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CASE 12.702

REPORT ON THE MERITS

BONIFACIO RÍOS ÁVALOS AND CARLOS FERNANDEZ GADEA
PARAGUAY

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I. INTRODUCTION

1. On November 13, 2003, and June 7, 2004, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received two petitions, filed respectively by Carlos Fernández Gadea and Bonifacio Ríos Ávalos (“the petitioners”) alleging that the Republic of Paraguay (“the Paraguayan State,” “the State,” or “Paraguay”) bears international responsibility for a series of alleged violations committed against them in the context of the impeachment proceedings that led to their removal as justices of the Supreme Court of Paraguay in 2003.

2. The Commission approved Admissibility Reports No. 18/09¹ and 47/09² on March 19, 2009, and notified the parties on April 20, 2009, when it also notified them of the decision to join the two petitions because they raised similar issues. The Commission also made itself available to the parties to reach a friendly settlement, though the circumstances were not such to resolve the case through that type of proceeding. The parties were allocated the time limits provided in the Rules of Procedure to submit their additional observations on the merits of the case.

II. POSITIONS OF THE PARTIES

A. Petitioners

3. By way of context, the petitioners indicated that in April 2003 the president-elect of Paraguay, Nicanor Duarte Frutos, suggested that it was necessary to replace the justices of the Supreme Court to overhaul the justice system, and when he took office, he said he would “pulverize the judiciary.” The petitioners claimed that the president had met with the political parties and had reached an agreement to replace six of the nine justices on the Supreme Court, and that it was agreed that the way to replace them would be to ask for their resignations, under threat of impeachment if they did not resign. The petitioners said that on October 27, 2003, two of the Supreme Court justices turned in their resignations.

4. Thereafter, according to the petitioners, senators and political leaders began to look for grounds on which to impeach the alleged victims. To that end, the petitioners said, an office was set up in the Chamber of Deputies where the public could file complaints. They indicated that on November 18, 2003, the party leaders in the Chamber of Deputies filed articles of impeachment against the two alleged victims, along with Justices Luis Lezcano Claude and Felipe Santiago Paredes, citing 20 disciplinary counts. The petitioners stated that these last two justices resigned rather than be impeached.

5. The petitioners stated that on November 25, 2003, as there was no impeachment law setting out the rules of procedure for carrying out the impeachment process contemplated in Article 225 of the Paraguayan Constitution, the Senate passed Resolution No. 122, establishing a set of rules for the impeachment trial. The rules did not allow for recusals and guaranteed only two business days to gather evidence to refute the charges and three hours to present their defense.

6. According to the petitioners, the impeachment of the alleged victims by the Paraguayan Congress began on November 26, 2003. They indicated that on December 3, 2003, the alleged victims’ defense attorneys offered evidence, and the representatives serving as prosecutors dropped 14 of the 20 original charges. In the case of Carlos Fernández Gadea, the impeachment continued on counts 1, 2, and 4, related to a supposed statement declaring that Supreme Court appointments are for life and violation of recusal obligations; alleged deviation from the constitutional procedure for confirming judges, and interference with the functions of another judicial body; and alleged interference in the Chamber of Deputies’

¹ IACHR. Report No. 18/09, Petition 525-04, Carlos Fernández Gadea, March 19, 2009. In that report, the IACHR declared the petition admissible with regard to the alleged violation of Articles 8 and 25 of the American Convention, in connection with Articles 1(1) and 2 thereof, and inadmissible with regard to the alleged violation of Articles 11, 23(1)(c), and 24 of the American Convention.

² IACHR. Report No. 47/09, Petition 963-03, Bonifacio Ríos Ávalos, March 19, 2009. In that report, the IACHR declared the petition admissible with regard to the alleged violation of Articles 8 and 25 of the American Convention, in connection with Articles 1(1) and 2 thereof, and inadmissible with regard to the alleged violation of Articles 11, 23(1)(c), and 24 of the American Convention.

exercise of its constitutional functions. In the case of Bonifacio Ríos Ávalos, the impeachment trial against him continued on counts 1, 2, and 4, as well as on counts 5, 7, and 14, concerning the Constitutional Court's failure to meet procedural deadlines; usurpation of constitutional authorities expressly reserved for the legislative branch, seriously upsetting the balance of power; and a case in which the State was ordered to pay damages.

7. The petitioners stated that on December 12, 2003, the Senate issued Resolution No. 134, which resolved to declare the alleged victims guilty of the charges brought against them and therefore to remove them from their posts. The petitioners indicated that the resolution provides no reasoning and merely refers to alleged improper performance (*mal desempeño*) as grounds for impeachment.

8. The petitioners maintained that the alleged victims challenged the constitutionality of Resolutions No. 122 and 134 by which they were removed from their posts. They indicated that the Constitutional Chamber of the Supreme Court ruled on both lawsuits on December 30, 2009, by means of Judgments 951 and 952, which declared the resolutions removing the alleged victims from office to be unconstitutional and ordered the justices reinstated. The petitioners noted that both the Supreme Court and the legislative branch failed to recognize Judgments 951 and 952.

9. The petitioners indicated that the same facts that were the subject of the alleged victims' impeachment trial and that led to their removal from office formed the basis for criminal complaints brought against them by the National Congress. On November 1, 2005, the criminal court judge dismissed the complaints and found that the decisions for which the justices were impeached were the product of their authority to interpret the law and arose from their judicial convictions, based on the factual and legal circumstances.

10. The petitioners argued that the alleged victims were targets of discrimination, based on the fact that other justices who signed some of the decisions that constituted grounds for impeachment were not impeached but continued to serve as justices.

11. In terms of the law, the petitioners argued that there were violations of the right to a fair trial, the principle of freedom from *ex post facto* laws (principle of legality), equal protection, judicial protection, and political rights.

12. With respect to the **right to a fair trial**, the petitioners argued that the right to a competent, impartial authority was violated, as the Rules of Procedure did not exist prior to the proceedings initiated against the alleged victims but were issued precisely to bring them to trial. The petitioners added that the Rules of Procedure did not allow for recusal of the disciplinary authority and therefore its impartiality could not be challenged.

13. The petitioners also argued that the principle of presumption of innocence was violated, as the decision to remove the alleged victims from the bench was made before the proceedings began. They also indicated that the Rules of Procedure governing the impeachment trial prohibited recourse to a second judicial instance or some type of appeal. They added that the deadlines for presenting their defense were so restricted that the right to present an adequate defense was violated.

14. In terms of **freedom from *ex post facto* laws** (principle of legality), the petitioners argued that this right was violated because the process by which the alleged victims were removed from their posts was not substantiated by a previously established law but was based on Rules of Procedure. Moreover, they argued that no law existed that characterized an act as "improper performance of duties" and that therefore they were tried under a law that did not exist at the time of the events and that was approved simply to bring them to trial, in a manner tailored to their situation.

15. The petitioners argued that the right to **judicial protection** was violated because the alleged victims did not have effective recourse to appeal the decision that removed them from office, and the constitutional challenges they filed, though decided in their favor, were never carried out.

B. The State

16. The State indicated that the impeachment process, as well as the authorities that set it in motion and the legal grounds that were applied, were those established in the Paraguayan Constitution. It also noted that an impeachment trial is eminently political, and because of that political nature, many of the guarantees established for ordinary judicial proceedings do not apply, since the purpose is not to impose a penalty or issue a conviction but rather to remove a public official from office if the person is found guilty of any of the charges the law prescribes as grounds for impeachment.

17. The State indicated that the guarantees of independence and impartiality applicable to judges in ordinary courts do not apply to legislators who participate in an impeachment trial because they contain insurmountable contradictions with respect to the very nature of these political bodies.

18. The State noted that the alleged victims' improper performance of their duties needed to be investigated, and so a procedure was approved to do that via Resolution No. 122. The State argued that the alleged victims were tried in accordance with all procedural guarantees. Specifically, the State indicated that the legislative branch ensured the alleged victims the right of defense and gave them the opportunity to introduce evidence to refute the charges. The State said that although the Rules of Procedure granted only a 48-hour period to review the articles of impeachment, the Impeachment Committee had forwarded these to the defendants on November 12, 2003, which means that the alleged victims had a total of 18 days between notification and the presentation of their defense.

