

OEA/Ser.L/V/II.169
Doc. 126
5 October 2018
Original: Spanish

REPORT No. 109/18
CASE 12.870
REPORT ON MERITS

YENINA ESTHER MARTINEZ ESQUIVIA
COLOMBIA

Approved by the Commission at its session No. 126 held on October 5, 2018
169 Period of Sessions.

Cite as: IACHR, Report No. 109/18, Case 12.840. Merits. Yenina Esther Martinez Esquivia.
Colombia. October 5, 2018.

REPORT No. 109/18
CASE 12.870
 MERITS
 YENINA ESTHER MARTINEZ ESQUIVIA
 COLOMBIA
 DATE

I.	SUMMARY	2
II.	ARGUMENTS OF THE PARTIES	2
	A. The petitioner.....	2
	B. The State	4
III.	FACTS PROVEN	6
	A. Appointment.....	6
	B. Petitioner relieved of her duties and <i>tutela</i> actions.....	6
	C. Other mechanisms for bringing challenges	8
IV.	LEGAL ANALYSIS	9
	A. Right to judicial guarantees and freedom from ex post facto laws	9
	1. General considerations on the guarantees applicable to proceedings for imposing sanctions for determining rights	9
	2. General considerations on the guarantees applicable to judicial officers, including prosecutors.....	10
	2.1 The principle of judicial independence and the removal of judicial officers.....	10
	2.2 General considerations about the reinforced stability of prosecutors	11
	3. Analysis of the instant case	12
	3.1 As per the right to be heard, the right to defense, and the freedom from ex post facto laws.....	12
	B. The rights to judicial protection and judicial guarantees.....	13
	1. The lack of judicial protection.....	13
	2. Reasonable time in relation to the remedy of labor appeal.....	15
	C. Political rights	16
V.	CONCLUSIONS AND RECOMMENDATIONS	16

REPORT No. 109/18
CASE 12.870
MERITS
YENINA ESTHER MARTINEZ ESQUIVIA
COLOMBIA¹
XXX XX, 2018

I. SUMMARY

1. On December 22, 2005, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by Yenina Esther Martínez Esquivia (hereinafter “the petitioner”) alleging the international responsibility of the Republic of Colombia (hereinafter “the Colombian State,” “the State,” or “Colombia”).

2. The Commission adopted admissibility report No. 62/12 on March 20, 2012.² On April 10, 2012 the Commission notified the parties of that report and placed itself at their disposal to pursue a friendly settlement, yet the parties did not agree to pursue such a settlement. The parties had the terms provided in the Commission’s Rules of Procedure for filing their additional observations on the merits. All the information received by one party was duly forwarded to the other.

3. The petitioner alleged that she was terminated in her position as Delegate Prosecutor before the Criminal Courts of the Circuit of Cartagena, without any explanation or due process. She also indicated that her termination occurred after having participated in an investigation related to the criminal offense of breach of public duty (*prevaricato*) that she was pursuing against an official who granted a license to build a sanitary landfill without carrying out the prior consultation with the communities affected.

4. The State argued that the Attorney General of the Nation has the power to remove prosecutors appointed provisionally at his discretion, that these acts do not require any explanation, and that they are presumably legal. It said that the presumption of legality may be refuted by the official affected in cases of abuse of authority, by filing a motion for nullity before the contentious-administrative jurisdiction, but that said remedy was filed after it was time-barred. It argued that the alleged victim’s rights to judicial guarantees and judicial protection were not violated.

5. Based on the determinations of fact and law, the Inter-American Commission concluded that the Colombian State is responsible for violations of Article 8(1), 8(2)(b), 8(2)(c) (judicial guarantees), Article 9 (freedom from ex post facto laws), Article 23(1)(c) (political rights), and Article 25(1) (judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in relation to the obligations established at Articles 1(1) and 2 of the same instrument. The Commission then made its recommendations.

II. ARGUMENTS OF THE PARTIES

A. The petitioner

¹ In keeping with Article 17(2) of the Commission’s Rules of Procedure, Commissioner Luis Ernesto Vargas Silva, of Colombian nationality, did not participate in the deliberations or decision on the instant case.

² IACHR. Report No. 62/12. Petition 1471-05. Yenina Esther Martínez Esquivia. Colombia. March 20, 2012. In that report, the IACHR found admissible the claims related to Articles 8 and 25 in relation to Article 1(1) of the American Convention, and found inadmissible the claims related to Articles 19, 24, and 26 of the same instrument.

6. The petitioner indicated that on March 9, 1992, she was designated as the 13th Judge of Criminal Instruction in Mompo, department of Bolívar, and subsequently, on July 1, 1992, she was incorporated to the staff of the Office of the Attorney General as a result of the change in the Colombian criminal justice system by virtue of which the courts of criminal investigation became part of the Office of the Attorney General. She indicated that on February 8, 2002, she was appointed on a provisional basis as Sectional Prosecutor No. 16 of Cartagena in the Unit of Crimes against the Public Administration.

7. She said that while she was in that position she pursued a criminal proceeding for the criminal offense of breach of public duty, for an action taken, against the Secretary of the Regional Autonomous Corporation of the Canal del Dique, who had granted a license for trash collection to a construction company in violation of the legal requirement of prior consultation with the Black communities in settlements in the zone in which the construction of the sanitary landfill was planned.

8. She also stated that in exercising her powers she handled the request for reestablishing the right of the representative of the Black communities who was the civil party in the proceeding and voided the administrative act that authorized the operation of the sanitary landfill.

9. She said that in July 2004 she made use of her vacations and that the person designated by the Director of the Office of the Attorney General as her temporary replacement proceeded immediately to revoke the measure that reestablished the right of the Black communities, and to close the criminal investigation into the criminal offense of breach of public duty before all of the evidence was collected.

10. She said that when she was reincorporated to her position the representatives of the Black communities and the Public Ministry requested revocation of the resolutions issued by the interim prosecutor. She indicated that after this, she received a call from the director of prosecutors, who told her that as prosecutor she should not get involved in administrative cases such as the case in question, and the director reminded her of the case of the other prosecutor who had taken cognizance of the proceeding and who, for not following instructions, was removed from his position. The director of prosecutors also told her that that message came directly from the Attorney General of the Nation.

