitioners claim that they were terminated by an incompetent authority lacking in guarantees of independence and impartiality, absent a procedure previously established by law, without the possibility of being heard or of hearing the charges against them, and unable to offer a defense. In response, the State claimed that the petitioners were not entitled to the allegedly violated guarantees in that they were not "removed" or "dismissed": instead, they were terminated because, according to the National Congress's interpretation, they were serving under an expired mandate.

104. The IACHR will analyze the arguments of the parties as follows: i) Analysis whether the rights enshrined in Articles 8 and 9 of the Convention are applicable to the alleged victims; ii) Analysis whether the State incurred in a violation of the rights established in Article 9 of the

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[90] I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 176. Citing: I/A Court H. R., *Case of Baena Ricardo et al. v. Panama*, Preliminary Objections, Judgment of November 18, 1999, Series C No. 61, para. 107.

[91] I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 177. Citing: I/A Court H. R., *Case of Baena Ricardo et al. v. Panama*, Preliminary Objections, Judgment of November 18, 1999, Series C No. 61, para. 106.

[92] I/A Court H. R., *Case of the Constitutional Court v. Peru.* Judgment of January 31, 2001, Series C No. 71. para. 69. Citing: *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25, and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, para. 27.

[93] I/A Court H. R., *Case of the Constitutional Court v. Peru.* Judgment of January 31, 2001, Series C No. 71. para. 70.

Convention; and iii) Analysis whether the State incurred in a violation of the rights established in Article 8 of the Convention.

1. Analysis whether the rights enshrined in Articles 8 and 9 of the Convention are applicable to the alleged victims

105. The Commission believes it must first of all address the Ecuadorian State's argument that the victims were not entitled to the guarantees of freedom from *ex post facto* laws and due process, in that their functions were terminated but they were not removed or dismissed from their positions under a disciplinary sanction.

106. First of all, because of the absence of clear regulations governing the grounds for terminating the functions of a Supreme Court justice and the procedure to the followed in such a case, it is difficult to establish the nature of the resolution adopted by Congress on December 8, 2004. Resolutions of that kind, issued in the absence of a precise legal framework, foster doubts about the goals they pursue, and it is reasonable to consider the possibility that a kind of sanction was being imposed on officers of the judiciary in reprisal for the way they exercised their judicial functions.

107. That is consistent with the transcript of the congressional debate of December 8, 2004, which makes repeated reference to alleged problems with the Supreme Court of Justice composed of the alleged victims, with harsh criticism of the way in which they had discharged their duties. Thus, during the debate, it was claimed on multiple occasions that the justices were "corrupt," that they were "politicized," that they were guilty of "omissions" in the exercise of their functions, that they obeyed "political interests," and, in general, that the Supreme Court of Justice had been "sequestered" by "political parties."[94] Those remarks were reproduced in numerous press reports that published statements on the alleged problems of corruption, politicization, and poor operations within the Supreme Court of Justice.[95] Moreover, at the hearing on the merits held during the IACHR's 131st period of sessions, the State said that "belonging to political parties" was they reason they were dismissed, as was reported by the media.[96] In consideration whereof, the Commission believes it is reasonable to infer that the actions of the National Congress were punitive in nature.

108. In second place, the Commission again states that under the international standards governing judicial independence, judges may only be removed from office when their mandates expire, when the terms of their appointment no longer apply, or when they commit disciplinary infractions. Thus, international law and state obligations regarding judicial independence require States to ensure the guarantees of due process in all proceedings that could lead to a judge's dismissal. Those standards are set by international law and are intended to protect the functioning of the judiciary. They therefore apply regardless of the name given to the domestic proceedings whereby judges are relieved of duties, be it termination, dismissal, or removal. The crux of the matter is that the free removal of judges is prohibited, and, consequently, they are entitled to the

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[94] **Annex 15.** Transcription of the recording of the regular permanent morning session of the National Congress of December 8, 2004. Deed 24-001-IV. (Annex to petitioners' submission, received on May 24, 2007.)

[95] **Annex 22.** IACHR, Public hearing held on March 10, 2008, at the 131st regular session, Case 12.600, Hugo Quintana Coello and others. Audio available at: http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES**.** Annex. Press stories submitted as an annex to the initial petition received on December 30, 2004.

