

REPORT No. 103/13
CASE 12,816
MERITS
ADÁN GUILLERMO LÓPEZ LONE *ET AL.*
HONDURAS
November 5, 2013

I. SUMMARY

1. On July 6, 2010, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition presented by the *Asociación de Jueces por la Democracia* (AJD) and the Center for Justice and International Law (CEJIL) (hereinafter “the petitioners”) alleging the responsibility of the State of Honduras (hereinafter “the State”, “Honduras” or “the Honduran State”) for the decisions taken in the disciplinary proceedings pursued against judges Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado, and magistrate Tirza del Carmen Flores Lanza (hereinafter “the alleged victims”) in the context of the 2009 *coup d’état*.

2. For its part, the State alleged that the action taken by the Judiciary in response to the conduct of the alleged victims observed the principles of due process of law. It maintained that the alleged victims had access to the remedies under domestic law, without any unwarranted delay, and that they had the opportunity to defend themselves and present evidence to competent, impartial and independent authorities. The State also indicated that the authorities involved issued their decisions in accordance with the laws governing the judicial career service, which are laws that all judicial officials are bound to observe.

3. After examining the parties’ positions, the Inter-American Commission concludes that the Honduran State is responsible for violating the right to a fair trial, freedom from *ex post facto* laws, freedom of expression, the right of assembly, freedom of association, the right to participate in government and the right to judicial protection, recognized in articles 8, 13, 15, 16, and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”). Also, the State is responsible in application of *iura novit curie* for violating the right to principle of legality and political rights enshrined by articles 9 and 23 of the same instrument, all those rights in conjunction with articles 1 and 2 thereof. Lastly, the Commission finds that it does not have sufficient information to make a determination concerning the rights recognized in Articles 5 and 7 of the Convention. The Commission is making the recommendations warranted by its findings.

II. PROCESSING WITH THE IACHR

4. The *Asociación de Jueces por la Democracia* (AJD) and CEJIL filed the original petition on July 6, 2010. The processing of the petition, from the time of its presentation through the decision on the petition’s admissibility, is set out in detail in Admissibility Report 70/11¹. On April 14, 2011, the Commission notified the parties of the admissibility report and, in keeping with Article 37(1) of its Rules of Procedure then in force, set a three-month period for the petitioners to present any additional observations they might have concerning the merits. The Commission also made itself available to the parties with a view to reaching a friendly settlement of the matter.

¹IACHR, [Report No. 70/11](http://www.oas.org/en/iachr/decisions/2011/HOAD975-10EN.DOC) (admissibility), Petition 975-10, Adán Guillermo López Lone, *et al.* Available at: <http://www.oas.org/en/iachr/decisions/2011/HOAD975-10EN.DOC>

5. The petitioners presented their observations on the merits of the case on July 18, 2011. The State submitted its observations on February 1, 2012. On March 26, 2011, during its 144th regular session, the IACHR held a hearing on the merits of the case.

6. The IACHR received additional communications from the petitioners on August 9, October 4, and November 4, 17 and 30, 2011; January 18, April 15 and October 12, 2012, and January 24, 2013. The IACHR received additional communications from the State on June 25, 2012, July 2, 2012 and January 14, 2013. Those communications were duly forwarded to the respective parties.

III. THE PARTIES' POSITIONS

A The petitioners

7. The petitioners asserted that at time of the *coup d'état* on June 28, 2009, the judges of the "Asociación de Jueces por la Democracia" took measures or made statements in favor of restoring democratic order, triggering their arbitrary dismissal by the Supreme Court of Honduras (hereinafter "the SCJ"). According to the petitioners, this happened because the SCJ endorsed the *de facto* government and undertook a campaign of political persecution against those who spoke out against the *coup*.

8. An itemization of the facts and each of the judicial proceedings will be discussed in the Commission's analysis of the facts, which is based on information supplied by both parties. In this section, the Commission is summarizing the main legal arguments made during the merits phase.

9. As for the facts that led to the disciplinary proceedings, the petitioners allege that the case of **Tirza Flores Lanza**, a magistrate on the Court of Appeals, involved a petition for a constitutional relief [*amparo*] that she filed on behalf of then President Manuel Zelaya Rosales, a subsequent petition seeking to have the proceedings on her petition of *amparo* nullified, and the complaint she filed with the Office of the Attorney General for a number of crimes committed by high-ranking public officials who participated in the *coup d'état*. The case of Adán Guillermo López Lone, a judge on San Pedro Sula's First Sentencing Court, concerned his participation in a march against the interruption of constitutional order. He was participating in the march as a citizen. He had no political-partisan emblems or insignia on his person and his participation did not affect his functions as a judge. The march was put down by the armed forces and the judge was left with a fractured left leg. The case of Luis Chévez, a judge with the Anti-Domestic Violence Court in San Pedro Sula, happened because he was at a shopping center when a demonstration protesting the *coup* passed by. The petitioners stated that when the judge witnessed the repression, he identified himself as a judge and complained about the police authorities' disproportionate use of force. Because of his remarks, he was arrested, in violation of the corresponding guarantees. The case of Ramón Barrios Maldonado, judge of the First Chamber of the San Pedro Sula Sentencing Court, involved an academic lecture he delivered in which he described what happened as a *coup d'état*.

10. The petitioners described the proceedings, stating that after an investigation was conducted in the Office of the Inspector General of Courts and Tribunals, the case file was sent to the Office of the Director of Personnel Management, which submitted a report to the SCJ proposing that the individuals be dismissed. The petitioners maintained that the Supreme Court delivered two decisions ordering dismissal and that the legal grounds for the judgments came out in a separate ruling of which

they were not notified. The petitioners added that an appeal was filed with the Judicial Career Council, which, in the case of Tirza Flores, confirmed the decision to dismiss with respect to all but one of the charges; in the case of Adán Guillermo López Lone, the Council confirmed the dismissal; in the case of Luís Chévez, the Council declared his petition “well founded”, but indicated that it was neither advisable nor possible to reinstate him to his seat on the bench; in the case of Ramón Barrios, the Council declared his petition “well founded” and ordered that he remain on the bench.

11. The petitioners argued that the State violated **the right to personal liberty**, since it had not properly investigated Luís Chévez’ arbitrary detention. They argued that while the judge regained his freedom thanks to a petition of *habeas corpus*, the police had engaged in criminal behavior, yet no investigation has thus far been conducted. The petitioners further maintained that the State violated the **right to a fair trial** because the guarantees of independence and impartiality were not observed during the disciplinary proceedings. They mentioned that the disciplinary process was flawed with a number of contradictions and gaps that made it unclear who the competent authority was, thereby obstructing the alleged victims’ right of defense. The following were among the arguments put forward: the manner of appointment of justices on the SCJ; the absence of a judicial career service that ensures judges’ tenure and irremovability; the affinity between the justices of the Supreme Court and the persons who took power as a result of the *coup d’état*; the lack of impartiality, as the position of the alleged victims with respect to the *coup d’état* was not as it was publicly depicted by the SCJ; the fact that the decision did not set forth the its legal grounds, and the lack of analysis regarding the applicable disciplinary sanction and its proportionality.

12. Regarding the **right to judicial protection**, the petitioners argued that the appeals filed against the decisions that admitted the evidence were taken up by the Judicial Career Council, which declared them out of order without giving a properly explanation. As for the appeals filed to challenge the dismissals, the petitioners claimed that the Judicial Career Council was not the competent authority and was not independent, as it was subordinate to the SCJ, the very court that had ruled in favor of the judges’ dismissal. The Council, they pointed out, is made up of five members, two of whom are justices on the SCJ; the rest are discretionary appointments. They added that the applicable law provides that decisions of the Judicial Career Council are not subject to appeal and observed that in any event, the petition seeking *amparo* relief would be ineffective since it would be decided by the SCJ’s own Constitutional Chamber. They further indicated that the practice of challenging a judge would not remedy the situation since the applicable suppletive rules provide that challenges would be heard by the Chief Justice of the Supreme Court or Chair of the Chamber.

13. The petitioners asserted that the State violated the right to **freedom of expression and the right of assembly** because the conducts in which the judges engaged were not punishable offenses under the law. They argued that judges do not, by virtue of the functions they perform, forfeit their right to express their views. Their contention was that the subsequent imposition of liability for exercise of this right should be clearly spelled out in the law, and be calculated to accomplish a legitimate purpose and be necessary in a democratic society. They added that most of the laws applied “are broad and ambiguous” and allow “arbitrary interpretations” that also violate the principle of freedom from *ex post facto* laws. The petitioners asserted that the use of sanctions served no legitimate end; instead it was used as a means to enable the court authorities to avoid having to raise questions about the SCJ’s role in the *coup d’état*, and to send a threatening message to judges. They added that the sanctions were unnecessary in a democratic society because “the practice of freedom of expression was vital and necessary for democracy.” They also argued that the disciplinary proceedings were themselves an indirect means of restricting freedom of expression and that the proceeding instituted against Adán

Guillermo López Lone was also a violation of the right of assembly, exercise of which was “an essential avenue for voicing criticism of the Honduran authorities’ activities. The petitioners added that while Luís Chévez did not participate in the demonstration, even if he had his conduct would have been entirely within the boundaries of the law.

14. The petitioners maintained that the State had violated the alleged victims’ **freedom of association** as they were members of the “*Asociación de Jueces por la Democracia*”, which spoke out against the *coup d’état* and was critical of the SCJ at the time. The petitioners stated that the arbitrary removal of the judges from their posts prevented them from continuing their membership in that association. The petitioners further alleged that the State had violated the **right to defend human rights under Article 23 of the Convention**, as the judges should not have had their right to defend human rights curtailed by virtue of their public office.

15. The petitioners argued that the illegal and arbitrary dismissals affected the dismissed judges’ **right to humane treatment**, which is evident in their sense of “anger, frustration and profound pain.” The petitioners added that the alleged victims were branded as “pro-Zelaya judges”, which has caused them additional pain as their personal struggle for the defense of human rights has been misrepresented. They added that the dismissals have left the judges in financial difficulty. Finally, the petitioners allege that the State violated **Article 2 of the Convention** inasmuch as Honduran law does not afford the necessary guarantees in disciplinary proceedings.

B. The State

16. In the merits phase, the State indicated that the Council of the Judiciary is the institution charged with ensuring the rights of the employees and officials in the Judicial Branch. Accordingly, the Council retains sufficient independence to ensure judicial management commensurate with employees’ effective exercise of their rights and access to an integrated, effective and expeditious system of justice, and with preservation and defense of freedom of expression and other individual freedoms.

17. It argued that the action taken by the Judicial Branch in response to the alleged victims’ conduct has been respectful of legal due process and that access to the remedies under domestic law was afforded without unwarranted delay. It further stated that the Judicial Career Council issued its decisions in accordance with the system of laws that apply to the judicial career service and that are binding upon all judicial officials.

18. The State asserted that the Judicial Career Council decided to confirm the dismissal of Magistrate Tirza Flores and Mr. López Lone, and decided to keep Judge Ramón Barrios on the bench. It also decided to pay compensation and benefits to Judge Chévez de la Rocha. All these decisions were based on the legal arguments made both by the complainants and by the Judicial Career Council when the case was heard. The State added that the petition for *amparo* relief has not yet been exhausted. It noted that while the rules state that no remedies of any kind, either regular or special, shall be admissible against final decisions handed down by the Council, the person against whom some disciplinary measure has been ordered is free to file a petition seeking *amparo* relief from the Constitutional Chamber. It noted that many petitioners have obtained favorable rulings via this avenue, in which the decisions of the Judicial Career Council have been reversed and the affected parties reinstated or their labor benefits and compensation paid.

19. The State maintained that should members of the Constitutional Chamber disqualify themselves or should they be challenged, the applicable rule states that other attorneys shall be called up to serve in their place, provided they have the qualifications to serve as a justice on the bench of the Constitutional Chamber.

20. The State asked that a thorough study be done of all the information provided by both parties and that the Commission conclude that the alleged victims' rights have not been violated inasmuch as the State recognized each one's rights under the law; two were dismissed, one retained his seat on the bench, and the fourth was "paid" all his entitlements.

21. Finally, the State observed that it hoped that the complainants were not trying to use the Commission as a court of fourth instance, especially since they availed themselves of all the forums available in the country. Based on its arguments the State asked that the Commission find that Honduras did not violate the alleged victims' human rights.

IV. ESTABLISHED FACTS

A. PRELIMINARY OBSERVATION

1. Regarding the exhaustion of the domestic remedies

22. In its admissibility report 70/11 the Commission decided to link the analysis of the exceptions to the exhaustion of domestic remedies invoked by the petitioners, to the merits analysis in relation to Articles 8 and 25 of the Convention. The Commission notes that the procedural stage of the disciplinary proceedings followed against the alleged victims has changed. Specifically, in all cases, the Judicial Career Council has issued its resolutions on the appeal and these resolutions are final because the constitutional remedy [*amparo*] was not filled.

23. Consequently, the Commission considers that this remedy is definitely exhausted. Notwithstanding the above, according to the analysis below, the Commission confirmed the *prima facie* considerations expressed in its admissibility report regarding the absence of minimum guarantees of fair trial.

24. In this scenario, the pending issue relates to the constitutional remedy [*amparo*]. The Commission notes that this remedy was not filled by the victims and, consequently, the Commission did not include it in its merits analysis. For the purpose of the pending debate on admissibility, the Commission has taken note of the information provided by the parties and considers that in the circumstances of the case, there was no requirement to exhaust the *amparo*. First, the Commission take note of Article 31 of the Regulations of the Judicial Career Council, which states that against the decision of the Judicial Career Council there is "no appeal, ordinary or extraordinary [remedy]". Such Article can be interpreted as a normative obstacle to file any remedy. In addition, the Commission notes that even if they had file the remedy, due to the design of the system, the alleged victims would have to challenge the judges of the Supreme Court who participated in their dismissals and follow the procedure established in Article 103 of the *Law on the Organization, Functions and Authorities of the Courts*².

²Annex 1. Attorney General of the Republic, Document No. SP-A-90-2012 of June 25, 2012. Attachment to the note of the Ministry of Foreign Affairs No. 757/DGAE/012 of June 26, 2012.

Under such procedure, "will be called other lawyers as members, who shall be appointed, in each case, by the remaining Court's members"³. In that regard, the Commission notes that the SCJ, which lack of impartiality due to its institutional position in the context has been challenged by the petitioners and is accredited in this merit report, would be in charge of the appointment of the substitutes.

2. Regarding the articles alleged by the representatives that were not pointed out on the admissibility report 70/11

25. The Commission in its admissibility report did not rule on the alleged violation of articles 7, 9, and 23 of the Convention, which were alleged by the petitioners at the merits stage. The Commission notes that the facts that support those allegations are integral and inseparable part of the case and also arising from the information and documents submitted by the parties during the proceedings before the Commission. The IACHR notes that during the procedure, the State knew the facts on which the allegations were based and had the opportunity to offer their comments. Accordingly, the Commission based on the principle of *jura novit curia*, taking into account that the state has had the opportunity to know the claims and the need to maintain consistency between other cases with similar situations, will make conclusions on the matter.

VI. Context

1. The coup d'état in Honduras

26. As the Commission wrote in its report titled *Honduras: Human Rights and Coup d'État*,⁴ at 5:00 a.m. on June 28, 2009, heavily armed troops of the Honduran Army stormed the presidential residence and took President José Manuel Zelaya Rosales into custody. The President was then taken to an air base and from there was flown to Costa Rica aboard a military aircraft. That same day, the National Congress ordered President Manuel Zelaya Rosales' removal from the office of President and designated the President of the National Congress as President of the Republic until the presidential elections held in November 2009.⁵ Subsequent to the *coup d'état*, it was reported that the SCJ had ordered the arrest of President Zelaya in connection with a legal case for alleged commission of crimes involving treason, abuse of authority and usurpation of powers to the detriment of the government and State of Honduras.⁶

27. The factor triggering the coup d'état was related to a political controversy concerning a popular consultation that the President was planning for the elections in November 2009,⁷ to give the

³ *Law on the Organization, Functions and Authorities of the Courts*. Available in spanish at: [http://www.poderjudicial.gob.hn/juris/Leyes/Ley%20de%20Organización%20y%20Atribuciones%20de%20los%20Tribunales%20\(actualizada-07\).pdf](http://www.poderjudicial.gob.hn/juris/Leyes/Ley%20de%20Organización%20y%20Atribuciones%20de%20los%20Tribunales%20(actualizada-07).pdf)

⁴ IACHR, *Honduras: Human Rights and Coup d'état*. OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Available at: <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm>

⁵ IACHR, *Honduras: Human Rights and Coup d'état*. OEA/Ser.L/V/II. Doc. 55. December 30, 2009, paragraph 77.

⁶ IACHR, *Honduras: Human Rights and Coup d'état*. OEA/Ser.L/V/II. Doc. 55. December 30, 2009, paragraphs 73-87. During its on-site visit, the Commission did not receive any information concerning the origin of the order to deport the President but did get information to the effect that the order to arrest the President had allegedly not yet been issued at the time the President was taken into custody.

⁷ IACHR, *Honduras: Human Rights and Coup d'état*. OEA/Ser.L/V/II. Doc. 55. December 30, 2009, paragraphs 83-84.

Honduran citizenry an opportunity to express their views on the advisability of convening a National Constituent Assembly. The judicial branch ordered suspension of the consultation and Congress passed a law to stop it.⁸ President Zelaya ordered the Head of the Joint Chiefs to serve as custodian of the ballot boxes that would be used for the consultation. However, the military officer refused to comply with the order and President Zelaya ordered that he be relieved of his command.⁹

28. The *de facto* government took power in Honduras on June 28, 2009 and announced a state of emergency and a curfew.¹⁰ From that day forward, numerous demonstrations were held in various communities across the nation, which the armed forces and the police used brute force to suppress.¹¹ One of the demonstrations was at Toncontín Airport on July 5, where thousands of President Zelaya's supporters had gathered and were awaiting his return to the country. In that demonstration, violent clashes broke out, with demonstrators on one side and police and military on the other.¹² The Commission documented the systematic detention of demonstrators during these events and concluded that "[t]housands of unlawful and arbitrary detentions have been made since the *coup d'état*, both in enforcing the curfew and during the demonstrations in support of President Zelaya."¹³ The Commission also recorded dismissals, arrest warrants, acts of persecution, threats and harassment against public officials in various government offices and local governments, apparently because of the affected officials' opposition to the *coup d'état*.¹⁴

29. The OAS General Assembly condemned the *coup d'état*¹⁵ and on July 4, 2009, resolved "to suspend the Honduran state from the exercise of its right to participate in the Organization of American States, in accordance with Article 21 of the Inter-American Democratic Charter."¹⁶

2. The Supreme Court of Justice's position

30. On June 28, 2009, the Supreme Court of Justice issued a communiqué addressed to "the Honduran People and the international community, concerning the events that occurred today, Sunday,

⁸ IACHR, *Honduras: Human Rights and Coup d'état*. OEA/Ser.L/V/II. Doc. 55. December 30, 2009, paragraph 82.

⁹ IACHR, *Honduras: Human Rights and Coup d'état*. OEA/Ser.L/V/II. Doc. 55. December 30, 2009, paragraph 84.

¹⁰ IACHR, *Honduras: Human Rights and Coup d'état*. OEA/Ser.L/V/II. Doc. 55. December 30, 2009, paragraphs 88-91.

¹¹ IACHR, *Honduras: Human Rights and Coup d'état*. OEA/Ser.L/V/II. Doc. 55. December 30, 2009, paragraphs 92 and 98.

¹² IACHR, *Honduras: Human Rights and Coup d'état*. OEA/Ser.L/V/II. Doc. 55. December 30, 2009, paragraph 92.

¹³ IACHR. *Honduras: Human Rights and Coup d'état*. OEA/Ser.L/V/II. Doc. 55 December 30, 2009. Paragraphs 340 et seq.

¹⁴ IACHR, *Honduras: Human Rights and Coup d'état*. OEA/Ser.L/V/II. Doc. 55. December 30, 2009, paragraphs 182-196.

¹⁵ OEA/Ser.P AG/RES 1 (XXXVII-E/09). July 1, 2009. Resolution on the Political Crisis in Honduras. Available at: <http://www.oas.org/consejo/GENERAL%20ASSEMBLY/37SGA.asp>. Article 20 of the Inter-American Democratic Charter applies "[i]n the event of an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, any member state" of the OAS.

¹⁶ OEA/Ser. P AG/RES 2 (XXXVII-E/09). July 4, 2009. Resolution on the Suspension of the Right of Honduras to participate in the OAS. Available at: <http://www.oas.org/consejo/GENERAL%20ASSEMBLY/Resolucionesextraordinarias.asp>. Article 21 of the Inter-American Democratic Charter provides for the suspension of a member state when "there has been an unconstitutional interruption of the democratic order of a member state."

June 28, 2009.”¹⁷ In that communiqué the Court stated that, “as defenders of the Constitution, the Armed Forces have taken action to defend the Rule of Law, enforcing the provisions of the law to those who have made public statements and taken public actions against the provisions of the Constitution.”¹⁸ In a subsequent communiqué and in a communiqué released on July 20, 2009, the SCJ described the judicial case brought against President Zelaya in connection with the popular consultation¹⁹ and reported on the orders given to court authorities to continue the case.²⁰ In documents published on July 31 and August 21, 2009, the SCJ again made the point that what was happening was being done within the law.²¹ Media outlets reported that, against this backdrop, *de facto* President Roberto Micheletti met with the full membership of the Supreme Court.²²

31. As for the role of the SCJ, the report of Honduras’ Truth and Reconciliation Commission concluded that “this branch of government was unable to rise above the crisis; it abandoned its role as arbiter and became instead a protagonist in the ouster of José Manuel Zelaya as constitutional president of the Republic.”²³ The report goes on to recount the disproportionate number of rejected petitions of *amparo* brought against the *de facto* government, by comparison to the only two petitions of *amparo* filed on behalf of the general who refused to obey the order to guard the ballot boxes, which the court granted.²⁴ Another factor considered was the speed and diligence with which these petitions of *amparo* were considered.²⁵

32. For its part, in the *Report of the Working Group on the Universal Periodic Review*, the following recommendation was made to the Honduran State:

¹⁷ Annex 2. Judicial Branch of the Nation. Communiqué dated June 28, 2009. Attachment to the petitioners’ communication of January 20, 2011.

¹⁸ Annex 2. Judicial Branch of the Nation. Communiqué dated June 28, 2009. Attachment to the petitioners’ communication of January 20, 2011.

¹⁹ Annex 3. Supreme Court. Special Communiqué. No date. Attachment to the petitioners’ communication of January 20, 2011.

²⁰ Annex 4. SCJ. Communiqué dated July 20, 2009. Attachment to the petitioners’ communication of January 20, 2011.

²¹ Annex 5. SCJ. Communiqué dated July 31, 2009. Annex **. SCJ Institutional Opinion of the SCJ. August 21, 2009. Attachments to the petitioners’ communication of January 20, 2011.

²² Anex 6. Press releases: “*Corte Suprema opuesta a la restitución de Manuel Zelaya*” [Supreme Court opposed to the reinstatement of Manuel Zelaya]; “*Micheletti consulta a la Corte opinión sobre Polémico Decreto*” [Micheletti consults the Court for an opinion on controversial decree], and “*Micheletti y magistrados discuten decreto*” [Micheletti and justices discuss decree]. Attachments to the petitioners’ communication of January 20, 2011.

²³ Truth and Reconciliation Commission, *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y Reconciliación* [So That Events Are Not Repeated: Report of the Truth and Reconciliation Commission], July 2011, p. 402.

²⁴ Truth and Reconciliation Commission, *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y Reconciliación* [So That Events Are Not Repeated: Report of the Truth and Reconciliation Commission], July 2011, pp. 369-370.

²⁵ Truth and Reconciliation Commission, *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y Reconciliación* [So That Events Are Not Repeated: Report of the Truth and Reconciliation Commission], July 2011, p. 372. Available in Spanish at: <http://www.sjd.hn/recomendacionesCVR/sites/default/files/Primer%20Informe%20de%20Estado%20de%20Cumplimiento%20de%20las%20Recomendaciones%20de%20CVR.pdf>

Undertake all necessary measures to ensure the independence of the judiciary, including by putting an end to any intimidation or unjustified disciplinary procedures against judges perceived as critical of the coup.²⁶

33. Finally, in one of its reports on the situation in Honduras, the Office of the United Nations High Commissioner for Human Rights commented that:

67. The institutions responsible for protecting human rights and guaranteeing the rule of law failed in many instances to accomplish their mandate, mainly due to a lack of independence.

68. During the period covered by this report, the lack of independence of the judiciary and the unequal and discriminatory application and interpretation of the law have been evident. The Attorney General's Office, judges and the Supreme Court of Justice have, in general, supported the de facto authorities by defending restrictive measures at the expense of protection of human rights and respect for the rule of law [...]²⁷.

3. The Asociación de Jueces por la Democracia

34. The *Asociación de Jueces por la Democracia* (AJD) is a professional association of Honduran judges and magistrates founded in 2006. According to the AJD, its objective is "to defend, promote and strengthen the rule of law, specifically the area of justice, and the independence of and respect for the Honduran judiciary."²⁸ To be a member of the association, one has to be a judge or magistrate in active service.²⁹

35. The AJD took a position on the events and discounted the hypothesis that what happened was a constitutional transition. It called upon the SCJ "to comply with its duty to guarantee fundamental rights and enforce the restraints on the other branches of government."³⁰ The AJD publicly

²⁶ General Assembly, *Report of the Working Group on the Universal Periodic Review. Honduras*, A/HRC/16/10, January 4, 2011. Recommendation 82.56. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-10.pdf>

²⁷ United Nations. Human Rights Council. A/HRC/13/66. Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d'état on 28 June 2009. March 3, 2010, paragraphs 67 and 68. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-66.pdf>

²⁸ Statute of the *Asociación de Jueces por la Democracia* (AJD). Resolution 1062-2007 of September 18, 2007, of the General Secretariat of the Secretariat of State in the Offices of Governance and Justice. *La Gaceta* No. 31.428. October 10, 2007. Available [in Spanish] at: <http://www.poderjudicial.gob.hn/asociaciones/Documents/Estatutos%20Asociación%20de%20Jueces%20por%20la%20Democracia.pdf>

²⁹ Articles 8 and 12 of the Statute of the *Asociación de Jueces por la Democracia* (AJD). Resolution 1062-2007 of September 18, 2007, of the General Secretariat of the Secretariat of State in the Offices of Governance and Justice. *La Gaceta* No. 31.428. October 10, 2007. Available [in Spanish] at: <http://www.poderjudicial.gob.hn/asociaciones/Documents/Estatutos%20Asociación%20de%20Jueces%20por%20la%20Democracia.pdf>

³⁰ Annex 7. Communiqué from the *Asociación de Jueces por la Democracia*. July 28, 2009. Attachment to the petitioners' communication of January 20, 2011.

condemned the arrest of Judge Chévez de la Rocha³¹ and considered that the disciplinary proceedings conducted against the alleged victims in this case and other officials in the Judicial Branch were an attack to the independence of the Judiciary.³²

C. The laws and regulations governing the procedure for removal of judges in Honduras

36. Under Article 313 of the **1982 Honduran Constitution** the SCJ has the authority to “appoint and remove the magistrates and judges proposed by the Judicial Career Council.”³³ For its part, Article 317 of the Constitution provides for the creation of a Council of the Judiciary, which would have authority over the judicial career service in the terms prescribed by a law.³⁴ The State of Honduras indicated that the bill that would regulate that authority of the Council of the Judiciary had been pending with the Congress since 2006; in its absence the Law of the Judicial Career Service and its Regulations contain the relevant provisions.³⁵ The Commission also observes that three regulations were applicable to the disciplinary proceedings, as evidenced by the decisions adopted in the present case: (i) the Regulations of the Judicial Career Service Act,³⁶ (ii) the Internal Rules of the Judicial Career Council³⁷ and (iii) the Regulations of the Office of the Inspector General of Courts and Tribunals.³⁸

37. **The Judicial Career Service Act** set up a disciplinary system for failure to perform one’s duties, incompatibilities and acts inimical to the dignity and efficacy of the justice system.³⁹

³¹ Annex 9. Communiqué from the *Asociación de Jueces por la Democracia. Condenamos enérgicamente la detención ilegal del abogado Luís Chévez de la Rocha por las autoridades policiales de San Pedro Sula* [We energetically condemn the unlawful detention of attorney Luís Chévez de la Rocha by the police authorities of San Pedro Sula]. August 14, 2009. Attachment to the petitioners’ communication of January 20, 2011.

³² Annex 10. Communiqué from the *Asociación de Jueces por la Democracia. Se agudiza la persecución contra jueces y juezas por apoyar el retorno al orden constitucional* [Persecution against judges for supporting restoration of constitutional order intensifies]. October 7, 2009; Communiqué from the *Asociación de Jueces por la Democracia. SCJ se niega al diálogo y a la reconciliación* [SCJ refuses dialogue and reconciliation]. November 3, 2009. Attachment to the petitioners’ communication of January 20, 2011.

³³ Constitution of the Republic of Honduras of 1982 (with amendments introduced up to January 20, 2006). Available [in Spanish] at: [http://www.poderjudicial.gob.hn/institucional/organizacion/dependencias/cedij/Leyes/Documents/CONSTITUCIÓN%20DE%20LA%20REPÚBLICA%20\(09\).pdf](http://www.poderjudicial.gob.hn/institucional/organizacion/dependencias/cedij/Leyes/Documents/CONSTITUCIÓN%20DE%20LA%20REPÚBLICA%20(09).pdf)

³⁴ Constitution of the Republic of Honduras of 1982 (with amendments introduced up to January 20, 2006). Available [in Spanish] at: [http://www.poderjudicial.gob.hn/institucional/organizacion/dependencias/cedij/Leyes/Documents/CONSTITUCIÓN%20DE%20LA%20REPÚBLICA%20\(09\).pdf](http://www.poderjudicial.gob.hn/institucional/organizacion/dependencias/cedij/Leyes/Documents/CONSTITUCIÓN%20DE%20LA%20REPÚBLICA%20(09).pdf)

³⁵ Annex 11. Communication from the State dated October 14, 2010, pp. 28-29.

³⁶ Regulations of the Judicial Career Service Act, published in the Official Record *La Gaceta* No. 25,657 of October 17, 1988. Article 172. Available [in Spanish] at: <http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Reglamento%20de%20la%20Carrera%20Judicial.pdf>

³⁷ Regulations of the Judicial Career Service Act, published in the Official Record *La Gaceta* No. 25,657 of October 17, 1988. Article 31. Available [in Spanish] at: <http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Reglamento%20de%20la%20Carrera%20Judicial.pdf>

³⁸ Regulations of the Office of the Inspector General of Courts and Tribunals. Published in the Official Record *La Gaceta* No. 27,745, August 31, 1995. Articles 10 et seq. Available [in Spanish] at: <http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Reglamento%20de%20la%20Inspector%C3%ADa%20General%20de%20Tribunales.pdf>.

³⁹ Annex 12. Military Governing Junta, Council of Ministers, Degree No. 953, *Judicial Career Service Act*, August 4, 1998. Attachment to the State’s communication of October 14, 2010.

38. Article 51 of the Act guaranteed persons in the judicial public service the “right of tenure when they properly enter the service; they may only be removed for conduct constituting grounds for dismissal under the terms of the present Act and its Regulations.”⁴⁰

39. As for the authorities charged with administering the judicial career service in Honduras, Article 6 of the Judicial Career Service Act⁴¹ provides that the judicial career service shall be administered by three organs: the Judicial Career Council, the Office of the Director of Personnel Management and the Personnel Selection Commission. Of these, the Judicial Career Council and the Office of the Director of Personnel Management participated in the disciplinary proceedings conducted against the alleged victims in this case. The Office of the Inspector General of Courts and Tribunals participated in the initial phase.

40. In the case of the Judicial Career Council, Article 7 of the Judicial Career Service Act provides that the Council “shall be under the SCJ”; under Article 8 of the Act, the Council’s main function is to “assist the SCJ with the policy of personnel management and to resolve any disputes that may arise as a result of the enforcement of this Act and its Regulations.” Under Article 8 of the Judicial Career Act, the Judicial Career Council shall have five permanent members and three alternates, who shall be selected from a list of ten candidates nominated by the Chief Justice of the SCJ. Two of the five permanent members shall be justices on the SCJ; as for the other three permanent members, one is to be an appellate court judge, the second a professional judge and the third a member of the Public Prosecutor’s Office. The alternates shall be appointed by the Court. The members of the Council shall serve three-year terms. The senior-most Justice on the Supreme Council appointed to the Council shall be its Chair.”

41. Article 9 of the Judicial Career Service Act lists the following among the functions of the Judicial Career Council:

“e) to take cognizance of and decide:

1. Any problems, disputes and claims that arise in the area of personnel management and those that arise between management and staff as a result of the enforcement of this Act.
2. Any admissible appeals filed to challenge decisions of the Office of the Director of Personnel Management.