19. With respect to how long the accused had to present their defense against the charges, the State clarified that although the Rules of Procedure established a three-hour period, the Senate at no time limited the time available to them for their defense. The State indicated that Justice Carlos Fernández made use of the three-hour time period and that Justice Bonifacio Ríos's defense went on for five and a half hours.

20. In addition, the State argued that the Senate has the intrinsic authority to adopt its own rules of procedure, as well as to define what is understood by "improper performance in office," and that the IACHR therefore lacks the jurisdiction to analyze the merits of what the Senate has considered as such. The State further deems that the impeachment trial in question is not flawed, as the American Convention is subsidiary to the National Constitution, and the process met all the constitutional parameters.

21. The State indicated that 14 of the 20 counts against the alleged victims were dropped not for lack of grounds but because presenting the evidence to prove those charges would have taken much more time. With respect to article of impeachment 1, concerning a decision by which the justices determined that their own appointments were for life, the State called that decision a "legal heresy."

22. With respect to article of impeachment 2, concerning the deviation from the procedure for confirming judges, the State noted that the impeached justices did not interpret the case put to them; instead, they delivered a "twisted" interpretation that misrepresented the Constitution. With respect to count 4, concerning interference in the functions of the Chamber of Deputies, the State argued that the law was stretched in order to grant a measure that was in violation of the Constitution. With respect to count 5, concerning the failure to meet procedural deadlines, the State argued that the impeached justices' conduct was one of complete indolence and negligence. With respect to count 7, concerning interference in legislative authority and upsetting the principle of balance of power, the State argued that the impeached justices had issued a ruling with *erga omnes* effects, which it said went against the Constitution. Finally, with respect to count 14, in which the State was convicted and ordered to pay damages, the State indicated that "all good citizens in Paraguay regarded the suit (...) as treasonous."

23. Finally, with respect to Resolutions 951 and 952, the State considers these rulings to be null and void because they were issued by an ad hoc Constitutional Chamber lacking in impartiality; in addition, they were based on the Commission's own admissibility report and analyze the concept of "improper performance," an issue over which the Senate has exclusive authority. According to the State, when the Supreme Court overturned that resolution, that resolved the legal question being analyzed once and for all.

III. DETERMINATIONS OF FACT

A. Applicable legal framework

24. The Commission notes that the alleged victims were subjected to impeachment proceedings based on the Constitution of the Republic of Paraguay, as well as the provisions of Senate Resolution 122, the most important regulations of which are indicated below.

25. The 1992 Constitution of the Republic of Paraguay establishes the following, in the pertinent sections:

Article 225. On Procedures. The President of the Republic, the Vice President, ministers of the Executive Branch, justices of the Supreme Court, the Attorney General, the Public Defender, the Comptroller General of the Republic and Deputy Comptroller, and members of the Superior Electoral Court may be impeached only for improper performance of their duties (*mal desempeño de sus funciones*), for crimes committed in the exercise of their office, or for common crimes.

The Chamber of Deputies, by a two-thirds majority, shall draw up the articles of impeachment. The Senate, by a two-thirds absolute majority, shall hold a public trial of those accused by the Chamber of Deputies and, if appropriate, shall declare them guilty for the sole purpose of removing them from office. In cases in which it appears that common crimes have been committed, the impeachment records shall be passed on to the ordinary justice system.

Article 261. On the Removal and Cessation of Supreme Court Justices. Supreme Court justices may be removed only by means of impeachment. They must leave office upon reaching the age of 75.

B. Concerning the alleged victims' impeachment

1. Appointments of the alleged victims

26. As noted in his case file, Mr. Carlos Fernández Gadea was appointed a justice of the Supreme Court in April 1995. For his part, Mr. Bonifacio Ríos was designated a justice on May 6, 1999,³ and appointed chief justice on February 6, 2003,⁴ for the 2003-2004 period. According to the Constitution in effect at the time of the events in question, Supreme Court justices remained in their posts until the age of 75.⁵

2. Impeachment background

27. The IACHR notes that according to publicly available information, on August 15, 2003, Nicanor Duarte, upon taking office as president of the Republic of Paraguay, made a series of statements about the judicial branch, indicating that it was necessary to “pulverize the corrupt judiciary.”⁶

28. The Commission notes that in that context, on October 27, 2003, two justices of the Paraguayan Supreme Court resigned. In their resignation statements, one of them indicated that “after a series of negotiations among the presidents of the political parties, the list of justices who would be subjected to impeachment was made public. Even though several leaders of this negotiation process maintained that they will give us the opportunity to exercise the right to a defense in an impeachment trial, it must be

³ Annex 1. Resolution No. 240 of the Senate by which Dr. Bonifacio Ríos Ávalos is designated justice of the Supreme Court. Annex to the Initial Petition of Bonifacio Ríos of November 9, 2003.

⁴ Annex 2. Court Order No. 276 of the Supreme Court by which Justice Bonifacio Ríos is named Chief Justice. Annex to the Initial Petition of Bonifacio Ríos of November 9, 2003.

⁵ Article 261 of the Paraguayan Constitution.

⁶ Annex 3. News story of September 8, 2003, titled “Reacciones encontradas en relación a ‘pulverizar al poder judicial corrupto’” [“Mixed reactions to ‘pulverize the corrupt judiciary’”]. Annex to the Initial Petition of Bonifacio Ríos of November 9, 2003/ September 8, 2003, news story titled “Castiglioni apoya la ‘pulverización’” [“Castiglioni supports ‘pulverization’”]. Annex to the Initial Petition of Bonifacio Ríos of November 9, 2003.

considered that other statements have repeatedly referred to removal from office. Under these circumstances, any defense put forth would be pointless.”⁷

3. Proceedings in the Chamber of Deputies

29. On November 18, 2003, the Chamber of Deputies brought articles of impeachment against Carlos Fernández Gadea, Luiz Lezcano Claude, and Bonifacio Ríos Ávalos, in order to institute impeachment proceedings against them, and communicated this to the Senate. The resolution indicates the following:

The Honorable Chamber of Deputies resolves (...)

a) To bring articles of impeachment to the Honorable Senate against Supreme Court Justices Carlos Fernández Gadea, Luis Lezcano Claude, and Bonifacio Ríos Ávalos, for acts that constitute the grounds of improper performance and that, moreover, could constitute crimes committed in the exercise of the office and common crimes, under the provisions of Article 225 of the Constitution.

b) To communicate this Resolution to the Honorable Senate for [the accused] to be submitted to the respective impeachment trial (...) in accordance with the procedure established for the effects prescribed in Article 225 of the Constitution, and if found guilty, removed from office and the impeachment records in due course forwarded to the ordinary justice system.⁸

30. The Commission observes that the resolution in question includes 20 charges against the alleged victims. In terms of what is relevant to this case, the Commission lists the following:

(...) 1. Declaration that appointments of its own members are for life, violation of the recusal obligations established in the Civil Procedural Code. Agreements and Judgments 222 and 223, both issued by the Supreme Court on May 5, 2000, ruled in favor of, first, an action of unconstitutionality advanced by Justices FELIPE SANTIAGO PAREDES and JERÓNIMO IRALA BURGOS and, second, an action advanced by Dr. ENRIQUE SOSA ELIZECHE, both of which challenged Resolution No. 421, issued by the Senate on November 5, 1999; Decree No. 6131, issued by the Executive Branch on November 9, 1999; and Article 19 of Law No. 609/15.

(...) The Supreme Court Justices who signed this judgment had a direct interest in the case because the resolution benefited them by keeping them in office until retirement age (...)

(...) 2. Deviation from the constitutional procedure for confirming judges, interference with the functions of another judicial body.

