

REPORT No. 42/14
CASE 12.453
MERITS
OLGA YOLANDA MALDONADO ORDOÑEZ
GUATEMALA
JULY 17, 2014

CONTENTS

| | | |
|------|---|----|
| I. | SUMMARY | 1 |
| II. | PROCESSING BY THE COMMISSION..... | 1 |
| III. | POSITIONS OF THE PARTIES | 2 |
| | A. The petitioners..... | 2 |
| | B. The State | 3 |
| IV. | ANALYSIS OF MERITS | 5 |
| | A. Established facts..... | 5 |
| | 1. Olga Maldonado Ordóñez and her separation from office..... | 5 |
| | 2. Remedies invoked and the response at the domestic level..... | 8 |
| | B. Legal analysis..... | 12 |
| | Right to a fair trial, principle of legality, and right to judicial protection (Articles 8, 9, and 25 of the American Convention, in connection with Article 1[1] of that treaty) 12 | |
| V. | CONCLUSIONS..... | 21 |
| VI. | RECOMMENDATIONS..... | 22 |

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I. SUMMARY

1. On July 15, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition submitted by Olga Yolanda Maldonado Ordóñez and the lawyers Dr. Alejandro Sánchez and Dr. Jorge Raúl Rodríguez Ovalle (hereinafter "the petitioners") alleging that the State of Guatemala (hereinafter "the State" or "the Guatemalan State") had violated Mrs. Maldonado Ordóñez' rights to a fair trial and judicial protection following her dismissal from her positions as an educator and assistant in the Office of the Human Rights Ombudsman (*Procuraduría de los Derechos Humanos*).

2. According to the petitioners, Mrs. Maldonado was dismissed by the Ombudsman based on charges made by family members that were neither reported to nor investigated by the judicial authorities. They said that Olga Maldonado challenged her dismissal by invoking the judicial remedy contained in the Personnel Regulations of the Office of the Ombudsman (*Reglamento de Personal de la Oficina del Procurador*), namely an appeal against the dismissal decision to the Court of Appeals in Labor and Social Security Matters (*Corte de Apelaciones de Trabajo y Previsión Social*). They said that that organ declared that it lacked jurisdiction to take up the matter, basing its decision on an interpretation that ran contrary to the Constitution, which, in the petitioners' opinion, restricted Mrs. Maldonado's right of recourse to justice. They added that they filed an action of unconstitutionality "in a specific case" in hopes that the Constitutional Court of the Supreme Court of Justice would order the Court of Appeals in Labor and Social Security Matters to admit the remedy invoked by Mrs. Maldonado. They said that the Constitutional Court ruled that the motion was inadmissible merit because an appeal to the Court of Appeals in Labor and Social Security Matters was not the appropriate mechanism for challenging her dismissal, without indicating, however, what recourse she should seek. The petitioners said that, thus, Mrs. Maldonado was left bereft of protection.

3. The State, for its part, contested the facts alleged by the petitioners. In the course of the merits proceedings before the Commission, the State has altered its position on the remedy that Mrs. Maldonado should have attempted in challenging her dismissal on a number of occasions. To begin with, it said that an appeal to the Court of Appeals in Labor and Social Security Matters was not the suitable remedy and that she had to take her case to the Office of the Inspector General in order to initiate a conciliation proceeding. Then, it said that she should have filed suit at first instance with the Labor and Social Security Court (*Juzgado de Trabajo y Previsión Social*). Finally, the state indicated that an appeal to the Court of Appeals in Labor and Social Security Matters was the appropriate remedy, as established in the Ombudsman Personnel Regulations, but that she should have filed an action for *amparo*, not an action of unconstitutionality, to have her case reviewed by that organ.

4. Having examined the information available, the Commission concluded that the State of Guatemala was responsible for violation of the right to a fair trial, the principle of legality, and the right to judicial protection recognized in Articles 8.1, 8.2, 9, and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in conjunction with Article 1.1 of said instrument to the detriment of Olga Yolanda Maldonado Ordóñez.

II. PROCESSING BY THE COMMISSION

5. Olga Yolanda Maldonado Ordóñez and the lawyers Alejandro Sánchez and Jorge Raúl Rodríguez Ovalle lodged the initial petition by means of a communication dated July 15, 2002. The processing

of the petition, from the time it was lodged to the decision on admissibility, is described in detail in Report on Admissibility 36/04 of March 11, 2004.¹ In that report, the IACHR concluded that the petition was admissible with respect to the claims concerning the rights protected in Articles 8 and 25 of the American Convention in connection with Article 1.1 of said instrument.

6. On March 3, 2004, the IACHR sent a communication to the parties, informing them of the adoption of the report on admissibility. On June 25, 2004, the State presented its comments. Furthermore, on October 26, 2004 and March 2, 2005, the parties held working meetings in the context of respective sessions of the Commission.

7. The petitioners presented comments on May 19, 2005; January 2, 2006; August 30 and December 13, 2011; and April 4, 2013. For its part, the State submitted comments on March 14 and August 29, 2005; March 17, 2006; October 17, 2011; January 24 and November 26, 2012; and July 24, 2013.

8. All written communications were duly forwarded to the parties.

III. POSITIONS OF THE PARTIES

A. The petitioners

9. The petitioners held that Mrs. Maldonado's dismissal from her position at the Office of the Human Rights Ombudsman was based on an accusation made by her siblings concerning the alleged falsification of a notarized deed of transfer of rights. They said that the accusation was never proven and that judicial proceedings were never instituted in that regard. They said that, in spite of that, however, the Ombudsman did not take that fact into consideration in the decision to dismiss her. They also held that the accusation made by her siblings was a personal matter, a circumstance not recognized as a cause for dismissal in either the Ombudsman's Personnel Regulations or the Labor Code. They added that both sets of regulations envisage grounds for dismissal based on acts committed within or against the institution, which was not the case in this instance.

10. They said that they attempted both an administrative and a judicial remedy against the Ombudsman's decision to dismiss her. With respect to the administrative remedy, the petitioners said that they filed an appeal with the National Civil Service Office, which declared that it lacked jurisdiction based on Articles 108 of the Constitution and 80.d and 80.e of the Civil Service Law. They indicated that those provisions state that the Office of the Ombudsman must act according to its own regulations. The petitioners recognized that the National Civil Service Office did indeed lack jurisdiction to decide on her dismissal.

11. Accordingly, the petitioners insisted that the suitable judicial remedy for challenging Mrs. Maldonado's dismissal was the appeal to the Court of Appeals in Labor and Social Security Matters. They said that said remedy is established and regulated by Article 80 of the Ombudsman's Personnel Regulations. They held that the decision of the Second Division of the Court of Appeals was that it could not take up appeal because the Ombudsman's Personnel Regulations cannot grant it jurisdiction over matters not covered by Article 303 of the Labor Code.

12. They argued that the Court of Appeals should have heard their appeal because that is what the Ombudsman's Personnel Rules establish. They said that the Court of Appeals should have applied Article 106 of the Constitution, which provides that in the event of doubt as to the scope of legal or regulatory provisions on labor matters, the latter should be interpreted in the manner most favorable to workers. They added that it should also have taken into account Articles 10 and 15 of the Judiciary Law (*Ley del Organismo*

¹ See, IACHR, Report No. 36/04, Petition 1643/2002, Admissibility, Olga Yolanda Maldonado Ordóñez, Guatemala, March 11, 2004. See: <http://www.cidh.org/annualrep/2004eng/Guatemala.1643.02eng.htm>

Judicial), which refer to the obligation of tribunals not to refuse to administer justice where there is ambiguity of provisions.

13. Therefore, according to the petitioners, the decision of the Court of Appeals violated the right of recourse to justice as well as the right to a defense given that Mrs. Maldonado was neither summoned nor granted a hearing to present her arguments.

14. The petitioners said that they filed an action of unconstitutionality “in a specific case” in hopes that the Constitutional Court of the Supreme Court of Justice might reason that the Court of Appeals’ decision that it lacked jurisdiction was based on an unconstitutional interpretation of the Labor Code. They added that the Constitutional Court would then be able to order the Court of Appeals to find on the appeal lodged.

15. They said that the Constitutional Court rejected their motion with the argument that the appropriate time for presenting it had been before the Court of Appeals applied the Civil Service Law and the Labor Code. The petitioners submitted that such an interpretation was “distorted” as they had no way of knowing that the Division would apply those laws.

16. They also noted that, in its ruling, the Constitutional Court argued that the appeal to the Court of Appeals was not the appropriate procedure to dispute her dismissal. In spite of that, they said that the Constitutional Court did not indicate what the appropriate judicial remedy was.

17. The petitioners held that Mrs. Maldonado was refused recourse to justice inasmuch as neither the administrative or judicial decisions addressed the merits of her claim, in violation of her rights to a fair trial and judicial protection.

18. The petitioners stressed that there was no other suitable remedy by which to analyze and reverse Mrs. Maldonado's dismissal. With respect to the State's argument regarding the possibility of recourse to the Office of the Inspector General, they contended that the latter performs a mediating function and is not mandatory, as is established in the Ombudsman's Personnel Regulations. They argued that there was no provision to activate this mediation process as there existed a precedent whereby the Office of the Inspector General did not intervene in matters in which the parties were the State and its employees.