42. As for the Office of the Director of Personnel Management, Article 10 of the Act provides that this Office is the executive body charged with the Act’s enforcement and that its Director shall be named by the SCJ from a slate of three candidates that the Chief Justice of the SCJ would nominate. The functions and authorities of the Office of the Director of Personnel Management include, *inter alia*, analyzing and classifying posts and salaries, preparing a remunerations plan and instructive handbooks for the posts, holding the competitions and exams necessary to select personnel, coordinating training programs, establishing systems to evaluate services, preparing a preliminary budget proposal and the annual report of the Judicial Branch.

⁴⁰ Annex 12. Military Governing Junta, Council of Ministers, Degree No. 953, *Judicial Career Service Act*, August 4, 1998. Attachment to the State’s communication of October 14, 2010

⁴¹ Annex 12. Military Governing Junta, Council of Ministers, Degree No. 953, *Judicial Career Service Act*, August 4, 1998. Attachment to the State’s communication of October 14, 2010

43. Finally, the Regulations of the Office of the Inspector General of Courts and Tribunals give it the authority to launch investigations related to disciplinary proceedings against magistrates and judges, and to refer the case files to the Office of the Director for Personnel Management and the SCJ.⁴²

44. As for the procedure followed to determine sanctions, under Article 188 of the Regulations of the Judicial Career Service Act, dismissal and disciplinary measures

may only be applied once a preliminary briefing has been held and the interested party has been given a hearing to explain his or her reasons and disprove the charges, and only after the appropriate investigations have been conducted and the necessary evidence taken. To that end, the Office of the Director of Personnel Management, either itself or the high-ranking official to whom it delegates that function, shall issue a written summons to the employee, spelling out the specific charges against the employee and advising him or her of the date, time and place of the hearing.

45. The article also states that the Office of the Director “shall make the final decision as to whether to confirm the disciplinary sanction announced to the employee and shall notify the interested party in writing of its decision. Dismissal shall become final when remedies filed by the accused have been exhausted and decided.”⁴³

46. Article 67 of the Act provides that “a judicial public servant who has been disciplined or dismissed may turn to the Judicial Career Council within ten working days, not subject to extension and counted from the date of notification of the disciplinary measure or dismissal ordered in his or her case, [...]”.

47. As for the types of decision the Council is authorized to take, Article 68 provides that “the decision the Judicial Career Council takes on a claim filed to challenge a dismissal may either confirm the dismissal or order reinstatement of the judicial employee or official concerned, either to his or her own post or to one of equal rank, with the right to receive the salaries owed since his or her removal from the post”. Article 69 provides that “any judicial public servant removed from his or her post without cause shall have the right to be reinstated in his or her post, as provided in the preceding article; when the Judicial Career Council finds that reinstatement is neither possible nor advisable, he or she shall be entitled to receive a month’s salary for every year of service, up to a maximum of six years.”

48. Under Article 31 of the Internal Regulations of the Judicial Career Council, “no remedies of any kind, either regular or special, shall be admissible against final decisions handed down by the Council.”⁴⁴

⁴² Regulations of the Office of the Inspector General of Courts and Tribunals. Published in the Official Record *La Gaceta* No. 27,745, August 31, 1995. Articles 10 et seq. Available [in Spanish] at: <http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Reglamento%20de%20la%20Inspector%C3%ADa%20General%20de%20Tribunales.pdf>. See also, *Judicial Career Service Act*, Decree No. 953, published in *La Gaceta* No. 23414 on June 30, 1980. Article 65.

⁴³ Regulations Governing the Judicial Career Service Act, Published in the Official Record *La Gaceta* No. 25,657 of October 17, 1988. Article 188.

⁴⁴ Internal Regulations of the Judicial Career Council, published in the Official Record *La Gaceta* No. 25,657 of October 17, 1988. Article 31. Available at:

49. For its part, the Constitution affords “any aggrieved person” the right to file a petition seeking *amparo* relief to protect his or her constitutional rights.⁴⁵ Under the law, the aggrieved person shall file the petition for *amparo* relief within two months of the date of notification of the act being challenged; furthermore, the petition “may also be filed even when the act constituting a violation of rights is not in writing.”⁴⁶

D. The proceedings conducted against the alleged victims

1. Adán Guillermo López Lone

50. At the time of the events, Judge Adán Guillermo López Lone was serving as a Sentencing Judge on San Pedro Sula’s Sentencing Court and was Chair of the Executive Board of the *Asociación de Jueces por la Democracia*.⁴⁷ By the time of the events he had served in the Judicial Branch for nearly eight years and had never been disciplined.⁴⁸

51. On Sunday, July 5, 2009, Judge López participated in a mass demonstration near Toncontín Airport, which ended in a violent clash between the demonstrators and the police and armed forces.⁴⁹ In the course of that clash, Judge López Lone’s left leg was fractured,⁵⁰ which was disclosed in media coverage of the events.⁵¹

<http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Reglamento%20Interno%20del%20Consejo%20de%20Ia%20Carrera%20Judicial.pdf>

⁴⁵ Constitution of the Republic of Honduras of 1982 (with amendments introduced up to January 20, 2006). Article 183; Law on Constitutional Justice, Decree No. 244, *La Gaceta* No. 30,792 of August 30, 2004, Articles 41-42. Available [in Spanish] at: <http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Ley%20Sobre%20Justicia%20Constitucional.pdf>

⁴⁶ Law on Constitutional Justice, Decree No. 244, *La Gaceta* No. 30,792 of August 30, 2004, Articles 43 and 48.

⁴⁷ Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. *Rebuttal Hearing #172-2009*, December 3, 2009, page 71. Attachment to the petitioners’ communication of January 20, 2011.

⁴⁸ Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Office of the Director of Personnel Management. Judicial Career Service. *Rebuttal Hearing #172-2009*, December 3, 2009. Attachment to the petitioners’ communication of January 20, 2011.

⁴⁹ Annex 13 Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. *Tiempo*. July 6, 2009. *Enfrentamiento entre Ejército y manifestantes deja un muerto* [Clash between Army and demonstrators leaves one dead]; *La Tribuna*. July 6, 2009. *Confuso y sangriento enfrentamiento* [Confusion and a bloody clash]; *La Prensa*. July 6, 2009. *Mel no atendió llamados y hay una víctima mortal* [Mel did not answer calls and one victim dead]. Attachment to the petitioners’ communication of January 20, 2011.

⁵⁰ Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Honduras Medical Center. Report of July 6, 2009; *Instituto Hondureño de Seguridad Social*. July 10, 2009. Certificate of Temporary Disability No. 432890. Attachment to the petitioners’ communication of January 20, 2011. Attachment to the petitioners’ communication of January 20, 2011.

⁵¹ See Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Press releases: *Tiempo*. July 6, 2009. *Enfrentamiento entre Ejército y manifestantes deja un muerto* [Clash between Army and demonstrators leaves one dead]; *La Tribuna*. July 6, 2009. *Confuso y sangriento enfrentamiento* [Confusion and a bloody clash]; *La Prensa*. July 6, 2009. *Mel no atendió llamados y hay una víctima mortal* [Mel did not answer calls and one victim dead]. Attachment to the petitioners’ communication of January 20, 2011. Attachment to the petitioners’ communication of January 20, 2011. Attachment to the petitioners’ communication of January 20, 2011.

52. On July 7, 2009, the Secretary of State in charge of National Defense filed a complaint with the SCJ concerning Judge López' participation in the demonstration.⁵² The complaint triggered an investigation in which the Office of the Inspector General of Courts and Tribunals concluded that Judge López' presence and participation in the demonstration opened him up to imposition of "administrative liability" and recommended that he appear before the Supreme Court, *en banc*, to exercise his right of defense.⁵³ When the case file was sent to the Office of the Director of Judicial Career Personnel, a citation was issued on October 30, 2009 for Judge López to appear to answer disciplinary charges.⁵⁴ On December 3, 2009, Judge López indicated that his presence in the demonstration was during "nonworking hours on a day that was [for him] a non-workday" and that "he was not wearing any official insignia at these events and did not participate in his capacity as a public official, but rather as a citizen and a member of civil society who is protesting the national crisis brought on by the disruption of the rule of law."⁵⁵ He stated that Article 3(6) of the Law on the Organization, Functions and Authorities of the Courts was incompatible with Article 319 of the Constitution, which only prohibits participation in party-related activities. He also pointed out that the purpose of the disciplinary proceeding was to curtail his rights to freedom of expression and to freedom of association.⁵⁶ On December 9, 2009, Judge López filed a constitutionality objection with the Office of the Director of Personnel Management challenging Article 3(6) of the Law on the Organization, Functions and Authorities of the Courts, on the grounds that it was incompatible with the American Convention and other international human rights instruments.⁵⁷ On December 10, 2009, the Office of the Director of Personnel Management declared that it did not have competence.⁵⁸

⁵² Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Communication of the Secretary of National Defense. Attachment to the petitioners' communication of January 20, 2011.

⁵³ Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Office of the Inspector General of Courts and Tribunals. Special Report dated July 30, 2009. Attachment to the petitioners' communication of January 20, 2011.

⁵⁴ Those charges were as follows: "Failure to perform the duties of one's office by engaging in acts that are inimical to the dignity of the administration of justice by having taken active part in the demonstration that occurred on July 5, 2009, in the vicinity of Toncontín International Airport, in flagrant violation of articles 319, paragraph two, of the Constitution of the Republic, Article 3 (6) of the Law on the Organization, Functions and Authorities of the Courts, Articles 44, 53(g), 54(j), and 55 of the Judicial Career Service Act; Articles 149, 172(f), 174 of the Regulations governing that Act; Article 1.2(g) of the Code of Ethics for Officials and Employees in the Judicial Branch." See Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Office of the Deputy Director of Judicial Career Personnel Management. Summons. October 30, 2009. Attachment to the petitioners' communication of January 20, 2011.

⁵⁵ Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Office of the Director of Judicial Career Personnel Management. Rebuttal Hearing # 172-2009. December 3, 2009. Attachment to the petitioners' communication of January 20, 2011.

⁵⁶ Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Office of the Director of Judicial Career Personnel Management. Rebuttal Hearing # 172-2009. December 3, 2009. Attachment to the petitioners' communication of January 20, 2011.

⁵⁷ Annex 14. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Constitutionality Objection Entered by Adán Guillermo López Lone with the Director of Personnel Management of the SCJ. December 4, 2009. Attachment to the petitioners' communication of January 20, 2011.

⁵⁸ Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Office of the Director of Personnel Management. Judicial Career Service, December 10, 2010. Attachment to the petitioners' communication of January 20, 2011.

53. On December 7, 2009, the Deputy Director of Personnel Management issued a decision in which he declared that the evidence offered by Judge López was admissible.⁵⁹ On January 18, 2010, Judge López Lone appealed that decision with the Office of the Director of Personnel Management, arguing that the evidence must be examined by the Director of the Office, not by lower-ranking administrative employees; “the party who may order a sanction must have firsthand knowledge of the evidence.”⁶⁰ He also challenged the admittance of written statements made by two officials in the Judicial Branch on the grounds that they should appear in person before the official charged with examining the evidence so that they could be questioned by the parties. After the Office of the Director of Personnel Management ruled that the competent body to decide the matter was the Judicial Career Council, the latter dismissed the challenge as out of order, in a decision dated February 22, 2010. It wrote that the issues being challenged concerned the “conduct of the procedures necessary for normal proceedings.”⁶¹

54. On March 10, 2010, Judge López filed a request claiming that the statute of limitations for disciplinary action before the Office of Personnel Management had expired, since more than 60 days had passed since the Office of the Inspector General of Courts and Tribunals was seized of the facts.⁶² The Office of the Director declared that appeal inadmissible on April 8, 2010.⁶³

55. One of the pieces of evidence that Judge López Lone singled out during the hearing with the Office of the Director of Personnel Management was a communiqué issued from the Office of the Chief-of-Staff of the Judicial Branch on June 30, 2009, in which the Chief Justice of the SCJ had reportedly invited personnel to a march that could be interpreted as being in support of the *de facto* government.⁶⁴ The conclusion reached in the course of the disciplinary investigations was that this communiqué was reportedly the result of an error.⁶⁵

⁵⁹ Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Memorandum from the Deputy Director of Judicial Career Personnel Management to Adán Guillermo López Lone. December 7, 2009. Attachment to the petitioners’ communication of January 20, 2011.

⁶⁰ Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Appeal filed with the Director of Personnel Management, January 15, 2010. Attachment to the petitioners’ communication of January 20, 2011.

⁶¹ Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Judicial Career Council. Decision of February 22, 2010. Attachment to the petitioners’ communication of January 20, 2011.

⁶² Annex 15. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Request that Guillermo López Lone filed with the Office of the Director of Personnel Management of the SCJ concerning the statute of limitations. March 9, 2010. Attachment to the petitioners’ communication of January 20, 2011.

⁶³ Annex 15. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Office of the Director of Judicial Career Personnel Management. Decision of April 8, 2010. Attachment to the petitioners’ communication of January 20, 2011.

⁶⁴ Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. Office of the Head of Personnel of the Office of the Director of Personnel Management. Judicial Branch. Communiqué from June 30, 2009. Attachment to the information provided by the State during the admissibility hearing, March 25, 2011.

⁶⁵ Annex 16. SCJ. Judicial Career Council. Certification, Case File No. 3077, page 317. Attachment to the petitioners’ communication of the State of 25 June, 2012. See also Annex **. Attorney General of the Republic, Document No. SP-A-90-2012 of June 25, 2012. Attachment to the note of the Ministry of Foreign Affairs No. 757/DGAE/012 of June 26, 2012.

56. On April 20, 2010, the Office of the Director of Personnel Management recommended to the Supreme Court that Judge López be dismissed, without liability for the institution.⁶⁶ The file contains a decision dated May 5, 2010 and signed by the Chief Justice of the SCJ and its Secretary.⁶⁷ The decision states that “it has been duly established that [judge López] failed to comply with the duties of his office by having taken active part in the political demonstration held on July 5, 2009,” which was a violation of the provisions of Article 319 of the Constitution, Article 3(6) of the Law on the Organization, Functions and Authorities of the Courts, and Article 1(d) of the Code of Ethics of Officials and Employees of the Judicial Branch.⁶⁸ The decision also stated that “no judge may claim a right to participate in the national political discourse like any other citizen, precisely because judges are not just any persons...” and that public officials are exposed to a greater degree of public scrutiny and criticism. Finally, the decision stated that by virtue of the fact that on his medical expense claim he asserted that his leg was injured “as he was walking [and] tripped,” Judge López violated several articles of the Code of Ethics of Officials and Employees of the Judicial Branch.⁶⁹

57. On May 21, 2010, the alleged victims filed a request with the Supreme Court asking that the decision to dismiss them be reconsidered.⁷⁰ One of the claims made in that request for reconsideration was that the alleged victims had learned of the May 5, 2010 meeting of the Court *en banc* where the decision to dismiss them was taken, because one of the justices had told the media as much before the alleged victims were even notified of the decision.⁷¹ In an interview that one media outlet had with the Chief Justice of the Supreme Court on June 4, 2010, it was learned that “the justices who voted the first time, confirmed their decision on the second occasion; the vote count was the same in both cases.”⁷² On June 16, 2010, the Supreme Court issued the decision to dismiss Judge López, which read as follows:

THE SCJ HEREBY DECIDES: 1. To dismiss, without any liability to the institution, attorney ADAN GUILLERMO LOPEZ LONE from the post of Judge of the Sentencing Court of the San Pedro Sula Judicial District, Department of Cortés, for serious or repeated noncompliance with or violation of some of the duties, incompatibilities and conduct established in chapters X and XI of the Judicial Career Service Act, by virtue of his having actively participated in the political demonstration staged near “TONCONTIN” Airport on July 5, 2009. As he himself testified at the rebuttal hearing, when military forces guarding the air strip opened fire with their regulation weapons, a human

⁶⁶ Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Complaint: 268-IGJT-PJ-2006. April 20, 2010. Decision 172-2010. Attachment to the petitioners’ communication of January 20, 2011.

⁶⁷ Annex 16. SCJ. Judicial Career Council. Certification, Case File No. 3077. SCJ. Decision of May 5, 2010, pages 291-294. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

⁶⁸ Annex 16. SCJ. Judicial Career Council. Certification, Case File No. 3077. SCJ. Decision of May 5, 2010, pages 291-294. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

⁶⁹ Annex 16. SCJ. Judicial Career Council. Certification, Case File No. 3077. SCJ. Decision of May 5, 2010, pages 291-294. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

⁷⁰ Annex 17. Appeal filed with the SCJ, seeking reconsideration of the dismissals. May 21, 2010. Attachment to the petitioners’ communication of July 6, 2010.

⁷¹ Annex 17. Appeal filed with the SCJ, seeking reconsideration of the dismissals. May 21, 2010. Attachment to the petitioners’ communication of July 6, 2010.

⁷² Annex 18. La Prensa.hn, *Prefiere renunciar a permitir injerencia. El Presidente de la SCJ dice que lo político no está sobre la ley* [He would rather resign than allow interference. Chief Justice of SCJ says politics is not above the law], June 4, 2010. Attachment to the original petition received July 6, 2010.

stampede was set off; in the effort to save himself, he sustained a fracture to the tibia plateaus on his left leg, a fact that is inconsistent with what attorney LOPEZ LONE states on the Atlántida Insurance medical expense claim form, where he states that the accident happened when he tripped as he was walking and hit his knee, leaving him unable to walk. He thus violated the Code of Ethics for Judicial Employees and Officials, Article 2 of which provides that a magistrate or judge must act with honesty, Independence, impartiality and equanimity. Therefore his conduct is unbecoming the dignity of his office and incompatible with the principles of ethics and with the laws governing the conduct of judicial officials and employees. Articles 80, 82, 90 (1), 303, 313 (I) and (8), 318, 322 and 323 of the Constitution of the Republic; XXXIII of the Universal Declaration of the Rights and Duties of Man; 1, 3, 4(2), 44, 45, 51, 53 (g), 55, 56 (3), 60, 64 (a), 65, 66, 73, 74, 83 and 84 of the Judicial Career Service Act; 1, 3, 4, 7, 9(4), 149, 160, 161, 171, 172(f), 174, 180(3), 184, 186, 187(a), 188, 189, 190, 206 and 214 of the Regulations Governing the Judicial Career Service Act; Article 3(6) of the Law on the Organization, Functions and Authorities of the Courts; 43, 44, 53 and 55 of the Ibero-American Model Code of Judicial Ethics; 10 and 20 of the Statute of the Ibero-American Judge; 1(1)(f), 8(a) and 9 of the Code of Ethics for Judicial Officials and Employees.⁷³

58. Upon notification of the decision, Judge López Lone filed an appeal on June 30, 2010, with the Judicial Career Council.⁷⁴ On September 29, 2010, a hearing with the Judicial Career Council was held, which was then nullified.⁷⁵ Finally, on February 28, 2011, Judge López Lone appeared before the Judicial Career Council for another hearing on his appeal.⁷⁶ On that occasion, Judge López made the point that he had no information as to whether the Judicial Career Council had been constituted and whether all its members would examine the hearing. He also pointed out that the disciplinary case file contained a decision dated May 5, 2010, signed by the Chief Justice of the Supreme Court and of which he had never been notified.⁷⁷

59. Justices Rosa de Lourdes Paz Haslam, Edith María López Rivera, Raúl Antonio Henríquez Interiano, Gustavo Enrique Bustillo Palma, Permanent and Alternate Council Members, disqualified themselves on the grounds that as members of the Supreme Court, they had served as judges in the proceedings on Judge López Lone's dismissal.⁷⁸ On April 6, 2011, the General Counsel and Secretary advised the Chief Justice of the SCJ that, there being no other alternates, the Judicial Career Council was left without its full membership; he therefore asked the Chief Justice "to nominate candidates to replace the Permanent and Alternate members of the Council and provide guidance as to the method to be

⁷³ Annex 16. Judicial Career Council. Certification, Case File No. 3077. SCJ. Memorandum No. 1290-SSCJ-2010. June 16, 2010, page 12. Attachment to the State's communication of June 25, 2012 received on July 2, 2012.

⁷⁴ Annex 16. SCJ. Judicial Career Council. Certification, Case File No. 3077. Appeal of August 31, 2010, pages 1-11. Attachment to the State's communication of June 22, 2012 received on July 2, 2012.

⁷⁵ Annex 16. SCJ. Judicial Career Council. Certification, Case File No. 3077. Decision nullifying the proceedings. Case File No. 3077, at 104 *et seq.* Attachment to the State's communication of June 22, 2012 received on July 2, 2012.

⁷⁶ Annex 16. SCJ. Judicial Career Council of the SCJ. Certification, Case File No. 3077. Certification of Hearing on the claim filed by Adan Guillermo López Lone, February 28, 2011. Attachment to the State's communication of June 25, 2012 received on July 2, 2012.

⁷⁷ Annex 16. SCJ. Judicial Career Council of the SCJ. Certification, Case File No. 3077. Certification of Hearing on the claim filed by Adan Guillermo López Lone, February 28, 2011. Attachment to the State's communication of June 25, 2012 received on July 2, 2012.

⁷⁸ Annex 16. SCJ. Judicial Career Council. Certification, Case File No. 3077. Decision of the Judicial Carrer Council. August 24, 2011, page. 484. Attachment to the State's communication of June 25, 2012 received on July 2, 2012.

followed.”⁷⁹ On April 14, 2011, the Chief Justice of the Supreme Court decided that inasmuch as he had been one of the judges who ruled in favor of dismissal, he was abstaining from appointing the new members. He indicated that “the method to be followed” was the one prescribed in Article 16 of the Internal Regulations of the Judicial Career Service and, by analogy, Article 72 of the Law on the Organization, Functions and Authorities of the Courts and Article 15(d) of the Internal Regulations of the SCJ.⁸⁰ On April 26, 2011, the Chair of the Judicial Career Council decided that the applicable rules included Articles 51⁸¹ of the Internal Regulations of the Judicial Career Council and 72 of the Law on the Organization, Functions and Authorities of the Courts.⁸² She then proceeded to name the alternates.⁸³

60. On September 21, 2011, the attorney of Judge López Lone was notified of the Judicial Career Service’s decision, taken on August 24 of that year, in which his appeal was denied and his removal was confirmed.⁸⁴ The Council wrote that “when issuing its decisions it acted as an independent body.” It also wrote that in order to ensure impartiality and independence in the consideration of the appeals filed by Judge López Lone, the record shows that the parties that had served on the panel that had heard the case that resulted in Judge López Lone’s dismissal disqualified themselves; acting in their place were officials who “have had no hand in any of the decisions taken by the Supreme Court.”⁸⁵ The Council rejected the statute-of-limitations argument made by Judge López Lone.⁸⁶ It added that Judge López Lone’s impartiality and independence “would be compromised the minute he was called upon to hear claims filed by citizens with whom he established a mutual interest in the political demonstration in which they were all partners in a common struggle; this was a given understood by other judges who did not participate in partisan political activities [...]”⁸⁷

⁷⁹ Annex 16. SCJ. Judicial Career Council. Certification, Case File No. 3077. Report of the General Counsel Secretary. April 6, 2011, at 109, page 448. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

⁸⁰ Annex 16. SCJ. Judicial Career Council. Certification, Case File No. 3077. Decision of the President of the Court of April 14, 2011. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012

⁸¹ Article 15.- Whatever is not provided for in these Regulations shall be decided in accordance with the provisions of the Judicial Career Service Act and its Regulations; failing that, it shall be decided in accordance with the Civil Service Act and its Regulations, the Law on the Organization, Functions and Authorities of the Courts, the Administrative Procedure Act, the Retirement Law for the Judicial Branch, the Code of Civil Procedure and Civil Code, applying from these laws those provisions deemed to be most in keeping with the spirit and the purpose of the Judicial Career Service Act.

⁸² The relevant provision states that one of the functions of the Chairs of the Appellate Courts: “To give the necessary orders to establish the membership of the Tribunal, when because of impediment, leave or any other cause the needed number of magistrates is absent.” Article 72(3) of the Law on the Organization, Functions and Authorities of the Courts. January 22, 1906.

⁸³ Annex 16. SCJ. Judicial Career Council. Case File 30.77. Resolution of the President of the Council of April 26, 2011, page 449. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

⁸⁴ Annex 16. SCJ. Judicial Career Council. Certification, Case File No. 3077. Decision of the Judicial Carrer Council of August 24, 2011, pages. 505-518. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

⁸⁵ Annex 16. SCJ. Judicial Career Council. Certification, Case File No. 3077. Decision of the Judicial Carrer Council of August 24, 2011, pages. 505-518. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

⁸⁶ Annex 16. SCJ. Judicial Career Council. Certification, Case File No. 3077. Decision of the Judicial Carrer Council of August 24, 2011, pages. 505-518. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

⁸⁷ Annex 16. SCJ. Judicial Career Council. Certification, Case File No. 3077. Decision of the Judicial Carrer Council of August 24, 2011, pages. 505-518. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

61. A report dated August 16, 2011 found that Judge López Lone allegedly received his final payment as a court judge in July 2010 and the attorney who replaced him took her seat on the bench on June 30, 2010.⁸⁸

2. Luis Alonso Chévez de la Rocha

62. On the date the disciplinary proceeding got underway, Judge Luis Alonso Chévez de la Rocha was serving as Judge of the San Pedro Sula Sentencing Court. According to his own testimony, he had been in the judiciary for thirteen and a half years during which time he never faced any disciplinary measure.⁸⁹ Judge Chévez was a member of the AJD.⁹⁰

63. According to Judge Chévez' testimony, on August 12, 2009 he had agreed to meet his wife at the "Multiplaza Mall" to do a bank transaction. After parking his car at the mall, he noticed a demonstration was passing by. As he walked to the mall entrance, "the air filled with smoke", which is why he covered his mouth with a handkerchief and asked them to open the gate, but they did not.⁹¹ Judge Chévez was taken into custody by police. He described the event as follows:

I witnessed the excessive force used against completely unarmed persons who were staging a peaceful demonstration. So I went to the officer in command of the operation and identified myself as a judge. I told him it would be better to negotiate than to use violence. The police officer became very angry and immediately ordered my arrest and had me put in the rear of a police vehicle [...].⁹²

64. On August 12, 2012, the Chair of the District Appellate Court requested that an Executor Magistrate be appointed to be present at the First Police Station and at any other detention center "to order the immediate release of those detained and to put a stop to any mistreatment or abuse suffered."⁹³

65. The Executor Magistrate indicated that after arriving at the facilities of the first police station, she proceeded to inspect the log of persons detained and established that there was no record

⁸⁸ Annex 16. SCJ. Judicial Career Council. Case File No. 3077. Report of the Deputy Director of Personnel Management. Case File 30,777. August 16, 2011. Page 469. Attachment to the State's communication of June 25, 2012 received on July 2, 2012.

⁸⁹ Annex 16. SCJ. Judicial Career Council. Case File No. 3077. Office of the Director of Personnel Management, Rebuttal Hearing 171-2006, December 3, 2009, pages. 279-287. Attachment to the State's communication of June 25, 2012 received on July 2, 2012.

⁹⁰ See in this regard, Annex 13. Judiciary. Republic of Honduras. Office of the Director of Personnel Management. File No. 191-2009. Denuncia 268-IGJT-PJ-2006. Office of the Director of Judicial Career Personnel Management. Judicial Career Service, Statement of Guillermo López Lone, Rebuttal Hearing #172-2009, December 3, 2009, page. 71. Attachment to the petitioners' communication of January 20, 2011.

⁹¹ Annex 19 Investigation report. Record of the personal appearance by Judge Luis Alonso Chévez de la Rocha. Office of the Inspector of Northwestern Courts and Tribunals, September 14, 2009. Attachment to the petitioners' communication of January 20, 2011. See also, Annex **. SCJ. Judicial Career Council. Case File 3078. Rebuttal Hearing. December 3, 2010. Page 279- 287. Attachment to the State's communication of June 25, 2012 received on July 2, 2012.

⁹² Annex 20 SCJ. Judicial Career Council. Case File 3078. Investigation Report. Rebuttal Hearing 171-2006. December 3, 2010. Page 279 *et seq.* Attachment to the State's communication of June 25, 2012 received on July 2, 2012.

⁹³ Annex 20 SCJ. Judicial Career Council. Case File 3078. Document signed by Permanent Magistrate Tirza Flores Lanza. August 12, 2009. Attachment to the State's communication of June 25, 2012 received on July 2, 2012.

of the arrest of Judge Chévez or indeed of any other person detained. Then Deputy Inspector Lorbin Mejía Torres reported that the names of those taken into custody “did not appear in the log books at the police station, nor were they read their rights, since they were not technically under arrest; they had simply been sent to the police station so that police could take their statements concerning the demonstration [...] and to be checked over by the forensic physician; hence, they were free to leave whenever they wanted.”⁹⁴ The Executor Magistrate stated that she spoke with Judge Chévez and, based on his statements, concluded that “it was apparent that [...] the preventive police had subjected Luis Alonso Chévez [and others] to physical, verbal and psychological mistreatment at the time of their arrest.”⁹⁵ Therefore, the Executor Magistrate granted the petition of *habeas corpus* from a call phone that she received. The Magistrate ordered the immediate release of a number of Honduran citizens, among them Judge Chévez. On September 10, 2009, the District Appellate Court upheld the writ of *habeas corpus* and sent certification of the ruling so that the appropriate criminal case could be brought.⁹⁶

66. In the course of the disciplinary investigation against a public defender who had supported a criminal complaint filed in connection with the arrest and forced exile of President Zelaya, the Deputy Inspector General of Courts and Tribunals observed that an article was published in the newspaper “*La Prensa*” to the effect that “among those detained yesterday was the Anti-domestic Violence Judge Luis Chévez, wearing glasses.” The Deputy Inspector General ordered that the article be classified as number 284-IGJT-PJ-2009 and sent to the Regional Office of the Inspector of Courts and Tribunals for investigation.⁹⁷

67. During the course of the investigation, statements were taken from officials in the Judicial Branch, who said that Judge Chévez had “incited judicial employees to join the demonstrations for Mr. José Manuel Zelaya Rosales,”⁹⁸ that Judge Chévez had said that he was ashamed of how the [SCJ] had allowed itself to be used” in connection with the events of June 28 and that he participated in “those movements staged to protest the current Constitutional Government.”⁹⁹

68. On September 11, 2009, the Regional Deputy Coordinator went to Judge Chévez’ courtroom and advised him of various aspects of the complaint, so that he might make the necessary statement. In that inquiry, after Judge Chévez asked for a copy of the complaint, the Deputy Regional

⁹⁴ Annex 19. Report of Investigation. Report prepared by Executor Magistrate Katy Sánchez. August 13, 2009. Attachment to the petitioners’ communication of January 20, 2011.

⁹⁵ Annex 19. Report of Investigation. Report prepared by Executor Magistrate Katy Sánchez. August 13, 2009. Attachment to the petitioners’ communication of January 20, 2011.

⁹⁶ Annex 20. SCJ. Judicial Career Council. Case File 3078. Judgment of the District Appellate Court. Case File 71-09 ExPer-SGM-, September 10, 2009. Pages 260-262. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

⁹⁷ Annex 20. SCJ. Judicial Career Council. Case File 3078. Office of the Inspector General of Courts and Tribunals. Memorandum from the Deputy Inspector General of Courts and Tribunals dated August 13, 2009. Attachment to the State’s communication of June 25, 2012.

⁹⁸ Annex 19. Investigation Report. Statement given by Miguel Ángel Cruz Cruz, Deputy Northwestern Purveyor of the Judicial Branch. September 3, 2009. Attachment to the petitioners’ communication of January 20, 2011.

⁹⁹ Annex 19. Investigation Report. Statement given by Carlos Luis Rodezno. September 3, 2009. Attachment to the petitioners’ communication of January 20, 2011. See also, Annex **. Statement by Mario Guillermo López Cabrera. September 8, 2009; Statement by María Critina Pazzetty. September 3, 2009; Statement by Rolando Isidro Enamorado. September 3, 2009. Attachments to the petitioners’ communication of January 20, 2011.

Coordinator stated that she could “not provide him with a copy [...] because these were purely administrative matters and because [...] Article 22 of our Regulations requires that of us, since this is the Supreme Court’s confidential business.”¹⁰⁰ On September 11, 2009, Judge Chévez requested a copy of the case file of the disciplinary investigation,¹⁰¹ but his request was dismissed on the grounds that the Regional Deputy Coordinator had verbally informed him of the matters under investigation. It was pointed out that the investigation “is not definitive”, that “it is subject to review by immediate superiors and is just one part of the entire procedure to be followed.”¹⁰² On September 14, 2009, Judge Chévez went to the Office of the Inspector to make his statements on the points in the complaint.¹⁰³

69. The Inspector’s Office issued its report on the complaint on September 16, 2009.¹⁰⁴ According to that report, some judges claimed that Judge Chévez had spoken out against the government, which he called a *coup* government. According to these judges, he was also critical of the Judiciary’s position in the face of what was happening. The Inspector’s Office therefore concluded that his conduct amounted to “acts that are inimical to the Administration of Justice, under Article 53, Rule “b” and Article 44 of the Judicial Career Service Act for being disrespectful of employees” of the Judicial Branch.¹⁰⁵ On September 17, 2009, the Inspector’s Office approved the report in question.¹⁰⁶ A decision was also made to forward the report to the Office of the Director of Judicial Career Personnel Management and to the SCJ.¹⁰⁷

70. On October 27, 2009, Judge Chévez was summoned to the Office of the Director of Judicial Career Personnel Management.¹⁰⁸ He again requested a copy of the file of the disciplinary case being prosecuted against him. On November 4, 2009, the brief was entered and a copy of the

¹⁰⁰ Annex 19. Investigation Report. Act of the Inspector General of Courts and Tribunals, September 11, 2009. Page 51. Attachment to the petitioners’ communication of January 20, 2011.