(...) Judges brought an action of unconstitutionality (...) requesting a finding of inapplicability regarding the rule requiring judges who aspire to be confirmed in their posts to appear again before the Council of the Judiciary (...). The Court, in its Agreement and Judgment No. 1033 of December 19, 2001, rejected the suit. However, in the resolution section it introduced an unusual decision that has no constitutional basis. Indeed, the ruling in question provides (...) that the Council of the Judiciary may not exclude from a shortlist of three candidates any Judge who presents him or herself for competition hoping to be confirmed to the post (...). In no article of the Constitution is it established that the Council of the Judiciary must include on a candidate shortlist judges who present themselves for confirmation. Moreover, the Constitution established a procedure that explicitly requires

⁷ Annex 4. Resignation of Justice Raúl Sapena Brugada. Annex to the Initial Petition of Bonifacio Ríos of November 9, 2003/ Annex XX. Resignation of Justice Jerónimo Irala Burgos. Annex to the Initial Petition of Bonifacio Ríos of November 9, 2003.

⁸ Annex 6. Resolution No. 134 of the Chamber of Deputies bringing articles of impeachment against the justices. Annex to the State's written observations of September 22, 2010.

judges to compete for their posts at least two more times after they are appointed, to secure tenure in office.

(...) 4. Interference in the Chamber of Deputies' exercise of its constitutional functions.

(...) On April 24, 2002, the Chamber of Deputies was informed that the Constitutional Chamber of the Supreme Court, in the case "Action of Unconstitutionality against Resolution No. 864/2002 of the Honorable Chamber of Deputies: Which Summons and Subpoenas the Paraguayan Director of Entidad Binacional Yacyretá, the Architect Walter Reiser," had decided to issue A.I. No. 487, dated April 24, 2002, by which "the effects of Resolution No. 864/2002 are suspended...." In this manner, the justices of the Constitutional Chamber were interfering in the exercise of a function assigned to the houses of Congress by the Constitution itself (...). What is most serious is that the decision was adopted with no legal foundation whatsoever (...).

(...) 5. A failure to meet procedural deadlines, which was highly detrimental to the workings of government. Several important cases run the risk of expiring due to judicial delays and the slow pace with which cases are processed. The case against former Comptroller General of the Republic Daniel Fretes Ventre, accused of serious acts of corruption, was held up in the Constitutional Chamber for several months, to cite one example. The most serious example of the nefarious consequences of this negligent and irresponsible conduct is the legal scandal arising out of the delays in resolving various constitutionality challenges brought against Law No. 1626 of the Civil Service (...).

(...) 7. Usurpation of constitutional authorities expressly reserved for the Legislative Branch, seriously upsetting the balance of power established in Article 3 of the Constitution, which constitutes the punishable offense of an "attack on the constitutional order." The Supreme Court, sitting *en banc*, (...) by Agreement and Judgment No. 979 of September 18, 2002, decided to (...) rule in favor of an action brought by the Attorney General challenging the constitutionality of Article 5 of Law No. 1444/99 "On Transition," within the scope established in the last part of Article 137 of the National Constitution (...). The Supreme Court strayed from the explicit and specific mandates of the National Constitution, encroaching on the precise and explicit sphere of another branch of government (due to either clear ignorance of the law or intentional omission), more precisely attributing to itself legislative powers that are the exclusive purview of the National Congress (...)

(...) 14. The Case of Mundy Recepciones or "Croquetas de Oro" ("Gold Croquettes"). The Constitutional Chamber of the Supreme Court (...) on February 28, 2002, issued Agreement and Judgment No. 62, rejecting the action brought by ITAIPU Binacional that challenged the constitutionality of S.D. No. 305 of April 9, 2001 (...) and Agreement and Judgment No. 101 of August 9 of that same year (...) which resulted in a judgment against ITAIPU BINACIONAL for the sum [in local currency, guaranis] of TEN BILLION FIVE HUNDRED NINETY-SEVEN MILLION, FIVE HUNDRED SEVENTEEN THOUSAND, FIVE HUNDRED SEVENTY-FIVE GUARANIS (...). Considering the notorious speed with which the case in question was conducted, there are serious indications of bias, more so considering that one of the lawyers for the plaintiff was none other than the brother of Justice Carlos Fernández Gadea. Beyond the speed of the case, which could constitute improper performance of duties, the aforementioned conduct falls under the crime of malfeasance established in Article 305 of the Criminal Code.⁹

⁹ Annex 6. Resolution No. 134 of the Chamber of Deputies bringing articles of impeachment against the justices. Annex to the State's written observations of September 22, 2010.

31. On November 22, 2003, the Senate issued Resolution No. 122 establishing the Rules of Procedure for the Handling of the Impeachment Trial against the aforementioned justices. That resolution stipulated, in its pertinent sections, the following:

Article 2.- No preliminary issues, recusals, matters of prior and special pronouncement, or confession evidence (*prueba confesoria*) shall be admitted. All resolutions adopted by the Honorable Senate in the presence of the parties or their representatives shall be considered notified in their own right; others shall be notified by certified document signed by the President of the Honorable Senate, handled by the persons he designates. Resolutions issued by the Honorable Senate as a Tribunal may not be appealed in any way.

Article 4.- The Senate shall convene as a Tribunal, its members first having been sworn in, in accordance with Article 225 of the National Constitution, on Wednesday, November 26, of the current year, at 9:00 a.m., in the following order of impeachment:

- 1) impeachment of Supreme Court Justice Dr. Carlos Fernández Gadea;
- 2) impeachment of Supreme Court Justice Dr. Luis Lezcano Claude; and
- 3) impeachment of Supreme Court Justice Dr. Bonifacio Ríos Ávalos.

Each impeachment may not last for more than one hour and thirty minutes, and it must be made specifically or individually.

The following procedure shall be observed during the session:

- a) those appearing for the accusation and for the defense, respectively, shall be accredited;
- b) the Honorable Chamber of Deputies shall formulate the charges and offer the evidence it seeks to use; and
- c) the charges and documents put forth by the Honorable Chamber of Deputies shall be provided to the accused parties and notice shall be served that they should prepare their defense and offer the evidence they seek to use in the special session to be held on December 1, 2003, at 8:30 a.m., in the following order:

- 1) defense arguments of Supreme Court Justice Dr. Carlos Fernández Gadea;
- 2) defense arguments of Supreme Court Justice Dr. Luis Lezcano Claude; and
- 3) defense arguments of Supreme Court Justice Dr. Bonifacio Ríos Ávalos.

Each party's defense may not last for more than three hours.

Article 5.- In the special session contemplated for Monday, December 1, 2003, in keeping with the schedule established in the previous article, and in the order that was indicated, the following measures shall be adopted:

- a) Each defendant, in the interest of his rights, shall formulate his defense and offer all the evidence he seeks to use;
- b) A copy of each party's defense argument and each offer of evidence shall be handed over to the Honorable Chamber of Deputies;
- c) The materials shall be placed in another room until Wednesday, December 3 of this year at 8:00 a.m., so that members of the Tribunal can examine the evidence offered by the parties and evaluate its relevance.

Article 6.- In the special session on Wednesday, December 3 of this year, at 8:00 a.m., the Tribunal shall decide on whether each piece of evidence offered is admitted or rejected. If it rejects one or more pieces of the evidence, it must give verbal reasons for the decision.

In the same session, production of the admitted evidence shall be ordered, and a special session shall be convened to produce it; this will be held on Saturday, December 6 of this year, at 8:00 a.m.

With regard to evidence that does not have to be produced in session (reports, expert opinions), the convening of a special session for that purpose shall be dispensed with, and these pieces of evidence shall be added to those already produced, before the session to hear arguments.

The evidence admitted, in the case of both defendants and accusers, shall be produced in the following order:

- a) accuser and defense (case of Supreme Court Justice Dr. Carlos Fernández Gadea);
- b) accuser and defense (case of Supreme Court Justice Dr. Luis Lezcano Claude); and
- c) accuser and defense (case of Supreme Court Justice Dr. Bonifacio Ríos Ávalos).

Article 8.- In the final special session, to be held on Friday, December 12 of this year, at 8:30 a.m.:

a) the plenary of the Honorable Senate shall deliberate publicly on the points argued by the parties and on the evidence produced; and

b) immediately following, the corresponding roll call vote shall take place. If the minimum number of votes is forthcoming, as required by the Constitution for such effects, the defendants shall be declared guilty and shall be removed from their posts *ipso jure*. In cases in which crimes have allegedly been committed, the records of the proceedings shall be turned over to the ordinary justice system; otherwise, they shall be archived.