11. She said that despite that call she proceeded to revoke all the actions of the prosecutor who replaced her while she was on vacation and that as a result the director of prosecutors and the Attorney General took reprisals against her.

12. In particular, she indicated that on October 29, 2004, two simultaneous resolutions were handed down that negatively impacted her, one ordering her transfer to the Colombian island of Providencia, to work as sectional prosecutor, signed by the director of prosecutors, and another declaring that she was relieved of her duties as 16th Sectional Prosecutor of Cartagena, signed by the Attorney General of the Nation, a resolution that had no explanation. She said that she received notice of the resolution transferring her on November 3, 2004, and the one removing her from the position of prosecutor on November 4, 2004, such that she was removed from a position she no longer held, as the second decree took effect the day after she was appointed Sectional Prosecutor of the island of Providencia.

13. The petitioner indicated that she pursued a series of judicial actions to be reinstated in her position as 16th Sectional Prosecutor of Cartagena. In particular, she indicated that on July 12, 2005, she filed an action for nullity and reestablishment of her rights against the act that removed her from her position, before the Administrative Tribunal of Cartagena. The action was dismissed on grounds that it was filed after the time for doing so had lapsed.

14. She said that subsequently she filed an action in the labor union jurisdiction (*acción de fuero sindical*) before the Seventh Labor Court of Cartagena, arguing that when she was removed from her position she was aspiring to become a director of the National Association of Officers and

Employees of the Judicial Branch (Asociación Nacional de Funcionarios y Empleados de la Rama Judicial). She indicated that the Court ruled against her on December 13, 2006; accordingly, she appealed the ruling that same day, and the Superior Court of Bolívar, which heard the appeal, confirmed the judgment of first instance on December 22, 2010, four years after it was filed.

15. The petitioner further noted that she also filed two *tutela* actions. The first was before the Superior Court of the Judicial District of Cartagena, seeking protection of her right to association, right to work, and other rights, which was denied, as the Court considered that the petitioner was making use of a subsidiary mechanism without having exhausted the regular ones. She added that the ruling was upheld on appeal by the Supreme Court of Justice and that said decision was not selected for review by the Constitutional Court.

16. As regards the second *tutela*, she indicated that it was filed on July 12, 2005, before the Superior Judicial Council (Consejo Superior de la Judicatura), Cartagena Section; in it she sought protection for her rights to due process, to equality, to the family, and to the vital minimum (*el mínimo vital*). She indicated that it was resolved in her favor in the first instance, as the Council considered that the lack of reasoning in the act that removed her from her position constituted a violation of due process. She indicated that nonetheless the ruling was challenged by the Office of Attorney General of the Nation and was overturned on appeal by the Superior Judicial Council of Bogotá, which found that the petitioner had already filed a *tutela* action concerning the same facts, rights, and claims. She indicated that in contrast to the first *tutela* action, in the second she sought protection for the right to due process.

17. As regards the law, the petitioner argued that the State violated her **right to judicial guarantees and to judicial protection**. As for **judicial guarantees**, she noted that the duty to state the reasoning of the decision was violated because the act that declared that she was relieved of her duties as prosecutor was not explained, and that this was a guarantee to keep her from being dismissed, in her provisional situation, as per the interests of whoever might be in power at a given moment, compromising the independence and impartiality of her function.

18. Moreover, she argued that the State violated the right to be heard within a reasonable time due to the unjustified delay of the Labor Chamber of the Superior Court of Bolívar in responding to the motion for appeal filed by the petitioner on December 13, 2006, which was resolved four days later, on September 22, 2010, even though it should have been resolved within five days under the applicable domestic legislation.

19. With respect to **judicial protection**, she indicated that the State violated this right because she did not have an adequate and effective judicial mechanism for challenging the decision that removed her from her position as prosecutor without any explanation. She added that even though the Colombian Constitutional Court has indicated that the *tutela* is an adequate remedy for resolving the petitioner's legal situation, the judges who heard the *tutela* actions did not follow that precedent and rendered the remedy ineffective.

B. The State

20. The State indicated that by Decision No 9 of March 9, 1992 the Superior Court of Bolívar designated the petitioner as the 13th Judge of Criminal Investigation, and subsequently she was designated by the Office of the Attorney General as Sectional Prosecutor. It noted that on February 9, 2002 she was appointed as Sectional Prosecutor No. 16.

21. It noted that on October 29, 2004, the Office of the Attorney General handed down a resolution ordering the petitioner's transfer, due to needs of the service, to the Sectional Unit of Prosecutors of Providencia, as of November 2, 2004. It added that on that same date the Attorney General of the Nation issued a resolution relieving her of her duties as Sectional Prosecutor No. 16, effective November 4, 2004.

22. The State further indicated that the petitioner filed an initial *tutela* action before the Superior Court of the Judicial District of Cartagena, seeking protection for her right to work, right to freedom of association, and other rights, and that it was denied on February 25, 2005, considering that there were other means for annulling the administrative act. It added that the decision was challenged by the petitioner, but the Supreme Court of Justice upheld the decision of first instance.

23. It indicated that on July 12, 2005 the petitioner filed an Action for Nullity of the Administrative Act and reestablishment of the right, in opposition to the resolution relieving her of her duties, and on October 4, 2005, the Administrative Tribunal of Cartagena rejected the action on grounds that it was time-barred.

24. The State said that in July 2005, the petitioner filed a second *tutela* action before the Sectional Judicial Council of Bolívar to protect her right to due process and other rights, based on the argument that the decision that declared she was relieved of her duties did not state its reasoning. It indicated that in the first instance the Council ruled in favor of the petitioner, thus she was provisionally reinstated, but that on September 7, 2005, the Superior Judicial Council overturned the ruling on first instance, considering that the petitioner had previously filed a *tutela* action for the same facts and claims.

