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## **REPORT No. 43/15**

### **CASE 12.632**

REPORT ON THE MERITS (PUBLICATION)

ADRIANA BEATRIZ GALLO, ANA MARÍA CARIAGA AND SILVIA  
MALUF DE CHRISTIN

ARGENTINA

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**I. SUMMARY**

1. On June 11, 2003, Adriana Gallo, Ana María Careaga, and Silvia Maluf, represented by the Center for Legal and Social Studies (CELS), the Center for Justice and International Law (CEJIL), and the law firm Wortman Jofré – Isola Abogados (hereinafter "the petitioners") lodged a petition with the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") against the Argentine Republic (hereinafter "the State," "the Argentine State," or "Argentina") for the alleged violation of the rights established in Articles 9 (Freedom from Ex Post Facto Laws), 8.1 and 8.2 (Right to a Fair Trial/due guarantees, 25 (Judicial Protection), and 13 (Freedom of Thought and Expression) of the American Convention in conjunction with Article 1.1 of the same instrument.

2. The petitioners alleged that judges Gallo, Careaga, and Maluf were dismissed on November 6 and December 17, 1998 and November 1, 2002, respectively, by a *Jurado de Enjuiciamiento* (Tribunal to try a judge's mal- or misfeasance) that lacked the required independence and objective impartiality, and based on a law that was not in force at the time of the facts of the case, in a context of grave institutional crisis in the Province of San Luis, Argentina. They also alleged that in their dismissals there were a number of violations of due process and they were unable to appeal the dismissal rulings. In addition, according to the petitioners, Judges Careaga and Maluf were accused and dismissed for having expressed their opinion regarding the state of the Judiciary in the province of San Luis, when they supported the legal grounds cited in a communiqué issued by the Bar Association (*Colegio de Abogados y Procuradores*) of Villa Mercedes, which constituted a violation of the right to freedom of thought and expression.

3. For its part, the Argentine State rejected the arguments of the petitioners and maintained that both the procedural remedies established by procedural law in the Province of San Luis and the extraordinary Federal appeal are adequate and therefore apt to protect the petitioners' human rights. According to the State, the petitioners have not demonstrated that the extraordinary and complaint remedies cannot be considered effective because of the overall situation of the country or even that they are illusory due to the particular circumstances of a given case. As for the unappealable nature of the decisions of the *Tribunal de Enjuiciamiento*, the State considered that "it neither is nor has been a prerogative of the Province of San Luis; rather it stems from provincial legislation and, essentially, from an express provision to that effect in Article 115 of the National Constitution." However, the State pointed out, in the case of Judges Gallo and Careaga, the dismissal of the Federal extraordinary appeal by the Superior Court of Justice of the Province of San Luis, "at no point is it discernible that the ground for dismissal was the unappealable nature of the decisions adopted by a *Tribunal de Enjuiciamiento*." Specifically, the State indicated that the *renvoi* ordered by the National Supreme Court of Justice was not the result of it considering that the decisions challenged had committed some violation of guarantees established in the Constitution or in international human rights treaties. Finally, as regards the notion of "reasonable period of time", the State rejected the petitioners' arguments, "taking into consideration the dates on which the respective extraordinary appeals were filed at the provincial level [...] and] that of the proceeding which derived from the Federal appeal."

4. On July 27, 2007, the Commission adopted Report No. 65/07, in which it declared itself competent to hear the petition and stated that it was admissible on account of possible violation of the rights established in Articles 8, 9, 13, and 25 of the Convention in conjunction with the general obligations established in Article 1.1 of the same instrument.

5. After analyzing the position of the parties, the Inter-American Commission concluded that the Argentine State was responsible for violating the rights established in Articles 8, 9,13, and 25 of the American Convention in conjunction with the general obligations established in Article 1.1 and 2 of the same instrument, to the detriment of Adriana Gallo, Ana María Careaga, and Silvia Maluf. In addition, the IACHR made the corresponding recommendations.

## **II. PROCESSING BY THE IACHR**

6. The initial petition was received on June 11, 2003. The processing of the petition from the time it was lodged to the decision on admissibility is described in detail in Admissibility Report No. 65/07,<sup>1</sup> issued on July 27, 2007.

7. On August 1, 2007, the Commission notified the parties of the aforementioned report, informed them that the petition had been registered as Case No. 12.632 and, pursuant to Article 38.1 of the Rules of Procedures then in force, gave the petitioners two months in which to submit their additional observations on the merits. Furthermore, pursuant to Article 48.1.f) of the American Convention, the Commission placed itself at the disposal of the Parties with a view to reaching a friendly settlement of the matter.

8. On October 10, 2007, the IACHR held a hearing on the merits of the case. That same day, the State sent a message proposing the start of the friendly settlement process. On November 20, 2007, the IACHR forwarded that written communication to the petitioners and gave them one month to inform the Commission regarding any progress and agreements reached. On October 18, 2007, the petitioners submitted their additional observations on the merits of the matter. That document was forwarded to the State, with a one month deadline for submitting its observations.

9. On December 21, 2007, the IACHR received a communication from the petitioners in which they indicated that the results of the friendly settlement process had not been satisfactory and for that reason they requested the IACHR to continue processing the case. On June 30, 2008, the IACHR received another note from the petitioners requesting that, since so much time had elapsed without the State having presented its additional observations on the merits, it should be considered to have waived its right to present them.

10. On October 19, 2009 and January 20, 2010, the petitioners sent further communications and, on the latter date, requested a hearing. On March 19, 2010, the IACHR held a second hearing on the merits.

11. On June 10, 2010, the IACHR forwarded to the State the information submitted by the petitioners on August 5, 2007. On October 22, 2010 and on March 1 and June 2 of 2011, the petitioners presented further information on the case. To date, the State has not presented additional observations on the merits.

## **III. POSITIONS OF THE PARTIES**

### **A. The petitioners**

12. The petitioners argued that the dismissal processes involving judges Gallo, Careaga, and Maluf must be analyzed in light of the "profound crisis undergone by the Judiciary in the Province of San Luis." In that regard, the petitioners indicated that said crisis began in 1995 when the provincial Executive Branch vetoed a new law of *amparo* 5054 and issued a set of laws: a) Law 5062 of December 29, 1995, which reduced the remunerations of judges and judicial officers; b) Law 5067, of February 1, 1996, which declared the Provincial State to be in an economic and social emergency; c) Law 5070 of February 16, 1996, which modified the procedure for appointing associate judges; d) Law 5071, of February 13, 1996, which suspended

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<sup>1</sup> IACHR, Report No. 65/07 (admissibility, Petition 415-03, Adriana Gallo, Ana María Careaga, and Silvia Maluf, Argentina, July 27, 2007, paragraphs 5, 6, and 7.

execution of all judgments and appeals in which the Provincial State was ordered to pay a sum of money; declared all the State's assets unattachable; and established the extinction *de jure* of time allowed to file lawsuits against the State or, if they had begun, for cases in which no judgment had been handed down within five years of the action being brought; e) Law 5103, of March 1996, which ruled that no precautionary measures could be ordered during the economic and social state of emergency of the Provincial State in *amparo*, constitutionality, administrative litigation or any other types of trials and/or appeals by its centralized, decentralized, or autonomous bodies; and retroactively suspended application of all precautionary measures ordered prior to its entry into force; f) Law 5074, of March 29, 1996, which transferred to the Provincial Superior Court the task of determining and paying the remunerations of the members of the Judiciary, while maintaining the power to charge those expenditures to the Executive Branch budget; g) Law 5093, of December 5, 1996, which established that the remunerations of judges, officers and employees of the Judiciary would be established by a specific law to be issued at the behest of the Superior Court in line with the wage guidelines for the Executive and Legislative Branches.

13. The petitioners considered that those amendments "eliminated the independence of the judiciary, restricted the possibility of judicial oversight of the acts of the other branches of government, [and] imposed a rigid vertical chain of command (*férreo verticalismo funcional*) within the Judiciary." The petitioners also stressed that the passing of this set of laws was accompanied by a campaign aimed at discrediting the members of the provincial judiciary, which culminated in the resignation of four of the five members of the Superior Court. The dismissal occurred after the Provincial Attorney General had denounced the existence of irregularities in the performance of the Superior Court and recommended the resignation of its members: a recommendation that was followed by a demonstration, convoked by the Partido Justicialista in front of the courthouse in the city of San Luis, on December 11, 1996.

14. In particular, the petitioners maintained that, in response to Law 5062, of December 29, 1995, which ordered a cut in judges' remunerations, a number of judges, including the alleged victims, filed *amparo* suits to prevent application of the ruling which were granted by the first instance courts. However, because of the veto exercised by the Executive against the new *amparo* law, the staying nature of the appeal remedy filed by the government attorney's office (*Fiscalía de Estado*) meant that, despite the resolutions in favor of the first instance courts, the precautionary measures obtained thanks to the *amparo* suit could not be implemented: an illegitimate manner of preventing compliance with those judicial rulings. According to the petitioners, none of the *amparo* suits filed subsequently resulted in a final judgment.

15. In addition, the petitioners argued that the approach used to neutralize the action for *amparo* as a simple and swift remedy consisted of employing "all kinds of obstructive and delaying tactics at every level," as well as systematic recusation of the judges by the Government Attorney's Office.

16. According to the petitioners, later on, in May 1997, the legislature passed Law 5106, which amended the Organic Law of the Judiciary and established: i) that the Provincial Superior Court, composed of five members appointed by the Executive Branch with the consent of the Senate, may function validly with three of its members; ii) that the President of the Court - who is also President of the Tribunal for Trying Judicial Officers and Judges - would be elected by his or her peers and could be re-elected indefinitely: a violation of Article 206 of the Provincial Constitution; iii) that the Superior Court was empowered to appoint and dismiss officials of the rank of secretary or below; and (iv) modifications of the powers of various officers and administrative personnel, who were tasked with overseeing the activity of the judges. The petitioners likewise averred that, in July 1997, the legislature passed Law No. 5119, amending the Organic Law of the Judiciary, which altered the subrogations system, and that, finally, Law 5123 was published on October 15, 1997, ordering the automatic dissolution of the existing Bar Associations for lawyers and prosecuting attorneys as official public entities (*entidades de orden público*). The dismantling of the Bar Associations, according to the petitioners, implied "doing away with the constitutional powers authorizing them to pertain to the National Judicial Councils (*Consejos de la Magistratura*) and the Tribunals for Trying a Judge's Malfeasance (*Jurados de Enjuiciamiento*), as well as to appoint associate judges."

17. The petitioners also maintained that, in that context, on February 4, 1997, the Bar Association of the city of Villa Mercedes issued a statement criticizing the institutional situation in which the

judiciary had been placed and requesting Federal intervention of the Province in its three branches of government. The alleged victims, along with another judge and other judicial officers adhered to that statement. The petitioners stressed that the Superior Court installed in December 1996 described the alleged victims support for that statement "an act of subversion."

18. According to the petitioners, the legislative reforms also affected the system for dismissing judges and magistrates. In particular, they indicated that Law 5102 of March 10, 1997, determined : i) that, should the Bar Association not present the list from which the attorneys making up the *Jurado de Enjuiciamiento* are chosen, the Court could select them from the roster of associate judges; ii) the expiration *de jure*, as of the date of its entry into force, of the time allowed for appointing the members of the *Jurado de Enjuiciamiento*; iii) that all existing cases and complaints had to be assigned to the new members of the *Jurado de Enjuiciamiento*; and iv) the broadening and amendment of grounds for dismissing judges.

19. In addition, the petitioners averred that, on March 26, 1997, the Superior Court issued Decision (*Acuerdo*) No. 114 declaring that Articles 1 and 2 of Law 5102 were unconstitutional. Moreover, on May 7, 1997, with its previous members, the *Jurado de Enjuiciamiento* had issued a resolution declaring Law 5102 unconstitutional and ordered that a copy of that decision be joined to all cases being processed and that the National Supreme Court be made aware of the constitutional gravity of the provisions of law 5102. The petitioners also pointed out that, subsequently, Law 5124 (an exact copy of Law 5102) was published on October 27, 1997. Finally, Law 5135 of August 5, 1998, established that the members of the *Jurado de Enjuiciamiento* who admitted initiation of a complaint would continue to have jurisdiction for judgment even though their term had expired.

20. As regards the specific situation of the alleged victims, the petitioners pointed out that Judges Maluf and Gallo were the regular judges of Civil Law Courts No. 2 and No. 3, respectively, while Judge Careaga was the regular judge of Criminal Law Court No. 1, all three in Villa Mercedes, in the Province of San Luis, and that they were dismissed in the tense political circumstances described above.

21. In particular, with regard to the dismissal processes, the petitioners pointed out that: i) as regards Judge Gallo, on April 23, 1996 and December 3, 1996, an attorney and officer of the Provincial Executive Branch and another attorney, filed complaints against her, alleging that the judge had made mistakes in two judicial proceedings; ii) as regards Judge Careaga, on November 27, 1997, the Superintendent of the city of Villa Mercedes filed a complaint with the *Jurado de Enjuiciamiento* alleging that the judge had summoned him to appear to make a signed statement in an investigation into corruption, without stating the offense of which he was accused, thereby violating his alleged immunity as an official; iii) as regards Judge Maluf, on March 2, 1999, the Substitute District Attorney (*Procuradora General Subrogante*) of the province of San Luis filed a complaint against her for having supported the communiqué of the Villa Mercedes Bar Association. These proceedings ended with the dismissal of the three judges and the imposition of a ban on exercising public office for 8 years in the case of Judge Gallo and 15 years in the case of Judge Careaga.

22. The petitioners argued that, in so doing, the State violated their right to be heard by a competent, independent, and impartial tribunal, their right to defense, their right to freedom from ex post facto laws, and the right to judicial protection in the destitution proceedings against the alleged victims. Furthermore, the petitioners pointed out that in the destitution proceedings against Judges Careaga and Maluf, the right to freedom of expression was also violated. In particular, in the proceedings against Judge Maluf, the right to be heard by a court within a reasonable period of time was also violated.

23. The petitioners considered that these facts constituted violations of the rights established in Articles 8.1, 8.2.b, 8.2.c, 8.2.f, 8.2.h, 9, 13.1, 13.2, 25.1.a, and 25.2.c, in conjunction with Article 1.1, of the American Convention on Human Rights. Following is a summary of the petitioners' arguments with respect to these Articles.

24. Regarding **the right to a fair trial with due guarantees, established in Article 8 of the Convention**, the petitioners argued that:

- The State violated the right to be tried by an independent and impartial tribunal inasmuch as the alleged victims were dismissed by a *Jurado de Enjuiciamiento* whose independence and objective impartiality were not assured.
- In particular, some of the members of the *Jurado de Enjuiciamiento* were members of the Partido Justicialista and had taken part in campaigns and demonstrations against the Provincial Judiciary.
- Law 5102, of March 10, 1997, amended Article 224 of the Provincial Constitution, by stipulating that the attorneys making up the *Jurado de Enjuiciamiento* had to be selected from a list of associate judges drawn up by the Governor with the Senate's consent. That circumstance meant allowing the intervention of the provincial Executive Branch in the selection of three of the nine members of the *Jurado de Enjuiciamiento*.
- The State violated the right to a tribunal previously established by law, in respect of Judges Gallo and Careaga, inasmuch as they were dismissed by a *Jurado de Enjuiciamiento* that was not the "natural judge," that is to say, the members appointed in accordance with the law in force at the time the complaints were filed. In the case of Judge Gallo, she was tried by a tribunal constituted after the complaints had been filed, while Judge Careaga was tried by members of the *Jurado de Enjuiciamiento* whose term was extended by Law 5135 of August 5, 1998.
- Law 5106 of May 1997, which established the possibility of indefinite re-election of the President of the Court -- who is also President of the *Jurado de Enjuiciamiento* for Judicial Officers and Judges --, violated Article 206 of the Provincial Constitution, which stipulated that the position rotate.
- The State violated the right to defense of the alleged victims, because they were not granted adequate means to prepare their defense and, in particular, they were not permitted to obtain the appearance of witnesses or experts capable of throwing light on the facts.
- Specifically, in the proceedings against Judge Gallo, 70 percent of the evidence offered was rejected and the evidence produced at the hearing was assessed arbitrarily; and in the proceedings against Judge Careaga much of the evidence was thrown out.
- In the proceedings against Judge Maluf, the defense was not allowed to reply during the hearing and the President of the *Jurado de Enjuiciamiento* ordered the defense to be prevented from speaking when it attempted to enter the pertinent reservations so as to be able to appeal and he prematurely issued his opinion as to the appealability of judgments of the *Jurado de Enjuiciamiento*. Furthermore, one of the members of the *Jurado de Enjuiciamiento* was absent during part of the hearings, but still voted.
- In the proceedings against Judges Gallo and Careaga, they received no prior notification in detail of the charges against them.
- In the proceedings against Judges Gallo and Careaga, the principle of consistency (between judgment and complaint: *congruencia*) was violated. In the case of Judge Gallo, the "second," "third," and "fourth" facts cited as grounds for her dismissal were not part of the complaint, its ratification, or of the decision to proceed with the case (*auto de apertura de causa*). Judge Careaga was dismissed on two counts that were incorporated in the charges without having been examined in the prior preliminary proceedings and, furthermore, the prosecution converted two items of evidence adduced by the plaintiff into new charges. In its judgment, the *Jurado de Enjuiciamiento* also assessed facts that had not formed part of either the indictment or the defense and it created a new "fact," consisting of the overall behavior of the judge.
- The State violated the right to have the proceedings conducted within a reasonable amount of time to the detriment of Judge Maluf because five years and eight months elapsed between the fact of which she was accused and her dismissal.
- The judges of the Province of San Luis and of the Supreme Court have engaged in an unreasonable delay.
- The State violated the right to appeal the sentence to a higher court, inasmuch as the legal order of the Province of San Luis stipulates the unappealable nature of judgments of the *Jurado de Enjuiciamiento*.

25. With respect to violation of **the principle of freedom from ex post facto laws established in Article 9 of the Convention**, the petitioners argued that the accusation and judgment in the dismissal proceedings against the alleged victims were based on Law 5124, of October 22, 1997, which was not the law

in effect at the time the acts for which they were dismissed were committed. The application of this law constituted a glaring violation of the principle of freedom from ex post facto laws and non-retroactivity, because it broadened the grounds for dismissal of judges and redefined certain grounds that were previously contemplated by reducing the prerequisites typically needed for them to apply. At the same time, it retroactively altered the rules governing the competence of the *Jurado de Enjuiciamiento*.

26. As regards **the right to judicial protection established in Article 25 of the Convention**, the petitioners stated that it was violated on three occasions. First, the actions for *amparo* filed by the alleged victims in response to the salary cut ordered by Law 5.062 of 1995 are currently allegedly pending final resolution by the Superior Court of the Province of San Luis. Second, the action for *amparo* filed by Judge Gallo on March 24, 1997, regarding the composition of the *Jurado de Enjuiciamiento* hearing her dismissal proceedings did not reach final resolution because when she was dismissed, the *amparo* action was declared without cause (“*abstracto*”). Third, Judge Gallo has not been guaranteed compliance with the decision which ruled that her action for *amparo* brought on March 24, 1997 was in accordance with law, and the order was given not to apply Law 5102.

27. As regards the **right to freedom of expression established in Article 13 of the Convention**, the petitioners pointed out that Judges Careaga and Maluf were accused and dismissed for having expressed their opinion on the state of the Judiciary in the Province of San Luis, by adhering to the resolution of the Bar Association of Villa Mercedes. Furthermore, the petitioners argued that, although Article 193 of the Provincial Constitution prohibits judges from intervening in politics, an interpretation of that provision in harmony with other related norms must restrict the scope of the prohibition to “acting institutionally in connection with a political party.” In contrast, the interpretation made by the *Jurado de Enjuiciamiento* results in an absolute ban on judges expressing their views on matters of institutional importance.

## **B. The State**

28. The State – specifically, the Province of San Luis – provided a copy of the “Digest of Legislation in Effect in the Province of San Luis – Social Contract for Peaceful Democratic Coexistence,” which had involved an analysis and revision of all provincial legislation, “repealing those laws whose function had been fulfilled, those that were catalogued but lacked any supporting documentation, proscriptive laws dating back to pre-democratic times in the Province; the laws that could be subsumed in a new law passed in this review period as an amended law, and those that had become obsolete due to changes in legal norms in the Province.”

29. The State also maintained that both the procedural remedies established by the procedural legislation of the Province of San Luis and the Federal extraordinary remedy were adequate and therefore suitable for protecting the human rights of the petitioners. Specifically regarding the Federal extraordinary remedy, the State indicated that it constitutes a genuine remedy because it is designed to achieve, in the course of proceedings, the amendment or total or partial annulment of a judicial – or exceptionally, an administrative – decision that is not yet final or for which revision is not yet precluded. Furthermore, when the possibility is raised of certain procedural irregularities that affect the constitutional guarantee of defense during trial and vis-à-vis certain grounds for arbitrariness - lack of substantiation, deviation from the evidence in the case, failure to issue a decision, or self-contradiction -, the Federal extraordinary remedy functions in a manner similar to an appeal to a court of cassation for flaws *in procedendo*.

30. According to the State, the petitioners have not demonstrated that the extraordinary remedies and remedies of complaint could not be regarded as effective because of overall conditions in the country or that they were illusory due to the particular circumstances of a given case. Much less have they been able to prove that the Judiciary in the Province of San Luis and at the national level lacked or lack the necessary independence to be able to judge impartially or that they lack the means for implementing their decisions; nor have they been able to prove the existence of any other situation that amounts to denial of justice or unwarranted delay in decisions.

31. As regards the question of the unappealable nature of decisions issued by the *Jurado de Enjuiciamiento*, the State argued that it was not relevant that Law. 5.124 declared them to be unappealable, because that was a provincial law that did not prevent the Supreme Court from hearing the case through a Federal extraordinary remedy.

32. The State also averred that the unappealable nature of the decisions of the *Jurado de Enjuiciamiento* “is not and was not a prerogative of the Province of San Luis. It also transpires from provincial juridical systems and from what is expressly provided by Article 115 of the National Constitution.” However, it was since the “Graffigna Latino” case of June 19, 1986 that the Supreme Court had established rules of exception, albeit subject to the existence of “gross violations of due legal process and hence of manifest unconstitutionality of the proceedings,” that is to say extremely serious circumstances “that have been proven, in order for the Superior Court to proceed, in due course, via due verification of the constitutionality of the respective decisions to dismiss, to determine the viability of the extraordinary appeal on grounds of unconstitutionality filed by Dr. Careaga and Dr. Gallo de Ellard and, in turn, declare the objection raised by Dr. Maluf de Christin admissible.”

33. In particular, the State maintained that, in the case of Judges Gallo and Careaga, the rejection of the Federal extraordinary remedy by the Superior Court of the Province of San Luis “does not appear at any point to have been based on the argument that the decisions of a *Jurado de Enjuiciamiento* are unappealable.”

34. The State rejected the arguments of the petitioners with respect to verification of constitutionality inasmuch as “the dismissal decisions such as those that led to rejection of the extraordinary remedy option are substantiated and the proceedings have not violated rights or guarantees that are directly and personally affected and are therefore officially ascertainable.[”]

35. Specifically, the *renvoi* ordered by the National Supreme Court was not based on the view that the decisions challenged had committed any violation of Constitutional guarantees or of guarantees established in international human rights treaties; or on the view that there might have been irrationality or flaws in the assessment of the facts and evidence leading to dismissal *contra constitutionem*. Rather the Supreme Court had left the final decision up to the Superior Court of the Province of San Luis.

36. Furthermore, the State maintained that there was no actionable issue (*cuestión justiciable*) regarding the assessment of substantive aspects of the judicial proceedings, that is to say with the weighing of evidence of the actions or omissions that allegedly led to the indictment and the initiation of proceedings, because if there had been, the judgment of the Court would replace that of the *Jurado de Enjuiciamiento* in order to determine the dismissal or acquittal of the defendant judges.

37. Finally, “with regard to the ‘reasonable period of time’ idea, the petitioners’ once again generalizing and theoretical mentions of it may also be dismissed, because [...] they are clearly contradicted when one looks at the dates on which the respective extraordinary appeals were filed at the provincial level [...and] even the date of the hearing resulting from the Federal remedy.” In addition, referring to the appeal filed with the National Supreme Court by Adriana Gallo, the State pointed out “it must also be taken into consideration that the change in the composition of the Tribunal with the entry of new members – as everybody knows – undoubtedly had an impact.” Moreover, it claimed that there was no “unwarranted delays in the decisions that was not due to the complexity of the issues raised.”

## IV. PROVEN FACTS

### A. Background on the Province of San Luis 1995-2005

#### 1. Tension between the Executive Branch and the Provincial Judiciary. Resignation of four members of the Superior Court.

38. On December 6, 1995, the San Luis provincial Legislature passed Law 5062, which ordered a reduction in the remunerations of judges and judiciary staff.<sup>2</sup> Most of the judges and officials of the Judiciary – including the three alleged victims – filed actions for *amparo* (protection of a Constitutional right) against the provision in Law 5062, because they considered that it violated the guarantee of the intangible nature of judicial remunerations established in Article 192 of the Constitution of the Province of San Luis and they requested as a precautionary measure that the salary cut not be applied. The lower court ruled in favor of those actions for *amparo*.<sup>3</sup>

39. On February 1, 1996, the Legislature passed Law 5067, which declared the provincial State to be in a state of economic and social emergency for one year.<sup>4</sup> On February 13, 1996, the Legislature passed Law 5071, which, *inter alia*, ordered the suspension of the execution of judgments ordering payment of a sum of money handed down or to be handed down against the provincial State, centralized agencies, decentralized or autonomous entities and agencies, state enterprises, state associations (*sociedades del Estado*), and entities or associations in which the provincial State had a stake, payment of which or compliance with which was not expressly established in the budget law for fiscal year 1996. Furthermore, that law established that decisions resolving appeals or administrative claims regarding disputes concerning matters of fact or of interpretation and application of regulations, that acknowledge sums in favor of the appellant or petitioner, shall restrict themselves to recognition only, their execution being governed by the provisions of the law.<sup>5</sup>

40. On March 15, 1996, the Appeals Court (*Cámara de Apelaciones*) ratified the decision of the first instance court, declared Law 5062 unconstitutional, and ordered that the salary cuts not be applied. However, the Attorney General's office filed an extraordinary appeal against that finding, the suspensory effect of which stayed execution of the decision taken by the Appeals Court.<sup>6</sup>

41. Irrespective of the laws passed, the Superior Court had paid the salaries of the judges and judicial officers as provided for in the precautionary measures, which had ordered that the cuts established by Law 5062 should not be applied. However, the budget appropriations sent by the Executive Branch did not contemplate that payment, as a result of which the money was not enough to pay December 1996 salaries or those of January and February 1997.<sup>7</sup>

<sup>2</sup> **Annex 1.** Law 5062 “Salaries for Judges and Judiciary Staff,” of December 6, 1995, published on 12/29/1995. Posted on the website of the Chamber of Deputies of the Province of San Luis at “Digesto” (<http://www.diputadosanluis.gov.ar>).

<sup>3</sup> **Annex 2.** Hearing held on October 10, 2007 before the IACHR, during its 130<sup>th</sup> regular session, remarks by Ms. Adriana Gallo. **Annex 3.** Judgment handed down by the Superior Court of San Luis on February 5, 1997 in the court records “District Attorney (*Fiscalía del Estado*) on/ Action to Annul,” p.3 (Attached to the petitioners’ initial petition). **Annex 4.** Newspaper articles published in La Nación on November 6 and 23, 1998, entitled “San Luis: conmovida por controvertido proceso. Dictan sentencia a una jueza enfrentada con Rodríguez Saá” [San Luis: upset by controversial trial. Sentence Judge opposed to Rodríguez Saá] and “San Luis: se agrava la crisis en la Justicia” [San Luis: Judicial Crisis Worsens]. (Attached to the petitioners’ initial petition).

<sup>4</sup> **Annex 5.** Law 5067 on economic and social emergency of February 1, 1996.

<sup>5</sup> **Annex 6.** Law 5071 of February 13, 1996.

<sup>6</sup> Initial petition presented by the petitioners. Writ of additional observations on the merits submitted by the petitioners on October 18, 2007.

<sup>7</sup> Initial petition presented by the petitioners. **Annex.** Newspaper article published in La Nación on November 24, 1998, entitled “Hablan en San Luis de otro ‘Pacto de Olivos’” [“There’s talk in San Luis of another ‘Pacto de Olivos’”]. [Annex 7 of the petition presented on June 11, 2003].