The result of the impeachment trial shall be notified to any parties who may not have attended the proceedings, to the Supreme Court, and to the executive branch.

Article 9.- For cases not contemplated in this Resolution, or if there should be any doubt or divergence over the interpretation of one of its provisions, the Tribunal shall be able to resolve the issue immediately, after discussing the matter.¹⁰

4. Impeachment trial in the Senate

32. The impeachment trial in the Senate began on November 26, 2003, after that chamber had approved the draft articles of impeachment.¹¹

33. On December 3, the Senate dropped several charges and continued the proceedings with respect to Bonifacio Ríos Ávalos only on counts 1, 2, and 4, and with respect to Carlos Fernández Gadea on counts 5, 7, and 14. These have to do with the declaration that justices are appointed for life; modification of the procedure for confirming judges; interference by the Supreme Court in legislative matters; failure to abide by judicial deadlines; resolution of actions of unconstitutionality with *erga omnes* effects; and the Mundy Case. In that regard, the Senate argued that dropping the charges in question would save time and allow for a more extensive discussion of the most important issues, in addition to ensuring that the defendants could carry out their defense.¹²

¹⁰ Senate Resolution No. 122.

¹¹ Annex 7. Transcript of the special session of November 18, 2003, of the Chamber of Deputies. Annex to the State's written observations of September 22, 2010.

¹² The charges that were dropped referred, respectively, to: 3. Usurpation of legislative authority in tax-related matters; 6. Attempt to thwart the authority of the legislative branch in order to keep the Second Chamber of the Court of Accounts functioning, referring to a

[continues ...]

5. Decision to remove from office

34. On December 12, 2003, by Resolution 134, the Senate decided to remove the alleged victims from office. In its resolution, the Senate stated the following:

(...) That now at this stage, with respect to the first defendant, Dr. CARLOS FERNÁNDEZ GADEA, the motion to remove him from his position as justice of the Supreme Court, having been submitted to a vote, obtained a total of forty-four votes in favor, out of a total of forty-four Senators present in the hall.-

That the motion to remove Dr. BONIFACIO RÍOS ÁVALOS from the position of justice of the Supreme Court, having been submitted to a vote, obtained forty-three votes in favor, out of a total of forty-four Senators present in the hall.-

(...) Resolves:

1. To declare Dr. CARLOS FERNÁNDEZ GADEA guilty of improper performance of his duties and consequently to remove him from his position as justice of the Supreme Court.-
2. To declare Dr. BONIFACIO RÍOS ÁVALOS guilty of improper performance of his duties and consequently to remove him from his position as justice of the Supreme Court.¹³

6. Constitutional challenges

35. Subsequently, the alleged victims filed actions challenging the constitutionality of Resolutions 122 and 134. They argued that their right of defense was violated because the time period allowed for preparing their defense was limited to two business days and the presentation of defense arguments could not exceed three hours. Likewise, they argued that the body that terminated them lacked independence and impartiality, which moreover violated the principle of judicial independence.

36. Between November 27, 2003, and September 15, 2004, Justices Antonio Fretes, Víctor Núñez Rodríguez, and Wildo Rienzi Galeano recused themselves and argued that they could not hear the case because they belonged to the Constitutional Chamber of the Supreme Court; the Chamber was therefore assembled with three interim justices.¹⁴

37. On December 30, 2009, the Constitutional Chamber of the Supreme Court ruled in favor of the constitutional challenges brought by the alleged victims and ordered, through Judgments 951 and 952, that the justices be reinstated. Judgment 951 ruled on the action of unconstitutionality brought by Bonifacio

[... continuation]

judicial body that has often hindered the work of the Office of the Comptroller General of the Republic and that has the Court's support through actions of unconstitutionality and precautionary measures; 8. The reinterpretation by the Supreme Court's Criminal Chamber of a precept in the Code of Criminal Procedure to avoid the effects of Article 142 of the Code of Criminal Procedure, thus "inaugurating" a mandatory precedent for similar and emblematic cases, the application of which will increase impunity; 9. The Supreme Court's unlawful appropriation of two aircraft confiscated from drug traffickers, in contravention of the Chicago Convention; 10. Irregularities in the bidding process related to the North Tower of the Palace of Justice, as well as the concession of the contract to bidders whose bids were higher than those of rejected bidders; 11. Egregious and widespread cases of nepotism, including positions held by direct relatives of the justices; 12. The unusual promotion of Judge Juan Carlos Paredes, who was involved in a drug trafficking case that was called into question, in which it was determined to grant a sentence other than imprisonment; 13. Self-awarded salary increases in 2002, in contravention of the fiscal regulations for that year; 15. The Nissen Case, the judicial harassment of a prosecutor who was investigating corruption cases, in which the official was suspended with no respect for the constitutional guarantees of due process; 16. Complaints of administrative irregularities at the school of veterinary sciences, a corruption case that involved a classmate of Justice Ríos' wife; 17. The Magu SRL case, in which Justice Ríos' wife defended the company in a tax litigation case; 18. The criminal case against several officials of the Municipality of San Lázaro, in which the aforementioned attorney was defending the accused; 19. The complaint by Judge Alfredo Romero that he had been pressured by the Chief Justice of the Supreme Court in connection with the bribery case of former Congressman Julián Sosa; 20. Evidence of unlawful enrichment, such as Justice Ríos' residence.

¹³ Annex 8. Senate Resolution by which the justices are removed from office. Annex to the State's Response to the Petition of Bonifacio Ríos.

¹⁴ Annex 9. Statement of Recusal of Justices Antonio Fretes, Víctor Núñez and Wildo Rienzi Galeano. Annex to the State's response to the petition.

Ríos, while Judgment 952 ruled on the action of unconstitutionality brought by Carlos Fernández. Both judgments have the same content.

38. With respect to Resolution 122, the Constitutional Chamber indicated the following:

(...)RESOLUTION NO. 122, here being contested, established a procedure for the impeachment trial of the Supreme Court Justices Carlos Fernández Gadea, Luis Lezcano Claude, and Bonifacio Ríos (ART. 1), a circumstance at odds with the constitutional provision that prohibits the establishment of a special prosecution law, that is, a law or legal regulation that applies to the prosecution of a particular individual; such a provision is recognized by international public law and accepted in the supranational legal system prescribed in Article 145 of our Constitution.

(...) The ban on opposing preliminary issues and on recusals, prior matters, and appeals of any type, established by Article 2 of the aforementioned administrative resolution of the Senate, blatantly violates the defense's guarantee to a hearing by impartial judges (Article 16 of the Constitution), as well as the right to petition established in Article 40, also of our Constitution.

(...) In the same administrative decision here being contested, the provision in Article 4 expresses, at the end, that "each party's defense may not last for more than three hours." And we well know that any limitation to the right to a defense goes against the cardinal principle of the inviolability of the defense, contained in Article 16 of the Constitution; furthermore, we can cite the Supreme Law itself, which in Article 17(7) imposes the obligation to ensure that a person is provided "prior and detailed notification of the charges, and has available the necessary copies, means, and time required to prepare a defense while in free communication."

In these circumstances, it is patently and unequivocally clear that the regulatory act of a procedural nature established in RESOLUTION No. 122, of 11/25/03, handed down by the Honorable Senate, is blatantly unconstitutional (...).¹⁵

39. With respect to Resolution 134, the Constitutional Chamber indicated that:

(...) In all the expositions, no concrete acts are attributed to those removed from office; it is only stated that there were 44 votes for the removal of Carlos Fernández Gadea and 43 votes for the removal of Dr. Bonifacio Ríos Ávalos. Those passing judgment have established no facts; the ruling is not reasoned either from a factual or legal standpoint. The judgment, in this case, is based on the autocratic will of "voters" (rather than judges), as they did not explain why they have proceeded in this manner, which inevitably makes any decision or sanction arbitrary: And so, we are in the presence of an arbitrary judgment, and any arbitrary judgment is unconstitutional.