19. As to the State's argument regarding the possibility of a remedy before a labor court of first instance, the petitioners said that, under the Labor Code, that court only has jurisdiction over labor disputes between employers and workers in the private sector.

20. As to the State's assertion that Mrs. Maldonado collected vacation pay and bonuses after her dismissal, the petitioners said that though that information was true, she did not receive any severance payment for all the years that she worked at the Office of the Human Rights Ombudsman. They said that Mrs. Maldonado was duped into signing a document saying that she waived her rights and claims, given that she was told that there was no other payroll form to record the payments received. They held that Mrs. Maldonado has waived neither her rights nor claims as she only undertook not to again collect the entitlement payments already received.

B. Position of the State

21. The State argued that the petitioners' claim does not address either "the motives or reasons for the Human Rights Ombudsman's dismissal of the petitioner, or the legality or illegality of that act" but, rather, centers on the supposed violation of Olga Maldonado's right to a defense and recourse to justice. However, the State later noted that in no part of Ombudsman's Personnel Regulations does it say that acts contrary to the law, decency, and moral conventions committed by the institution's staff must first be judged by a court as a precondition for the dismissal of an employee of the institution.

22. Preliminarily, the State held that under Article 80 of the Personnel Regulations of the Office of the Human Rights Ombudsman it was appropriate to file a petition for review before the organ. The State recognized that the alleged victim did so within the time prescribed by the law for that purpose. The State argued, however, that "apparently the decision refusing the motion was signed by the chief of the human resources unit of the Ombudsman's Office ... despite that, the party concerned did not challenge said anomaly in the decision ... and, therefore, it became final".

23. In addition, the State held that the administrative and judicial decisions went against Mrs. Maldonado because she received "clearly deficient legal counsel." It added that that is not sufficient grounds to hold that the State is responsible for violations of the rights to a fair trial and judicial protection.

24. With respect to the appeal filed by Mrs. Maldonado with the National Civil Service Office, the State said that it was not the suitable mechanism because that organ is not competent to take cognizance of "matters concerning requests relating to the reinstatement or worker entitlement payments." It stressed that the alleged victim had the opportunity to present a defense in the administrative proceedings.

25. As regards the judicial proceedings, the Commission notes that during the merits stage the State advanced different submissions regarding which remedy Mrs. Maldonado should invoke to challenge her dismissal.

26. To begin with, in its briefs presented in 2004, 2011, and 2012, it argued that Olga Maldonado erroneously took her case to the Court Of Appeals in Labor and Social Security Matters when she should have gone to the Office of the Labor Inspector General. It stated that in accordance with Articles 278 to 282 of the Labor Code, the Inspector General contacted the Ombudsman for the purpose of conciliation or reaching a settlement regarding Mrs. Maldonado's dismissal. The State added that in the event of a failure of the parties to reach a conciliation agreement, the alleged victim should have filed suit with "the courts of justice" and exhausted the various proceedings, such as "a verbal trial and conciliation period, objections, examination of evidence, judgment at first instance, appeals, second instance, and amparo."

27. At a second point in the inter-American proceedings, in its written submissions in 2013, the State argued that the appeal to the Court of Appeals in Labor and Social Security Matters was not suitable because she should have filed a suit at first instance with the Labor and Social Security Court. It held that according to Article 372 of the Labor Code, that was the competent authority to take cognizance of labor disputes. It added that Mrs. Maldonado sought to submit the dismissal decision of the Human Rights Ombudsman to the second instance as opposed to a judgment or decision at first instance.

28. At a third juncture, separate from the other two submissions described above, in its brief of August 2005, the State argued that the appeal to the Court of Appeals in Labor and Social Security Matters was the appropriate remedy to review Mrs. Maldonado's dismissal. However, it held that against that organ's decision that it lacked jurisdiction over the matter, the alleged victim should have filed a motion for amparo, as opposed to an action of unconstitutionality.

29. In that regard, it argued that the motion for amparo should have been interposed so that the Constitutional Court might require the judges of the Court of Appeals in Labor and Social Security Matters "to take cognizance of the appeal in accordance with due process." It added that, in that way, "the jurisdiction of the Court of Appeals in Labor and Social Security Matters would have been made clear." The State said that "by choosing the wrong labor proceeding, she failed to secure the intervention of the appropriate court in settling her dispute with the Ombudsman's Office."

30. As regards the unconstitutionality action brought by Olga Maldonado, the State said that "on invoking the constitutional proceeding, the petitioner did so in full knowledge that the proceeding would not succeed because the earlier rulings were correct and grounded in law."

31. The State said that according to the release of claims for employment signed by Mrs. Maldonado before the Human Rights Ombudsman, she undertook not to attempt any further legal action after

collecting her entitlement payments. It added that, consequently, Mrs. Maldonado may no longer institute labor litigation proceedings in the courts of justice seeking that the Human Rights Ombudsman be ordered to: (i) pay the entitlement payments and wages that she ceased to receive during the time that she stopped working; or (ii) reinstate her in her previous position.

32. Finally, the State held that the statute of limitations had run on Mrs. Maldonado's right to contest her dismissal and that, therefore, she was unable to present any claim via legal proceedings. The State said that the alleged victim "lost time invoking remedies in the wrong jurisdiction."

IV. ANALYSIS OF MERITS

A. Established facts

1. Olga Maldonado Ordóñez and her separation from office

33. Olga Maldonado Ordóñez is a social worker and was 56 years old at the time of the facts alleged in the petition.² On April 1, 1982, she began working at the Office of the Human Rights Ombudsman as a technical officer in the education department.³ Subsequently, Mrs. Maldonado held a regular position as an educator at the Office of the Ombudsman in the Department of Quetzaltenango until February 15, 2000.⁴ Later, Mrs. Maldonado became a departmental assistant at the Office of the Human Rights Ombudsman in Quiché Department.⁵ Under Article 275 of the Constitution of Guatemala, the Human Rights Ombudsman has the following powers:

- a. To promote the adequate functioning and expediting of government administration in matters of human rights;
- b. To investigate and denounce administrative behavior that is detrimental to the interests of persons;
- c. To investigate every type of denunciation that may be brought by any person regarding human rights violations;
- d. To recommend privately or publicly to officials the modification of administrative conduct which has been objected to; e. To publicly censure acts or conduct that are contrary to constitutional rights;
- f. To bring judicial or administrative actions or remedies, in cases where it is appropriate; and
- g. Such other functions and powers as may be assigned to him by law.⁶

34. On February 21, 2000, Marco Tulio, Joel Enrique, José Roberto, and Oscar Armado Maldonado Ordóñez, siblings of the alleged victim, presented a written communication to the Human Rights Ombudsman.⁷ According to the Ombudsman, that communication was regarded by the latter as a complaint in which the alleged victim was accused of having falsified notarized document No. 470 of October 11, 1994,

² Annex 1. Letter to the Human Rights Ombudsman from Olga Maldonado Ordóñez, dated June 2, 2000. Appendix 2 to the initial petition of July 16, 2002.

³ Annex 1. Letter to the Human Rights Ombudsman from Olga Maldonado Ordóñez, dated June 2, 2000. Appendix 2 to the initial petition of July 15, 2002.

⁴ Annex 2. Decision No. 81-2000 of the Human Rights Ombudsman, May 16, 2000. Appendix 1 to the initial petition of July 15, 2002.

⁵ Annex 2. Decision No. 81-2000 of the Human Rights Ombudsman, May 16, 2000. Appendix 1 to the initial petition of July 15, 2002.

⁶ Annex 3. Constitution of Guatemala. Free translation. Available in Spanish at: http://www.oas.org/juridico/MLA/sp/gtm/sp_gtm-int-text-const.pdf

⁷ Annex 2. Decision No. 81-2000 of the Human Rights Ombudsman, May 16, 2000. Appendix 1 to the initial petition of July 15, 2002. See also: State's brief of October 17, 2011

given that there appear two signatures when, according to a authenticated plain copy of that document, there should have been three.⁸ According to Mrs. Maldonado, that public instrument was signed by her mother, Florinda Ordóñez Rodas, since deceased; her sister, Mary Luz Maldonado Ordóñez; and Mrs. Maldonado herself.⁹ In the notarized document, the mother of the alleged victim assigned to her daughters, Olga and Mary Luz Maldonado, her hereditary and possessory rights over a building and the properties left by her husband Dámaso Guadalupe Maldonado upon his death.¹⁰

35. On April 5, 2000, in accordance with Article 76.a of the Human Rights Ombudsman's Personnel Regulations, Mrs. Maldonado was notified in writing of "the cause of dismissal of which she [was] charged,"¹¹ which was that contained in Articles 74.4 and 74.15 of the Human Rights Ombudsman's Personnel Regulations.¹² The texts of those provisions are as follows:

Article 74. Causes of dismissal. Workers of the institution may be dismissed from their positions without any liability to the latter if they incur any of the following causes:

...

4. If a worker commits any criminal offense or fault against property to the detriment of the institution or any of their work colleagues, or to the detriment of a third party in the workplace; also when they cause, either intentionally or through lack of care or negligence, material damage to equipment, machinery, tools, or other work-related objects;

...