[96] **Annex 22.** IACHR, Public hearing held on March 10, 2008, at the 131st regular session, Case 12.600, Hugo Quintana Coello and others. Audio available at: http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES**. Annex 23**. Press notes submitted as an annex to the initial petition received on December 30, 2004.

guarantees of freedom from *ex post facto* laws and due process set out in Articles 8.1, 8.2, and 9 of the American Convention.[97]

2. Analysis whether the State incurred in a violation of the rights established in Article 9 of the Convention

109. Regarding the freedom from *ex post facto* laws, the Commission has already concluded that on the dates the Supreme Court justices were appointed (October 1997) and terminated (December 8, 2004), no regulations governing the constitutionally established systems for terminations and vacancies at the Supreme Court of Justice were in place. Neither were there any regulations in place for the disciplinary system applicable to members of the Court. The Commission believes that these problems in the regulatory framework meant that the Supreme Court justices were denied prior knowledge of the grounds for which they could be removed from office, the competent authority for doing so, and the applicable procedure.

110. As a result of this situation, in a political context of heightened tension between the different branches of government, an *ad hoc* mechanism – provided for neither in the Constitution nor in law – was created to terminate the functions of all the Supreme Court justices on the grounds that their mandates had expired. That was in spite of that fact, already established in this report, that their appointment was for an indefinite period, subject to grounds for removal to be determined by law. Despite that situation, Congress justified the mechanism used to terminate them through Transitory Provision No. 25 of the Constitution that came into force on August 10, 1998, which provides:

> The officers and members of agencies appointed by the National Congress and the Comptroller General of the State appointed for a four-year period as of August 10, 1998, under the provisions of this Constitution, shall remain in those positions until January 2003.[98] *(emphasis added)*

111. The Commission again notes that the victims in this case were appointed by means of the procedure established in the transitory provisions of the constitutional amendments adopted on July 23, 1997: that is, before the date indicated in Transitory Provision No. 25 of the 1998 Constitution. Consequently, the expiration of date of January 2003 referred to by Congress did not apply to them, particularly since, as has been noted, the constitutional amendments in force at the time of their appointment clearly indicated that they were to enjoy indefinite tenure in their positions.

112. To summarize, given the failure to regulate the situation of the Supreme Court justices, the creation of an *ad hoc* mechanism not provided for by law to order their termination, and the clear lack of legal and constitutional grounds for the National Congress's interpretation of Transitory Provision No. 25 of the 1998 Constitution, the Commission concludes that the State of Ecuador did violate the right enshrined in Article 9 of the American Convention, in conjunction with Article 2 thereof, with respect to Hugo Quintana Coello, Alfredo Contreras Villavicencio, Teodoro Coello Vásquez, Santiago Andrade Ubidia, José Julio Benítez Astudillo, Armando Bermeo Castillo, Eduardo Brito Mieles, Nicolás Castro Patiño, Galo Galarza Paz, Luis Heredia Moreno, Estuardo Hurtado Larrea, Ángel Lescano Fiallo, Galo Pico Mantilla, Jorge Ramírez Álvarez, Carlos Riofrío Corral, José Vicente Troya Jaramillo, Rodrigo Varea Avilez, Jaime Velasco Dávila, Miguel Villacís

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[97] See: I/A Court H. R., *Case of the Constitutional Court v. Peru*, Judgment of January 31, 2001, Series C No. 71, para. 74; and I/A Court H. R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 44. "In other words, the authority in charge of the procedure to remove a judge must behave impartially in the procedure established to this end and allow the latter to exercise the right of defense."

[98] **Annex 5.** Constitution of Ecuador, adopted on June 5, 1998. Available at: http://pdba.georgetown.edu/Constitutions/Ecuador/ecuador98.html.

Gómez, Gonzalo Zambrano Palacios, Milton Moreno Aguirre, Arturo Donoso Castellón, Ernesto Albán Gómez, Hernán Quevedo Terán, Jorge Andrade Lara, Clotario Salinas Montaño, and Armando Serrano Puig.

3. Analysis whether the State incurred in a violation of the rights established in Article 8 of the Convention

113. Furthermore, as regards the right to be judged by a competent authority, the Court has established that people have "the right to be heard by regular courts, following procedures previously established[99] (…) to prevent persons from being judged by special tribunals set up for the case, or *ad hoc.*"[100] In the present report, the Commission concluded that at the time of the victims' appointment, the constitutional provisions enacted on July 23, 1997 – establishing indefinite tenure for justices and the use of the cooptation system to fill vacancies – were in force. The Commission believes it is clear that under those constitutional norms, the National Congress did not have the legal power to terminate the functions of the Supreme Court justices.