(...) The 2003 removal was not for legal reasons but for reasons that were strictly political. It is true that an impeachment proceeding (*juicio político*) may respond to "political motives," and generally does; however, what cannot or what should not be accepted is that "legal motives" are invoked for the proceedings and that the trial ends by condemning or punishing someone for "political reasons," and that to achieve this "political objective," procedures that are unexpected or non-existent in a previously enacted law are used, and that these procedures openly defy not only the "principle of legality" that should govern the conduct of the entire Government, but even the prevailing Rule of Law, infringing on higher laws that make up the Constitutional Rights and Guarantees, whose protection and effectiveness have been placed under the supervision of this Constitutional Chamber (...)

¹⁵ Annex 10. Judgments 951 and 952. Annex to the January 16, 2010, written observations of Carlos Fernández.

(...) Clearly, in the case *sub judice*, putting Justices of the Supreme Court on trial for the opinions they expressed in the judgments specified above has involved not only a grave error committed against the judicial immunity recognized in the Constitution itself for all judges, but also, because the ruling being contested could even amount to an “attack on the independence of the judiciary,” a “punishable offense” characterized as such by the Constitution itself, which lays out the following punishment: “Those who attack the independence of the Judiciary and of its judges shall be disqualified from exercising any public function for five consecutive years, in addition to being subject to any penalties set by law” (Article 248).¹⁶

40. On January 2, 2010, in response to the earlier decisions, the Congress approved Resolution No. 1, rejecting the content of the ruling in the following terms:

Article 1.- The authority to try the officials cited in Article 225 of the Constitution by means of an impeachment trial is a sphere of competence that belongs exclusively and solely to the National Congress; and the procedure to be used to that effect may only be determined by this branch of government. Therefore, the resolutions adopted as a result are not subject to judicial review. (...)

Article 3.- Forcefully repudiate the content of the December 30, 2009, Agreements and Judgments 951 and 952, respectively, handed down by the Constitutional Chamber of the Supreme Court, which seeks to declare unconstitutional the removal from office through an impeachment trial of the former Supreme Court Justices Bonifacio Ríos Ávalos and Carlos Fernández Gadea, resolved by the Honorable Senate under Resolution No. 134 of December 12, 2003.

(...)

Article 5.- Caution the Supreme Court Justices, the Council of the Judiciary, the Jury for the Prosecution of Judges, and the Executive Branch that accepting the validity of the judgment shall incur grounds for impeachment proceedings, in addition to incurring criminal liability for acting as accomplices of the signers of the decision in question.¹⁷

41. On January 5, 2010, the Supreme Court issued Resolution No. 2382 declaring Judgments 951 and 952 to be invalid and suspended the judges who issued the resolutions. The Supreme Court indicated the following:

In these decisions, the intervening Judges did not observe the legal order of the Republic, and they violated cardinal principles of the national judicial system, as both our Constitution and the Civil Procedural Code categorically state that a judgment of unconstitutionality always includes a pronouncement that is exhausted only and exclusively with the declaration of unconstitutionality.

(...) given the significance of the effects of decisions made by judges in the Judiciary that were issued in opposition to the constitution and the legal framework applicable to these matters, this highest court finds it necessary to declare that what was resolved in Agreements and Judgments 951/2009 and 952/2009, issued by the members of the Court of Accounts of this body’s Constitutional Chamber, lack all legal validity, within the scope provided in Article 137 of the National Constitution.

¹⁶ Annex 10. Judgments 951 and 952. Annex to the January 16, 2010, written observations of Carlos Fernández.

¹⁷ Annex 11. Congressional Resolution No. 1 of January 2, 2010. Annex to the State’s written observations of January 25, 2010.

Moreover, for the reasons explained above, it is incumbent to suspend Judges Juan Francisco Recalde Burgos, Meneleo Insfrán Riveros, and Florencio Pedro Almada Álvarez from their duties while the case proceeds through the Jury for the Prosecution of Judges.¹⁸

42. The Commission notes that Justice Antonio Fretes, who recused himself from hearing the case before the Constitutional Chamber, signed the resolution.¹⁹

C. Criminal proceeding

43. The IACHR notes that various members of Congress subsequently filed criminal complaints against the alleged victims for the crimes of malfeasance, attack on the constitutional order, usurpation of public functions, and extortion, damage to the public trust, and illegitimate enrichment.

44. On November 5, 2005, the Fourth Supervising Criminal Judge dismissed the complaint. In his resolution, the judge indicated that:

(...) This judge may agree with the legal position of the former Justices in several rulings under examination, but in the light of criminal law, he does not consider that the punishable offense of Malfeasance has been committed.

(...) In terms of the alleged attack on the constitutional order, no evidence was found that would indicate an overreach of the legal powers conferred on the Supreme Court. As regards usurpation of public functions and extortion, it was found that the fact that the Justices approved a change in the rate of judicial remuneration does not constitute the imposition of a tax but a simple adjustment in amount based on the Consumer Price Index, in keeping with what has been established by the pertinent legislation. As regards the crime of damage to the public trust, it was concluded that because there has been no impact on the national patrimony, one of the elements that would constitute such a crime does not exist. Finally, the crime of illegitimate enrichment was dismissed because “the very authority responsible for analyzing the consistency of the sworn statements provided by the former Justice concluded that these statements are substantiated.”²⁰

IV. LEGAL ANALYSIS

A. Right to a fair trial,²¹ freedom from ex post facto laws,²² and judicial protection²³

¹⁸ Annex 12. Supreme Court Resolution No. 2382 of January 5, 2010. Annex to the January 16, 2010, written observations of Carlos Fernández.

¹⁹ Annex 13. Statement of Recusal of Antonio Fretes, para. 41. Annex to the State’s response to the petition.

²⁰ Annex 10. Judgments 951 and 952. Annex to the January 16, 2010, written observations of Carlos Fernández.

²¹ Article 8 of the Convention establishes, in its pertinent sections: 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.

²² 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.”

²³ Article 25 of the American Convention establishes, in the pertinent section, that: 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. 2. The States Parties undertake: c) to ensure that the competent authorities shall enforce such remedies when granted.

1. General considerations regarding applicable guarantees

45. The Commission notes that both bodies of the inter-American system have indicated that the guarantees established in Article 8 of the American Convention are not limited to criminal proceedings but apply to other types of proceedings as well.²⁴ Specifically, when sanction proceedings are involved, both of the system's bodies have indicated that the guarantees established in Article 8(2) of the American Convention apply analogously.²⁵

46. The case at hand involves an impeachment trial that ended with the decision to remove the alleged victims from their positions as justices of the Paraguayan Supreme Court. In this regard, the Commission considers that this had to do with a sanction proceeding that involved the punitive power of the State, and thus the applicable guarantees include, analogously, those applicable to a criminal proceeding. Of particular relevance for the analysis of this case are the guarantees established in Articles 8(1), 8(2), and 9 of the American Convention.

47. Specifically, in terms of impeachment and its application for the removal of justice operators, the Inter-American Court has indicated that impeachment “must observe due process in order to ensure the principle of judicial independence with respect to high ranking judges subjected to that procedure.”²⁶ For its part, the IACHR has indicated, with regard to impeachment, that it should be used only exceptionally as a mechanism to remove judges, since by its very nature it could create certain risks to particular guarantees that must be strictly observed in these circumstances. As a result, if the legislature has jurisdictional authority in cases involving the removal of judges, this must not constitute political control over judicial activity based on criteria of discretion or political expediency but must consist of legal oversight, in absolute compliance with the principle of legality (freedom from *ex post facto* laws) and with due process guarantees.²⁷

48. The Commission has stressed that “the use of impeachment in the case of justice operators should be gradually eliminated in the region, as impeachment poses a significant threat to judicial independence.”²⁸

2. Competence of the disciplinary authority and respective proceedings

49. Article 8(1) of the Convention establishes the right to a hearing “by a competent (...) tribunal, previously established by law.” Thus, people “have the right to be tried, in general, by a competent tribunal, in accordance with legally established procedures.” The State must not create tribunals that do not use the duly established procedures of the legal process “to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.”²⁹

50. States have the authority to design and organize disciplinary proceedings in the domestic sphere. Such proceedings should be applied in accordance with pre-established procedures that indicate the

²⁴ IACHR, Report No. 65/11, Case 12.600, Merits, Hugo Quintana Coello et al., “Justices of the Supreme Court,” Ecuador, March 31, 2011, para. 102; I/A Court H.R., Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 126-127; Case of the Constitutional Court v. Peru. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, paras. 69-70; and Case of López Mendoza v. Venezuela. Merits, Reparations and Costs. Judgment of September 1, 2011. Series C No. 233, para. 111.