15. If a worker engages in unlawful acts that imply the intention to cause harm to the institution or a violation of labor norms that constitute manifest acts of sabotage of the institution's operations and activities.¹³

36. The petitioners recognized that Mrs. Maldonado was able to present a brief and evidence in her defense to the Ombudsman, in accordance with Article 76.b of the Ombudsman's Personnel Regulations.¹⁴ On May 16, 2000, the Human Rights Ombudsman issued decision No. 81-2000, by which he dismissed Olga Maldonado from her internal position as a departmental assistant and her regular position as an educator.¹⁵ The ombudsman found that the situation complained of:

... constitute[d] a series of legal acts and disputes of a personal nature whose outcome could seriously harm the institution of the Human Rights Ombudsman because of Mrs. Maldonado Ordóñez' employment relationship with the institution ... and that it ha[d] the obligation to avert, both within and outside the institution, the commission of acts contrary to the law, decency, and moral conventions that might undermine its prestige.¹⁶

⁸ Annex 2. Decision No. 81-2000 of the Human Rights Ombudsman, May 16, 2000. Appendix 1 to the initial petition of July 15, 2002.

⁹ Annex 1. Letter to the Human Rights Ombudsman from Olga Maldonado Ordóñez, dated June 2, 2000. Appendix 2 to the initial petition of July 15, 2002.

¹⁰ Annex 4. Testimony in notarized document No. 470, dated October 11, 1994. Appendix 3 to the initial petition of July 15, 2002.

¹¹ Annex 5. Article 76.a of the Human Rights Ombudsman's Regulations. Available at: http://www.pdh.org.gt/accesinfo/images/downloads/2012/reglamento_de_personal.pdf

¹² Annex 2. Decision No. 81-2000 of the Human Rights Ombudsman, May 16, 2000. Appendix 1 to the initial petition of July 15, 2002.

¹³ Annex 6. Human Rights Ombudsman's Personnel Regulations. Available at: http://www.pdh.org.gt/accesinfo/images/downloads/2012/reglamento_de_personal.pdf

¹⁴ Annex 7. Petitioners brief of August 30, 2011

¹⁵ Annex 2. Decision No. 81-2000 of the Human Rights Ombudsman, May 16, 2000. Appendix 1 to the initial petition of July 15, 2002.

¹⁶ Annex 2. Decision No. 81-2000 of the Human Rights Ombudsman, May 16, 2000. Appendix 1 to the initial petition of July 15, 2002.

37. The Ombudsman held that the dismissal was supported by Articles 74.4 and 74.15 of the Human Rights Ombudsman's Personnel Regulations, as well as articles 77.d of the Labor Code.¹⁷ The latter provision essentially repeats what it says in the Regulations, as follows:

Article 77. The following are just cause for the employer to terminate the employment contract without any liability on his part:

...

d. When a worker commits any crime or fault against property to the detriment of the employer or any of their work colleagues, or to the detriment of a third party on the premises; also when they cause, either intentionally or through lack of care or negligence, material damage to machinery, tools, raw materials, products or other objects related directly or irrefutably to the work;¹⁸

38. The Ombudsman added that the dismissal would be effective as of May 18, 2000.¹⁹ That same day, Mrs. Maldonado presented a letter to the Assistant Ombudsman for Human Rights "irrevocably resigning from the internal position of departmental assistant and the regular position of educator."²⁰ She said that the resignation was due to "acute respiratory problems" that had been troubling her in recent days, for which she even had to be rushed to hospital.²¹ She asked the Assistant Ombudsman to accept her resignation and that she be informed "regarding the procedure for the entitlement payments that she was legally due."²²

39. Subsequently, on May 22, 2000, Mrs. Maldonado sent a letter desisting from her resignation "with the aim that it be rendered void in all respects."²³ She said that she had tendered her resignation for "health reasons consisting of asthmatic respiratory problems,"²⁴ but that "thanks to the medical attention, [she had] made a full and satisfactory recovery" from its effects.²⁵

40. On May 24, 2000, the Chief of the Human Resources Unit of the Ombudsman's Office wrote to Olga Maldonado informing her that the Human Rights Ombudsman had decided that "her resignation was not viable because she had been notified of her dismissal for cause before her note was received."²⁶

¹⁷ Annex 2. Decision No. 81-2000 of the Human Rights Ombudsman, May 16, 2000. Appendix 1 to the initial petition of July 15, 2002.

¹⁸ Annex 8. Labor Code of Guatemala. Free translation. Available in Spanish at: <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/29402/73185/S95GTM01.htm>

¹⁹ Annex 2. Decision No. 81-2000 of the Human Rights Ombudsman, May 16, 2000. Appendix 1 to the initial petition of July 15, 2002.

²⁰ Annex 9. Letter from Olga Maldonado Ordóñez to the Human Rights Ombudsman dated May 18, 2000. Appendix 5 to the initial petition of July 15, 2002.

²¹ Annex 9. Letter from Olga Maldonado Ordóñez to the Human Rights Ombudsman dated May 18, 2000. Appendix 5 to the initial petition of July 15, 2002.

²² Annex 9. Letter from Olga Maldonado Ordóñez to the Human Rights Ombudsman dated May 18, 2000. Appendix 5 to the initial petition of July 15, 2002.

²³ Annex 10. Letter from Olga Maldonado Ordóñez to the Human Rights Ombudsman dated May 22, 2000. Appendix 5 to the initial petition of July 15, 2002.

²⁴ Annex 10. Letter from Olga Maldonado Ordóñez to the Human Rights Ombudsman dated May 22, 2000. Appendix 5 to the initial petition of July 15, 2002.

²⁵ Annex 10. Letter from Olga Maldonado Ordóñez to the Human Rights Ombudsman dated May 22, 2000. Appendix 5 to the initial petition of July 15, 2002.

²⁶ Annex 11. Official Letter No. URH-244-2000 from the Chief of the Human Resources Unit of the Human Rights Ombudsman, dated May 24, 2000. Appendix 6 to the initial petition of July 15, 2002.

41. On May 31, 2001, Mrs. Maldonado received 11,727.48 quetzals from the Human Rights Ombudsman as (i) vacation pay for retirement prorated for the period from January 4 to May 17, 2000; (ii) annual bonus prorated for the period from July 1, 1999 to May 17, 2000; (iii) specific supplementary pay prorated for the period from March 1 to May 17, 2000; (iv) vacation bonus prorated for the period from March 1 to May 17, 2000; and (v) Christmas bonus.²⁷ On the voucher that the alleged victims signed it says:

... this amount is for the worker entitlement payments ... described for the services rendered, and therefore I voluntarily grant the Office of the Human Rights Ombudsman full, effective and final release of any and all claims for employment through civil, criminal, administrative, mercantile, or, in particular, labor proceedings.²⁸

2. Remedies invoked and the response at the domestic level

2.1. Appeal to the Office of the Director of the National Civil Service Office

42. On May 22, 2000, Mrs. Maldonado filed an appeal with the Director of the National Civil Service Office.²⁹ She contended that the causes mentioned by dismissal decision No. 81-2000 do not entail "any fault in service or situation that could compromise the Office of the Human Rights Ombudsman as an institution," but "a family dispute over [her] parents' estate that could be dealt with differently, without turning the ... Ombudsman ... into judge and penalizer."³⁰

43. In that regard, Olga Maldonado asked the National Civil Service Office to conduct an inquiry in order to declare her dismissal wrongful. Mrs. Maldonado based her position on Articles 80, 81, and 83 of the Civil Service Law. The texts of those provisions are as follows:

Article 80. The claims referred to in Article 19.6 of this law and the others contained therein,³¹ must be pursued in the following manner: The interested party must submit the claims in writing to the director of the National Civil Service Office within three days after notification of the decision being challenged. Upon receipt of the submission, the director will refer it immediately to the National Civil Service Board, which must resolve the matter within 30 days. In cases of dismissal only, if the Board does not issue a decision within that time period, the administrative route will be deemed exhausted, and the petition rejected, whereupon the appellants may appeal to the divisions of the Labor and Social Security Court. Those tribunals shall decide the matter in accordance with normal labor procedures, at a single level of jurisdiction. In other cases covered by this law, the Board must decide any claim within the same period of 30 days, but its resolutions shall be deemed final and not subject to appeal.

Article 81. Effects of the Decision. With respect to the dismissal, the National Civil Service Board must decide whether it is rightful or wrongful. In the case of the former, the appointing authority must immediately execute the respective decision unless it has already

²⁷ Annex 12. Voucher Ref. DF-007-2001-megadev, dated May 31, 2001. Appendix to the State's brief of June 25, 2004.

²⁸ Annex 12. Voucher Ref. DF-007-2001-megadev, dated May 31, 2001. Appendix to the State's brief of June 25, 2004.

²⁹ Annex 13. Brief presented to the National Civil Service Office by Olga Maldonado Ordóñez, dated May 22, 2000. Appendix 7 to the initial petition of July 15, 2002.