42. In that context, the provincial Executive Branch issued a series of pronouncements against the members of the Judiciary, accusing them of causing an institutional crisis, of being privileged and not accepting the cut in their salaries to the detriment of the population.<sup>8</sup> In addition, the Partido Justicialista called for a demonstration on December 11, 1996 in front of the Courthouse in the city of San Luis to demand the resignation of the members of the Superior Court. Participating in the demonstration on December 11, 1996 were: the Governor of the Province, ministers, under-secretaries, directors, provincial legislators and the Chief of Police.<sup>9</sup> That same day, four of the five members of the Superior Court resigned.<sup>10</sup>

43. In May 1997, the Executive Branch, with the consent of the Senate, appointed the four new members of the Superior Court.<sup>11</sup> The person appointed to be President of that Court was Mr. Sergnese, the personal attorney of the Governor of the Province and of the Partido Justicialista and a former minister in the provincial cabinet. Mr. Sergnese served as President of the Superior Court and President of the *Jurado de Enjuiciamiento* until 1999, when he resigned in order to take up a position as National Senator for the Partido Justicialista.<sup>12</sup>

## 2. Resolution in the form of a complaint by the Bar Association of Villa Mercedes

44. On February 4, 1997, the Bar Association of Villa Mercedes issued a “Resolution in the form of a Complaint,” in which it requested intervention of the three branches of government of the Province of San Luis. The Resolution stated in its pertinent parts:

[...That in recent months the Judiciary, essentially the Superior Court of the province has been subjected to merciless and unusual attack by the whole political-economic structure of the head of the provincial executive branch. [...] That the judiciary, which is undergoing a crisis triggered by the provincial Executive’s attempt to destroy its independence, is powerless to solve the institutional deficiencies of this province. That this situation of the judiciary’s lack of independence can be observed in other parts of the national territory. [...] That the Judges’ Associations and Bar Associations have constantly been denouncing the interference of the provincial Executive Branch in judicial matters in order to obstruct the proper administration of justice. [...] That indeed an example illustrating this fear is the fact that the National Executive Branch has assiduously called for cuts in judges’ salaries [...] in violation of the constitutional principle of the intangibility of judges’ remunerations, which is one of the mainstays of the independence of the judiciary [...] RESOLVES IN THE FORM OF A COMPLAINT: [...] 3<sup>RD</sup>. To request that the National Authorities intervene the three branches of government in the province of San Luis: the executive, the legislature, and the judiciary, given the gravity of the irregularities denounced above.”<sup>13</sup>

<sup>8</sup> **Annex 3.** Resolution of the Superior Court of San Luis on February 5, 1997 in the case: “District Attorney on/Action to Annul, Whereas Clause. Annex to the petitioners’ initial petition.

<sup>9</sup> **Annex 3.** Resolution of the Superior Court of San Luis on February 5, 1997 in the case: “District Attorney on/Action to Annul, Whereas Clause 17. Annex to the petitioners’ initial petition.

<sup>10</sup> **Annex 7.** Newspaper article published in La Nación on November 24, 1998, entitled “Hablan en San Luis de otro ‘Pacto de Olivos”’ [“There’s talk in San Luis of another ‘Pacto de Olivos’”]. [Annex 7 of the petition presented on June 11, 2003].

<sup>11</sup> **Annex 7.** Newspaper article published in La Nación on November 24, 1998, entitled “Hablan en San Luis de otro ‘Pacto de Olivos”’ [“There’s talk in San Luis of another ‘Pacto de Olivos’”]. [Annex 7 of the petition presented on June 11, 2003].

<sup>12</sup> **Annex 2.** Hearing held on October 10, 2007 before the IACHR, during its 130<sup>th</sup> regular session. **Annex 8.** Reasons for bill (S-802/04) on “Federal Intervention of the Judiciary in the Province of San Luis,” posted on the National Senate website at (<http://www.senado.gov.ar/web/proyectos/verExpe.php?origen=S&numexp=802/04&tipo=PL&tConsulta=11>). **Annex 9.** Newspaper articles published on December 19, 1998 and April 8 and 15, 1999 in La Nación, entitled “Careaga está dispuesta a dar batalla” [Careaga Ready to Fight], “Rodríguez Saá, eje de disputas en el Congreso” [Rodríguez Saá, at the center of disputes in Congress] and “Absuelto en dos horas” [Acquitted in 2 hours] (Annex to the petitioners’ initial petition).

<sup>13</sup> **Annex 10.** “Resolución con carácter de denuncia” [Resolution in the form of a Complaint] by the Bar Association of Villa Mercedes on February 4, 1997. (Annex to the petitioners’ initial petition). Articles 5 and 6 of the National Constitution of the Argentine Republic establish respectively:

[continues ...]

45. On February 7, 1997, Judges Gallo, Careaga, and Maluf, together with another judge and other judicial officers, all from the Second Judicial District of San Luis, signed a note addressed to the President of the Bar Association of Villa Mercedes, in which they stated that “[they] shared the interpretation of provincial issues, set forth in the preambular paragraphs of the Resolution of that Bar Association” of February 4, 1997 and that “[b]earing in mind the political and institutional circumstances being experienced by the province of San Luis, that were accurately analyzed in said document, [it was] their duty to adhere to it as members of the provincial judiciary.”<sup>14</sup>

### 3. Communiqués issued by various organizations

46. The situation of tension between the Judiciary and the provincial Government was recognized in the news.<sup>15</sup> In the same regard, certain organizations expressed their concern about the situation of the provincial Judiciary. In particular, on November 28, 1996, the provincial Bar Association issued a resolution demanding that the three branches of government of the nation protect the administration of justice. The Argentine Federation of Bar Associations endorsed that resolution on December 6, 1996.<sup>16</sup>

47. For its part, on February 5, 1997, the Superior Court of Justice of San Luis issued a judgment which, in its operative paragraphs, ordered that “the people of the province, in their capacity as sole sovereign, be informed that the wise decision to separate the branches of government is not being observed because the judiciary is in a state of subordination.”<sup>17</sup>

48. The College of Judges of San Luis issued a communiqué reporting the existence of a policy preventing the harmonious exercise of the powers of government and undermining the administration of justice.<sup>18</sup>

49. Later, in May 2005, the Argentine Federation of Judges issued a communiqué in which, “in light of the particular situation facing the judicial branch of San Luis [...] it urges the local political powers to immediately reestablish the constitutional mechanisms for the selection and dismissal of judges and to halt

[... continuation]

Each province shall enact its own constitution under the republican, representative system, in accordance with the principles, declarations, and guarantees of the National Constitution, ensuring its administration of justice, municipal regime, and elementary education. Under these conditions, the Federal Government shall guarantee each province the full exercise of its institutions.

The Federal Government may intervene in the territory of the provinces in order to guarantee the republican form of government or to repel foreign invasions; and at the request of their constituted authorities, it may intervene to support or reestablish them, should they have been deposed by sedition or invasion from another province.

<sup>14</sup> **Annex 11.** Judgment of the *Jurado de Enjuiciamiento* with respect to Judge Maluf on November 1, 2002 (Annex to the initial petition). **Annex 12.** Judgment of the *Jurado de Enjuiciamiento* with respect to Judge Careaga, handed down on December 17, 1998 (Annex to the petitioners’ initial petition). **Annex 2.** Minutes of the hearing held on October 10, 2007 before the IACHR as part of its 130<sup>th</sup> regular session. **Annex 13.** Newspaper articles published in *La Nación* on October 28 and November 2, 2002, entitled “Comienzo otro juicio político contra una jueza en San Luis” (Another political trial starts against a judge in San Luis) and “Destituyen en San Luis a otra jueza crítica del poder” (Another judge critical of the establishment dismissed in San Luis). (Annex to the petitioners’ initial petition).

<sup>15</sup> **Annex 14.** News (Annex to the initial petition). **Annex .** News (Anexo to writing of the petitioners of 2006). **Annex .** (Annex to the writing of the petitioners of October 18, 2007).

<sup>16</sup> **Annex 3.** Judgment issued by the Superior Court of Justice of San Luis on February 5, 1997, in proceedings “State Prosecutor in matter of annulment action,” case file No. 15-F-96, p. 5 (Annex 1 of the petition lodged on June 11, 2003).

<sup>17</sup> **Annex 3.** Judgment issued by the Superior Court of Justice of San Luis on February 5, 1997, in proceedings “State Prosecutor in matter of annulment action,” case file No. 15-F-96, pp. 8, 9, 19 (Annex 1 of the petition lodged on June 11, 2003).

<sup>18</sup> **Annex 3.** Judgment issued by the Superior Court of Justice of San Luis on February 5, 1997, in proceedings “State Prosecutor in matter of annulment action,” case file No. 15-F-96, p. 5 (Annex 1 of the petition lodged on June 11, 2003). **Annex 15.** Minute of the oral proceedings before the Impeachment Jury in the case of Judge Silvia Maluf. Statement given by Mr. Carlos Aostri Rivas, a former president of the College of Judges. (Annex of the initial petition)

all interference in the sphere of the judiciary, in order to ensure the separation of powers.”<sup>19</sup> In the same regard, the Argentine Federation of Bar Associations (FACA) issued several statements on the conflict between the branches of government and the “severe crisis” affecting the judiciary in the province of San Luis.<sup>20</sup>

#### 4. Consideration of a possible Federal intervention of the Province of San Luis

50. In April 2004, the Constitutional Affairs Commission of the National Senate presented a bill to declare “the Federal intervention of the Judiciary of the Province of San Luis,” citing as grounds “the situation of dependence and subjection of the judiciary in San Luis.”<sup>21</sup>

51. During the period of review by the Constitutional Affairs Commission, on April 11, 2005, the District Attorney (*Agente Fiscal*) of First Instance No. 3 of Villa Mercedes filed a complaint with the Attorney General of the Nation, ratified in court, regarding the alleged coercion exerted by the Minister and Vice-Minister of Legality (*Legalidad*) of the Province of San Luis, in order to obtain alleged undated resignations signed in advance by judges in the province as a condition for their being appointed, to be used later as a means of exerting pressure.<sup>22</sup> On May 11, 2007, the Federal Oral Hearings Tribunal of San Luis resolved to order the trial of the accused.<sup>23</sup> This item was added to the file in relation with the possibility of Federal intervention in the province.

52. Although the Constitutional Affairs Commission of the National Senate prepared an opinion in which it concluded that “there are irregularities that clearly point to the gravity of the current state of affairs in the judiciary of the Province of San Luis” and recommended the adoption of certain measures,<sup>24</sup> on February 28, 2006, the case expired without a final decision being adopted.<sup>25</sup>

<sup>19</sup> **Annex 16.** Petitioners’ submission of October 16, 2006, p. 27; and “Declaration of Salta” issued by the Governing Committee of the Argentine Federation of Judges at its regular meeting of May 26 and 27, 2005 (available at <http://fam.org.ar/declaraciones.asp?id=31>).

<sup>20</sup> **Annex 15.** Minute of the oral proceedings before the Impeachment Jury in the case of Judge Silvia Maluf. Statement given by Ms. Miriam Judith Agúndez, the representative of the College of Lawyers of San Luis to the Argentine Federation of Bar Associations, in the oral proceedings before the Impeachment Jury in the case of Judge Silvia Maluf, p. 36 of the trial record (Annex of the petition lodged on June 11, 2003). Statement given by Mr. Julio Esnaola, a former president of the College of Lawyers of Villa Mercedes, in the oral proceedings before the Impeachment Jury in the case of Judge Silvia Maluf, p. 27 of the trial record (Annex of the petition lodged on June 11, 2003). **Annex 17.** “Statement of the FACA Governing Committee of March 19, 2004, regarding the institutional situation in the province of San Luis,” “Statement of the FACA Governing Committee of March 11, 2005, regarding the grave crisis affecting the judicial branch in the province of San Luis,” “Statement of the FACA Governing Committee of March 20, 2009” (available on the FACA web page at [http://www.faca.org.ar/noticia.php?noticia\\_id=73](http://www.faca.org.ar/noticia.php?noticia_id=73), [http://www.faca.org.ar/noticia.php?noticia\\_id=137](http://www.faca.org.ar/noticia.php?noticia_id=137), and [http://www.faca.org.ar/noticia.php?noticia\\_id=360](http://www.faca.org.ar/noticia.php?noticia_id=360)); and newspaper article published in the daily *La Nación* on November 2, 1998, titled “San Luis: The case that defines the judicial crisis” (Annex of the initial petition).

<sup>21</sup> **Annex 8.** Reasons for bill (S-802/04) on “Federal Intervention of the Judiciary in the Province of San Luis,” posted on the National Senate website at (<http://www.senado.gov.ar/web/proyectos/verExpe.php?origen=S&numexp=802/04&tipo=PL&tConsulta=1>).

<sup>22</sup> **Annex 18.** Complaint filed with the Attorney General of the Nation by the District Attorney (*Agente Fiscal*) of First Instance No. 3 of Villa Mercedes (Annex to the petitioners’ written communication of October 18, 2006). **Annex.** Decision issued on May 11, 2007 by the Federal Oral Hearings Tribunal of San Luis (Annex to the petitioners’ written communication of July 18, 2007). **Annex 20.** Newspaper article published in *El Clarín* on May 4, 2005, entitled “Denuncia contra el Gobierno de San Luis” (Complaint against the Government of San Luis) (Annex to the petitioners’ written communication of October 16, 2006).

<sup>23</sup> **Annex 19.** Decision issued on May 11, 2007 by the Federal Oral Hearings Tribunal of San Luis (Annex 1 to the written communication submitted by the petitioners on July 18, 2007).

<sup>24</sup> **Annex 21.** Legislative processing of the file on bill (S-802/04) on “Federal Intervention of the Judiciary in the Province of San Luis,” posted on the National Senate website at

(<http://www.senado.gov.ar/web/proyectos/verExpe.php?origen=S&numexp=802/04&tipo=PL&tConsulta=1>).

<sup>25</sup> **Annex 21.** Legislative processing of the file on bill (S-802/04) on “Federal Intervention of the Judiciary in the Province of San Luis,” posted on the National Senate website at

(<http://www.senado.gov.ar/web/proyectos/verExpe.php?origen=S&numexp=802/04&tipo=PL&tConsulta=1>).

**B. Regulatory framework of the Procedure for Dismissing Judges in the Province of San Luis**

53. Article 201 of the Constitution of the Province of San Luis<sup>26</sup> establishes:

“Judges and members of the public prosecutor’s office (*Ministerio Público*) shall be irremovable and shall retain their posts so long as they observe good conduct and faithfully perform their duties.

Irremovability shall include both rank and venue.

They may not be transferred or promoted without their consent. They may only be removed in the manner and on the grounds provided for in this Constitution.

They shall enjoy the same immunities as legislators.”

54. The provincial Constitution further establishes the functions of the *Jurado de Enjuiciamiento* and the procedure for dismissing judges as follows:

“Judges and members of the public prosecutor’s office may be brought before the *Jurado de Enjuiciamiento* for improper official conduct, continuing physical or mental incapacity, felonies, or misdemeanors. The proceeding shall be public and can be initiated by any individual, by the Superior Court, the public prosecutor’s office, and the provincial bar association. The *Jurado* shall be chaired by the President of the Superior Court and composed of nine members, three deputies, attorneys if there are any, three licensed lawyers who are qualified to sit on the Superior Court, and three judges including the President of the Superior Court.

The members of the *Jurado* and their alternates shall be appointed annually by lot in a public act, as follows: the deputies by the respective chamber, the judges from among the members of the Superior Court and the chambers, and the lawyers from a list of 20 attorneys prepared by the provincial bar association in December of each year.”

**Performance**

**Article 225**

The position of member of the *Jurado de Enjuiciamiento* shall be honorary and may not be renounced.

The member who without good reason does not join, is absent from sessions, does not intervene in the verdict or through failure to attend prevents it from being issued shall incur a fine equal to the entire monthly remuneration of the Chamber of Deputies and that amount shall be allocated to the Judiciary’s library.

**Excusal and recusation**

**Article 226**

Members of the *Jurado* may excuse themselves or be recused for cause established in the Law on that subject.

**Preliminary investigation**

**Article 227**

Once the complaint has been filed and after preliminary investigation, the *Jurado* shall decide whether there are or are not grounds for initiation of the case. Its decision, if negative, shall end the case; otherwise the trial proceeds.

**Suspension from office of the accused**

**Article 228**

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<sup>26</sup> Available at: <http://ministerios.sanluis.gov.ar/res/5088/media/pdf/19589.pdf>.

While the case is being heard, the *Jurado* must order suspension from office of the judge or official accused with half-pay.

### **Verdict – Deadline**

#### **Article 229**

The *Jurado* shall pronounce its verdict in accordance with law within 30 days of the case going forward and declare the accused judge or official guilty or not guilty of the charges.

If the former, that judge or official shall be definitively separated from office and may be barred from public office to the extent and for such time as the *Jurado* deems fit and shall be remitted to the ordinary courts according to law; if the latter, he or she shall continue in office. The *Jurado* must notify the appropriate authority of its verdict.

### **Trial – Duration**

#### **Article 230**

The trial must terminate within 90 business days from the date of the final resolution ordering the case to proceed. Suspension of the trial or failure to render judgment shall be grounds for acquittal solely because the time allowed has elapsed, in which case, for the purposes of restitution to office, the effects shall be identical to those established in the foregoing article.

### **Grounds for removal**

#### **Article 231**

In addition to the offenses and misdemeanors of officials subject to the jurisdiction of the *Jurado de Enjuiciamiento* determined by the respective law, the following shall be grounds for removal from office for magistrates and members of the public prosecutor's office in the Judiciary: improper conduct, negligence, repeated and glaring ignorance of law, and unwarranted tardiness in the performance of duties.

### **Procedure**

#### **Article 232**

- 1) The right of a plaintiff or defendant may not be obstructed by charging a court tax or a stamp tax on documents.
- 2) The defendant has the right to legal aid.
- 3) The trial must be oral, continuous, and open to the public.
- 4) Provide for punishments to be imposed in the event of manifestly unfounded or malicious complaints.

### **Trial of judges for offenses unrelated to their functions**

#### **Article 233**

Judges accused of offenses unrelated to their functions shall be tried in the same way as for other residents of the Province, after requesting the *Jurado* to suspend them from work.

### **Trial of other judicial officers**

#### **Article 234**

The Superior Court shall hear and resolve accusations against all other judicial officers for offenses, misdemeanors, or negligence in the performance of their respective duties, in procedures established by law.

55. Along the same lines, Law 4832 of July 4, 1989<sup>27</sup> regulated the procedure for dismissing judges as follows:

Art. 2: The *Jurado de Enjuiciamiento* responsible for trying judges and officials shall be chaired by the President of the Superior Court and shall comprise nine members: three deputies, attorneys if there are any, three licensed lawyers who are qualified pursuant to Article 202 of the Provincial Constitution,<sup>28</sup> and three court judges, including the President of the Court.

The *Jurado* shall be renewed on August 19 of each year and its members and their alternates – except the President – shall be chosen by lot in a public act.

The lawyers shall be renewed in the month of March from a list of twenty (20) professionally qualified attorneys chosen by lot, in December of each year, by the provincial Bar Association from among all the professionals who meet the requirements established in Article 7.

The judges shall be chosen from among the members of the Superior Court and the Chambers.

In April of each year, the Chamber of Deputies shall proceed to appoint the members of the *Jurado de Enjuiciamiento*.

Article 15. When the *Jurado de Enjuiciamiento* has issued a resolution allowing a case to go forward against the accused, it shall hear the case until the end of the trial, even if the annual term for appointment of its members has expired, to which end their duties shall be considered extended.

Article 16. The judges and officials covered by this Law may be removed on the grounds listed below, without prejudice to any other that may arise from the Constitution and the law:

I. Offenses committed on account of or in the performance of their duties:

- d) Illegal assumption of authority;
- e) Abuse of office and violation of the rights of government officials;
- k) Breach of public duty;
- l) Denial and delaying of justice;

II. Breaches

- c) Ineptitude or repeatedly demonstrated negligence in the performance of duties;
- d) Repeated and glaring ignorance of law;
- e) Repeated failure to comply with the duties inherent to the office;
- f) Manifest partiality;
- i) Reiteration of grave procedural irregularities;

<sup>27</sup> **Annex 22.** Law 4832 of July 4, 1989 (Annex to the petitioners' communication of May 30, 2011).

<sup>28</sup> Article 202 of the Constitution of the Province of San Luis establishes:

To be a member of the Superior Court, Attorney General, a member of a chamber and Chamber prosecutor (*Fiscal de Cámara*) it is necessary:

- 1) To exercise citizenship;
- 2) To be at least 30 years old;
- 3) To possess the title of attorney authorized to exercise the profession;
- 4) To have practiced as an attorney or some kind of court judge for at least 10 years; and
- 5) To have resided in the Province continuously for the past three years, unless born in the province.

j) Public or concealed intervention in politics or the carrying out of acts of that nature prohibited by Article 193 of the Provincial Constitution.

56. On February 12, 1996, the provincial Legislature passed Law 5070,<sup>29</sup> which amended the mechanism for appointing associate judges as follows:

Art. 2. The associate judges who shall replace judges of the Superior Court and the ad hoc official who shall replace the district attorney and other members of the district attorney's office shall be appointed in accordance with the following rules:

a) The associate judges who replace judges of the Superior Court and the ad hoc official who replaces the district attorney shall be appointed by the Executive with the consent of the Senate. Ten appointments, for a two-year term, shall go to persons who meet the requirements and conditions of Article 202 and concordant provisions of the Provincial Constitution. The allocation of cases to the associate judges shall be done in relative order arising out of the appointment.

b) The associate judges who are to replace lower court judges and the ad hoc officials who are to replace members of the district attorney's office shall be proposed by the Council of Judges to the Executive, pursuant to Article 19630 of the provincial Constitution and its enabling regulations, in a three-person slate for each office in the respective judicial district. The Executive shall make the appointments with the consent of the Senate. The appointments shall go to persons who meet the conditions set forth in the provincial Constitution and shall be for a two-year term.

Art. 3. The procedure prescribed by Law 4929 and its amendments for appointing associate judges and ad hoc officials to replace court judges and members of the District Attorney's office shall expire as appointments are made pursuant to the procedure prescribed in the present Law and shall not be in effect beyond December 31, 1996, at the latest.

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<sup>29</sup> **Annex 23:** Law 5050 [sic] of February 12, 1996. According to the petitioners, the previous Law 4929 established that associate judges were appointed by lot, conducted by the provincial Superior Court from among all licensed attorneys in the Province who met the Constitutional and/or legal requirements for replacing judges in cases of recusation or excusal. **Annex.** La Nación, *Una profunda que ya lleva varios años* [A profound crisis (?) that has gone on for several years already], November 2, 2002 (Annex to the petitioners' initial petition). La Nación, *Absuelto en dos horas* [Acquitted in two hours]. April 15, 1999 (Annex to the petitioners' initial petition).

<sup>30</sup> Article 196 of the Constitution of the Province of San Luis establishes:

The members of the Superior Court and the Attorney General shall be elected by the Executive, with the consent of the Senate.

Lower court judges and the officials of the District Attorney's office shall be proposed in three-person slates by the Council of Judges to the Executive and the latter shall appoint one of them with the consent of the Senate. If any of the branches of government rejects the proposal, a second slate is presented to the Council of Judges, without the name of the person rejected by the Senate.

In this latter case, the appointment has to be made from among those listed in the second proposal submitted.

57. On March 10, 1997, the provincial Legislature passed law 5102,<sup>31</sup> which amended Law 4832 as follows:

Art.1. – Article 2 of Law 4832 is hereby repealed in all its parts to now read as follows:  
The *Jurado de Enjuiciamiento* shall be chaired by the President of the Superior Court of Justice and its composition shall be as prescribed by Article 224 of the provincial Constitution, whereby the licensed attorneys must meet the requirements established by

Article 202 of that Constitution.

The members of the *Jurado* and their respective alternates shall be appointed annually by lot – except the President – in a public act to be conducted by the Superior Court, and they shall be renewed on April 1 of each year.

The three licensed attorneys shall be appointed from a list of twenty professionals drawn up by the provincial Bar Association, each December, from the list of associate judges appointed in accordance with Law 5070 and decrees 2163/GyE (SERI)/96 and 1/MGyE/97, by lot to be conducted by the Superior Court.

Should that list not be presented by the provincial Bar Association to the Superior Court by march 10, that Court shall appoint the three attorneys referred to in Article 224 of the

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<sup>31</sup> **Annex 25.** Law 5102 of March 10, 1997. Regarding grounds for dismissal, the law established:

Art.7 - Article 16, point II, Misdemeanors, subparagraph c) of Law 4832 is hereby repealed in all its parts to now read as follows:

c) Ineptitude or negligence demonstrated in the performance of their duties.

Art. 8 - Article 16, point II, Misdemeanors, subparagraph d) of Law 4832 is hereby repealed in all its parts to now read as follows:

d) Inexcusable and grave ignorance of law.

Art. 9 - Article 16, point II, Misdemeanors, subparagraph e) of Law 4832 is hereby repealed in all its parts to now read as follows:

e) Failure to fulfill the duties inherent in the office.

Art. 10 - Article 16, point II, Misdemeanors, subparagraph g) of Law 4832 is hereby repealed in all its parts to now read as follows:

g) Tardiness in the performance of duties, consisting of failure to attend the habitual place of duty in the hours established by the Organic Law of Courts and/or Law 5065, or postponement of that attendance, unless the Superior Court justified such failure to be present, as well as failure to comply with the deadlines set by the codes of procedure for issuing simple court orders; resolutions; court judgments; administrative opinions; or else similarly preventing collegiate bodies to which he or she pertains from being able to meet those deadlines. Overwork, lack of attendance not justified by the Superior Court, and lack of complaint by interested parties shall not excuse the tardiness.

Art. 11 - Article 16, point II, Misdemeanors, subparagraph h) of Law 4832 is hereby repealed in all its parts to now read as follows:

h) Insufficiently substantiated or manifestly inappropriate excusals, as well as intervention in any judicial and/or administrative proceedings when he or she has been recused by one of the parties and said recusation was conducted on time and in accordance with law and must be resolved by another court in accordance with the provincial codes of procedure governing such matters, or the issuing of a court order, resolution and/or judgment while being manifestly incompetent, or performing any procedural act that delays processing of the file.

Art. 12. - Article 16, point II, Misdemeanors, subparagraph i) of Law 4832 is hereby repealed in all its parts to now read as follows:

i) Grave irregularities in the proceedings that discredited the Judiciary.

Art. 13. The following text is hereby added to subparagraph p) of point II, Misdemeanors, of Article 16 of Law 4832:

p) Any judge three (3) of whose orders, resolutions, and/or judgments have been declared null by the respective Chamber.

Constitution of the Province of San Luis, from the list of associated judges appointed in accordance with Law 5070 and decrees 2163/GyE (SERI)/96 and 1/MGyE/97, who meet the requirements established by Article 202 of the provincial Constitution.

The judges shall be appointed from among the members of the Superior Court and the Chambers, to which end the associate judges appointed pursuant to Law 5070 and decrees 2163/GyE (SERI)/96 and 1/MGyE/97 shall also be considered members of the Superior Court and the Chambers.

The lot will be conducted in a public act by the Superior Court before March 10 of each year. Before March 10 of each year, the Chamber of Deputies shall proceed to appoint the member of the *Jurado de Enjuiciamiento* in accordance with Article 224 of the provincial Constitution and shall notify the Superior Court of the list of appointed members.

Transitional clause: For this time only, and for the purposes of installing the *Jurado de Enjuiciamiento* established by Article 224 of the provincial Constitution, for the period from April 1, 1997 to April 1, 1998, in the event that the provincial Bar Association has not submitted the list of twenty professionals referred to in Article 224 of the provincial Constitution on the date this Law enters into force, from the list of associate judges appointed in accordance with Law 5070 and decrees 2163/GyE (SERI)/96 and 1/MGyE/97, the Bar Association shall remit said list to the Superior Court by March 10 of this year; otherwise, the Superior Court shall appoint the three (3) attorneys referred to in Article 224 of the provincial Constitution, from the list of associate judges established in accordance with Law 5070 and decrees 2163/GyE (SERI)/96 and 1/MGyE/97, who meet the requirements established by Article 202 of the provincial Constitution, by lot, in a public act. In all cases, the Superior Court shall duly notify the Honorable *Jurado de Enjuiciamiento* by March 30 of each year, of the complete list of its regular and alternate members.

Art. 2. -The appointments of the current members of the *Jurado de Enjuiciamiento* carried out pursuant to Article 224 of the Constitution of the Province of San Luis and to Law 4832 shall expire *de jure* on the date this law enters into force.

Furthermore, Article 15 of Law 5832 is hereby expressly repealed in all its parts, and all existing cases and complaints shall be turned over to the new members of the *Jurado de Enjuiciamiento* in accordance with Article 1 of this law.

In addition, the suspensions of all those judges and officials ordered by the members of the previous *Jurado de Enjuiciamiento* shall be rescinded until the new members of said *Jurado de Enjuiciamiento* have taken office in accordance with this law.

Art. 14. - The third (3rd) paragraph of Article 32 of Law 4832 is hereby repealed to now read as follows:

All the deadlines established in Law 4832 and in the present law are final and may not be extended. All final judgments issued by the *Jurado de Enjuiciamiento* shall be unappealable.

58. On May 5, 1997, the provincial legislature adopted Law 5,106<sup>32</sup>, which established at the pertinent part:

Article 3 - Article 40 of Law 4,929 shall be replaced, and it shall be drafted as follows:

Article 40. - The Superior Court of Justice shall be made up of five (5) members designated by the provincial Executive Branch, with the agreement of the Honorable Provincial Senate, but it may function validly with three (3) of its members....

<sup>32</sup> Annex 26. Law 5,106 of May 5, 1997.

Article 4 – Article 41 of Law 4,929 shall be replaced, and it shall be drafted as follows:

Article 41. – The president of the Superior Court shall be elected by vote of its members, shall serve for one year, and may be re-elected.

59. On October 10, 1997, the provincial legislature approved Law 5,123<sup>33</sup> amending the regime for the practice of law, which determined, among its transitory clauses, Article 28, that:

In a term of sixty (60) calendar days from the entry into force of this law, the associations and/or colleges of attorneys and/or lawyers should present their status in keeping with the new legislation.... From the entry into force of this law the Bar Associations of attorneys and lawyers that exist shall automatically be dissolved as entities of public order.