25. It stated that on February 24, 2005, the petitioner filed a trade union action before the Seventh Labor Court of Cartagena, which denied the action on considering that the petitioner could not bring a claim in the trade union jurisdiction in view of her status as a Delegate Prosecutor. It further indicated that on January 26, 2007 the petitioner appealed that decision, and that the appeal was dismissed by the Superior Court of Cartagena on September 22, 2010, affirming the judgment of first instance. The State indicated that the duration of the proceeding meets the standard of reasonable time, in view of the number of matters before that Court.

26. The State said that the Attorney General of the Nation has the power to remove, at his or her discretion, the officials appointed on a provisional basis, that such acts do not need to state the reasoning, and that they are presumed to be legal. It noted that the presumption of legality may be refuted by the official affected, who may bring an action for nullity of the administrative act before administrative jurisdiction in cases of abuse of authority when the official considers that he or she was removed for reasons other than to guarantee a good service. It added that the alleged victim never proved that she was removed in an act involving abuse of authority in retaliation for her actions in the criminal proceeding against the Secretary of the Regional Autonomous Corporation of the Canal del Dique.

27. As regards the law, the State indicated that it did not violated the **rights to judicial guarantees and judicial protection**. It argued that the action for nullity and reestablishment of the right was an adequate and effective remedy that made it possible to review the legality of the administrative act that removed the petitioner, yet that action was rejected in the instant case because it was filed several months after the term established by law.

28. Moreover, it indicated that the *tutela* action may go forward when what one seeks is the reasoning of the administrative act, yet it is not suitable for attaining reinstatement or the payment of benefits for the official concerned, which was what the petitioner was seeking with her *tutela* actions. In this regard, it explained that the first *tutela* action was denied, as it was considered that inappropriate use was being made of said remedy.

29. In addition, it argued that the Superior Judicial Council denied the second *tutela* action since it was based on the same facts and put forth the same claims. It added that arguing violation of the right to due process did not break the identity between the two *tutela* actions.

30. The State concluded by indicating that the alleged victim had adequate and effective remedies by which she obtained an in-depth study and expeditious responses to her claims, in keeping with the national legislation.

III. FACTS PROVEN

A. Appointment

31. As appears in the record, on March 12, 1992 the Superior Court of the Judicial District of Cartagena designated Yenina Martínez Esquivia, by 10 votes, as the 13th Judge of Criminal Investigation of Mompo, on a provisional basis. The resolution indicated that “Ms. YENINA MARTÍNEZ ESQUIVIA Esq. is put in charge of the 13th Court of Criminal Instruction, situated in Mompo, while she submits the documentation for confirmation of the position.”³

32. On July 1, 1992, the Office of the Sectional Director of Prosecutors of Cartagena assigned the alleged victim, “currently the 13th Judge of Criminal Instruction, Grade 17, to the position of Sectional Prosecutor Grade 18 in Mompo (Bolívar).”⁴ The Commission underscores that said resolution does not indicate the type of appointment nor its conditions.

33. On September 28, 1992 the Sectional Director of Prosecutors ruled to transfer the alleged victim, Sectional Prosecutor 25 based on Mompo to the Unit of Prosecutors of El Carmen de Bolívar, taking into account the alleged victim’s request, for family reasons, “since it is quite far from her family.”⁵

34. In 1996 the Office of the Administrative and Financial Sectional Bureau of the Office of the Attorney General of the Nation ruled to transfer the alleged victim to the Specialized Unit of Crimes against Economic Property (Unidad Especializada de Delitos contra el Patrimonio Económico).⁶

35. On November 25, 1997 the alleged victim was transferred to the Sectional Unit of Crimes against the Public Administration of Cartagena.⁷

36. On September 1, 1999, the alleged victim was transferred to the 48th Prosecutorial Office under the Unit of Law 30 of 1996-Automotive Vehicles of Cartagena.⁸

B. Petitioner relieved of her duties and *tutela* actions

37. On October 29, 2004, the Attorney General of the Nation issued a resolution in which he determined “to declare YENINA MARTÍNEZ ESQUIVIA, with national ID number 33,152,897, relieved of her duties as DELEGATE PROSECUTOR BEFORE CIRCUIT JUDGES, of the Sectional Bureau of Prosecutors of Cartagena.”⁹ The resolution indicates that “this resolution enters into force as of the

³ Annex 1. Copy of the act of assuming office of March 16, 1992. Annex to the initial petition of December 22, 2005.

⁴ Annex 2. Resolution 000004 of the Sectional Director of Prosecutors, July 1, 1992. Annex to the initial petition of December 22, 2005.

⁵ Annex 3. Resolution 000158 of the Sectional Bureau of Prosecutors, September 28, 1992. Annex to the initial petition of December 22, 2005.

⁶ Annex 4. Resolution 000946 of the Sectional Administrative and Financial Bureau of the Office of the Attorney General of the Nation of 1996. Annex to the initial petition of December 22, 2005.

⁷ Annex 5. Resolution 001742 of the Sectional Administrative and Financial Bureau of the Office of the Attorney General, November 25, 1997. Annex to the initial petition of December 22, 2005.

⁸ Annex 6. Resolution 001048 of the Sectional Administrative and Financial Bureau of the Office of the Attorney General, August 1999.

⁹ Annex 7. Resolution 0-5213 of the Office of the Attorney General of the Nation, October 29, 2004. Annex to the initial petition of December 22, 2005.

date of its communication and no remedy whatsoever against it may be admitted.”¹⁰ The Commission observes that the decision is not reasoned.