³⁰ Annex 13. Brief presented to the National Civil Service Office by Olga Maldonado Ordóñez, dated May 22, 2000. Appendix 7 to the initial petition of July 15, 2002.

³¹ Annex 14. Article 19.6 of the Civil Service Law. "In addition to those assigned by other provisions in this law, the National Civil Service Board shall have the following duties and powers: ... To investigate and decide in administrative proceedings, on appeal, at the request of the interested party, claims arising from the application of this law and in relation to the following matters: recruitment, selection, appointment, assignment or reassignment of posts, transfers, suspensions, terminations, and dismissals." Free translation. Available in Spanish at: http://www.oas.org/juridico/spanish/mesicic2_gtm_ley_servicio_civil.pdf

ordered the suspension of the civil servant. In the case of the latter, the appointing authority must immediately and definitively abide by the decision.

Article 83. Reinstatement. The reinstatement of a civil servant gives rise to a new employment relationship that leaves intact all previously acquired vested rights not covered in accordance with this law, except those withdrawn under the causes contained in Article 76 [justified dismissal].³²

44. On May 29, 2000, the National Civil Service Office wrote to Mrs. Maldonado informing her that this organ and the National Civil Service Board lacked administrative jurisdiction “to consider matters pertaining to requests concerning reinstatement or entitlement payments of employees.”³³ It added that this was because it was not the civil service law that was applied but the “state departments’ or institutions’ own provisions.”³⁴

2.2. Petition for review to the Human Rights Ombudsman

45. On June 2, 2000, Mrs. Maldonado presented a petition for review to the Human Rights Ombudsman under Article 80 of the Ombudsman's Personnel Regulations, seeking the annulment of dismissal decision No. 81-2000.³⁵ That provision reads as follows:

Article 80. Procedure for motions for review. The Human Rights Ombudsmen must settle the appeal for a review within 10 business days of its filing; if the appeal is declared to be groundless or is not settled within the prescribed time, the affected party may appeal to the divisions of the Labor and Social Security Courts within the following five business days. The appeals procedure shall be that established in the Labor Code.³⁶

46. In first place, Mrs. Maldonado argued that the dismissal decision was devoid of any legal validity as it had not been signed by the Human Rights Ombudsman or the Assistant Ombudsman.³⁷ Second, she claimed that the accusations against her were inaccurate since the notarized document referred to was not falsified.³⁸ Mrs. Maldonado presented a photocopy of the notarized document, arguing that it contained all three signatures and, therefore, her siblings' submissions would be disproved.³⁹

47. On June 16, 2000, the chief of the Human Resources Unit of the Human Rights Ombudsman declared the petition for review large by the alleged victim to be without merit.⁴⁰ He argued that dismissal

³² Annex 14. Civil Service Law. Free translation. Available in Spanish at: http://www.oas.org/juridico/spanish/mesicic2_gtm_ley_servicio_civil.pdf

³³ Annex 15. Interlocutory decision No. 2000-DJ-1680, National Civil Service Office, May 29, 2000. Appendix 8 to the initial petition of July 15, 2002.

³⁴ Annex 15. Interlocutory decision No. 2000-DJ-1680, National Civil Service Office, May 29, 2000. Appendix 8 to the initial petition of July 15, 2002.

³⁵ Annex 1. Letter to the Human Rights Ombudsman from Olga Maldonado Ordóñez, dated June 2, 2000. Appendix 2 to the initial petition of July 15, 2002.

³⁶ Annex 6. Human Rights Ombudsman's Personnel Regulations. Available at: http://www.pdh.org.gt/accesinfo/images/downloads/2012/reglamento_de_personal.pdf

³⁷ Annex 1. Letter to the Human Rights Ombudsman from Olga Maldonado Ordóñez, dated June 2, 2000. Appendix 2 to the initial petition of July 15, 2002.

³⁸ Annex 1. Letter to the Human Rights Ombudsman from Olga Maldonado Ordóñez, dated June 2, 2000. Appendix 2 to the initial petition of July 15, 2002.

³⁹ Annex 1. Letter to the Human Rights Ombudsman from Olga Maldonado Ordóñez, dated June 2, 2000. Appendix 2 to the initial petition of July 15, 2002.

⁴⁰ Annex 16. Official Letter No. 285-2000-URH from the Chief of the Human Resources Unit of the Human Rights Ombudsman, dated June 26, 2000. Appendix 4 to the initial petition of July 15, 2002.

decision No. 81-2000 did bear the signature of the Human Rights Ombudsman.⁴¹ He said that the causes that led to Mrs. Maldonado's dismissal were of a personal nature and that, therefore, Articles 74.4 and 74.15 of the Personnel Regulations were applicable, "without the Ombudsman at any time becoming ... judge and penalizer, since a competent court will decide her situation."⁴² He added that the allegation that prompted her dismissal "reflects conduct not desirable in [those] who defend human rights."⁴³

2.3. Appeal to the Second Division of the Court of Appeals in Labor and Social Security Matters

48. On June 20, 2000, in keeping with Article 80 of the Ombudsman's Personnel Regulations, Olga Maldonado filed an appeal with the Second Division of the Court of Appeals in Labor and Social Security Matters against the denial of the petition for review by the Human Rights Ombudsman.⁴⁴ She said that the reason for her dismissal was not consistent with the causes established in Articles 74.4 and 74.15 of the Personnel Regulations.⁴⁵

49. Mrs. Maldonado stated that "none of the facts or acts alleged as grounds for dismissal is consistent with the allegations that [her] siblings have made against [her]."⁴⁶ She said that those facts were false and that "proof of that is that [she had] never been summoned by the courts of justice to answer the accusations made against [her]."⁴⁷ She held that the Ombudsman had made a "serious evaluation error" since the photocopy of the notarized document that was presented by her brothers did contain the three signatures, though hers was illegible as it was very close to that of the authorizing notary.⁴⁸

50. She said that the appeal was admissible under Article 80 of the Personnel Rules of the Ombudsman's Office⁴⁹, which allows such remedies to be invoked in two instances: (i) if the petition for review is refused; or (ii) if the review is not decided within 10 days.⁵⁰

51. On June 26, 2000, the Second Division of the Court of Appeals in Labor and Social Security Matters issued a decision abstaining from hearing the appeal filed by Olga Maldonado.⁵¹ It found that it was

⁴¹ Annex 16. Official Letter No. 285-2000-URH from the Chief of the Human Resources Unit of the Human Rights Ombudsman, dated June 26, 2000. Appendix 4 to the initial petition of July 15, 2002.

⁴² Annex 16. Official Letter No. 285-2000-URH from the Chief of the Human Resources Unit of the Human Rights Ombudsman, dated June 26, 2000. Appendix 4 to the initial petition of July 15, 2002.

⁴³ Annex 16. Official Letter No. 285-2000-URH from the Chief of the Human Resources Unit of the Human Rights Ombudsman, dated June 26, 2000. Appendix 4 to the initial petition of July 15, 2002.

⁴⁴ Annex 17. Brief of Olga Maldonado to the Second Division of the Court of Appeals in Labor and Social Security Matters, dated May 22, 2000. Appendix 9 to the initial petition of July 15, 2002.

⁴⁵ Annex 17. Brief of Olga Maldonado to the Second Division of the Court of Appeals in Labor and Social Security Matters, dated May 22, 2000. Appendix 9 to the initial petition of July 15, 2002.

⁴⁶ Annex 17. Brief of Olga Maldonado to the Second Division of the Court of Appeals in Labor and Social Security Matters, dated May 22, 2000. Appendix 9 to the initial petition of July 15, 2002.

⁴⁷ Annex 17. Brief of Olga Maldonado to the Second Division of the Court of Appeals in Labor and Social Security Matters, dated May 22, 2000. Appendix 9 to the initial petition of July 15, 2002.

⁴⁸ Annex 17. Brief of Olga Maldonado to the Second Division of the Court of Appeals in Labor and Social Security Matters, dated May 22, 2000. Appendix 9 to the initial petition of July 15, 2002.

⁴⁹ Annex 16. Article 80 of the Personnel Rules of the Ombudsman's Office: "Procedure for motions for review. The Human Rights Ombudsmen must settle the appeal for a review within 10 business days of its filing; if the appeal is declared to be groundless or is not settled within the prescribed time, the affected party may appeal to the divisions of the Labor and Social Security Courts within the following five business days. The appeals procedure shall be that established in the Labor Code."

⁵⁰ Annex 17. Brief of Olga Maldonado to the Second Division of the Court of Appeals in Labor and Social Security Matters, dated May 22, 2000. Appendix 9 to the initial petition of July 15, 2002.