60. Subsequently, on October 13, 1997, the provincial legislature adopted Law 5,124<sup>34</sup>, which derogated laws 4,832 and 5,102 and established, as relevant:

Article 2 – The *jurado de enjuiciamiento* (tribunal to try a judge's malfeasance or misfeasance) shall be presided over by the president of the Superior Court of Justice, and shall be made up as prescribed by Article 224 of the Provincial Constitution; the registered attorneys must meet the requirements established in Article 202 of said Constitution. The members of the *jurado* are renewed on August 19 of each year.

The members of the *jurado* and their respective alternates, except the president, shall be designated by lot in a public act, which shall be done by the Superior Court of Justice.

Article 3 – The Forensic College of the Province, in December of each year, among the judges of the Superior Court and the chambers, designated in keeping with Law 5,070, shall draw up a list of 20 attorneys who will communicate to the Superior Court of Justice before March 10 of each year so that, on effectuating the corresponding drawing of lots, the three principal attorneys and the three alternates who shall make up the *jurado* shall be designated.

Article 4 – In the event that the Forensic College does not fulfill the obligation to send the list to the Superior Court of Justice in proper time and form, it will draw lots among the list of associate judges of the Superior Court from the courts of appeals designated in keeping with Law 5,070.

Article 11 – The members of the *jurado* of judges may be recused for cause and shall be excused for the following causes in relation to the respondent:

- (a) Relationship up to the fourth grade of consanguinity and the second grade of affinity.
- (b) Creditor or debtor.
- (c) Grave and manifest enmity.
- (d) Intimate friendship.
- (e) Having intervened, issued an opinion, or having an interest in the case that has led to the trial (*enjuiciamiento*)

#### CHAPTER I – Grounds for removal

Article 21. – The judges and public servants covered by this law may be removed for the grounds listed below without prejudice to any other that may arise from the Constitution or statute.

I – Offenses committed for reasons associated with or in the exercise of their functions:

- (d) Usurpation and abuse of authority.
- (e) Violation of the duties of public servants.

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<sup>33</sup> Annex 27. Law 5,123 of October 10, 1997.

<sup>34</sup> Annex 28. Law 5,124 of October 13, 1997.

- (k) Prevarication.
  - (l) Delay and denial of justice.
- II -- Faults:
- (c) Ineptitude or negligence shown in the performance of one's functions.
  - (d) Inexcusable and grave lack of knowledge of the law.
  - (e) Breach of the duties inherent to his or her position.
  - (f) Manifest bias.
  - (i) Grave irregularities in the procedure that have led to the discredit of the Judicial branch.
  - (j) Public or covert intervention in politics, or performing acts of this nature prohibited in Article 193 of the Provincial Constitution.

CHAPTER III -- Formalities and processing of the complaint

Article 24. – The complaint shall be submitted in writing before the *jurado de enjuiciamiento* on plain paper; it may be presented by counsel, and it shall contain:

- (a) The personal information on the complainant, his or her actual domicile, and the domicile constituted within the radius of the city of San Luis.
- (b) The account of the facts that the complainant considers constitute the grounds for removal.
- (c) Complainant may offer evidence and, if any, documentary evidence shall be attached, if the complainant has it. Otherwise, mention will be made of where it can presumably be found. The complainant should not include more than one judge or public servant, unless there is participation and relatedness.

Article 25. – The complainant by himself or herself or through counsel, with special power of attorney, may intervene after the complaint is filed before the *jurado de enjuiciamiento* with the following powers:

- (a) Recuse for cause.
- (b) Offer evidence and be present when it is examined.
- (c) Argue the grounds for the accusation.
- (d) Summarize the evidence presented.

CHAPTER III – On the verdict

Article 42. – Once the debate has concluded, the *jurado* shall deliberate in closed session in which it will weigh the evidence in keeping with the rules of freedom of choice of judges in evaluating the evidence. The judgment with the number of votes set by Article 16 shall be handed down in no more than five (5) days, it should be well-founded and in keeping with Article 229 of the Provincial Constitution, it shall be in line with the law, and shall merely declare the accused guilty or not guilty of the act or acts of which he or she is accused.

If convicted, it shall order the removal of the respondent, who it may also be disqualified from holding public office with the scope and effects that are determined. If the removal is based on acts that could constitute a criminal offense, the case shall be forwarded to the competent judge of the criminal jurisdiction. If the respondent is absolved, the judge or public servant, without any further process, shall be reinstated and resume his or her duties.

All the time frames set in this law are peremptory and may not be extended.

All the final resolutions and/or final judgments handed down by the *jurado de enjuiciamiento* are unappealable.

61. On August 5, 1998, the Legislative branch adopted Law 5,135<sup>35</sup>, which incorporated the following text as Article 7 bis of Law 5,124:

When the *jurado* has handed down the resolution initiating the criminal complaint against the accused, it shall continue hearing the matter until the end of the respective proceeding, even if the annual term of the designation of members has lapsed; their terms shall be considered extended for that sole purpose.

<sup>35</sup> Annex 29. Law 5,135 of August 5, 1998.

## C. Processes of removal of judges Gallo, Careaga, and Maluf

### 1. Process of removal of Judge Gallo

62. On April 23, 1996, Mr. Edgar del Corro filed a complaint against Judge Gallo because of a judicial resolution adopted by the judge on July 7, 1994, in the case captioned “Rossi Grosso Oscar v. Foetra-Collection of Australs, by which she is said to have approved an agreement on a payment, without requiring the prior agreement of the attorneys involved, which is established in the regulations in force. In the complaint, Mr. del Corro subsumed the facts alleged in Article 16 of Law 4,832 and indicated that “there are other antecedents of irregularities committed by the Judge denounced, that this party will submit the antecedents and evidence.”<sup>36</sup> At the moment of ratifying his complaint, Mr. del Corro added other facts such as having designated as special auditor (síndico) in the case “DIAZ Y NOGAROL-QUIEBRA”, expressly and voluntarily in contempt of the resolution emanated from the Court of Appeals for Civil and Commercial Matters of Villa Mercedes, and that was communicated to her formally and prior to the selection by lot of the special auditor (Síndico) and he alleged irregularities, abuse of authority, notorious and reiterated repudiation of the law in the case “ABA DE VILLARROEL AMANDA ALICIA v/ PEDRO ROBERTO SUAREZ RE: PERFORMANCE OF CONTRACT” and in the case: “PERLO DE CIVALERO – SUCCESSION.”<sup>37</sup>

63. On August 22, 1996, the *Jurado de Enjuiciamiento* was constituted in keeping with what was established in Law 4,832, in force as of the date of the complaints.<sup>38</sup>

64. On December 4, 1996, Mr. Carlos Aguilera filed a complaint against Judge Gallo for the delay said to have been caused by the delay in delivery of a check in the succession case captioned “Federigi Federico and Angela Santos Corresi de Federigi- Succession,” the last procedures in which took place on August 29, 1996. In the complaint, Mr. Aguilera subsumed the facts alleged in Articles 16(II)(c), (d), (e), (f), (g), (i), (k), (l) of Law 4,832 and 273 of the Criminal Code.<sup>39</sup>

65. By virtue of the adoption of Law 5,102 of March 10, 1997, the composition of the *Jurado de Enjuiciamiento* was modified. In response to this situation, Judge Gallo filed an *amparo* action before Civil Court No. 4 of the city of San Luis alleging the unconstitutionality of the new make-up of the *Jurado*.<sup>40</sup> On March 25, 1997, Civil Court No. 4 ruled favorably on the *amparo* and issued a restraining order that Law 5,102 did not apply.<sup>41</sup>

66. In October 1997, the adoption of Law 5,124, which derogated Laws 4,832 and 5,102, once again impacted on the make-up of the *Jurado de Enjuiciamiento*. On December 23, 1997, the Superior Court of Justice found the injunction referred to in the previous paragraph “abstract,” since Law No. 5,102 had been

<sup>36</sup> **Annex 30.** Complaint filed by Edgar S. del Corro of April 23, 1996. Annex to the petitioners’ brief of March 1, 2011.

<sup>37</sup> **Annex 31.** Report No. 435/98. Accusation by the Attorney General Domingo Antonio Vaca, of August 5, 1998. Annex to the petitioners’ brief of May 30, 2011.

<sup>38</sup> **Annex 32.** Act of constituting the *Jurado de Enjuiciamiento* of August 22, 1996. Annex 7 to petitioners’ brief of May 30, 2011.

<sup>39</sup> **Annex 33.** Brief of December 3, 1996, in which the complaint is lodged before the Honorable *Jurado de Enjuiciamiento* against Ms. Adriana Gallo de Ellard. Brought by Carlos Alberto Aguilera. Annex to petitioners’ brief of March 1, 2011.

<sup>40</sup> **Annex 34.** Resolution of Court No. 4 of San Luis of March 25, 1997. Case captioned “Gallo de Ellard Adriana Beatriz v. Province. *Amparo* Action.” (Annex to petitioners’ brief of May 30, 2011).

<sup>41</sup> **Annex 34.** Resolution of Court No. 4 of San Luis of March 25, 1997. Case captioned “Gallo de Ellard Adriana Beatriz v. Province. *Amparo* Action.” Annex 6 to petitioners’ brief of May 30, 2011. In the Resolution, the Court found the unconstitutionality of Article 7 of Law 5,103, which impeded bringing *amparo* proceedings against the State and decreed as a restraining order the inapplicability of Law 5,102.

derogated by Law No. 5,124<sup>42</sup> and on December 30, 1997, it ordered a new drawing of lots for the members of the *Jurado de Enjuiciamiento*<sup>43</sup>, which led to a new change in its make-up.<sup>44</sup>

67. In the face of this situation, on March 4, 1998, Judge Gallo filed a brief in which she argued the ineffectiveness of legal actions against the make-up of the *Jurado de Enjuiciamiento* on grounds that it violated Article 224 of the Provincial Constitution and that it repudiated the restraining order in her favor, and subsidiarily she recused the principal and alternate members of the *Jurado de Enjuiciamiento*, who were affiliated with the Partido Justicialista at the time of: (i) the mobilization of December 1996 to demand the resignation of the members of the Superior Court of Justice, specifically Carlos Sergnese, José Mirábile, Sesar Rolando Ochoa, Walter Aguilar, Rubén Angel Rodríguez, and Agustina Garro de Torres, (ii) the march of June 10, 1997, to protest a judgment handed down by her, and (iii) with respect to Mr. Víctor Nicador Liceda, since he was litigating a case on his own behalf in Judge Gallo's court, and she reserved the right to pursue the federal case.<sup>45</sup>

68. On June 29, 1998, the composition of the *Jurado de Enjuiciamiento* was modified once again.<sup>46</sup> On July 7, 1998, the *Jurado de Enjuiciamiento* ruled to initiate the criminal complaint against Judge Gallo in keeping with the terms of Law 5,124, suspended her from her duties, and ordered the joinder of the two cases against her.<sup>47</sup>

69. On August 5, 1998, the Attorney General filed the accusation for the following acts:

**FIRST ACT:** [Acts referring to the case captioned “Rossi Grosso Oscar v. Foetra- Collection of Australs” Judge GALLO DE ELLARD rules, on July 6, 1994, “All other professionals intervening expressing conformity, Article 40 Law 3,548” (folio 57). On July 7, the next day at folio 58, *sua sponte* the judge rules “nothing in this state that the interlocutory order at folio 57 is not compatible with the documentation in this proceeding, in that the interests of the other professionals intervening are not affected by the agreement presented, I overturn it as contrary to the rule.... It is evident that the Judge has acted without regard for Article 40 of the Law on Fee Schedules No. 3,528 in force at that time.... The clarity of the legal text cited indicates a notorious departure therefrom as it approves a ratification and it orders the delivery of sums of money without the professional agreement in the case of Mr. DEL CORRO, who had intervened in the proceeding as the previous attorney in the action. The harm caused and the manifest bias are evident insofar as funds are released without the professional agreement of Mr. DEL CORRO, and note that the interlocutory order at folio 58 that overturns, *sua sponte*, the prior decree, which required the conformity of Article 40 of Law 3,528 does not explain, laying a foundation, how it is that the interests of the other professionals intervening are not affected. **SECOND ACT** Ms. Adela Russo, who intervened on behalf of the respondent, at folio 66 of July 8, states that she has learned that a settlement was reached that terminates the case and notes that her fees – regulated – have not been paid, which would impede judicial ratification of that settlement agreement, pursuant to Articles 40 ff. of Law 3,528, seeking pre-judgment attachment which Ms. Gallo de Ellard

<sup>42</sup> **Annex 35.** Resolution of the Superior Court of Justice of the Province of San Luis of December 23, 1997, the case “*Jurado de Enjuiciamiento* re: date of the drawing of lots.” Case No. 95-J-97. Annex 10 to petitioners’ brief of May 30, 2011.

<sup>43</sup> **Annex 35.** Resolution of the Superior Court of Justice of the Province of San Luis of December 23, 1997, in the case “*Jurado de Enjuiciamiento* re: date of the drawing of lots.” Case No. 95-J-97. Annex 10 to petitioners’ brief of May 30, 2011.

<sup>44</sup> **Annex 36.** Act of constituting the *Jurado de Enjuiciamiento* of December 30, 1997. (Annex to the petitioners’ brief of May 30, 2011).

<sup>45</sup> **Annex 37.** Brief of Judge Gallo on inability to question the composition of the *Jurado de Enjuiciamiento*. Subsidiarily recuses with cause. Annex 9 to petitioners’ brief of May 30, 2011.

<sup>46</sup> **Annex 38.** Act of constituting the *Jurado de Enjuiciamiento* of June 29, 1998. Annex to the petitioners’ brief of May 30, 2011.

<sup>47</sup> **Annex 31.** Report No. 435/98. Accusation brought by the Attorney General Domingo Antonio Vaca, August 5, 1998. Annex 20 to petitioners’ brief of May 30, 2011.

admits.... One notes the reiteration of the conduct assumed by the judge. **THIRD ACT** Dr. DEL CORRO argued that the settlement agreement is void based on grounds argued therein, invoking Article 40 of Law 3,528 ... the Court of Appeals for Civil Matters, by Order No. 281 of August 15, 1995, ruled to set aside the ruling appealed. The judgment of the Court of Appeals merely highlights the notorious departure on the part of the Judge from what is provided for in Article 40 of Law 3,528. **FOURTH ACT** In the case captioned “Aba de Villarreal Amanda Alicia v. Pedro Roberto Suárez- COMP. CONT. Ordinary Redhibitory Flaw” (Case No 16-A-93) by judgment No. 466 the court orders “... To declare null and void the auction held.... Order the return of the money [paid].... Find civilly liable [the purchaser, the Auctioneer, and the Clerk of Court]. Defer the fixing of damages.... Costs to be paid by the liable parties.... Apply to Ms. Susana Bravo a warning ... ordering her removal from this case.... That, by rule of Article 43(1) of Law 4,929 since at that time Ms. BRAVO DE MEDIAVILLA was Clerk/Attorney of Civil Court No. 3, the Superior Court has jurisdiction to hear the case. The ruling by Ms. GALLO DE ELLARD at folios 514/518 as regards Ms. BRAVO DE MEDIAVILLA, which finds her civilly liable for the damages caused by the annulment of the auction, is null by absolute nullity as she has been found civilly liable by a judgment without jurisdiction, without a prior proceeding, violating the guarantee of due process and the right to defense. The Superior Court of Justice ... at folios 674/679 resolves.... To declare the [substantive] nullity of interlocutory order No. 466 in relation to operative paragraphs 3,4,5, and 6.... The decision of the Superior Court of Justice highlights the “failure to observe imperative precepts that go to the exercise of the jurisdiction (see considering paragraphs in the judgment referred to) by the judge who was tried, which indicates a grave irregularity in the procedure and a repudiation of the law. **FIFTH ACT** In relation to the complaint filed by Mr. Carlos Aguilera for the case that motivates that complaint captioned “Federigi Federico and Angela Santos Corresi de Federigi- Succession” Case No. 08-F-94 it appears that ... Mr. Aguilera requested a check in the amount of \$ 1,653.75 for a surplus amount as the result of a payment made for a fiscal order, ordering the subrogating Judge to serve notice on the other heir.... Subsequently, in response to the filing of a Motion for Reconsideration with appeal subsidiarily at folios 1521/1522 by the complainant Mr. AGUILERA, the Judge orders the Actuarial report at folio 1523 which therein states: “I inform you that at folio 1374, the co-heir MARIO FEDERIGI requests delivery of a check for a payment made for the same thing. At folio 1374 dorso, notice of that request was served on the other heir, who is notified at folio 1433. At folio 1446, given the lack of an answer to the request for a check, he asks that it be admitted, notice of which is again served). At folios 1450/1451 the notice conferred at folio 137 dorso is granted after the time for doing so has expired, notice being given that the matter is being considered for decision at folio 1452. At folio 1510 the notice is answered, notice being given once again at folio 1520. Next at folio 1523 dorso the judge called a hearing in the terms of Article 36(4) of the Code of Civil Procedure. What is described indicates an evident disorder in the procedure in which one does not note an appropriate and correct direction of the procedure. This has made possible the incorporation of briefs filed after the period for doing so had expired, and no measure has been adopted aimed at curing those visible irregularities. Nor is it resolved, it arising that no ruling was issued without further procedure, but rather the procedure was drawn out in an absolutely unnecessary manner and with detriment to the complainant.... The result is a drawn out procedure whose origin is an erroneous direction of the process.... As regards the cases “Diaz y Nogarel, Saccia Quierra” and “Perlo de Civalero Catalina -Succession,” I do not find merit to effectuate a judgment of reproach.-“ ... The conduct of Ms. GALLO DE ELLARD fits in the grounds for removal provided for at Article 21(I)(d), (e), (k), (l), 21(II)(c) (d), (e), (f), (i) of Law 5,124] and in Articles 224 and 231 of the Constitution of the Province all of which amounts to misfeasance (*mal desempeño de las funciones*). ...I request that Your Excellency issue a verdict finding Ms. ADRIANA E. GALLO DE ELLARD guilty of the acts of which she is accused, and that you remove her from her position ... and that she be

disqualified for two years from holding public office, and that the proceedings be remitted to the Criminal Court in turn.”<sup>48</sup>

70. That same day, the provincial legislature adopted Law 5,135, which established that the members of the *Jurado* who admitted a case would continue hearing the case until its conclusion, even if their terms should lapse.<sup>49</sup>

71. In the answer to the accusation, the defense of Judge Gallo requested an express ruling with respect to the law under which she would be judged, mindful of the recent adoption of Law 5,135.<sup>50</sup> In addition, the defense argued that the accusation was null and void based on: (i) the second and third acts were introduced in the accusation, (ii) act four did not contain facts that constitute grounds for removal, and (iii) act four was not part of the allegations.<sup>51</sup>

72. The oral proceeding was conducted on October 28, 29, and 30 and November 2, 1998. Throughout the proceeding: (i) the defense filed a number of preliminary motions, which were rejected<sup>52</sup>, (ii) the documentary evidence offered was read out, (iii) the statement by Judge Gallo was heard, (iv) the defense sought to recuse one of the members considering that he had already advanced an opinion, which was rejected, (v) the statement of witnesses proposed by the defense and the prosecution was received, (vi) the defense sought to add a ruling in which a civil court had ordered an injunction that affected the make-up of the *Jurado de Enjuiciamiento*, which was rejected, (vii) the defense reserved the right to appeal, and (viii) the defense, the accuser Mr. del Corro, and the prosecution made their final arguments.<sup>53</sup>

73. On November 6, 1998, the *Jurado de Enjuiciamiento* handed down its judgment and ruled: “(I) To find Ms. ADRIANA BEATRIZ GALLO DE ELLARD ... GUILTY and accordingly to order her immediate REMOVAL from the position ... and TO DISQUALIFY HER from holding public office for the term of EIGHT (8) YEARS.”<sup>54</sup>

<sup>48</sup> **Annex 31.** Report No 435/98. Accusation brought by the Attorney General Domingo Antonio Vaca, August 5, 1998. Annex to petitioners’ brief of May 30, 2011.

<sup>49</sup> **Annex 29.** Law 5,135 of August 5, 1998.

<sup>50</sup> **Annex 39.** Record of the oral trial held October 28 and 29, 1998, before the *Jurado de Enjuiciamiento* (Annex 3 to the petition filed on June 11, 2003).

<sup>51</sup> **Annex 40.** Judgment of removal and disqualification of Judge Adriana Gallo issued November 6, 1998, by the *Jurado de Enjuiciamiento* of the Province of San Luis, p. 4 (Annex 3 to the petition submitted on June 11, 2003).

<sup>52</sup> The defense argued the following preliminary matters: nullity due to the make-up of the *Jurado* and its presidency, based on unconstitutional laws and in violation of an injunction in force; nullity because the complaints against Judge Gallo were heard by the *Jurado* in its previous composition, which ruled to archive them; recusal of the new members of the *Jurado*; nullity because the facts were characterized by the *Jurado* – in its new composition – based on a statute that was not in force when they occurred; the second and third acts were not part of any complaint but rather were introduced in the accusation; and in terms of the fourth act, the complainant merely referred in generic terms that in a given case there were irregularities without properly describing the facts, plus that case was incorporated to the proceeding before the *Jurado* after it was officially ordered opened, such that it was not part of the summary investigation. The *Jurado* deliberated and resolved to reject or declare unfounded the arguments on “nullity of the composition of the *Jurado*,” “[n]ullity of the accusation,” “[r]efusal to admit evidence without any basis,” and recusal of the members of the *Jurado*. In addition, it ruled to defer the question as to incorporation of the acts individually identified as second, third, and fourth in the accusation, so as to resolve it in the respective judgment. **Annex .** Record of the oral trial held October 28, 29, and 30 and November 2, 1998, before the *Jurado de Enjuiciamiento*, folios 3 to 8 (Annex 3 of the petition presented on June 11, 2003).

<sup>53</sup> **Annex 39.** Record of the oral trial held October 28, 29, and 30 and November 2, 1998, before the *Jurado de Enjuiciamiento*, folios 153 dorso to 185 (Annex 3 of the petition presented on June 11, 2003).

<sup>54</sup> **Annex 40.** Judgment of the *Jurado de Enjuiciamiento* of the Province of San Luis in the cases captioned “Respondent: Gallo de Ellard Adriana – Judge of Court No. 3 for Civil and Commercial Matters of the Second Judicial District – Complainant: Del Corro Edgar S.” Case No. 1-G-96, and the case joined to it: “Respondent: Gallo de Ellard Adriana – Judge of Court No. 3 for Civil and Commercial Matters of the Second Judicial District – Dte.: Mr. Aguilera Carlos Alberto” Case. N! 2-G-96, of November 6, 1998. (Annex to the petitioners’ original petition).

74. To reach that decision, with respect to the motion for nullity filed by the defense in relation to the violation of the principle of conformity with respect to the second, third, and fourth acts, the Court considered that it was not a substantial nullity, “since one does not note a violation of the guarantee of defense in the proceeding, as the respondent has consented to the alleged vices that she just now alleged.” In addition, the Court held that the accusation, “as a matter of methodological issues,” separates into three aspects the act that had been alleged as one, and that in her statement the judge denounced had the opportunity to mount her material defenses with respect to all of the acts that have led to the accusation. In addition, the Court considered:

... When the *Jurado de Enjuiciamiento* rules to separate a judge from his or her position for having engaged in conduct included within the grounds for rendering him or her unworthy of continuing with his or her lofty function of administering justice, that resolution is not in the nature of a “sanction” but rather removal, as it is not a criminal proceeding. From the “non-criminal” nature of the impeachment proceeding or “*iure*” of trials (*enjuiciamientos*) is derived the non-demandable nature of the constitutive conduct.... In contrast to the criminal proceeding, where one must first attribute the facts alleged such that at the moment of making the signed statement the accused can exercise his or her material defense on the same, which subsequently limits the content of the accusation, the procedure provided for in Law 5,124 is accusatory in which, without the accusation directed at a person by the accuser, there is no proceeding, and the Court’s action is limited precisely to the case and to the circumstances put forth by that accuser. In other words, it is not the allegation, but rather the charge by the accuser that limits the action and cognizance of the Court....

75. As regards the merits of the case, the *Jurado de Enjuiciamiento* held that the judge subject to the proceeding “not only has recognized the existence of the acts that are the subject matter of the accusation, taking issue only with the scope assigned to them by this Tribunal” and that “her technical defense ... should have been focused on seeking to convince the members of the *Jurado* of the reasons he argued such that the conduct of his client would be justifiable, and not to respond to the intention of provoking the approval or applause of the public.”

76. In addition, the judgment indicated that (a) with respect to the Rossi-Grosso case, the “contradictions [of Judge Gallo] with the written documentation in the case constitute the confession of bias and of the agreement” that existed between her and the plaintiff, (b) with respect to the Federigi succession, “a reflexive, methodical, adequate, interpretative, and exhaustive analysis leads us to hold with profound conviction, based on the principles of reasoned judgment (*la sana crítica*), that such acts reflected not mere judicial error but, to the contrary, they reflect a methodology, inscribed under the intention of favoring one and prejudicing the other, (c) with respect to the Aba de Villarroel case or “fourth act” the Court held:

... THE NON-CRIMINAL NATURE OF THE IMPEACHMENT PROCEEDING, the criterion for the judgment being that based on POLITICAL DISCRETION, according to which one analyzes the advisability of the continuation or non-continuation of a judge, in keeping with whether his or her conduct has been reproachable.... One should note that this *Jurado* has jurisdiction to analyze, from the viewpoint of “political discretion,” each of the resolutions of the Judge denounced, independent of said resolution having been overturned or upheld by the appellate court.... From the legal norms transcribed above, it appears with total clarity that this Honorable *Jurado*, at the moment of ruling on admission of the case, the only thing that it has to analyze are THE FACTS SET FORTH IN THE COMPLAINT, from which one clearly infers that the alleged “LATE INCORPORATION OF SAID JUDICIAL FILE TO THIS CASE” is absolutely false.

77. In terms of the subsuming of these facts into the grounds for removal, the Court considered that “the facts that are the subject of the trial, with special reference to Article 21 of Law 5,124, are a necessary and substantial derivation from the provisions contained in Articles 224 and 231 of the Provincial Constitution, and coincide in essence with the provisions at Article 16 of Law 4,832, thus the facts [were] fit in the law in the following manner”:

- Case of “ROSSI GROSSO OSCAR v. FOETRA – COLLECTION OF AUSTRALS”: Provincial Constitution: [ARTICLE 224, 231. Law No. 5,124: Article 21(I)(d), (e), (l), Article 21(II)(c), (d), (e), (f), (g)]. – Case of “ABA DE VILLARROEL AMANDA ALICIA v. PEDRO ROBERTO SUÁREZ- CUMP. CONT. ORDINARY REDHIBITORY FLAW”: Provincial Constitution: [ARTICLES 224, 231. Law No. 5,124: Article 21(I)(d), (e), (k), (l), Article 21(II)(c), (d), (f), (g), (i)]. – Case of “FEDERIGI FEDERICO Y ÁNGELA SANTOS TORRESI DE FEDERIGI-SUCCESSION”: Provincial Constitution: [ARTICLES 224, 231 Law No. 5,124: Article 21(I)(d), (e), (k), (l), Article 21(II)(c), (d), (f), (g), (i)].

78. On November 13, 1998, the defense filed a special constitutional appeal before the Jurado de Enjuiciamiento<sup>55</sup>, asking that the Provincial Superior Court of Justice overturn the judgment, declaring it null based on the violation of the guarantee of a judge with jurisdiction, natural judge, the violation of the principle of legality, the violation of the guarantee of defense at trial for unfounded rejection of the evidence offered, violation of the principle of conformity, and arbitrary weighing of the evidence produced in the hearing. In addition, the right to appeal was reserved.<sup>56</sup>

79. On November 24, 1998, the *Jurado de Enjuiciamiento* rejected the motion considering that “the resolutions and final judgments issued by this *Jurado* [are unappealable]” and that “Ms. Gallo has not made the pertinent reservation for appealing to the Superior Court of Justice in any of her pleadings to the *Jurado de Enjuiciamiento*, accordingly she has not met the requirement to raise the constitutional issue timely and adequately.”<sup>57</sup>

80. On December 3, 1998, the defense filed a complaint appeal (*recurso de queja*) for the denial of the special appeal on constitutionality before the Superior Court of Justice.<sup>58</sup> On that occasion, in addition to reiterating the bases for arguing the violation of due process guarantees, the defense questioned the unappealable nature of the judgments of the *Jurado de Enjuiciamiento*, based on the case-law of the Supreme Court of Justice of the Nation, and made reference to different procedural mechanisms in which the right to appeal to the Superior Court of Justice was expressly reserved.

81. On August 22, 2000, the Superior Court of Justice of the Province of San Luis considered that “merely reserving the constitutional issue does not suffice ... but rather the constitutional case must be introduced, debated, and resolved; this omission together with the unappealable nature of the decisions of the *Jurado de Enjuiciamiento* seal the fate of the direct remedy attempted” and it resolved “to dismiss the complaint appeal (*recurso de queja*) filed by the defense.”<sup>59</sup>

<sup>55</sup> The special appeal on constitutional grounds of the Province of San Luis was governed by Article 452 of Provincial Law 310 (at present Article 825 of the Code of Civil and Commercial Procedure) of the Province of San Luis

Article 825: The jurisdiction of the Superior Court is exercised on appeal:

(a) When in a litigation the validity of a law, decree, regulation, or ordinance has been called into question as contrary to the constitution, in the case that is the subject of that decision by the judges in favor of the law, decree, regulation, or ordinance.