38. On that same date the Office of the Attorney General of the Nation issued another resolution in which it ordered the “transfer, as of November 2 of this year, YENINA MARTÍNEZ ESQUIVIA ... Delegate Prosecutor before the Criminal Judges of Circuit No. 16 of the Unit of Crimes against the Public Administration to the Sectional Unit of Prosecutors of Providencia-Sectional No. 50,” taking into account the request of the Sectional Director of Prosecutors of Cartagena.¹¹

39. As appears in the record, the alleged victim filed a *tutela* action against the Office of the Attorney General of the Nation with the aim of protecting “the rights to free association, to work, to the vital minimum, to health, to life, and to special protection for women heads of household” and asked to be reinstated, and for recognition and payment of the salaries not received from the date of her removal up until her reinstatement.”¹²

40. On February 25, 2005, the Superior Court of the Judicial District of Cartagena denied the *tutela* action filed by the alleged victim. Among its considerations, the Court considered that:

The party filing the *tutela* action cannot claim by the residual and subsidiary mechanism of the *tutela* to have the administrative act that relieved her of her duties as Delegate Prosecutor before the Criminal Judges of the Circuit of the Sectional Bureau of Prosecutors of Cartagena, which she held, annulled, insofar as that administrative act enjoys a presumption of legality that the law recognizes for such acts, since the legal review of such acts corresponds to the contentious-administrative jurisdiction, and not to the constitutional *tutela* judge, as the moving party claims.¹³

41. Subsequently, the alleged victim filed a second *tutela* action, arguing the violation of the rights to equality, due process, a vital minimum, and the family.¹⁴

42. On July 26, 2005 the Sectional Judicial Council of Bolívar granted the *tutela* sought by the alleged victim and ordered the Attorney General to reinstate her within 48 hours. Among its considerations:

The respondent entity – OFFICE OF THE ATTORNEY GENERAL OF THE NATION – violated the fundamental right of due administrative process in respect of Prosecutor YENINA MARTÍNEZ ESQUIVIA, as it was shown that the moving party had been serving in a career-service position on a provisional basis, that she was relieved of her duties by resolution No. 001048 of October 29, 2004, an administrative act that did not state reasons, without the Office of the Attorney General having given sufficient reasons, to this day, for the removal of said officer.

In addition, the vital minimum of the moving party and her family is compromised, for it should be borne in mind that she was a woman head of household...¹⁵

¹⁰ Annex 7. Resolution 0-5213 of the Office of the Attorney General of the Nation, October 29, 2004. Annex to the initial petition of December 22, 2005.

¹¹ Annex 8. Resolution 2215 of the Office of the Attorney General of the Nation, October 29, 2004. Annex to the initial petition of December 22, 2005.

¹² Annex 9. Decision of the Superior Court of the Judicial District of Cartagena, February 25, 2005, denying the *tutela* action brought by the alleged victim. Annex to the initial petition of December 22, 2005.

¹³ Annex 9. Decision of the Superior Court of the Judicial District of Cartagena, February 25, 2005, denying the *tutela* action brought by the alleged victim. Annex to the initial petition of December 22, 2005.

¹⁴ Annex 10. Decision of the Sectional Judicial Council of Bolívar, July 26, 2005, granting the *tutela* action filed by the alleged victim. Annex to the initial petition of December 22, 2005.

¹⁵ Annex 10. Decision of the Sectional Judicial Council of Bolívar, July 26, 2005, granting the *tutela* action filed by the alleged victim. Annex to the initial petition of December 22, 2005.

43. On September 7, 2005, the Superior Judicial Council decided to overturn the *tutela* ruling of July 26, 2005, arguing the existence of threefold identity of claims, parties, and facts with the first *tutela* filed, and ordered a criminal investigation into the alleged victim for abusive use of the *tutela* action. The Council considered:

It is evident that there is factual identity of both *tutela* actions filed, of the parties, and of claims, the first before the Chamber of Labor Decisions of the Superior Court of the Judicial District of Cartagena, by her attorney, and the second before the Sectional Judicial Council of Bolívar....

The moving party in the action filed ... swore that she had not filed any other action for the same facts and rights ... she was untruthful and acted contrary to the principle of morality in the *tutela* action.¹⁶

44. The Commission takes note that two judges cast dissenting votes with respect to the decision that denied the previous *tutela*. Judge Flechas Díaz indicated that:

This chamber has decided cases similar to the one that now occupies our attention and has considered that administrative acts relieving judicial officers and public servants of other entities of their duties should be reasoned lest they violate the fundamental right to due process and the right to the vital minimum of persons who, on being removed, are seriously impacted....¹⁷

45. In addition, Judge Henao Orozco indicated that it should have been taken into account that:

The Labor Chamber of the Superior Court of the Judicial District of Cartagena, before which the first action for special relief was filed, on February 25, 2002, found the *tutela* action to be inadmissible on procedural grounds, adducing that there were other mechanisms of judicial defense, thereby ignoring the abundant case-law of the highest Constitutional Court, which preceded that determination.¹⁸

46. The Commission notes that subsequently the alleged victim requested a review of the ruling of the Superior Judicial Council by the Constitutional Court, yet it was not selected for review by that court.

C. Other mechanisms for bringing challenges

47. The Commission takes note that in addition to the *tutela* actions described in the previous section, the alleged victim also filed an action for nullity and reestablishment of the right, which was rejected by the Administrative Tribunal of Cartagena on October 4, 2005, as it considered that the action had prescribed, taking into account that such actions must be filed within four months from the day after notification of the ruling; and in this case notice of the decision to relieve her of her duties was given to the alleged victim on November 4, 2004, and the action was filed on July 12, 2005.¹⁹

¹⁶ Annex 11. Decision of the Superior Judicial Council, September 7, 2005, revoking the *tutela* action. Annex to the initial petition of December 22, 2005.

¹⁷ Annex 12. Dissenting vote of Judge Jorge Alonso Flechas Díaz, in relation to the decision of the Superior Judicial Council of September 7, 2005, revoking the *tutela* action. Annex to the communication from the petitioner, September 30, 2009.

¹⁸ Annex 12. Dissenting vote of Judge Ruben Darío Henao Orozco, in relation to the decision of the Superior Judicial Council of September 7, 2005, revoking the *tutela* action. Annex to the communication from the petitioner, September 30, 2009.

¹⁹ Annex 13. Decision of the Administrative Tribunal of Bolívar, October 4, 2005, rejecting the action for nullity and reestablishment of the right. Annex to the communication from the petitioner, September 30, 2009.