²⁵ IACHR, Report No. 65/11, Case 12.600, Merits, Hugo Quintana Coello et al., “Justices of the Supreme Court,” Ecuador, March 31, 2011, para. 102; I/A Court H.R., Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 126-127; Case of the Constitutional Court v. Peru. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, paras. 69-70; and Case of López Mendoza v. Venezuela. Merits, Reparations and Costs. Judgment of September 1, 2011. Series C No. 233, para. 111.

²⁶ 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.

²⁷ IACHR, Report No. 43/15, Case 12.632. Merits (Publication). Adriana Beatriz Gallo, Ana María Careaga, and Silvia Maluf de Christin, Argentina, July 28, 2015, paras. 135-137.

²⁸ IACHR, Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas, OEA/Ser.L/V/II.Doc.44, December 5, 2013, para. 205.

²⁹ I/A Court. H.R., Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, para. 75; Principle 5, United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan, Italy, from August 26 to September 6, 1985.

authorities and the procedural rules that apply.³⁰ Such a guarantee is met when the disciplinary authority originates in a statute established before the proceedings³¹ and, correspondingly, such a law is violated when the disciplinary body lacks the competence established by law.³²

51. The European Court of Human Rights, in interpreting Article 6§1 of the European Convention, which establishes that “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law,” has indicated that the object of the term “established by law” is to ensure that the organization of the judicial system in a democratic society does not depend on the discretion of the executive but is regulated by law emanating from parliament³³ and covers not only the legal basis for the existence of a “tribunal,” but also compliance by the tribunal with the particular rules that govern it³⁴ and the tribunal’s composition in each case.³⁵

52. In the case at hand, the Commission notes that the Constitution established the jurisdiction of the Chamber of Deputies to impeach justices of the Supreme Court for improper performance of their duties, in which case they had to present the articles of impeachment to the Senate, which is responsible for holding the impeachment trial and deciding on the removal of Supreme Court justices.

53. Nevertheless, the Commission notes that on November 22, 2003, after the Chamber of Deputies had formulated the articles of impeachment against the alleged victims, the Senate issued Resolution No. 122, which established not only the Rules of Procedure for the Handling of the Impeachment Trial but procedural rules for this particular impeachment trial, with a substantive impact on the exercise of a defense, as well as other aspects related to due process guarantees. Specifically, in these rules of procedure the Senate determined, among other things: i) that challenges to the disciplinary body would not be admitted; ii) that the Senate’s ruling could not be appealed; iii) that each defendant’s presentation of his defense could not last more than three hours; iv) that the articles of impeachment would be delivered to the alleged victims on Wednesday, November 26, 2003, and they would have until Monday, December 1, 2003—in other words, two business days—to prepare their defense and offer their evidence.

54. The Commission deems that the incorporation of ad hoc procedural rules such as those indicated above, through rules of procedure applicable to the alleged victims’ specific case, when the proceeding had already begun with the articles of impeachment, violates the right established in Article 8(1) of the Convention, which holds that both the disciplinary authority and the procedure to be followed should be previously established by law. This constitutes a guarantee which provides the necessary legal certainty of knowing beforehand what the competent authority will be and thus the scope and manner in which its competence will be exercised, and which seeks to protect the right of defense. This is even more important considering that this case involves sanction proceedings against judges, bearing in mind the reinforced guarantees of tenure that apply to those who hold such positions, in order to safeguard their independence.

55. In view of the foregoing, the Commission concludes that the Paraguayan State violated the right to a hearing by a competent authority by means of previously established procedures, established in Article 8(1) of the American Convention, in connection with the obligations established in Articles 1(1) and 2 therein, to the detriment of Bonifacio Ríos Ávalos and Carlos Fernández Gadea.

3. The right to an impartial judge

³⁰ IACHR, Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas, OEA/Ser.L/V/II.Doc.44, December 5, 2013, para. 187.

³¹ 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. 53.

³² I/A Court. H.R., Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 221.

³³ ECHR, Case of Biagioli v. San Marino, Third section, Application 8162-13, July 8, 2014, para. 74.

³⁴ ECHR, Case of Sokurenko and Strygun v. Ukraine. Applications 29458/04 and 29465/04, Judgment of November 12, 2006, paras. 24 and following.

³⁵ See Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (civil limb), Updated to August 31, 2018, paras. 174 and following.

56. The IACHR calls to mind that the guarantee of impartiality is wholly applicable to impeachment proceedings that involve the removal of judges, taking into account that the decisive aspect for determining the respective guarantees and their scope is the punitive nature of the power being exercised by the authority in question. The guarantee of impartiality implies that the members of a disciplinary body “have no direct interest in, a pre-established viewpoint on, or a preference for one of the parties, and that they are not involved in the controversy.”³⁶

57. The Inter-American Court has indicated that the recusal of judges is a means to protect the right to a hearing by an impartial body. It gives parties the right to move for the exclusion of a judge when, regardless of the personal conduct of the questioned judge, there are demonstrable facts or convincing elements that may lead to reasonable fears or legitimate suspicions of partiality toward the person. A recusal would prevent the judge’s decision from being seen as motivated by reasons alien to the law and thus prevent the operation of the judicial system from appearing distorted. The institution of recusal, on one hand, works as a guarantee for the parties to the proceedings, and on the other hand, it aims to provide credibility to the role performed by the jurisdiction. A challenge should not necessarily be seen as putting the moral rectitude of the challenged official on trial, but rather as a tool to build trust for those who turn to the State seeking action by bodies that should be and should appear to be impartial.³⁷

58. In the case at hand, the Commission underscores that Resolution 122, which laid out the rules for the impeachment proceedings against the alleged victims, established that “no preliminary issues, recusals, matters of prior and special pronouncement, or confession evidence shall be admitted.” This prevented the alleged victims from challenging the impartiality of the disciplinary authority, a guarantee that is particularly significant in the context described, in which the alleged victims argued that the impeachment had a discriminatory basis and that, as will be analyzed in the following sections, the disciplinary authority did not provide grounds for its decisions and these decisions could not be appealed.

59. Based on the foregoing, the Commission concludes that the Paraguayan State violated the right to a hearing by an impartial authority established in Article 8(1) of the American Convention, in connection with the obligations established in Articles 1(1) and 2 therein, to the detriment of Bonifacio Ríos Ávalos and Carlos Fernández Gadea.

4. The right to a hearing and the right of defense

60. The right to be a hearing (Article 8(1) of the Convention) encompasses the right of every person to have access to the court or public body responsible for determining his or her rights and obligations.³⁸ The right of defense, for its part, includes the obligation to prior notification in detail of the charges being brought against the accused (Article 8(2)(b) of the Convention), as well as the granting of adequate time and means for the preparation of the person’s defense (Article 8(2)(c) of the Convention). Both rights—to a hearing and to a defense—are related to each other, as “to provide a hearing to a person under investigation implies permitting him to defend himself adequately.”³⁹ The right to a hearing does not necessarily imply that this must be exercised orally, and it may be substantiated in writing.⁴⁰ The authority in charge of the sanction proceeding must follow the procedures established for this purpose and allow the

³⁶ I/A Court. H.R., Case of Palamara Iribarne vs. Chile. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, para. 146.

³⁷ 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. 63.

³⁸ I/A Court. H.R., Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs. Judgment of January 29, 1997. Series C No. 30, para. 74, and Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 140.