114. In this report the IACHR stated that the institution of *impeachment* before the legislative branch is a legitimate mechanism of control under the rule of law. However, in the instant case the constitucional and legal competence of the Congress to remove from office the magistrales of the Supreme Court of Justice, has not been established.

115. The Commission recalls that the rule invoked by Congress to claim competence and terminate the victims in this case was Transitory Provision No. 25 of the Constitution, the text of which, as indicated above (*supra* 111), makes it clear that it was not applicable to the victims. Furthermore, although the congressional resolution of December 8, 2004, referred to the Organic Law of the Judicial Branch, which gave the legislature certain powers, it has also been established that those provisions were not consistent with the subsequent constitutional norms of July 23rd, 2007 that ruled the situation of the justices of the Supreme Court of Justice. That situation was confirmed by the secretary of the National Congress at the request of the body's president during the legislative debate of December 8, 2004.[101]

116. Regarding the guarantees of independence and impartiality, the Court has ruled that although they are related,[102] it is also true that they each have a legal content of their own.[103] As the Court has said:

> One of the principal purposes of the separation of public powers is to guarantee the independence of judges.[104] Said autonomous exercise shall be guaranteed by the State both in

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[99] I/A Court H. R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 50; Citing: *Case of Castillo Petruzzi v. Peru*, Merits, Reparations, and Costs, Judgment of May 30, 1999, Series C No. 52, para. 129; and No. 5 of the Basic Principles on the Independence of the Judiciary.

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

[101] **Annex 15.** Transcript of the recording of the regular permanent morning session of the National Congress of December 8, 2004. Deed 24-001-IV. (Annex to petitioners' submission, received on May 24, 2007.)

[102] I/A Court H. R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 55; Citing the following: "For example, the Committee Against Torture has stated: 'The Committee is concerned at the judiciary's *de facto* dependence on the executive, which poses a major obstacle to the immediate institution of an impartial inquiry when there are substantial grounds for believing that an act of torture has been committed in any territory under its jurisdiction.' United Nations Committee against Torture, Conclusions and Recommendations: Burundi, CAT/C/BDI/CO/1, para. 12.

[103] I/A Court H. R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 55.

> its institutional aspect, that is, with regard to the Judicial Power as a system, as well as in connection with its individual aspect, that is, with regard to the specific judge as an individual. The objective of the protection lies in avoiding that the justice system in general and its members specifically be submitted to possible improper restrictions in the exercise of their duties by bodies foreign to the Judicial Power or even by those judges that exercise duties of revision or appeal.[105]
>
> On the other hand, impartiality demands that the judge acting in a specific dispute approach the facts of the case subjectively free of all prejudice and also offer sufficient objective guarantees to exclude any doubt the parties or the community might entertain as to his or her lack of impartiality.[106] The European Court of Human Rights has explained that personal or subjective impartiality is to be presumed unless there is evidence to the contrary.[107] Thus, the objective test entails determining whether the judge in question provided convincing elements to eliminate legitimate or grounded fears regarding his or her impartiality.[108] That is so since the judge must appear as to act without being subject to any influence, inducement, pressure, threat, or interference, be it direct or indirect,[109] and only and exclusively in accordance with – and on the basis of – the law.[110]

117. Regarding the independence of the National Congress in resolving to terminate the justices of the Supreme Court, the Commission notes first of all that the attribution of certain judicial, administrative, or disciplinary powers is not *per se* incompatible with the American Convention.

118. However, those powers, and the applicable procedures, must be clearly established in law. For example, it is common for constitutions to set special regulations to ensure compliance with the required independence and impartiality of the legislature when it is required to judge certain officials. That was not the case in the instant matter, and so it may be inferred that the National Congress did not act with the necessary guarantees of independence in terminating the victims.

119. In addition to this, and with reference to the guarantee of impartiality, the Commission believes that the case at hand involves a series of elements that give rise to reasonable doubt regarding the impartiality of the National Congress in terminating the functions of the Supreme Court justices. According to Congress's interpretation, their supposed term in office had expired in January 2003. In spite of that, it was not until December 8, 2004, following the President of the Republic's call for a special session, that Congress resolved to terminate the victims, arguing that they had been acting under an expired mandate for almost two years. That

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[104] I/A Court H. R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 55; I/A Court H. R., *Case of the Constitutional Court v. Peru.* Judgment of January 31, 2001, Series C No. 71. para. 73.