⁵¹ Annex 18. Decision of the Second Division of the Court of Appeals in Labor and Social Security Matters, dated June 26, 2000. Appendix 10 to the initial petition of July 15, 2002.

not competent to take up the appeal filed because that tribunal's jurisdiction is governed by the Labor Code, which establishes two conditions of jurisdiction. It said that the first condition is that it "only hears at a single instance cases concerning final administrative decisions issued by the National Civil Service Board," as is stated in Article 80 of the Civil Service Law.⁵² It added that the second condition is governed by Article 303 of the Labor Code. In that connection, the Second Division held that:

... [they] take cognizance of decisions issued by the Labor and Social Security Courts or the Arbitration Tribunals when an appeal or consultation is admissible, which are precepts of a legislative nature that take precedence within the hierarchy of laws over the Personnel Regulations of the Office of the Human Rights Ombudsman.⁵³

52. The Second Division found that none of these conditions was met in Mrs. Maldonado's case. Therefore, it concluded that it "cannot take up a referred matter between the Office of the Human Rights Ombudsman and Mrs. Olga Yolanda Maldonado Ordóñez because it lacks jurisdiction."⁵⁴

2.4. Action of unconstitutionality "in a specific case"

53. On August 23, 2000, Mrs. Maldonado filed an action of unconstitutionality in a specific case before the Second Division of the Court of Appeals in Labor and Social Security Matters against its decision of June 26 of that year.⁵⁵ She argued that the decision violated her rights to work and recourse to justice recognized in Articles 29 and 101 of the Constitution, respectively.⁵⁶ She added that the Second Division's interpretation of Articles 365⁵⁷ of the Labor Code and 80 of the Civil Service Law is unconstitutional and restrictive, to the extent that it left her without protection.⁵⁸ She held that the Second Division should have examined the appeal in the light of Article 29 of the Constitution and Articles 10 and 15 of the Judiciary Law, which recognize the right of recourse to justice.⁵⁹

54. On September 6, 2000, the Second Division of the Court of Appeals in Labor and Social Security Matters, acting as Constitutional Court, rejected the action of unconstitutionality in a specific case filed by Mrs. Maldonado.⁶⁰ It held that "to seek to claim that an administrative organ can create the necessary jurisdiction to enable the divisions of the Court of Appeals in Labor and Social Security Matters, through an

⁵² Annex 18. Decision of the Second Division of the Court of Appeals in Labor and Social Security Matters, dated June 26, 2000. Appendix 10 to the initial petition of July 15, 2002.

⁵³ Annex 18. Decision of the Second Division of the Court of Appeals in Labor and Social Security Matters, dated June 26, 2000. Appendix 10 to the initial petition of July 15, 2002.

⁵⁴ Annex 18. Decision of the Second Division of the Court of Appeals in Labor and Social Security Matters, dated June 26, 2000. Appendix 10 to the initial petition of July 15, 2002.

⁵⁵ Annex 19. Brief of Olga Maldonado to the Second Division of the Court of Appeals in Labor and Social Security Matters, dated August 23, 2000. Appendix 11 to the initial petition of July 15, 2002.

⁵⁶ Annex 19. Brief of Olga Maldonado to the Second Division of the Court of Appeals in Labor and Social Security Matters, dated August 23, 2000. Appendix 11 to the initial petition of July 15, 2002.

⁵⁷ Annex 8. Article 365 of the Labor Code: (...) In labor proceedings, the following remedies may be invoked against judgments or orders that bring an end to the trial:

(a) A motion for clarification and enlargement, which must be presented within 24 hours following notice of the ruling. Clarification will be requested if the terms of the judgment are obscure, ambiguous, or contradictory, in order to clarify or rectify their meaning. Enlargement will be requested if a ruling has been omitted on any aspect or aspects submitted for trial; and

(b) An appeal, which must be presented within three days following notice of the ruling.

⁵⁸ Annex 19. Brief of Olga Maldonado to the Second Division of the Court of Appeals in Labor and Social Security Matters, dated August 23, 2000. Appendix 11 to the initial petition of July 15, 2002.

⁵⁹ Annex 19. Brief of Olga Maldonado to the Second Division of the Court of Appeals in Labor and Social Security Matters, dated August 23, 2000. Appendix 11 to the initial petition of July 15, 2002.

⁶⁰ Annex 20. Decision of the Second Division of the Court of Appeals in Labor and Social Security Matters, dated September 6, 2000. Appendix 12 to the initial petition of July 15, 2002.

administrative decision, to review on appeal a decision of such a nature, as in this case ... and the fact that the decision handed down in accordance with the related provisions of law does not satisfy the interests of the challenger, does not make them unconstitutional.”⁶¹ It concluded that “the foregoing leads to the conclusion that the action of unconstitutionality under examination here is patently inadmissible.”⁶²

55. On September 8, 2000, Olga Maldonado filed an appeal against the decision of September 6 of that year.⁶³ Mrs. Maldonado reiterated the arguments advanced in her action of unconstitutionality of August 23, 2000.⁶⁴ She added that she had pursued the procedure envisaged in Article 80 of the Personnel Rules of the Human Rights Ombudsman and that, despite that, she had been left “utterly bereft of legal protection” because the organs to which she had had recourse had abstained from taking up the case.⁶⁵

56. On October 9, 2001, the Constitutional Court declared Mrs. Maldonado's appeal inadmissible.⁶⁶ The Court held that an action of unconstitutionality in a specific case should be aimed at preventing a tribunal hearing a particular case from applying the disputed provision in a future decision “provided that the judge accepts the argument of the challenger that its application in the case would be contrary to the constitutional precepts indicated by the applicant.”⁶⁷

57. The Constitutional Court found in the case that the Second Division of the Court of Appeals in Labor and Social Security Matters had “already applied the specific provisions being challenged in the case, making its review innocuous and ... because the interested party did not challenge the application of the provisions through the appropriate procedure, which would have enabled her to discuss their unconstitutionality in the proper jurisdiction.”⁶⁸ The Commission notes that in its ruling, the Constitutional Court did not state which would have been the suitable remedy that Mrs. Maldonado should have invoked to challenge her dismissal.

B. Legal analysis

1. Right to a fair trial, principle of legality,⁶⁹ and right to judicial protection (Articles 8, 9, and 25 of the American Convention, in connection with Article 1[1] of that treaty)

58. 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

⁶¹ Annex 20. Decision of the Second Division of the Court of Appeals in Labor and Social Security Matters, dated September 6, 2000. Appendix 12 to the initial petition of July 15, 2002.

⁶² Annex 20. Decision of the Second Division of the Court of Appeals in Labor and Social Security Matters, dated September 6, 2000. Appendix 12 to the initial petition of July 15, 2002.

⁶³ Annex 21. Brief of Olga Maldonado to the Second Division of the Court of Appeals in Labor and Social Security Matters, constituted as Constitutional Court, dated September 8, 2000. Appendix 13 to the initial petition of July 15, 2002.

⁶⁴ Annex 21. Brief of Olga Maldonado to the Second Division of the Court of Appeals in Labor and Social Security Matters, constituted as Constitutional Court, dated September 8, 2000. Appendix 13 to the initial petition of July 15, 2002.

⁶⁵ Annex 21. Brief of Olga Maldonado to the Second Division of the Court of Appeals in Labor and Social Security Matters, constituted as Constitutional Court, dated September 8, 2000. Appendix 13 to the initial petition of July 15, 2002.

⁶⁶ Annex 22. Decision of the Constitutional Court of October 9, 2001. Appendix 14 to the initial petition of July 15, 2002.

⁶⁷ Annex 22. Decision of the Constitutional Court of October 9, 2001. Appendix 14 to the initial petition of July 15, 2002.

⁶⁸ Annex 22. Decision of the Constitutional Court of October 9, 2001. Appendix 14 to the initial petition of July 15, 2002.

⁶⁹ Under the principle *iura novit curia*, the Commission finds it pertinent to analyze the principle of legality recognized in Article 9 of the American Convention. The State has been afforded the opportunity to exercise its right to contradict and express its position on the facts that support this analysis.

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.

59. Article 9 of the American Convention provides, "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."

60. Article 25.1 of the American Convention states:

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.

61. The Commission analyzes the established facts in the light of the above-cited provisions in the following order: (i) the right to be informed of the basis of the accusation, the right of defense, the principle of legality, and the obligation to justify decisions in the framework of the administrative proceeding; and (ii) the rights to appeal against punitive decisions and to judicial protection.

1.1. The right to be informed of the basis of the accusation, the right of defense, the principle of legality, and the obligation to justify decisions in the framework of the administrative proceeding

1.1.1. General considerations

62. The right to a fair trial comprises the set of requirements that must be met in procedural instances in order to enable individuals to adequately defend their rights against any act by the State.⁷⁰ The right to judicial protection, for its part, entails the duty of states to provide an effective judicial remedy against acts that violate the rights of persons under their jurisdiction.⁷¹

63. The Commission also considers it timely to recall that:

the investigation by [the] authorities of a State's alleged violation of international obligations may face the [Commission and the] Court with the need to examine the related domestic proceedings. Based on the above, domestic proceedings must be considered as a whole and

⁷⁰ I/A Court H.R., *Genie Lacayo Case v. Nicaragua*. Judgment of January 29, 1997. Series C. No. 30, par. 74; I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Judgment of September 19, 2006. Series C. No. 151, par. 116; and I/A Court H.R., *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights)*. Advisory Opinion OC-9/87. October 6, 1987. Series A, No. 9, par. 27.