(b) When in a litigation the wisdom of some constitutional clause has been called into question and the resolution of the judges is contrary to the validity of the title, decree, guarantee, or exemption that may be the subject of the case, and it is based on said clause.

<sup>56</sup> **Annex 41.** Special appeal on constitutional grounds filed before the *Jurado de Enjuiciamiento* on NEEDS TO BE COMPLETED. Annex to the petitioners’ initial petition.

<sup>57</sup> **Annex 42.** Resolution of the *Jurado de Enjuiciamiento* of November 24, 1998. Annex to the petitioners’ initial petition.

<sup>58</sup> **Annex 43.** Complaint appeal (*recurso de queja*) for denial of special appeal on constitutional grounds filed before the Superior Court of Justice, December 3, 1998. Annex to petitioners’ initial petition.

<sup>59</sup> **Annex 44.** Resolution of the Superior Court of Justice of San Luis of August 22, 2000. Annex to the petitioners’ initial petition.

82. On September 11, 2000, the defense filed a federal special appeal, reiterating the arguments associated with the violations alleged.<sup>60</sup> On August 14, 2001, the Superior Court of Justice rejected the appeal based on failure to comply with the formal requirement of the timing for filing and raising the constitutional case, and noted that no federal question whatsoever arises from the injuries shown, that the special appeal is only admissible with respect to resolutions that decide federal questions, and that everything having to do with the removal of local judges is governed by provisions of provincial public law that are not within the Supreme Court's original jurisdiction.<sup>61</sup> In response to that decision, on August 30, 2001, the defense filed a complaint for denial of the special appeal before the Supreme Court of Justice of the Nation.<sup>62</sup>

83. On August 8, 2006, the Supreme Court of Justice of the Nation ruled favorably on the complaint appeal (*recurso de queja*) filed by Judge Gallo's defense, set aside the judgment on appeal, and ordered the remanding of "the case to the court below so as to issue a new judgment consistent herewith." The judgment indicated that:

... this issue is substantially analogous to that addressed by this Court in case C.1678.XXXVIII "Cangiano, Jorge Alberto –Municipal Intendant of Villa Mercedes San Luis Case 1-D-99 re: his complaint v. Careaga, Ana María – principal judge of Criminal Court No. 1 Second Judicial District, judgment of the date, to whose foundations and conclusions one should refer for the sake of brevity.<sup>63</sup>

84. On October 7, 2010, the Superior Court of the Province of San Luis rejected, by majority, the special appeal on constitutional grounds and upheld the judgment removing Judge Gallo in the following terms:

... To consider the guarantee of natural judge violated, it will not suffice for the judicial organ that finally hears the case to be established subsequent to the act, rather that must have been provoked arbitrarily, not to judge impartially, but to prejudice the respondent ... in the framework of this process, carried out by the *Jurado de Enjuiciamiento*, the appellant has had a sufficient accusation, with timely notice, has been assisted by counsel, has had the opportunity to offer and produce evidence, and to be fully heard in the debate that culminated in her removal, all of which shows that the constitutional guarantee of due process has not been violated because there was no deprivation or substantial restriction of the right to defense at trial.... The decisions issued by the *Jurado* are based on the study of the actions of the judges, determining not only the fact patterns that show conduct subject to sanction in the scope of her jurisdiction, but that such a determination is subject to criteria of reasonableness, relevance, and prudent exercise of the jurisdiction, aspects which transcend the institutional and overall management of the administration of justice. Any irregular conduct that implies poor performance of functions with deleterious effects for citizen consideration regarding the function of ensuring rights and claims that corresponds to those who hold the power of imparting justice, requires the intervention and decision of the *Jurado*

<sup>60</sup> **Annex 45.** Federal special appeal filed on September 11, 2000. Annex to the petitioners' initial petition. The federal special appeal to the Supreme Court of Justice of the Nation is governed by the Code of Civil and Commercial Procedure of the Nation, and by Law 48 of 1863. It is properly filed:

When in the dispute the validity of a Treaty, a law of Congress or of an authority exercised in the name of the Nation has been called into question, and the decision has been against its validity. 2. When the validity of a law, decree, or authority at the provincial level has been called into question on the claim that it is repugnant to the National Constitution, treaties, or laws of Congress, and the decision has been in favor of the validity of the provincial law or authority. 3. When the intelligence of some clause of the Constitution, or of a treaty or law of Congress, or a commission exercised in the name of the national authority has been questioned and the decision is against the title, right, privilege or exemption on which said clause is founded and it is the subject of litigation.

<sup>61</sup> **Annex 46.** Official notice of August 15, 2001. Annex to the petitioners' initial petition.

<sup>62</sup> **Annex 47.** Brief of complaint for denial of federal special appeal of August 30, 2001. Annex to the petitioners' initial petition.

<sup>63</sup> **Annex 48.** Judgment issued on August 8, 2006, by the Supreme Court of Justice of the Nation, Case No. G.588.XXX (Annex A to the brief submitted by petitioners on October 16, 2006).

as an organ which, specifically, should place limits on the abusive exercise of powers the proceedings that fall under the aegis of action.... That there is agreement that it is an elastic concept, open-ended.... The offense or fault that is provided for as grounds constitutes a form of misfeasance or falls short of good conduct. This organ judges the conduct of judges and determines the possible existence of a “misfeasance” or “misconduct,” an assessment that defines the political nature of the trial..... External circumstances (dissolution of the Bar Association) motivated the adoption of new provisions for the election of the three attorneys who were to constitute the *Jurado de Enjuiciamiento*, but always maintaining the requirement that the attorneys meet the requisites set forth in Article 202 of the Constitution for serving as member of the Superior Court of Justice....<sup>64</sup>

## 2. Process on the removal of Judge Careaga

85. On November 26, 1997, the Municipal Intendant of the city of Villa Mercedes, Jorge Alberto Cangiano, filed a complaint against Judge Careaga. The complaint indicated that the call to give a signed statement formulated by the judge on November 20, 1997 implied the violation of the rules that protect the office of the Intendant, violation of the original and exclusive jurisdiction of the Superior Court of Justice, and the violation of due process and the principle of innocence, and indicated that these facts make out the grounds set forth in Article 21(II)(a), (e) and (f) of Law 5,124.<sup>65</sup>

86. On May 12, 1998, the *Jurado de Enjuiciamiento* dismissed the argument on unconstitutionality of the make-up of the *Jurado de Enjuiciamiento* for violation of constitutional guarantees filed by the defense of Judge Careaga, insofar as “in view of the statutory nature of the *Jurado de Enjuiciamiento*, one concludes that it is not the organ constitutionally vested with jurisdiction to rule on the issue posed, considering that in our legal order the judicial system for constitutional review prevails.”<sup>66</sup>

87. On answering the notice served, the complainant Cangiano expanded the offer of evidence and referred to the case of: “BRAVO HUMBERTO DANIEL – FALSIFICACION OF DOCUMENT” and “add[ed] a copy of the document of February 7, 1097, which in adhesion to the pronouncement issued by the Bar Association of the Second Judicial District requested the federal intervention of the Province and alleged the grave institutional situation, [and that] was signed by Ms. ANA MARIA CAREAGA.”<sup>67</sup>

88. On June 16, 1998, the preliminary criminal proceeding concluded. On August 24, 1998, the prosecutor filed the accusation<sup>68</sup>, in which he accused Judge Careaga of four acts:

FIRST ACT: [Case of CIMOLI JORGE OSVALDO ET AL. REQUEST INVESTIGATION] [Ms. Careaga] resolves on November 20, 1977: “Despite the prosecutorial report referenced at folio 183, as the undersigned considers that the elements at hand at this time have made it possible to meet the requirements of Article 147 of the Code of Civil Procedure, it is ordered to institute preliminary criminal proceedings, the foregoing proceedings leading the way in this proceeding, it being necessary to clarify the operation and legality of acts of the municipal administration, JORGE ALBERTO CANGIANO is hereby called on to make a signed

<sup>64</sup> **Annex 49.** Judgment STJSL-S.J.N. No. 55/10 of the Superior Court of Justice of October 7, 2010 (Annex to petitioners’ brief of October 16, 2006).

<sup>65</sup> **Annex 50.** Complaint brought by the Municipal Intendant of the City of Villa Mercedes, Jorge Alberto Cangiano of November 26, 1997. Annex to the petitioners’ initial petition.

<sup>66</sup> **Annex 51.** Resolution of the *Jurado de Enjuiciamiento* of May 12, 1998 (Annex to the petitioners’ brief of May 30, 2011).

<sup>67</sup> **Annex 52.** Report 482/98, Accusation brought before the Honorable *Jurado de Enjuiciamiento* against Judge Ana María Careaga, by Attorney General Domingo Antonio Vaca, August 21, 1998. Annex 3 to the petitioners’ brief of May 30, 2011.

<sup>68</sup> **Annex 52.** Report 482/98, Accusation brought by the Honorable *Jurado de Enjuiciamiento* against Judge Ana María Careaga, by Attorney General Domingo Antonio Vaca, August 21, 1998. (Annex to petitioners’ brief of May 30, 2011).

statement.... Based on what is decided by the judge..., one notes that she has not examined at all whether the application of the system and collection of parking fees measured constitutes a public service in keeping with the definition of the Institute set forth in Article 191 of the Organic Municipal Charter.... In this framework, the call to make a signed statement evidences the manifest bias of the judge on trial, with the mere intent to secure such a statement without any basis whatsoever, without even verifying where *prima facie* the offense was committed.... To that is added that the interlocutory order does not cite any provision of the Criminal Code that indicates the offense for which the accused would be questioned, thereby and gravely having a detrimental impact on the right to defense at trial and the principle of due process..... One can conclude, accordingly, from the analysis of the criminal case, that Ms. Careaga has repudiated constitutional precepts by adopting judicial attitudes that are evidently biased. – SECOND ACT: [Case of CIMOLI JORGE OSVALDO ETE AL. v. OTHERS REQUEST INVESTIGATION] That the judge in the above-cited criminal case calls on the Municipal Intendant Jorge Alberto Cangiano to make a signed statement without considering that he enjoys immunity by virtue of his position.... What is stated by the Attorney General's Office merely highlights that the call to make a sworn statement is out of order, that it has been ordered without respecting the constitutional provisions and the Organic Municipal Charter, and without effectuating a minimum analysis that supports the decision adopted by Ms. Careaga.- It appears then that the Judge should have undertaken a serious examination of the provision cited by the Attorney General's Office, it being true that she engaged in biased and politicized reasoning, attending only to what was said by the complainants. So she attributed legislative functions to herself.... THIRD ACT: That the Bar Association of the city of Villa Mercedes, with respect to the crisis affecting the Judicial Branch of the province in December 1996 and the first months of 1997, produced a political document dated February 4, 1997, called "RESOLUTION IN THE NATURE OF A COMPLAINT." The Bar Association of Villa Mercedes asked for intervention in the three branches of government of the Province of San Luis and that it be disseminated by various print media.... The adhesion signed by Ms. CAREAGA, in addition to constituting an act with clear political content and intent, includes a phrase which is most significant and alarming when she notes that "... it is our duty to adhere as members of the Judicial branch..." which leads one to note that what she considers a duty conduct expressly prohibited by Article 193 of the Constitution of the Province. In this context, the Attorney General's Office of the state filed a motion of recusal for cause against the Judges for Civil Matters who signed the note, giving rise to various motions of recusal. The severity of the justifications of the judgment mentioned [which resolved the admission of the ground for recusal of Judge Careaga in other cases] mark with notable clarity the seriousness of the conduct assumed by Ms. Careaga, adhering to the pronouncement by the Bar Association, which entails a notorious violation of Article 193 of the Constitution of the province, which includes an express prohibition, a provision that has not been respected. On violating this prohibition, it is considered that it is a flagrant case of misfeasance...." FOURTH ACT: That in the case captioned: "Bravo Humberto Daniel- Falsification of Document" ... Ms. CAREAGA calls the accused to make a signed statement, not citing at all any provision of the Criminal Code that indicates the offense in respect of which he is to make the statement. In the document containing the signed statement at folio 38 he is asked about the crime of falsification of private document and order No. 293 was issued to try him for the crime of falsification of public document. To that is added that while the prosecutorial report is not binding, one cannot get around the fact that ... the prosecutor rules that that the conditions of Article 147 of the Code of Criminal Procedure are not satisfied. Subsequently, the judge accumulates new evidence and fails to serve notice anew on the Attorney General's Office, which shows the manifest bias against the municipal public servant.... This is why, as I understand it, the respondent Judge did not respect the principle of conformity, violating the accused's right to defense, which leads me to indicate that one notes based on the antecedents put forth a judicial performance that is markedly substandard that disqualifies her from continuing to serve in the position.... The conduct of Ms. ANA MARIA CAREAGA falls under the grounds for removal provided for in Article 21 of Law 5,124 [Section II(d), (e), (f), and (j),] Public or covert intervention in

politics, or performing such acts, prohibited in Article 193 of the Provincial Constitution and Articles 193, 224, and 231 of the Province, all of which entails misfeasance.... I ask that Your Excellency issue a verdict finding Ms. ANA MARIA CAREAGA guilty of the acts of which she is accused, that she be removed ... and that she be disqualified for a term of ONE (1) year.

89. The defense answered the accusation, rejecting the charges.<sup>69</sup> The oral trial was held on December 9, 10, and 11, 1998. Throughout the trial: (i) the defense raised a series of preliminary motions that were rejected<sup>70</sup>, (ii) the *Jurado* ruled that it would defer the issue of the alleged reformulation of grounds for restitution, so as to rule on it in the judgment<sup>71</sup>, (iii) the defense argued that it would reserve the federal case for violation of the right to defense and the principle of natural judge, (iv) the documentary evidence offered was read, (v) the declaration of Judge Careaga was heard; she did not accede to be questioned, (vi) statements were received from witnesses offered by the defense and the prosecution, (vii) the defense and the prosecution made final arguments.<sup>72</sup>

90. On December 17, 1998, the *Jurado de Enjuiciamiento* in its judgment found “Ms. Ana María Careaga guilty ... and accordingly order[ed] her immediate REMOVAL from the position of principal Judge of Criminal Court No. 1 of the Second Judicial District, based in the ... Province of San Luis, and to DISQUALIFY HER from holding public office for FIFTEEN (15) YEARS.”<sup>73</sup>

91. In order to so decide, the *Jurado* rejected the argument of the nullity of the accusation due to reformulation of the grounds based on the following considerations:

From the “non-criminal” nature of the impeachment (Juicio Político) or “*Jury*” de *enjuiciamiento* is derived the lack of a requirement that the conduct be statutorily specified. [... The] Jury during its activity may not be taken by merely ritualistic grounds, but rather has great latitude to interpret the foundational purposes of its establishment, and it goes without saying, always in line with the constitutional guarantees that are imposed in all

<sup>69</sup> **Annex 52.** Report 482/98, Accusation brought before the Honorable *Jurado de Enjuiciamiento* against Judge Ana María Careaga, by Attorney General Domingo Antonio Vaca, August 21, 1998. Annex 3 to petitioners’ brief of May 30, 2011.

<sup>70</sup> **Annex 53.** Record of the oral trial held December 9, 10, and 11, 1998, before the *Jurado de Enjuiciamiento* (Annex to the petitioners’ initial petition). The defense argued the following preliminary issues: “violation of the principle of natural judge,” “nullity of the accusation” since it included facts that were not the subject of the summary investigation; definition of two of the grounds for removal based on the legislative reform contrary to the formulation of those grounds expressly provided for in the provincial Constitution; challenge of the declaration of inadmissibility of several items of evidence offered by the defense, requesting in particular that the testimony of a witness considered vital for the defense be admitted, and indicating that her right to defense was violated; and challenge of the admissibility of certain items of evidence offered by the accusation. The *Jurado* resolved: (1) that the matters referring to integration of the *jurado*, the summary information, and the denial of evidence were not in the nature of preliminary issues, as they had been resolved previously; (2) to declare inadmissible the testimonial evidence proposed by the prosecution; and (3) to consider abandoned two witnesses who did not appear.

<sup>71</sup> **Annex 53.** Record of the oral trial held December 9, 10, and 11, 1998 before the *Jurado de Enjuiciamiento*, pp. 9 and 10 (Annex 4 to the petition presented on June 11, 2003).

<sup>72</sup> **Annex 53.** Record of the oral trial held December 9, 10, and 11, 1998, before the *Jurado de Enjuiciamiento*, pp. 86-146 (Annex 4 of the petition submitted on June 11, 2003). In addition, during the trial a group of Argentine jurists forwarded a brief to the *Jurado de Enjuiciamiento* stating their “concern over the substantiation of the trial directed against ... Judge ... Careaga, which will take place before your court.” In this respect they noted that “It is a matter of concern to find out that the promotion of the *jury de enjuiciamiento* ... would be motivated in the call to give a signed statement that she made to an intendant suspected of acts of corruption ... and that she is also accused of issuing opinions about the institutional situation of the Judicial Branch of the province.” They added that it was not reasonable “to demand of the judge that she refrain from expressing any opinion about matters of public interest, and less still when the issues on which the judge opines are directly associated with functions of the branch of government in which she works.” **Annex .** Brief (undated) directed to the *Jurado de Enjuiciamiento* of the Province of San Luis, at the end of which appear the names of the following persons: Susana Albanese, Leonardo Franco, Emilio Mignone, Julio Strassera, Gregorio Badeni, Ricardo Gil Laavedra, Augusto M. Morelo, Jorge R. Vanossi, Andres D’Alessio, Julio B. J. Maier, Daniel Sabsay, and Raul E. Zaffaroni; it does not contain signatures but it indicates the address at which are found “the documents showing adhesion to the text of the letter” and it says “Before me, Emilio F. Mignone” (Annex 8 of the petition submitted on June 11, 2003).

<sup>73</sup> **Annex 12.** Judgment of removal and disqualification of Judge Ana María Careaga issued December 17, 1998 by the *Jurado de Enjuiciamiento* of the Province of San Luis, pp. 81-82 (Annex 4 to the petition submitted on June 11, 2003).

proceedings of this nature....” ... One notes that Article 231 of the Provincial Constitution makes express reference to the grounds for removal, in addition to the offenses and faults of public officials subject to the jurisdiction of the *Jurado de Enjuiciamiento*, which are determined by the respective law, and that in the instant case is Law No. 5,124.... Accordingly, in the legal assessment of the conduct alleged as it fits within one or more grounds for removal, made by the accusation, the existence of any vice or prejudice that would justify a motion for annulment being of no import since the Court, by the principle of *iura novit curia*, and so long as it does not stray from the facts invoked and proven, has full powers to determine which legal provisions apply thereto. [It also notes] that in her memorial answering the accusation ... Ms. Careaga does not make any argument such as that which she now seeks to introduce late.... In view of all the foregoing..., IT IS RESOLVED: To reject the motion for annulment in its entirety....<sup>74</sup>

92. In relation to the merits of the case, the *Jurado de Enjuiciamiento* considered in relation to Judge Careaga that

(1) On February 7, 1997, she adhered along with other Judges and Judicial Officers of the City of Villa Mercedes (Province of San Luis) to the Resolution in the nature of a complaint of the former Bar Association of Villa Mercedes (San Luis), of February 4, 1997... (2) On November 7, 1997, she summoned Mr. HUMBERTO DANIEL BRAVO, an official with the Transit Police of the Municipal Intendancy of the City of Villa Mercedes (San Luis) to make a signed statement; this summons was formally and substantively out of order .... (3) On November 20, 1997, she summoned Mr. JORGE ALBERTO CANGIANO, Municipal Intendant of the City of Villa Mercedes (San Luis), to make a signed statement, though she clearly lacked jurisdiction.... IV- Ms. Careaga’s conduct. Ms. CAREAGA’s conduct must be analyzed as a whole based on the facts brought to the hearing, the evidence produced, and the arguments of both the accusation and the defense.... These three isolated acts (which answer to the FOUR ACTS that are the motive of the accusation by the Attorney General of the Province), that this Honorable *Jurado* in this case has had an opportunity to analyzed, crystallized in the period February to November of 1997, has enabled us to create in our mind the most absolute conviction that the conduct of the respondent Judge on that occasion authorizes her immediate removal, since all the charges brought by the Attorney General of the Province in his initial accusation, which were then expanded upon in relation to the legal characterization and request for penalty as referred to in the final argument formulated by Ms. DIANA BERNAL in the course of this Oral Debate, constitute an intolerable departure from the august mission entrusted to judges, with evident harm to the service, and detriment to their investiture.<sup>75</sup>

93. In addition, the judgment established that:

Case of “CIMOLI JORGE OSVALDO ET AL. – THEY SEEK INVESTIGATION” ... (Covers the First and Second Acts in the Accusation by the Prosecutor). The factual platform in the instant case makes it clear that Ms. Ana María Careaga, who has insisted so much in this case on the application of human rights to her favor, being a Judge in the criminal cases in her court, violated the following rights and minimal guarantees of the Municipal Intendant of the City of Villa Mercedes, Mr. Jorge Alberto Cangiano and Mr. Humberto Daniel Bravo, among others: (1) Natural judge: Given the nature of the complaint of the council members ... it should have been heard before the Superior Court of Justice of the Province of San Luis.... and in relation to the complaint by Senior Carranza, it should have been heard first in the

<sup>74</sup> **Annex 12.** Judgment of removal and disqualification of judge Ana María Careaga issued December 17, 1998, by the *Jurado de Enjuiciamiento* of the Province of San Luis, pp. 81-82 (Annex to the petition submitted on June 11, 2003).

<sup>75</sup> **Annex 12.** Judgment of removal and disqualification of Judge Ana María Careaga issued December 17, 1998 by the *Jurado de Enjuiciamiento* of the Province of San Luis, pp. 3-8 (Annex 4 to the petition submitted on June 11, 2003).

Municipal Infractions Court, prior to coming before the criminal courts.... (2) Impartial judge: ... Ms. Careaga reflects action that is: Biased/Interested, taking a position against the validity of the administrative acts performed by the Municipal Intendancy of the City of Villa Mercedes, and by its municipal officials, that is, inexplicably, given her status as Judge, she assumes the discourse of the political opposition to the Municipal Intendant; ... (3) Due Process and Defense at Trial: Ms. Careaga did not respect the right to defense at trial of either Mr. Jorge Alberto Cangiano or Mr. Humberto Daniel Bravo....; (4) The Principle of Innocence ...; (5) *In dubio pro reo* ...; (6) *Nullum crimen nulla poena* without conduct ...; (7) Reasonableness and rationality: The action of Ms. Careaga in the case that we are analyzing shows conduct that is unreasonable/arbitrary/reckless...; (8) Strict necessity in the imposition of penalties: According to which there may be no legal provision for nor may judges enforce penalties that are not “strictly and evidently necessary”; Ms. Careaga’s conduct was just the opposite....; (9) The disproportionality of the penalty; and (10) Respect for municipal codes.<sup>76</sup>

94. In terms of the subsuming of the grounds for removal, the *Jurado* concluded that “CASE: CIMOLI JORGE OSVALDO ET AL. – THEY REQUEST INVESTIGATION,” Case No. 170-C-96 (COVERS FIRST AND SECOND ACTS OF THE ACCUSATION BY THE PROSECUTOR) AND CASE: “BRAVO HUMBERTO DANIEL FALSIFICATION OF DOCUMENT,” Case No. 27-B-98, [the facts should fit under Articles 193, 224, and 231 of the Constitution of the Province of San Luis and Article 21 of Law 5,124, Section I(d), (e), (k), (n), Section II(c), (d), (f), (i), (j)] RESOLUTION IN THE NATURE OF A COMPLAINT [the conduct of Ms. Careaga fits under the grounds of removal Articles 193, 224, and 231 of the Constitution of the Province of San Luis and Article 21 of Law 5,124, Section I(d), (e), Section II(c), (d), (j)]” and considered that

In the situation under review there is no question of expanding the factual content of the accusation, but merely to expand the legal characterization of the facts that have already been included in the accusation. Expanding the legal characterization only tends to strengthen respect for the guarantee of defense at trial, on allowing for a broader and more comprehensive adverse argument, for knowledge of the law does not have to limit the Court, except with respect to this expansion of the legal characterization if it was not questioned at all by the defense.<sup>77</sup>

95. The judgment ordered that certified copies of the record be sent to the judge with jurisdiction in the criminal courts since “that facts described above ... *prima facie* could constitute offenses.” In addition, it ordered that copies be sent to the Attorney General of the Province “as a consequence [...of the analysis of] adhesion of Judges and Judicial Officers to the complaint of the former Bar Association ... for the responsibility that could attach to all the other Judges and Judicial offices who signed that note of adhesion, namely, Mesdames María Angélica Leyba, Alicia R. Neirotti de Lucero, and Silvia Maluf de Christin.”<sup>78</sup>

96. The defense of Judge Careaga filed a special appeal on constitutional grounds asking that the Superior Court of Justice overturn the judgment of removal, as there had been violations of the guarantee of natural judge, the guarantee of defense at trial, the principle of conformity, due process by the inclusion of new issues that were not before the *Jurado* when the case was opened, and there was manifest arbitrariness

<sup>76</sup> **Annex 12.** Judgment of removal and disqualification of Judge Ana María Careaga issued December 17, 1998 by the *Jurado de Enjuiciamiento* of the Province of San Luis, pp. 3-8 (Annex 4 to the petition submitted on June 11, 2003).

<sup>77</sup> **Annex 12.** Judgment of removal and disqualification of Judge Ana María Careaga issued December 17, 1998 by the *Jurado de Enjuiciamiento* of the Province of San Luis, pp. 3-8 (Annex 4 to the petition submitted on June 11, 2003).

<sup>78</sup> **Annex 12.** Judgment of removal and disqualification of Judge Ana María Careaga issued December 17, 1998 by the *Jurado de Enjuiciamiento* of the Province of San Luis, p. 85 (Annex to the petition submitted on June 11, 2003).

in the judgment and irrationality in the sanction imposed. In addition, the defense reserved the right to appeal.<sup>79</sup>

97. In addition, the defense of Ms. Careaga filed a writ of “preventive habeas corpus” before the federal courts, considering that there was a threat to her liberty as a result of the decision issued by the *Jurado de Enjuiciamiento* on December 17, 1998, which, in addition to ordering her removal and disqualification, ordered that a copy of the record be forwarded to the criminal jurisdiction.<sup>80</sup>

98. On December 29, 1998, the *Jurado de Enjuiciamiento* rejected the motion filed based on the unappealable nature of its judgments, under “Article 42 of Law No. 5,124, a principle that is consistent with the precept contained in Article 115 of the National Constitution.” In addition, it was indicated that “Ms. Careaga has not made the pertinent reservation of appeal to the Superior Court of Justice in timely fashion, accordingly the requirement of timely and adequate introduction of the constitutional question has not been satisfied.”<sup>81</sup>

99. In response, the defense filed a complaint appeal (*recurso de queja*) for denial of a special constitutional appeal<sup>82</sup>, which was dismissed by the Superior Court of Justice of the Province of San Luis on September 11, 2001.<sup>83</sup>

100. The defense filed a special federal appeal<sup>84</sup>, which was rejected by the Superior Court of Justice by resolution of April 23, 2002. The majority vote based that rejection on the consideration that “it [was] not satisfied with an adequate introduction and argument of the federal question, the basis of the special appeal,” with which it did not comply with “the formal requirement of the ‘timing’ in the filing and arguing of the federal case.”<sup>85</sup> In April 2002 the defense filed a complaint appeal (*recurso de queja*) before the Supreme Court of Justice of the Nation for denial of the federal special appeal.<sup>86</sup>

101. On August 8, 2006, the Supreme Court of Justice of the Nation ruled favorably on the federal special appeal, set aside the judgment appealed, and remanded the case to the original court below for it to hand down a new judgment.<sup>87</sup> To so rule, it considered that

... this Court has invariably upheld ... the justiciable nature of the judgments handed down in what are called *juicios políticos* (impeachment proceedings) or the trial of judges in the

<sup>79</sup> **Annex 55.** Provincial special appeal of the judgment of the *Jurado de Enjuiciamiento* of December 17, 1998, filed with that *Jurado*; and federal special appeal against the resolution of the Superior Court of Justice of San Luis of September 11, 2001, p. 11 (Annex to the petition submitted on June 11, 2003).

<sup>80</sup> **Annex 56.** “Preventive habeas corpus” filed by Ms. Ana María Careaga (Annex 4 to the petition submitted on June 11, 2003).

<sup>81</sup> **Annex 57.** Complaint appeal (*recurso de queja*) filed before the Superior Court of Justice against the resolution issued by the *Jurado de Enjuiciamiento* on December 29, 1998, pp. 1-3 (Annex to the petition submitted on June 11, 2003).

<sup>82</sup> **Annex 57.** Complaint appeal (*recurso de queja*) filed before the Superior Court of Justice against the resolution issued by the *Jurado de Enjuiciamiento* on December 29, 1998 (Annex to the petition submitted on June 11, 2003).