³⁹ Along these lines, the Commission has indicated: “To provide a hearing to a person under investigation implies permitting him to defend himself adequately, with the assistance of an attorney, in knowledge of all the evidence mounted against him; to provide him with a hearing is to permit him to be present at the examination of any witnesses that testify against him, to permit him to challenge their testimony, and to cross-examine them in order to discredit their incriminating statements as contradictory or false; to provide an accused with a hearing is to give him the opportunity to deny and to detract from the documents sought to be used against him.” IACHR, Report No. 50/00 in Case 11.298, Reinaldo Figueredo Planchart v. Venezuela, para.112.

⁴⁰ 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. 75.

exercise of the right of defense.⁴¹ This right is impaired, for example, when the time period allowed to exercise the right of defense is inadequate considering the need to examine the case and the evidence.⁴²

61. In the instant case, the alleged victims argued that their right of defense was violated considering that they had two business days to prepare their defense and three hours to present it. For its part, the State indicated that although the Rules of Procedure granted only 48 hours for the articles of impeachment to be conveyed to them, the Impeachment Committee sent them the charges on November 12, 2003, giving the alleged victims 18 days between the notification and the presentation of their defense. The State also noted that even though the Rules of Procedures established a period of three hours for the accused to defend themselves against the charges, the Senate did not limit the time for exercising their defense. The State added that Justice Carlos Fernández used the three hours provided while Justice Bonifacio Ríos extended his defense to five and a half hours.

62. The Commission notes that, quite aside from the unconventional nature of the ad hoc regulation regarding the exercise of the right of defense, which was analyzed in the previous section, the IACHR does not have sufficient evidence to determine how the time frame provided impinged on the right to a hearing and the right of defense.⁴³ While the 48-hour period may be seen as excessively short, in light of the State's argument the IACHR does not have evidence to determine that the time to prepare and present a defense, as carried out in practice, violated the Convention. Based on the foregoing considerations, the Commission concludes that the Paraguayan State did not violate the right to a hearing and the right of defense to the detriment of Bonifacio Ríos Ávalos and Carlos Fernández Gadea.

5. The principle of judicial independence, the principle of freedom from ex post facto laws, and the right to have well-reasoned decisions

63. The Commission calls to mind that disciplinary proceedings against justice operators should be carried out in a way that is compatible with the principle of judicial independence. Based on that principle, it follows that States should provide reinforced guarantees to judges to ensure their independence.⁴⁴ The bodies of the inter-American system have interpreted the principle of judicial independence in the sense of incorporating the following guarantees: an adequate appointment process, tenure in the position, and the guarantee against external pressures.⁴⁵ Specifically, as pertains to the case at hand, the Court has indicated with respect to the guarantee of tenure, that “the scope of judicial independence results in the subjective right of judges to be dismissed exclusively for the reasons permitted, either by a proceeding that complies with judicial guarantees or because their mandate has terminated.”⁴⁶ When a judge's tenure is arbitrarily impaired, “the right to judicial independence recognized in Article 8(1) of the American Convention is violated.”⁴⁷

64. For its part, the principle of legality (freedom from ex post facto laws) governs the actions of State bodies when the exercise of the State's punitive powers are involved, and it is applicable to disciplinary proceedings, which are an expression of that power as they imply an impairment or alteration of a person's rights as a consequence of a wrongful conduct.⁴⁸ The IACHR has indicated that in the context of disciplinary

⁴¹ I/A Court. H.R., Case of the Constitutional Court v. Peru. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, paras. 73 and 74. IACHR, Report No. 30/97. Case 10.087 (Merits). Gustavo Carranza, Argentina, September 30, 1997, para. 68.

⁴² I/A Court. H.R., Case of the Constitutional Court v. Peru. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, paras. 81-83.

⁴³ See I/A Court. H.R., Case of López Mendoza v. Venezuela. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233, para. 121.

⁴⁴ 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. 147.

⁴⁵ IACHR, Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas, OEA/Ser.L/V/II.Doc.44, December 5, 2013, paras. 56, 109, and 184; I/A Court. H.R., Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 191.

⁴⁶ I/A Court. H.R., Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 192.

⁴⁷ I/A Court. H.R., Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 192.

⁴⁸ I/A Court. H.R., Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 257.

proceedings against justice operators, there must be clear rules concerning the grounds and procedure for removing judges from office. The absence of such rules, in addition to fueling doubts about the independence of the judiciary, can lead to arbitrary abuses of power, with direct repercussions for the rights of due process and of freedom from ex post facto laws.⁴⁹ Specifically, the law must give detailed guidance on the infractions by judges that can trigger disciplinary measures, including the gravity of the infraction and the kind of disciplinary measure to be applied in such a case.⁵⁰ The Commission has stressed that “under international law the grounds for disciplinary investigations and sanctions imposed on a judge should never be a legal opinion or judgment he or she wrote in a decision.”⁵¹

65. In addition, the obligation to provide reasons translates into the “reasoned justification” that allows the judge to reach a conclusion.⁵² That guarantee is closely related to the principle of legality, since on the premise that the disciplinary grounds must be established in the State’s legal framework in accordance with the above-described standards, the justification for a ruling should disclose “the facts, reasons and standards on which the authority for the decision was based.”⁵³ In that sense, it is the reasoning in a disciplinary decision that makes it possible to understand how the facts behind the proceedings fit into or fall within the scope of the grounds cited. On this point, in *De la Cruz Flores v. Peru* the Court underscored the need, with any punitive decision, for there to be a relationship between the behavior with which the person is charged and the provision on which the decision is based.⁵⁴

66. As regards the applicable penalty, the “principle of maximum severity” implies that the dismissal of a judge is appropriate only in the case of “clearly punishable” conduct “based on the most serious grounds of misconduct or incompetence.”⁵⁵ The protection of judicial independence requires that the dismissal of judges be considered as the *ultima ratio* in judicial disciplinary matters.⁵⁶ The IACHR has indicated that “under international law, the penalty of suspension or removal must be applied only in the case of the most serious misconduct. As the Council of Europe recommended with respect to disciplinary offences, the disciplinary measure should become stricter as the seriousness of the offence increases, and can include removal of cases from a judge, assigning the judge other tasks, economic sanctions and suspension.”⁵⁷ The Court likewise indicated that the guarantee of tenure for justice operators implies that dismissal is due to fairly serious types of conduct, while other sanctions may be used in the case of negligence or incapacity.⁵⁸

67. In the instant case, the Commission notes, first, that the decision by which the alleged victims were removed from office does not include any reasoning and simply indicates that the motion to remove Carlos Fernández Gadea and Bonifacio Ríos Ávalos for improper performance of their duties was approved by forty-three and forty four votes. This makes it impossible to understand the reasoning behind the decision, including how the alleged victims’ conduct fits the disciplinary fault in question.

⁴⁹ IACHR, Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas, OEA/Ser.L/V/II.Doc.44, December 5, 2013, paras. 206 and 207.

⁵⁰ IACHR, Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas, OEA/Ser.L/V/II.Doc.44, December 5, 2013, para. 208.

⁵¹ IACHR, Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas, OEA/Ser.L/V/II.Doc.44, December 5, 2013, para. 216.

⁵² I/A Court. H.R., Case of Maldonado Ordoñez v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, para. 87.

⁵³ IACHR, Report No. 103/13, Case 12.816, Merits Report, Adán Guillermo López Lone et al., Honduras, párr.145.

⁵⁴ I/A Court. H.R., Case of De La Cruz Flores v. Peru. Merits, Reparations and Cost. Judgment of November 18, 2004. Series No. 115, para. 84.

⁵⁵ I/A Court. H.R., Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 259.

⁵⁶ I/A Court. H.R., Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 259; IACHR, Report No. 38/16, Case 12.768, Merits, Omar Francisco Canales Ciliezar, Honduras, August 31, 2016, para. 71 and following. See also Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas, OEA/Ser.L/V/II.Doc.44, December 5, 2013, para. 211. In that report, the IACHR found that “laws that establish administrative disciplinary measures such as dismissal must be subjected to the strictest test of legality. Such laws not only provide for extremely serious penalties and curtail the exercise of rights, but also create an exception to the principle of judicial stability and can compromise the principles of judicial independence and autonomy.”