48. Finally, the alleged victim filed a special action in the trade union jurisdiction against the Office of the Attorney General of the Nation before the Seventh Labor Court of Cartagena. On December 13, 2006, said court rejected the action, considering:

On studying Article 406 of the CST [Substantive Labor Code], we find which workers are covered by the jurisdiction, in the first place it would be considered that Ms. MARTÍNEZ has the right to the TRADE UNION JURISDICTION yet as she is a PROSECUTOR OF THE REPUBLIC BEFORE THE CIRCUIT JUDGES she cannot enjoy the guarantee of Trade Union Jurisdiction as per Paragraph 1 of Article 406 of the CST.²⁰

49. As the alleged victim indicated, on that same date she filed an appeal; it was resolved on December 22, 2010, four years after it was filed.²¹ The State indicated that said delay was due to the number of matters pending before the court that took cognizance of the appeal.

IV. LEGAL ANALYSIS

A. Right to judicial guarantees²² and freedom from ex post facto laws²³

1. General considerations on the guarantees applicable to proceedings for imposing sanctions for determining rights

50. The Commission recalls that both organs 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 also apply to other types of proceedings.²⁴ Specifically, both organs of the system have indicated that by analogy the guarantees established in Article 8(2) of the American Convention apply to sanction-imposing proceedings.²⁵ In proceedings in which rights or interests are in play, the “due guarantees” established at Article 8(1) of the American Convention apply, including the right to sufficient reasoning.²⁶ In addition, the European Court of Human Rights has ruled that due process guarantees must be respected and ensured in the context of administrative proceedings that conclude in the dismissal of a public servant.²⁷

²⁰ Annex 14. Decision of the Seventh Labor Court of Cartagena, December 13, 2006. Annex to the communication from the petitioner, September 30, 2009.

²¹ Communication from the alleged victim, September 30, 2009.

²² Article 8(1) of the Convention states: “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.” Article 8(2) establishes, at the relevant part: “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.”

²³ 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.”

²⁴ IACHR, Report No. 65/11, Case 12,600, Merits, Hugo Quintana Coello *et al.* “Judges of the Supreme Court of Justice,” Ecuador, March 31, 2011, para. 102; I/A Court HR. 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.* “Supreme Court of Justice,” Ecuador, March 31, 2011, para. 102; I/A Court HR. 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 HR. Case of Barbani Duarte *et al.* v. Uruguay. Merits, Reparations and Costs. Judgment of October 13, 2011. Series C No. 234, para. 118; and Case of Claude Reyes *et al.* v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 118.

²⁷ ECHR, Cudak v. Lithuania. Application No. 15869/025. Judgment of March 23, 2010, para. 42.

51. Accordingly, the determination of what are the due guarantees in a specific proceeding for the determination of rights must be made taking into account the nature of the proceeding and the legal interests at stake.²⁸

2. General considerations on the guarantees applicable to judicial officers, including prosecutors

2.1 The principle of judicial independence and the removal of judicial officers

52. The IACHR has indicated that the principle of judicial independence is a requirement inherent to a democratic form of government and a fundamental prerequisite for the protection of human rights.²⁹ It is enshrined as one of the guarantees of due process protected by Article 8(1) of the American Convention and, moreover, the principle gives rise to the “reinforced”³⁰ guarantees that states must offer judges to ensure their independence.³¹ The organs of the inter-American system have interpreted the principle of judicial independence so as to incorporate the following guarantees: adequate appointment process, tenure in the position, and guarantees against external pressures.³²

53. Specifically, with respect to the guarantees for ensuring tenure, the Court has indicated that proceedings that may culminate in the separation of a judicial officer should unfold in a manner compatible with the principle of judicial independence. This implies that the states should ensure that all persons who perform judicial functions have guarantees of reinforced stability, understanding this to mean that the dismissal or removal of a judge from his or her position may proceed on two fundamental grounds: (i) for engaging in “clearly punishable” conduct, “based on the most serious grounds of misconduct or incompetence,”³³ or (ii) due to completing the term or satisfying the condition established in the designation. Provisional status is not equivalent to free removal and should not mean any alteration whatsoever of the regime of guarantees for the sound performance of the judge and safeguard of parties who come before the courts.³⁴

54. Stability of judicial officers in their positions is closely tied to the guarantee against external and internal pressures, since if they do not have security of tenure during a given period they would be vulnerable to pressures from different sectors, mainly from those who have the power to decide on their removal.

²⁸ I/A Court HR. Case of Barbani Duarte *et al.* v. Uruguay. Merits, Reparations and Costs. Judgment of October 13, 2011. Series C No. 234, paras. 118-119.

²⁹ IACHR, Case 12,816, Merits, Report No. 103/13, November 5, 2013, para. 112. Citing United Nations, Human Rights Committee, General Comment No. 32, CCPR/C/GC/32, August 23, 2007, para. 19. See in this regard, Habeas Corpus in Emergency Situations (Articles 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87, January 30, 1987. Series A No. 8, para. 30. See also, IACHR, Democracy and Human Rights in Venezuela, III. Independence and Separation of Public Powers, December 30, 2009. para. 80.

³⁰ I/A Court HR. Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 67; IACHR, Democracy and Human Rights, December 30, 2009, para. 185; IACHR, Second Report on the Situation of Human Rights Defenders, December 31, 2011, para. 359.

³¹ Thus, for example, the Inter-American Court has indicated that the obligations of the State with respect to parties subject to proceedings before the courts give rise, in turn, to “rights for judges,” among which the Court has indicated the guarantee that judges enjoy that they shall not be subject to discretionary removal, meaning that disciplinary proceedings involving judges must observe the guarantees of due process and offer judges undergoing a disciplinary process an effective remedy. I/A Court HR. 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. 188.

³² IACHR, Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas, December 5, 2013, paras. 56, 109, and 184, I/A Court HR. 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.

³³ I/A Court HR. 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.

³⁴ I/A Court HR. Case of Apitz Barbera *et al.* (“First Court of Administrative Disputes”) vs. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008, Series C No.182, para. 43.