<sup>83</sup> **Annex 58.** Federal special appeal against the resolution of the Superior Court of Justice of San Luis of September 11, 2001, pp. 1 and 13 (Annex 4 to the petition submitted on June 11, 2003).

<sup>84</sup> **Annex 58.** Federal special appeal against the resolution of the Superior Court of Justice of San Luis of September 11, 2001 (Annex 4 to the petition submitted on June 11, 2003). Within the constitutional injuries stated by the defense were: “unappealable nature of the resolutions of the *Jurado*,” “violation of the guarantee of natural judge,” “independence of the judiciary,” “the right of defense at trial” due to “unfounded rejection of evidence offered,” “the substantive principle of legality,” “violation of the principle of conformity,” “freedom of expression,” “denial of justice.”

<sup>85</sup> **Annex 59.** STJSL –S.J. No. 84/02 resolution issued April 23, 2002, by the Superior Court of Justice of the Province of San Luis (Annex of the initial petition of the petitioner).

<sup>86</sup> **Annex 60.** Complaint appeal due to the denial of the federal special appeal, filed with the Supreme Court of Justice of the Nation (Annex to the initial petition of the petitioner).

<sup>87</sup> **Annex 61.** Judgment issued August 8, 2006, by the Supreme Court of Justice of the Nation, Case No. C.1678.XXXVIII (Annex to the brief submitted by the petitioners on October 16, 2006).

provincial sphere ... in which it is up to this Court to intervene by means of the special appeal a violation of due process is shown.... ...The provincial superior court from which must come the final judgment susceptible to a special appeal is, in principle, the judicial organ that is made supreme by the provincial constitution, for without eluding the principle by virtue of which the provinces are free to create the judicial instances that they deem appropriate, they cannot forbid any of them, especially the highest ones, from the preferential application of the National Constitution.... With this understanding, the intervention of the provincial superior court is mandatory when issues are posed that are *prima facie* federal in nature, such as those stemming from the alleged violation of the constitutional guarantees of defense at trial and natural judge on having ordered the removal of a judge without those arguments having been examined by the court below, which refused to intervene based on the unappealable nature of the removal ... ignoring the well-established doctrine of this Court....<sup>88</sup>

102. On November 3, 2011, the Superior Court of Justice of the Province of San Luis ruled “TO REJECT the Constitutional Appeal, ratifying the judgment of the *Jurado de Enjuiciamiento* of November 6, 1998 ... and TO MODIFY the Judgment as regards the penalty of disqualification from holding public office, which is reduced to the term of FIVE YEARS.”<sup>89</sup> To reach that decision, the majority considered that

Mindful of the doctrine established by the Supreme Court of Justice of the Nation ... one should not get into the substantial injuries especially mindful that in keeping with the principles set by the Court and that I have outlined, it is necessary – before getting to the merits issues – to determine whether in the trial there have been clear, unequivocal, and conclusive injuries of the right to defense, and that are relevant for changing the fate of the case.... Having reviewed the injuries I consider ... that none of them has the necessary compelling quality nor are they sufficient to show a clear and flagrant violation of the right to defense, nor are they relevant for changing the fate of the case.... The only harm injury which, on first blush, would appear to be addressable, would be the one referring to the make-up of the *Jurado de Enjuiciamiento*, ... which is sufficiently refuted by the reasoning of Judge Uría [in the case of “Gallo de Ellard”]. [As regards the adhesion to the Resolution of the Bar Association] I take this opportunity to reproduce what I stated in the vote I cast in the above-cited case of “Maluf de Christin.”

### 3. Process of removal of Judge Maluf

103. On February 26, 1999, the Subrogating Attorney General filed a complaint before the *Jurado de Enjuiciamiento* against Judge Silvia Susana Maluf de Christin “in relation to the facts that arose on occasion of the case” against Judge Careaga, with respect to the note signed on February 7, 1997, of adhesion to the “Resolution in the nature of a complaint” issued by the Bar Association of Villa Mercedes.<sup>90</sup>

104. After the recusals of the members of the *Jurado* were resolved, the summary investigation was conducted.<sup>91</sup> On July 29, 2002, the *Jurado* ruled to admit the case and suspended Judge Maluf from her duties.<sup>92</sup>

<sup>88</sup> **Annex 61.** Judgment issued August 8, 2006, by the Supreme Court of Justice of the Nation, Case No. C.1678.XXXVIII (Annex to the brief submitted by the petitioners on October 16, 2006).

<sup>89</sup> **Annex 62.** Judgment STJSL-C-162-2011 of the Superior Court of Justice of San Luis, November 3, 2011.

<sup>90</sup> **Annex 63.** Complaint submitted by the Subrogating Attorney General before the *Jurado de Enjuiciamiento* against Judge Silvia Maluf, dated February 26, 1999; and record of oral trial held October 28 and 29, 2002, before the *Jurado de Enjuiciamiento*, p. 19 (Annex of the initial petition of the petitioners).

<sup>91</sup> **Annex 79.** Accusation presented by the Subrogating Attorney General before the *Jurado de Enjuiciamiento* against Judge Silvia Maluf, pp. 1-2; Record of the oral trial held October 28 and 29, 2002, before the *Jurado de Enjuiciamiento*, p. 2; and brief filing a special appeal on constitutional grounds brought against the judgment to remove Ms. Silvia Maluf, p.2 (Annex of the initial petition of the petitioners).

105. On August 5, 2002, the Prosecutor presented the accusation against the judge and argued that

... in the case "SUBJECT OF COMPLAINT: ANA MARIA CAREAGA – PRINCIPAL JUDGE CRIMINAL COURT No. 1 – SECOND JUDICIAL DISTRICT– DTE.: CANGIANO JORGE ALBERTO – Case No. 2-C-97 the *Jurado de Enjuiciamiento*, on handing down its judgment, ruled favorably on the accusation of the Office of the Attorney General referring to the adherence of February 7, 1997, by a group of Judges and Judicial Officers, among them the accused here, Ms. SILVIA SUSANA MALUF DE CHRISTIN, to a "RESOLUTION IN THE NATURE OF A COMPLAINT" issued by the then-Bar Association of the City of Villa Mercedes on February 4, 1997, understanding that said "adhesion," on being an act of clear political content and intent, constituted a notorious violation of the provision at Article 193 of the Provincial Constitution.... The conduct for which Ms. SILVIA SUSANA MALUF DE CHRISTIN is reproached fits within the grounds for removal provided for at Article 21, [Section I(e), Section II(d), (e), (j) of Law 5,124, and Articles 193, 224, and 231 of the Provincial Constitution].

106. The prosecutor asked that Judge Maluf be found guilty, be removed, and be disqualified for seven years from holding public office.<sup>93</sup>

107. The oral trial was held on October 28 and 29, 2002. In the course of the trial: (i) the accusation and answer were read, (ii) the defense raised a number of preliminary matters, (iii) the *Jurado* ruled to reject the arguments of limitations period, lapsing, and nullity of procedure presented by the defense as preliminary matters, (iv) the defense reserved the right to appeal, (v) the President of the *Jurado* stated that it was not the moment to formulate reservations mindful that the rulings of the *Jurado* are unappealable, (vi) the documentary evidence produced was read, (vii) the statement by Judge Maluf was heard, she agreed that she signed the note of adherence of the document of the Bar Association and stated that she did so "with the firm conviction that I was defending the Constitution, both the provincial and national Constitutions," (viii) the defense and prosecution made final arguments.<sup>94</sup>

108. On November 1, 2002, the *Jurado de Enjuiciamiento* issued its judgment, in which it removed Judge Silvia Maluf<sup>95</sup> on finding her guilty of violating "the express prohibition" set forth in Article 193 of the Provincial Constitution and Article 21(j) of Law No. 5,124, which reproduces that prohibition, for having

[... continuation]

<sup>92</sup> **Annex 64.** Brief filing a special appeal on constitutional grounds brought against the judgment to remove Ms. Silvia Maluf, p.2 (Annex of the initial petition of the petitioners).

<sup>93</sup> **Annex 79.** Accusation brought by the Subrogating Attorney General before the *Jurado de Enjuiciamiento* against Judge Silvia Maluf (Annex of the initial petition of the petitioners).

<sup>94</sup> **Annex 15.** Record of the oral hearing held October 28 and 29, 2002 before the *Jurado de Enjuiciamiento* (Annex of the initial petition of the petitioners). **Annex 64.** Brief filing special appeal on constitutional grounds brought against the judgment of removal of Ms. Silvia Maluf, pp. 2-3 (Annex of the initial petition of the petitioners). During the trial, a group of Argentine jurists forwarded a brief to the *Jurado de Enjuiciamiento* expressing their "concern for the substantiation of the trial of ... Judge ... Maluf de Christin, which will take place before your court on ... October 28, 2002." In addition, they noted that it was a "motive of concern to find out that [said trial] would be motivated by opinions given by the judge on the institutional situation of the Judicial branch of the province" and they indicated that it was not reasonable "to demand of the judge that she refrain from expressing any opinion on matters of public interest, and less still when the issue on which the judge opines are directly related to functions of the branch of government in which she works." **Annex .** Brief (no date) directed to the *Jurado de Enjuiciamiento* of the Province of San Luis, at the end of which appear the names of the following persons: Susana Albanese, Gregorio Badeni, Ricardo Gil Saavedra, Silvia A. Fernández, Leonardo Franco, Julio B. J. Maier, Mario Rejtman Farah, Daniel Sabsay, and Raul E. Zaffaroni; does not contain signatures but it indicates the address at which one finds "the documentation of adherence to the text of the letter" and it says "Before me, Víctor Abramovich" (Annex of the initial petition of the petitioners).

<sup>95</sup> **Annex 11.** Judgment of removal of Judge Silvia Maluf issued on November 1, 2002, by the *Jurado de Enjuiciamiento* of the Province San Luis, p. 3 (Annex of the initial petition of the petitioners).

signed said note directed to the President of the Bar Association of Villa Mercedes, San Luis.<sup>96</sup> On analyzing whether that act constituted conduct prohibited by those provisions, the *Jurado de Enjuiciamiento* indicated, in the pertinent part, that<sup>97</sup>:

None of the reasons that [the defense] mentions in its arguments is acceptable or justifies her actions because adhering to a request for federal intervention in the three branches of government is an essentially political act, and the weighing of the factual circumstances which in the view of the petitioners could hypothetically support that is reserved to the political organs of the province.... With the conduct analyzed here, the respondent has compromised the impartiality and dignity of her office on expressly violating the prohibition established at Article 193 Provincial Constitution.... The Judge should maintain a public image that reinforces the concept of integrity and maintains him or her far from the temptation to use the position he or she performs to promote his or her own interests or those of private or public groups outside of the Judicial Branch because the notion of impartiality disappears.... That it then turns out that this interest group [referring to the Bar Association of Villa Mercedes] becomes a pressure group when in pursuit of its specific aim and for its benefit, they bring pressure to bear on those who govern, political parties, public opinion, carrying out activities in order to exercise influence ... to achieve in this case a public consensus to seek judicial intervention in the three branches of government of the Province of San Luis in view of the irregularities set forth in the considering paragraphs, to which she adhered, as the respondent judge has expressly recognized.... In the instant case the measure requested by the Bar Association of Villa Mercedes, adherence to which by the respondent has given rise to this proceeding, constitutes a typical act of political contents, grounds, and character, which is corroborated in the statements of the witnesses offered by the defense.... When the witness ... states that the Provincial Justice system ruled favorably on the *amparo* actions, which were respected by the branches of government, and even issued restraining orders, we can assume that there were statutory and constitutional mechanisms by which the accused could uphold her rights.... That freedom of expression is regulated differently and more restrictively for judges based on the principle that of essential state interest.... In the performance of their functions judges must be prudent, circumspect, measured, showing respect for all members of society who perform their function within a republican order ... emphasizing that judges have the need and the obligation to be measured in their expressions.... Which leads us to conclude that the manifesto to which the respondent adhered is clearly political in nature, since federal intervention in the branches of government is an extreme measure with political content and nature, with which her conduct falls under Article 193 of the Provincial Constitution, and Article II(j) of Law 5,124.... That as appears from the proceedings and evidence produced in the proceeding, the violation of Article 193 of the Provincial Constitution, and Article 21(j) of Law 4124, which reproduces the constitutional prohibition, by the respondent Judge, has been duly proven....

109. In addition, the *Jurado* decided “not to admit the request for disqualification formulated by the Subrogating Attorney General,” indicating that

... given the characteristics of the impeachment proceeding [Juicio Político] that have been developed in these considering paragraphs, where the jurisdictional concept of the court of accounts has been made clear, which cannot be that of imposing criminal sanctions of any sort, we find that it is not appropriate to rule on the accessory penalty sought by the Subrogating Attorney General.

<sup>96</sup> **Annex 11.** Judgment of removal of Judge Silvia Maluf issued November 1, 2002, by the *Jurado de Enjuiciamiento* of the Province of San Luis, pp. 3 and 11 (Annex of the initial petition of the petitioners).

<sup>97</sup> **Annex 11.** Judgment of removal of Judge Silvia Maluf issued November 1, 2002, by the *Jurado de Enjuiciamiento* of the Province of San Luis, pp. 12, 13 (Annex of the initial petition of the petitioners).

110. On November 11, 2002, Judge Maluf's defense filed a provincial special appeal requesting that the Superior Court of Justice overturn the judgment of removal, due to violation of the right to freedom of expression, the principle of the independence of judges, the right of defense, the guarantee of impartiality, the nullity of the accusation, among others, and reserved the right to appeal.<sup>98</sup> On November 18, 2002, the *Jurado de Enjuiciamiento* rejected that remedy, considering the unappealable nature of the judgments established at Article 42 of Law 5,124.<sup>99</sup>

111. In response, the defense filed a complaint appeal (*recurso de queja*) for the denial of the provincial special appeal<sup>100</sup>, which was rejected on August 4, 2004, by the Superior Court of Justice of the Province of San Luis<sup>101</sup> since the unappealable nature of the decisions of the *Jurado de Enjuiciamiento* finds its basis in the provincial constitution, which is identical to the provision established in Article 155 of the National Constitution.<sup>102</sup>

112. The defense filed a federal special appeal<sup>103</sup>, which was admitted by the Superior Court of Justice on October 18, 2005, "and the record shall be forwarded to the Honorable Supreme Court of Justice of the Nation."<sup>104</sup> On July 11, 2007, the Supreme Court of Justice issued a judgment in which it declared "the special appeal well-founded", "set aside the judgment appealed," and ordered the remand "of the case to the original court below so that a new judgment be issued in keeping with this decision by the appropriate authority." In the judgment it indicated that "for the sake of brevity" it was referencing the foundations and conclusions of the cases involving judges Careaga and Gallo.<sup>105</sup>

113. On March 10, 2011, the Superior Court of Justice of the Province of San Luis issued a new judgment in the case of Judge Maluf and resolved to reject the special appeal on constitutional grounds, and to uphold the judgment of the *Jurado de Enjuiciamiento* of November 1, 2002, that removed Judge Maluf. To so decide, the Court considered, among other issues:

Having exhaustively studied the record from the *Jurado de Enjuiciamiento*, one notes strict compliance with the procedural norms established by Law No. 5,124 (then in force) that guarantee the respondent's right to defense. The members of the Jurado were so informed, she was allowed unrestricted exercise of the right to recuse, she was served notice of the complaint, and after the case was admitted and the accusation made, it was forwarded to

<sup>98</sup> **Annex 64.** Special appeal against the judgment of the *Jurado de Enjuiciamiento* of November 1, 2002, filed before that *Jurado* (Annex 5 of the petition submitted June 11, 2003). Among the constitutional injuries set forth by the defense were: "the interpretation of the ground for removal provided by Article 193 of the provincial Constitution rendered by the *Jurado de Enjuiciamiento* impairs the freedom of expression" and the "independence of judges," "the right to defense," "advancing an opinion," "the absent jury," "lack of constitutional challenge to Law 5,124", "the guarantee of impartiality," "lapsing of the procedure," "prescription of the action," and "nullity of the accusation."

<sup>99</sup> **Annex 66.** Resolution of the *Jurado de Enjuiciamiento* of November 18, 2002. Annex to the communication from the petitioners of May 30, 2011.

<sup>100</sup> **Annex 67.** Complaint appeal (*recurso de queja*) for denial of special appeal against the resolution of the *Jurado de Enjuiciamiento* of November 18, 2002, filed with the Superior Court of Justice (Annex of the initial petition of the petitioners).

<sup>101</sup> **Annex 68.** STJSL -S.J. No. 140 resolution issued October 18, 2005, by the Superior Court of Justice of the Province of San Luis, p. 1 (Annex I to the "report" of the "Government of the Province of San Luis" attached by the State to the brief presented to the IACHR on April 30, 2007).

<sup>102</sup> **Annex 69.** Resolution of the Superior Court of Justice of August 4, 2004. Annex to the petitioners' brief of May 30, 2011.

<sup>103</sup> **Annex 70.** Resolution issued on October 18, 2005, for the Superior Court of Justice of the Province of San Luis (Annex I to the "report" of the "Government of the Province of San Luis" attached by the State to the brief filed with the IACHR on April 30, 2007).

<sup>104</sup> **Annex 70.** Resolution issued October 18, 2005, for the Superior Court of Justice of the Province of San Luis (Annex I to the "report" of the "Government of the Province of San Luis" attached by the State to the brief it presented to the IACHR on April 30, 2007).

<sup>105</sup> **Annex 71.** Judgment of the Supreme Court of the Nation of July 11, 2007 in the case "Maluf de Christin, Silvia, judge of the Court for Civil Matters; Com. Y Minas No. 2- 2<sup>nd</sup> C.J.- Dto. Ms. Bernal, Diana María Subrogating Attorney General." Annex 19 to the petitioners' brief of May 30, 2011.

her. She was also afforded the opportunity to offer evidence and it was admitted, and in the oral debate she was assisted by counsel.... Nor is the harm referring to the alleged advancing of an opinion by the President of the Jurado addressable. In the middle of the oral debate the President, conducting it, had ordered that it was not the time to make reservations. That was a “ruling” of the President of the *Jurado*, thus before the claim of the defense he recalled the unappealable nature of the ruling, as per the provision of Article 42 of Law 5,124.... One should also clarify, however bad as it may be for the appellant, that only the Courts and Judges known as Jueces Letrados of the Province have powers to find statutory or other provisions unconstitutional (Articles 10 and 210 of the Constitution of the Province). Yet that notwithstanding, it is undeniable that Ms. Maluf de Christin, in the oral debate, in her trial did not argue that Law 5,124 was unconstitutional and consented to its application. [The *Jurado de Enjuiciamiento* was constituted respecting the constitutional provisions], beyond the statutory provisions on the manner of election, which did not alter the spirit of the framers of the constitution. [... The Resolution of the Bar Association of Villa Mercedes] that concludes with the request for the intervention of the three constitutional branches of government of the Province are, no doubt, political positions staked out publicly and that were widely disseminated, even though they were not made by a political party.<sup>106</sup>

#### D. Subsequent events

114. In 2003 the governor of the province forwarded a bill to the provincial legislature to review all the provincial legislation.<sup>107</sup> As a result, “more than 7,000 statutes” were analyzed and some were repealed.<sup>108</sup> Among others, Law No. 5,062, was repealed. It had provided “[r]educe the remuneration of ... judges and officers of the Judicial Branch.”<sup>109</sup>

115. In April 2005, the legislature of the province of San Luis adopted Law No. XIV-0457 entitled “On the Collegial Association of Lawyers,” which re-established the association of attorneys and lawyers, on providing that in each of the judicial districts there shall be a Bar Association, that said Associations shall constitute the Forensic College of the Province, and gave them once again the “character of juridical persons at public law, with functional and organizational independence from the government authorities.”<sup>110</sup>

116. Also in April 2005 the law called “Public hearings for the selection of members of the Superior Court of Justice and of the Attorney General of the Province of San Luis” was approved.<sup>111</sup> The

<sup>106</sup> **Annex 72.** Judgment of the Superior Court of Justice, March 10, 2011. Annex to the petitioners’ brief of May 30, 2011.

<sup>107</sup> **Annex 73.** Prologue of the “Digesto de la Legislación vigente en la Provincia de San Luis,” “updated as of November 3, 2004” (Annex to the note presented by the State on July 4, 2005, by which it attaches the brief of June 24, 2005, prepared by the State Prosecutor of the Province of San Luis). In that prologue it is indicated that those laws were derogated “whose objective was already attained, those that just appeared in the nomenclature without any type of documentary support, the laws with prohibitions from eras without democratic rule in the Province, the laws that could be subsumed in a new law adopted in this period of review in the nature of an ordered text, which had become outdated in their provisions by new developments in the life of the province.”

<sup>108</sup> **Annex 73.** Prologue to the “Digesto de la Legislación vigente en la Provincia de San Luis,” “updated to November 3, 2004” (Annex to the note presented by the State on July 4, 2005, by which it attached the brief of June 24, 2005, prepared by the State Prosecutor for the Province of San Luis). In that prologue it was indicated that the laws derogated were “those [laws] whose objective was already attained, those that just appeared in the nomenclature without any type of documentary support, the laws with prohibitions from eras without democratic rule in the Province, the laws that could be subsumed in a new law adopted in this period of review in the nature of an ordered text, which had become outdated in their provisions by new developments in the life of the province.”

<sup>109</sup> **Annex 74.** Annexes to the report prepared by the Minister Secretary of State for Interior, Justice, and Worship of the Province of San Luis of March 29, 2007 (Annex to the brief submitted by Argentina on April 30, 2007).

<sup>110</sup> **Annex 75.** Law No. XIV-0457-2005 adopted April 14, 2005, and published April 20, 2005 (Annex to the note submitted by the State on July 4, 2005, by which it attaches the brief of June 24, 2005 prepared by the state prosecutor of the Province of San Luis). Article 59(c) of Law No. XIV-0457-2005 was modified by Law No. XIV-0528-2006 adopted November 29, 2006 (available at the webpage of the Chamber of Deputies of the Province of San Luis, at the “Digesto” link (<http://www.diputadossanluis.gov.ar>)).

<sup>111</sup> **Annex 76.** Law No. IV-0456-2005 adopted April 14, 2005 (Annex to the note submitted by the State on July 4, 2005, by which it attaches the brief of June 24, 2005, prepared by the state prosecutor of the Province of San Luis).

decree promulgating said law considers that the selection mechanism provided for “will make it possible to improve the system for designating judges, which is necessary to recover the legitimacy of the Justice system, motivate the participation of citizens and restore and bolster credibility in the institutions of Democracy.”<sup>112</sup>

117. In September 2005 a new “Law on the *Jurado de Enjuiciamiento*”<sup>113</sup> was adopted that derogated the previous laws. On regulating the make-up of the *Jurado*, it provided that “the representation of the attorneys shall be done by the Forensic College of the Province ... in keeping with Article 224 of the Provincial Constitution” and, in the event that said College does not follow through, the Superior Court of Justice shall draw lots “from among all the attorneys who meet the requirements of Article 202 of the Provincial Constitution.”

#### IV. LAW ANALYSIS

##### A. Preliminary matters

118. The Commission notes that this case involves the dismissal of three judges in the province of San Luis, at a time of intense political tensions between the judiciary and the provincial executive, and that the petitioners have alleged political motivations for their dismissals, in violation of the guarantees of judicial independence, impartiality, and due process. In consideration of the judicial nature of their positions, the Commission believes it must first develop a series of preliminary considerations on the principle of judicial independence, since that principle informs the entire analysis that follows on the scope of the guarantees to which the alleged victims were entitled. In addition, the Commission will offer a series of considerations regarding the mechanisms for removing judges from office and the impeachment process. The Commission will then determine whether the international responsibility of the State of Argentina was triggered with respect to the rights established in Articles 8, 9, 13, and 25 of the American Convention.

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

119. This principle is set out in Article 8.1 of the American Convention and represents one of the basic pillars of a democratic system. On this point, the Inter-American Court has stated that one of the principal purposes of the separation of public powers is to guarantee the independence of judges.<sup>114</sup> Although the principle of judicial independence is regulated by the American Convention as a right enjoyed by persons facing prosecution or appearing before the courts to resolve their disputes, the duty of respecting and ensuring that right has implications that are directly related to the procedures whereby judges are appointed and removed – issues regarding which consolidated international standards exist, as will be indicated below.

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

Judges, unlike other public officials, have reinforced guarantees due to the necessary independence of the Judicial Power, which the Court has understood as “essential for the exercise of the judicial function.”[...] Said autonomous exercise shall be guaranteed by the State both in its institutional aspect, that is, with regard to the Judicial Power as a system, as well as in connection with its individual aspect, that is, with regard to the specific judge as an individual. The objective of the protection lies in avoiding that the justice system in general

<sup>112</sup> **Annex 77.** Decree No. 1596 –ML and RI-2005- of April 18, 2005 (Annex to the note submitted by the State on July 4, 2005, by which it attaches the brief of June 24, 2005, prepared by the state prosecutor for the Province of San Luis).

<sup>113</sup> **Annex 78.** Law No. VI-0478-2005 adopted on September 21, 2005 (Annex to the “report” of the “Government of the Province of San Luis” attached by the State to the brief submitted to the IACHR on April 30, 2007).

<sup>114</sup> I/A Court H.R., Case of the Constitutional Tribunal v. Peru, Merits, Reparations and Costs, Judgment of January 31, 2001, Series C No. 71, para. 73; and Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 55. IACHR, Report No. 28/94 Case 10,026, Panama, September 30, 1994.

and its members specifically be submitted to possible improper restrictions in the exercise of their duties by bodies foreign to the Judicial Power or even by those judges that exercise duties of revision or appeal.[...] Additionally, the State has the duty to guarantee an appearance of independence of the Magistracy that inspires legitimacy and enough confidence not only to the parties, but to all citizens in a democratic society.<sup>115</sup>

121. The Inter-American Commission and Court, in line with the constant jurisprudence of the European Court, have repeatedly held that the principle of judicial independence gives rise to a series of guarantees: appropriate appointment procedures<sup>116</sup>, fixed terms in office<sup>117</sup>, and guarantees against external pressure.<sup>118</sup>

122. The Inter-American Court also specified the content of these guarantees and their implications for state decisions on the organization of public power. Specifically, regarding the existence of appropriate appointment procedures, the Court listed several applicable international rulings:

The Basic Principles highlight as preponderant elements in the appointment of judges their integrity, ability with appropriate training or qualifications in law. Likewise, the Recommendations of the Council of Europe evoke a framework criterion of usefulness in this analysis when it states that all the decisions regarding the professional career of the judges shall be based on objective criteria, namely the judge's personal merits, his qualifications, integrity, ability, and efficiency, all of which are the preponderant elements to be considered.

(...)

The Human Rights Committee has stated that if the access to the public administration is based on merits and equal opportunities, and the stability in the position can be ensured, the liberty from all political interference or pressure is guaranteed. In a similar sense, the Court points out that all appointment processes shall serve the purpose not only of appointment according to merits and qualifications of those who aspire, but to assurance of equal opportunities in the access to the Judicial Power. Therefore, the judges must be selected exclusively based on their personal merits and professional qualifications, through objective

<sup>115</sup> I/A Court H.R., Case of Reverón Trujillo v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 2009, Series C No. 197, para. 67. Citing Case of Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, Judgment of July 2, 2004, Series C No. 107, para. 171.

<sup>116</sup> IACHR, Application to the Inter-American Court of Human Rights, Case 12,565, Reverón Trujillo v. Venezuela, November 9, 2007, Para. 75; IACHR, Application to the Inter-American Court of Human Rights, Case 12,556, Chocrón Chocrón v. Venezuela, para. 69; I/A Court H.R., Case of the Constitutional Tribunal v. Peru, Merits, Reparations and Costs, Judgment of January 31, 2001, Series C No. 71, para. 75; Case of Palamara Iribarne v. Chile, Merits, Reparations and Costs, Judgment of November 22, 2005, Series C No. 135, para. 156; Eur. Court H.R., Langborger case, decision of 27 January 1989, Series A no. 155, para. 32, Campbell and Fell judgment of 28 June 1984, Series A no. 80, para. 78; Principle 10 of the United Nations Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan, Italy, from August 26 to September 6, 1985, and confirmed by the General Assembly in its resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985, hereinafter "Basic Principles on the Independence of the Judiciary."

<sup>117</sup> IACHR, Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96, Doc. 10 rev. 1, April 24 1997, Ch. III. IACHR, Second Report on the Situation of Human Rights in Peru, OEA/Ser.L/V/II.106, Doc. 59 rev., June 2, 2000, Ch. II; I/A Court H.R., Case of Constitutional Tribunal v. Peru, Merits, Reparations and Costs, Judgment of January 31, 2001, Series C No. 71, para. 75; and Case of Palamara Iribarne v. Chile, Merits, Reparations and Costs, Judgment of November 22, 2005, Series C No. 135, para. 156; Eur. Court H.R., Langborger case, decision of 27 January 1989, Series A No. 155, para. 32, Campbell and Fell judgment of 28 June 1984, Series A no. 80, para. 78; and Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, para. 55. Principle 12 of the Basic Principles on the Independence of the Judiciary.

<sup>118</sup> IACHR, Application to the Inter-American Court of Human Rights, Case 12,556. Chocrón Chocrón v. Venezuela, para. 69; I/A Court H.R., Case of Reverón Trujillo v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 2009. Series C No. 197, para. 70; Eur. Court H.R., Langborger case, decision of 27 January 1989, Series A no. 155, para. 32; Campbell and Fell judgment of 28 June 1984, Series A no. 80, para. 78; and Piersack judgment of 1 October 1982, Series A no. 53, para. 27. Principles 2, 3, and 4 of the Basic Principles on the Independence of the Judiciary.

selection and continuance mechanisms that take into account the peculiarity and specific nature of the duties to be fulfilled.<sup>119</sup>

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

The Basic Principles state that “the term of office of judges shall be adequately secured by law” and that “judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.”