[105] I/A Court H. R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 55.

[106] I/A Court H. R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 56. Citing: ECHR, *Pullar v. the United Kingdom*, Judgment of June 10, 1996, *Reports of Judgments and Decisions 1996-III*, § 30; and *Fey v. Austria*, Judgment of February 24, 1993, Series A No. 255-A, p. 8, § 28.

[107] I/A Court H. R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 56. Citing: ECHR, *Daktaras v. Lithuania*, No. 42095/98 (Sect. 3) (bil.), ECHR, 2000-X – (10.10.00), § 30.

[108] I/A Court H. R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 56. Citing: ECHR, *Piersack v. Belgium*, Judgment of October 1, 1982, Series A No. 53; and *De Cubber v. Belgium*, Judgment of October 26, 1984, Series A No. 86.

[109] No. 2 of the Basic Principles on the Independence of the Judiciary.

[110] I/A Court H. R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 56.

took place precisely in a political context of heightened tension between the highest courts of the Ecuadorian judiciary and the executive and legislative branches. This is compounded by the National Congress's evidently arbitrary interpretation of Transitory Provision No. 25 of the 1998 Constitution in order to apply it to the justices of the Supreme Court, even though its text makes it clear that it did not apply to officials appointed prior to August 10, 1998. Thus, the external pressure, including pressure from the executive branch, the National Congress's failure to exercise its supposed competence to terminate the functions of the Supreme Court justices over the space of two years, the activation of that supposed competence in a political context marked by pronounced tension with the judiciary, and the obvious arbitrariness of the interpretation in which the decision was based, fuel doubts about objectivity and strict compliance with the law that allow a lack of impartiality on the part of the National Congress to be inferred in the case at hand.

120. Consequently, the IACHR concludes that the State did violate the right to be judged by a competent, independent, and impartial authority, enshrined in Article 8.1 of the American Convention in relation to the obligations established in articles 1.1 and 2 of the American Convention, with respect to Hugo Quintana Coello, Alfredo Contreras Villavicencio, Teodoro Coello Vásquez, Santiago Andrade Ubidia, José Julio Benítez Astudillo, Armando Bermeo Castillo, Eduardo Brito Mieles, Nicolás Castro Patiño, Galo Galarza Paz, Luis Heredia Moreno, Estuardo Hurtado Larrea, Ángel Lescano Fiallo, Galo Pico Mantilla, Jorge Ramírez Álvarez, Carlos Riofrío Corral, José Vicente Troya Jaramillo, Rodrigo Varea Avilez, Jaime Velasco Dávila, Miguel Villacís Gómez, Gonzalo Zambrano Palacios, Milton Moreno Aguirre, Arturo Donoso Castellón, Ernesto Albán Gómez, Hernán Quevedo Terán, Jorge Andrade Lara, Clotario Salinas Montaño, and Armando Serrano Puig.

121. Finally, as regards the guarantees set out in Article 8.2 of the American Convention, it has been established that the termination of the Supreme Court justices was ordered after the President of the Republic had convened a special session of Congress. The call for that session was issued on December 5, 2004, and the resolution was adopted by Congress on December 8, 2004, and there is no information whatsoever to indicate that the victims were granted any possibility of defending themselves. On the contrary, the State of Ecuador acknowledged that it was not necessary to notify the Supreme Court justices of the procedure or to grant them the right of defense. The IACHR has already made clear that under the applicable international standards, all proceedings to remove judges from office must offer guarantees of due process, regardless of what name is given to the procedure under domestic law.

122. Consequently, and given the State's express acknowledgment of the absence of procedural guarantees and the possibility of offering a defense in this case, the Commission concludes that the State of Ecuador did also violate the guarantees set out in Article 8.2 of the American Convention, in conjunction with the obligations set out in Articles 1.1 and 2 thereof, with respect to Hugo Quintana Coello, Alfredo Contreras Villavicencio, Teodoro Coello Vásquez, Santiago Andrade Ubidia, José Julio Benítez Astudillo, Armando Bermeo Castillo, Eduardo Brito Mieles, Nicolás Castro Patiño, Galo Galarza Paz, Luis Heredia Moreno, Estuardo Hurtado Larrea, Ángel Lescano Fiallo, Galo Pico Mantilla, Jorge Ramírez Álvarez, Carlos Riofrío Corral, José Vicente Troya Jaramillo, Rodrigo Varea Avilez, Jaime Velasco Dávila, Miguel Villacís Gómez, Gonzalo Zambrano Palacios, Milton Moreno Aguirre, Arturo Donoso Castellón, Ernesto Albán Gómez, Hernán Quevedo Terán, Jorge Andrade Lara, Clotario Salinas Montaño, and Armando Serrano Puig.