55. Accordingly, the Commission reiterates that the states must ensure that all persons who exercise a judicial function have reinforced guarantees of stability in the understanding that except for committing serious disciplinary breaches, stability in the position should be respected for the term or until satisfaction of the condition established in the designation, without any distinction between career service judges and those who perform the judicial function temporarily or provisionally. Such temporary or provisional nature should be determined by a term or a specific condition for the exercise of the judicial function, so as to ensure that these judges will not be removed from their positions due to the rulings they adopt or by virtue of arbitrary decisions by administrative or judicial entities. The appointment of temporary judicial officers with no defined term or condition in their appointment should be considered incompatible with the international obligations of a state as regards judicial independence and cannot be argued as an excuse for not granting due process guarantees in a decision on removal.³⁵ The IACHR has indicated that the independence of the judicial system is undermined when provisional judges can be dismissed without any statement regarding the cause.³⁶

56. In sum, even when the “needs of the service” may justify an appointment of a judicial officer on a temporary basis or to fulfill a specific function, that period or condition should be clearly established in the act of the appointment and should also be part of the explanation of the eventual act of separation. Only in this way can one protect the independence of the judicial function and avoid the provisional nature of judicial officers from being used arbitrarily to undermine such independence.

2.2 General considerations about the reinforced stability of prosecutors

57. The Commission considers that the principle of reinforced stability of judges also applies to prosecutors insofar as they play a complementary role to that of judges in the administration of justice, on bringing criminal proceedings, investigating crimes, as well as performing other functions of public interest, which in the absence of sufficient guarantees may contribute to them becoming subject to internal and external pressures in relation to the decisions they make.³⁷

58. In this respect the United Nations Guidelines on the Role of Prosecutors establish that “States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.”³⁸

59. In addition, the Bordeaux Declaration on judges and prosecutors in a democratic society establishes:

The independence of the public prosecution service constitutes an indispensable corollary to the independence of the judiciary... The independence of public prosecutors is indispensable for enabling them to carry out their mission.... Thus, akin to the independence secured to judges, the independence of public prosecutors is not a prerogative or privilege conferred in the interest of the prosecutors, but a guarantee in the interest of a fair, impartial and effective justice that protects both public and private interests of the persons concerned.

(...) The proximity and complementary nature of the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and conditions of service, namely regarding recruitment, training, career development, discipline, transfer

³⁵ IACHR, Application before the Inter-American Court of Human Rights in the case of Mercedes Chocrón Chocrón, Case 12,556, para. 78.

³⁶ IACHR, Second Report on the Situation of Human Rights in Peru, Chapter II, Administration of Justice and Rule of Law, OEA/Ser.L/V/II.106 Doc. 59 rev., June 2, 2000, para. 15.

³⁷ See, for example, IACHR, Integral Protection Policies for Human Rights Defenders, OEA/Ser.L/V/II.Doc.207/17, December 29, 2017, para. 47.

³⁸ United Nations Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

(which shall be effected only according to the law or by their consent), remuneration, termination of functions and freedom to create professional associations.³⁹

60. In addition, the Consultative Council of European Prosecutors of the Council of Europe indicated in its Opinion No. 9:

The independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary. Therefore, the general tendency to enhance the independence and effective autonomy of the prosecution services should be encouraged.

Prosecutors should be autonomous in their decision-making and should perform their duties free from external pressure or interference, having regard to the principles of separation of powers and accountability.⁴⁰

61. In view of the foregoing considerations, the IACHR considers that the standards cited in the previous section are applicable to prosecutors, who by the nature of the function they perform should enjoy the reinforced stability in their position as a guarantee for independence in their work and should only be replaced for grave breaches or because the term or condition established in their designation has been completed or fulfilled, similar to judges. As was indicated in the previous section, the foregoing is applicable to officers appointed provisionally, insofar as they perform the same function as those will full appointments, and it is that function that is protected under the principle of judicial independence.

3. Analysis of the instant case

3.1 As per the right to be heard, the right to defense, and the freedom from ex post facto laws

62. Applying what has been indicated, the Commission observes that in the instant case two resolutions were issued with respect to Yenina Esther Martínez Esquivia. In one her appointment was terminated and in the other she was transferred to a place far from where she had been serving. The Commission considers that both resolutions constituted state acts that determine rights and that therefore at the very least the due guarantees established at Article 8(1) of the American Convention are applicable, including the right to be heard and the duty to state the reasons in a judicial decision. In addition, taking into account that one of the resolutions had the effect of terminating her in her position as prosecutor, for the reasons stated just below, the Commission considers that the case should also be analyzed in light of the applicable guarantees at Articles 8(2) and 9 of the Convention.

63. As indicated in the section on factual determinations, the IACHR recalls that the alleged victim was appointed in 1992 as Provisional Judge of Criminal Investigation of Mompox and as of July 1, 1992, she was brought on as Sectional Prosecutor Grade 18, and served as a prosecutor as of that date. On October 29, 2004 the Attorney General of the Nation declared that the alleged victim was relieved of her duties, without stating any reasons.

64. The Commission observes that the original appointment of the alleged victim in her capacity as judge indicated that she was appointed provisionally, while she presented the documentation for confirmation in the position. Subsequently she was incorporated to the position of prosecutor, provisionally, without any term or condition.

³⁹ Consultative Council of European Judges and Consultative Council of European Prosecutors. Bordeaux Declaration on judges and prosecutors in a democratic society, Strasbourg, December 8, 2009, paras. 10, 27, and 37.

⁴⁰ Consultative Council of European Prosecutors, Opinion No. 9 (2014), Rome Charter, points IV and V.

65. The State indicated that the Attorney General of the Nation has the power to remove, at his or her discretion, the officials appointed provisionally, that these acts need not state reasons, and that they are presumed to be legal.

66. The IACHR considers that the free removal of provisional prosecutors has a negative impact on their independence, which should be guaranteed, insofar as it renders them vulnerable to being removed because of the decisions they make, or by virtue of arbitrary decisions by the administrative or judicial entities.