⁷¹ I/A Court H.R., *Case of the Constitutional Court v. Peru*. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C. No. 71, par. 89; and *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C. No. 158, par. 122.

the duty of the international tribunal is to find out if all proceedings were carried out in compliance with international provisions.⁷²

1.1.2 Determination of rights and applicable guarantees

64. Both the Commission and the Inter-American Court have consistently held that, in general, the guarantees recognized in Article 8 of the American Convention are not confined to criminal proceedings, but apply also to other types of proceedings.⁷³ Specifically, where punitive proceedings are concerned, both organs of the system have held that the guarantees enshrined in Article 8.2 of the American Convention apply analogously.⁷⁴ The “due guarantees” established in Article 8.1 of the American Convention are also applicable in other proceedings in which rights or interests are addressed, including the right to sufficient justification for decisions.⁷⁵ The decision as to what constitute “due guarantees” in a particular proceeding for a determination on rights must take into account the nature of the proceeding and the legal interests in play.⁷⁶

65. Broadly, the Court has stressed the need for the basic guarantees of due process to be observed and for the person whose interests are harmed to be offered an effective remedy to challenge the measure.⁷⁷ Likewise, the European Court has found that due process guarantees must be observed and ensured in administrative proceedings that conclude in the dismissal of a civil servant.⁷⁸

66. Based on the above, to determine which guarantees the State had the obligation to afford in a specific case, it is necessary to refer the nature of the proceeding in question.

67. This case concerns an administrative proceeding that led to the separation from office of a civil servant. In that sense, the proceeding clearly had an impact on Mrs. Maldonado's rights. Accordingly, the basic guarantees set forth in Article 8.1 of the Convention were applicable.

68. Furthermore, the Commission finds that the established facts disclose that the proceeding had a clearly punitive character. In that respect, the Commission notes that both the initial notification to Mrs. Maldonado and the Ombudsman's decision cite the provisions that contain causes of disciplinary measures. In addition, the Commission notes that what gave rise to the administrative proceeding was the receipt of

⁷² I/A Court H.R., *Case of Zambrano-Vélez et al. v. Ecuador*. Judgment of July 4, 2007. Series C. No. 166, par. 142; *Case of Lori Berenson Mejía v. Peru*. Judgment of November 25, 2004. Series C. No. 119, par. 133; *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C. No. 101, par. 200; and *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C. No. 99, par. 120.

⁷³ I/A Court H.R., *Baena Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C. No. 72, pars. 126-27; *Case of the Constitutional Court v. Peru*. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C. No. 71, par. 69-70; and *Case of López Mendoza v. Venezuela*. Merits, Reparations and Costs. Judgment of September 1, 2011. Series C. No. 233, par. 111. See also: IACHR, Report No. 65/11, Case 12.600, Merits, *Hugo Quintana Coello et al. (Supreme Court of Justice)* Ecuador, March 31, 2011, par. 102.

⁷⁴ I/A Court H.R., *Baena Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C. No. 72, pars. 126-127. See also: IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*. OEA/Ser.L/V/II.129. September 7, 2007, pars. 98-123; and Case No. 12.828, Report 112/12, Marcel Granier et al., Venezuela, Merits, November 9, 2012, par. 188.

⁷⁵ I/A Court H.R., *Case of Barbani Duarte et al. v. Uruguay*. Merits, Reparations and Costs. Judgment of October 13, 2011. Series C. No. 234, par. 118; and *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C. No. 151, par. 118.

⁷⁶ I/A Court H.R., *Case of Barbani Duarte et al. v. Uruguay*. Merits, Reparations and Costs. Judgment of October 13, 2011. Series C. No. 234, pars 118-119.

⁷⁷ I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C. No. 182, par. 147; *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C. No. 158, par. 126; and *Baena Ricardo et al. Case v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C. No. 72, par. 131.

⁷⁸ ECHR, *Cudak v. Lithuania*. Application No. 15869/02. Judgment of March 23, 2010, para. 42; *Oleksandr Volkov v. Ukraine*. Application No. 21722/11. Judgment of January 9, 2013, para. 88.

information regarding purported unlawful conduct on the part of Mrs. Maldonado, which the Ombudsman took to tarnish the institution's image.

69. As was noted, the punitive nature of the procedure indicates that the penalizing authority of the state was engaged, thus analogously expanding the applicable guarantees to include those of criminal due process set down in Article 8.2 of the Convention. Particularly important are the rights to a hearing, to know the grounds for the accusation, to have adequate means to prepare a defense, to be presumed innocent, and the possibility of appeal. In addition, it is applicable the principle of legality contained in Article 9 of the American Convention. Indeed, the Court has held that in cases such as these a careful verification of whether or not there was unlawful conduct is essential, in keeping with the principle of legality.⁷⁹

70. As to the right of presumption of innocence, the Inter-American Court has held that this right implies that the defendant does not have to prove that he has not committed the offense of which he is accused, because the *onus probandi* is on those who have made the accusation.⁸⁰ Hence, irrefutable demonstration of guilt is an essential requirement for punishment, so the burden of proof falls on the prosecutor and not the accused.⁸¹

71. As for the rights enshrined in Article 8.2.b, both the IACHR and the Inter-American Court have held that this provision “orders that the competent judicial authorities notify the accused of the charges presented against him, their reasons, and the crimes or offenses he is charged with.”⁸²

72. As regards the right of defense, the Commission recalls that this implies that anyone on trial, including in an administrative proceeding, will be able to defend their interests or rights effectively and on “equal procedural terms ... and be fully informed of the charges against them,”⁸³ so that anyone subject to the punitive authority of the State may answer the charges with all the necessary information.

73. With respect to the right to sufficient justification, the Court regards it as “a guarantee related to the correct administration of justice, which protects the right of the people to be tried for the reasons established by law and grants credibility to judicial decisions in a democratic society.”⁸⁴ According to the Inter-American Court, disciplinary decisions adopted by administrative authorities must “indicate the violation precisely and ... submit arguments that allow it to be concluded that the comments provide sufficient grounds to justify removing a [civil servant] from a post.”⁸⁵ Furthermore, the requirement to provide adequate justification is extremely significant because the purpose of disciplinary oversight is to assess the conduct, suitability and performance of civil servant and, therefore, it is precisely in the justification that the seriousness of the conduct and the proportionality of the sanction are analyzed.⁸⁶

⁷⁹ I/A Court H.R., *Baena Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C. No. 72, par. 106.

⁸⁰ I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C. No. 111, par. 154.

⁸¹ I/A Court H.R., *Cabrera García and Montiel Flores v. Mexico*. Judgment of November 26, 2010. Series C. No. 220, par. 182.

⁸² I/A Court H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C. No. 141, par. 149; I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C. No. 135, par. 225; I/A Court H.R., *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C. No. 129, par. 118; and I/A Court H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C. No. 114, par. 187. Also, par. 76.

⁸³ I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants* Advisory Opinion OC-18/03 of September 17, 2003. Series A, No. 18, par. 117.

⁸⁴ I/A Court H.R., *Case of Chocrón Chocrón v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 1, 2011. Series C. No. 227, par. 118.

⁸⁵ I/A Court H.R., *Case of Chocrón Chocrón v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 1, 2011. Series C. No. 227, par. 120.

⁸⁶ I/A Court H.R., *Case of Chocrón Chocrón v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 1, 2011. Series C. No. 227, par. 120.

74. Those obligations are intrinsically bound up with the principle of legality, as it is the justification that allows an understanding of how the facts that support the proceeding match or square with the cause invoked. On this point, in *De la Cruz Flores v. Peru*, the Court stressed the need that in all punitive decisions there be a link between the conduct of which the person is accused and the provision on which the decision is based.⁸⁷

1.1.3. Analysis of the facts in the case

75. The IACHR notes that Article 103 of the Constitution of Guatemala provides that “[a]ll disputes relative to work are subject to ... the norms corresponding to that jurisdiction and the organs charged with putting them into practice.” In addition, Article 14.j of the Law of the Human Rights Committee of the Congress of the Republic and of the Human Rights Ombudsman empowers the Human Rights Ombudsman to “appoint, reprimand, and remove its staff in accordance with the respective regulations.”⁸⁸

76. So it was that on February 7, 1991, the Personnel Regulations of the Human Rights Ombudsman were published in the Official Gazette. Article 1 of the Regulations provides that their purpose is to govern “the labor relations of the Office of the Human Rights Ombudsman ... and its workers.” Article 5.c states that “the workers of the Ombudsman's Office are guaranteed against dismissal without a just cause.” For its part, Article 74 of the Regulations sets out the causes for dismissal of the institution's workers.

77. In that connection, the commission notes that the human rights ombudsman was competent to carry out the procedure and that the applicable rules established the courses that could give rise to a disciplinary penalty, to wit: (i) when a criminal offense or fault is committed against property to the detriment of the institution, their work colleagues, or a third party in the workplace; (ii) when material damage is caused to equipment, machinery, tools, or other work-related objects; and (iii) in the event of unlawful acts that imply the intention to cause harm to the institution, or of a violation of labor norms that constitute manifest acts of sabotage against the institution.

78. Based on the above, the Commission will analyze the aforementioned guarantees, taking into account the chronological sequence of the proceedings, from the receipt of the document from Mrs. Maldonado's siblings to the conclusion of the administrative procedure.

Concerning the violation of the right contained in Articles 8.2.b and 8.2.c of the Convention.