E. The right to judicial protection (Article 25 of the American Convention)

123. Article 25 of the American Convention establishes:

> 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights

> recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

124. Article 1.1 of the American Convention stipulates:

> The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

125. Article 2 of the American Convention provides:

> Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

126. The Court has repeatedly said that Article 25.1 of the Convention requires States to offer, to all people under their jurisdiction, effective judicial recourse against actions that violate their basic rights. The existence of that guarantee "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society, as defined by the Convention."[111]

127. Regarding the scope of the right to judicial protection, both the Commission and the Inter-American Court have repeatedly stated that it applies not only with respect to the rights set out in the Convention, but also to those recognized by the Constitution or in law.[112] The Court has also said that "for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress."[113] As held by the Court's constant jurisprudence, a remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective.[114]

128. In connection with the relationship between the right enshrined in Article 25 of the Convention and the obligations set out in Articles 1.1 and 2 thereof, the Court has ruled that:

> Article 25 is closely linked to the general obligation in Article 1.1 of the American Convention, in that it assigns duties of protection to the States Parties through their domestic legislation, from which it is clear that the State has the obligation to design and embody in legislation an

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[111] I/A Court H. R. *Case of Castillo Páez v. Peru, Merits,* Judgment of November 3, 1997, Series C No. 34, para. 82; *Case of Claude Reyes et al. v. Chile,* Merits, Reparations, and Costs, Judgment of September 19, 2006, Series C No. 151, para. 131; and *Case of Castañeda Gutman v. Mexico,* Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 6, 2008, Series C No. 183, para. 78.

[112] I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.),* Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2006, Series C No. 158, para. 122; *Case of Claude Reyes et al.*. Judgment of September 19, 2006, Series C No. 151, para. 128; and *Yatama Case*, Judgment of June 23, 2005, Series C No. 127, para. 167. See also: IACHR, Application to the Inter-American Court of Human Rights, *Case of the Union of Employees, Professionals, and Technicians of the Lima Water and Sewerage Service Company v. Peru*, January 16, 2010, para. 57.

[113] I/A Court H. R.*C.f. Judicial Guarantees in States of Emergency (Arts. 27.2, 25, and 8 of the American Convention on Human Rights)*, para. 24; *Case of the Five Pensioners v. Peru*, Judgment of February 28, 2003, Series C No. 98, para. 136.

[114] I/A Court H. R *c.f. Judicial Guarantees in States of Emergency (Arts. 27.2, 25, and 8 of the American Convention on Human Rights)*, para. 24*; Case of Baldeón García v. Peru*, Merits, Reparations, and Costs, Judgment of April 6, 2006, Series C No. 147, para. 145, and *Case of Almonacid Arellano et al. v. Chile*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 154, para. 111.

> effective recourse, and also to ensure the due application of the said recourse by its judicial authorities.[115] At the same time, the State's general duty to adapt its domestic law to the stipulations of said Convention in order to guarantee the rights enshrined in it, established in Article 2, includes the enactment of regulations and the development of practices that seek to achieve an effective observation of the rights and liberties enshrined in it, as well as the adoption of measures to suppress the regulations and practices of any nature that imply a violation to the guarantees established in the Convention.[116]

129. The Commission notes that in the case at hand the victims filed no judicial remedies to challenge the termination resolution adopted by the National Congress on December 8, 2004. According to the petitioners, that failure to pursue remedies was chiefly due to: (i) the existence of a decision by the Constitutional Court expressly ruling *amparo* suits inadmissible; (ii) the repeated rejection of suits filed by the former members of the Constitutional Court who had been dismissed in similar circumstances; and (iii) the absence of guarantees of independence and impartiality at the Constitutional Court that would be called on to hear the final instance of any *amparo* remedies filed.

130. In response, the State argued that the alleged violation of the right enshrined in Article 25 of the American Convention is inadmissible, since the victims in the case did not pursue such domestic remedies as unconstitutionality suits or the remedies offered by administrative proceedings.