On the other hand, the Universal Principles also state that “promotion of judges, wherever such a system exists, should be based on objective factors, in particular on ability, integrity and experience.”

Finally, the Basic Principles state that the judges “shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties” and that “all disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.” Similarly, the Human Rights Committee has pointed out that the judges may only be removed for grave disciplinary offenses or incapacity and according to fair procedures that guarantee objectivity and impartiality according to the constitution or law. Additionally, the Committee has expressed that “the dismissal of judges by the Executive Power before the expiration of the term of office for which they were appointed, without giving them a specific reason and without having an effective judicial protection to appeal the dismissal, is not compatible with judicial independence.”<sup>120</sup>

124. In particular, the Commission has said that in light of the need to guarantee judicial impartiality and independence in decision-making, brevity of the terms of judges has been identified within the judiciary as a source of concern.<sup>121</sup>

125. Regarding this requirement, the European Court has ruled that the guaranteed permanence of judges for as long their mandate lasts has to be seen as a corollary to the judicial independence enshrined in Article 6.1 of the European Convention on Human Rights and Fundamental Freedoms<sup>122</sup>.

126. In addition, the Commission has maintained that one of the objectives of judicial tenure is to ensure that judicial functions are performed with the freedom necessary to ensure that rulings are given in strict accordance with the law. For that guarantee to be possible, judges must enjoy (i) the power to interpret and apply the sources of law and (ii) the power to freely assess facts and evidence.<sup>123</sup> Consequently,

<sup>119</sup> 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, paras. 71 and 72. Citing: Principle I(2)(c) of Recommendation No. R (94) 12 of the Committee of Ministers to the Members States of the Council of Europe on the Independence, Efficiency and Role of Judges adopted by the Committee of Ministers on October 13, 1994, in meeting No. 518 of the Vice Ministers; and United Nations, Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, August 23, 2007, para. 19. Principle 10 of Basic Principles on the Independence of the Judiciary.

<sup>120</sup> I/A Court H.R., Case of Reverón Trujillo v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 1999, Series C No. 197, para. 77. Citing: Principles 11, 12, 13, 18 and 19 of the Basic Principles on the Independence of the Judiciary; and United Nations, Human Rights Committee, General Comment No. 32, Article 14, para. 20.

<sup>121</sup> IACHR, Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96, Doc. 10 rev. 1, April 24, 1997, ch. III.

<sup>122</sup> 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.

<sup>123</sup> IACHR, Application to the Inter-American Court of Human Rights, *Case of Ana María Ruggeri Cova, Perkins Rocha Contreras, and Juan Carlos Apitz (First Court of Administrative Disputes) v. Venezuela*, Case 12.489, November 29, 2006, para. 89.

investigations and disciplinary sanctions imposed on judges may in no case be based on the legal opinions developed in any of their resolutions.<sup>124</sup> For instance, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa state that “judicial officers [...] shall not be removed from office or subject to other disciplinary or administrative procedures by reason only that their decision has been overturned on appeal or review by a higher judicial body.”<sup>125</sup>

127. In line with those principles, the Court has said that the authority in charge of the process for the dismissal of a judge must act independently and impartially in the proceedings established for that purpose and allow the exercise of the right of defense.<sup>126</sup> As the Court has stated, the free removal of judges fosters an objective doubt in the observer regarding the effective possibility they may have to decide specific controversies without fearing retaliation.<sup>127</sup>

128. From the above, it is clear that the various international human rights agencies and courts agree that heightened stability in the tenure of judges, and the resultant ban on their free removal, is an essential part of the principle of judicial independence. As the Inter-American Court has said, if a State fails to abide by those guarantees, it would be failing in its obligation of upholding judicial independence.<sup>128</sup> Similarly, the Inter-American Commission has stated that the guarantee of stability in the positions of judges must be reinforced – a requirement that arises from the need to establish mechanisms to ensure their independence from the other branches of government.<sup>129</sup> The Commission highlights the Inter-American Court’s comments on prohibiting the free removal of judges:

To the contrary the States could remove the judges and therefore intervene in the Judicial Power without greater costs or control. Additionally, this could generate a fear in the other judges, who observe that their colleagues are dismissed (...). Said fear could also affect judicial independence, since it would promote that the judges follow instructions or abstain from contesting both the nominating and punishing entity.<sup>130</sup>

129. To summarize, the principle of judicial independence – together with the associated state obligations of upholding and guaranteeing it – requires that judges have appropriate appointment and promotion procedures, that they are guaranteed stability in their positions during the mandates for which they are appointed, and that they can be removed from office solely for the commission of disciplinary offenses that are previously and clearly set out in the Constitution or domestic law, and in strict compliance with the guarantees of due process.

<sup>124</sup> IACHR, Application to the Inter-American Court of Human Rights, *Case of Ana María Ruggieri Cova, Perkins Rocha Contreras, and Juan Carlos Apitz (First Court of Administrative Disputes) v. Venezuela*, Case 12.489, November 29, 2006, para. 89.

<sup>125</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 376, citing: Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted as part of the Report of Activities of the African Commission at the 2nd Summit and Meeting of Heads of State of the African Union in Maputo, July 4 to 12, 2003, Principle A.4.2.

<sup>126</sup> I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 1999, Series C No. 197, para. 78. Citing *Case of Constitutional Tribunal v. Peru*, Merits, Reparations and Costs, Judgment of January 31, 2001, Series C No. 71, para. 74.

<sup>127</sup> I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 1999, Series C No. 197, para. 78. See also Principles 2, 3, and 4 of the Basic Principles on the Independence of the Judiciary.

<sup>128</sup> I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 79. See also: Nos. 2, 3, and 4 of the Basic Principles on the Independence of the Judiciary.

<sup>129</sup> IACHR, Application to the Inter-American Court of Human Rights, Case 12.556, *Chocrón Chocrón v. Venezuela*, para. 72.

<sup>130</sup> I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 81.

## 2. Mechanisms for the removal of judges and the impeachment process

130. Since the alleged victims' removal took place through impeachment proceedings, the Commission believes it appropriate to offer a series of thoughts regarding this mechanism in light of the standards referred to in the previous section.

131. Thus, in the case of *The Constitutional Court v. Peru*, the Inter-American Court stated that:

Under the rule of law, the impeachment proceeding is a means of controlling senior officials of both the Executive and other State organs exercised by the Legislature. However, this control does not mean that the organ being controlled – in this case the Constitutional Court – is subordinate to the controlling organ – in this case the Legislature; but rather that the intention of the latter is that an organ that represents the people may examine and take decisions on the actions of senior officials.<sup>131</sup>

132. In that same case, the Inter-American Court ruled that impeachments must observe the guarantees of due process in order to respect the principle of judicial independence with respect to senior magistrates facing such proceedings.<sup>132</sup>

133. The Ibero-American system has similarly ruled that “to guarantee judicial independence, the creation and enforcement of rules to ensure the self-government of the judiciary are necessary,”<sup>133</sup> and that “the efficient operation of judicial disciplinary agencies and of disciplinary tribunals that oversee the legal profession must be guaranteed, to strengthen the independence of judges.”<sup>134</sup> Similarly, Article 20 of the Statute of the Ibero-American Judge, adopted at the Sixth Ibero-American Summit of Chief Justices, states that “competence for disciplining judges shall lie with the legally established agencies of the judiciary, using procedures that uphold respect for due process and, in particular, the rights of hearing, defense, contradiction, and applicable legal remedies.”<sup>135</sup> Likewise, the 57th Regular General Assembly of the Latin American Federation of Judges set down a series of principles, including the following: (a) matters related to the administration and disciplining of members of the judicature and the judiciary shall be the sole competence of the judiciary itself,<sup>136</sup> (b) judges may not be prosecuted or held responsible for disciplinary purposes for the sense, content, or tenor of their judicial decisions,<sup>137</sup> (c) the agency with competence for disciplinary action shall belong exclusively to the judiciary itself,<sup>138</sup> and (d) the most stringent disciplinary sanctions may only be imposed by a qualified majority.<sup>139</sup> Similarly, the Brasilia Rules state that keeping the judiciary as an independent and impartial system of agencies is essential for judicial security, and so interference by political powers is both counterproductive and negative.<sup>140</sup>

<sup>131</sup> I/A Court H. R., *Case of the Constitutional Court v. Peru*, Judgment of January 31, 2001, Series C No. 71, para. 63.

<sup>132</sup> I/A Court H. R., *Case of the Constitutional Court v. Peru*, Judgment of January 31, 2001, Series C No. 71, para. 84.

<sup>133</sup> “Declaration of Caracas,” Ibero-American Summit of Chief Justices, Caracas, Venezuela, March 1998, policy 1.

<sup>134</sup> “Declaration of Caracas,” Ibero-American Summit of Chief Justices, Caracas, Venezuela, March 1998, policy 4.

<sup>135</sup> “Statute of the Ibero-American Judge,” Sixth Summit Ibero-American of Chief Justices, Justice, Santa Cruz de Tenerife, Canary Islands, Spain, May 2001, Article 20.

<sup>136</sup> “Declaration of Minimum Principles on the Independence of Judiciaries and Judges in Latin America,” 57th Regular General Assembly of the Latin American Federation of Judges, April 2008, Mexico, Article 5.b, Title 2.

<sup>137</sup> “Declaration of Minimum Principles on the Independence of Judiciaries and Judges in Latin America,” 57th Regular General Assembly of the Latin American Federation of Judges, April 2008, Mexico, Article 7.b.3, Title 3.

<sup>138</sup> “Declaration of Minimum Principles on the Independence of Judiciaries and Judges in Latin America,” 57th Regular General Assembly of the Latin American Federation of Judges, April 2008, Mexico, Article 10.b.

<sup>139</sup> “Declaration of Minimum Principles on the Independence of Judiciaries and Judges in Latin America,” 57th Regular General Assembly of the Latin American Federation of Judges, April 2008, Mexico, Article 10.d.

<sup>140</sup> “Brasilia Rules,” Plenary Assembly of the 14th Ibero-American Judicial Summit, Brasilia, Federative Republic of Brazil, March 2008, Title 2.

134. In turn, the United Nations Special Rapporteur on the independence of judges and lawyers has noted his concern about the role played by the legislative and executive branches in some states, and about parliamentary oversight in executive branch proceedings to discipline and remove judges before the end of their mandates, without specific legal and procedural guarantees.<sup>141</sup> Thus, the universal human rights system has stated its position discouraging the use of impeachment as a means to remove judges.

135. In this regard, the Commission notes that the figure of impeachment are provided for in various laws of the countries in the region and considers pertinent to note that although the inter-American system has recognized the figure of impeachment as a legitimate control over other governmental bodies, when the impeachment is applied as a mechanism for removing judges it must have a disciplinary nature and it must be subject to certain specific standards related to guaranteeing the independence of the judiciary.

136. The Commission reiterates that, to be valid, the procedure for removing a judge has to be disciplinary in nature, in that it is intended to separate the person from the post held on account of serious disciplinary failings or incompetence. Given the strengthened stability of judicial functions and the punitive nature of this procedure, it follows that not only must the grounds for such a removal be determined by law in detail in advance thereof, but also that the guarantees of due process must be ensured. It also follows that regardless of the name given to the procedure or of the agency that carries it out, the removal of a judge cannot arise from political control, based on criteria of trust and timeliness, because that would gravely undermine the principle of judicial independence.

137. In particular, although the mechanism of impeachment may be compatible with the American Convention, it is equally right that by its very nature it could create certain risks to certain protections that must be strictly observed in the case of removal of judges, and therefore strict compliance with the principles of legality and due process guarantees must be guaranteed.

138. In addition, the compatibility of the mechanism of impeachment with the standards listed above should be done on a case by case basis, taking into account the regulatory framework and the specific impact of the impeachment in the safeguards mentioned.

**B. Right to a fair trial and to judicial protection (Articles 8 and 25 of the American Convention), in connection with the obligation to respect rights and to adopt domestic provisions (Articles 1.1 and 2 of the American Convention)**

139. The relevant part of 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;

<sup>141</sup> United Nations Human Rights Council, Report of Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, A/HRC/11/41, March 24, 2009, para. 60.

f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts; (...)

h. the right to appeal the judgment to a higher court.

140. Article 25 of the American Convention establishes:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

141. Article 1.1 of the American Convention states:

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.

142. Article 2 of the American Convention stipulates:

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.

143. While the Commission in its admissibility report did not rule on the alleged violation of Article 2 of the Convention, the facts that support such violations are integral and inseparable part of the case, which is why the State was in a position to know and contest them. By virtue of the foregoing, the Commission considers that in accordance with the decisions of the Commission in similar cases, the analysis of the information in the file and the evidence, in this case, there are sufficient elements to rule on possible violations of Article 2 of the American Convention.

144. The Inter-American Court has ruled that “although Article 8 of the American Convention is entitled ‘Judicial Guarantees’ [in the Spanish version – ‘Right to a Fair Trial’ in the English version], its application is not strictly limited to judicial remedies, but rather the procedural requirements that should be observed [...] so that a person may defend himself adequately in the face of any kind of act of the State that affects his rights.”<sup>142</sup>

145. The Court has also said that although that article does not establish minimum guarantees in matters relating to the determination of rights and obligations of a civil, labor, fiscal, or any other nature, the full range of minimum guarantees stipulated in its second paragraph are also applicable in those areas and, therefore, in matters of that kind, the individual also has the overall right to the due process applicable in criminal matters.<sup>143</sup>

<sup>142</sup> I/A Court H. R., *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25, and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, para. 27.

<sup>143</sup> I/A Court H. R., *Case of the Constitutional Court v. Peru*, Judgment of January 31, 2001, Series C No. 71, para. 70.

146. Furthermore, as regards the right to be judged by a competent authority, the Court has established that a defendant “has the right to be heard by regular courts, following procedures previously established<sup>144</sup> (...) to prevent persons from being judged by special tribunals set up for the case, or ad hoc.”<sup>145</sup>

147. Regarding the guarantees of independence and impartiality, the Court has established that although they are related, it is also true that they each have a legal content of their own.<sup>146</sup> As the Court has said:

One of the principal purposes of the separation of public powers is to guarantee the independence of judges. [...] Said autonomous exercise shall be guaranteed by the State both in its institutional aspect, that is, with regard to the Judicial Power as a system, as well as in connection with its individual aspect, that is, with regard to the specific judge as an individual. The objective of the protection lies in avoiding that the justice system in general and its members specifically be submitted to possible improper restrictions in the exercise of their duties by bodies foreign to the Judicial Power or even by those judges that exercise duties of revision or appeal. [...]

On the other hand, impartiality demands that the judge acting in a specific dispute approach the facts of the case subjectively free of all prejudice and also offer sufficient objective guarantees to exclude any doubt the parties or the community might entertain as to his or her lack of impartiality. [...] The European Court of Human Rights has explained that personal or subjective impartiality is to be presumed unless there is evidence to the contrary. [...] Thus, the objective test entails determining whether the judge in question provided convincing elements to eliminate legitimate or grounded fears regarding his or her impartiality. [...] That is so since the judge must appear as to act without being subject to any influence, inducement, pressure, threat, or interference, be it direct or indirect, and only and exclusively in accordance with – and on the basis of – the law.<sup>147</sup>

148. Regarding the possibility of review, the Commission has stated that decisions adopted both in disciplinary proceedings and when suspending or separating judges from their positions must be subject to independent review. In addition, in both disciplinary and criminal proceedings leading to the removal of judges, States must provide a suitable and effective remedy allowing those judges to obtain reinstatement when their responsibility is not proven or when their removal was arbitrary. The guarantee of tenure must operate so as to allow the reinstatement of a judge who was arbitrarily deprived of his position, since otherwise States could remove judges and intervene in this way in the judicial branch without any great cost

<sup>144</sup> *Case of Castillo Petruzzi et al. v. Peru*, Merits, Reparations, and Costs, Judgment of May 30, 1999, Series C No. 52, para. 129; and No. 5 of the Basic Principles on the Independence of the Judiciary.

<sup>145</sup> I/A Court H. R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 50;

<sup>146</sup> I/A Court H. R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 55, citing: “For example, the Committee Against Torture has stated: ‘The Committee is concerned at the judiciary’s de facto dependence on the executive, which poses a major obstacle to the immediate institution of an impartial inquiry when there are substantial grounds for believing that an act of torture has been committed in any territory under its jurisdiction.’ United Nations, Committee against Torture, Conclusions and Recommendations: Burundi, CAT/C/BDI/CO/1, para. 12.”

<sup>147</sup> I/A Court H. R., *Case of the Constitutional Court v. Peru*, Judgment of January 31, 2001, Series C No. 71, para. 73; 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, paras. 55 and 56. Citing: Eur. Court H. R., *Pullar v. the United Kingdom*, Judgment of June 10, 1996, Reports of Judgments and Decisions 1996-III, § 30, and *Fey v. Austria*, judgment of February 24, 1993, Series A No. 255-A p. 8, § 28. Citing: Eur. Court H. R., *Daktaras v. Lithuania*, No. 42095/98 (Sect. 3) (bil.), ECHR 2000-X – (10.10.00), § 30. Citing: Eur. Court H. R., *Piersack v. Belgium*, Judgment of October 1, 1982, Series A No. 53, and *De Cubber v. Belgium*, Judgment of October 26, 1984, Series A No. 86. No. 2 of the Basic Principles on the Independence of the Judiciary.

or control, which could create fear among other judges who see their colleagues removed and not reinstated even when the removal was arbitrary.<sup>148</sup>

149. The alleged victims claimed they were dismissed during a crisis in the San Luis provincial judiciary and that the State violated their right to a competent, independent, and impartial tribunal and to the right of defense. In particular, the petitioners contended that the objective independence and impartiality of the Impeachment Jury were not guaranteed, that the legislative amendments allowed the executive branch greater influence over the selection of the Impeachment Jury's members, and that some of the members of the Impeachment Jury had participated in campaigns and mobilizations against the provincial judiciary. They also held that in Judge Maluf's case, the State violated the right to be heard within a reasonable time.

150. In response, the State maintained that the petitioners had failed to establish that the San Luis provincial judiciary and the federal judiciary lacked or had lacked the independence necessary to rule with impartiality. In addition, the State maintained that when the Supreme Court of Justice of the Nation ordered the proceedings referred back to the provincial courts, it did not do so on the grounds that the decisions had violated any judicial guarantees. The State also found the reasonable time claim ungrounded, given the dates of the filing of the special remedies at the provincial level and of their substantiation by the federal courts.

151. First of all, the Commission notes that the body responsible for carrying out the dismissal of judges in the province of San Luis is the Impeachment Jury and that the legal nature of that process, according to the jury's own interpretation, is that of a political impeachment.

152. The Commission further notes that in the judgment whereby Judge Gallo was dismissed, the Impeachment Jury upheld "the noncriminal nature of impeachment, with the grounds for the decision based on political discretion, according to which the continued service or otherwise of a judge is analyzed" (*supra* para. 76). Similarly, Judge Careaga's dismissal judgment stated that "the 'noncriminal' nature of impeachments means that a criminal classification of the conduct is not necessary" and that the Jury "in its activities cannot be led by reasons of mere ritualism, but instead has a broad scope for attaining the purposes for which it was created" (*supra* para. 91). It therefore follows that the Impeachment Jury emphasized that the procedure's nature was in pursuit of dismissals and that its decisions were adopted "based on political discretion" to determine the "appropriateness of the continued service or otherwise of a judge," based on "criteria of reasonableness, relevance, and the prudent exercise of jurisdiction," on account of which "a criminal classification of the conduct is not necessary."

153. However, according to the standards referred to above, jurisdictional duties are to be carried out without external pressure and, consequently, they cannot be subject to political control, based on the criterion of political discretion: their oversight must be legal or disciplinary in the event of serious disciplinary failings or incompetence.

154. Secondly, the Commission notes that Article 229 of the San Luis Provincial Constitution states that the Impeachment Jury can punish judges by disqualifying them from holding public positions. Accordingly, the Commission believes that the power of the agency responsible for the removal of judges to impose criminal sanctions, given that it is not a court of law and pursues proceedings that are political in nature, affects the guarantees of due process enshrined in Article 8 of the American Convention.

155. For its part, the Commission also notes that the Impeachment Jury has a tripartite composition: one third of its membership comes from the judiciary, one third comes from the legislature, and one third are registered lawyers. In addition, the Commission has established that during the period when the alleged victims were being removed from office, the province of San Luis was enacting a series of legislative amendments that modified the mechanism for the selection of associate judges (Law 5070 of February 12,

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<sup>148</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 380, citing: I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 81.

1996), allowed for the indefinite reelection of the President of the Superior Court of Justice (Law 5106 of May 5, 1997), and dissolved the College of Lawyers (Law 5123 of October 10, 1997). Those amendments led to major changes in the rotation of the President and in the duration of the mandates and the members of the Impeachment Jury and allowed greater interference in that body by political powers.

156. In addition, the Commission notes that the proceedings for the dismissal of the alleged victims were initiated at a time of intense conflict between the executive and judicial branches of government in the province of San Luis, as seen in the Justicialist Party's organization of protest marches, the issuing of various communiqués, the consideration of a possible federal intervention in the province, etc. Similarly, the victims spoke out openly in defense of the judiciary and those actions were taken into consideration, either directly or indirectly, by the Impeachment Jury.

157. In those circumstances, the Commission believes that the legislative amendments that led to the composition of the Impeachment Jury being changed some five times in less than two years undermined the natural judge principle with respect to the alleged victims. In addition, the Commission finds that in this case, the violation of the natural judge principle fuels doubts about the independence and impartiality of the Impeachment Jury.

158. Regarding the principle of independence, the Commission has stated that one of the consequences of those legislative amendments was greater political intervention in the Impeachment Jury's composition. In addition, the Commission has noted that the removal of the alleged victims took place at a time when the majority political party, to which the Governor of the province belonged, had made serious accusations about the members of the judiciary and had even organized protest marches against them. Those circumstances, together with the fact that members of the Impeachment Jury are appointed for one year, represent factors that could affect the independence of the Impeachment Jury's members and fail to ensure the absence of external pressure when adopting decisions regarding judges facing removal proceedings.

159. Similarly, the Commission has also established that throughout the proceedings, the victims questioned the impartiality of the Impeachment Jury's members, based on the unconstitutionality of the legislative amendments, the "violation of the natural judge principle," and the fact that some of the members belonged to the political party that had organized marches to protest against the judiciary. Judge Gallo even recused one of the members of the Impeachment Jury who was litigating a case in her court. However, none of the recusals lodged was admitted. Moreover, in Judge Gallo's case, the Impeachment Jury dismissed a noninnovation motion issued in her favor that established the inadmissibility of the new membership of the Impeachment Jury. The Commission notes that it does not have detailed information and copies of all internal procedures of recusal filed. However, under the terms of the proven facts, the Commission considers that the elements of objective impartiality were not given in this case.

160. In addition, the Commission notes that Judge Maluf's impeachment was brought directly by the Attorney General, absent a private complaint, two years after she had signed the communiqué of the Villa Mercedes College of Lawyers and after the dismissal judgment against Judge Careaga was handed down.

161. Consequently, the IACHR concludes that the State violated the right to be judged by a competent, independent, and impartial authority enshrined in Article 8.1 of the American Convention, in conjunction with the obligations set out in Article 1.1 thereof, with respect to Adriana Gallo, Ana María Careaga, and Silvia Maluf.

162. Regarding the guarantees set forth in Articles 8 and 25 of the American Convention, the Commission will address the parties' contentions in the following order: (i) violation of the principle of coherence and of the right to prior, detailed communication of the charges against them in the proceedings against Judges Gallo and Careaga, (ii) violation of the right of defense, particularly the granting of adequate means for preparing a defense in the proceedings against Judges Gallo and Careaga, (iii) violation of the reasonable time principle, and (iv) violation of the right to appeal the judgment of the Impeachment Jury and of the right to judicial protection.

**(i) Violation of the principle of coherence and of prior, detailed communication of the charges**

163. In connection with this principle, the Inter-American Court has maintained that:

When determining the scope of the guarantees included in Article 8(2) of the Convention, the Court must consider the role of the “indictment” in the criminal due process vis-à-vis the right to a defense. The material description of the conduct attributable contains the factual data included in the indictment, which is the indispensable reference for the exercise of the defense of the accused and the consequent consideration of the judge in the verdict. Therefore, the defendant has the right to know, through a clear, detailed, and precise description, the facts he is being charged with. Their legal classification may be varied during the process by the prosecutor or the judge, without this violating the right to a defense, when the facts themselves are maintained invariable and the procedural guarantees included in the law for the change to the new classification are observed. The so-called “principle of coherence or correlation between the indictment and the conviction” implies that the judgment may fall only upon the facts or circumstances included in the indictment.<sup>149</sup>

164. The Commission notes that in Judge Gallo’s case two specific incidents were denounced, four facts were addressed in the prosecutorial accusation, and the judgment dismissed the judge for three offenses. Regarding Judge Careaga, the complaint was lodged for one incident, the prosecutorial accusation was drawn up for four facts, and the dismissal judgment analyzed three facts and a fourth consisting of “Judge Careaga’s actions.”

165. The Commission notes that the information submitted does not allow it to ascertain if all the facts were covered by the preliminary investigation provided for as a prior step in bringing charges against a judge, or whether the additional facts should have been covered by other charges. Per the established facts, the Commission notes that the parties produced evidence related to all the allegations and that the judges’ defense teams, at trial, raised objections in connection with all the facts.

166. Given those circumstances, the Commission does not have enough evidence to state that there was a modification of the factual assumptions that could have affected the alleged victims’ right of defense. In light of the foregoing, the Commission concludes that the State of Argentina did not violate Article 8.2.b with respect to Adriana Gallo and Ana María Careaga.

**(ii) Violation of the right to have the elements necessary to prepare a defense**

167. The petitioners allege that in then Judge Gallo’s trial, 70% of the evidence presented was rejected, and that a large proportion of the evidence was also rejected in the proceedings brought against Judge Careaga. The State offered no specific arguments on this point.

168. The Commission notes that the petitioners furnished a copy of the evidence submission document and of the Impeachment Jury’s resolution whereby a part of the evidence presented by Judge Gallo’s defense was rejected on the grounds that it was “irrelevant.” The petitioners submitted no information regarding the presentation and submission of evidence in Judge Careaga’s case. However, the information furnished indicates that Judges Gallo and Careaga were able to present witnesses and give statements during the oral proceedings. Given those circumstances, although the Commission notes that in Judge Gallo’s case the Impeachment Tribunal rejected the evidence offered without conducting a detailed analysis of the grounds for that rejection, the Commission fails to find adequate grounds for it to rule on the violation of Article 8.2.c of the American Convention.

<sup>149</sup> I/A Court H. R. *Case of Fermín Ramírez v. Guatemala*, Judgment of June 20, 2005, Series C No. 126, para. 67.

**(iii) Reasonable time**

169. The petitioners held that the State violated the right to a trial within a reasonable time with respect to Silvia Maluf, in that five years and eight months went by between the incident for which she was charged and her dismissal. They further contended that the local judges locales of the province of San Luis and the Supreme Court of Justice of the Nation incurred in unreasonable delays. The State maintained that the petitioners' contentions were "ungrounded, given the dates of the filing of the special remedies at the provincial level and their substantiation by the federal courts," and said that there had been no unwarranted delays in reaching decisions that were not due to the complexity of the matters at hand.

170. In Admissibility Report No. 65/07, the Commission found that the alleged unwarranted delay in adopting a final decision on the alleged victims' claims before the provincial courts and before the Supreme Court could tend to establish a violation of the rights enshrined in Articles 8 and 25.<sup>150</sup>

171. The agencies of the inter-American human rights protection system have maintained that in determining the reasonableness of a delay, "three elements must be taken into account: (a) the complexity of the matter; (b) the procedural activity of the interested party; and (c) the actions of the judicial authorities."<sup>151</sup> In addition, they have held that the reasonable time referred to in Article 8.1 of the Convention must be assessed in terms of the total duration of the proceedings until such time as a final decision is handed down.<sup>152</sup>

172. The Commission notes that in Judge Gallo's case, the charges were made on August 5, 1998, and the appeal judgment was handed down by the Superior Court of Justice of the province of San Luis on October 7, 2010. In Judge Careaga's case, charges were drawn up on August 24, 1998, and the appeal judgment was issued on November 3, 2011. In the case of Judge Maluf, the charges were drawn up on August 5, 2002, and the appeal judgment was issued on November 10, 2011. Thus, the delays between the formulation of the charges against Judges Gallo, Careaga, and Maluf and the issuing of the final judgment by the Superior Court of Justice, were more than 12, 13, and 8 years, respectively. The Commission notes that the victims' cases were not finally resolved until the latter judgment and that, in addition, to reach that venue they had to file numerous remedies that were rejected on formal grounds, either the nonappealable nature of judgments of the Impeachment Jury or the admissibility requirements of the special federal remedy, such as the introduction of appeal objections and the accreditation of the "federal case." Likewise, the Commission notes that none of the appeal venues argued the complexity of the case as an obstacle to adopting a prompt and suitable decision.