¹⁰¹ Annex 19. Investigation Report. Document signed by attorney Rosa Argentina Donaire, Inspector of Courts and Tribunals. September 11, 2009. Annex **. Communication from Luis Chévez de la Rocha to attorney Amilcar Valle, Chief, Office of the Regional Inspector of the SCJ. September 12, 2009. Attachments to the petitioners’ communication of January 20, 2011.

¹⁰² Annex 19. Investigation Report. Decision of the Office of the Regional Inspector of Courts and Tribunals. September 11, 2009. Attachment to the petitioners’ communication of January 20, 2011.

¹⁰³ Annex 19. Investigation Report. Record of the personal appearance of Judge Luis Alonso Chévez de la Rocha. Northwestern Regional Inspector’s Office, September 14, 2009. Page. 52. Attachment to the petitioners’ communication of January 20, 2011.

¹⁰⁴ Annex 20. SCJ. Judicial Career Council. Case File 3078. Report on complaint number 278/284 IGJT-PJ-2009. Office of the Inspector General of Courts and Tribunals. December 16, 2009. Pages. 263-269. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

¹⁰⁵ Annex 20. SCJ. Judicial Career Council. Case File 3078. Report on complaint number 278/284 IGJT-PJ-2009. Office of the Inspector General of Courts and Tribunals. September 16, 2009. Pages 263-269. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

¹⁰⁶ Annex 20. SCJ. Judicial Career Council. Case File 3078. Office of the Inspector General of Courts and Tribunals. Report on Complaint No. 278/284 IGJT-PJ-2009. September 17, 2009, pages 272-273. Attachment to the State’s communication of June 25, 2011 received on July 2, 2012.

¹⁰⁷ Annex 20. SCJ. Judicial Career Council. Case File 3078. Office of the Inspector General of Courts and Tribunals. Report on Complaint No. 278/284 IGJT-PJ-2009. September 17, 2009, pages 272-273. Attachment to the State’ communication of June 25, 2012, received on July 2, 2102.

¹⁰⁸ Annex 20. SCJ. Judicial Career Council. Case File 3078. Summons. Office of the Deputy Director of Judicial Career Personnel Management. October 27, 2009. Attachment to the petitioners’ communication of January 20, 2011.

investigative case file was requested to enable him to prepare his defense. He was summoned to a hearing slated for November 30, 2009.¹⁰⁹ When Judge Chévez asked for a postponement given the “intense climate of insecurity the country [wa]s experiencing,” a decision was made to postpone the hearing until December 3, 2009.¹¹⁰ The reason given in the summons for his appearance was to give him “a hearing.”¹¹¹

71. On December 3, 2009, Judge Chévez appeared before the Office of the Director of Personnel Management to be deposed. He stated that he was arrested for criticizing the excessive force used by police officers and denied having said that he was “ashamed” of being a member of the Judiciary. Judge Chévez maintained that his comments were made in the context of a conversation with officials from the Judicial Branch, but his remarks could not be construed as an attempt to “incite” them. He observed that the investigation was itself a form of SCJ persecution “of judges who are members of the AJD who, in exercise of our legal rights to freedom of expression, assembly, belief and association, have spoken out against the *coup d’état*.” Finally, he denounced the violation of his right of defense and alleged that the statute of limitations for any action had expired.¹¹² In a ruling dated December 7, 2009, the Deputy Director of Personnel Management issued a decision on the evidence offered by Judge Chévez.¹¹³ On February 8, 2010, Judge Chévez filed an appeal with the Judicial Career Council to challenge this decision. On February 22, 2010, the Council dismissed the appeal.¹¹⁴

72. By a decision dated March 18, 2010, the Office of the Director of Personnel Management requested that the expert testimony offered by Judge Chévez be given within 5 days, for an interpretation of the statute-of-limitations provided for in Article 83 of the Judicial Career Service Act and Article 214 of its Regulations. The decision also set a date for the hearing to examine the evidence gathered by the Inspector’s Office.¹¹⁵ When that evidence was examined on April 7, 2010, it was established that the communication described at *supra* paragraph 54, was in a folder of 2009 circulars in the correspondence records kept by the Office of the Head of Personnel, which is part of the Office of the Director for Judicial Career Personnel Management.¹¹⁶

¹⁰⁹ Annex 10. SCJ. Judicial Career Council. Case File 3078. Communication from Luis Alonso Chévez de la Rocha to the Director of Personnel Management. November 4, 2009. Case File 3078. Page 224. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

¹¹⁰ Annex 20. SCJ. Judicial Career Council. Case File 3078. Communication from Luis Alonso Chévez de la Rocha to the Director of Personnel Management. November 4, 2009. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

¹¹¹ Annex 20. SCJ. Judicial Career Council. Case File 3078. Summons. November 24, 2009. Page 277. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

¹¹² Annex 20. SCJ. Judicial Career Council. Case File 3078. Rebuttal Hearing No. 171-2009. December 3, 2009. Pages 279- 286. Attachment to the State’s communication of June 25, 2012.

¹¹³ Annex 20. SCJ. Judicial Career Council. Case File 3078. Memorandum from the Deputy Director of Personnel Management. December 7, 2010. Pages 288-290. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

¹¹⁴ Annex 20. SCJ. Judicial Career Council. Case File 3078. Judicial Career Council. February 22, 2010. Page 297. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

¹¹⁵ Annex 20. SCJ. Judicial Career Council. Case File 3078. Office of the Director of Personnel Management. March 18, 2010. Page 301. Attachment to the State’s communication of June 25, 2012.

¹¹⁶ Annex 19. Investigation report. Judicial Branch. Office of the Director of Personnel Management. Office of the Head of Personnel. April 12, 2010. Page 483. Attachment to the petitioners’ communication of January 20, 2011.

73. On April 13, 2010, the testimony offered by Judge Chévez was heard. Several officials of the Judicial Branch were asked whether they had participated in demonstrations in support of the government of Roberto Micheletti, held subsequent to June 28, 2009. They were also questioned about the conduct of Judge Chévez as a judge and whether he had incited his colleagues to “protest”.¹¹⁷

74. On April 20, 2010, the Office of the Director of Personnel Management issued its report and recommended that Judge Chévez be removed from the bench.¹¹⁸

75. The disciplinary case file contains a decision signed by the Chief Justice of the SCJ and its Secretary on May 5, 2010¹¹⁹ in which Judge Chévez’ argument claiming expiration of the statute of limitations was rejected. The decision also states that during his dismissal hearing, the judge admitted that “he was participating in a peaceful demonstration and, seeing the excessive force used by the police against unarmed persons, he spoke to the officer and identified himself as a judge, and told him that it would be better to negotiate than to use violence, whereupon his arrest was ordered . . .”

76. On May 21, 2010, the alleged victims filed a request with the Supreme Court seeking reconsideration of their dismissal.¹²⁰ In that reconsideration request, they pointed out, *inter alia*, that they learned of the Court’s *en banc* session on May 5, 2010 where the Court decided to order their dismissal, when one of the justices reportedly confirmed the information for the media, although the alleged victims had not yet received notification.¹²¹ In an interview that the Chief Justice of the Supreme Court gave on June 4, 2010, he said that “the justices who voted the first time, confirmed their decision on the second occasion; the vote count was the same in both cases.”¹²² On June 4, the Supreme Court issued a decision ordering dismissal of Judge Chévez. The decision read as follows:

THE SCJ HEREBY DECIDES: 1. To dismiss attorney LUIS ALONSO CHÉVEZ DE LA ROCHA from the position of Judge of the Special Anti-Domestic Violence Court of the department of Cortés, for serious noncompliance with or violation of some of his duties and engaging in conduct inimical to the dignity of the administration of justice, by having participated in a demonstration in the city of San Pedro Sula, Cortés, on August 12, 2009, near the monument to Mothers and the downtown area. He was arrested by the Preventive National Police Force for disturbing the peace, and was released when a petition of *habeas corpus* was granted. He also provoked altercations with other judicial public servants inside the facilities of the Judiciary over their political position with respect to the events that occurred in the country. Articles 80, 82, 90(1), 303 (i)(8), 318, 319, 322, and 323 of the Constitution of the Republic; XXXIII of the Universal

¹¹⁷ Annex 19. Investigation report. Hearing Record. April 13, 2010. Pages 504-508. Attachment to the petitioners’ communication of January 20, 2011.

¹¹⁸ Annex 19. Investigation report. Office of the Director of Personnel Management. Decision 171-173-174-2010. April 20, 2010. Attachment to the petitioners’ communication of January 20, 2011.

¹¹⁹ Annex 19. Decision of the SCJ, dated May 5, 2010. Attachment to the petitioners’ communication of January 20, 2011.

¹²⁰ Annex 17. Petition filed with the SCJ requesting reconsideration of the dismissal. May 21, 2010. Attachment to the petitioners’ communication of July 6, 2010.

¹²¹ Annex 17. Petition filed with the SCJ requesting reconsideration of the dismissal. May 21, 2010. Attachment to the petitioners’ communication of July 6, 2010.

¹²² Annex 18. La Prensa.hn, *Prefiere renunciar a permitir injerencia. El Presidente de la SCJ dice que lo político no está sobre la ley* [He would rather resign than allow interference. Chief Justice of SCJ says politics is not above the law], June 4, 2010. Attachment to the original petition received July 6, 2010.

Declaration of the Rights and Duties of Man; 1, 3, 4 (2), 44, 51, 53 (g), 55, 56(3), 60, 64(a), 65, 66, 73, 74, 83 and 84 of the Judicial Career Service Act; 1, 7, 9(3), 60, 64 (a), 65, 66, 73, 74, 83 and 84 of the Judicial Career Service Act; 1, 7, 9(4), 149, 160, 161, 171, 172(b) (f), 174, 180 (3), 184, 186, 187 (a), 188, 189, 190, 206, 214 of the Regulations Governing the Judicial Career Service Act; 3 (1), (4) and (6) of the Law on the Organization, Functions and Authorities of the Courts; 43, 44, 53, 55 of the Ibero-American Model Code of Judicial Ethics; 10 and 20 of the Statute of the Ibero-American Judge; 1(d), 2(d) and (f), 8 (a) and 9 of the Code of Ethics for Judicial Officials and Employees.¹²³

77. On June 30, 2010, Judge Chévez filed an appeal with the Judicial Career Council to challenge that decision.¹²⁴ On February 17, 2011, Judge Chévez appeared before the Judicial Career Council for a hearing on his appeal. In the course of the proceedings, he entered an objection claiming that disciplinary action in his case was time barred and a decision was made on the evidence offered.¹²⁵ During the hearing, Judge Chévez said that he did not know which members of the Council would be examining his appeal and observed that he had never been notified of the May 5, 2010 decision that appears in the disciplinary case file, bearing the signature of the Chief Justice of the SCJ.¹²⁶

78. On August 24, 2011, the Judicial Career Council decided to grant his appeal of his dismissal, but not his request to be reinstated in his post.¹²⁷ In its decision, the Council repeated the arguments regarding independence and impartiality, and observance of the judicial guarantees in the proceedings. As for the charges made against Judge Chévez, the Council held that according to the writ of *habeas corpus* dated August 13, 2009, “while it is true that the arrest of attorney CHEVEZ DE LA ROCHA is there, it is also true that the arrest would not be a determinative fact since the competent authority had stated that Judge Chévez was not under arrest.” It also wrote that “the slights or rude remarks to his colleagues” had not been shown and that even if they had been proven, the principle of proportionality dictates that the proper course of action “should have been to order that the plaintiff pay [...] a fine or that he be suspended, but not that he be dismissed, which is the ultimate punishment.” However, the Council observed that the evidence “demonstrated that attorney LUIS ALONSO CHÉVEZ DE LA ROCHA is ashamed of belonging to the Judicial Branch and works there out of need; hence, given his expressions of dissent, it is not in either party’s best interests to leave the employment relationship intact.” It added that his reinstatement was out of the question, as his replacement had already been appointed back on September 13, 2010. The Council therefore ordered compensation consisting of payment of one month’s salary for each year of service in the judiciary and one month’s salary for the concept of “notice” and other compensation according to applicable law.¹²⁸

¹²³ Annex 20. SCJ. Judicial Career Council. Case File 3078. Memorandum No. 1183-SSCJ-2010. June 4, 2010. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

¹²⁴ Annex 20. SCJ. Judicial Career Council. Certification, Case File No. 3078. June 30, 2010. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

¹²⁵ Annex 20. SCJ. Judicial Career Council. Certification, Case File No. 3078. Certification of the Hearing. February 17, 2011, pp. 38 to 44. Attachment to the State’s communication of June 25, 2012.

¹²⁶ Annex 20. File 5. Judicial Career Council of the SCJ. Certification of the Hearing on Case No. 3078. February 17, 2011, pages 38 to 44. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

¹²⁷ Annex 20. SCJ. Judicial Career Council. Certification, Case File No. 3078. Decision of the Judicial Career Council. August 24, 2011, pages 341-352. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

¹²⁸ Annex 20. SCJ. Judicial Career Council. Certification, Case File No. 3078. Decision of the Judicial Career Council. August 24, 2011, pages 341-352. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

79. The information available indicates that payment was made. Judge Chévez stated that the payment is an advance toward the reparations he is owed and his acceptance of that compensation does not signify his acceptance of the Judicial Career Council's decision.¹²⁹

3. Tirza del Carmen Flores Lanza

80. Magistrate Tirza del Carmen Flores Lanza was serving as a Tenured Magistrate on the San Pedro Sula District Appellate Court, department of Cortés.¹³⁰ She joined the Judiciary on June 11, 2002¹³¹ and was a member of the AJD.¹³²

81. On June 30, 2009, the magistrate, in her citizen capacity, filed a petition seeking *amparo* relief with the SCJ in which she alleged that "the residence of Mr. José Manuel Zelaya Rosales had been entered illegally, whereupon he was apprehended and sent into forced exile in the city of San José, Costa Rica" on June 28. The petition identified the Head of the Joint Chiefs of Staff of the Armed Forces as the authority responsible for these actions. The petition sought, "as an urgent precautionary measure, the immediate repatriation of the citizen President."¹³³ By a decision of that same date, the Constitutional Chamber of the SCJ joined that petition with similar petitions filed by six other persons (among them, Judge Adán Guillermo López Lone) and granted cert for an examination of the merits. In that same ruling, the Supreme Court ordered the Head of the Joint Chiefs to submit a report within five days.¹³⁴

82. On June 30, 2009, Magistrate Tirza Flores and others also filed a criminal complaint with the Office of the Attorney General of the Republic in which they accused four members of the Superior Council of the Honduran Armed Forces and several members of the National Congress of the crimes of abuse of authority, usurpation of functions, terrorism, rebellion, treason and crimes against the form of government and against high-ranking officials of the Honduran State.¹³⁵

¹²⁹Annex 21. Letter from Judge Luis Alonso Chévez de la Rocha. Attachment to the petitioners' communication of November 30, 2011.

¹³⁰Annex 22. SCJ. Judicial Career Council. Certification, Case File No. 3076. Office of the Director of Personnel Management. Rebuttal Hearing 04-2010, pages 163-146. Attachment to the State's communication of June 25, 2012 received on July 2, 2012.

¹³¹Annex 22. SCJ. Judicial Career Council. Certification, Case File No. 3076. Appeal, pages 1-12. Attachment to the State's communication of June 25, 2012 received of July 2, 2012.

¹³² See in this regard, Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No. 222-223-2009. Complaint . 267-OGJT-PJ-2009. Judicial Career Service, Rebuttal Hearing #04-2010, Tirza Flores Lanza, January 7, 2010. Pages 95. Annex **. Republic of Honduras. Office of the Director of Personnel Management. File No. 222-223-2009. Complaint . 267-OGJT-PJ-2009. Judicial Career Service, Rebuttal Hearing #172-2009, Guillermo López Lone, December 3, 2009. Attachment to the petitioners' communication of January 20, 2011.

¹³³ Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No Office of the Director of Personnel Management. File No. 222-223-2009. Complaint . 267-OGJT-PJ-2009. Petition seeking *amparo* relief SCO-896-2009. June 30, 2009. Attachment to the petitioners' communication of January 20, 2011.

¹³⁴ Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No Office of the Director of Personnel Management. File No. 222-223-2009. Complaint . 267-OGJT-PJ-2009. Ruling of the Constitutional Chamber of the SCJ. June 30, 2009. Joined petitions Nos. 896, 897, 898, 899, 900, 901 and 902 of 2009. Page 41. Attachment to the petitioners' communication of January 20, 2011.

¹³⁵ Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No Office of the Director of Personnel Management. File No. 222-223-2009. Complaint . 267-OGJT-PJ-2009. Complaint filed with the Office of the Attorney General of the Republic, Public Prosecutor's Office. Attachment to the petitioners' communication of January 20, 2011.

83. On July 1, 2009, the Supreme Court's Inspector General of Courts and Tribunals launched an investigation *ex officio* into Magistrate Flores, as the Inspector General had heard television reports that a petition of *amparo* had been filed. She decided to conduct the pertinent investigations, pursuant to Articles 1(b), 2, 15, 16 and 17 of the Internal Regulations.¹³⁶ On July 30, 2009, the Inspector General issued a report in which she concluded that when Magistrate Flores filed the petition seeking *amparo* relief, she was absent from her office without requesting permission, in addition to which she listed the court where she worked as her domicile for purposes of receiving notifications. The Inspector General considered that Magistrate Flores' conduct came under Article 53(g) of the Judicial Career Service Act, under which judges are not to "engage, either directly or indirectly, in activities unbecoming the dignity of their office or that are in any way inimical to the dignity of the institution." The Inspector General therefore recommended to the SCJ that it "follow through with whatever disciplinary measures may be called for."¹³⁷

84. On August 12, 2009, Magistrate Flores asked the Court to nullify any proceedings conducted on the petition of *amparo* so that she could correct a mistake in that petition.¹³⁸ On September 9, 2009, the Constitutional Chamber denied her request and wrote the following:

This Chamber finds that under the law, the act of filing a petition seeking *amparo* relief does not in itself constitute solicitorship. However, the act of appearing before a court and requesting that its proceedings be nullified, as petitioner attorney TIRZA DEL CARMEN FLORES LANZA would have the court do at this stage of the proceedings, is indeed solicitorship and, in the opinion of this Chamber, a violation of Article 108 of the Law on the Organization, Functions and Authorities of the Courts, because the petitioner in this matter is a tenured magistrate on the San Pedro Sula District Appellate Court.¹³⁹

85. Having said this, the Supreme Court nonetheless decided to order the proceedings on the petition nullified, and also ordered that a new petition be filed.¹⁴⁰

86. On October 20, 2009, the Office of the Director of Judicial Career Personnel Management summoned Magistrate Flores to his office to answer to disciplinary charges.¹⁴¹ On

¹³⁶ Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No Office of the Director of Personnel Management. File No. 222-223-2009. Complaint . 267-OGJT-PJ-2009. CSG's Office of the Inspector General of Courts and Tribunals. Record of an Investigation *Ex Officio*. July 1, 2009. Attachment to the petitioners' communication of January 20, 2011.

¹³⁷ Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No Office of the Director of Personnel Management. File No. 222-223-2009. Complaint . 267-OGJT-PJ-2009. Office of the Inspector General of Courts and Tribunals. Report on the findings of the investigation *ex officio*. June 30, 2009. July 30, 2009. Pages 9-13. Attachment to the petitioners' communication of January 20, 2011.

¹³⁸ Annex 24. SCJ. Judicial Career Council. Certification, Case File No. 3076. Request filed by Tirza del Carmen Flores Lanza seeking nullification of proceedings. August 21, 2009. Attachment to the State's communication of June 25, 2012.

¹³⁹ Annex 24. SCJ. Judicial Career Council. Certification, Case File No. 3076. Ruling of the Constitutional Chamber of the SCJ. September 9, 2009. Pages 259-260. Attachment to the State's communication of June 25, 2012 received on July 2, 2012.

¹⁴⁰ Annex 24. SCJ. Judicial Career Council. Certification, Case File No. 3076. Ruling of the Constitutional Chamber of the SCJ. September 9, 2009. Page 259-260. Attachment to the State's communication of June 25, 2012 received on July 2, 2012.

¹⁴¹ Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No Office of the Director of Personnel Management. File No. 222-223-2009. Complaint . 267-OGJT-PJ-2009. Resolution of the Office of the Director of

November 25, 2009, the magistrate received a summons which set out the grounds for her alleged administrative liability, which were her unexcused absence from her court office on June 30, 2009, to engage in solicitorship, acts that were incompatible with her office; listing her offices as the address to which notifications should be sent, and filing a complaint with the Attorney General's Office accusing State officials of crimes.¹⁴² In her reply to the notification, Magistrate Flores informed the Director of Personnel Management that she had requested a copy of the case file on her *amparo* petition in order to prepare her defense.¹⁴³

87. On January 7, 2010, Magistrate Flores appeared at the Office of the Director of Personnel Management and indicated that she had failed to ask permission to be away from her office when she filed the petition of *amparo* on June 30, 2009, because of the "anxiety and uncertainty she was experiencing at the time," caused by the disruption of constitutional order. She added, however, that the San Pedro Sula District Appellate Court had no hearings scheduled for that date. Concerning the alleged solicitorship, she stated that she had filed the petition seeking *amparo* relief as a defender of human rights, an authority given by law to "any natural or legal person". She maintained further that the request for nullification of the proceedings on the *amparo* petition is not solicitorship, "since it is a step taken within the *amparo* process." She maintained that on another occasion, she had given her office as her address when in 2008 she filed a constitutionality challenge, and was never notified of any impropriety. As for the criminal complaint brought against State officials, she argued that here again, she had acted as a defender of human rights. Magistrate Flores argued further that her disciplinary case amounted to persecution and violated her rights to freedom of expression and freedom of opinion and her rights of assembly and association. Finally, she asserted that the statute of limitations for imposing disciplinary measures had expired.¹⁴⁴

88. The Office of the Director of Personnel Management ordered that the evidence offered by Magistrate Flores be entered and examined.¹⁴⁵ On January 14, 2010, the magistrate appealed that decision, on the grounds of the statute of limitations and alleged irregularities.¹⁴⁶ On February 22, 2010,

Judicial Career Personnel Management. October 20, 2009. Pages 81-82. Attachment to the petitioners' communication of January 20, 2011.

¹⁴² Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No Office of the Director of Personnel Management. File No. 222-223-2009. Complaint. 267-OGJT-PJ-2009. Summons. November 20, 2009. Pages 84-85. Attachment to the petitioners' communication of January 20, 2011.

¹⁴³ Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No Office of the Director of Personnel Management. File No. 222-223-2009. Complaint. 267-OGJT-PJ-2009. Communication addressed to José Antonio Salazar, Director of Personnel Management, from Tirza Flores Lanza. December 3, 2009, Request for a photocopy of the case presented to the Constitutional Chamber of the SCJ. December 3, 2009. Page 86. Attachments to the petitioners' communication of January 20, 2011.

¹⁴⁴ Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No Office of the Director of Personnel Management. File No. 222-223-2009. Complaint. 267-OGJT-PJ-2009. Rebuttal Hearing 04-2010. January 7, 2012. Pages 95. The magistrate cited articles 83 of the Judicial Career Service Act, 214 of the Regulations governing that law, and 40 of the Civil Code, and indicated that the Supreme Court had taken cognizance of the relevant facts in the period between June 30 and September 9, 2009.

¹⁴⁵ Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No Office of the Director of Personnel Management. File No. 222-223-2009. Complaint. 267-OGJT-PJ-2009. Decision of the Office of the Director of Judicial Career Personnel Management. January 11, 2010. Page 106. Attachment to the petitioners' communication of January 20, 2011.

¹⁴⁶ Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No Office of the Director of Personnel Management. File No. 222-223-2009. Complaint. 267-OGJT-PJ-2009. Appeal filed against the Decision of the Office

the Judicial Career Council issued its decision, in which it declared the magistrate's appeal unfounded.¹⁴⁷ The examination of the evidence turned up the same communication mentioned at *supra* paragraph 54.¹⁴⁸

89. On April 20, 2010, the Office of the Director of Personnel Management recommended that Magistrate Flores be dismissed on the grounds cited earlier.¹⁴⁹

90. The disciplinary case file contains a decision signed by the Chief Justice of the SCJ and its Secretary¹⁵⁰ stating that by majority vote, the SCJ had decided that the conduct attributed to Magistrate Flores violated various provisions of the Honduran legal system and accordingly decided to dismiss her. The decision states that the explanations offered by the magistrate "could not exonerate her of administrative blame," that her statute-of-limitations argument was out of order, that the magistrate's absence from her office on June 28, 2009 without the necessary permission was a violation of articles 54 (a) and (c) of the Judicial Career Service Act and Article 2(g) of the Code of Ethics for Judicial Officials and Employees, that she had engaged in solicitorship, which is expressly prohibited by Article 219 of the Constitution, Article 108 of the Law on the Organization, Functions and Authorities of the Courts and Tribunals, and Article 50 of the Judicial Career Service Act; the decision also stated that by filing a criminal complaint against State officials and "making comments on the judicial activities of other jurisdictional bodies and of the SCJ itself," magistrate Flores was acting in a manner unbecoming her office. Finally, the decision states that "no judge may claim a right to participate in the national political discourse like any other citizen, precisely because judges are not just any persons; instead, they are officers of the court whose role is incompatible with the professional practice of unrelated businesses, and with any and all involvement in lawyering, notarization, or solicitorship." The ruling cited case law of the Inter-American Court on the stricter scrutiny to which public officials are exposed and its case law to the effect that the right to freedom of expression is not an absolute right.

91. On May 21, 2010, the alleged victims filed a request with the Supreme Court seeking reconsideration of their disciplinary dismissal.¹⁵¹ The reconsideration request pointed out, *inter alia*, that the petitioners had learned of the decision to dismiss them because a justice on the Court had

of the Director of Judicial Career Personnel Management on January 11, 2010. January 14, 2010. Attachment to the petitioners' communication of January 20, 2011.

¹⁴⁷ Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No Office of the Director of Personnel Management. File No. 222-223-2009. Complaint. 267-OGJT-PJ-2009. Judicial Career Council. Decision of February 22, 2010. Attachment to the petitioners' communication of January 20, 2011.

¹⁴⁸ Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No Office of the Director of Personnel Management. File No. 222-223-2009. Complaint. 267-OGJT-PJ-2009 Inspection Record. April 6, 2009. Page 127. Attachment to the petitioners' communication of January 20, 2011

¹⁴⁹ Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No Office of the Director of Personnel Management. File No. 222-223-2009. Complaint. 267-OGJT-PJ-2009. Office of the Director of Personnel Management. Decision 04-201. April 20, 2010. Pages 148-155. Attachment to the petitioners' communication of January 20, 2011.

¹⁵⁰ Annex 23. Republic of Honduras. Office of the Director of Personnel Management. File No Office of the Director of Personnel Management. File No. 222-223-2009. Complaint. 267-OGJT-PJ-2009. Decision of May 5, 2010. Attachment to the petitioners' communication of January 20, 2011.

¹⁵¹ Annex 17. Petition filed with the SCJ seeking reconsideration of the disciplinary dismissal. May 21, 2010. Attachment to the petitioners' communication of July 6, 2010. Republic of Honduras.

reportedly confirmed that fact for the media, before the petitioners even received notification.¹⁵² In an interview that the Chief Justice of the SCJ on June 4, 2010, he revealed that “the justices who voted the first time, confirmed their decision on the second occasion; the vote count was the same in both cases.”¹⁵³ On June 4, 2010, the Supreme Court issued the following decision ordering the dismissal of Magistrate Tirza del Carmen Flores Lanza:

THE SCJ HEREBY DECIDES: 1) To dismiss, without any liability to the institution, attorney TIRZA DEL CARMEN FLORES LANZA from the post of Magistrate on the San Pedro Sula Appellate Court, department of Cortés, for serious or repeated noncompliance with or violation of some of the duties, incompatibilities and conduct set forth in chapters X and XI of the Judicial Career Service Act, by virtue of the following: a) Having been absent from her court office on June 30, 2009, on which date she was in the capital of the Republic engaging in matters that are not inherent functions of her post and which she did without obtaining the necessary leave; b) engaging in activities incompatible with the performance of her office, by engaging in solicitorship to seek nullification of the proceedings conducted in Case No. SCO-896-2009 (Petition of *Amparo*) on August 12, 2009; c) using the offices of the San Pedro Sula Appellate Court, which is the exclusive and legal property of the Judicial Branch, as the address for receiving notifications pertaining to business entirely unrelated to her sole function, which is to impart and administer justice impartially; d) involving herself in activities that, as a Magistrate, she is not permitted to participate in, as she went to the Office of the Attorney General of the Republic and there filed a criminal complaint against officials of the State for the alleged commission of crimes; e) making comments on the judicial proceedings and decisions of other jurisdictional bodies, including the SCJ itself; all these behaviors are incompatible with the principles of ethics and the laws governing the conduct of judicial officials and employees. Articles 80, 82, 90(1), 303, 313 (1) and (8), 318, 319, 322 and 323 of the Constitution of the Republic; XXXIII of the Universal Declaration of the Rights and Duties of Man; 1, 3, 4 (i), 44, 45, 51, 53 (g), 54 (c), 55, 56 (3), 60, 64 (a), 65, 66, 73, 74, 83 and 84 of the Judicial Career Service Act; 1, 3, 4, 7, 9 (1), 149, 157, 160, 161, 171, 172 (f), 173 (c), 174, 180 (3), 184, 186, 187 (a), 188, 189, 190, 206, and 214 of the Regulations Governing the Judicial Career Service Act; 3 (6) and 108 of the Law on the Organization, Functions and Authorities of the Courts; 53 of the Model Ibero-American Code of Judicial Ethics; 10 and 20 of the Statute of the Ibero-American Judge; and 1(1), 2(d), 8(d) and 9 of the Code of Ethics for Judicial Officials and Employees.¹⁵⁴

92. On June 30, Magistrate Flores filed an appeal with the Judicial Career Council.¹⁵⁵ Her dismissal took effect on July 1, 2010, and on that day her replacement took over the post.¹⁵⁶

¹⁵² Annex 17. Petition filed with the SCJ seeking reconsideration of the disciplinary dismissal. May 21, 2010. Attachment to the petitioners’ communication of July 6, 2010.

¹⁵³ Annex 18. La Prensa.hn, *Prefiere renunciar a permitir injerencia. El Presidente de la SCJ dice que lo político no está sobre la ley* [He would rather resign than allow interference. Chief Justice of SCJ says politics is not above the law], June 4, 2010. Attachment to the original petition received July 6, 2010.

¹⁵⁴ Annex 24. SCJ. Judicial Career Council. Certification, Case File No. 3076. SCJ. Memorandum No. 1181-SSCJ-2010. June 4, 2010. Page 13. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

¹⁵⁵ Annex 24. SCJ. Judicial Career Council. Certification, Case File No. 3076. Appeal. June 30, 2010. Pages 1- 12. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

¹⁵⁶ Annex 24. SCJ. Judicial Career Council. Certification, Case File No. 3076. Office of the Director of Judicial Career Personnel Management. Report of August 16, 2011. Page 421. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

93. The hearing was postponed once. Then, on February 17, 2011, Magistrate Flores appeared before the Judicial Career Council where she stated that she did not know who the members of the Judicial Career Council were or which members of the Council would hear her appeal. She also stated that the disciplinary case file contained a decision dated May 5, 2010, signed by the Chief Justice of the SCJ, of which she had never been notified.¹⁵⁷ Hearings to examine the evidence were held on March 3 and 7, 2011.¹⁵⁸

94. On September 21, 2011, the magistrate was notified of the decision taken by the Judicial Career Council on August 24 of that year, which dismissed her appeal and confirmed her dismissal on four of the five grounds.¹⁵⁹ In that decision, the Council addressed the argument claiming that it did not have the independence and impartiality necessary to take up remedies filed to challenge decisions of the Supreme Court and observed that those members of the Supreme Court who had voted in favor of her dismissal had disqualified themselves from the proceedings on the petition and that, based on the suppletive rules, other persons served as members of the Council. The latter also commented that “no member’s independence can be questioned, as they are officials who joined the Career Service and won their positions by competition and have had impeccable careers in the Judiciary ...” The Council held that there were no violations of due process, that the magistrate had had the procedural opportunities to be heard and to present evidence, and the statute-of-limitations argument was out of order.