67. The IACHR reiterates, taking into account what is indicated in the previous section on the nature of the function they perform, that prosecutors should have guarantees of reinforced stability and should only be separated from their positions for incurring in serious disciplinary breaches or for completing the term or satisfying the condition established in their designation. Along these lines, the Commission considers that in the instant case the appointment of the alleged victim without any term or condition was incompatible with the Convention.

68. The IACHR further recalls that the lack of reasoning of the decision did not allow one to understand the reasons that resulted in the termination of the alleged victim's appointment, so as to clear up the suspicions and allegations that it was in retaliation for the decisions made in her capacity as prosecutor in the context of a criminal investigation for breach of public duty. The IACHR considers that the act of appointment of Ms. Martínez Esquivia does not offer the minimal safeguards in terms of time frame or condition subsequent such that it would be possible to understand the service-related reasons that were the basis of her provisional designation. This, together with the lack of reasoning in the decision to separate her from her position, underscores the precarity in which the alleged victim performed her key function in a State under the rule of law, which found its highest expression in the removal from her position without any reasons being given, a position that she had held for a considerable period, in this case more than a decade.

69. In this scenario, in which the State has not succeeded in showing that the provisional status of the alleged victim had a specific aim associated with a delimited time frame or a condition subsequent, under the international standards cited, the alleged victim had the right to the separation from her position being consistent with the only other acceptable option under those standards, i.e. a procedure in which the duty to present reasons, the right of defense, and the freedom from ex post facto laws were respected, insofar as it should have been a formal disciplinary procedure.

70. From the facts proven it is clear that due to the nature of the act by which the alleged victim was separated, she did not have a procedure with the minimal guarantees that arise from the right of defense and the freedom from ex post facto laws.

71. By virtue of the foregoing reasons, the IACHR considers that the State violated Articles 8(1), 8(2)(b), 8(2)(c), and 9 of the American Convention in relation to Articles 1(1) and 2, to the detriment of Yenina Esther Martínez Esquivia.

B. The rights to judicial protection⁴¹ and judicial guarantees

1. The lack of judicial protection

72. The IACHR recalls that the State is under a general obligation to provide effective judicial remedies to persons who allege that they are victims of human rights violations (Article 25), which should be substantiated in keeping with the rules of due process (Article 8(1)). Effective

⁴¹ Article 25(1) of the Convention stipulates: "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."

recourse requires not only that it be provided for by law, but that it must be genuinely suitable to establish whether there has been a violation of human rights and provide as necessary to remedy it.⁴² On evaluating the effectiveness of remedies one must examine whether the decisions in judicial proceedings have contributed effectively to putting an end to a situation violative of rights, and ensuring the non-repetition of harmful acts and ensuring the free and full exercise of the rights protected by the Convention.⁴³

73. In the instant case the IACHR recalls that in the resolution that declared the petitioner relieved of her duties as Delegate Prosecutor before the Criminal Courts of the Circuit of the Sectional Bureau of Prosecutors of Cartagena it was specifically indicated that “no remedy whatsoever against it may be admitted.” Even so, the Commission takes note that the alleged victim made use of judicial remedies in the labor, administrative, and constitutional jurisdictions.

74. With respect to the action for nullity and reestablishment of the right, the Commission takes note that it was filed by the alleged victim after they time for filing had lapsed, and the State indicated that this was the suitable action for annulling an administrative act at odds with the law and attaining the reintegration of whoever’s rights were impaired. Nonetheless, the Commission takes note that as of 2003 some of the case-law of the Council of State has established that “an employee appointed provisionally has no stability whatsoever; accordingly, he or she may be removed without it being necessary to state the reasons,”⁴⁴ this being one of the alleged victim’s claims. In view of the foregoing, the IACHR considers that said remedy did not actually address the alleged victim’s claims.

75. The Commission observes that the arguments put forth by Ms. Martínez Esquivia were related to violations of fundamental rights in the context of her being relieved of her duties, which were set forth in the two *tutela* actions. The first was denied as it was considered that “the administrative act enjoys the presumption of legality that the law recognizes in such acts” and that the legal review corresponds to the contentious-administrative jurisdiction. And the second *tutela* was granted initially, but the ruling was overturned on appeal, as it was considered that it was identical to the first, even though the violation of due process had not been alleged in the first *tutela*. The Commission further notes that two judges of the Superior Judicial Council cast dissenting votes, one of which referred to the first *tutela* action, indicated that the argument of that court with respect to there being other mechanisms for judicial defense repudiates the case-law of the Constitutional Court, which has taken cognizance of this type of case.

76. In light of the foregoing, the Commission considers that in none of the legal initiatives taken by the alleged victim did she have an effective remedy to challenge the decision that terminated her appointment as Delegate Prosecutor before Circuit Judges of the Sectional Bureau of Prosecutors of Cartagena and to review the violations of due process, of the freedom from ex post facto laws, and other arguments regarding fundamental constitutional rights that were put forth in these *tutela* actions.

77. In addition, the Commission notes that one of the arguments put forth by Ms. Martínez Esquivia had to do with the decisions adopted by the Office of the Attorney General of the Nation against her having constituted retaliation for a series of acts in her capacity as prosecutor in the context of an investigation she was pursuing into breach of duty. The Commission observes that in the face of

⁴²I/A Court HR, Case of Dismissed Congressional Employees (*Aguado Alfaro et al.*). Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 125; I/A Court HR, Case of Yakye Axa Indigenous Community. Judgment of June 17, 2005. Series C No. 125, para. 61; I/A Court HR, Case of the “Five Pensioners.” Judgment of February 28, 2003. Series C No. 98, para. 136.

⁴³I/A Court HR, Case of Ramírez Escobar *et al. v. Guatemala*. Merits, Reparations and Costs. Judgment of March 9, 2018. Series C No. 351, paras. 251-252.