173. Given those circumstances, the Commission finds that for more than 12, 13, and 8 years respectively, the victims were denied a final decision on their legal situations. In addition, the Commission notes that the petitioners have identified factors and failings that they blame on the State, and that the State has not challenged those claims. In light of the foregoing, the Commission concludes that the State of Argentina violated the right to be heard within a reasonable time enshrined in Article 8.1 of the American Convention, in conjunction with the obligations set out in Article 1.1 thereof, with respect to Adriana Gallo, Ana María Careaga, and Silvia Maluf.

<sup>150</sup> IACHR, Report No. 65/07 (Admissibility), Petition 415-03, Adriana Gallo, Ana María Careaga, and Silvia Maluf, July 27, 2007, para. 57.

<sup>151</sup> I/A Court H. R., *Case of Genie Lacayo v. Nicaragua*, Judgment of January 29, 1997, para. 77. See also: *Case of García Asto and Ramírez Rojas*, *supra* note 7, para. 166; *Case of Acosta Calderón*, *supra* note 18, para. 105; and *Case of the Serrano Cruz Sisters*, *supra* note 97, para. 67.

<sup>152</sup> I/A Court H. R., *Case of López Álvarez v. Honduras*, Judgment of February 1, 2006, Series C No. 141, para. 129, citing: *Case of Acosta Calderón*, *supra* note 18, para. 104; *Case of Tibi*, *supra* note 80, para. 168; and *Case of Suárez Rosero*, *supra* note 87, para. 70.

**(iv) Violation of the right to appeal judgments and of the right to judicial protection**

174. The Court has repeatedly said that Article 25.1 of the Convention requires States to offer, to all people under their jurisdiction, effective judicial recourse against actions that violate their basic rights. The existence of that guarantee “is one of the basic pillars, not only of the American Convention, but of the very rule of law in a democratic society within the meaning of the Convention.”<sup>153</sup>

175. Regarding the scope of the right to judicial protection, both the Commission and the Inter-American Court have repeatedly stated that it applies not only with respect to the rights set out in the Convention, but also to those recognized by the Constitution or in law.<sup>154</sup> The Court has also said that “for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.”<sup>155</sup> As stated by the Court’s constant jurisprudence, a remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective.<sup>156</sup>

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

Article 25 is closely linked to the general obligation in Article 1.1 of the American Convention, in that it assigns duties of protection to the States Parties through their domestic legislation, from which it is clear that the State has the obligation to design and embody in legislation an effective recourse, and also to ensure the due application of the said recourse by its judicial authorities.<sup>157</sup> At the same time, the State’s general duty to adapt its domestic law to the stipulations of said Convention in order to guarantee the rights enshrined in it, established in Article 2, includes the enactment of regulations and the development of practices that seek to achieve an effective observation of the rights and liberties enshrined in it, as well as the adoption of measures to suppress the regulations and practices of any nature that imply a violation to the guarantees established in the Convention.<sup>158</sup>

177. Regarding judicial protection in cases involving the removal of judges, the United Nations Rapporteur has said that when such dismissals are carried out by political bodies, it is even more important

<sup>153</sup> I/A Court H. R., *Case of La Cantuta v. Peru*, Judgment of November 3, 1997, Series C No. 34, para. 82; *Case of Claude Reyes et al. v. Paraguay*, Merits, Reparations, and Costs, Judgment of September 19, 2006, Series C No. 151, para. 131; and *Case of Castañeda Gutman v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 6, 2008, Series C No. 183, para. 78.

<sup>154</sup> I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2006, Series C No. 158, para. 122; I/A Court H. R., *Case of Claude Reyes et al.*, Judgment of September 19, 2006, Series C No. 151, para. 128; and *Yatama Case*, Judgment of June 23, 2005, Series C No. 127, para. 167. See also: IACHR, Application to the Inter-American Court of Human Rights, *Case of the Union of Employees, Professionals, and Technicians of the Lima Water and Sewerage Service Company v. Peru*, January 16, 2010, para. 57.

<sup>155</sup> I/A Court H. R., Advisory Opinion, *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25, and 8 of the American Convention on Human Rights), para. 24; and I/A Court H. R., *Case of the Five Pensioners v. Peru*, Judgment of February 28, 2003, Series C No. 98, para. 136.

<sup>156</sup> I/A Court H. R., *Case of Baldeón García v. Peru*, Merits, Reparations, and Costs, Judgment of April 6, 2006, Series C No. 147, para. 145; and *Case of Almonacid Arellano et al. v. Chile*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 154, para. 111.

<sup>157</sup> I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 60, citing: *Case of the Street Children (Villagrán Morales et al.) v. Guatemala*, Merits, Judgment of November 19, 1999, Series C No. 63, para. 237; *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations, and Costs, Judgment of August 31, 2001, Series C No. 79, para. 135; and *Case of the Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment of June 17, 2005, Series C No. 125, para. 99.

<sup>158</sup> I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 60, citing: *Case of Castillo Petruzzi et al. v. Peru*, Merits, Reparations, and Costs, Judgment of May 30, 1999, Series C No. 52, para. 207.

that their decision be subject to judicial review.<sup>159</sup> In addition, the Commission has said that the denial of an effective judicial remedy against alleged violations of the right of stability as judge constitutes a violation of Article 25 of the American Convention.<sup>160</sup>

178. As indicated in the preceding paragraphs, international law states that judges must have a venue available to them to question their removal from office. In addition, that appeal venue must be established in advance and offer both adequate guarantees of impartiality and independence and an institutional design in accordance with the nature of the remedy.

179. The petitioners claim that the State violated their right to appeal their convictions, in that the laws of the province of San Luis provide that the judgments of the Impeachment Jury admit no appeals. The State maintained that the nonappealability of the Impeachment Tribunal's decisions "is not and has not been limited to the province of San Luis: it also arises from the terms of provincial legislations and, fundamentally, from the express provisions of Article 115 of the National Constitution."

180. In addition, the petitioners stated that the *amparo* suit filed by Judge Gallo against the composition of the Impeachment Jury received no final judgment and that the *amparo* action ordering the nonenforcement of Law 5102 was not observed. In turn, the State indicated that the petitioners had failed to establish: (i) that the special and complaint remedies could not be considered effective, in the general conditions in the country or even in the particular circumstances of each case; (ii) that there had been an unwarranted delay in reaching decisions due to reasons other than the complexity of the matters under litigation; (iii) that they were denied access to domestic remedies; (iv) that the provincial judiciary and the federal judiciary lack or lacked the independence necessary to reach impartial decisions or the means to enforce those decisions; (v) that there was any other situation indicating a pattern of justice denied.

181. The Commission notes that the laws of the province of San Luis expressly stipulated that the judgments of the Impeachment Jury admitted no appeals. The Commission understands that this legal restriction prevented the judges facing impeachment from questioning their dismissals and from having access to a review of the sanction applied. In addition, the province of San Luis offered no mechanism whereby the dismissed judges could request a judicial review of that decision, not even with respect to the punishment of "disqualification from holding public positions."

182. The Commission also notes that the judges filed various remedies, which were dismissed by the Impeachment Jury and by the Superior Court of Justice of the province (except in the case of Judge Maluf) on the grounds that the Impeachment Jury's judgments admitted no appeals and on certain formal requirements such as the "appeal objection" and the "accreditation of the federal case," which had been met by the victims. The Commission further notes that the victims had to file complaint remedies with the federal Supreme Court of Justice for it to analyze their cases, but that the Supreme Court offered no decision on the merits and instead ordered the cases sent back to the provincial courts.

183. Consequently, the Commission concludes that in this case, the right to appeal to a higher judge or court was undermined and that the victims were denied a simple, prompt, and effective judicial remedy to question violations of due process in their dismissal proceedings, such as the right to be heard and the effective exercise of the right of defense. The Commission therefore concludes that the State of Argentina did violate the right to appeal judgments and the right to judicial protection enshrined in Articles 8.2.h and 25.1 of the American Convention, in conjunction with the obligations set forth in Articles 1.1 and 2 thereof, with respect to Adriana Gallo, Ana María Careaga, and Silvia Maluf.

184. Regarding Judge Gallo's situation, the information indicates that, first, the Impeachment Jury rejected her claims that its composition was unconstitutional on the grounds that it was not a court of law.

<sup>159</sup> United Nations Human Rights Council, Report of Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, A/HRC/11/41, March 24, 2009, para. 61.

<sup>160</sup> IACHR, Report No. 30/97, Case 10.087, Merits, Gustavo Carranza, Argentina, September 30, 1997, para. 72.

Those matters have already been examined in the section dealing with the guarantee of an impartial tribunal. In addition, the Commission notes that there was no final decision in the *amparo* suit brought against Law 5102 because it was repealed by Law 5124 before a final ruling on the *amparo* could be issued. The same situation applies with Law 5062, the repeal of which was started by the State when the provincial Digest was presented. Given those circumstances and on the base of the information presented, the Commission lacks sufficient information to rule on the violation of the right to judicial protection in those terms.

**C. Principle of legality (Article 9 of the American Convention), in connection with the obligation of respecting rights (Article 1.1 of the American Convention)**

185. Article 9 of the American Convention establishes:

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

186. The principle of legality enshrined in Article 9 of the American Convention covers the basic principles of *nullum crimen sine lege*, *nulla poena sine lege*, whereby states may not prosecute or punish people for actions or omissions that were not considered criminal offenses by the laws in force at the time of their commission.<sup>161</sup>

187. In addition, as inter-American precedent has ruled, a corollary to the principle of legality is the rule whereby criminal law must be drafted without ambiguities, in strict, precise, and unequivocal terms that clearly define the actions defined as punishable offenses, clearly establishing their elements and the factors that distinguish them from other actions that do not constitute punishable offenses or that are punishable under other provisions.<sup>162</sup>

188. In line with those principles, the Inter-American Court has ruled on a series of cases by finding violations of the principle of legality in, for example, the existence of criminal offenses that “refer to conduct that is not precisely defined, meaning that it could be considered under either.”<sup>163</sup> The Court has placed particular emphasis on the problems arising from ambiguities of this kind, since they can lead to a series of restrictions on the guarantees of due process according to whether one offense or the other is involved, and to variations in the punishment to be imposed.<sup>164</sup> The Court further found that in such situations there was no certainty regarding the punishable actions, the elements making them up, the objects or interests against which they were committed, and their effects on society as a whole.<sup>165</sup>

<sup>161</sup> IACHR, Report on Terrorism and Human Rights, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, para. 225.

<sup>162</sup> IACHR, Report on the Situation of Human Rights in Peru (2000), OEA/Ser.L/V/II.106, Doc. 59 rev. 2, June 2, 2000, paras. 80, 168; IACHR, Report on Terrorism and Human Rights, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, para. 225; I/A Court H. R., *Case of Castillo Petruzzi et al.*, Merits, Reparations and Costs, Judgment of May 30, 1999, Series C No. 52, para. 121; I/A Court H. R., *Case of Cantoral Benavides v. Peru*, Judgment of August 18, 2000, Series C No. 69, para. 157; I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 174; I/A Court H. R., *Case of De la Cruz Flores v. Peru*, Judgment of November 18, 2004, Series C No. 115, para. 79; I/A Court H. R., *Case of García Asto and Ramírez Rojas v. Peru*, Judgment of November 25, 2005, Series C No. 137, para. 188; 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, para. 55.

<sup>163</sup> In connection with Articles 1, 2, and 3 of Peru’s Decree Law No. 25.659 and Articles 2 and 3 of Decree Law No. 25.475, which, respectively, defined the crimes of treason against the fatherland and terrorism, but left it impossible to determine when one of those offenses had been committed and when the other was involved.

See: I/A Court H. R., *Case of Cantoral Benavides v. Peru*, Judgment of August 18, 2000, Series C No. 69, para. 153; I/A Court H. R., *Case of Castillo Petruzzi et al. v. Peru*, Judgment of May 30, 1999, Series C No. 52, para. 119.

<sup>164</sup> I/A Court H. R., *Case of Castillo Petruzzi et al. v. Peru*, Judgment of May 30, 1999, Series C No. 52, para. 119; and I/A Court H. R., *Case of Lori Berenson Mejía v. Peru*, Judgment of November 25, 2004, Series C No. 119, para. 119.

<sup>165</sup> I/A Court H. R., *Case of Lori Berenson Mejía v. Peru*, Judgment of November 25, 2004, Series C No. 119, para. 117.

189. The Court has also stressed that in a democratic system, it is necessary to intensify precautions in order for criminal sanctions to be adopted with absolute respect for the basic rights of individuals, and subject to a careful verification of whether or not there was unlawful conduct.<sup>166</sup>

190. Although in this case the victims were not prosecuted in criminal proceedings, the Commission understands that the process whereby judges are removed from office is punitive in nature, in that its consequences can include the judge's dismissal. In addition, in the province of San Luis, the removal of a judge may be accompanied by the sanction of disqualification from holding public positions.

191. On this point, the Commission recalls the Court's repeated rulings that the freedom from *ex post facto* laws enshrined in Article 9 of the American Convention is one of the principles that govern the actions of all bodies of the State in their respective fields, particularly when the exercise of its punitive power is at issue.<sup>167</sup> In terms of its scope, the Court has ruled that the freedom from *ex post facto* laws applied not only to criminal matters, but also to administrative sanctions.<sup>168</sup>

192. The Commission has already established that if a judge is to be removed from office, that removal must be carried out in strict compliance with the procedures set forth in the Constitution, as a safeguard for the democratic system of government and the rule of law. The principle is based on the very special nature of the function of the courts and to guarantee the independence of the judiciary vis-à-vis the other branches of government and political-electoral changes.<sup>169</sup>

193. In addition, the Commission has stated that with respect to the disciplinary control to which judges are subject when they fail to efficiently and adequately fulfill their jurisdictional duties, one of the requirements to be met for imposing a disciplinary sanction is that the sanctioned conduct be defined previously and in detail in the law and that the seriousness of the violation and the type of disciplinary measure to be imposed in the respective case be specified and that, in all cases the penalty must be in proportion to the seriousness of the offense.<sup>170</sup>

194. As the Inter-American Court has said:

The definition of an act as an unlawful act, and the determination of its legal effects must precede the conduct of the subject being regarded as a violator. Otherwise, individuals would not be able to orient their behavior according to a valid and true legal order within which social reproach and its consequences were expressed. These are the foundations of the principles of legality and unfavorable non-retroactivity of a punitive rule.<sup>171</sup>

<sup>166</sup> I/A Court H. R., *Case of Baena Ricardo et al. v. Panama*, Judgment of November 2, 2001, Series C No. 72, para. 106. Citing, *inter alia*: Eur. Court H. R., *Ezelin Judgment* of April 26, 1991, Series A No. 202, para. 45; and Eur. Court H. R., *Müller and Others Judgment* of May 24, 1988, Series A No. 133, para. 29. See also: I/A Court H. R., *Case of De la Cruz Flores v. Peru*, Judgment of November 18, 2004, Series C No. 115, para. 81; and I/A Court H. R., *Case of García Asto Ramírez Rojas v. Peru*, Judgment of November 25, 2005, Series C No. 137, para. 189.

<sup>167</sup> I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 176, citing: I/A Court H. R., *Case of Baena Ricardo et al. v. Panama*, Preliminary Objections, Judgment of November 18, 1999, Series C No. 61, para. 107.

<sup>168</sup> I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 177, citing: I/A Court H. R., *Case of Baena Ricardo et al. v. Panama*, Preliminary Objections, Judgment of November 18, 1999, Series C No. 61, para. 106.

<sup>169</sup> IACHR, Report No. 30/97, Case 10.087, Merits, Gustavo Carranza (Argentina), September 30, 1997, paras. 41, 58. IACHR, Report 48/00, Case 11.166, Merits, Walter Humberto Vásquez Bejarano (Peru), April 13, 2000, para. 76.

<sup>170</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 372, citing: United Nations General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development, Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, A/HRC/11/41, March 24, 2009, paras. 57 and 58.

<sup>171</sup> *De La Cruz Flores*, para. 104; *Baena*, 106. Citing, *inter alia*: Eur. Court H. R., *Ezelin Judgment* of April 26, 1991, Series A No. 202, para. 45; and Eur. Court H. R., *Müller and Others Judgment* of May 24, 1988, Series A No. 133, para. 29.

195. In this case, the Commission notes that both the procedure and the grounds for dismissing judges in the province of San Luis are set out in Articles 224 *et seq.* of the provincial Constitution and in the corresponding secondary legislation. The Commission also notes that at the time that the alleged victims were removed from office, that legislation underwent a series of amendments. Consequently, the Commission will analyze whether the alleged victims' dismissal proceedings were carried out in accordance with the applicable legal provisions.

196. As the Commission has established, the actions for which the judges were dismissed took place on July 7, 1994, and August 29, 1996, in the case of Judge Gallo; on February 7, 1997, and November 20, 1997, in the case of Judge Careaga; and on February 7, 1997, in the case of Judge Maluf. In addition, the Commission notes that as of July 4, 1989, the operations of the Impeachment Jury were regulated by Law 4832, which was amended by means of Law 5102 on March 10, 1997; by Law 5124 on October 13, 1997; and by Law 5135 on August 5, 1998. Consequently, with the exception of the fact that took place on November 20, 1997, in Judge Careaga's case, when all the incidents took place the legal provisions in force and applicable were those of Law 4832.

197. The petitioners allege the use of Law 5124, which was not in force at the time of the facts for which the victims were dismissed, represented a blatant violation of the principle of legality and nonretroactivity in that it expanded the grounds for the removal of judges and redefined some of the existing grounds by reducing their requirements and, at the same time, retroactively amended the rules governing the competence of the Impeachment Jury. The State presented no specific claims regarding those contentions.

198. Regarding the grounds for the dismissal of judges, the Commission has already stated that in order to safeguard the principle of judicial independence, they must be set down with the greatest possible clarity. Indeed, in addition to fueling doubts about the independence of the judiciary, the lack of certainty about the grounds and procedure for removing judges from office can lead to arbitrary abuses of power, with direct repercussions for the rights of due process and of freedom from *ex post facto* laws.<sup>172</sup> The Commission has also established that jurisdictional duties are to be carried out without external pressure and, consequently, they cannot be subject to political control, based on the criterion of political discretion.

199. In this case, the Commission notes that the provincial Constitution gives, as grounds for the dismissal of judges, "poor performance of duties," "physical or mental incapacity," "serious misdemeanors," or "the commission of common crimes." In particular, the Commission holds that such grounds for dismissal as "poor performance" or "serious misdemeanors" are broad and indeterminate and, consequently, that they fail to meet the standards of predictability required to uphold the principle of judicial independence.

200. However, the Commission notes that the constitutional provisions were elaborated upon by the regulatory provisions, which indicate in detail each of the misdemeanors, offenses, and forms of misconduct for which judges may be removed from office in the province of San Luis.

201. In particular, the Commission notes that Article 16 of Law 4832 of 1989 establishes the following grounds for dismissal: I.d: Usurpation of authority; I.e: Abuse of authority and violation of the duties of public officials; II.c: Repeated ineptitude or negligence in the performance of functions; II.d: Reiterated and notorious ignorance of law; II.e: Reiterated noncompliance with the duties of their positions; III.i Repetition of serious irregularities in proceedings.

202. Similarly, Article 21 of Law 5124 of 1997 established the following grounds for dismissal: I.d: Usurpation and abuse of authority; I.e: Violation of the duties of a public official; II.c Ineptitude or negligence in the performance of functions; II.d: Inexcusable and serious ignorance of law; II.e Noncompliance with the duties of their positions; II.i: Serious procedural irregularities to the discredit of the judiciary.

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<sup>172</sup> IACHR, Report No. 99/11, Case 12.597, Miguel Camba Campos and Others (Members of the Constitutional Court), Ecuador, July 22, 2011, para. 106. IACHR, Report No. 65/11, Case 12.600, Hugo Quintana Coello and Others (Justices of the Supreme Court), Ecuador, March 31, 2011, para. 106.

203. The Commission notes that there are differences in the wording of the grounds for dismissal in Laws 4832 and 5124. In particular, the Commission notes that according to Law 5124: (A) section I.d includes both usurpation and abuse of authority, (B) section II.c lifts the requirement for the incompetence or negligence to be repeated, (C) section II.d changes reiterated and notorious ignorance of law to inexcusable ignorance of law, (D) section II.e lifts the repetition requirement for noncompliance with duties, and (E) section II.i lifts the repetition requirement for irregularities and adds their impact on the discrediting of the judiciary.

204. Accordingly, the Commission finds that Law 5124 substantially amended the grounds for the dismissal of judges in the province of San Luis and that, in addition, the new formulation established in that law reduced the standard for the offense by eliminating repetition requirements and including such elements of subjective appraisal as “discrediting the judiciary.”

205. The Commission sees that in the three cases, the Impeachment Jury defined the judges’ actions in terms of both relevant articles of the provincial Constitution and the situations provided for in Law 5124, which was not the law in force at the time of the commission of the facts with which they were charged; in addition, it amended the definition of some of the grounds for which the judges were dismissed, thereby affecting the victims’ predictability with respect to the actions on which their dismissal could be based. Consequently, the removal from office of the judges for the grounds established in Law 5124 constituted a retroactive enforcement of the substantive law that is incompatible with the principle of legality enshrined in the American Convention.

206. In light of the foregoing, the Commission concludes that the State of Argentina did violate the right enshrined in Article 9 of the American Convention, in conjunction with Article 1.1 thereof, with respect to Adriana Gallo, Ana María Careaga, and Silvia Maluf.

207. With regard to the claims related to the retroactive enforcement of the procedural considerations of Law 5124, the Commission believes that those issues have already been analyzed in the section dealing with the right to a fair trial and judicial protection. Furthermore, the Commission does not have sufficient elements to indicate that the procedural reforms introduced by Law 5124 had a substantive effect on the victims’ dismissal proceedings, and so it finds that no violation of the principle of legality was committed in connection therewith.

**D. Right of free expression of Judges Adriana Gallo, Ana María Careaga, and Silvia Maluf, in connection with the principle of legality, enshrined in Articles 13 and 9 of the American Convention**

208. Article 13 of the American Convention establishes:

(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.

(4) Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

(5) Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

209. The Commission's task in this section is to analyze whether the sanctions imposed on the alleged victims as a consequence of the statements made before the College of Lawyers of San Luis constitute a violation of their right of free expression.

210. As has been indicated in the established facts, the three alleged victims were dismissed from their positions as judges in the Second Judicial District of the province of San Luis, based in the city of Villa Mercedes. Ms. Gallo and Ms. Maluf de Christin were in charge of courts responsible for civil, commercial, and mining matters, while Ms. Careaga was in charge of a criminal court.

211. The petitioners allege that the State violated the three alleged victims' right of free expression "in that [...] they were charged and dismissed for having expressed their opinion on the situation of the judiciary in San Luis province." According to the petitioners, the Impeachment Jury's interpretation of Article 193 of the Constitution of the province of San Luis in the resolutions dismissing Judges Maluf and Careaga "had the effect of an absolute ban on the judges making statements on matters of institutional importance," thereby causing an illicit restriction of freedom of expression. The State did not address this alleged violation of freedom of expression.

212. The Commission has noted that the judgments ordering the dismissals of Judges Maluf and Careaga and the latter's disqualification from holding public positions expressly included, among the reasons for their dismissals, their having signed a note addressed to the President of the College of Lawyers of Villa Mercedes, San Luis, endorsing a statement issued by that college on February 4, 1997. That action was ruled by the Impeachment Jury to be a violation of the ban on *involvement in politics* established by Article 193 of the San Luis Constitution<sup>173</sup> and by Article 21.j of Law No. 5.124, which developed that prohibition.<sup>174</sup> Moreover, in the case of Judge Maluf, that was the sole fact and grounds on which her dismissal was based.

213. As has been established, on February 4, 1997, the College of Lawyers of Villa Mercedes, San Luis, issued an "Accusatory Resolution" in which it spoke of the "serious institutional crisis facing the province of San Luis, affecting the whole of the judiciary." That statement comprised a series of "whereas" clauses and an operative section. In the operative section, the College of Lawyers asked the federal authorities to apply the institutional mechanisms provided for in the existing constitutional and legal provisions to correct the alleged institutional crisis. Three days later, Judges Gallo, Careaga, and Maluf, along with another four female employees of the second judicial district of San Luis (another judge, a judicial officer, and two secretaries), signed a note addressed to the President of the College of Lawyers of Villa Mercedes, stating that they "shared the interpretation of the province's problems set out in the whereas clauses of the resolution of the College of Lawyers" and that "in light of the political and institutional circumstances facing the province of

<sup>173</sup> Article 193 of the San Luis Provincial Constitution prohibits judges from "involvement in politics." That article reads: "Judges and other members of the judiciary are prohibited from involvement in politics of any kind other than through the casting of votes; from engaging in games of chance or visiting premises exclusively for such games; and from all actions that could compromise the impartiality and dignity of the position. Breaches of these prohibitions shall be considered flagrant cases of poor performance for which they may face impeachment."

<sup>174</sup> Article 21 of the Impeachment Jury Law, No. 5.124, which came into force on October 28, 1997, gives various grounds for dismissal, covering crimes, misdemeanors, misconducts, incapacities, and disqualifications. Law 5.124 defines "public or concealed involvement in politics, or actions of that nature, prohibited by Art. 193 of the provincial Constitution," as a misdemeanor.

San Luis, accurately analyzed in the aforesaid document, it is our duty as members of the provincial judiciary to endorse it.”

214. In Judge Careaga case’s, after studying her actions the Jury ruled that her endorsement of the statement issued by the College of Lawyers of Villa Mercedes was an act aimed at “subverting the constitutional order.” Specifically, it described it as:

“[...] a personal attitude that greatly exceeds the jurisdiction, personal freedom, and freedom of expression of Dr. CAREAGA and it means that the judge in question is a proponent, along with the signatories of that document, of an authentic institutional coup aimed at subverting the constitutional order that exists in the province of San Luis, in that it sought, through judicial channels, to replace the authorities that were legally established and legally voted in by all the inhabitants of the province of San Luis.”

215. In Judge Maluf’s case, in addition to stating that “judges are required and obliged to be measured in their statements,” the Jury concluded that:

“[...] Consequently, this interest group [the College of Lawyers of Villa Mercedes] becomes a pressure group when, in compliance with its specific goals to its own benefit, it brings pressure to bear on officials, political parties, or public opinion by taking actions intended to exercise influence [...] in the case at hand, to achieve public consensus for requesting judicial intervention in the three branches of government of the province of San Luis in accordance with the irregularities set out in the whereas clauses, which she endorsed, as expressly acknowledged by the defendant judge. [...]

In this case, the measure requested by the College of Lawyers of Villa Mercedes, the endorsement of which by the defendant was the cause of these proceedings, is a typical act of political contents[,] grounds, and nature [...]

That freedom of expression is regulated differently, in a more restrictive way, for judges, based on an unassailable principle of state interest [...]. In performing their functions, judges must be prudent, circumspect, measured, respectful of all the members of society who discharge duties within a republican order [...] emphasizing that judges are required and obliged to be measured in their statements.

This leads us to conclude that the manifesto endorsed by the defendant is purely political in nature, in that federal intervention in established powers is an extreme measure of political contents and nature, which means that her actions come under the terms of Art. 193 of the provincial Constitution and Art. 21.II.j of Law 5.124.”

216. As indicated by these extracts from the decisions, the disciplinary sanctions imposed on Judges Maluf and Careaga were a punishment after the fact for a written expression of their opinion regarding the institutional crisis that was affecting them. It is therefore necessary to analyze whether the punishment met the requirements necessary for the imposition of measures of subsequent liability for the exercise of freedom of expression, under the terms of Article 13.2 of the Convention.

217. Answering that question demands an analysis of the scope of the right to freedom of thought and expression and the limitations that may be placed on the exercise of those rights by public officials in general and by judges in particular. Using those considerations as a framework, the Commission will now apply the criterion of necessity developed by the jurisprudence of the inter-American system in resolving disputes involving Article 13 of the Convention.

218. Finally, regarding the alleged violation of Judge Adriana Gallo’s freedom of expression, the Commission notes that the judgment ordering her dismissal and disqualification from holding public positions does not include, among its grounds, her adhesion to the communiqué issued by the College of

Lawyers of Villa Mercedes. That notwithstanding, the Commission will examine whether her dismissal represented an indirect restriction because of her expression of her opinion, taking into account the commonalities between her case and those of the other judges who made similar statements and paying attention to the evidence in the case, to the determinations reached regarding Articles 8, 9 and 25 of the Convention, and to the context in which her dismissal took place.

### 1. General considerations on the scope of freedom of expression and the restriction of that right among officers of the judiciary

219. Both the Commission and the Inter-American Court of Human Rights have held that the right of freedom of thought and expression entails two dimensions: an individual dimension, and a social dimension. As an individual right, free expression reflects the ability of all persons, without discrimination, to seek, receive, and impart information and ideas of all kinds, through any means and without arbitrary interference. But the function of freedom of expression is not limited to the defense of those individual rights. From the social point of view, freedom of expression is a right that has a structural relationship with democracy.<sup>175</sup> That relationship has been called “close,” “indissoluble,” “essential,” and “fundamental” by the agencies of the inter-American human rights system.<sup>176</sup>

220. The relationship between freedom of expression and democracy is so important that, as the IACHR has explained, the very purpose of Article 13 of the American Convention is to strengthen the functioning of pluralistic and deliberative democratic systems by protecting and encouraging free access to information, ideas, and expressions of all types.<sup>177</sup> In turn, Article 4 of the Inter-American Democratic Charter defines freedom of expression and freedom of the press as “essential components of the exercise of democracy.”