131. The Commission again states that at the admissibility stage – in its analysis of the exhaustion of domestic remedies requirement in particular – it resolved the matters related to the procedural effects of failing to pursue those remedies referred to by the State. At the merits stage, the Commission will consider the petitioners' claims regarding their inability to file for *amparo* actions in the specific context in which they found themselves, as well as whether this situation affected their right to judicial protection.

132. Thus, the Commission has established that on December 2, 2004, the Constitutional Court issued a decision ruling that to suspend the effects of a parliamentary resolution that was allegedly in violation of the Constitution, the only admissible action was an unconstitutionality suit filed with the Constitutional Court. It consequently determined that all the country's judges had to reject and rule inadmissible any *amparo* actions lodged with them for that purpose. It further added that a judge's failure to do so could lead to legal action.[117] Several elements in that decision are worth noting.

133. First of all, the decision was adopted at the express request of the President of the Republic "to prevent trial judges from admitting for processing constitutional *amparo* actions against Parliamentary Resolution 25-160, adopted by the National Congress on November 25, 2004." Although this decision of the Constitutional Court was issued prior to the termination of the victims in this case, the Commission notes that through Resolution Parliamentary 25-160, Congress ordered the termination of the members of the Constitutional Court in terms similar to those of Resolution 25-181 whereby, some days later, it ordered the termination of the Supreme Court justices. In

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[115] I/A Court H.R., *Reverón-Trujillo v. Venezuela Case.* Preliminary Objection, Merits, Reparations, and Costs. Judgment of june 30, 2009. Series C No. 197. Párr. 60. Citing: *c.f. Case of the Street Children (Villagrán Morales ''et al.) v. Guatemala*, Merits, Judgment of November 19, 1999, Series C No. 63, para. 237; *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations, and Costs, Judgment of August 31, 2001, Series C No. 79, para. 135; and *Case of the Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment of June 17 2005, Series C No. 125, para. 99.

[116] I/A Court H.R., *Reverón-Trujillo v. Venezuela Case.* Preliminary Objection, Merits, Reparations, and Costs. Judgment of june 30, 2009. Series C No. 197. Párr. 60. Citing: *c.f. Case of Castillo Petruzzi v. Peru*, Merits, Reparations, and Costs, Judgment of May 30, 1999, Series C No. 52, para. 207.

[117] **Annex 9.** Decision of the Constitutional Court, dated December 2, 2004. (Annex to the initial petition received on December 30, 2004.)

addition, although the President of the Republic's request was limited to Parliamentary Resolution 25-160, the Constitutional Court restricted the admissibility of *amparo* filings in challenging parliamentary resolutions in general.

134. So, as narrated in the proven facts, when faced with *amparo* remedies filed by the former members of the Constitutional Court, the courts were unanimous in stating that under the Constitutional Court's ruling of December 2, 2004, those filings were inadmissible for challenging the constitutionality of parliamentary resolutions. The Commission therefore believes that the Constitutional Court's decision of December 2, 2004, was an impediment to the Supreme Court justices' filing for *amparo* relief against the resolution whereby their functions were terminated.

135. In second place, the Commission notes that the Constitutional Court's December 2, 2004 decision was based on an earlier resolution issued by the Supreme Court of Justice on June 27, 2001, in which it clarified a series of criteria relating to constitutional *amparo*. A reading of that resolution reveals that it cannot be use as grounds for the inadmissibility of *amparo* remedies for challenging Congress's termination resolution. Thus, what the Supreme Court of Justice established on June 27, 2001, was that *amparo* was inadmissible against regulatory provisions and resolutions of a general nature, since unconstitutionality suits were admissible with respect to them.

136. The Commission holds that the resolution whereby the National Congress terminated the justices of the Supreme Court can in no way be considered a resolution of general nature, in that it disposed of the victims' rights and interests, affecting them in a particular way that could not be challenged by means of an unconstitutionality suit which, by nature, is general and abstract. The Commission therefore believes that the Constitutional Court's decision of December 2, 2004, was grounded on an contradictory interpretation of the text of the Supreme Court's resolution of June 27, 2001, which it claimed to use as its basis.