79. The established facts show that following the receipt of the document from her siblings on April 5, 2000, Mrs. Maldonado was notified of the causes contained in Articles 74.4 and 74.15 of the Human Rights Ombudsman's Personnel Regulations. The available information suggests that said notification merely mentioned the relevant provisions and made reference to the communication from her siblings.

80. The Commission finds that, from the outset, this situation impaired Mrs. Maldonado's understanding of the object of the proceeding instituted against her. That is, if in her defense she was supposed to demonstrate that her siblings' allegations were untrue, or if that situation, true or not, might amount to any of the above-cited causes. The Commission finds that the inclusion of precise information about the object of the proceedings and the specific causes that would be considered was essential for Mrs. Maldonado to mount a defense, given that the causes set forth in Articles 74.4 and 74.15 of the Human Rights Ombudsman's Personnel Regulations are markedly different in content. Thus, some concern the commission of criminal offenses, others have to do with unlawful acts, others with harm to property, and still others with acts of sabotage against the institution, etc. Therefore, though Mrs. Maldonado drafted a defense brief, it was extremely limited as she lacked the basic information that Article 8.2.b of the Convention requires.

⁸⁷ I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Merits, Reparations and Costs. Judgment of November 18, 2004. Series C. No. 115, par. 84.

⁸⁸ Annex 23. Law of the Human Rights Committee of the Congress of the Republic and of the Human Rights Ombudsman. Free translation. Available in Spanish at: <http://biblio.juridicas.unam.mx/libros/4/1842/12.pdf>

81. In short, the Commission considers that this lack of information and its effects on the exercise of her right to defense constituted a violation of the rights to be sufficiently informed about the grounds for the charges against her and to adequate means to exercise her defense, which are recognized in Articles 8.2.b and 8.2.c of the American Convention.

Concerning the violation of the right to sufficient justification of decisions, the principle of legality, and the right to be presumed innocent

82. On this point, the Commission will analyze the decision by which the Human Rights Ombudsman ordered Mrs. Maldonado's dismissal. The purpose is to determine if that decision respected the right to sufficient justification of decisions, the principle of legality, and the right to be presumed innocent.

83. The text of decision No. 81-2000 of the Human Rights Ombudsman suggests that her dismissal was for causes established in paragraphs 4 and 15 of Article 74 of the aforementioned institution's Personnel Regulations. As was noted above, the right to be presumed innocent is also applicable to non-criminal punitive proceedings. Accordingly, the Human Rights Ombudsman had the obligation to verify if Mrs. Maldonado had committed those causes and to reflect both its factual and its legal analysis in its justification. On this point, the European Court has stressed the need in dismissal proceedings to perform a "minute and detailed analysis" of the charges.⁸⁹

84. The Commission notes that the Ombudsman's entire explanation of reasons is confined to the following:

That the allegations against Mrs. Olga Yolanda Maldonado Ordóñez amount to a series of legal acts and disputes of a personal nature whose outcome could seriously harm the institution of the Human Rights Ombudsman because of Mrs. Maldonado Ordóñez' employment relationship with the institution, by virtue of the fact that she is accused of falsifying notarized document No. 470 dated October 11, 1994, ... allegedly by notary Mariano Orozco de León, on which two signatures appear when there should be three, according to the authenticated plain copy of said notarized document, all of which creates grave doubts as to its authenticity, it having the obligation to avert, both within and outside the institution, the commission of acts contrary to the law, decency, and moral conventions that might undermine its prestige.⁹⁰

85. Based on the Ombudsman's words above, the basis of the decision were the "allegations" and the alleged "commission of acts contrary to the law." The State also recognized in the proceedings before the IACHR that the "causal act" was neither reported to nor investigated by the judicial authorities. This, in itself, is a violation of the right to be presumed innocent recognized in Article 8.2 of the American Convention.

86. As regards the principle of legality, the Commission notes that the cause of disciplinary measures established in the provision that was ultimately applied in respect of the possible harm to "the institution" is literally linked to the actual commission of criminal offenses or unlawful acts and not the mere probability thereof. This means that invoking this cause requires that the facts that supported instituting the proceeding be proven and actually classed as unlawful acts or criminal offenses by the competent authorities for the matter in question. As was mentioned above, that did not happen in this case as the Ombudsman based his decision on the "allegations," in violation, not only of the right to be presumed innocent, but also of the principle of legality recognized in Article 9 of the Convention.

⁸⁹ ECHR, *Obst v. Germany* Application No. 425/03. Judgment of December 23, 2010, para. 49; *Schüth v. Germany* Application No. 1620/03. Judgment of December 23, 2010, para. 59.

⁹⁰ Annex 2. Decision No. 81-2000 of the Human Rights Ombudsman, May 16, 2000. Appendix 1 to the initial petition of July 15, 2002.

87. Apart from the violation of the right to be presumed innocent and the principle of legality, the Commission recalls that the Ombudsman had an obligation to adequately explain the reasons why the facts—which, as has been noted, were not proven—were subsumed in the causes invoked.

88. Based on its reading of the aforesaid regulations, the Commission finds that the communication that Mrs. Maldonado's siblings sent to the Ombudsman informing him of a family problem regarding an alleged falsification of a notarized document would not, *prima facie*, appear to square with the provisions cited by the Ombudsman in the dismissal decision. There is nothing in the Ombudsman's decision by which to understand that link.

89. On the contrary, the justification was extremely succinct and made no reference at all to the arguments offered by Mrs. Maldonado in her defense. On this point, the Commission recalls that the Court has determined that administrative authorities should examine the claims and arguments of the person concerned "fully and genuinely."⁹¹ Notably, the resolution does not contain an analysis by which to establish a match between the supposed facts and the causes of disciplinary measures contained in the Ombudsman's Personnel Regulations.

90. This circumstance constitutes a violation of the right to sufficient justification, in connection with the principle of legality, which are recognized in Articles 8.1 and 9 of the American Convention, respectively

91. Additionally, the IACHR notes that according to the established facts, Mrs. Maldonado signed a document by which the Office of the Human Rights Ombudsman paid her a sum of money for a variety of employment-related items, from July 1999 to May 2000, following her dismissal.

92. The Commission considers that those items do not have a compensatory content for the alleged violations in the instant case. The Commission could assess its connection with the facts and violations established in the report and evaluate its suitability and sufficiency in light of inter-American standards on reparations when it examines compliance with its recommendations.⁹² Thus, the IACHR reiterates that the obligation to provide redress arises as a direct consequence of the State's responsibility for a violation of the Convention, which therefore, demands full and adequate reparation for the violations declared in this report.⁹³

Conclusion

93. Based on its analysis thus far, the Commission concludes that the State of Guatemala violated Mrs. Maldonado's rights to a hearing with due guarantees, to sufficient justification, to be adequately informed of the reasons for the proceeding against her, and to adequate means to exercise her defense, recognized in Articles 8.1 and 8.2 of the Convention. The Commission also concludes that the State violated the principle of legality recognized in Article 9 of the American Convention to the detriment of Mrs. Maldonado. All of these violations are taken in conjunction with Article 1.1 of said instrument.

1.2. The rights to appeal against punitive decisions and to judicial protection

⁹¹ I/A Court H.R., *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2013. Series C. No. 268, par. 181; and *Case of Barbani Duarte et al. v. Uruguay*. Merits, Reparations and Costs. Judgment of October 13, 2011. Series C. No. 234, par. 120.

⁹² In this regard, the Inter-American Court has held that "the amounts that have been paid for the violations established in this Judgment [may be deducted] when paying the reparations ordered." I/A Court H.R., *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012, Series C No. 253, par. 389.

⁹³ I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, par. 221.

94. Regarding the right to appeal, both the Commission and the Court have held that it applies to punitive decisions.⁹⁴ The IACHR stresses the importance of this right, as its purpose is to prevent a flawed ruling, containing errors unduly prejudicial to a person's interests, from becoming final.⁹⁵

95. The Court says emphasized the need for domestic proceedings to ensure genuine access to justice, in order to determine whatever rights may be in dispute.⁹⁶ According to the Court, Article 25.1 of that instrument:

includes an obligation for States Party to guarantee all persons under [their] jurisdiction access to an effective judicial remedy against acts that violate their fundamental rights. This effectiveness supposes that in addition to the formal existence of the remedies, they get results or responses to the violations of the rights contemplated in the Convention, in the Constitution or in laws. ... Thus the proceeding must tend toward the materialization of the protection of the right recognized in the judicial ruling through the suitable application of that ruling.⁹⁷

96. Therefore, for an effective remedy to exist, it is not sufficient that it be provided for in a law or that it be formally recognized, but rather it must be truly effecting in establishing whether there has been a violation of human rights and in providing redress.⁹⁸ As regards the admissibility requirements of a judicial claim, the Court has found that:

To ensure legal certainty, for the proper and functional administration of justice and the effective protection of human rights, the States may and should establish admissibility principles and criteria for domestic recourses of a judicial or any other nature. Thus, although these domestic recourses must be available to the interested parties and result in an effective and justified decision on the matter raised, as well as potentially providing adequate reparation, it cannot be considered that always and in every case the domestic organs and courts must decide on the merits of the matter filed before them, without verifying the procedural criteria relating to the admissibility and legitimacy of the specific recourse filed.⁹⁹

97. In relation to labor matters, the European Court has held that states have a positive obligation to put in place tribunals with jurisdiction in the area of labor law to take cognizance of alleged violations of workers' rights.¹⁰⁰ Specifically, the European Court held that a person who had been dismissed

⁹⁴ I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010. Series C. No. 218, par. 179. See also: IACHR, Report No. 136/11, Case 12.474, Merits, Pacheco Tineo Family, October 31, 2011, par. 120.