⁴⁴Council of State, Second Section, case 76001-23-31-000-1998-1834-01(4972-01), Judgment of March 13, 2003. According to the Colombian Constitutional Court, as of this decision, “this has been the position of the Council of State and based on it administrative acts of such nature have not been annulled when the action for nullity and reestablishment of the right has been used.” See Constitutional Court of Colombia, Judgment SU-917 of 2010.

that argument the response of the judicial authorities was that the act was covered by a presumption of legality, and that the alleged victim did not succeed in refuting that presumption. On this type of judicial response in the face of an allegation of a possible reprisal or abuse of authority, the Inter-American Court has indicated as follows:

78. While the actions of the state authorities are covered by a presumption of lawful conduct, in cases in which arbitrary action or abuse of authority is argued the authority called upon to oversee that action should verify, by all means available, whether there is a reason or purpose different from the one in the provision that grants the powers to the state authority that would formally justify its action.⁴⁵ Accordingly, the Commission concludes that the Colombian State violated the right to judicial protection established at Article 25(1) of the American Convention in relation to the obligations established at Article 1(1) of the same instrument, to the detriment of Yenina Esther Martínez Esquivia.

2. Reasonable time in relation to the remedy of labor appeal

79. The Commission recalls that Article 8(1) of the American Convention establishes, as one of the elements of due process, that the courts are to decide the cases submitted to them in a reasonable time. According to the terms of that provision, the Commission shall take into consideration, in light of the specific circumstances of the case, the following elements: (i) the complexity of the matter; (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities; and (iv) the impact on the legal situation of the person involved in the proceeding.⁴⁶ The Inter-American Court has established that a prolonged delay may constitute, in itself, a violation of judicial guarantees⁴⁷; accordingly, it is up to the State to set forth and prove why more than a reasonable time has been required to issue a final judgment in a particular case.⁴⁸

80. The IACHR recalls that in the instant case, on December 13, 2006, the petitioner appealed the decision that denied her action in the trade union jurisdiction, which was resolved on December 22, 2010 by the Superior Court of Cartagena, i.e. more than four years after it was filed. The State indicated that the delay was due to the number of matters before the Court.

81. The Commission notes that the matter was not at all complex, as it had to do only with determining whether the alleged victim was protected by the right to form and join trade unions and the petitioner set the proceeding in motion through the remedy, thus the delay was due to the actions of the State. The IACHR further considers that the State's generic argument that the delay was due to the large number of matters before the Court is not sufficient to excuse it from its obligation to decide the remedy pursued in a reasonable time.

82. In view of the foregoing considerations, the Commission concludes that the State violated the guarantee of a reasonable time established at Article 8(1) of the American Convention in relation to the obligation established at Article 1(1) of the same instrument, to the detriment of Yenina Martínez Esquivia.

⁴⁵ I/A Court HR. Case of San Miguel Sosa *et al.* v. Venezuela. Merits, Reparations and Costs. Judgment of February 8, 2018. Series C No. 348, para. 191.

⁴⁶ IACHR, Report No. 111/10, Case 12,539, Merits, Sebastián Claus Furlan and family, Argentina, October 21, 2010, para. 100. I/A Court HR, Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012. Series C No. 259, para. 164.

⁴⁷ I/A Court HR. Case of García Asto and Ramírez Rojas v. Peru. Judgment of November 25, 2005. Series C No. 137, para. 166; Case of Gómez Palomino v. Peru. Judgment of November 22, 2005. Series C No. 136, para. 85; Case of the Moiwana Community v. Suriname. Judgment of June 15, 2005. Series C No. 124, para. 160.

⁴⁸ I/A Court HR. Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004. Series C No. 111, para. 142.

C. Political rights⁴⁹

83. Article 23(1)(c) established the right to gain access to public office “under general conditions of equality.” The Court has interpreted this article indicating that “when a judge’s tenure is arbitrarily impaired, the right to judicial independence recognized in Article 8(1) of the American Convention is violated, as is the right to access to public service and tenure, under general conditions of equality, established in Article 23(1)(c)...”⁵⁰

84. The Commission considers that the standard indicated is also applicable to prosecutors, in light of what is indicated in this report, i.e. that the reinforced guarantees of stability of judges are also applicable to and should protect prosecutors to ensure independence in the performance of their duties.

85. In the instant case it has been established that Ms. Martínez Esquivia was separated from her position as provisional prosecutor in a procedure in which the minimal guarantees required were not respected, in the terms described throughout this report. In those circumstances and consistent with the criterion mentioned in the previous paragraph, the Commission considers that the State also violated Article 23(1)(c) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Yenina Esther Martínez Esquivia.

V. CONCLUSIONS AND RECOMMENDATIONS

86. The Commission concludes that the Colombian State is responsible for violating the right to judicial guarantees, the freedom from ex post facto laws, and the right to judicial protection, enshrined in Articles 8(1), 8(2)(b), 8(2)(c), 9, 23(1)(c), and 25(1) of the American Convention, in relation to the obligations established at Articles 1(1) and 2 of the same instrument, to the detriment of Yenina Martínez Esquivia.

87. Based on the analysis and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF COLOMBIA,

1. To reinstate the victim in a similar position to the one he served in, with the same remuneration, social benefits and a comparable rank to the one he would be entitled to today had he not been removed. In the event that the victim should not wish to be reinstated or there are objective reasons preventing his reinstatement, the State shall pay compensation for this reason, which is independent from reparations relating to the material or moral damages included in recommendation number two.

2. To provide full reparation for the consequences of the violations declared in the instant report, including both tangible and intangible damages.

3. To adopt necessary measures of non-repetition to prevent similar events from taking place in the future. In particular, ensure application of the rules of due process in the context of the proceedings for the dismissal or removal of prosecutors, regardless of whether or not they are provisional.

⁴⁹ Article 23 of the American Convention establishes, at the relevant part: “1. Every citizen shall enjoy the following rights and opportunities: ... c. to have access, under general conditions of equality, to the public service of his country. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.”

⁵⁰ I/A Court HR. 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.

4. To adopt the necessary measures so that domestic law and relevant practice conform to clear criteria and ensure guarantees in the appointment, tenure and removal of prosecutors, pursuant to the criteria set forth in the instant report.