137. Third, even if an unconstitutionality suit could be considered a suitable and effective remedy for challenging the victims' termination, it would have fallen to the Constitutional Court to rule on any such filing. As indicated in the narrative of the facts, the members of the Constitutional Court at the time the Supreme Court justices were terminated – December 8, 2004 – were appointed by Congress following the termination of the earlier members of the Constitutional Court. The Commission believes that given the way in which the members of that court were appointed, without a legal or constitutional basis, and without clear rules governing their tenure, the Constitutional Court as it stood in December 2004 did not afford adequate guarantees of independence. In addition, it is logical to infer that the Constitutional Court so composed would have a direct interest in the rejection of any action or remedy dealing with the terminations at the Supreme Court of Justice or the Constitutional Court, since a favorable decision would mean that its own appointment was invalid. In such circumstances, neither did any guarantees of impartiality in the resolution of a possible unconstitutionality suit exist.

138. Based on the foregoing considerations, the Commission believes that: (i) the victims were arbitrarily and unreasonably prevented from filing *amparo* remedies against the National Congress's termination resolution; and (ii) the Constitutional Court's indicated remedy – an unconstitutionality suit – was not suitable for challenging the particular effects of that resolution and, in any event, it was an illusory remedy in light of the absence of independence and impartiality on the part of the authority that would have resolved it.

139. Consequently, the Commission concludes that the State of Ecuador failed to provide a simple, prompt, and effective judicial remedy and therefore did violate the right to judicial protection enshrined in Article 25.1 of the American Convention, in conjunction with the guarantees of independence and impartiality established in Article 8.1 and the obligations set out in Articles 1.1 and 2 thereof, with respect to Hugo Quintana Coello, Alfredo Contreras Villavicencio, Teodoro

Coello Vásquez, Santiago Andrade Ubidia, José Julio Benítez Astudillo, Armando Bermeo Castillo, Eduardo Brito Mieles, Nicolás Castro Patiño, Galo Galarza Paz, Luis Heredia Moreno, Estuardo Hurtado Larrea, Ángel Lescano Fiallo, Galo Pico Mantilla, Jorge Ramírez Álvarez, Carlos Riofrío Corral, José Vicente Troya Jaramillo, Rodrigo Varea Avilez, Jaime Velasco Dávila, Miguel Villacís Gómez, Gonzalo Zambrano Palacios, Milton Moreno Aguirre, Arturo Donoso Castellón, Ernesto Albán Gómez, Hernán Quevedo Terán, Jorge Andrade Lara, Clotario Salinas Montaño, and Armando Serrano Puig.

VI. CONCLUSIONS

140. From all the foregoing, the Commission concludes that the State of Ecuador is responsible for violating the rights to a fair trial, to freedom from *ex post facto* laws, and to judicial protection, enshrined in Articles 8, 9, and 25 of the American Convention, in conjunction with the obligations set out in Articles 1.1 and 2 thereof, with respect to Hugo Quintana Coello, Alfredo Contreras Villavicencio, Teodoro Coello Vásquez, Santiago Andrade Ubidia, José Julio Benítez Astudillo, Armando Bermeo Castillo, Eduardo Brito Mieles, Nicolás Castro Patiño, Galo Galarza Paz, Luis Heredia Moreno, Estuardo Hurtado Larrea, Ángel Lescano Fiallo, Galo Pico Mantilla, Jorge Ramírez Álvarez, Carlos Riofrío Corral, José Vicente Troya Jaramillo, Rodrigo Varea Avilez, Jaime Velasco Dávila, Miguel Villacís Gómez, Gonzalo Zambrano Palacios, Milton Moreno Aguirre, Arturo Donoso Castellón, Ernesto Albán Gómez, Hernán Quevedo Terán, Jorge Andrade Lara, Clotario Salinas Montaño, and Armando Serrano Puig.

VII. RECOMMENDATIONS

141. In consideration of the foregoing conclusions,

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

1. Reinstate the victims in the judiciary, if they so wish, in positions similar to those that they held, with the same remuneration, social benefits, and rank comparable to that they would hold today if their functions had not been terminated. If, for grounded reasons, reinstatement is not possible, the State shall pay reasonable indemnification to the victims or, if applicable, to their assigns.

2. Pay the victims the professional wages and/or social benefits they failed to receive from the time of their termination up to the moment they are reinstated or the alternative indemnification described in the previous recommendation is paid.

3. Adopt measures of nonrepetition, including the measures necessary so that domestic law and applicable practice obey clear criteria and ensure guarantees in the appointment, tenure, and removal of judges, in accordance with the standards established in the American Convention.