⁹⁵ I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations, and Costs. July 2, 2004. Series C. No. 107, par. 158. See also: IACHR, Report No. 55/97, Case 11.137, Merits, Juan Carlos Abella, Argentina, November 18, 1997, pars. 261-262.

⁹⁶ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C. No. 158, par. 107; and *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C, No. 148, par. 365.

⁹⁷ I/A Court H.R., *Case Abrill Alosilla et al. v. Peru*. Interpretation of Judgment on Merits, Reparations, and Costs. Judgment of November 21, 2011. Series C. No. 235, par. 75. The references in the original have been omitted.

⁹⁸ I/A Court H.R., *Case of the Yakye Axa Indigenous Community*. Judgment of June 17, 2005. Series C. No. 125, par. 61; *Case of the "Five Pensioners"*. Judgment of February 28, 2003. Series C. No. 98, par. 136; and *The Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001. Series C. No. 79, par. 113.

⁹⁹ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Judgment of November 24, 2006. Series C. No. 158, par. 126.

¹⁰⁰ ECHR, *Schüth v. Germany* Application No. 1620/03. Judgment of December 23, 2010, para. 59.

had the right to a judicial remedy that effectively offered the possibility of a tribunal determining whether the dismissal was lawful under domestic law.¹⁰¹

98. According to the standards described, there is an intrinsic relationship between the existence of sufficient justification and the possibility of challenging decisions and formulating an adequate defense in the framework of subsequent remedies. It is clear from the foregoing section that the Ombudsman's decision infringed the guarantee of sufficient justification, given that said decision does not reflect a consistency between the facts alleged and the causes invoked. As a result, when she invoked the remedies, Mrs. Maldonado's possibility of an effective review and judicial protection was severely limited.

99. Thus, Mrs. Maldonado presented a petition for review to the Ombudsman in order to dispute the dismissal decision in accordance with Article 79 of the Ombudsman's Personnel Regulations. The petition was rejected by the decision of June 16, 2000, signed by the Chief of the Human Resources Unit of the Ombudsman's Office. The Commission finds that under the institution's Personnel Regulations, the petition for review should have been decided by the Ombudsman, not the Chief of the Human Resources Unit. The State recognized that this was an anomaly.

100. The first remedy did not allow the problems with the Ombudsman's decision to be corrected. In rejecting the petition, rather, the authority merely echoed those problems, saying that the allegations "reflect conduct not desirable in we who defend human rights." Furthermore, the IACHR also underscores a contradiction in that decision, given that it also states that this act "must be dealt with by the competent courts," which, as was indicated, did not occur in this case.

101. Then, on June 20, 2000, Mrs. Maldonado filed an appeal with the Second Division of the Court of Appeals in Labor and Social Security Matters. Article 80 of the Ombudsman's Personnel Regulations provides that if the petition for review disputing the dismissal in domestic proceedings is rejected, the person may "appeal to the divisions of the Labor and Social Security Courts ... ; [t]he appeal procedure shall be that set forth in the Labor Code." The appeal was refused on June 26 of that year. The Second Division found that it lacked jurisdiction to issue a decision because the Labor Code did not envisage this circumstance.

102. The Commission notes that, faced with this refusal, Mrs. Maldonado brought an action of unconstitutionality in a specific case, which was ruled inadmissible by the Constitutional Court on October 9, 2001, on the ground that an appeal to the Labor and Social Security Courts was not the "appropriate procedure." In spite of this assertion, the Constitutional Court did not explain what was the suitable procedure for Mrs. Maldonado to use.

103. Thus, neither the appeal nor the action of unconstitutionality in a specific case allowed a review of the penalty or offered an effective remedy for the infringements of due process described in the preceding section.

104. The IACHR observes that the Personnel Regulations of the Human Rights Ombudsman, which establishes the appeal to the Labor and Social Security Courts as the appropriate judicial remedy for challenging a dismissal, was adopted based on the Law of the Human Rights Committee of the Congress of the Republic and of the Human Rights Ombudsman.

105. By the same token, according to Article 108 of the Constitution, "[t]he relations of the State or its decentralized or autonomous entities with its workers are regulated by the Law of the Civil Service, with the exception of those regulated by the laws or provisions of said entities themselves." For its part, Article 106 of the Constitution provides, "In case of doubt on the interpretation or scope of legal provisions, regulations, or contracts in labor matters, the provisions will be interpreted in the manner most favorable for the workers."

¹⁰¹ ECHR, *Schüth v. Germany* Application No. 1620/03. Judgment of December 23, 2010, para. 59; K.M.C. v. Hungary. Application No. 19554/11. Judgment of July 10, 2012, paras. 31-33.

106. Therefore, the Commission finds that under Guatemala's domestic laws, the appropriate remedy in cases of staff dismissals from the Office of the Human Rights Ombudsman is an appeal to the Labor and Social Security Courts, as the Ombudsman's Personnel Regulations expressly state. The IACHR notes that the State concurred in one of its briefs to the Commission that this was the appropriate remedy for disputing Mrs. Maldonado's dismissal. The State added that the alleged victims should have filed a motion of amparo requesting the constitutional court to "order" the Second Division to examine the merits of Mrs. Maldonado's appeal

107. The IACHR also observes that in other briefs submitted during this proceeding, the State put forward a different argument to the foregoing by suggesting that the appropriate remedy was not an appeal to the Labor and Social Security Courts, but a proceeding before the Office of the Labor Inspector General and a suit at first instance with the Labor and Social Security Court. In that respect, the Commission notes that the proceeding before the Office of the Labor Inspector General is not a judicial remedy. Moreover, the IACHR finds that these procedures are envisaged not in the Ombudsman's Personnel Regulations, but in the Labor Code.

108. The IACHR notes that Article 193 of the Labor Code provides that "workers who provide their services to entities or institutions that because of their nature are subject to a special disciplinary system, shall be governed by their ordinances, bylaws, or regulations." Therefore, that very code provided that entities under a special disciplinary system, such as the Office of the Human Rights Ombudsman, had to abide by their own regulations.

109. Aside from the fact that the judicial decisions handed down on Mrs. Maldonado were not consistent with the applicable rules, especially regarding the propriety of the appeal, the Commission sees that none of the organs that issued those decisions indicated to her what the appropriate procedure for disputing her dismissal was, if not the appeal to the Court of Appeals in Labor and Social Security Matters as provided in Article 80 of the Ombudsman's Personnel Regulations.

110. The IACHR considers that the decision of the Constitutional Court left Mrs. Maldonado in a state of defenselessness and legal uncertainty by: (i) declaring her request inadmissible; (ii) informing her that the appeal established in the Personnel Regulations was not the appropriate remedy; and, (iii) omitting to establish what the suitable remedy was.

111. The IACHR recalls that in the *Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru* the Court found that the victims' rights to a fair trial and judicial protection were violated because they were prevented from invoking a remedy to challenge their dismissal.¹⁰² In that matter, the Court found that as a result of the lack of effective access to judicial protection whereby the competent authorities might make the pertinent decisions, the victims found themselves in a situation of "defenselessness and uncertainty."¹⁰³

112. In this case, the IACHR considers that Mrs. Maldonado was denied a remedy to seek a review of the penalty imposed and an effective remedy to protect her from the violations of due process and the principle of legality in the context of the administrative proceeding. Therefore, the Commission concludes that the State of Guatemala violated the rights recognized in Articles 8.2.h and 25 of the American Convention, taken in conjunction with Article 1.1 of that instrument, to the detriment of Mrs. Maldonado.

V. CONCLUSIONS

¹⁰² I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C. No. 158, par. 120.

¹⁰³ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C. No. 158, par. 150.

113. In view of the foregoing considerations as to the facts and law, the Commission concludes that the State of Guatemala is responsible for violation of the rights to a fair trial and judicial protection and the principle of legality recognized in Articles 8.1, 8.2, 9, and 25 of the American Convention on Human Rights, in conjunction with Article 1.1 of said instrument, to the detriment of Olga Yolanda Maldonado Ordóñez.

VI. RECOMMENDATIONS

114. Based on the above conclusions,

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

1. Make full reparation to Mrs. Olga Maldonado for the violations declared in this report, which should encompass both material and moral injuries.
2. Expunge the effects of the penalty imposed on Mrs. Maldonado, including any adverse entries on her disciplinary record.
3. Adopt measures to avoid repetition, so as to ensure that civil servants in posts similar to that of the victim in this case have clarity and recourse to effective remedies to challenge disciplinary proceedings and penalties against them.

Signed in the original
Emilio Álvarez Icaza L.
Secretario Ejecutivo