95. As to the first grounds for dismissal, the Council concluded that Magistrate Flores’ conduct “violated the duty set forth in Article 45 of the Judicial Career Service Act, read in conjunction with Article 54 of that law, which provides that officials and employees shall not be absent from their offices on work days and during working hours, except with the proper authorization. Unauthorized absence from the office is deemed to be inimical to the efficacy of the administration of justice as the respective office is left unattended without cause. Under Article 179 of the Regulations Governing the Judicial Career Service Act, the conduct described in its Article 173 (c) is deemed to be a serious offense.”¹⁶⁰

96. As for the second and fourth grounds for dismissal, the Council wrote that

Judges and magistrates shall provide their services to the Judicial Branch exclusively and shall not therefore practice the legal profession independently, nor may they provide legal counsel or advice to any person.’ Applying the suppletive rule contained in Article 85 of the Judicial Career Service Act, Article 215 of the Regulations Governing the Judicial Career Service Act, and Article 51 of the Internal Regulations of the Judicial Career Council, the Council refers to Article 108 of the Law on the Organization, Functions and Authorities of the Courts which provides that no judge or magistrate may engage in legal representation or solicitorship in any court or tribunal

¹⁵⁷ Annex 24. SCJ. Judicial Career Council. Certification, Case File No. 3076. Judicial Career Council de la SCJ. Certification of Hearing, February 17, 2011. Pages 47-54. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

¹⁵⁸ Annex 24. SCJ. Judicial Career Council. Certification, Case File No. 3076. Judicial Career Council. SCJ. Record of the Hearing. February 17, 2011. Pages 380-384. Attachment to the State’s communication of June 25, 2012.

¹⁵⁹ Annex 24. SCJ. Judicial Career Council. Certification, Case File No. 3076. SCJ. Judicial Career Council. Decision of August 24, 2011. Pages. 458- 472. Annex **. SCJ. Judicial Career Council. Certification, Case File No. 3076. Notification. September 21, 2011. Attachments to the State’s communication of June 25, 2012 received on July 2, 2012.

¹⁶⁰ Annex 24. SCJ. Judicial Career Council. Certification, Case File No. 3076. Decision of August 24, 2011. Attachments to the State’s communication of June 25, 2012 received on July 2, 2012.

and may only defend personal causes or those of their spouse, wards and relatives up to and including the fourth degree of consanguinity or second degree of affinity. The following are also among the incompatibilities prohibited under Article 50 of the Judicial Career Service Act and Article 157 of the Regulations governing the Judicial Career Service Act: “No one may hold a position in both the Judiciary and the Public Prosecutor’s Office, as they are mutually incompatible [...] even though the exceptions [established in Article 11 of the Organic Law of the Honduran Bar Association] include “the procedures associated with petitions of *habeas corpus* or *amparo*’; [...] attorney Flores Lanza did not file just the petition of *amparo*; she also filed a petition with the Constitutional Chamber of the SCJ [...] titled “Nullification of Proceedings” [...], which is a petition that can only be filed by a solicitor certified by the Honduran Bar Association or a legal professional who is a member of the Bar [...].¹⁶¹

97. The Council also observed that it was established fact that Magistrate Flores Lanza had used the offices of the San Pedro Sula Appellate Court to receive notifications, “which is improper conduct, as she listed the office in which she served as a magistrate as her legal domicile.” It observed that while Magistrate Flores Lanza claimed to have used her office address in the remedy she filed challenging the constitutionality of Article 12 of the Constitutional Justice Act, a review of the records in the case file turned up no evidence that she ever filed such a challenge.¹⁶²

98. As for the accusation that she was “making comments on the judicial proceedings and decisions of other jurisdictional bodies, including the SCJ itself,” the Council held that because the precise comments were never clearly established, it would not confirm that grounds for dismissal.¹⁶³

99. According to a report by the Deputy Director of Personnel Management, Magistrate Flores Lanza received her last monthly salary payment in July 2010, and her replacement took over on July 1, 2010.¹⁶⁴

4. Ramón Enrique Barrios

100. Judge Ramón Enrique Barrios served as a judge in the San Pedro Sula Sentencing Court. He joined the Judiciary in June 2003 and had never been disciplined.¹⁶⁵ He was a member of the AJD.¹⁶⁶

101. On August 28, 2009, the newspaper *Tiempo* ran a column in its Opinion Section titled “*No hubo sucesión constitucional*” [This was not a constitutional succession], under the name of Ramón

¹⁶¹ Annex 24. SCJ. Judicial Career Council. Certification, Case File No. 3076. Decision of August 24, 2011. Pages 458-472. Attachments to the State’s communication of June 25, 2012.

¹⁶² Annex 24. SCJ. Judicial Career Council. Certification, Case File No. 3076. Decision of August 24, 2011. Pages 458-472. Attachments to the State’s communication of June 25, 2012.

¹⁶³ Annex 24. SCJ. Judicial Career Council. Certification, Case File No. 3076. Decision of August 24, 2011. Pages 458-472. Attachments to the State’s communication of June 25, 2012.

¹⁶⁴ Annex 24. Annex **. SCJ. Judicial Career Council. Certification, Case File No. 3076. Judicial Career Personnel Management. August 16, 2011. Page 421. Attachment to the State’s communication of June 25, 2012 received on July 2, 2012.

¹⁶⁵ Annex 19. Investigation Report. Office of the Director of Judicial Career Personnel Management. Rebuttal Hearing 173-2009. December 7, 2009. Pages 254-259. Attachment to the petitioners’ communication of January 20, 2011.

¹⁶⁶ In this regard, see Annex 13. Republic of Honduras. Office of the Director of Personnel Management. Office of the Director of Personnel Management. File No. 222-223-2009. Complaint . 267-OGJT-PJ-2009. Judicial Career Service, Rebuttal Hearing #172-2009, Guillermo López Lone, December 3, 2009. Attachment to the petitioners’ communication of January 20, 2011.

Enrique Barrios.¹⁶⁷ At the end of the article was an asterisked notation after Judge Barrios' name that read "*Sentencing Judge and Chair of Constitutional Law, unah-vs. This is a summary of a chat that attorney Ramón Enrique Barrios, Chair of Constitutional Law, gave for a group of teachers and workers at the UNAH-VS [Universidad Autónoma de Honduras]." The article does not give the name of the person who prepared the summary. The comments in the text included such remarks as "This was not a constitutional succession; it was a *coup d'état*. This crisis began with a call for a non-binding survey. It was neither a plebiscite nor a referendum, which are binding." The article closed with the following comment: "This is the historic, self-defining moment to set out to defend the institutions of government and the Rule of Law; this is not about any one person. Speaking for myself, while I am not a member of a political party, I am nonetheless a citizen and as chair of the UNAH I have to help enlighten the public we serve."¹⁶⁸

102. That same day, August 28, 2009, the Office of the Inspector General of Courts and Tribunals made a record of the notification of the article titled "This was not a constitutional succession" in order to attach it to the file of investigation no. 278-IGJT-PJ-2009.¹⁶⁹ On September 16, 2009, during a deposition made in the course of that investigation, Judge Barrios said that the article was written by Patricia Murillo Gutiérrez, Dean of the School of Journalism of the UNAH-VS, and that the opinions reported in the article were made in his capacity as a professor, not as a judge.¹⁷⁰ On September 17, 2009, the Office of the Inspector General approved a report turned in by the inspectors involved in the investigation. The report found that the conduct of Judge Barrios was a violation of Article 3 of the Law on the Organization, Functions and Authorities of the Courts. The relevant parts of that article read as follows: Article 3. Judicial authorities shall not: 1) Become involved in other activities and perform functions other than those prescribed in Laws ... 2nd....3rd....4th Send the Executive Branch, Public Officials or government-owned corporations, remarks either congratulating or criticizing them for their actions... 5) ... 6) ..."; this read in conjunction with Article 53 (f), (g) and (55) of the Judicial Career Service Act and Articles 172 (e) and (f) and 174 of its Governing Regulations." Finally, the report found that Judge Barrios had engaged in "acts inimical to the dignity of the Administration of Justice and matters incompatible with the exercise of his office, as provided in articles 321, 322, and 323(1) of the Constitution of the Republic; 44), 53 (b) and (g) of the Judicial Career Service Act; 6) 149 and 172 (b) of its Governing Regulations; and had failed to comply with articles 1 (d) and (e) and 2 (d) and (f) of the Code of Ethics for Judicial Officials and Employees; and 3, 8, 43 and 55 of the Ibero-American Code of Judicial Ethics." The Inspector General ordered that the report be sent to the Office of the Director of Judicial Career Personnel Management "for the legal purposes it deems pertinent."¹⁷¹

¹⁶⁷ Annex 19. Investigation Report. Press release *Tiempo*. August 28, 2009. *No hubo sucesión constitucional* [This was not a constitutional succession]. Page 16. Attachment to the petitioners' communication of January 20, 2011.

¹⁶⁸ Annex 19. Investigation Report. Press release *Tiempo*. August 28, 2009. *No hubo sucesión constitucional* [This was not a constitutional succession]. Page 16. Attachment to the petitioners' communication of January 20, 2011

¹⁶⁹ Annex 19. Investigation Report. SCJ. Northwestern Regional Office of the Inspector of Courts. August 28, 2009. Document signed by José Francisco Quiroz, Inspector of Courts. Attachment to the petitioners' communication of January 20, 2011.

¹⁷⁰ Annex 19. Investigation Report. SCJ. Northwestern Regional Office of the Inspector of Courts. September 16, 2009. Deposition. Investigation No. 278/284-IGJT-PJ-2009. Page 191. Attachment to the petitioners' communication of January 20, 2011.

¹⁷¹ Annex 19. Investigation Report. SCJ. Office of the Inspector General of Courts. Decision of September 17, 2009. Pages 210-2013. Attachment to the petitioners' communication of January 20, 2011.

103. On October 27, 2009, Judge Barrios was summoned to appear before the Office of the Director of Personnel Management.¹⁷² After requesting additional time to prepare his defense, a new hearing was set for December 7, 2009. There he underscored the point that his comments were made in his capacity as a law professor and not as a sentencing judge.¹⁷³ The judge added that the SCJ was waging a campaign to persecute judges who are members of the AJD, to silence their voices of criticism and dissent within the Judicial Branch. He also asserted that his right of defense had been violated, claimed the statute of limitations and offered evidence.¹⁷⁴

104. On December 10, 2009, the Office of the Director made its decision on the evidence offered.¹⁷⁵ On February 8, 2010, Judge Barrios filed an appeal arguing, *inter alia*, that disciplinary action was time barred.¹⁷⁶ The Judicial Career Council dismissed that argument as “unfounded” since such appeals concern the “procedures that have to be followed in regular proceedings.”¹⁷⁷

105. When the evidence from the Inspector General’s Office was examined on April 7, 2010, it was found that the folder of 2009 circulars in the Office of the Director of Judicial Personnel Management contained the communication referenced at *supra* paragraph 54. On April 12, 2010, the evidence offered by Judge Barrios was heard and consisted of one witness testifying to his official conduct and another testifying about the publication of the article.¹⁷⁸

106. On April 20, 2010, the Office of the Director of Personnel Management sent a recommendation to the SCJ to the effect that Judge Barrios be dismissed.¹⁷⁹ On May 5, 2010, the SCJ resolved to dismiss Judge Barrios from his post, without liability to the institution. That decision is signed by the Chief Justice of the Supreme Court and its Secretary, and reads as follows:

[T]he conduct of Judge Barrios has been duly established: he accepted an invitation to give a lecture [at the UNAH] [...] for professors, employees and the general public concerning the events that occurred on June 28, 2009. Conducted outside the classroom setting, opinions were expressed during the lecture, which became political as a result. Under [the law] [...] judicial officials are prohibited from engaging in such conduct and

¹⁷² Annex 19. Investigation Report, Judicial Branch. Office of the Deputy Director of Judicial Career Personnel Management. Summons. October 27, 2009. Page 216. Attachment to the petitioners’ communication of January 20, 2011.

¹⁷³ Annex 19. Investigation Report. Rebuttal Hearing No. 173-2009, Ramón Enrique Barrios. December 7, 2009. Pages 254-259. Attachments to the petitioners’ communication of January 20, 2011.

¹⁷⁴ Annex 19. Investigation Report. Rebuttal Hearing No. 173-2009, Ramón Enrique Barrios. December 7, 2009. Pages 254-259. Attachments to the petitioners’ communication of January 20, 2011.

¹⁷⁵ Annex 19. Investigation Report. Memorandum from the Deputy Director of Personnel Management. December 10, 2009. Page 459. Attachment to the petitioners’ communication of January 20, 2011.

¹⁷⁶ Annex 19. Investigation Report. Appeal filed with the Director of Personnel Management of the SCJ. February 8, 2010. Pages 466- 468. Attachment to the petitioners’ communication of January 20, 2011.

¹⁷⁷ Annex 19. Investigation Report. Judicial Career Council. Decision on the appeal. February 22, 2010. Pages 466-468. Attachment to the petitioners’ communication of January 20, 2011.

¹⁷⁸ Annex 19. Investigation Report. Record of Inspection on April 7, 2010. Page 484. Record of Hearing on April 12, 2010. Pages 519. Attachments to the petitioners’ communication of January 20, 2011.

¹⁷⁹ Annex 19. Investigation Report, Decision 171-173-174-2010 from the Office of the Director of Personnel Management. April 20, 2010. Pages 525. Attachment to the petitioners’ communication of January 20, 2011.

must refrain from participating in political events and from airing political opinions [...] ¹⁸⁰

107. The decision cited above added that the publication of the article in the newspaper *Tiempo* “transformed [the judge’s] conduct into something unbecoming the office of a judge,” and observed that “no judge can claim the right to participate in national political discourse like any other citizen.” The decision also stated that his conduct was a violation of Article 319, paragraph two of the Constitution and the Model Ibero-American Code of Judicial Ethics. It added that because of his comments in the lecture and the newspaper article that followed, his conduct is unbecoming the dignity of the office of judge, in violation of the Code of Ethics of Judicial Officials and Employees. ¹⁸¹

108. On May 21, 2010, the alleged victims filed a request with the Supreme Court seeking reconsideration of their disciplinary dismissal. ¹⁸² The reconsideration request pointed out, *inter alia*, that the petitioners had learned of the decision to dismiss them because a justice on the Court had reportedly confirmed that fact with the media, before the petitioners ever received notification. ¹⁸³ In an interview that the Chief Justice of the SCJ on June 4, 2010, he revealed that “the justices who voted the first time, confirmed their decision on the second occasion; the vote count was the same in both cases.” ¹⁸⁴ On June 16, 2010, the Court issued a decision ordering Judge Barrios’ dismissal. It read as follows:

THE SCJ HEREBY DECIDES: 1) To dismiss attorney RAMON ENRIQUE BARRIOS from the post of judge on the San Pedro Sula District Sentencing Court, department of Cortés, for serious noncompliance with or violation of his duties and for engaging in acts inimical to dignity in the administration of justice, by have accepted an invitation to give a lecture in Auditorium Number Four of the *Universidad Nacional Autónoma de Honduras*, Valle de Sula Campus, for professors, employees and the general public. The lecture was about the events of June 28, 2009 and was delivered outside the classroom. The opinions expressed transformed the lecture into a political event. Under the Constitution of the Republic, the Judicial Career Service Act, the Law on the Organization, Functions and Authorities of the Courts and the Code of Ethics for Judicial Officials and Employees, judicial officials shall not engage in such activities and must refrain from participating in political events or expressing political views, either in private or in public, even though other citizens are permitted to do so. Academic freedom allows a university professor, even one who is also a judge, to discuss and analyze current national events with his or her students from an eminently legal standpoint; however that freedom does not extend to any other chat or lecture for an audience other than his duly enrolled students since he or she is prevented from doing so precisely because he or she is a judge and as such must refrain from airing political views. Judge Barrios’ conduct was unbecoming the dignity of his office because he did not avoid

¹⁸⁰ Annex 19. Investigation report. Resolution of May 5, 2010. Attachment to the petitioners’ communication of January 20, 2011.

¹⁸¹ Annex 19. Investigation Report. Resolution of May 5, 2010. Attachment to the petitioners’ communication of January 20, 2011.

¹⁸² Annex 17. Appeal filed with the SCJ seeking reconsideration of the disciplinary dismissal. May 21, 2010. Attachment to the petitioners’ communication of July 6, 2010.

¹⁸³ Annex 17. Appeal filed with the SCJ seeking reconsideration of the disciplinary dismissal. May 21, 2010. Attachment to the petitioners’ communication of July 6, 2010.

¹⁸⁴ Annex 18. Press release La Prensa.hn, *Prefiere renunciar a permitir injerencia. El Presidente de la SCJ dice que lo político no está sobre la ley* [He would rather resign than allow interference. Chief Justice of SCJ says politics is not above the law], June 4, 2010. Attachment to the original petition received July 6, 2010.

involvement in events that could disrupt law and order. Furthermore, subsequent to the lecture and with his knowledge and authorization, his views were published in an article that appeared in the newspaper *Tiempo* which serves the city of San Pedro Sula. The article came out on Friday, August 28, 2009, in the "OPINIONS" Section, where he is identified as being a Sentencing Judge. Articles 80, 82, 83 and 84 of the Judicial Career Service Act; 1, 3, 4, 7, 9(1), 149, 157, 160, 161, 171, 172 (f), 173 (c), 174, 180 (3), 184, 186, 187 (a), 188, 189, 190, 206, and 214 of the Regulations Governing the Judicial Career Service Act; 3(6) and 108 of the Law on the Organization, Functions and Authorities of the Courts; 53 of the Model Ibero-American Code of Judicial Ethics; 10 and 20 of the Statute of the Ibero-American Judge; and 1(1), 2(d), 8(a) and 9 of the Code of Ethics for Judicial Officials and Employees.¹⁸⁵

109. On June 30, 2010, Judge Barrios filed an appeal¹⁸⁶ and on February 24, 2011 appeared before the Judicial Career Council for a hearing.¹⁸⁷ There he pointed that he did not know which members of the Council would take cognizance of his presentation and that his disciplinary case file contained a May 5, 2010 decision signed by the Chief Justice of the SCJ of which he was never notified.¹⁸⁸

110. On August 24, 2011, the Judicial Career Council decided to render the Supreme Court's decision null and void and to "thereby guarantee the petitioner his tenure in the Judicial Branch," where he had continued to work inasmuch as no replacement had been named. According to the Council, the article published in the newspaper *Tiempo* "is a personal opinion on the law expressed in the context of a course on Constitutional Law delivered by attorney RAMÓN ENRIQUE BARRIOS." The Judicial Career Council observed that freedom of thought and expression is a right protected under the Constitution and in international instruments. Judge Barrios' demand to be reinstated and receive back pay was declared "unfounded" inasmuch as he had remained on the job, since no replacement had ever been named.¹⁸⁹

V. THE LAW

111. The present case concerns disciplinary proceedings conducted against the backdrop of the *coup d'état* in Honduras. Given the "judicial" nature of the alleged victims' positions, the Commission believes some preliminary observations are in order concerning the principle of judicial independence and its protection under the American Convention. That principle informs the entire analysis that follows regarding the scope of the guarantees to which the alleged victims were entitled. The Commission will then give its decision as to whether the State of Honduras violated the rights established in articles 7, 8, 9, 13, 16, 23 and 25 of the Convention.

¹⁸⁵ Annex 25. SCJ. Memorandum No. 1291-SSCJ-2010. June 16, 2010. Attachment to the State's communication of October 15, 2010.

¹⁸⁶ Annex 25. SCJ. Judicial Career Council. Certification, Case No. 3079. August 31, 2010. Pages 1-9. Attachment to the State's communication of June 25, 2012 received on July 2, 2012.

¹⁸⁷ Annex 25. SCJ. Judicial Career Council. Certification, Case No. 3079. Certification of the Hearing held on Case No. 3079. February 24, 2011. Pages 46-62. Attachment to the State's communication of March 11, 2011 received on July 2, 2012.

¹⁸⁸ Annex 25. SCJ. Judicial Career Council. Certification, Case No. 3079. Judicial Career Council of the SCJ. Certification of the Hearing held on Case No. 3079. February 24, 2011. Attachment to the State's communication of June 25, 2012 received on July 2, 2012.

¹⁸⁹ Annex 25. Judicial Career Council of the SCJ. Certification of the Hearing held on Case No. 3079. February 24, 2011. Attachment to the State's communication of March 11, 2011.

A. The principle of judicial independence and its bearing on the analysis of the case

112. The principle of the independence of the Judiciary has been established in numerous international instruments¹⁹⁰ and is recognized as “international custom and a general principle of law.”¹⁹¹ An independent judiciary is an essential requirement in a democratic system and a condition *sine qua non* for the protection of human rights, as it becomes one of the basic pillars of the guarantees of due process and must therefore be respected in all types of proceedings and before all bodies called upon to determine a person’s rights. It must even be assured in special situations, such as states of emergency.¹⁹²

113. International law views independence as two dimensional: the first is institutional or systemic, while the second is functional, referring to judges’ individual independence in performing their functions.¹⁹³ In the case of the institutional dimension, one of the principal factors to be considered is the degree of independence that the judicial branch, as a system, must have vis-à-vis the other branches of government so that sufficient guarantees are in place to protect the judicial institution from abuses or unreasonable restrictions on the part of the other branches of government or state institutions. Addressing this aspect of the independence factor, the United Nations Human Rights Committee pointed out, for example, that a situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.¹⁹⁴ On the other hand, the functional dimension or individual exercise of judicial functions involves more than just the procedures and qualifications for the appointment of judges. It also involves the guarantees of their security of tenure until mandatory retirement age or the expiration of their term of office, where such exists, and the

¹⁹⁰ The importance of an independent judiciary has been recognized in the following international and regional instruments: Universal Declaration of Human Rights (Article 10); the International Covenant on Civil and Political Rights (Article 14); the 1993 Vienna Declaration and Programme of Action (Paragraph 27); American Convention on Human Rights (Article 8(1)); European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6.1); and the African Charter on Human and Peoples’ Rights (Article 7.1). Some more specific international treaties also contain provisions on the independence and impartiality of the courts, such as: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Article 18.1); the International Convention for the Protection of All Persons from Enforced Disappearance (Article 11.3); the Additional Protocol to the Geneva Conventions (Article 75.4) and the Additional Protocol relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (Article 6.2).

¹⁹¹ United Nations. General Assembly. Human Rights Council. Report of the Special Rapporteur on the Independence of judges and lawyers, Leandro Despouy, A/HRC/11/41, March 24, 2009, paragraph 14

¹⁹² In its General Comment No. 32, the Human Rights Committee wrote that “[t]he requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception.” See United Nations. Human Rights Committee. General Comment No. 32, CCPR/C/GC/32, August 23, 2007, paragraph 19. See also in this regard, *Habeas Corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, paragraph 30.

¹⁹³ The Inter-American Court highlighted both *de jure* and *de facto* independence, and wrote that this “requires not only hierarchical or institutional independence, but also real independence.” I/A Court H.R. *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 122.

¹⁹⁴ CCPR/C/GC/32 (footnote on page 1), paragraph 19 cited in United Nations. General Assembly. Human Rights Council. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, A/HRC/11/41, March 24, 2009, paragraph 18.

conditions governing promotions, transfers, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive and legislative branches.¹⁹⁵

114. The UN General Assembly established the international norms governing the minimum guarantees necessary to ensure the institutional and personal independence of judges in the *United Nations Basic Principles on the Independence of the Judiciary* (hereinafter the *UN Basic Principles*).¹⁹⁶ The UN Basic Principles set out, in international law, the minimum guarantees that must be observed to ensure the independence of the judiciary and are also the accepted instrument for measuring the independence of the judiciary in a given member state.¹⁹⁷ Since the adoption of the Basic Principles and drawing upon them, a number of universal and regional instruments have been crafted to protect the independence of the judicial branch of government.¹⁹⁸

115. Within the inter-American system, the principle of independence is recognized as one of the guarantees of due process protected under Article 8(1) of the American Convention. The guarantee of an independent judge attends those facing or standing trial in the defense of their rights. The case law of the Inter-American Court of Human Rights holds that other guarantees are derived from judicial independence, and are guarantees that States must afford to judges so as to ensure their independence.¹⁹⁹ In the *Case of Reverón Trujillo* the Court wrote that unlike other public officials, judges have certain guarantees due to the independence the Judicial Power must have for the sake of those on trial or parties to litigation, which the Court has understood as “essential for the exercise of the judicial function.”²⁰⁰ In keeping with the jurisprudence of the European Court of Human Rights, the organs of

¹⁹⁵ CCPR/C/GC/32 (nota 1), Paragraph 19 cited in United Nations. General Assembly. Human Rights Council. Report of the Special Rapporteur on the Independence of judges and lawyers, Leandro Despouy, A/HRC/11/41, March 24, 2009, paragraph 52.

¹⁹⁶ The *United Nations Basic Principles on the Independence of the Judiciary* were adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 (hereinafter the UN Basic Principles).

¹⁹⁷ The Preamble to the UN Basic Principles states that “[t]he following basic principles [...] should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general.”

¹⁹⁸ Among the instruments that build upon the Basic Principles, the General Assembly approved *Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary* (1989), which provide that “[a]ll States shall adopt and implement in their justice systems the Basic Principles on the Independence of the Judiciary in accordance with their constitutional process and domestic practice.” The United Nations Economic and Social Council approved the Bangalore Principles (2002) which mention the importance of a competent, independent and impartial judiciary to the protection of human rights. At the regional level, the standards for guaranteeing judicial independence are set out in the following instruments: the Commonwealth (Latimer House) Principles on the three branches of government; the European Charter on the Statute for Judges (1998) and the Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA Region (1995). There are other instruments as well, like the Universal Charter of the Judge and the Statute of the Ibero-American Judge, approved by associations or summits of judges or prosecutors and setting out provisions on the guarantees or principles of the independence and impartiality of justice operators.

¹⁹⁹ For example, the Inter-American Court has written that the State’s obligations with respect to those facing prosecution create “rights for judges”; for example, the guarantee that they will not be subject to a discretionary removal implies that the disciplinary proceedings and sentencing proceedings in cases involving judges must observe the guarantees of due process and shall offer those affected an effective remedy. I/A Court H.R. *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, paragraph 147.

²⁰⁰ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, paragraph 67. I/A Court H.R., *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, paragraph 97.

the inter-American system have made reference to the following guarantees: a) establishment of an adequate procedure for the appointment and removal of judges;²⁰¹ b) the guarantee against external pressures;²⁰² and c) the irremovability in the post for the duration of one's term.²⁰³ Those guarantees are a corollary of the right of access to justice that every person enjoys and, in the case of judges, are "reinforced guarantees" of tenure so as to thereby ensure the necessary independence of the Judicial Branch.²⁰⁴

116. With specific reference to the guarantee of tenure, the *UN Basic Principles* provide that "[t]he term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law";²⁰⁵ they also provide that "[j]udges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists."²⁰⁶ The *UN Basic Principles* state that "[j]udges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties."²⁰⁷ Likewise, the European Court has written that the irremovability of judges by the executive during their term of office must in general be considered as a corollary of their independence and thus included in the guarantees of Article 6 (1) of the European Convention on Human Rights and Fundamental Freedoms.²⁰⁸ Similarly, the UN Human Rights Committee has written that judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law.²⁰⁹ For its part, the Inter-American Court and the Commission has held that these guarantees "reinforce" judges' stability in their position as a way to ensure their independence

²⁰¹ I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, paragraphs 73-75. IACHR, *Democracy and Human Rights in Venezuela*, December 30, 2009. Available at: <http://www.cidh.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>; CIDH, *Second Report on the Situation on Human Rights Defenders*, December 31, 2011. Available at: <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>

²⁰² I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, paragraph 75; IACHR, *Democracy and Human Rights in Venezuela*, December 30, 2009. Available at: <http://www.cidh.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>; CIDH, *Second Report on the Situation on Human Rights Defenders*, December 31, 2011. Available at: <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

²⁰³ I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, paragraph 75.; *Case of Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela*, Judgment of August 5, 2008. Series C No. 182, paragraph 138. IACHR, *Democracy and Human Rights in Venezuela*, December 30, 2009. Available at: <http://www.cidh.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>; CIDH, *Second Report on the Situation on Human Rights Defenders*, December 31, 2011. Available at: <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

²⁰⁴ I/A Court H.R. *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, paragraph 67.

²⁰⁵ Principle 11 of the *UN Basic Principles on the Independence of the Judiciary* (1985).

²⁰⁶ Principle 12 of the *UN Basic Principles on the Independence of the Judiciary* (1985).

²⁰⁷ Principle 18 of the *UN Basic Principles on the independence of the judiciary* (1985).

²⁰⁸ Eur. Court H.R., *Campbell and Fell* judgment of 28 June 1984, Series A no. 80, para. 80; Eur. Court HR., *Engel and Others* judgment, Series A no. 22, pp. 27-28, para. 68.

²⁰⁹ Cf. United Nations, Human Rights Committee, General Comment No. 32, Article 14, supra nota 71, paragraph 20.

and that of the system, as well as the appearance of independence with regard to the parties and society.²¹⁰

117. The Commission is of the view that under the applicable international law on the subject of the irremovability of judges, the latter may only be removed under two different types of circumstances: i) circumstances that are commensurate with the guarantee of irremovability and are dictated by the term of office, period of appointment, or mandatory retirement age;²¹¹ and ii) circumstances related to the judge's fitness for office, i.e., through the disciplinary system.²¹²

118. The dispute between the parties in the present case concerns the disciplinary proceedings conducted against the alleged victims for certain acts they supposedly performed in their capacity as judges, against the backdrop of the *coup d'état* in Honduras. The Commission will now turn its attention to its analysis, with a view to ascertaining the following: i) whether the alleged victims had the necessary guarantees of due process in the disciplinary proceedings conducted in their cases and ii) whether those proceedings, that took into account deeds or remarks by the alleged victims, affected other rights protected by the American Convention.

B. Right to a fair trial and judicial protection (Articles 8 and 25 of the American Convention, read in conjunction with articles 1(1) and 2 thereof)

119. Article 8 of the American Convention provides that:

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.

120. Article 25 of the American Convention establishes:

²¹⁰ I/A Court H.R. *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, paragraph 81.

²¹¹ Principle 12 of the Basic Principles on the Independence of the Judiciary, principle I.3 of the Recommendation N. R (94) 12 and principle A 4 (I) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa require guaranteed tenures of judges until mandatory retirement age or the expiry of their term of office, where such exist. See, United Nations. General Assembly. Human Rights Council. Report of the Special Rapporteur on the Independence of judges and lawyers, Leandro Despouy, A/HRC/11/41, March 24, 2009, paragraph 53.

²¹² IACHR, *Final written observations, Case 12,600 Quintana Coello et al. (Justices of the Supreme Court) v. Ecuador*, March 4, 2013. See also the expert paper by Param Kumaraswamy in *Case 12,600 Hugo Quintana Coello et al.* with respect to Ecuador, January 29, 2013.

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.

121. For its part, Article 1(1) of the Convention states that:

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

122. Article 2 of the American Convention reads as follows:

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

123. As for the observance of due process guarantees in disciplinary proceedings against judges, the Inter-American Court has observed that the guarantee of tenure and irremovability means in part that judges shall not be subject to discretionary removal, which in turn requires that the proceedings conducted to discipline and sanction judges must respect the guarantees of due process and offer those affected an effective remedy.²¹³ Thus, observance of the due process guarantees is, in principle, a necessary consequence of the State's obligation to guarantee an independent and impartial judge in favor of those that use de system of justice. The Commission notes, however, that the observance of due process guarantees also follows from the punitive nature of the disciplinary process, which can result in a sanction that affects a judge's status as a judge.²¹⁴

1. The competence, independence and impartiality of the disciplinary authorities

124. With regard to the guarantee of a competent judge, the Court has written that while States have the authority to design and organize the disciplinary proceedings within their respective States, the authorities who participate in those proceedings must do so according to pre-established

²¹³ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, paragraph 147.

²¹⁴ Here, the Office of the United Nations Rapporteur on the Independence of judges and lawyers has listed the use of disciplinary measures against judges as one of the elements that affect the individual independence of judges. United Nations. General Assembly. Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/11/41, March 24, 2009, paragraph 52. The Commission has also looked at the punitive nature of disciplinary proceedings against judges and the need to ensure the guarantees of due process protected under Article 8 of the Convention. See, in this regard, IACHR, *Case of 12.600 Hugo Quintana Coello et al. (SCJ) regarding Ecuador (Merits)*, August 2, 2011, paragraph 100.

procedures. This is a way to ensure that a State does not invent authorities that will not adhere to the pre-established rules of procedure and that serve in place of the authority in which that competence is normally vested.²¹⁵

125. The Commission notes that the SCJ's disciplinary authority can be traced to Article 313 of the Honduran Constitution, which makes it the competent authority to remove judges "upon the recommendation of the Judicial Career Council." The Commission notes that the removal of the alleged victims was done by a decision of the SCJ issued subsequent to a recommendation by the Office of the Director of Personnel Management. Likewise, the Judicial Career Council's role in the disciplinary proceedings came on the heels of the Supreme Court's decisions to dismiss, where it functioned as an appellate body.

126. Here, the Commission observes that the manner in which the disciplinary proceedings were conducted was not the one prescribed in the Constitution. Because the Supreme Court intervened in the disciplinary process without the requirement prescribed by the Constitution being met, it did not have jurisdiction to decide the matter of the alleged victims' dismissal. The Commission notes further that the Judicial Career Council did not follow the model prescribed in Article 313 of the Constitution and functioned instead as a body to which the alleged victims could turn to appeal the SCJ's decision to order their dismissal. According to the information available, this was not just at variance with the procedure prescribed in the Constitution; it was also a situation in which the Council exercised an authority it did not have since, under Article 9 of the Judicial Career Service Act, the Council is only authorized to take up and decide those "remedies that are duly filed against decisions of the Office of the Director of Personnel Management." It is not authorized to hear appeals challenging decisions of the SCJ. Therefore, the Commission finds that the Judicial Career Council was not competent to serve as an appellate body of the SCJ.