⁵⁷ IACHR, Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas, OEA/Ser.L/V/II.Doc.44, December 5, 2013, para. 217.

⁵⁸ I/A Court. H.R., Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 199.

68. Moreover, and related to the foregoing, the IACHR underscores that the standard that was cited, “improper performance of their duties,” is extremely vague, leaving a wide margin of discretion to the disciplinary body in charge of enforcing it, and it offers scant guarantees to judges and justices, who are unable to guide their conduct to meet clear and pre-established parameters. That is particularly serious considering that engaging in the prohibited conduct could lead to the serious consequence of removal from office.⁵⁹

69. The Commission believes that the vagueness of the grounds cited made it possible, at least in part, for the Chamber of Deputies to include in the impeachment charges, as acts that constitute improper performance of duties, a series of jurisdictional decisions issued by the alleged victims, which are related to their judgments or legal opinions and are protected by the principle of judicial independence. In that respect, the IACHR underscores that all the alleged behaviors that constitute the disciplinary fault, with one exception, refer to decisions in which the alleged victims, as justices of the Supreme Court, ruled for or against challenges to constitutionality.

70. The Commission notes that this situation was mentioned in the decisions that ruled in favor of the constitutionality challenges put forth by the alleged victims, which indicated: “Clearly, in the case *sub judice*, putting Justices of the Supreme Court on trial for the opinions they expressed in the judgments specified above has involved not only a grave error committed against the judicial immunity recognized in the Constitution itself for all judges, but also (...) an attack on the independence of the judiciary.”

71. Based on the foregoing, the Commission concludes that the Paraguayan State violated the right to have well-reasoned decisions and the principle of legality in relation to the principle of judicial independence, both established in Articles 8(1) and 9 of the American Convention, in connection with Articles 1(1) and 2 therein, to the detriment of Bonifacio Ríos Ávalos and Carlos Fernández Gadea.

6. The right to appeal a judgment and the right to judicial protection in connection with the principle of judicial independence

72. The right to appeal a judgment is part of due process of law in a disciplinary proceeding⁶⁰; it is a fundamental guarantee whose purpose is to avoid a miscarriage of justice from becoming *res judicata*.⁶¹ As for the scope of the right to appeal, both the IACHR and the Court have indicated that it implies that the appealed decision is reviewed, both in its factual and legal aspects, by another and higher authority.⁶² The right to file an appeal against a judgment must be guaranteed before the judgment becomes *res judicata*; it must be timely, meaning resolved within a reasonable period of time; and it must be effective, in other words, it must provide results or responses to the end that it was intended to serve. Moreover, the remedy must be accessible; hence, the kind of complex formalities that would render this right illusory must not be required.⁶³

73. Moreover, the IACHR calls to the mind that the State has a general obligation to provide effective judicial remedies to persons who claim they are victims of human rights violations (Article 25), and these remedies must be substantiated in line with the rules of due process (Article 8(1)). For an effective recourse to exist, it is not enough for it to be provided by law; rather, it must be truly appropriate for establishing whether there has been a human rights violation and for providing whatever is necessary to remedy it.⁶⁴

⁵⁹ IACHR. Report No. 43/15, Case 12.632. Merits (Publication). Adriana Beatriz Gallo, Ana María Careaga, and Silvia Maluf de Christin, Argentina, July 28, 2015, para. 250.

⁶⁰ IACHR, Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas, OEA/Ser.L/V/II.Doc.44, December 5, 2013, para. 235; I/A Court. H.R., Case of Vélez Loor v. Panama. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, para. 179.

⁶¹ IACHR, Report No. 33/14, Case 12.820, Manfred Amrhein et al., Costa Rica. April 4, 2014, para. 186.

⁶² IACHR, Report No. 33/14, Case 12.820, Manfred Amrhein et al., Costa Rica. April 4, 2014, para. 186.

⁶³ IACHR, Report No. 33/14, Case 12.820, Manfred Amrhein et al., Costa Rica. April 4, 2014, paras. 186 and following.

⁶⁴ 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, para. 125; I/A Court. H.R., Case of the Yakye Axa Indigenous

[continues ...]

74. Finally, the IACHR notes that effective judicial protection implies the absence of external pressures in the resolution of the remedies pursued. Protection against external pressures is a corollary of the principle of judicial independence, by which “the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”⁶⁵

75. In the case at hand, the IACHR notes that Resolution No. 122 issued by the Chamber of Deputies on November 25, 2003, stated expressly that “resolutions issued by the Honorable Senate as a Tribunal may not be appealed in any way.”

76. In spite of that, the alleged victims filed lawsuits challenging the constitutionality of the decision in the Constitutional Chamber of the Supreme Court. These were decided in their favor by that court on December 30, 2009, in other words, more than six years later, with the State providing no reasons for such a delay in a suit filed to protect fundamental rights. Moreover, on January 5, 2010, the Supreme Court declared those favorable judgments to be invalid, arguing that the justices involved did not observe legal order in issuing the decisions.

77. The IACHR notes that this last decision was taken three days after the Congress approved Resolution No. 1, in which it “forcefully repudiated” the sense of the aforementioned decisions and cautioned the justices of the Supreme Court, as well as other officials, that “accepting the validity of the judgment shall incur grounds for impeachment proceedings (...).” The Commission believes that this resolution, issued by the body that removed the alleged victims from office in the context and manner that has been described, constituted an external pressure that clearly led the Supreme Court to declare Judgments 951 and 952 to be invalid.

78. Against this backdrop, the IACHR finds that, based both on the legal framework and on the content of the decisions in question, the alleged victims did not have access to a higher authority or to effective judicial recourse for review of the decision to sanction them.

79. Based on the foregoing, the Commission concludes that the Paraguayan State violated the right to appeal the judgment and the right to judicial protection established in Articles 8(2)(h) and 25(1) of the American Convention in connection with the principle of judicial independence contained in Article 8(1) and Articles 1(1) and 2 therein, to the detriment of Bonifacio Ríos Ávalos and Carlos Fernández Gadea.

V. CONCLUSIONS

80. The Commission concludes that the Paraguayan State is responsible for violating the principle of judicial independence, the right to a competent and impartial authority, the right to a reasoned decision, the principle of freedom from ex post facto laws, and the right to judicial protection established in Articles 8(1), 8(2)(h), 9, and 25(1) of the American Convention, in connection with the obligations established in Articles 1(1) and 2 therein, to the detriment of Bonifacio Ríos Ávalos and Carlos Fernández Gadea.

81. The Commission also concludes that the Paraguayan State is not responsible for violating the right to a hearing and the right to a defense.

[... continuation]

Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Serie C No. 125, para. 61; I/A Court. H.R., Case of the “Five Pensioners” v. Peru. Merits, Reparations and Costs. Judgment of February 28, 2003. Series C No. 98, para. 136.

⁶⁵ United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan, Italy, from August 26 to September 6, 1985.

VI. RECOMMENDATIONS

82. Based on the previous conclusions,

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

1. Reinstatement Bonifacio Ríos Ávalos, should he so wish, in a position similar to the one he held in the judiciary, with the same remuneration, social benefits, and equivalent rank to which he would have been entitled if he had not been removed from office. If, for well-founded reasons, it is not possible to reinstate him, pay him alternative compensation. In the case of Carlos Fernández Gadea, the IACHR notes that due to his death, alternative compensation on his behalf is in order.

2. Provide full reparation for the violations of rights laid out in this report, including the material and non-material aspect.

3. Adjust domestic laws to ensure that sanction proceedings against justice operators are compatible with the standards on judicial independence established in this report and comply with all due process guarantees and the principle of legality. Specifically, the State should take the necessary measures to: i) ensure that sanction proceedings against judges are subject to legal controls and not political controls; ii) properly regulate applicable penalties so that they comply with the principle of legality; iii) allow judges to appeal to a higher authority in any sanction process, so that they can be ensured a second review of any penalty imposed against them, and to have judicial recourse for potential violations to due process; and iv) adopt the necessary measures to ensure that the authorities in charge of proceedings to sanction judges provide reasons for their decisions in a manner compatible with the American Convention, in keeping with the terms analyzed in this report.