127. As for the guarantee of independence, the Inter-American Court has held that an adequate appointment process, tenure and protection against external pressures are essential to the independence of the authority charged with applying sanctions.²¹⁶ That guarantee must materialize in the form of a disciplinary system in which the authorities charged with reviewing the situation and determining whether sanctions are in order are not subject to "possible undue limitations in the exercise of their functions" by other authorities and inspire confidence in the judge facing disciplinary proceedings.²¹⁷

128. The Commission has sufficient information to conclude that the SCJ did not offer the guarantees of independence necessary to intervene in the present case. However, since the Judicial Career Council functioned as a body for review of the SCJ's decisions, with the ultimate authority to confirm its decisions or overturn them, the Commission will now consider whether the Council had the necessary guarantees of independence vis-à-vis the Supreme Court, whose decisions reviewed.

²¹⁵ 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, paragraph 50.

²¹⁶ Cf. I/A Court H.R. *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009, paragraph 70; and *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011, paragraph 98.

²¹⁷ 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, paragraph 55.

129. The Commission notes that under Honduran law, the Council answers to the SCJ. Thus, Article 7 of the Judicial Career Service Act provides that the Council “shall be subordinate to the SCJ”. Under Article 8 of that law, its purpose is to “assist the SCJ.” The Commission notes that this dependency relationship would not, in principle, pose a problem if the order established in the Constitution for disciplinary proceedings had been followed; in other words, if the Judicial Career Council had served as the body making recommendations to the Court rather than as a review body. Even so, its function as an appellate body of the very organ to which it answers is incompatible with the guarantee of independence.

130. The Commission further observes that when the justices on the Supreme Court who were members of the Council disqualified themselves, the Judicial Career Service Act provided that “the alternates shall be appointed at the discretion of the Court.” However, when the Chief Justice declared that he could not appoint them since he had been party to the decision that ordered dismissal, he “provided guidance” to enable the Chair of the Council of the Judiciary to call upon other persons to serve as members of the Council.

131. As for the procedures used to appoint and select judges, the Commission reiterates that their objective must be to select candidates based on merit and qualifications,²¹⁸ taking into account the singular and specific nature of the duties to be performed.²¹⁹ The Inter-American Court has pointed to the importance of affording “open and equal opportunity [...] through an ample public announcement, which shall be clear and transparent with regard to the requirements demanded to fill the position.”²²⁰ The United Nations Rapporteur on the Independence of Judges and Lawyers has observed that States should issue advance, public announcements of the competitions and the procedures, spelling out the requirements, criteria and deadlines so that any person who believes he or she meets the requirements can have an opportunity to compete for the post.²²¹

132. In the present case, contrary to the criteria and standards described here, it was not until the final decisions that the Council disclosed that the persons whom the Council’s Chair had called upon to serve on the Council were members of the Judiciary who had won “their positions through competition and [had] long and impeccable careers within it.” Apart from that, however, it is unclear, either in the case file or in the applicable norms, what criteria the Council’s President uses in practice to select and appoint the members of the Council in a specific case and whether the criteria are made

²¹⁸ IACHR, *Second Report on the Situation of Human Rights Defenders*, December 31, 2011, paragraph 363. See also, I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, Paragraph 72; and United Nations. Human Rights Committee. General Comment No. 32, CCPR/C/GC/32, August 23, 2007, Paragraph 19. For their part, the United Nations Basic Principles provide that the persons selected for judicial office shall be individuals of integrity and ability with appropriate training. Basic Principles on the Independence of the Judiciary, Principle 10.

²¹⁹ IACHR, *Second Report on the Situation of Human Rights Defenders*, December 31, 2011, paragraph 363. See also, I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, paragraph 72. See also the Guidelines on the Role of Prosecutors, guideline 1.

²²⁰ I/A Court H.R. *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, paragraph 73.

²²¹ United Nations. Human Rights Committee. General Comment No. 32, CCPR/C/GC/32, August 23, 2007, Paragraph 19. See also, United Nations. General Assembly. Human Rights Council. Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/11/41, March 24, 2009, Paragraph 30; and Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to Mexico A/HRC/17/30/Add.3, April 8, 2011, paragraph 23.

public. To the contrary, the record of the hearings with the Council shows that the alleged victims stated that they did not know whether the membership of the Council had been determined and did not know who the members of the Council would be. It was not until after the hearing had been held and the evidence heard and examined that the Chair of the Council selected the persons who would serve on the Judicial Career Council. The Council's members were selected specifically to take up the dismissals of the victims in this case.

133. The Commission notes that in the end, at least four members of the Council were career judges.²²² The Commission does not have any information suggesting that the disciplinary proceedings that members of the Council would face would be in any way different from those faced by other judges in the country. The Commission notes, therefore, that under Article 313 of the Constitution judges serving on the Council could be subject to the disciplinary authority of the Supreme Court whose decision they were called upon to review in an *ad hoc* proceeding that, as previously observed, did not follow the system prescribed in the Constitution.

134. All these factors, combined with the political atmosphere in which the Judicial Branch, following the Supreme Court's lead, sought to legitimize the *coup d'état* which the alleged victims opposed, point to the conclusion that the latter were not given a hearing by independent authorities who were adequately shielded against external pressures.

135. Finally, concerning the guarantee of impartiality, the Inter-American Court has written that "[t]he impartiality of a court implies that its members 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."²²³ As the European Court has observed, when the impartiality of a tribunal is being determined, regard must be had not only to the personal conviction and behavior of a particular judge in a given case—the subjective approach— but also to whether it afforded sufficient guarantees to exclude any legitimate doubt in this respect.²²⁴

136. The Commission observes that as the European Court of Human Rights has pointed out, the objective test of a judge's impartiality must determine whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to the judge's impartiality. The Court commented that even appearances may be of certain importance and wrote that "[w]hat is at stake is the confidence which the courts in a democratic society must inspire in the public."²²⁵ The Commission has written that *indicia* or *prima facie* evidence may turn out to be especially important when determining whether there are objective factors that could compromise impartiality.²²⁶

²²² This, taking into consideration that the Judicial Career Service Act provides that one of the five members of the Judicial Career Council shall be a member of the Public Prosecutor's Office, which would be independent of the three branches of government, under the terms of Legislative Decree No 228-93, in force since January 6, 1994. Available [in Spanish] at: http://www.oas.org/juridico/PDFs/mesicic4_hnd_sc_anex15.pdf

²²³ I/A Court H.R., *Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 146.

²²⁴ See *Thomann v. Switzerland*, Judgment of June 10, 1996, Reports of Judgments and Decisions 1996-III, p. 815, § 30.

²²⁵ ECHR, *Caso Wettstein vs. Suiza*, Application No. 33958/96, Judgment, 21 de diciembre de 2000, párr. 44.

²²⁶ IACHR, Application to the Inter-American Court of Human Rights in the case of Ana María Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz ("First Court of Administrative Disputes") (Case 12.489) against the Bolivarian Republic of Venezuela, November 29, 2006, paragraph 129.

137. In the present case, the information available indicates that the Judicial Branch, in the form of the SCJ, had a clear and public position in favor of the legality of the events associated with the coup d'état, a position that was patently at variance with the interest manifested by the judges and magistrates who, through various acts and statements, came out in opposition to the *coup d'état*.

138. The position of the SCJ, calculated to validate the *coup d'état*, is confirmed by the following: i) it was a protagonist in the ouster process of José Manuel Zelaya and the consummation of the *coup*; ii) it issued a series of press releases in which it underscored the alleged legality of the events associated with the apprehension of President Zelaya; iii) it held meetings with the *de facto* President concerning decrees he issued, and iv) it denied all the petitions of *amparo* filed against actions on the part of the *de facto* government and acted swiftly to grant *amparo* relief to those who claimed to have been adversely affected by President Zelaya's actions.

139. The Commission therefore considers that the SCJ does not pass the objectivity test of impartiality to pass judgment on the alleged victims in the instant case, whose interests were patently at odds with the interests the Court was serving.

140. Furthermore, the Commission notes that the alleged victims had no opportunity to challenge the impartiality of the members of the SCJ, since the case on the disciplinary investigation went directly to the Supreme Court from the Office of Personnel Management, which had recommended their dismissal. The Court then proceeded to make its decision without following trial procedure; as a result, the alleged victims were never given a procedural opportunity to challenge the Supreme Court's lack of impartiality. Here, the Inter-American Court has held that the right to challenge judges serves a twofold purpose: on one hand, it works as a guarantee for the parties to the proceedings, and on the other hand, it seeks to lend credibility to the role performed by the court.²²⁷ As the Court wrote:

through challenging, the parties are given the right to move for the exclusion of a judge when, regardless of the personal conduct observed by the questioned judge, there are facts that can be proven or elements of conviction that may not warrant elimination of grounds for misgivings or legitimate suspicions of partiality regarding his person, thus preventing his decision from being seen as made by reasons alien to the Law and, therefore, the operation of the *Judicial System* to appear distorted. Challenging should not necessarily be seen as putting on trial the moral rectitude of the challenged official, but rather as a tool to build trust in those turning to the State in quest for action by bodies that are and appear to be impartial.²²⁸

141. The Commission therefore concludes that in the present case, the SCJ violated the principle of impartiality in two respects: both through the Court's involvement without the necessary objective guarantees of impartiality, and through the impediment that made it impossible to bring a challenge to guarantee this right.

²²⁷I/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, Paragraph 63.

²²⁸I/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, Paragraph 63.

142. From the facts set out in this section, the Commission concludes that the State violated the right to a trial by a competent, independent and impartial authority, established in Article 8(1) of the American Convention, read in conjunction with the obligations established in Article 1(1) of the Convention and to the detriment of Judges Guillermo López Lone, Ramón Barrios and Luis Alonso Chévez de la Rocha and Magistrate Tirza Flores Lanza.

2. The right to prepare an adequate defense and the obligation to state grounds

143. The Inter-American Court has written that under Article 8 of the Convention, the right to an adequate defense is part of due process and for that right to be observed, a defendant must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants²²⁹ and must be fully informed of the charges against him.²³⁰ In the specific case of disciplinary proceedings against judges, and in keeping with the *Basic Principles*, the Inter-American Court has written that the authority conducting the disciplinary proceeding must conduct itself according to the procedure established for the purpose and allow the accused to exercise his or her right of defense.²³¹

144. As for the content of this right, in the case of *Olújjic v. Croatia* the European Court has written that “the judge whose office is at stake must be afforded a reasonable opportunity to present his or her case - including his or her evidence - under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* the authorities bringing those proceedings against a judge.”²³² Likewise, in the case of the *Constitutional Court v. Peru*, the Inter-American Court held that some of the factors that need to be examined to determine whether dismissed judges have been given an opportunity to defend themselves include the question of whether they had complete and timely knowledge of the charges filed against them, whether they had proper access to the probative material, whether the period granted for exercising their defense was adequate –since as accused persons they have the right to examine the case and evidence- and the question of whether they were allowed to cross-examine the witnesses whose testimony was the basis of the accusation.²³³ The *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* provide that judicial officials facing disciplinary, suspension or removal proceedings shall be entitled to guarantees of a fair hearing including the right to be represented by a legal representative of their choice.²³⁴ Summarizing, as the

²²⁹ I/A Court H.R. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, paragraph 117.

²³⁰ See Section VI. Accountability Mechanisms, in the Commonwealth (Latimer House) Principles on the Three Branches of Government. Parliamentary Supremacy and Judicial Independence, adopted on June 19, 1998, at a meeting of representatives of the Commonwealth Parliamentary Association, the Commonwealth Magistrates’ and Judges’ Association, the Commonwealth Lawyers’ Association and the Commonwealth Legal Education Association.

²³¹ Cf. I/A Court H.R., *Case of the Constitutional Court*. Judgment of January 31, 2001. Series C No. 74, paragraphs 73 and 74. Also the Commission has established that “the guarantees that must be respected and fulfilled to ensure a suitable defense include those calling for intervention by a competent, independent and impartial judicial body to determine the claim’s legality”. Report No. 30/97, Case 10.087 (Merits), Gustavo Carranza, Argentina, September 30, 1997. Available at: <http://www.cidh.oas.org/annualrep/97eng/Argentina10087.htm>

²³² Cf. ECHR, *Olújjic v. Croatia*, judgment of 5 February 2009 (Sect.1) (Application no. 22330/05). §78

²³³ I/A Court H.R. *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, paragraphs 81-83.

Court has held in cases related to judges' dismissal from office, "[t]he right to defense obliges the State to treat the individual at all times as a true subject of the procedure, in the broadest sense of that concept, and not simply as an object of it."²³⁵

145. The duty to state the reasons for a decision is one of the "due guarantees" provided for in Article 8(1) of the Convention to safeguard the right to a fair trial.²³⁶ The obligation to give a reasoned judgment "is a guarantee related to the correct administration of justice, which protects the right of the people to be tried for the reasons established by law and lends credibility to judicial decisions in a democratic society."²³⁷ According to the Inter-American Court, decisions in disciplinary cases must spell out the precise misconduct and lay out the arguments necessary to conclusively make the case that the "comments" carry sufficient weight to warrant a judge's removal from his or her post.²³⁸ Furthermore, it is vital that the ruling in a disciplinary case be a reasoned judgment, since the purpose of disciplinary oversight is to assess the conduct, qualifications and performance of a public official; ultimately, the judgment's reasoning is where the seriousness of the misconduct and the proportionality of the sanction are analyzed.²³⁹

146. In the instant case, the Commission has already concluded that the disciplinary proceedings conducted against the victims were in violation of Article 313 of the Honduran Constitution, with the result that it was difficult to determine who the competent authority was for each phase of the process and ascertain the "nature" of the decisions each one issued and whether it was definitive. The uncertainty this created affected the right of the judges and magistrate to prepare an adequate defense.

147. The Commission also observes that even under the model disciplinary rules applied *ad hoc* in this case, the alleged victims would not have had an opportunity to prepare an adequate defense and be heard by the Court first and then by the Council.

148. The Commission notes that in the Supreme Court's proceedings, it reached its decision to order the victims' dismissal based on a report provided by the Office of the Director of Personnel Management; these proceedings were not conducted as a trial would be, and the victims were not given an opportunity to present their case and defend themselves against the charges and accusations that the Office of the Director of Personnel Management made against them. This meant that the judges and magistrate never received a hearing before the SCJ and never had a chance to defend themselves before it.

²³⁴ *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, adopted as part of the Report on Activities of the African Commission at the Second Summit and Assembly of Heads of State and Government of the African Union, held in Maputo, July 4 to 12, 2003. See Section A. General Principles Applicable to All Legal Proceedings. A.r) Independent Tribunal.

²³⁵ I/A Court H.R. *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, paragraph 121.

²³⁶ 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, paragraph 78.

²³⁷ I/A Court H.R. *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, paragraph 118.

²³⁸ I/A Court H.R. *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, paragraph 120.

²³⁹ I/A Court H.R. *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, paragraph 120.

149. Furthermore, the dismissal decisions of which the judges and magistrate received notification did not set out the arguments supporting the reasoning that led the members of the Court to conclude that the victims had engaged in conduct that constituted the grounds for disciplinary action cited by the Office of the Director of Personnel Management. The decisions to dismiss invoke a number of procedural and disciplinary articles, without specifying their content or clearly spelling out how the conduct of the victims fit the situations described in the norms that content the disciplinary sanctions. The decisions also contained no reasoning concerning the seriousness of the misconduct that the victims were alleged to have committed and how dismissal was a proportionate sanction.

150. Concerning the obligation to state the grounds or reasons for a decision, the Inter-American Court has pointed out that one of the effects this obligation has is to demonstrate to the parties that they have been heard and, when the decision is subject to appeal, to afford them the possibility to argue against it and have the decision reviewed by an appellate body.²⁴⁰ In this case, the SCJ's decisions ordering the victims' dismissal did not state the grounds for the decisions, yet these were the decisions that the alleged victims had to challenge when filing their appeals to the Council, which they had to do without knowing the grounds on which the decisions ordering their dismissal were based. The Commission believes this affected their ability to mount an adequate defense before the Council.

151. The Commission observes that after requesting copies of their disciplinary case files in the proceedings before the Council, the victims learned that those files contained decisions spelling out the reasons that supposedly justified the SCJ's decision to dismiss them. Those decisions are signed by the Chief Justice of the Supreme Court and its Secretary, under a seal that reads "Office of the Chief Justice". The signatures of the other members of the Supreme Court do not appear on the decision, nor is there any certification stating that the decisions are copies of an original. The Commission also notes that despite the questions that the petitioners raised at the domestic level and that the petitioners raised with the inter-American system, the State has been unable to prove that those decisions were duly notified. Thus, when the victims appeared for the appellate hearing, they had in their possession, on the one hand, the SCJ's decision ordering their dismissal, without a sufficient statement of grounds and never formally notified, and on the other a decision by the Chair of the Council containing greater detail as to the grounds for their dismissal but which came to their attention only by chance, and without any explanation of its import and implications for the disciplinary proceedings. This situation necessarily hurt their chances of putting together, with the required legal certainty, an adequate defense strategy for their appearance before the Judicial Career Council on their appeal.

152. Given the foregoing, the Commission finds that the State violated article 8(1) and 8(2)(c) of the American Convention, to the detriment of Guillermo López Lone, Ramón Barrios, Luis Alonso Chévez de la Rocha and Tirza Flores Lanza.

3. Right to challenge the conviction and the right to a presumption of innocence

153. Concerning reviews of convictions, the United Nations Basic Principles provide that "[d]ecisions in disciplinary, suspension or removal proceedings should be subject to an independent review."²⁴¹ As the Office of the United Nations Special Rapporteur has written, "there should be some

²⁴⁰ 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, paragraph 78.

²⁴¹ Principle 20.

provision for having any disciplinary or administrative decision that has an impact on the status of judges reviewed by an independent judicial body.”²⁴² The European Charter on the Statute for Judges makes specific reference to disciplinary proceedings involving judges, to the effect that “[t]he decision [...] pronouncing a sanction [...] is open to an appeal to a higher judicial authority.”²⁴³ The *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* provide that in disciplinary proceedings judges “shall be entitled to [...] an independent review of decisions of disciplinary, suspension or removal proceedings.”²⁴⁴

154. In the Inter-American System, the American Convention provides that States must offer an adequate and effective recourse to all persons subject to their jurisdiction, for protection against acts that violate their fundamental rights. This right is protected under Article 25 of the Convention and “is one of the fundamental pillars” of States in a democratic society.²⁴⁵ As for the scope of the right to judicial protection, both the Commission and the Court have reiterated that judicial protection applies not just to the rights contained in the Convention, but also to the rights recognized by the Constitution or law of the State concerned.²⁴⁶ The Court has written that “for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.”²⁴⁷ For its part, under Article 8(2)(h) of the American Convention, the right to appeal a ruling is part of due process of law.²⁴⁸ The Commission notes that “the right to appeal a judgment is an essential guarantee that must be respected as part of due process of law, so that a party may turn to a higher court for revision of a judgment that was unfavorable to that party’s interests.”²⁴⁹

²⁴² United Nations. Human Rights Council. Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Mission to Mexico, A/HRC/17/30/Add.3, April 18, 2011, paragraph 14. See also, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Communications to and from governments, A/HRC/17/30/Add.1, May 19, 2011, Bolivia, paragraph 120 [not in English].

²⁴³ European Charter on the Statute for Judges and Explanatory Memorandum (DAJ/DOC)98) prepared at the first multilateral meeting in Strasbourg devoted to the Status of Judges in Europe, organized by the Council of European and Held from July 8 to 10, 1998.

²⁴⁴ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted as part of the Report on Activities of the African Commission at the Second Summit and Assembly of Heads of State and Government of the African Union, held in Maputo, July 4 to 12, 2003. See Principle A, paragraph 4(q) and (r).

²⁴⁵ I/A Court H.R. *Case of Castillo Páez v. Peru*. Judgment of November 3, 1997. Series C No. 34, paragraph 82; *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paragraph 131, and *Case of Castañeda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 183, paragraph 78.

²⁴⁶ I/A Court H.R. *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Judgment of November 24, 2006. Series C No. 158, paragraph 122; *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006. Series C No. 151, paragraph 128; and *Case of Yatama v. Nicaragua*. Judgment of June 23, 2005. Series C No. 127, paragraph 167. See also, IACHR. Application to the Inter-American Court of Human Rights, Case of the Union of Employees, Professionals, and Technicians of the Lima Water and Sewerage Service Company v. Peru. January 16, 2010. Paragraph 57.

²⁴⁷ I/A Court H.R. OC-9/87. Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights), paragraph 24; and I/A Court H.R. Case of the “Five Pensioners” v. Peru. Judgment of February 28, 2003. Series C No. 98, paragraph 136.

²⁴⁸ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004, paragraph 158

²⁴⁹ I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 2 July de 2004. Series C No. 107, Paragraph 158, and *Case of Mohamed v. Argentina*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 23, 2012. Series C No. 255, paragraph 97.

Therefore, in the Commission's view, the phase for review of a conviction is part of the disciplinary process that must be observed if a judge is to be properly dismissed. As the Court has written, in the rules that States develop in their respective appeals systems, they must ensure that this remedy against a conviction respects the minimum procedural guarantees that, under Article 8 of the Convention, are relevant and necessary to decide the grievances claimed by the appellant.²⁵⁰ In conclusion, the review of a conviction in a disciplinary process is a guarantee of fair trial for the judge subjected to the process, but also a protection against arbitrary actions against the independence of judiciary.

155. As for the scope of an appeal to review a judgment, the Court has written that what matters most is that the appeal guarantees the possibility of a review of the facts and of the law invoked to support the decision being appealed.²⁵¹ Accordingly, it wrote the following:

This means that it must be able to analyze the facts, evidence and law on which the contested judgment was based, because, in jurisdictional activities, interdependence exists between the determination of the facts and the application of the law, so that an erroneous determination of the facts entails an incorrect application of the law. Consequently, the grounds for the admissibility of the appeal should make an extensive control of the contested sentence possible.²⁵²

156. On the matter of the principle of the presumption of innocence, the Inter-American Court has written that Article 8(2) of the Convention requires that a person cannot be convicted unless there is clear evidence of his criminal liability. In this respect, the Court has stated that the principle of presumption of innocence is founded upon the existence of judicial guarantees, by affirming the notion that a person is innocent until proven guilty.²⁵³ As for the principle of presumption of innocence vis-à-vis the stages of the proceeding, the Inter-American Court wrote that

[...] the right to presumption of innocence is an essential element for the effective exercise of the right to defense and accompanies the defendant throughout the proceedings until the judgment determining his guilt is final.²⁵⁴

157. Invoking the case law of the European Court, the Inter-American Court has written that "the principle of presumption of innocence implies that judges should not start a proceeding with a preconceived idea that the accused has committed the crime as charged; the burden of proof is on the prosecutor, and any doubt that arises must benefit the accused. The presumption of innocence is violated if, prior to the accused being found guilty, a judicial decision concerning him reflects the opinion that he is guilty."²⁵⁵ In its own case law, the Inter-American Court has commented on the proceedings followed in cases involving conduct warranting discipline, to examine whether the oversight bodies,

²⁵⁰ Mendoza, 246.

²⁵¹ I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, paragraph 165.

²⁵² I/A Court H.R. *Case of Mendoza et al. v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013, Series C No. 260, paragraph 245.

²⁵³ I/A Court H.R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, Paragraph 153.

²⁵⁴ I/A Court H.R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, Paragraph 154.

²⁵⁵ I/A Court H.R. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010, Series C No. 220, paragraph 184

through the different phases of the proceedings, sought to assess the potential responsibility for supposed administrative wrongdoing, while respecting the principle of the presumption of innocence.²⁵⁶

158. In the present case, the Commission notes that in the proceedings conducted against judges Lone, Chévez and Barrios and Magistrate Flores, the Council served as a body for review of the SCJ's decisions. However, as the Commission concluded earlier in this report, the Council: i) was not a competent body; ii) was not an impartial body; iii) did not protect the victims' right of defense, and iv) is not hierarchically superior to the body whose decisions it reviewed. Given these circumstances, the Commission finds that the due guarantees that States must provide for a review under Article 8(2)(h) of the Convention were not observed.

159. The Commission also observes that although the Judicial Career Service Act provided that "[a] dismissal shall become final only when the appeals filed by the accused have been exhausted and decided",²⁵⁷ the stage for review of the decision, conducted by Judicial Career Council, did not have the effect of suspending the Supreme Court's decision ordering dismissal; in fact, the victims' separation from their posts in the wake of the Supreme Court's decision, took effect as soon as their replacements were named.

160. The Commission believes that enforcing a disciplinary sanction while the appeal of the decision of the court of first instance is still pending is incompatible with the principle of presumption of innocence and creates obstacles for reinstatement if the review body's decision on the appeal is in the accused' favor.

161. Thus, in the case of Judge Chévez de la Rocha, the Commission notes that while the Council's view was that there no grounds for his dismissal, it also indicated that it was "impossible" and "inadvisable" to reinstate him because his replacement was already in the post and because he had said that he was "ashamed" of the Judiciary. Those impediments to the judge's reinstatement were allowed under Article 68 of the Judicial Career Service Act, which mentions "possibility" or "advisability" as reasons that the Council can invoke for not reinstating a judge who was unjustifiably dismissed.

162. As the Court has written, if a review finds that a dismissal was arbitrary, then a judge so dismissed must be reinstated.²⁵⁸

This is so, because [...] States could remove the judges and therefore intervene in the Judicial Power without greater costs or control. Additionally, this could generate a fear in the other judges, who observe that their colleagues are dismissed and then not reinstated even when the dismissal has been arbitrary. Said fear could also affect judicial

²⁵⁶ I/A Court H.R. *Case of López Mendoza v. Venezuela*. Merits, Reparations and Costs. Judgment of September 1, 2011, Series C No. 233, paragraph 131.

²⁵⁷ Regulations Governing the Judicial Career Service Act, published in the Official Record, *La Gaceta*, No. 25,657 of October 17, 1988. Article 188.

²⁵⁸ IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, paragraph 380, quoting I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, paragraph 81.

independence, since it would promote that the judges follow instructions or abstain from contesting both the nominating and punishing entity.²⁵⁹

163. Even so, the Court has acknowledged that there may be special reasons for not reinstating a judge to his or her seat on the bench, reasons that have to be suitable to achieve a conventionally accepted end and necessary in the sense that there is no other less onerous or more proportional means.²⁶⁰

164. In the present case, the Commission notes that the “advisability” criterion is impermissible when one considers the importance and fundamental relevance of the principle of judicial independence. Lacking a permissible justification, what the Council did in practice was to impose yet another sanction on Judge Chévez, this time without the pretense of a trial and without allowing him to exercise his right to defend himself against the very same set of facts that the Council had previously discounted as grounds for disciplinary action.

165. As for the supposed “impossibility” of ordering reinstatement, the Commission notes that while the only reason given by the State was that the post was already occupied by the replacement appointed by the Supreme Court, the State failed to show that there were no other less onerous alternatives by which it could have offered the judge the option of being reinstated, for example, to a similar post with another tribunal or court.

166. In the case of Judge Barrios, the Council upheld his arguments as to the merits and decided that he would remain a member of the Judicial Branch. However, it also decided to declare his claim seeking reinstatement and back pay to be “unfounded” since Judge Barrios had continued working because no replacement had ever been named. After the SCJ’s decision ordering his dismissal, Judge Barrios remained in his post from June 16, 2010 to August 24, 2011, awaiting his replacement. During that time, the decision ordering his dismissal had not yet become final, which meant that he lived in a constant state of uncertainty as to his future in the Judicial Branch, and that uncertainty lasted for more than a year, thereby affecting his guarantee of job stability and exposing him to the threat of discretionary removal and pressure about his performance as a judge. The Commission observes that the Council’s ruling did not acknowledge the violations committed during the disciplinary process and did not order that Judge Barrios be compensated for those violations.

167. The Commission therefore considers that the State violated the right to challenge a punitive disciplinary ruling in violation of Article 8(2)(h) of the American Convention, read in conjunction with articles 1(1) and 2 thereof, to the detriment of Guillermo López Lone, Ramón Barrios, Luis Alonso Chévez de la Rocha and Tirza Flores Lanza. The Commission notes that the appeal was not an effective means to safeguard the Convention-protected rights that the Commission, in this report, declared were violated. That failure to provide an effective remedy was itself a violation of Article 25 of the Convention, to the detriment of Guillermo López Lone, Ramón Barrios, Luis Alonso Chévez de la Rocha and Tirza Flores Lanza.

²⁵⁹ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, paragraph 81.

²⁶⁰ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, paragraph 124.

168. Finally, the Commission takes into account that Article 31 of the Regulations of the Judicial Carrer Council expressly forbids remedies to challenge decisions of the Judicial Carrer Council. This is another manifestation of the lack of access to judicial protection in this case.

C. Principle of Freedom from *Ex Post Facto* Laws

169. Article 9 of the American Convention provides that:

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.

170. Article 1(1) of the American Convention reads as follows:

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

171. Article 2 of the American Convention states that:

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

1. Observations on the principle of freedom from *ex post facto* laws in the context of disciplinary proceedings

172. The principle of freedom from *ex post facto* laws, or principle of legality, is one of the pre-eminent principles governing the conduct of all organs of the State in their respective areas of competence, particularly in the exercise of punitive authority.²⁶¹ By virtue of the principle of legality, the definition of an act as unlawful and the determination of its legal effects must precede the conduct of the subject regarded as the offender.²⁶² The principle requires a clear definition of the punishable

²⁶¹ I/A Court H.R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111. Paragraph 176. Citing: 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, paragraph 107.

²⁶² 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, paragraph 106. Citing. *Eur. Court H.R., Ezelin judgement of 26 April 1991, Series A no. 202*, para. 45; and *Eur. Court H.R. Müller and Others, judgement of 24 May 1988, Series A no. 133*, para. 29.

conduct and its distinctive elements, so as to distinguish that conduct from non-punishable behaviors.²⁶³ The Court has held that vague or ambiguous provisions that give broad discretionary powers to the authorities are incompatible with the American Convention because they can be used as the basis for potentially arbitrary acts.²⁶⁴

173. The greater the restriction on a human right, the more precise and clear the provisions establishing that restriction must be.²⁶⁵ Thus, the limitations imposed under criminal law are subjected to the strictest test of legality, and must therefore comply with the requirements established in Article 9 of the Convention,²⁶⁶ under which “[n]o 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.” The same is true with the restrictions imposed via administrative disciplinary proceedings, particularly when they can lead to serious disciplinary measures such as dismissal. The Inter-American Court has written that Article 9 applies to such proceedings since, like criminal penalties, administrative disciplinary measures are an expression of the State’s punitive authority and can seriously harm or alter a person’s rights or deprive said person of his or her rights.²⁶⁷

174. The foregoing presupposes that the laws establishing administrative sanctions like dismissal must be subjected to the strictest test for legality. Such norms have severe consequences and restrict the exercise of rights; but because they represent an exception to the principle of judicial stability, they can compromise the principles of judicial independence and autonomy. In the specific case of disciplinary proceedings, the Commission has underscored the fact that there must be “clear rules on the grounds and procedure for removing judges from office;”²⁶⁸ “[i]n addition to fueling doubts about the independence of the judiciary,” the absence of such rules “can lead to arbitrary abuses of power, with direct repercussions for the rights of due process and of freedom from *ex post facto* laws.”²⁶⁹

175. Given the importance of the principle of freedom from *ex post facto* laws in proceedings in which a judge can be removed from his or her post, international law has set certain requirements that disciplinary proceedings must meet. The law must give detailed guidance on the infractions by judges that trigger disciplinary measures, including the gravity of the infraction, which in turn determines the kind of disciplinary measure to be applied in the case at hand.²⁷⁰ In *Maestri v. Italy*, the

²⁶³ Cf. I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 55, and Cf. *Case of Baena Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paragraphs 105-107.

²⁶⁴ See, IACHR, Report of the Office of the Special Rapporteur for Freedom of Expression 2009, OEA/Ser.L/V/II.Doc. 51, December 30, 2009, Chapter III, paragraph 70.

²⁶⁵ Cf. I/A Court H.R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Series C No. 177, paragraphs 59 *et seq*

²⁶⁶ Cf. 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, paragraphs 105-108.

²⁶⁷ Cf. 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, paragraphs 106 and 108.

²⁶⁸ IACHR, *Case 12,600, Hugo Quintana Coello et al. (Supreme Court) with respect to Ecuador (Merits)*, August 2, 2011, paragraph 95.

²⁶⁹ IACHR, *Case 12,600, Hugo Quintana Coello et al. (Supreme Court) with respect to Ecuador (Merits)*, August 2, 2011, paragraph 95.

²⁷⁰ United Nations. General Assembly. Human Rights Council. Report of the Special Rapporteur on the independence of judges and lawyers, *Leandro Despouy*, A/HRC/11/41, March 24, 2009, paragraph 57. Also, the *Universal Charter of the Judge*

European Court wrote that the principle of legality requires not only that the impugned measure should have some basis in domestic law, but also refer to the quality of the law in question. The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.²⁷¹ As the Inter-American Court has held, “[i]n the disciplinary sphere, it is essential to indicate the violation precisely and to submit arguments that allow it to be concluded that the comments provide sufficient grounds to justify removing a judge from a post.”²⁷²

176. From this standpoint, the grounds for removal of judges established by constitutional law may be set out in more or less general and abstract terms, given the nature of constitutional clauses. However, when embodied in a disciplinary system, those constitutional clauses must be restated in very precise terms that clearly establish what the prohibited behaviors are.²⁷³ As the Inter-American Court wrote in its judgment on a case in which the principle of strict legality also should have been applied, this means establishing a clear definition of the punishable conduct and its elements, so as to distinguish that conduct from non-punishable behaviors.²⁷⁴ This is essential to enable judges to steer their behavior according to an established legal system.²⁷⁵ Vague and broad disciplinary systems that give an unacceptable margin of discretion to the authorities charged with conducting proceedings in which magistrates and judges are tried, are incompatible with the American Convention.²⁷⁶ The United Nations Special Rapporteur on the Independence of Judges and Lawyers has written that “the law must give detailed guidance on the infractions by judges triggering disciplinary measures, including the gravity of the infraction which determines the kind of disciplinary measure to be applied in the case at hand.”²⁷⁷

2. Analysis of the present case

a. Concerning the absence of a connection between the articles cited and the conduct for which the victims were disciplined.

provides that “Disciplinary action against a judge can only be taken when provided for by pre-existing law and in compliance with predetermined rules of procedure.” Article 11 of the *Universal Charter of the Judge*, unanimously approved by the delegates attending the meeting of the Central Council of the International Association of Judges in Taipei (Taiwan) on November 17, 1999.

²⁷¹ ECHR. *Case of Maestri v. Italy (Application no. 3974/98)*. Judgment. Strasbourg, 17 February 2004, p. 30.

²⁷² I/A Court H.R. *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, paragraph 120.

²⁷³ Cf. I/A Court H.R. *Case of Usón Ramírez v Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 55.

²⁷⁴ Cf. I/A Court H.R. *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraph 55 and Cf. *Case of Baena Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paragraphs 105-107.

²⁷⁵ Cf. 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, paragraphs 106 and 108.

²⁷⁶ Cf. 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, paragraphs 43 and 44.

²⁷⁷ United Nations, Report of the Special Rapporteur on the Independence of Judges and Lawyers, A/HRC/11/41, March 24, 2009, paragraph 57.

177. To begin with, the Commission notes that the decisions ordering the victims' dismissal contain a description of the conduct for which they incurred disciplinary blame; that description is followed by a paragraph listing a long series of articles from various laws. The Commission notes that the drafting of the decision of dismissal -described in the Section of Established Facts-, makes it impossible to distinguish the articles containing the grounds for disciplinary action from those that concern the functions and powers vested in the authorities who participated in the disciplinary proceeding, those that refer to the rules of procedure of the proceeding, or even the rules of due process.

178. The Commission has already alluded to the implications that a simple recitation of the articles can have for the duty to state grounds and for the alleged victims to be able to properly exercise their right of defense before the Judicial Career Council. For purposes of the principle of legality, the Commission must point out that a simple reading of the decisions ordering the victims' dismissal will not suffice to establish the connection between the articles listed in the decisions to dismiss and the conduct attributed to the victims. The Commission is of the view that the non-specific use of disciplinary rules and the lack of clarity as to how the facts of each case would fit each of the provisions cited constitute a violation of the principle of legality.

b. Precision in stating the grounds

179. Secondly, of the articles cited, the Commission has been able to establish that at least the following concerned guidelines for or restrictions on the conduct of judicial officials: i) from the Constitution: 319 (invoked in the decisions concerning Magistrate Tirza Flores and judges Chévez de la Rocha and López Lone) and 323 (invoked in the decision ordering dismissal of Judge López Lone); ii) from the Judicial Career Service Act: 44 (invoked in the decisions concerning Judges López Lone and Chévez de la Rocha and Magistrate Tirza Flores); 45 (invoked in the decisions concerning Judge López Lone and Magistrate Tirza Flores); 53(g) (invoked in the decisions concerning judges López Lone and Chévez de la Rocha and Magistrate Tirza Flores); 54(c) (invoked in the case of Magistrate Tirza Flores); 55 (invoked in the decisions ordering dismissal of judges López Lone and Chévez de la Rocha and Magistrate Tirza Flores); iii) from the Regulations Governing the Judicial Career Service Act, articles 149 (cited in the decisions to dismiss each of the alleged victims); 157 (cited in the decisions dismissing Magistrate Flores Lanza and Judge Barrios); 172 (f) (cited in the decisions to dismiss each of the alleged victims); 173 (c) (cited in the decisions to dismiss Judge Barrios and Magistrate Flores Lanza); 174 (cited in the decisions to dismiss each of the alleged victims); iv) from the Law on the Organization, Functions and Authorities of the Courts: Article 3 (1) (cited in the decision to dismiss Judge Chévez); 4 (cited in the decision to dismiss Judge Chévez de la Rocha), 3 (6) (cited in the decision to dismiss judges López Lone, Barrios and Chévez de la Rocha); 108 (cited in the decisions to dismiss Magistrate Flores Lanza and Judge Barrios); v) from the Code of Ethics for Judicial Officials and Employees: 1(1)(d) (cited in the decisions to dismiss judges Chévez and Barrios and Magistrate Flores Lanza), 1(1)(f) (cited in the decisions to dismiss judges López Lone and Chévez de la Rocha), 2 (d) (cited in the decisions to dismiss judges Chévez and Barrios and Magistrate Flores Lanza), 2(f) (cited in the decision to dismiss Judge Chévez de la Rocha), and 8(a) (cited in the decisions to dismiss each of the alleged victims); from the Statute of the Ibero-American Judge, articles 10 and 20 (cited in the decisions to dismiss each of the alleged victims).

180. The Commission observes that a number of the articles cited do not contain a clear and precise definition of what the punishable conduct would be, thereby preventing judges from comporting themselves in such a way that they do not incur any of the grounds for dismissal. In these decisions, the Supreme Court cited grounds such as observing "irreproachable conduct, in private and in public, at all

times and in all places” (Article 44 of the Judicial Career Service Act and Article 149 of the Regulations Governing the Judicial Career Service Act); not engaging in “acts inimical to the dignity of the administration of justice”, such as “engaging, either directly or indirectly, in activities unbecoming the dignity of the office” (Art. 53 (g)) of the Judicial Career Service Act and 172 (f) of the Regulations Governing the Judicial Career Service Act); “serving his office with dignity, while refraining from any conduct at variance with the seriousness and decorum that it demands,” “avoiding indecent places,” participating in acts “that can disrupt public order” (Article 1 of the Code of Ethics for Judicial Officials and Employees); and “comporting oneself as a model citizen, so that there can be no question as to one’s balanced judgment, prudence and the thoughtfulness of one’s decisions” (Article 8 of the Code of Ethics for Judicial Officials and Employees).

181. In the Commission’s view, the descriptions of the grounds for dismissal, such as those cited above, are stated in sweeping and yet vague terms and thus give the authorities charged with enforcing them an ample margin of discretion. The Commission therefore considers that they do not conform to the standards of predictability required under Article 9 of the Convention, read in conjunction with articles 1 and 2 thereof.

c. Grounds that can involve the lawful exercise of other rights

182. The Commission also notes that one set of articles invoked by the Supreme Court concerns grounds for disciplinary action whose content more closely approximates the conduct of the alleged victims. The Commission will now turn its attention to those articles.

183. The Commission observes that the decisions to dismiss judges López Lone and Chévez de la Rocha and Magistrate Flores Lanza invoked Article 319 of the Constitution. That article reads as follows:

Article 319. Judges and magistrates shall provide their services to the Judicial Branch exclusively and shall not therefore practice the legal profession independently, nor may they provide legal counsel or advice to any person. This rule does not apply to teaching or (ad hoc) diplomatic functions.

Judicial officials and auxiliary personnel in the Judicial Branch, from the judicial and administrative areas alike, shall not, under any circumstances, participate in partisan activities of any kind, except to cast their personal vote. Nor may they unionize or go on strike.

184. As for the application of the first paragraph of Article 319 to the conduct of Magistrate Tirza Flores Lanza, the Commission notes that the contents of both, the criminal complaint and the request for nullification of the proceedings conducted on the petition she filed seeking *amparo* relief, could be understood as activities of defense of human rights in the context of the events associated with the *coup d’état*.

185. The constitutional prohibition is embodied in Article 108 of the Law on the Organization, Functions and Authorities of the Courts and Article 157 of the Regulations Governing the Judicial Career Service Act. The Judicial Career Council observed that Article 12 of the Organic Law of the Honduran Bar Association provides that the practice of solicitorship is the exclusive purview of “attorneys and persons with degrees in legal and social sciences who are members of the Bar”; Article 11 of that law provides

that the “authority to represent interests before the courts and tribunals [...] is the exclusive purview of attorneys and persons with degrees in legal and social sciences who are members of the Bar”; it goes on to state that the exceptions to that rule include “representation in connection with petitions of *habeas corpus* or *amparo*.” The Supreme Court held that, given the facts established, “attorney FLORES LANZA effectively engaged in solicitorship” inasmuch as “she did not act as a simple citizen, but instead was practicing her profession; moreover, no evidence was produced to show that she was in any way related to Mr. JOSÉ ZELAYA ROSALES, whom she was representing, either as spouse, ward or as a relative within the fourth degree of consanguinity or second degree of affinity.”

186. The Commission notes first that in order to determine the scope of the restriction established in Article 319 of the Constitution, the Judicial Career Council had to turn to at least three different laws, which is an indicator of how vague and imprecise those articles were in terms of the scope of the prohibition contained therein and its legal consequences.

187. The Commission also observes that the Council’s interpretation of that prohibition, rendered on the basis of imprecise laws, is that judges are prohibited from engaging in legal advocacy and representation, the purpose being, according to Article 319 of the Constitution, that they should “provide their services to the Judicial Branch exclusively.” The Commission believes that prohibiting judges from engaging in legal advocacy and representation has a legitimate purpose, which is precisely to safeguard the independence and impartiality of judges in the cases in which they participate. However, the Commission observes that the Judicial Career Council’s interpretation of the prohibition was that it is not absolute; instead, an exception is made for those procedural acts that are not the exclusive purview of attorneys and *licenciados*, among them “the procedures associated with petitions of *habeas corpus* or *amparo*.”

188. Exercise of the right to defend human rights by filing petitions like *amparo* is essential in a democratic society²⁷⁸.

189. In the instant case, the Commission notes that according to the Judicial Career Council’s interpretation, the “procedures associated with petitions of *habeas corpus* or *amparo*” would not constitute solicitorship, and hence would not be prohibited in the case of judges. However, it is unclear to the Commission whether the Council’s phrase “procedures associated with petitions of *habeas corpus* or *amparo*” would include petitions filed seeking nullification of proceedings on petitions seeking *amparo* relief, or is confined to the filing of the petition without any follow-up. The Commission considers that the prohibition formulated by the Council to dismiss Magistrate Flores Lanza does not clearly define the parameters of permissible procedures in connection with petitions of *amparo*, and those that are impermissible. In the opinion of the Commission, this ambiguity affects the person’s ability to foresee what conduct is permissible and what conduct is impermissible, in violation of Article 9 of the Convention, and in practice would render the defense of human rights through a petition of *amparo* illusory.

²⁷⁸Specifically regarding the constitutional remedy [*amparo*], the Court has established that “Article 25(1) of the Convention is a general provision that gives expression to the procedural institution known as *amparo*, which is a simple and prompt remedy designed for the protection of all the fundamental rights. I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9. paragraph 23.

190. In the section on the rights to freedom of expression and assembly, at XX *infra*, specifically in the analysis of strict legality, the Commission will discuss the prohibition established in the second paragraph of Article 319, which was invoked in the decisions to dismiss judges Chévez de la Rocha and López Lone.

d. The applicable sanctions

191. The Commission observes that a number of the grounds for disciplinary action invoked against the alleged victims are not in the Judicial Career Service Act, but instead appear in other legal instruments like the Regulations Governing the Judicial Career Service Act, the Code of Ethics for Judicial Officials and Employees, and the Law on the Organization, Functions and Authorities of the Courts. Norms devised by international summits were even invoked to take disciplinary action against the victims, such as articles from the Statute of the Ibero-American Judge and the Model Ibero-American Code of Judicial Ethics. The Commission observes that from the standpoint of the domestic legal system, ordering disciplinary sanctions for conduct established in instruments other than the Judicial Career Service Act would be a violation of its Article 51, which provides that officials may “only be removed for conduct constituting grounds for dismissal.” Furthermore, as no sanctions are prescribed for the grounds invoked in the case of the alleged victims, any disciplinary sanction applied is in violation of the principle of freedom from *ex post facto* laws protected by Article 9 of the Convention.

192. Because of the multiple problems both with the formulation of the grounds for disciplinary action and in the lack of predictability as to the applicable sanctions, the Commission concludes that the Honduran State violated the principle of legality or freedom from *ex post facto* laws established in Article 9 of the American Convention, read in conjunction with articles 1(1) and 2 thereof, to the detriment of Guillermo López Lone, Ramón Barrios, Luis Alonso Chévez de la Rocha and Tirza Flores Lanza.

D. Right to freedom of expression (Article 13 of the American Convention), right of assembly (Article 15 of the American Convention), the principle of freedom from *ex post facto* laws and the non-retroactivity of the law (Article 9 of the Convention), read in conjunction with the duties to respect rights and adopt domestic legal measures (articles 1(1) and 2 of the American Convention)

193. The relevant parts of Article 13 of the American Convention read as follows:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a. respect for the rights or reputations of others; or
 - b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

[...]

194. As determined in the section on established facts, judges Guillermo López Lone, Luis Alfonso Chévez de la Rocha and Ramón Barrios and Magistrate Tirza del Carmen Flores Lanza were subjected to disciplinary proceedings because they expressed, through various means, their opposition to the *coup d'état* that happened in Honduras on June 28, 2009. As a result of the disciplinary proceedings, the Honduran SCJ removed the alleged victims from their seats on the bench; the Judicial Career Council later reinstated Judge Barrios.

195. The petitioners alleged that these disciplinary sanctions constituted a violation of the alleged victims' right to freedom of expression. In general terms, the petitioners argued that judges do not, because of the office they hold, forfeit their right to express their views; their argument was that the subsequent imposition of liability for exercise of this right should be clearly spelled out in the law, be calculated to achieve a legitimate purpose and be necessary in a democratic society. They pointed out that the alleged victims' actions were not among the conduct subject to sanction listed in the Honduran legislation and that the majority of the laws cited as the basis for the dismissals are "broad and ambiguous" and allow for "arbitrary interpretations." They also indicated that the sanctions served no legitimate purpose; instead, their purpose was "to prevent judges from continuing to raise questions about the regrettable role that the Honduran SCJ played, to send an intimidating message to the professional association of judges, further undermining judicial independence." The petitioners also alleged that sanctions were unnecessary in a democratic society, because "commentary of this type was important and necessary for democracy given the events unfolding in Honduras at the time." The context was such that the alleged victims thought that speaking out was not just their right but also their duty.

196. The petitioners added that the State's action is also a violation of Article 13(3) of the American Convention, since the disciplinary proceedings to which the alleged victims were subjected were in themselves an indirect means "of silencing the stream of criticism of what the justices of the SCJ have done since the *coup d'état*, and provoking self-censorship."

197. The petitioners also alleged that the case brought against Judge Guillermo López Lone was also a violation of the right to peaceful, unarmed assembly recognized in Article 15 of the American Convention, "because he was being disciplined for his participation in peaceful demonstrations that opposed the *coup d'état* and in support of constitutional order." They argued that for Judge López, "exercising this right was an essential means of expressing criticism of the activities of the Honduran authorities at that time." They added that while Judge Chévez de la Rocha did not participate in the demonstration for which he was disciplined, even if he had, those activities are permitted under the right protected in Article 15 of the Convention.

198. The State, for its part, maintained that the sanctions against the alleged victims were imposed because "they engaged in conduct that, under the Honduran legal system, is prohibited conduct because of their role as judges." It asserted that "public servants in the judicial branch – especially judges and magistrates- are not just any citizens" and that their freedom of expression "is curtailed by the limitations imposed by the domestic laws governing their judicial status." The State

further argued that the disciplinary sanctions ordered in the case of the alleged victims were warranted because they “made political statements [...] incompatible with the independence and impartiality required of them under the laws that apply to them.” The State also underscored the claim that the alleged victims’ actions were not justified by events in Honduras, since there was no *coup d’état*; it also argued that because “the Honduran State did not violate the Honduran legal system or the American Convention, the petitioners are misleading the Commission by claiming *political motivations*.”

199. Clearly the parties disagree on the scope of the alleged victims’ right to freedom of expression as judges in the Judicial Branch, and on the legitimacy of the various measures taken by the State in this case, against the backdrop of the *coup d’état*. To determine whether there has been a violation of Article 13 of the American Convention, the first order of business is some general observations on the scope and permissible restrictions of the right to freedom of expression in the case of judicial officials. Based on these observations, the Commission will then decide whether there was, in fact, some restriction or limitation of each alleged victim’s exercise of freedom of expression and if so, whether that limitation or restriction fulfilled the requirements established in Article 13(2) of the Convention.

200. Ultimately, what the Commission will analyze is whether, as the petitioners contend, the administrative disciplinary proceedings to which the alleged victims were subjected were a means of bringing indirect pressure to bear to silence officials in the Judicial Branch from speaking out against the *coup d’état*, in violation of Article 13(3) of the American Convention.

1. The right to freedom of thought and expression enjoyed by officials in the judicial branch

201. Under the American Convention, freedom of expression is the right of *every person*, under conditions of equality and without discrimination of any kind or on any grounds. As the case law has held, ownership of the right to freedom of expression cannot be confined to a specific profession or group of persons, or to the realm of freedom of the press.²⁷⁹ The broad perspective adopted in the American Convention includes public officials, who do not forfeit their basic rights upon taking office; instead they enjoy the same broad freedom of expression that every other person enjoys.²⁸⁰ The Commission considers that being public officials, judges also enjoy this right.

202. Inter-American doctrine and case law have allowed that the exercise of the right to freedom of expression by public officials has certain specific connotations and distinctive characteristics.²⁸¹ The Commission considers that officials in the judicial branch have a special duty to

²⁷⁹ I/A Court H.R. *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009 Series C No. 193, paragraph 114.

²⁸⁰ The European Court of Human Rights has on a number of occasions maintained that the right protected by Article 10 of the European Convention extends to public officials and employees. See European Court of Human Rights, *Vogt v. Germany*, paragraph 53 (on a public high school teacher’s right to freedom of thought and expression); *Wille v. Lichtenstein*, paragraphs 41 *et seq* (on a judge’s freedom of expression on his views on the competence of the Constitutional Court); *Ahmed and others v. United Kingdom*, paragraph 56 (on the restrictions of certain public officials’ participation in politics), and others.

²⁸¹ In this regard, the inter-American organs have maintained that State officials not only enjoy the right to freedom of expression; under certain circumstances, exercise of that right may be a duty (I/A Court H.R. *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, paragraph 139; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, paragraph 151). As the Inter-American Court wrote, “making a statement on public-interest matters is

maintain discretion and exercise prudence for the sake of safeguarding the principles of the independence and impartiality of the judiciary. In fact, these principles, recognized in many international treaties and statements of principles,²⁸² are fundamental if the democratic system is to function properly. Protection of these principles may necessitate subsequent imposition of liability to members of the judicial branch for abusing their right to free speech. The *United Nations Basic Principles on the Independence of the Judiciary* recognized that “[...] members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.”²⁸³ Likewise, Principle 4.6 of the *Bangalore Principles of Judicial Conduct* provide that “[a] judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but, in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.”²⁸⁴

203. Nevertheless, the *jurisprudence constante* of the Inter-American Court and the Inter-American Commission has been that such limitations must be the exception and to be admissible, three preconditions derived from Article 13(2) of the Convention must be met: (1) the limitation must have been precisely and clearly defined through formal and material law; (2) the limitation must be designed to achieve imperative objectives authorized by the American Convention; and (3) the limitation must be necessary in a democratic society, adequate to meet the objective it pursues, and strictly proportional to the end sought.

204. Thus, administrative punitive systems that allow for subsequent imposition of liability on a judge for exercising his or her right to freedom of expression must follow the requirements derived

not only legitimate but, at times, it is also a duty of the state authorities.” (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, paragraph 131) Suffice it to point out that the legal functions and authorities of public officials, particularly the highest ranking public officials in the executive branch, include special duties directly or indirectly related to the exercise of their right to freedom of expression, namely: (1) a special duty to reasonably verify the facts on which their statements are based; 2) a duty to ensure that their statements do not amount to human rights violations and, in particular, do not violate the rights of those who contribute to the public discourse by expressing and imparting their ideas, such as journalists and human rights defenders; (3) a duty to ensure that their statements do not interfere with the Independence and autonomy of the judicial authorities; (4) a duty to respect the confidentiality of certain information in the State’s possession, within the framework established by Article 13(2) of the Convention, and (5) a special duty to denounce human rights violations (IACHR, Report of the Office of the Special Rapporteur for Freedom of Expression 2009, OEA/Ser.L/V/II.Doc. 51, December 30, 2009, Chapter III, paragraphs 202 *et seq*)

²⁸² See, in this regard, the 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, August 26 to September 6, 1985, and endorsed by the General Assembly in its resolutions 40/32 of November 1985 and 40/146 of December 3, 1985); Bangalore Principles of Judicial Conduct; International Covenant on Civil and Political Rights (Article 14); the Statute of the Ibero-American Judge, adopted by the VI Ibero-American Summit of Chief Justices of the Supreme Courts and Supreme Tribunals of Justice, held in Santa Cruz de Tenerife, the Canary Islands, Spain, May 23-25, 2001; American Convention on Human Rights (articles 8, 59 and 71); European Convention on Human Rights (Article 6), and others.

²⁸³ Principle 8, 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, August 26 to September 6, 1985, and endorsed by the General Assembly in its resolutions 40/32 of November 1985 and 40/146 of December 3, 1985.

²⁸⁴ Principle 4.6, *Bangalore Principles of Judicial Conduct*, approved by the United Nations Economic and Social Council in its resolution E/CN.4/2003/65/Annex, as revised at The Hague, the Netherlands, November 2002 and adopted on January 10, 2003.

from Article 13(2) of the Convention to be in compliance with it. Given their relevance to the case at hand, the IACHR will now clarify the scope of each of the three preconditions mentioned above, as they relate to the principles of judicial independence and impartiality.

205. Under Article 13(2) of the American Convention, any limitation or restriction of the right to freedom of expression must be expressly established by law. The *jurisprudence constante* of the Inter-American Court has been that it must be a law in both the formal and material sense and establish in clear and precise terms the grounds for subsequent imposition of liability to which the exercise of freedom of expression may be subject.²⁸⁵ Therefore, it has held that vague or ambiguous provisions that grant discretionary powers to the authorities are incompatible with the American Convention, because they can support potential arbitrary acts that are tantamount to prior censorship or that establish disproportionate liabilities for the expression of protected speech.²⁸⁶

206. The precision and rigor of the language of provisions that provide for restrictions on freedom of expression is a function of the severity of the restriction.²⁸⁷ Thus, limitations imposed through criminal law are subject to the strictest test of legality, and must meet the requirements established in Article 9 of the Convention,²⁸⁸ under which “[n]o 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.” The same is true of limitations imposed through punitive administrative proceedings, especially when such proceedings can lead to such serious sanctions as dismissal. The Inter-American Court has written that Article 9 of the Convention applies to these proceedings, since they “constitute an expression of the State’s punitive power” that implies impairment, denial or alteration of individuals’ rights as a consequence of unlawful conduct.²⁸⁹

207. To determine the legitimacy of a measure that severely restricts the right of expression in the case of judges and magistrates, it is not sufficient that such restriction be clearly and precisely spelled out in the law. Under Article 13(2) of the Convention, a determination must be made as to whether the restriction is lawful and justified under the American Convention. As previously observed, Article 13(2) of the Convention provides that the exercise of the right to freedom of expression is subject only to subsequent imposition of liability, which shall be established by law to the extent necessary to

²⁸⁵ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paragraphs 39-40; I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 79; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, paragraph 120; I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, paragraph 117; IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of *Desacato* Laws with the American Convention on Human Rights. Title IV. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995; IACHR. Report No. 11/96. Case No. 11,230. *Francisco Martorell*. Chile. May 3, 1996, paragraph 55; IACHR. Arguments to the Inter-American Court in the *Case of Ricardo Canese v. Paraguay*. Transcribed in: I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, Paragraph 72 (a).

²⁸⁶ See IACHR, Report of the Office of the Special Rapporteur for Freedom of Expression 2009, OEA/Ser.L/V/II.Doc. 51, December 30, 2009, Chapter III, paragraph 71.

²⁸⁷ Cf. I/A Court H.R. *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Series C No. 177, Paragraph 59 *et seq*

²⁸⁸ Cf. 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, paragraphs 105-108.

²⁸⁹ Cf. 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, paragraphs 106 and 108.

ensure “respect for the rights or reputations of others” or “the protection of national security, public order, or public health or morals.”

208. For the reasons explained below, the Commission considers that a restriction imposed on freedom of expression for the sake of defending the principles of judicial independence and autonomy serves legitimate purposes that qualify as protection of institutional public order. Indeed, the importance and relevance of these basic principles has been explicitly stated throughout this report.

209. Even so, it would be a mistake to maintain that the laws need only serve a legitimate purpose for a restriction on freedom of expression to be permissible. Inter-American case law has consistently held that it has to be established whether the restriction is truly useful, necessary and strictly proportional to achieve that legitimate purpose sought. The paragraphs that follow summarize the basic criteria developed in the literature and case law to advance this third phase of the necessity test.

210. Both the Inter-American Commission and the Inter-American Court have held that the right to freedom of thought and expression has two dimensions: an individual and a social. The individual dimension of this freedom is the right of every person, without discrimination, to seek, impart and receive ideas and information of all kinds and by any means, without undue interference. However, the function of freedom of expression is not confined to the defense of individual rights. From the social standpoint, freedom of expression is a right that is an intrinsic part of democracy.²⁹⁰ The organs of the inter-American human rights system have described the relationship between democracy and freedom of expression as “close,” “indispensable” and “essential.”²⁹¹ The Inter-American Court held that

[f]reedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public.²⁹²

211. The link between freedom of expression and democracy is so essential that, as the IACHR explained, the very purpose of Article 13 of the Convention is to strengthen the functioning of pluralist and deliberative systems by protecting and promoting the free exchange of ideas and

²⁹⁰ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paragraph 70; I/A Court H.R. *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, paragraph 85; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, paragraph 112; I/A Court H.R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, Paragraph 82; I/A Court H.R. *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, paragraph 105; I/A Court H.R. *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, paragraph 116.

²⁹¹ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paragraph 70; I/A Court H.R. *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, paragraph 85; I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, paragraph 116; I/A Court H.R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, paragraph 86.

²⁹² I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paragraph 70.

expression of all kinds.²⁹³ Article 4 of the Inter-American Democratic Charter provides that “freedom of expression and of the press are essential components of the exercise of democracy.” In effect, full exercise of the right to express one’s ideas and opinions and impart available information and the opportunity to discuss, in an open and unfettered manner, is a *conditio sine qua non* for democratic systems to function properly.²⁹⁴

212. Based on the foregoing, time and time again the Inter-American Court has held that in a democratic and pluralist system, expression, information and opinions on matters of public interest and on the State and its institutions enjoy greater protection under the American Convention, which means that the State must take greater care to refrain from establishing limitations on these forms of expression; the institutions and officials of the State, and those who aspire to public office, must have a higher threshold of tolerance for criticism, given the public nature of the functions they perform.²⁹⁵ In a democratic society, opinion plays a pivotal role in the oversight of public affairs; hence, the margin for any kind of restriction on political discourse or discussion of public issues is very narrow. Seen from this perspective, legitimate protection of the principles of judicial independence and impartiality cannot be premised on the notion that a judge must remain silent on public issues. Any restrictions must strike a proper balance between expression and the duty of judges to exercise the discretion and prudence necessary to protect the independence and autonomy of their office.

213. The European Court of Human Rights had occasion to analyze the limits on freedom of expression of officials in the judiciary in a case where the debate centered around the question of whether a sanction imposed on a judge for expressing harsh criticism of other public servants and, in particular, the judiciary itself, was legitimate. In effect, in the case of *Kudeshkina v. Russia*, the European Court held that the removal of a judge for having made public statements criticizing the judicial branch’s lack of independence was a violation of the judge’s right to freedom of expression recognized in Article 10 of the European Convention on Human Rights. The Court reasoned that “issues concerning the functioning of the justice system constitute questions of public interest, the debate on which enjoys the protection of Article 10 [of the European Convention on Human Rights].”²⁹⁶ While the European Court acknowledged that judges must be particularly observant in those cases where the independence and impartiality of the justice system might be impugned, it also reasoned that the mere fact that a given matter has political implications “is not by itself sufficient to prevent a judge from making any statement on the matter.”²⁹⁷

²⁹³ IACHR. Arguments to the Inter-American Court in the *Case of Ivcher Bronstein v. Peru*. Cited in: I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, Paragraph 143. d); IACHR. Arguments to the Inter-American Court in the *Case of the “Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*. Cited in: I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, Paragraph 61. b).

²⁹⁴ Cf. I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paragraph 69.

²⁹⁵ Cf. I/A Court H.R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 83, and I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107.

²⁹⁶ European Court of Human Rights, *Case of Kudeshkina v. Russia*, judgment of February 26, 2009, paragraph 86.

²⁹⁷ European Court of Human Rights, *Case of Kudeshkina v. Russia*, judgment of February 26, 2009, paragraph 95. See also, European Court of Human Rights, *Case of Wille v. Lichtenstein*, judgment of October 28, 1999, in which the Court held that constitutional issues always have political implications, but that element alone should not prevent judges from making any statement on such matters.

214. Following this same line of reasoning, the IACHR states that in every case in which a violation of the duty to exercise prudence was alleged because of a judge's participation in a matter of public interest that is not at issue in a case over which said judge is presiding, a careful assessment must be done to determine whether the expression of opinion affected the judge's independence and impartiality to such an extent as to warrant a disciplinary sanction. It is up to the State to prove that the purpose of the limitations imposed is to protect these principles and that they have no other hidden agenda; that they have been interpreted narrowly, as they constitute an exception to the general principle whereby freedom of expression is a right guaranteed to every person equally, and is especially protected in the case of speech on matters of public interest.²⁹⁸ As the European Court of Human Rights has written in its case law, "freedom of expression is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established."²⁹⁹ Also, as previously observed, when speech concerning the State or matters of public interest is concerned, the examination of the need for and proportionality of the restrictions on a judicial official's right to freedom of expression must be more rigorous.

215. Given this framework of legal principles, the IACHR will now examine the subsequent liability imposed in this specific case.

2. Limitations imposed in the specific case.

216. Based on the foregoing considerations, the IACHR will now determine whether the disciplinary proceedings and the sanctions imposed on the alleged victims are a restriction of their right to freedom of expression as judicial officials and, if so, if that restriction meets the necessity test that the American Convention establishes for the purpose.

217. The Commission observes that the facts and grounds cited for the alleged victims' removal, and which triggered the disciplinary proceedings against them, are different from case to case. The Commission will therefore examine each particular case separately.

a. Adán Guillermo López Lone

218. As previously established, Judge López Lone underwent disciplinary proceedings for alleged violation of a number of provisions of the Honduran legal system. After spending almost a year facing disciplinary proceedings, on May 5, 2010 the SCJ, *en banc*, decided to order Judge López Lone's dismissal on the grounds that he "h[ad] taken active part in the political demonstration held on July 5, 2009," in violation of the provisions of Article 319 of the Constitution and Article 3(6) of the Law on the Organization, Functions and Authorities of the Courts. The decision also stated that "no judge may claim a right to participate in the national political discourse like any other citizen, precisely because judges

²⁹⁸ Cf. I/A Court H.R. *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, paragraph 114. In this case, the Court held that where the Court held that "[t]he American Convention guarantees this right to every individual, irrespective of any other consideration; so, such guarantee should not be limited to a given profession or group of individuals. Freedom of expression is an essential element of the freedom of the press, although they are not synonymous and exercise of the first does not condition exercise of the second. The instant case involves a lawyer who claims protection under Article 13 of the Convention."

²⁹⁹ European Court of Human Rights, *Case of Pitkevich v. Russia*, judgment of February 8, 2001.

are not just any persons....” The Judicial Career Council confirmed this decision on August 24, 2011, and concluded that it had been duly established that the alleged victim

[t]ook active part in the partisan political demonstration staged in the vicinity of Toncontín Airport, with flags bearing the insignia of the different political organizations and ideologies represented there. In addition, the newspapers with the country’s widest circulation consistently mentioned that because of Attorney LOPEZ LONE’s participation, he was regarded as a partisan politician, given his role as Judge on the San Pedro Sula Sentencing Court. Hence, by his conduct he violated Article 319 (2) of the Constitution [...] and Article 3 (6) of the Law on the Organization, Functions and Authorities of the Courts [...] as such conduct is incompatible with exercise of the office of judge, as provided in Article 49 of the Judicial Career Service Act and Article 156 of its Regulations.

219. From the foregoing it is self-evident that the disciplinary administrative proceeding that removed Adán López Lone from the office of Judge of the San Pedro Sula Sentencing Court was because of his participation in a political demonstration held to protest the *coup d’état* in Honduras, and to that extent clearly affected the exercise of his right to freedom of expression and his right of assembly, protected by Article 15 of the Convention.

220. The Inter-American Commission has maintained that the right to demonstrate publicly or to engage in social protest as a means to mobilize society to take active part in public discourse and assert rights, is an essential element of the exercise of democracy and, as such, is protected by both the right of assembly protected under Article 15 of the American Convention, and the right to freedom of expression, protected by Article 13 of that instrument. As other international bodies for the protection of human rights have held,³⁰⁰ the expression of opinions is one of the purposes of the right of assembly; hence, exercise of the right of assembly is premised upon the effective enjoyment of the right to freedom of expression. Of course, the most impoverished sectors frequently do not have access to the traditional channels to make their complaints known, such as the press; the institutional complaint mechanisms may be either lacking or not very effective; so for them, protest becomes a vital vehicle for effective and inclusive citizen participation in public affairs.³⁰¹

221. This becomes even more relevant when, as happened in the case under study, an institutional and democratic crisis occurs that erects prodigious obstacles to criticism and public discourse. As the Commission observed, “[w]eak public institutions, government corruption and other problems often prevent human rights violations from being brought to light and punished. In countries affected by such problems, the exercise of freedom of expression has become the main means by which

³⁰⁰ See, for example, ECHR, *Case of Vogt v. Germany*, Judgment of September 26, 1995, Series A, No. 323, paragraph 64; ECHR, *Case of Rekvényi v. Hungary*, Judgment of May 20, 1999, Report on Judgements and Decisions 1999-III, paragraph 58; ECHR, *Case of Young, James and Webster v. the United Kingdom*, Judgment of August 13, 1981, Series A, No. 44, para. 57; ECHR, *Case of Refah Partisi (The Welfare Party) and others v. Turkey*, Judgment of July 31, 2001, para. 44, available at <http://www.echr.coe.int>; ECHR, *Case of United Communist Party of Turkey and others v. Turkey*, Judgment of January 30, 1998, Report 1998-I, para. 42. IACHR. Annual Report 2005. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V. *Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly*. OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006. Paragraph 6. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=662&IID=1>

³⁰¹ IACHR. Annual Report 2005. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V. *Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly*. OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006. Paragraphs 129 to 149. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=662&IID=1>

illegal or abusive acts previously unnoticed, ignored or perpetrated by authorities are exposed.”³⁰² The IACHR has observed that “social protest and mobilization have become tools to petition the public authorities, as well as channels for public complaints regarding abuses or human rights violations.”³⁰³

222. Consequently, demonstration and social protest as the exercise of freedom of expression and right of assembly are a social imperative, leaving the State even less grounds to justify a restriction of these rights. The practical effect of the regulation of this right cannot be to prohibit assembly or peaceful demonstration. Thus, in language similar to Article 13 of the Convention, Article 15 of that instrument provides that exercise of that right “shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.”

223. Based on these considerations, the IACHR will now determine whether, as the petitioners contend, the dismissal sanction imposed on Judge López Lone for exercising the right of assembly and freedom of expression is legitimate under the provisions of the American Convention described above; in other words, whether (a) the sanction is spelled out clearly and precisely in a formal and material law; (b) it is calculated to accomplish the objectives authorized by the American Convention; and (c) it is necessary in a democratic society to accomplish the legitimate purpose to be served, suitable to accomplishing that purpose and strictly proportional to it.

224. In responding to the petition filed in this case, the State asserted that the Honduran law that applies to public servants in the Judicial Branch, i.e. the Judicial Career Service Act and the Law on the Organization, Functions and Authorities of the Courts, as well as the applicable regulations,³⁰⁴ comply with the international standards on the subject. According to the State, these laws clearly establish limitations on judges and magistrates by virtue of their office and the function they perform. In general, the State underscored the fact that on this matter, the judges “have voiced opinions and made public statements on events of a political nature that they claimed were in violation of the Honduran Constitution; they thereby adopted and publicly expressed a personal opinion in this regard.”

225. Article 51 of the Judicial Career Service Act guarantees judicial public servants the “right of tenure when they properly enter the service and they may only be removed for conduct constituting grounds for dismissal under the terms of the present Act and its Regulations.” The IACHR observes that Judge López Lone was removed from his office for violation of Article 319 of the Constitution of the Republic, Article 3(6) of the Law on the Organization, Functions and Authorities of the Courts, “as provided in Article 49 of the Judicial Career Service Act and Article 156 of its Regulations.” The Commission must examine the text to determine whether these legal provisions are in compliance with the principle of strict legality, under which any limitations on the right to freedom of expression that

³⁰² IACHR. *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. October 22, 2001, paragraph 267. See also, IACHR, *Second Report on the situation of human rights in Peru*, OEA/Ser.L/V/II.106 Doc. 59 rev. June 2, 2000. Chapter V, paragraph 20.

³⁰³ IACHR. Annual Report 2005. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V. *Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly*. OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006. Paragraph 1. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=662&IID=1>

³⁰⁴ These are the Regulations Governing the Judicial Career Service Act, the Internal Regulations of the SCJ and the Code of Ethics for Judicial Officials and Employees.

may lead to the dismissal of a judge or magistrate must be spelled clearly and precisely in a pre-existing law.³⁰⁵

226. The Constitution of the Republic of Honduras, adopted after democracy was restored in 1982, prohibits judicial officials from participating in “partisan activities”. The relevant part of Article 319 of the Constitution reads as follows:

Judicial officials and auxiliary personnel in the Judicial Branch in the jurisdictional and administrative areas **shall not** take part for any reason in partisan political activities of any kind, except to cast their personal vote. Nor may they unionize or go on strike.
[Emphasis added]

227. This constitutional prohibition, however, is expressed differently in the law: on the one hand, Article 49 of the Judicial Career Service Act, in force since 1973, provides that judicial officials shall not “*be active members of Political Parties, [and] take part in electoral debates*”; on the other hand, Article 3(6) of the Law on the Organization, Functions and Authorities of the Courts, adopted in 1936, states that judicial authorities shall not, *inter alia*: “*take part in political meetings, demonstrations or other acts, although the rest of the citizenry may take part in those activities.*” [Italics added].

228. As previously observed, the grounds for removing judges from office set forth in the Constitution, are expressed in more or less general and abstract terms. It is legislation that must fashion the constitutional principles into clear and precise laws spelling out the prohibited conduct. This does not mean that such provisions must be crafted with absolute precision; however, they should allow one to foresee what the penalty will be and be straightforward enough as to prevent any arbitrary interpretation on the part of the authority charged with enforcing them.

229. In the present case it is difficult to determine, with the certainty that strict legality demands, what the specific unlawful conduct is; in other words, what conduct on the part of Honduran judges does the law prohibit with respect to their participation in public demonstrations. While the constitutional clause prohibits judicial officials from engaging in any type of “partisan” activities, Article 49 of the Judicial Career Service Act prohibits active participation in political parties, whereas the broad language of Article 3 of the Law on the Organization, Functions and Authorities of the Courts appears to be an outright ban on judicial officials’ exercise of their rights to freedom of expression and assembly on matters of general interest, which goes far beyond the ban contained in the Constitution.

230. In effect, from a reading of Article 3(6) of the Law on the Organization, Functions and Authorities of the Courts as grounds for removal of Judge López Lone, and judging by its interpretation by the SCJ and the Judicial Career Council, it is apparent that this provision is not a law that can instruct

³⁰⁵ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paragraphs 39-40; I/A Court H.R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 79; I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, paragraph 120; I/A Court H.R. *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009 Series C No. 193, paragraph 117; IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of the *Desacato* Laws with the American Convention on Human Rights. Title IV. OEA/Ser. L/V/II.88. doc. 9 rev., February 17, 1995; IACHR. Report No. 11/96. Case No. 11.230. *Francisco Martorell*. Chile. May 3, 1996, paragraph 55; IACHR. Arguments to the Inter-American Court in the *Case of Ricardo Canese v. Paraguay*. Cited in: I/A Court H.R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, Paragraph 72. a).

a judicial official as to what his or her conduct should be, given how serious dismissal is as a disciplinary sanction for having exercised a human right. The ban on “participation in a political demonstration” to which the Supreme Court alludes when it decided to dismiss the alleged victim is expressed in the Law on the Organization, Functions and Authorities of the Courts in excessively vague and broad terms. The provision does not establish clear-cut parameters by which to foresee what constitutes a political demonstration; its practical effect, then, is to nullify the judge’s right to express opinions or participate in public demonstrations about any matter of public concern.

231. This is particularly dangerous when one considers that Article 3(6) of the Law on the Organization, Functions and Authorities of the Courts does not draw a clear distinction by type of conduct and speech, and does not give a court the authority to weigh various relevant factors, such as the timing, context and nature of the demonstration in which the judge participated and what his participation was seeking to express, in order to determine how severe the offense should be. Furthermore, the Law on the Organization, Functions and Authorities of the Courts does not even contain a system of disciplinary sanctions for the offenses therein established, which creates confusion as to the legal basis that would authorize enforcement of so severe a sanction as dismissal for noncompliance with the law, given the provision in Article 51 of the Judicial Career Service Act.³⁰⁶ The decisions handed down in this matter make reference to the Judicial Career Service Act, which provides, in broad terms, that public officials in the Judicial Branch may be dismissed from their offices for “serious or repeated noncompliance with or violation of” any of the duties, incompatibilities and conduct established therein, but does not specify when the conduct should be so deemed. The proof are the various decisions taken in this matter, none of which states the reasons why the alleged victim’s conduct is an instance of serious or repeated noncompliance with or violation of the law.

232. Given the foregoing, the Commission concludes that the ambiguity and breadth of the grounds for removal contemplated in Article 3(6) of the Law on the Organization, Functions and Authorities of the Courts applied in the present case, implies a failure to comply with the requirement of strict legality when imposing restrictions on the right of the three judges and one magistrate to their freedom of expression and their right of assembly, thereby also violating articles 9, 13(1), 13(2) and 15 of the American Convention, read in conjunction with Article 1(1) thereof. Likewise, because this violation occurred as a result of a law’s enforcement, the State also violated Article 2 of the Convention.

233. Having said this, the Commission must nonetheless examine whether the restriction or limitation in this case served some legitimate State imperative and whether it was strictly necessary to achieve that purpose, all for the sake of a systematic and thorough discussion of the possible violations of the right to freedom of expression that the case *sub judice* may involve.

234. The second part of the necessity test is to determine whether the purpose that the restriction serves is legitimate and justified under the American Convention. As previously noted, the Commission considers that a restriction or limitation on freedom of expression whose purpose is to defend the principles of judicial independence and impartiality serves legitimate ends that fit within the concept of institutional *ordre public*.

³⁰⁶ No supplementary reference is made to the Judicial Career Service Act. Its Article 85 provides that: “Cases not provided for in this law, its regulations or other related provisions shall be covered by the provisions of the Civil Service Law, the Code of Administrative Procedures, the Judicial Officials’ Retirement Act or, failing that, the provisions of the Civil Code and the Code of Administrative Procedures. Available [in Spanish] at: http://www.oas.org/juridico/spanish/mesicic2_hnd_anexo10.pdf

235. In effect, as previously observed, while judges' right to publicly express their views on matters of public interest is amply protected, they also have a special duty to exercise prudence and discretion with respect to the cases they are hearing and other matters, in order to safeguard the principles of independence and impartiality. The question that the Commission needs to answer, then, is whether the sanction imposed on the alleged victim was necessary, suitable and strictly proportional to ensure observance of the principles of independence and impartiality, which are essential to democratic *ordre public*.

236. In other cases, the organs of the inter-American system have held that when evaluating an alleged restriction or limitation to freedom of expression, the examination should not stop with the act in question; instead, the act must be examined in the context of the facts of the case as a whole, including the circumstances and context in which they occurred.³⁰⁷ The facts in this instance occurred in the context of the *coup d'état* that ousted President Manuel Zelaya of Honduras on June 28, 2009 and the emergence of a *de facto* government. In its report on *Honduras: Human Rights and Coup d'État*, the IACHR observed with concern that this serious institutional crisis also "took a heavy toll on the right to life, humane treatment, personal liberty, freedom of expression, sexual integrity, equality and nondiscrimination, the right to strike, the right to education, judicial guarantees, and others."³⁰⁸

237. For the IACHR, the interruption of democratic and constitutional order in a country is a matter of nationwide public concern of the highest order. Social protest and social mobilization as expression and resistance to a *coup d'état* are fully and amply protected by the American Convention. In such extraordinary times for a country's democratic way of life, the fact that a public official might face such a severe sanction as dismissal for having participated in a public demonstration on matters of fundamental importance to the preservation of democracy and the rule of law, must be subjected to the strictest scrutiny, where the State must credibly show that the dismissal was *truly necessary and suitable* in a democratic society. In other words, it must show that the restriction or limitation of rights is solely for the purpose claimed and that the same purpose could not have been *reasonably* served by a means less restrictive of human rights.

238. The evidence provided shows that on July 5, 2009, Judge López Lone participated in a massive public demonstration near Toncontín Airport, which was awaiting the arrival of President Zelaya. Tens of thousands of people were present at that demonstration. The SCJ's decision to dismiss Judge López Lone considered that the fact that he had "actively participated in the political demonstration" was conduct "unbecoming the dignity of his office, incompatible with the principles of ethics and with the laws governing the conduct of judicial officials." When deciding the appeal of Judge López Lone's dismissal, the Judicial Career Council held that it was not just a question of a simple "political demonstration", as described by the SCJ; it was also a "partisan" political demonstration, since there were "flags bearing the insignia of the different political organizations and ideologies represented there." The Commission notes that the Judicial Career Council did not specify what the various ideologies were, nor did it say whether Judge López Lone had actively supported any of the parties present at the demonstration. Apparently it also did not examine whether the persons attending the demonstration came from various sectors of society, not just members of political parties or supporters

³⁰⁷ Cf. I/A Court H.R. *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, paragraph 154.

³⁰⁸ IACHR, *Honduras: Human Rights and Coup d'état*. December 30, 2009. Paragraph 163. <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm>

of President Zelaya. In their reasoning, the decision-making bodies do not distinguish a citizen's participation in a public demonstration protesting the *coup d'état* from demonstrations in support of a particular political party or candidate.

239. Given the foregoing considerations, the State has failed to show that the sanction imposed is somehow mandated by the need to protect the independence and impartiality of the Judiciary as an institution, or that of Judge López Lone in particular. A public demonstration staged to protest the *coup d'état* need not *necessarily* be construed as an act that violates these principles. Furthermore, punishing a judge for expressing his support for the restoration of constitutional order in a democratic crisis like the one that Honduras experienced at that time does not seem to be an effective means of safeguarding the principles of judicial independence and autonomy. It is an exaggeration to claim that the Judicial Branch's independence and impartiality are somehow threatened by the alleged victim's participation in a protest of the kind described here. While it is true that appearances matter when it comes to instilling confidence in the courts, to achieve such an end the disciplinary body should have objectively and reasonably dispelled any doubts in this regard.

240. For the reasons explained in the preceding paragraphs, the Commission deems that the dismissal of Judge López Lone was neither appropriate nor necessary to protect the guarantees of *independence and impartiality* that must govern judicial practice. Nor can dismissal be deemed a proportional measure. In effect, in the present case the most severe punishment allowed under the law was applied, even though it was not warranted based on the seriousness of the harm done, which was never proven. The severity of the measure cut short the alleged victim's career in the judiciary, with all the negative connotations that has.

241. In the case of *Kudeshkina v. Russia*, cited previously, the European Court held that the removal of a judge for criticizing the judiciary's lack of independence "was undoubtedly a severe penalty (...). This was the strictest available penalty that could be imposed in the disciplinary proceedings and (...) in the light of the Court's findings above, did not correspond to the gravity of the offence. Moreover, it could undoubtedly discourage other judges in the future from making statements critical of public institutions or policies, for fear of the loss of judicial office."³⁰⁹ As the European Court wrote, the "chilling effect" that the removal of the judge in that case had on the exercise of freedom of expression works to the detriment of society as a whole, and is likewise a factor which concerns the proportionality of, and thus the justification for, the sanctions imposed on the applicant, who [...] was undeniably entitled to bring to the public's attention the matter at issue."³¹⁰

242. The Commission finds that the European Court's observations concerning the chilling effect of measures that restrict freedom of expression apply with equal force to the case at hand. In effect, the severity of the restriction on freedom of expression imposed in the case *sub examine* is compounded by the fact that it was not just Judge López Lone's right to freedom of expression and right of assembly that were violated; instead, the dismissal sanction imposed was capable of instilling terror in other judges who might have been planning to exercise those rights amid a crisis of such importance to the democratic way of life in Honduras. The chilling effect is a factor that also has to be considered when assessing the proportionality of the restriction on freedom of expression.³¹¹

³⁰⁹ Case of *Kudeshkina v. Russia*, Judgment of February 26, 2009, paragraph 98.

³¹⁰ Case of *Kudeshkina v. Russia*, Judgment of February 26, 2009, paragraph 99.

³¹¹ Case of *Kudeshkina v. Russia*, no. 29492/05, § 83, 99-100, 26 February 2009; and *Kayasu v. Turkey*, no. 64119/00 and 76292/01, 13 November 2008.

243. For all the foregoing reasons, the Commission concludes that the Honduran State is responsible for violating the rights to freedom of thought and expression and assembly, recognized in articles 9, 13 and 15 of the American Convention, read in conjunction with the obligations established in articles 1(1) and 2 thereof and to the detriment of Adán Guillermo López Lone.

b. Luis Alfonso Chévez de la Rocha

244. The established facts show that on August 13, 2009, disciplinary proceedings were instituted against Judge Luis Chévez de la Rocha because of his alleged participation in a public demonstration in the city of San Pedro Sula, where he was allegedly “disturbing the peace” and because he was deemed to have been “disrespectful of the employees [...] and inciting them to protest what he regards as a *de facto* government.”

245. Almost a year after the disciplinary case first started, on May 5, 2010 the SCJ decided to dismiss Judge Chévez de la Rocha. In arriving at its decision, the SCJ observed that the judge was arrested “for disturbing the peace” and that judges may not engage in partisan political activities of any kind or under any circumstances under Article 319 of the Constitution and Article 3(6) of the Law on the Organization, Functions and Authorities of the Courts, which provides that judicial authorities, among others, shall not “take part in political meetings, demonstrations or other acts, although the rest of the citizenry may take part in those activities.” The witnesses in the disciplinary proceedings claimed that Judge Chévez had made to other members of the Judicial Branch, their contention was that he had “incited judicial employees to join the demonstrations for Mr. José Manuel Zelaya Rosales”, that Judge Chévez had said that he was ashamed of “how the [SCJ] had allowed itself to be used” in connection with the events of June 28 and that he participated in “those movements staged to protest the current Constitutional Government.” The Supreme Court held that the judge had “provoked altercations” and stated that Article 53(b) of the Judicial Career Service Act and the Code of Ethics for Judicial Officials and Employees prohibit officials of the Judiciary from making “slanderous or defamatory statements against the institutions or against any public servant or public official.

246. The IACHR observes that the Judicial Career Council subsequently reversed the SCJ’s decision finding Judge Chévez de la Rocha at fault. On the one hand it found that the judge’s participation in the events that disrupted public order had not been proven and that his arrest during the demonstration had been unlawful. It did, however, state that the proceedings had shown that the alleged victim’s conduct toward his colleagues was “unbecoming his office as a judge, as he engaged in acts inimical to the administration of justice [...] by making slanderous or defamatory statements against the institutions or against a public servant or public official; it has also been shown that he was derelict [in his duty] to act with respect and equanimity.” Nevertheless, applying the principle of proportionality, the Council was of the view that it should only order “a fine or that he be suspended, but not that he be dismissed, which is the ultimate punishment.”

247. Despite its findings, the Judicial Career Council decided to deny the alleged victim’s request to be reinstated in his office since in its view, “the evidence demonstrates that Judge [Chévez de la Rocha] is ashamed of belonging to the Judicial Branch and works there out of need; hence, given his expressions of dissent, it is not in either party’s best interests to leave the employment relationship intact.” The IACHR notes that Judge Chévez received the compensation that he was entitled to receive by law.

248. As is apparent, although Judge Chévez' ultimate removal was not technically a dismissal, the Judicial Career Council's decision has materially identical effects, and was based –as it was in the SCJ's decision- on the judge's expression of his opinion. The Council's decision further maintains that the alleged victim made "slanderous and defamatory" statements. Here lies the limitation or restriction of Judge Chévez de la Rocha's right to freedom of expression. Hence, the Commission will now proceed to examine whether that limitation or restriction is legitimate under the American Convention.

249. To begin with, in its decision not to restore Judge Chévez de la Rocha to his office, the Judicial Career Council cited Article 69 of the Judicial Career Service Act, under which "[a] judicial servant removed from his post without justified cause shall have the right to be reinstated to his or her post [...] or to receive compensation [...] if his or her reinstatement is deemed *impossible* or *inadvisable* in the Judicial Career Council's decision."

250. In the opinion of the IACHR, the authority that this law gives to disciplinary bodies to refuse to reinstate a judge when it is deemed "inadvisable" is excessively broad and open-ended, and therefore at variance with the precision and predictability that the American Convention demands for the removal of a judge in the judiciary. As previously noted, a decision that terminates a judge because of his or her exercise of the right to freedom of expression must be subject to the strictest test of legality, to safeguard not just the alleged victim's right to freedom of expression and right of assembly, but also the principles of the autonomy and independence of the judiciary that are cornerstones of the democratic system of government and the rule of law.³¹² In the instant case, the ample margin of discretion allowed under this law gave the disciplinary body the authority to order the alleged victim's *de facto* removal, ignoring all the guarantees that a disciplinary system affords. In effect, this provision gives the State authority the power to determine the grounds or reasons for separating a judge from his office, making it impossible for the judicial official to reasonably foresee what the prohibited conduct is, which is patently incompatible with the principle of legality and due process. The IACHR understands that in some circumstances the State may not be able to reinstate a public servant, but such circumstances should be foreseeable and objectively determinable, so that the official is protected against arbitrary abuses of power.

251. The untenable degree of discretion that the excessively vague language of this provision allows is clear from the reasons why the Council deemed that the alleged victim's reinstatement in his post as a Special Anti-Domestic Violence Judge was inadvisable: his opposition to the *coup d'état* in Honduras and his criticisms of the Honduran SCJ's role in these events. More specifically, it was because of his alleged feelings of "shame for working in the Judicial Branch" after it was involved in the events associated with the *coup d'état*. Thus, the excessive ambiguity and breadth of Article 69 of the Judicial Career Service Act gave the disciplinary authority some kind of generic authority to impose liability for the exercise of freedom of expression, in patent violation of the requirement of strict legality and to the detriment of Judge Chévez de la Rocha.

252. Regarding the application of Article 53 of the Judicial Career Service Act, which provides that "[t]he following shall be considered acts by officials and employees that are inimical to the dignity of the administration of justice: b) *slanderous or defamatory statements against the institutions or against any public servant or public official*, the IACHR notes that in its decision the Judicial Career Council does an accounting of the rights compromised and recognizes how disproportionate the

³¹² IACHR, Report No. 30/97, Case 10.087, Merits, Gustavo Carranza, Argentina, September 30, 1997, paragraphs 41, 58. IACHR, Report No. 48/00, Case 11.166, Merits, Walter Humberto Vásquez Vejarano, Peru, April 113, 2000, paragraph 76.

dismissal ordered by the SCJ was for acts that in its view constituted noncompliance with this provision of the law.

253. In other cases, inter-America jurisprudence and documents have established that norms of this type do not by themselves meet the requirements of strict legality; to the contrary, the breadth and imprecision of the language used allows for abuse as a means to silence ideas and opinions on matters of public interest.

254. In the case of *Kimel v. Argentina*, the Inter-American Court held that the laws criminalizing slander and libel violated Articles 13 and 9 of the American Convention, in relation to articles 1(1) and 2 thereof,³¹³ because they were too broad and ambiguous. Later, when monitoring compliance with the judgment, the Court declared that the State had complied with the judgment when it amended the laws to add the element of intentionality to the description of the crimes and thereby narrowed the scope of application of a criminal law so as to protect speech that concerns matters of public interest and other matters.³¹⁴ Likewise, in the case of *Usón Ramírez v. Venezuela*, the Inter-American Court held that a law criminalizing slander, offense or disparagement of the Armed Forces of the Nation, in which the elements of the crime and the harm caused by the active subject were not clearly spelled out, allowed the aggrieved party's subjectivity to determine whether a crime had been committed and thus violated articles 9 and 13 of the American Convention in relation to articles 1(1) and 2 thereof,³¹⁵ because the law criminalizing the behavior was vague, ambiguous and imprecise.³¹⁶

255. The IACHR understands that a judge has special obligations of discretion and prudence and, because of this, the need to protect the independence and impartiality of the judicial function may give rise to subsequent imposition of liability for abusive exercise of the right to freedom of expression.

³¹³ The Court examined the language of Article 109, which provided that "[t]he false imputation of a publicly actionable crime resulting in a criminal proceeding shall be punished with imprisonment from one to three years" and Article 110, which provided that "[a]nyone who damages another person's honor or reputation shall be punished with a fine from 1,500.00 to 90,000.00 pesos or imprisonment from one month to one year" and concluded that "taking into consideration the statements made by the State as to the inadequate criminal legislation regarding this matter, the Court deems that the pertinent criminal definition violates Articles 9 and 13(1) of the Convention, in relation to Articles 1(1) and 2 thereof. I/A Court H.R. *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177, paragraphs 64-67.

³¹⁴ Cf. I/A Court H.R. *Case of Kimel v. Argentina*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 18, 2010, paragraphs 30-35, Available at: www.corteidh.or.cr/docs/supervisiones/kimel_18_05_10.pdf; Cf. Law 26.551, enacted November 26, 2009, Available [in Spanish] at: <http://infoleg.gov.ar/infolegInternet/anexos/160000-164999/160774/norma.htm>. As amended, the respective articles of the Argentine Penal Code read as follows:

Article 109: Slandering or falsely accusing a natural person of the commission of a specific offense under certain circumstances that make it a publicly actionable crime shall face punishment of three thousand (\$3,000) to thirty thousand (\$30,000) pesos. Remarks made concerning matters of public interest or not declaratory statements shall not be deemed slanderous.

Article 110: Anyone who intentionally defames or discredits a natural person shall face a fine of fifteen hundred (\$1,500) to twenty thousand (\$20,000) pesos. In no case shall remarks impugning honor be deemed defamatory when they concern matters of public interest.

³¹⁵ The then Article 505 of the Organic Code of Military Justice provided that: "Anyone who slanders, offends, or disparages the National Armed Forces or one of their entities shall face punishment of three to eight years in prison. Cf. I/A Court H.R. *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraphs 56-57.

³¹⁶ Cf. I/A Court H.R. *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paragraphs 56-57.

However, it observes that Article 53 of the Judicial Career Service Act is too vague with respect to the active subject and the prohibited conduct. This can lead to abuses in the disciplinary body's application of this article, which can become a sweeping ban on any criticism by members of the Judiciary with respect to State institutions and officials. In effect, by applying this provision, the Judicial Career Council deemed that the remarks made by the alleged victim constituted defamation and slander, even though the Council never proved that the purpose of the remarks was not to participate in the public discourse on a matter of enormous national consequence, but instead to violate the autonomy of the judicial office or to harm the reputation of one or more of the judge's colleagues.

256. Given the foregoing considerations, the Commission concludes that the removal of Judge Chévez de la Rocha constituted an illegal restriction of his right to freedom of expression, in violation of articles 9, 13(1) and 13(2) of the American Convention, in relation to articles 1(1) and 2 thereof.

c. Tirza del Carmen Flores

257. The IACHR has established that Magistrate Flores Lanza filed a petition of *amparo* with the SCJ in which she alleged that "the residence of Mr. José Manuel Zelaya Rosales had been entered illegally, whereupon he was apprehended and sent into forced exile in the city of San José, Costa Rica" on June 28. The petition identified the Head of the Joint Chiefs of Staff of the Armed Forces as the authority responsible for the alleged violations of Mr. Zelaya's rights and sought, "as an urgent precautionary measure, the immediate repatriation of citizen President Manuel Zelaya Rosales." That same day, Magistrate Tirza Flores and others also filed a criminal complaint with the Office of the Attorney General of the Republic in which they accused four members of the Superior Council of the Honduran Armed Forces and several members of the National Congress of the crimes of abuse of authority, usurpation of functions, terrorism, rebellion, treason and crimes against the form of government and against high-ranking officials of the Honduran State."

258. The SCJ labeled that conduct as a violation of Article 53 of the Judicial Career Service Act which, as previously explained, makes "slandorous or defamatory statements against the institutions or against any public servant or public official" an offense warranting a disciplinary sanction. Here, the Supreme Court wrote that the alleged victim was acting in a manner unbecoming her office by filing a complaint with the Attorney General's Office accusing State officials of alleged crimes and by "making comments on the judicial activities of other jurisdictional bodies and of the SCJ itself."

259. The IACHR notes that the Judicial Career Council subsequently confirmed the dismissal of magistrate Flores Lanza for noncompliance with the provisions of the law pertaining to the exercise of legal advocacy and representation and for her absence from her place of work [which is examined *supra* paragraph 184-189]. However it also found that the remarks classified as slanderous and defamatory were allegedly not sufficiently proved so that it reversed the SCJ's decision regarding the alleged violation of Article 53 of the Judicial Career Service Act.

260. The foregoing notwithstanding, as previously observed, the IACHR is aware that in the instant case, the administrative disciplinary proceedings conducted against the alleged victims cannot be divorced from the backdrop against which they occurred, which amounted to a crisis of democracy. The petitioners maintain that the purpose of the proceedings instituted against the alleged victims, including the case brought against Magistrate Flores Lanza, was to "to prevent judges from continuing to raise questions about the regrettable role that the Honduran SCJ played [in the *coup d'état*] and to send an

intimidating message to the professional association of judges, further undermining judicial independence.” The question the Commission has to answer is whether, given the context, the Magistrate’s prosecution for broad and ambiguous cause and then actually removing her from office for a significant part of that time, disproportionately affected her right to freedom of expression, in violation of the American Convention.

261. The IACHR has written that the mere fact of subjecting someone to criminal proceedings in application of a law that is contrary to the provisions of articles 13(2) and 9 of the American Convention and in which the person faces the prospect of an extraordinarily severe sanction may in itself constitute an unlawful violation of the right to freedom of expression.³¹⁷ Likewise, the Inter-American Court has written that the restriction of rights -like the right to leave the country- during proceedings in which the defendant is accused of offenses that carry penalties, constitutes a violation of the right to freedom of expression, no matter what the outcome of the case.³¹⁸ Similarly, the Commission has maintained that when slander and defamation proceedings are brought against the persons who have filed complaints with the competent authorities concerning acts that in their view constituted punishable offenses committed by public servants in the performance of their functions, public scrutiny is discouraged and it has an obvious inhibiting effect that noticeably affects democratic oversight in violation of Article 13 of the Convention. The Commission has written that it is only natural, for example, that complaints of serious human rights violations might offend the honor or reputation of the person who turns out to be involved in those violations; hence enforcement of criminal laws that punish slander and defamation may act as a deterrent to such complaints, out of fear of legal reprisals.³¹⁹

262. Based on the evidence presented by the parties in this case, the Commission finds that in the context of the *coup d’état* in Honduras (*infra* paragraphs XX), disciplinary proceedings were instituted against Magistrate Flores Lanza and lasted two years. They were based on a provision in the law that, in vague and broad terms, established sanctions for slander and defamation. The process took a disproportionate toll on the alleged victim’s judicial career and personal life and had an undeniable chilling effect on the exercise of her right to freedom of expression. As the facts established show, for a two-year period the Magistrate had to endure a disciplinary proceeding for having filed a criminal complaint in which she expressed her opinion on events that, in her view, constituted crimes. This process, at least with respect to the slander and defamation charges, was conducted under a law that is incompatible with the principle of strict legality, which prevented the Magistrate from knowing, to a certainty, precisely what illicit conduct was being attributed to her. She also had to devote time and resources to preparing her defense, within a disciplinary proceeding riddled with due process violations and violations of her right of access to justice (*infra* paragraph XX). Also, the Council delayed a year to decide the challenge she filed against the SCJ’s decision, during which time she had to endure the effects of the decision to remove her from office, which involved the loss of salary and social benefits.

³¹⁷ Cf. IACHR, Report No. 88/10, Case 12.661, Merits, Néstor José and Luís Uzcátegui *et al.*, Venezuela, July 14, 2010, paragraph 279.

³¹⁸ Cf. I/A Court H.R. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004, Series C No. 111, paragraph 117 *et seq*

³¹⁹ Cf. IACHR, Report No. 88/10, Case 12.661, Merits, Néstor José and Luís Uzcátegui *et al.*, Venezuela, July 14, 2010, paragraph 279.

263. Summarizing, the Commission considers that the disciplinary proceeding described above was itself a restriction of the alleged victim's right to freedom of expression. As has been amply explained, that restriction does not meet the first requirement of the necessity test, i.e., a precise and clear legal provision.

264. Therefore, the Commission concludes that the State violated articles 9, 13(1) and 13(2) of the American Convention, read in conjunction with articles 1(1) and 2 thereof and to the detriment of Tirza Flores Lanza.

d. Ramón Barrios

265. As the established facts show, the disciplinary process instituted against Judge Ramón Barrios did not end with his removal for exercising his right to freedom of expression. In effect, although a decision of the SCJ dismissed Judge Ramón Barrios from his office as Judge of the San Pedro Sula Sentencing Court for having expressed political opinions, the Judicial Career Council later reversed that decision and decided to guarantee the judge's tenure in the Judicial Branch, as it reasoned that the speech for which he was sanctioned was "a personal legal opinion expressed in the context of a course on Constitutional Law" that he delivered, and as such was speech protected by the right to freedom of thought and expression recognized in the Constitution and international instruments.

266. The IACHR finds that the Judicial Career Council's decision in Judge Barrios' case met the requirements of international human rights law to the extent that it recognized that the judge's right to express opinions when teaching was protected speech. However, the Commission notes that, as in the other cases, Judge Barrios had to endure a protracted disciplinary process against the backdrop of the *coup d'état* and based on legal provisions that were so ambiguous and broad that, as the Council's own decision demonstrates, they are subject to differing and even contradictory discretionary interpretations. He had to defray the economic and personal expenses of his defense, in a disciplinary process marred by violations of due process and of his right of access to justice (*supra* paragraph 119-168). Furthermore, while Judge Barrios' process was still in progress, he continued to work as a Sentencing Court Judge, and received the corresponding remuneration. Strictly speaking he did not enjoy job security, since at any moment the Supreme Court decision that ordered his dismissal could take effect.

267. Based on the foregoing and on the legal arguments used to decide the petition as it pertained to Magistrate Tirza Flores Lanza (*supra* paragraphs 260-266), the Commission finds that, given the particular context of this case, the disciplinary process conducted against Judge Barrios took a disproportionate toll on his right to exercise free speech, in violation of articles 9, 13(1) and 13(2) of the American Convention, in relation to articles 1(1) and 2 thereof.

3. Use of disciplinary proceedings as an indirect means of restriction or limitation

268. There are multiple ways of unlawfully limiting freedom of expression, from the most radical form of suppression in the form of prior censorship, to less obvious, more subtle and sophisticated means. Article 13(3) of the American Convention makes specific reference to this indirect method "to impede the communication and circulation of ideas and opinions." In effect, that article provides that:

“The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”

269. Similarly, addressing the scope of the restrictions on human rights, Article 30 of the Convention states that such restrictions “may not be applied except in accordance with laws enacted for reasons of general interest and *in accordance with the purpose for which such restrictions have been established.*” (Italics added).

270. The indirect methods of restricting freedom of expression are veiled as legitimate measures and are advanced to accomplish a purpose other than the one that the law authorizes, such as restricting individuals’ exercise of freedom of expression. When this happens, it is a violation of Article 13(3) of the Convention. As the Inter-American Court has held, “any governmental action that involves a restriction of the right to seek, receive and impart information and ideas to a greater extent or by means other than those authorized by the Convention, would also be contrary to it.”³²⁰

271. The Court has condemned compulsory membership in an association prescribed by law for the practice of journalism³²¹ and the arbitrary use of the State’s regulatory authority to bring actions against media executives calculated to intimidate them or to revoke a media owner’s citizenship because of the editorial leaning of the programs his media outlet broadcasts.³²² It has also called into question statements by public officials when, given the context, they may be forms of direct or indirect interference or seek to exert restrictive pressures on the rights of those who seek to contribute to the public discourse by expressing and circulating their thoughts and ideas.³²³ The Court has also held that another indirect restriction would be a disproportionate or discriminatory demand requiring accreditations or authorizations for the written media to participate in official events.³²⁴

272. In the same vein, the IACHR has explained that a single government act may simultaneously be a limitation on freedom of expression in violation of the requirements of Article 13.2 of the American Convention, as well as an indirect or subtle means of restricting freedom of expression. For example, the imposition of criminal penalties for certain expressions that are contrary to the interests of the government—which is a direct limitation to this freedom according to Article 13 insofar as it is unnecessary and disproportionate—is also an indirect limitation of this right; its “chilling” and

³²⁰ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paragraph 55.

³²¹ I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paragraph 76.

³²² I/A Court H.R. *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, paragraphs 162 y 163.

³²³ I/A Court H.R. *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, paragraph 139; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, paragraph 151.

³²⁴ I/A Court H.R. *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, paragraph 346; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, paragraph 375.

silencing effects on future expressions, which restrict the circulation of information, produce the same results as direct censorship.³²⁵

273. Along the same lines, the IACHR has stated that the prosecution of persons, including journalists and members of the media, for the mere act of investigating, writing, and publishing information in the public interest violates freedom of expression by discouraging public debate on matters of interest to society. The mere threat of being criminally prosecuted for criticism concerning matters of public interest may give rise to self-censorship, given its “chilling effect.”³²⁶

274. Given the foregoing, the Commission must now turn its attention to the question of whether the proceedings against the alleged victims were really used as a legitimate tool for the administration of justice or whether they were just the opposite, a mechanism calculated to indirectly limit exercise of their right to freedom of expression.

275. As the Inter-American Commission documented in its two reports on the situation of human rights and the *coup d'état* in Honduras that brought on the *de facto* government, various groups in civil society, civil service and the general public undertook measures to protest these events, which were systematically and violently crushed by the security forces and State authorities in the state of emergency that was arbitrarily declared.³²⁷

276. The presence of patterns of intolerance and general repression of the population that came out against the *coup d'état* was confirmed by Honduras' Truth and Reconciliation Commission, the Office of the United Nations High Commissioner for Human Rights and the Inter-American Commission on Human Rights in various reports.³²⁸ Here, the Commission observed that:

³²⁵ IACHR. Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI. Report. CHAPTER V. Principles on the Regulation of Government Advertising in the Inter-American System for the Protection of Human Rights. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paragraph 6. Available at: http://www.cidh.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

³²⁶ IACHR. Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI. Informe. CHAPTER V. Principles on the Regulation of Government Advertising in the Inter-American System for the Protection of Human Rights. OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paragraph 6. Available at: http://www.cidh.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf

³²⁷ IACHR. *Honduras: Human Rights and Coup d'état*, 2009. OEA/Ser.L/V/II. Doc. 55 December 30, 2009. Paragraphs 1 a 7, 92, 98, 192 *et seq.* and 532 *et seq.* Available at: <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm>; IACHR. Preliminary Observations of the Inter-American Commission on Human Rights on its Visit to Honduras, May 15 to 19, 2010. OEA/Ser.L/V/II. Doc 68, Paragraph 9. Available at: <http://www.cidh.org/countryrep/Honduras10eng/Honduras10TOC.eng.htm>; United Nations. Human Rights Council. A/HRC/13/66. United Nations. Human Rights Council. A/HRC/13/66. Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d'état on 28 June 2009. March 3, 2010. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-66.pdf>.

³²⁸ Truth and Reconciliation Commission. Report titled *Para que los hechos no se repitan* [So That Events Are Not Repeated]. July 2009. Volume I. Available [in Spanish] at: <http://www.sjdh.gob.hn/recomendacionesCVR/sites/default/files/VOLUME-I-FINAL%20Para%20que%20los%20hechos%20no%20se%20repitan%20-%20Informe%20de%20la%20CVR.pdf>. IACHR. *Honduras: Human Rights and Coup d'état*, 2009. OEA/Ser.L/V/II. Doc. 55 December 30, 2009. Available at: <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm>; IACHR. *Preliminary Observations of the Inter-American Commission on Human Rights on its visit to Honduras, May 15 to 18, 2010*. OEA/Ser.L/V/II. Doc 68. June 3, 2010. Available at: <http://www.cidh.org/countryrep/Honduras10eng/Honduras10TOC.eng.htm>; United Nations. Human Rights Council. A/HRC/13/66. Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d'état on 28 June 2009. March 3, 2010. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-66.pdf>

Participation in demonstrations, statements against the *coup* made by way of the media or the resistance actions –such as the teachers’ strike- have drawn a disproportionate reaction on the part of the *de facto* authorities, carried out for the purpose of silencing public opinion. The Commission observes that this policy of intolerance and repression limits Honduran society’s right to political participation because its goal is to silence the criticism that arose in response to the illegitimate government’s takeover and in so doing eliminates any type of political opposition by creating a climate of insecurity and terror.³²⁹

277. The effort to crush the public demonstrations through the excessive use of force and massive, arbitrary detentions was particularly pervasive. The Office of the United Nations High Commissioner for Human Rights found that “the security forces carried out serious assaults on persons in the aftermath of the *coup d’état*, including acts of torture, ill-treatment of detainees and the systematic use of excessive force against people participating in demonstrations.” For its part, the IACHR documented the systematic detention of demonstrators during these events and concluded that “thousands of unlawful and arbitrary detentions have been made since the *coup d’état*, both in enforcing the curfew and during the demonstrations in support of President Zelaya.”³³⁰ The Truth and Reconciliation Commission found that “the arbitrary or illegal arrests systematically involved persons who participated in political demonstrations in support of President Zelaya, and those who were known to be political, social or human rights leaders.”³³¹

278. The Commission notes that the widespread violence was matched by acts of selective repression, targeting persons considered to be opponents of the *de facto* government, particularly social leaders and union leaders, human rights defenders, journalists and public officials.³³² In the specific case of public officials, the IACHR documented dismissals, arrest warrants, episodes of persecution, threats and harassment, all for deeds that were interpreted as being in opposition to the interests and policy of the *de facto* government.³³³ In this regard, the Commission expressed the view that under the *de facto*

³²⁹ IACHR. *Honduras: Human Rights and Coup d’état*, 2009. OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Paragraph 403. Available at: <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm>

³³⁰ IACHR. *Honduras: Human Rights and Coup d’état*. OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Paragraph 340 *et seq*

³³¹ Truth and Reconciliation Commission. Informe *Para que los hechos no se repitan* [So That Events Are Not Repeated]. July 2009. Volume I, p. 326. Available [in Spanish] at: <http://www.sjdh.gob.hn/recomendacionesCVR/sites/default/files/VOLUME-I-FINAL%20Para%20que%20los%20hechos%20no%20se%20repitan%20-%20Informe%20de%20la%20CVR.pdf>.

³³² IACHR. *Honduras: Human Rights and Coup d’état*, 2009. OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Paragraphs 179-197. Available at: <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm>; IACHR, Preliminary Observations of the Inter-American Commission on Human Rights on its Visit to Honduras, May 15 to 18, 2010. OEA/Ser.L/V/II. Doc 68. June 3, 2010. Paragraphs 23 a 67. Available at: <http://www.cidh.org/countryrep/Honduras10eng/Honduras10TOC.eng.htm>; United Nations. Human Rights Council. A/HRC/13/66. Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the *coup d’état* on 28 June 2009. March 3, 2010, paragraphs 41 to 45 and 57 to 66. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-66.pdf> and Truth and Reconciliation Commission. Report titled *Para que los hechos no se repitan* [So That Events Are Not Repeated]. July 2009. Volume I, p. 347. Available [in Spanish] at: <http://www.sjdh.gob.hn/recomendacionesCVR/sites/default/files/VOLUME-I-FINAL%20Para%20que%20los%20hechos%20no%20se%20repitan%20-%20Informe%20de%20la%20CVR.pdf>.

³³³ IACHR. *Honduras: Human Rights and Coup d’état*, 2009. OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Paragraphs 182-196. Available at: <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm> .

government, there was no effective guarantee of tenure in public office, which put serious constraints on the exercise of public office.³³⁴ In the particular case of teachers and leaders of teachers unions, who played an important role in the resistance to the *coup d'état*, the IACHR received information to the effect that no orders had been given to renew the contracts of temporary teachers. Through inspections and documents prepared by the National Human Rights Council, the Office of the Special Prosecutor for Human Rights and the Office of the Special Prosecutor for Children, inspections were conducted and criminal investigations and prosecutions were brought against teachers who exercised their right to strike in protest to the government.³³⁵ The Office of the United Nations High Commissioner for Human Rights found that “some school principals faced legal proceedings initiated by the Fiscalía special prosecutor for children, on the grounds that the strikes violated children’s right to education.”³³⁶

279. The Commission confirmed that in a blatant display of discrimination, the coercive measures were specifically targeted at the political opposition. By contrast, the IACHR observed that the demonstrations, campaigns and any type of expression in favor of the *coup d'état* were conducted in an atmosphere of security and calm. For example, the security forces did not engage in any act of violence at any of the demonstrations in favor of the *de facto* government.³³⁷ The Truth and Reconciliation Commission found that “the use of force was discriminatory with respect to the right of equality, the right of assembly and the right to express one’s opinion, all protected under international law and Honduras’ own domestic laws.”³³⁸ By way of example, it wrote that:

At the demonstration that occurred near the Francisco Morazán National Teaching University on July 2, 2009, which was attended by some 2000 people, press accounts reported that the police used excessive force. According to one witness who was a victim of those events: ‘... Even though this Insulza, OAS Secretary General, was here, even though all the delegations were here in Honduras, that day was terrible; the police were on the hunt and inflicted a tremendous blow. They didn’t arrest anyone. They just got their jollies by beating people up there in El Prado district.’ That same day, supporters of Roberto Micheletti gathered in a show of support, but in a protected area: the Plaza de la Democracia near the Presidential Palace. The newspapers didn’t say how many people were there in the Plaza, but did say that the Plaza was filled with supporters of Roberto Micheletti.³³⁹

³³⁴ IACHR, *Honduras: Human Rights and Coup d'état*, 2009. OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Paragraph 398. <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm>

³³⁵ IACHR. *Honduras: Human Rights and Coup d'état*, 2009. OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Paragraph 539 *et seq* Available at: <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm>

³³⁶ United Nations. Human Rights Council. A/HRC/13/66. Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d'état on 28 June 2009. March 3, 2010, paragraph 53. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-66.pdf>

³³⁷ IACHR. *Honduras: Human Rights and Coup d'état*, 2009. OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Paragraph 405. Available at: <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm>

³³⁸ Truth and Reconciliation Commission. Report titled *Para que los hechos no se repitan* [So That Events Are Not Repeated].. July 2009. Volume I, p. 328. Available [in Spanish] at: <http://www.sjdh.gob.hn/recomendacionesCVR/sites/default/files/VOLUME-I-FINAL%20Para%20que%20los%20hechos%20no%20se%20repitan%20-%20Informe%20de%20la%20CVR.pdf>.

³³⁹ Truth and Reconciliation Commission. Report titled *Para que los hechos no se repitan* [So That Events Are Not Repeated].. July 2009. Volume I, p. 328 y 329. Available [in Spanish] at:

280. The patterns of violence and repression were said to have occurred because the laws in place were inadequate and enabled abusive activities. In its report, the Office of the United Nations High Commissioner for Human Rights observed that in many cases an ambiguous or imprecise formulation of the law allowed “for arbitrary application, particularly of criminal legislation, of the Police and Social Coexistence Law, the Telecommunications Law and the Emergency Law, as well as of provisions criminalizing sedition and illegal demonstrations.”³⁴⁰ Furthermore, the events were said to have occurred in a context in which freedom of expression and the free flow of information and ideas were severely restricted. The Truth and Reconciliation Commission concluded that the media outlets identified as being in favor of the government of deposed President Zelaya “had their electric power cut, their antenna damaged to the point of being inoperable; their broadcasts were interrupted, their broadcasting equipment was confiscated and staff were subjected to threats, intimidation and persecution to get them to stop broadcasting.”³⁴¹

281. Despite these serious events, the IACHR observed that no institutions were in place to process complaints, investigate the facts, punish those responsible and make reparations to the victims of human rights violations.³⁴² In its report, the Office of the United Nations High Commissioner for Human Rights observed that:

67. The institutions responsible for protecting human rights and guaranteeing the rule of law failed in many instances to accomplish their mandate, mainly due to a lack of independence.

68. During the period covered by this report, the lack of independence of the judiciary and the unequal and discriminatory application and interpretation of the law have been evident. The Attorney General’s Office, judges and the Supreme Court of Justice have, in

<http://www.sjdh.gob.hn/recomendacionesCVR/sites/default/files/VOLUME-I-FINAL%20Para%20que%20los%20hechos%20no%20se%20repitan%20-%20Informe%20de%20la%20CVR.pdf>.

³⁴⁰ United Nations. Human Rights Council. A/HRC/13/66. Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d’état on 28 June 2009. March 3, 2010, paragraph 13. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-66.pdf>

³⁴¹ Truth and Reconciliation Commission. Report titled *Para que los hechos no se repitan* [So That Events Are Not Repeated].. July 2009. Volume I, p. 347. Available at: <http://www.sjdh.gob.hn/recomendacionesCVR/sites/default/files/VOLUME-I-FINAL%20Para%20que%20los%20hechos%20no%20se%20repitan%20-%20Informe%20de%20la%20CVR.pdf>. The IACHR confirmed that the flow of information and news was controlled by temporarily shutting down some media outlets; orders were given to block transmission of the signal from certain cable television networks that were covering the *coup d’état*; selective power outages were used to affect broadcasting by audiovisual media covering the *coup*, and journalists from media outlets whose editorial positions were opposed to the *coup d’état* were attacked and threatened. IACHR. *Honduras: Human Rights and Coup d’état*, 2009. OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Paragraph 12. Available at: <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm>

³⁴² IACHR. *Honduras: Human Rights and Coup d’état*, 2009. OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Paragraph 14. Available at: <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm>

general, supported the de facto authorities by defending restrictive measures at the expense of protection of human rights and respect for the rule of law [...] ³⁴³.

282. The Truth and Reconciliation Commission concluded that:

The response of the Judicial Branch and the SCJ in particular to the violations of human rights was unsatisfactory and in several respects violated the right to judicial protection recognized in Art. 25 of the American Convention on Human Rights. They failed to order a precautionary suspension and did not grant any of the 79 petitions of *amparo* filed against acts of the *de facto* government, not even the 36 petitions for *amparo* filed against the decree that restricted rights, issued on September 22, 2009 (PCM-M-016-2009), which had ordered flagrant violations of human and constitutional rights. The decisions on the petitions filed to challenge decree No. PCM-M-016-2009 were held up until the decree was revoked by the political power, thereby leaving Honduran citizens completely defenseless. Furthermore, the decisions still pending on the petitions of *amparo* filed in connection with the arrest and deportation of President Zelaya, on the actions of Police and the Army against various media outlets and on restrictions of freedom of movement, all filed between June and October 2009, have been delayed to this day. The conduct of the SCJ puts in sharp contrast the speed and diligence applied to protect General Vásquez Velásquez, as opposed to the multiple difficulties and delays imposed in the case of petitions of *amparo* filed by other Honduran citizens. The day the Honduran Judiciary protects all citizens as efficiently as it did in the case of the general, will be the end of impunity in Honduras.

283. The foregoing makes plain that the SCJ did not function as the guarantor of democratic constitutional legal order; instead, through its various public pronouncements, it created serious doubts as to its impartiality at that time. Thus, for example, on the day of the *coup*, June 28, 2009, the Judicial Branch issued a press release addressed “to the Honduran people and the international community, on the occasion of the events that occurred this day, Sunday, June 28, 2009.” In that press release, the Judicial Branch reported that in its opinion, “the Armed Forces, as defenders of the primacy of the Constitution, have acted to protect the rule of law by requiring that law be observed by those who have publicly come out against and acted against the provisions of the Constitution.” Similarly, in its report titled *Honduras: Human Rights and Coup d’État*, the Commission observed that “the Supreme Court of Honduras consistently den[ied] the existence of those violations. Inactivity and tolerance enable[d] the repetition of human rights violations with impunity.” ³⁴⁴

284. The IACHR must again point out that this crisis and the patterns of conduct herein described were the context for the disciplinary proceedings instituted against the alleged victims in this case. Given the circumstances and the vague and general provisions invoked, the proceedings against the alleged victims had to have instilled fear and self-censorship among other judicial officials, who knew that they could face the same fate at any time.

³⁴³ United Nations. Human Rights Council. A/HRC/13/66. Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d’état on 28 June 2009. March 3, 2010, paragraphs 67 and 68. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-66.pdf>

³⁴⁴ IACHR. *Honduras: Human Rights and Coup d’État*, 2009. OEA/Ser.L/V/II. Doc. 55. December 30, 2009. Paragraph 15. Available at: <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm>

285. The State maintained that the proceedings instituted against the alleged victims were legitimate measures given their failure to comply with the duties of their judicial office. Nevertheless, it was up to the State to provide proof or arguments that demonstrated that the sole purpose of the disciplinary proceedings was to protect the principles of judicial independence and impartiality in the context described above. Even so, it failed to produce that evidence or make that case. To the contrary, the speed with which the proceedings herein described were instituted and the drastic disciplinary measures taken stand in stark contrast to the judiciary's inaction in the face of the serious human rights violations committed in the wake of the *coup d'état*. From the elements in the present case, one can conclude that the proceedings *sub examine* were instituted for the purpose of silencing criticism of the *coup*. The ambiguities and imprecision of the law were used to achieve ends other than those prescribed by law, in an abusive exercise of State power.

286. It is telling that no disciplinary proceedings were instituted against those judicial officials who dabbled in politics on the side of those who supported the *de facto* government. The Commission knows of only one investigation instituted because the Head of Personnel of the Judicial Branch issued a communiqué on June 30, 2009, which read as follows: "Acting on instructions from above, officials and employees of the Judicial Branch are hereby invited to take part in the '**March for Peace in Honduras**' which will be held in the central park of the city of Tegucigalpa **today, Tuesday, June 30, 2009 from 9:30 a.m. to 1:00 p.m.**" [emphasis in the original]. The Commission notes that the communiqué was signed by Ing. Sandra Lizeth Rivera Gallo, Head of Personnel of the Office of the Director of Personnel Management of the Judicial Branch. An investigation was allegedly instituted against her only because of a complaint filed by the alleged victims in this case. The investigation concluded that officials in the Office of the Director of Personnel Management and the General Secretariat of the SCJ had issued the invitation by mistake, but in good faith, and that no employee or official in the Judicial Branch attended the event to which they were invited."

287. Summarizing, the evidence points to the conclusion that relying on excessively broad grounds for dismissal, the objective was to silence criticism of the *coup d'état* and the judicial branch's role in it; in other words, indirect pressure was used to restrict exercise of the right to freedom of expression by the judges who are victims in the present case, in violation of Article 13(3) of the American Convention.

C. Right of association and right to participate in government (articles 16 and 23 of the Convention, read in conjunction with Article 1 thereof)

288. The right of association is protected under Article 16 of the American Convention.³⁴⁵ The Court has observed that under Article 16(1) of the Convention, "those who are protected by the

³⁴⁵ "1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.

3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

Convention not only have the right and freedom to associate freely with other persons, without the interference of the public authorities limiting or obstructing the exercise of the respective right, which thus represents a right of each individual; but they also enjoy the right and freedom to seek the common achievement of a licit goal, without pressure or interference that could alter or change their purpose.”³⁴⁶ The Court has written that the positive obligations to prevent and investigate violations of this right must be undertaken “even in the sphere of relations between individuals, if necessary.”³⁴⁷

289. The Court has also held that exercise of the right to freedom of association “is not absolute and may be subject to such restrictions as are established by law, have a legitimate purpose and are, ultimately, necessary in a democratic society.”³⁴⁸ In the specific case of judges, the right of association is recognized in the *Basic Principles on the Independence of the Judiciary* which provides that “[j]udges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.”³⁴⁹ As the Office of the United Nations Rapporteur on the Independence of Judges and Lawyers has written, exercise of that right enables them to collectively defend their rights in the debates surrounding their functions and legal status, while also requiring that their ability to perform their functions independently be safeguarded.³⁵⁰

290. Political rights are protected under Article 23 of the Convention. The Court has made repeated reference to the fundamental importance of observing political rights in order to strengthen a democratic society and the rule of law. It has written that:

[...] Political rights are human rights of fundamental importance within the inter-American system and they are closely related to other rights embodied in the American Convention, such as freedom of expression, and freedom of association and assembly; together, they make democracy possible. [...]”³⁵¹

291. In the specific case of the political rights of judges, in the case of *Apitz Barbera and others*, the Court wrote that Article 23(1)(c) “does not establish the right to accede to public office, but the right to access ‘under general conditions of equality.’ Consequently, compliance with the obligation to ensure and respect this right means that “the criteria and processes for appointment, promotion,

³⁴⁶ I/A Court H.R. *Case of Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, paragraph 69. See also, *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 144.

³⁴⁷ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, paragraph 144. Cf. I/A Court H.R., *Case of Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005, Series C No. 121, paragraph 76, and I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007, Series C No. 167, paragraph 141.

³⁴⁸ I/A Court H.R., *Case of Escher et al. v. Brazil*. Judgment of July 6, 2009. Series C No. 200, paragraph 173.

³⁴⁹ *Basic Principles on the Independence of the Judiciary*, principle 9.

³⁵⁰ United Nations. General Assembly. Human Rights Council. Report of the Special Rapporteur on the independence of judges and lawyers, *Leandro Despouy*, A/HRC/11/41, March 24, 2009, paragraph 45.

³⁵¹ I/A Court H.R., *Case of Castañeda Gutman v. Mexico*. Judgment of August 6, 2008. Series C No. 184, paragraph 140; I/A Court H.R., *The Word “Laws” in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, paragraph 34; I/A Court H.R., *Case of Yatama v. Nicaragua*. Judgment of June 23, 2005. Series C No. 127, Paragraph 191.

suspension, and dismissal must be objective and reasonable,” and “that persons do not suffer discrimination in the exercise” of this right.”³⁵² However, in subsequent case law, specifically the case of *Reverón Trujillo*, the Court elaborated where it wrote that access under general conditions of equality would be an insufficient guarantee were it not accompanied by effective protection of tenure in the office to which one aspires.³⁵³

292. The Court has concluded that Article 23 of the Convention protects not just the rights of its beneficiaries but also their “opportunities”. This means that the State has an obligation to ensure, through positive measures, that every person who is the *titulaire* of political rights has the opportunity to exercise those rights.³⁵⁴ This, in turn, means that the State must create optimum conditions and mechanisms to ensure that political rights can be exercised effectively.³⁵⁵ The United Nations Human Rights Committee has written that the guarantee of protection applies to both access to and tenure in the public service of one’s country, under general conditions of equality and non-discrimination, especially in the case of suspension and dismissal proceedings.”³⁵⁶

293. Certain details are unique to the present case, as the alleged victims were performing activities against the *coup d’état* in Honduras; they were judges and members of the “Asociación de Jueces por la Democracia.” As pointed out in the section on established facts, during the *coup d’état* the AJD issued a number of public communiqués critical of the SCJ’s position and that stated that that one could not make the case that what had happened was a constitutional succession. The Commission observes that one has to be a judge in order to be a member of that association. Under its Statutes, one has to be a judge or magistrate in active service and that membership is lost when one’s status as a judge is lost.

294. As established in earlier paragraphs, both the Truth and Reconciliation Commission and the Office of the United Nations High Commissioner for Human Rights made reference to the Supreme Court’s disparate application and interpretation in handling petitions filed by persons in favor of the *coup* and petitions filed for the protection of human rights and observance of the rule of law. The Commission notes that the disciplinary proceedings instituted against the three judges and one magistrate were precisely because of certain acts or statements made against the *coup d’état* and in favor of restoring democracy. The Commission notes that i) disciplinary proceedings were instituted against Judge López Lone for demonstrating in a peaceful protest in favor of re-establishment of constitutional order; ii) the disciplinary proceedings against Judge Chévez concerned his detention at a site where demonstrators were marching and his protestations over police brutality; iii) the proceedings were instituted against Magistrate Tirza Flores Lanza for having filed a petition of *amparo* on behalf of

³⁵²I/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, paragraph 206.

³⁵³I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197. Paragraph 138.

³⁵⁴I/A Court H.R., *Case of Castañeda Gutman v. United Mexican States*. Merits, Reparations and Costs, Judgment of August 6, 2008. Series C No. 184, Paragraph 145.

³⁵⁵IACHR, Note of remission and Merits Report in Case 12.343 *Edgar Fernando García et al. v. Guatemala*, February 9, 2011, paragraph 149. I/A Court H.R., *Case of Castañeda Gutman v. United Mexican States*, Merits, Reparations and Costs, Judgment of August 6, 2008. Series C No. 184, paragraph 145.

³⁵⁶Cf. *Pastukhov v. Belarus* (814/1998), ICCPR, A/58/40 vol. II (5 August 2003) 69 (CCPR/C/78/D/814/1998) at paras. 7.3 and 9; *Adrien Mundy Busyo, Thomas Osthudi Wongodi, René Sibum Matubuka et al. v. Democratic Republic of the Congo* (933/2000), ICCPR, A/58/40 vol. II (31 July 2003) 224 (CCPR/C/78/D/933/2000) at paragraph 5.2.

then President Zelaya and for filing a complaint against the authorities who participated in the *coup d'état*; and finally, iv) the proceedings against Judge Barrios were because of a newspaper editorial written by someone else, citing the legal reasons that Judge Barrios had given in a lecture to explain why the *coup d'état* was not a constitutional succession.

295. In the present case, the Commission has already concluded that the disciplinary proceedings were instituted against the alleged victims against the backdrop of the *coup d'état*, and their purpose was to silence the alleged victims' criticism of the event. To do this, the State employed laws riddled with ambiguity and imprecision. The authorities who presided over the disciplinary apparatus did not afford the alleged victims the guarantees of competence, independence and impartiality and conducted the proceedings without the necessary guarantees of due process. The result of all this was that, in an abusive and arbitrary exercise of State power, the judges who were the victims in this case were disciplined for actions that are permissible under the American Convention.

296. Given the circumstances, the Commission believes that subjecting the judges and magistrate to disciplinary proceedings in retaliation for their criticism of the *coup d'état* in order to dismiss them from office –which meant that they would lose their membership in the Association– constitutes arbitrary interference on the part of the State calculated to restrict their exercise of their political rights and their freedom of association, in violation of the rights protected under articles 16 and 23 of the American Convention, read in conjunction with Article 1(1) thereof and to the detriment of Guillermo López Lone, Ramón Barrios, Luis Alonso Chévez de la Rocha and Tirza Flores Lanza.

E. Personal integrity (Article 5 of the American Convention, read in conjunction with Article 1 thereof)

297. Article 5(1) of the American Convention provides that “[e]very person has the right to have his physical, mental, and moral integrity respected.”

298. The Commission observes that the petitioners' allegations concern the material and moral damages caused by the violations of the victims' rights as a result of the disciplinary proceedings instituted against them. Because those allegations allude to the effects of violations already established by the Commission in this report, the Commission believes it does not have sufficient information to consider a stand-alone violation caused by the actions or omissions that the State incurred against the judges and magistrate. Nevertheless, the Commission considers that the State has a duty to redress the consequences of the violations of the victims' rights, among them the circumstances narrated by the petitioners.

F. Personal Liberty (Article 7 of the American Convention, read in conjunction with Article 1 thereof)

299. The Commission takes as established fact that Judge Luis Alonso Chévez was deprived of his liberty on August 12, 2009, by a member of the national police, because he was mistakenly identified as being a demonstrator in one of the marches staged to protest the *coup d'état*. The arrest was made without a court order and even though the victim was not apprehended in the commission of any crime. According to the facts established, Judge Chévez was taken to a police station but was not advised of the reasons for his arrest, was not entered into the log book and there was no judicial oversight of his arrest. A writ of *habeas corpus* was issued ordering Judge Chévez' immediate release. Given the circumstances

of this case and because a writ of *habeas corpus* was granted, the Commission does not have sufficient information to find an additional violation of the duty to guarantee the right to personal liberty.

VI. CONCLUSIONS

300. From all the foregoing the Commission concludes that the State of Honduras is responsible for violation of the rights to judicial guarantees, the principle of legality, freedom of expression, freedom of association, political rights and the right to judicial protection, recognized in articles 8, 9, 13, 16, 23 and 25 of the American Convention, in relation to the obligations established in articles 1(1) and 2 thereof, to the detriment of Judges Adán Guillermo López Lone, Ramón Enrique Barrios Maldonado and Luis Alonso Chévez de la Rocha and Magistrate Tirza del Carmen Flores Lanza. Furthermore, the State of Honduras is responsible for violation of the right of assembly, recognized in Article 15 of the Convention, to the detriment of Judge Guillermo López Lone.

VII. RECOMMENDATIONS

301. Based on the foregoing conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IS RECOMMENDING TO THE STATE OF HONDURAS THAT IT,

1. Reinstatement of the victims in the Judicial Branch, in a post similar to the one they were holding, with the same salary and benefits and at a rank equivalent to the rank they would have had today had they not been dismissed and for whatever period of time remains in their term; alternatively, if for some good reason their reinstatement is not possible, the State shall pay them compensation.
2. Redress the consequences of the violations declared in the present report, which are to include both pecuniary and non-pecuniary damages.
3. Order the amendments to the law necessary to ensure that disciplinary proceedings against judges are conducted by competent authorities with sufficient guarantees of independence and impartiality.
4. Order the amendments to the law necessary to ensure that the grounds for disciplinary action against judges and the applicable sanctions are compatible with the principle of legality, in the terms set out in the present report.