221. Thus, full exercise of the right to express one’s own ideas and opinions, to circulate information already available, and to deliberate openly and freely on matters of public interest is a indispensable condition for the correct functioning of democratic regimes. For that reason, statements regarding matters of public interest enjoy the highest level of protection under the American Convention. That means that the State must refrain, even more assiduously, from placing restrictions on such forms of expression.<sup>178</sup> Given the importance of free expression in controlling the public administration, any restriction of political debate or matters of public interest enjoys a highly curtailed margin for action and must be strictly necessary in a democratic society.<sup>179</sup>

<sup>175</sup> 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, November 13, 1985, Series A No. 5, para. 70; I/A Court H. R., *Case of Claude Reyes et al.*, Judgment of September 19, 2006, Series C No. 151, para. 85; I/A Court H. R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107, para. 112; I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 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, para. 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, para. 116.

<sup>176</sup> 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, November 13, 1985, Series A No. 5, para. 70; I/A Court H. R., *Case of Claude Reyes et al.*, Judgment of September 19, 2006, Series C No. 151, para. 85; I/A Court H. R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107, para. 116; I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 86.

<sup>177</sup> IACHR, Arguments before the Inter-American Court in the case of *Ivcher Bronstein v. Peru*, transcribed in: I/A Court H. R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74, para. 143.d; IACHR, Arguments before the Inter-American Court in the case of “*The Last Temptation of Christ*” (*Olmedo Bustos et al.*) v. *Chile*, transcribed 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, para. 61.b.

<sup>178</sup> I/A Court H. R., *Case of Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177, para. 57 and 87; I/A Court H. R., *Case of Claude Reyes et al. v. Chile*, Judgment of September 19, 2006, Series C No. 151, paras. 84, 86, and 87; I/A Court H. R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005, Series C No. 135, para. 83; I/A Court H. R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107, para. 127.

<sup>179</sup> I/A Court H. R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107, para. 127; I/A Court H. R., *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74, para. 155; IACHR, Annual Report 1994, Chapter V: Report on [continues ...]

222. Under the American Convention, freedom of expression is a right enjoyed by *all persons*, in conditions of equality and without discrimination of any kind. According to established precedent, ownership of the right of free expression cannot be restricted to a given profession or group of persons, or to the area of press freedom.<sup>180</sup> The broad perspective adopted by the American Convention includes, of course, public officials and, within that group, judges.

223. However, the right of free expression is not an absolute right. Article 13.2 of the Convention, which prohibits prior censorship, also allows for the possibility of demanding the subsequent imposition of liability on an exceptional basis, provided that it does not curtail the exercise of free expression more than is strictly necessary and does not constitute a direct or indirect form of censorship. Hence, any subsequent sanction imposed as a result of the right of free expression that does not meet the requirements set out in Article 13.2 is in violation of the American Convention. Those requirements, as is well known, are the following: (1) the restriction must be defined precisely and clearly through a formal, material law, (2) the restriction must be in pursuit of objectives allowable under the American Convention, and (3) the restriction must be necessary in a democratic society to achieve the goals sought, suitable for attaining the desired purpose, and strictly proportional to the objective pursued.

224. Now, as the Commission and the Court have stated, defining the limits on the right of free expression of public servants must abide by particular rules, which are outlined below.

225. According to inter-American case law, the exercise of the right of free expression by public officials has certain specific implications and characteristics.<sup>181</sup> The Court has ruled, for example, that the vital democratic function of free expression requires, in certain cases, that public officials make statements on matters of public interest in compliance with their legal powers. In other words, in certain circumstances, their exercise of free expression is not only a right, but also a duty.<sup>182</sup> As the Inter-American Court has stated: “The Court has repeatedly insisted on the importance of freedom of expression in any democratic society, particularly in connection with public-interest matters. [...] Accordingly, making a statement on public-interest matters is not only legitimate but, at times, it is also a duty of the state authorities.”<sup>183</sup>

226. In addition to this duty, inter-American doctrine and precedent state that public officials – particularly, the highest officials of the executive branch – are subject to the following duties in direct or indirect connection with the right of free expression: (1) special duty to reasonably verify the facts on which their statements are based; (2) duty to ensure that their statements do not amount to human rights violations and, in particular, that they do not harm the rights of those who contribute to public debate through the expression and dissemination of ideas, such as journalists and human rights defenders; (3) duty to ensure that their statements do not interfere with the independence and autonomy of judicial authorities; (4) duty of confidentiality that may legally apply to certain sensitive information in the possession of the State, within

[... continuation]

the Compatibility of *Desacato* Laws with the American Convention on Human Rights, Title III, OEA/Ser. L/V/II.88. doc. 9 rev., February 17, 1995.

<sup>180</sup> 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, para. 114 (in which the Court ruled that “the 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 [American] Convention”).

<sup>181</sup> 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, Chap. III, para. 202 *et seq.*

<sup>182</sup> 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, para. 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, para. 151.

<sup>183</sup> I/A Court H. R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131.

the framework established by Article 13.2 of the Convention; (5) special duty to denounce human rights violations of which they are aware.<sup>184</sup>

227. In turn, the European Court of Human Rights has stated on repeated occasions that the right protected by Article 10 of the European Convention applies to public officials and employees<sup>185</sup> and, as will be seen below, it has developed criteria for analyzing the scope of this right with respect to different types of officials.

228. As public officials, judges also enjoy broad freedom of expression but are subject to special restrictions in connection with cases they are hearing or with the principles of judicial independence and impartiality. Thus, the United Nations Basic Principles on the Independence of the Judiciary stipulate that:

“8. [...] 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.

[...] The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.”<sup>186</sup>

229. Similarly, No. 4.6 of the Bangalore Principles of Judicial Conduct provides:

“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.”<sup>187</sup>

230. In turn, the United Nations Special Rapporteur on the independence of judges and lawyers has noted the “importance of the participation of judges in debates concerning their functions and status as well as general legal debates.”<sup>188</sup>

231. As can be seen in the preceding paragraphs, the general principle is that judges do not renounce their basic rights upon assuming office: instead, they enjoy broad rights of free expression, like other citizens, with a number of strict exceptions related to the dignity of their positions and the protection of the principles of *independence* and *impartiality*, as examined in further detail below.

232. The concept of judicial *independence* arises from the separation of powers that characterizes democratic systems of government. Thus, the Inter-American Court has said that “one of the principal

<sup>184</sup> 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, Chap. III, paras. 202 to 217.

<sup>185</sup> See: European Court of Human Rights, *Vogt v. Germany*, para. 53 (on the freedom of thought and expression of a teacher at a state school); *Wille v. Lichtenstein*, para. 41 *et seq.* (on the freedom of expression of a judge regarding matters subject to the competence of the Constitutional Court); *Ahmed and others v. United Kingdom*, para. 56 (on restrictions to the political participation of certain public officials); as well as other cases.

<sup>186</sup> Principle 8 of the United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan, Italy, August 26 to September 6, 1985, and confirmed by the General Assembly in resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985.

<sup>187</sup> Principle 4.6, Bangalore Principles of Judicial Conduct, approved by the United Nations Economic and Social Council in resolution E/CN.4/2003/65/Annex, in The Hague, Netherlands, in November 2002, and adopted on January 10, 2003.

<sup>188</sup> Report of the United Nations Special Rapporteur on the independence of judges and lawyers, A/HRC/11/41, March 24, 2009, para. 45.

purposes of the separation of public powers is to guarantee the independence of judges.”<sup>189</sup> According to the Court, the guarantee of judicial independence is “essential for the exercise of the judicial function.”<sup>190</sup> The Court has ruled that the State has the duty of ensuring judicial independence “both in its institutional aspect, that is, with regard to the Judicial Power as a system, as well as in connection with its individual aspect, that is, with regard to the specific judge as an individual. The objective of the protection lies in avoiding that the justice system in general and its members specifically be submitted to possible improper restrictions in the exercise of their duties by bodies foreign to the Judicial Power or even by those judges that exercise duties of revision or appeal.”<sup>191</sup>

233. In turn, there are two components to *impartiality*: one subjective, and the other objective. As the Court has stated, “impartiality demands that the judge acting in a specific dispute approach the facts of the case subjectively free of all prejudice and also offer sufficient objective guarantees to exclude any doubt the parties or the community might entertain as to his or her lack of impartiality.”<sup>192</sup> In this, the Inter-American Court has embraced the precedents set by its European counterpart, which has ruled that *subjective* impartiality is assumed to exist absent evidence to the contrary and that *objective* impartiality is established through elements of conviction that serve to exclude all legitimate misgivings or well-grounded suspicion of partiality regarding his or her person, since judges must appear as “acting without being subject to any influence, inducement, pressure, threat or interference, direct or indirect.”<sup>193</sup>

234. These precepts, enshrined in numerous international treaties and statements of principles,<sup>194</sup> are essential to the correct functioning of a democratic system, since the independence of the judiciary is a *sine qua non* for the defense of human rights, of the Constitution, and of democracy itself through judicial channels.<sup>195</sup> In light of those principles, certain restrictions on the freedom of expression of judges are deemed legitimate provided they are limited, specific, and directed toward upholding them.

## 2. Study of the case at hand

235. Bearing in mind the above considerations, the Commission must now resolve the problem posed in the case at hand: whether the sanctions imposed on the alleged victims as a consequence of their statements to the College of Lawyers of San Luis constitute a violation of the right of free expression or whether they were instead legitimate sanctions under the terms of Article 13.2 of the Convention.

<sup>189</sup> I/A Court H. R., *Case of the Constitutional Court v. Peru*, Competence, Judgment of September 24, 1999, Series C No. 55, para. 73.

<sup>190</sup> See: *Case of Herrera Ulloa v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of July 2, 2004, Series C No. 107, para. 171, and *Case of Palamara Iribarne v. Chile*, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 135, para. 145.

<sup>191</sup> I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 67.

<sup>192</sup> I/A Court H. R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 56.

<sup>193</sup> I/A Court H. R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 56. See: European Court of Human Rights, *Case of Pullar v. the United Kingdom*, Judgment of June 10, 1996, Reports of Judgments and Decisions 1996-III, § 30; European Court of Human Rights, *Case of Fey v. Austria*, Judgment of February 24, 1993, Series A No. 255-A p. 8, § 28; European Court of Human Rights, *Case of Daktaras v. Lithuania*, No. 42095/98 (Sect. 3) (bil.), ECHR 2000-X – (10.10.00), § 30; See: *Piersack v. Belgium*, Judgment of October 1, 1982, Series A No. 53, and *De Cubber v. Belgium*, Judgment of October 26, 1984, Series A No. 86.

<sup>194</sup> See, in this regard: United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan, August 26 to September 6, 1985, and confirmed by the General Assembly in resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985; Bangalore Principles of Judicial Conduct; International Covenant on Civil and Political Rights (Art. 14); the Statute of the Ibero-American Judge, adopted by the Sixth Ibero-American Summit of Supreme Court Presidents, held in Santa Cruz de Tenerife, Canaries, Spain, on May 23 to 25, 2001; American Convention on Human Rights (Articles 8, 59, and 71); European Convention on Human Rights (Article 6); and others.

<sup>195</sup> See: Barak, Aharon, *The Judge in a Democracy*, p. 76 (2006).

236. To resolve this issue, the Commission will determine: (1) if the restriction was defined precisely and clearly through a formal, material law; (2) if the restriction was aimed at attaining pressing objectives allowable under the American Convention; and (3) if the restriction was necessary in a democratic society to achieve the pressing goals sought, suitable for attaining the desired purpose, and strictly proportional to the objective pursued.

**a. Reservation of law and principle of strict legality**

237. It falls to the Commission to study whether the provisions governing the grounds for the removal of judges set out in the domestic law of San Luis province – which were used to justify the dismissal of the alleged victims for the purported abuse of their freedom of expression – satisfy the terms of Articles 13.2 and 9 of the Convention.

238. Thus, the petitioners lodged claims regarding an alleged violation of the principle of legality and of freedom from ex post facto laws, in which they held that “such broad provisions” as Article 193 of the provincial Constitution, prohibiting judges from “involvement in politics,” were in breach of the principle of strict legality. The State submitted no arguments on this question.

239. As stated in Article 13 of the Convention, all restrictions of free expression must be expressly set down formally and materially in law. In addition, if criminal or administrative sanctions are imposed, the corresponding legal provisions must meet the requirements enshrined in Article 9 of the Convention. In this regard, the Inter-American Court has said that Article 9 of the Convention is applicable to punitive processes in the administrative realm in that “administrative sanctions, as well as penal sanctions, constitute an expression of the State’s punitive power,” leading to a reduction, deprivation or alteration of the rights of individuals as a consequence of unlawful conduct.<sup>196</sup> In the case at hand, particular attention must be paid to the satisfaction of the legality requirement, since disciplinary sanctions of the most serious kind, including dismissal, are involved.<sup>197</sup> Thus, as the Inter-American Court has stated, the severest restrictions demand the greatest precision in the rules establishing them.<sup>198</sup>

240. Provisions providing for the dismissal and disqualification of a judge as a subsequent consequence of the exercise of the right of free expression must be subject to the strictest scrutiny of legality. Such provisions do not only lead to an extraordinarily severe sanction (dismissal) and restrict the exercise of the right of free expression; they can compromise the principles of judicial independence and autonomy, in that they are an exception to judicial stability as an institutional guarantee for ensuring independence and impartiality.

241. As is common knowledge, to guarantee their independence and impartiality, judges must enjoy stability in their appointments provided they observe good conduct. Those principles involve the very essence of the separation of powers and the independence and autonomy of the judiciary. On this point, the United Nations Special Rapporteur on the independence of judges and lawyers has said that the “irremovability of judges is one of the main pillars guaranteeing the independence of the judiciary. Only in exceptional circumstances may the principle of irremovability be transgressed. One of these exceptions is the application of disciplinary measures, including suspension and removal.”<sup>199</sup> Accordingly, No. 12 of the *Basic Principles on the Independence of the Judiciary* states: “Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the conclusion of their term of office, where such exists.”

<sup>196</sup> See: *Case of Baena Ricardo et al. v. Panama*, Merits, Reparations, and Costs, Judgment of February 2, 2001, Series C No. 72, paras. 106 and 108.

<sup>197</sup> See: *Case of Baena Ricardo et al. v. Panama*, Merits, Reparations, and Costs, Judgment of February 2, 2001, Series C No. 72, paras. 105-108.

<sup>198</sup> See: I/A Court H. R., *Case of Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177, paras. 59 *et seq.*

<sup>199</sup> Report of the United Nations Special Rapporteur on the independence of judges and lawyers, A/HRC/11/41, March 24, 2009, para. 57.

242. From this point of view, the grounds for dismissal established by the Constitution may be set in terms that are more or less general and abstract, given the nature of constitutional provisions. However, when those grounds are transformed into a regime of sanctions, they must be reflected by the legislation in clear, precise formulas that clearly determine the prohibited actions.<sup>200</sup> That means – to use the wording used by the Court in another case in which the principle of strict legality was involved – establishing “a clear definition of the incriminatory behavior, setting its elements, and defining the behaviors that are not punishable (...).”<sup>201</sup> That is essential to ensure that judges can orient their behavior according to a valid and true legal order.<sup>202</sup>

243. In this regard, the United Nations Special Rapporteur on the independence of judges and lawyers has said 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.”<sup>203</sup> Sanctions regimes that are vague and broad afford the officials responsible for prosecutions of judges an unacceptable level of discretion that is incompatible with the standards of the American Convention.<sup>204</sup>

244. The relevant section of Article 193 of the Constitution of San Luis “prohibits judges and other members of the judiciary from involvement in politics of any kind other than through the casting of votes.”<sup>205</sup>

245. In turn, Article 21 of the Impeachment Jury Law, No. 5.124, in force up until 2006, regulated the “grounds for the dismissal” of judges, section II of which covered ““Misdemeanors.” That article did not distinguish between the gravity of those misdemeanors, and so they could all lead to the same legal consequence – such as dismissal from office and disqualification from public duties – without clear criteria defined by the legislature. Article 21.II.j of Law No. 5.124 specifically included, as a misdemeanor, “public or concealed involvement in politics, or actions of that nature, prohibited by Art. 193 of the provincial Constitution.”

246. The Commission must determine whether the text of these legal provisions satisfies the requirements set by Articles 13.2 and 9 of the Convention. Although the grounds for dismissal used in the case at hand were established by law in a formal and material sense, the ban on “public or concealed involvement in politics, or actions of that nature” is drafted in too generic terms; for that reason, it was interpreted in radically divergent – even contradictory – ways by the different impeachment juries. It can therefore be seen that the breadth and vagueness of this legal formula allows for enormous discretion in interpretation and offers scant guarantees to judges and magistrates, who are unable to orient their actions in accordance with clear, preestablished parameters.

<sup>200</sup> 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, para. 55.

<sup>201</sup> 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, para. 55; and *Case of Baena Ricardo et al. v. Panama*, Merits, Reparations, and Costs, Judgment of February 2, 2001, Series C No. 72, paras. 105-107.

<sup>202</sup> See: *Case of Baena Ricardo et al. v. Panama*, Merits, Reparations, and Costs, Judgment of February 2, 2001, Series C No. 72, paras. 106 and 108.

<sup>203</sup> Report of the United Nations Special Rapporteur on the independence of judges and lawyers, A/HRC/11/41, March 24, 2009, para. 57.

<sup>204</sup> See: 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, paras. 43 and 44.

<sup>205</sup> Thus, Article 193 of the San Luis provincial Constitution provides: “Judges and other members of the judiciary are prohibited from involvement in politics of any kind other than the casting of votes; from engaging in games of chance or visiting premises exclusively for such games; and from all actions that could compromise the impartiality and dignity of the position. Breaches of these prohibitions shall be considered flagrant cases of poor performance for which they may face impeachment.”

247. Thus, in the cases of Judges Careaga and Maluf, the grounds for dismissal set by Article 21.II.j of Law 5.124 were interpreted in a way that included their endorsement of the statement issued by the College of Lawyers of Villa Mercedes on February 4, 1997. In 2006, however, in the case against Judge Alicia Raquel Nerotti, the Impeachment Jury ruled that such endorsement did not equate to the aforesaid grounds<sup>206</sup>. Thus, the Commission notes that in her case, the Impeachment Jury resolved the dismissal the complaint against the judge and order the proceedings sent to the archive, finding, *inter alia*, that:

“The interpretation offered – and hereby overturned – of Art. 193 [of the Constitution of San Luis] and of Art. 21.II.j of the Jury Law and resultant definition of the actions as poor conduct directly undermine the provisions that establish freedom of expression for all persons, in that they appear to deny judges the possibility of expressing their opinions on institutional matters lest they trigger a reason for their removal. An interpretation harmonizing both clauses should restrict the scope of the ban imposed by Art. 193 to participation in party-political activities: in other words, to institutional actions within the framework of a political party. Clearly, in that it is a branch of government, there is also a political dimension to the judiciary, and judges cannot be denied the ability to express their opinions about matters of institutional relevance that affect them. Surely the drafters of the provincial constitution did not want judges who were unconcerned about the functioning of government. The interpretation proposed by the prosecution – that a judge’s endorsement of the analysis prepared by the College of Lawyers constitutes a political act prohibited by Art. 193 of the Constitution – undermines the freedom of expression of the members of the judiciary [...].

[...] Regardless of the abridgment of the individual rights of judges, an interpretation such as the one offered of Art. 193 of the provincial Constitution by the complainant indirectly affects the independence of the judiciary, in that it encourages defining as a political act any stance or opinion adopted by the members of the judiciary that is unfavorable to the interests or political aims of the serving government, even those that are intended to defend its institutions.

Thus, any action or opinion on the part of a judge that could upset the interests of political power runs the risk of being termed an ‘act of political contents’ and, consequently, of being used as grounds for dismissal, as occurred in the complaint that led to the case at hand. [...]

Again, the correct interpretation of Article 193 of the provincial Constitution and its regulatory provision (Art. 21.II.j of the Jury Law) is the idea of ‘intervention in politics’ in the sense of ‘involvement in party-political activity,’ and not merely any kind of activity or statement that could be understood as political in the broad sense of the term [...].”

248. The radical difference between the interpretation in the cases of petitioners Careaga and Maluf and that used in Judge Nerotti’s case clearly shows the risks to free expression and to the guarantees of judges’ independence inherent in vague, imprecise sanctions regimes.

249. In the proceedings before the Commission, the State has provided no evidence whatsoever to indicate the existence of domestic legal precedents that could help resolve these issues clearly.<sup>207</sup> Neither has the State addressed the petitioners’ claims that “although [that] article [...] forbids judges to intervene in politics, an interpretation in line with freedom of expression and, in particular, with the regime of permissible restrictions of that right, [...] must be constrained [...] solely to participation in party-political activities: in other words, to institutional activities within the framework of a political party.” In addition, the State offered no comments when the petitioners submitted, as evidence, the judgment issued by the Impeachment Jury in 2006 in the complaint against the fourth judge, Ms. Alicia Raquel Neirotti, who also signed the endorsement note.

<sup>206</sup> **Annex 72.** Judgment of the Superior Court of Justice, March 10, 2011. Annex to the petitioners’ brief of May 30, 2011.

<sup>207</sup> See: *Case of Vogt v. Germany* [GC], No. 17851/91, § 48, September 26, 1995.

250. Given the terms in which those domestic legal provisions are drafted, and taking into account the Impeachment Jury's interpretation of those rules as indicated in the submissions made in these proceedings, the Commission finds that those provisions fail to establish clear parameters for understanding what is meant by involvement in politics and acts of a political nature. The domestic law regulating the restriction used in the case at hand does not clearly indicate the scope of the illicit behavior, which could lead to broad interpretations that allow given instances of the legitimate exercise of free expression being unduly punished. That is particularly serious bearing in mind that such actions could lead to the grave consequence that is dismissal or even cause disqualification from holding public office, without making distinctions regarding the seriousness of the offense according to the type of behavior and statement and without taking into account various relevant factors, such as the time, context, and channel of the judge's statement and the contents thereof. Thus, under the Argentine law in question, the same penalty of dismissal applies to judges who participate or collaborate in party-political activities and to judges who, in other contexts, express technical opinions on matters of institutional import that, in a broad sense, can be determined by the Impeachment Jury to be acts of a political nature.

251. Although it is in line with Article 13.2 of the Convention to limit judges' freedom of expression through the subsequent imposition of disciplinary responsibilities when they incur in abuses of that right, the Commission believes that if the State, as in the case at hand, establishes dismissal as a punishment for a disciplinary fault, the illicit conduct must be defined much more precisely in law and be a misdemeanor of a very serious nature, since dismissal from office is the most serious consequence that can be applied<sup>208</sup> and can compromise the principles of judicial independence and autonomy. That precision is even more important in cases involving grounds for dismissal that restrict a judge's freedom of expression in areas beyond the scope of his jurisdictional activity and that have no bearing on pending cases.

252. In consideration whereof, the Commission concludes that the ambiguity and breadth of the restriction used in the case at hand entails a breach of the strict legality requirement, thereby causing a violation of Articles 9, 13.1, and 13.2 of the American Convention, in conjunction with Articles 1.1 and 2 thereof. The Commission further notes that although Law 5.124 has since been amended,<sup>209</sup> the text banning judges from involvement in politics<sup>210</sup> and Article 193 of the provincial Constitution<sup>211</sup> remain unchanged. However, the Commission believes that it should nevertheless analyze whether the restriction in this case sought to satisfy a legitimate, pressing objective of the State and whether it was strictly necessary for attaining that goal. The aim of this is to secure a systematic and complete discussion on the possible implications for the right of free expression in the case at hand.

#### **b. Pressing objective**

253. The second part of the Court's ruling states that to assess the legitimacy of a subsequent restriction on freedom of expression, in accordance with Article 13.2 of the Convention, it must be determined whether the objective sought by the restriction is legitimate and justified by the American Convention. Here it is necessary to differentiate the objective sought by the law from the objective sought by

<sup>208</sup> See: Principle VI.2 of Recommendation No. R (94) 12 of the Committee of Ministers to the member states on the independence, efficiency, and role judges, adopted on October 13, 1994. This principle provides as follows: "Appointed judges may not be permanently removed from office without valid reasons until mandatory retirement. Such reasons, which should be defined in precise terms by the law [...] may relate to [...] serious infringements of disciplinary rules."

<sup>209</sup> "Impeachment Jury Law," No. VI-0478-2005, amended by Law No. VI-0640-2008, issued by the San Luis Provincial Legislature (last updated on October 29, 2008), available at: <http://www.diputados.sanluis.gov.ar/diputadosasp/paginas/normas.asp>.

<sup>210</sup> See: "Impeachment Jury Law," No. VI-0478-2005, Art. 22.II.j: "Judges and officials covered by this law may be removed on the grounds listed below, regardless of other grounds that may be prescribed by the Constitution and by law [...] Public or concealed involvement in politics, or actions of that nature, prohibited by Art. 193 of the provincial Constitution."

<sup>211</sup> "Judges and other members of the judiciary are prohibited from involvement in politics of any kind other than through the casting of votes; [...] or any action that could compromise the impartiality and dignity of the position. Breaches of these prohibitions shall be considered flagrant cases of poor performance for which they may face impeachment." Art. 193, Constitution of the Province of San Luis, available at: <http://www.argentina.gov.ar/argentina/portal/paginas.dhtml?pagina=425>.

the authorities in enforcing that law. It must also be borne in mind that while Article 13 of the Convention requires that those restrictions must be necessary to attain a legitimate objective, Article 30 of the Convention, in speaking of the scope of restrictions on human rights, says that they “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.*” (Emphasis added.)

254. As has been noted, Article 13.2 the Convention provides that the exercise of the right of free expression shall be subject solely to the subsequent imposition of liability necessary to ensure “respect for the rights or reputations of others; or the protection of national security, public order, or public health or morals.” The Commission believes that a restriction of freedom of expression that seeks to defend the principles of judicial independence and impartiality has legitimate objectives that are covered by the notion of the institutional public order.<sup>212</sup> As the Inter-American Court has ruled, the State must ensure independence and impartiality “both in its institutional aspect, that is, with regard to the Judicial Power as a system, as well as in connection with its individual aspect, that is, with regard to the specific judge as an individual.”<sup>213</sup> Those two aspects make up the public institutional order that must be guaranteed as a condition for the exercise of the remaining human rights. Thus, Article 10.2 of the European Convention on Human Rights expressly states that “maintain[ing] the authority and impartiality of the judiciary” is a legitimate objective of restrictions of the right of free expression, and this has been reflected in the European Court’s rulings in cases in which domestic law placed constraints on judges.<sup>214</sup>

255. Now, it is not enough to maintain that the provisions may have a legitimate objective. In addition, it must be determined whether those laws are necessary, useful, and strictly proportionate for attaining the legitimate objective they seek; or whether they were enforced with the purpose for which they were established, as provided for in Article 30 of the Convention. Accordingly, in cases such as the one at hand, it must be analyzed whether the disciplinary provisions were applied for the purpose for which they were established – in other words, if their enforcement actually served to ensure the principles of judicial independence, impartiality, and autonomy.

### c. Need in a democratic society

256. The Commission must now examine whether the restriction imposed on the right of free expression in the case at hand was necessary in a democratic society. On this point, it should again be noted that although judges enjoy broad protection of their right of free expression, they are also subject to a special duty of prudence and discretion regarding cases placed before them and other matters, in order to safeguard the principles of independence and impartiality. In consideration of the foregoing, the question the Commission must answer is whether the sanction imposed on the alleged victims for exercising their freedom of expression by endorsing the communiqué of the College of Lawyers was truly necessary to ensure compliance with the principles of independence and impartiality that are an essential part of the public democratic order.

257. The European Court of Human Rights has had the opportunity to analyze limits on judicial officials’ free expression of in a case that hinged on the legitimacy of a sanction imposed on a judge for severely criticizing other public servants and, in particular, the judiciary itself. Thus, in the case of *Kudeshkina v. Russia*, the European Court found that the dismissal of a judge because she had publicly criticized the lack of independence of the judiciary violated her right of free expression as enshrined in Article 10 of the European Convention on Human Rights. Specifically, the European Court found that “issues concerning the functioning

<sup>212</sup> For comparative purposes only, note that Article 10 of the European Convention on Human Rights specifically allows restrictions on freedom of expression, provided that they are set out in law and serve, *inter alia*, to “maintain the authority and impartiality of the judiciary.”

<sup>213</sup> *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 55.

<sup>214</sup> See: *Case of Kudeshkina v. Russia*, No. 29492/05, § 86 and 101, February 26, 2009; *Case of Kayasu v. Turkey*, No. 64119/00 and 76292/01, November 13, 2008; and *Case of Pitkevich v. Russia* (dec.), No. 47936/99, February 8, 2001, p. 9.

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.<sup>215</sup> Although the European Court acknowledged that judges are subject to special duties of caution in those cases in which the impartiality and independence of the judiciary may be called into question, it also found that the fact that a given matter may have political implications “is not by itself sufficient to prevent a judge from making any statement on the matter.”<sup>216</sup>

258. This judgment, the principles set out in the previous paragraphs, the findings of the United Nations Special Rapporteur on the independence of judges and lawyers, and the principles contained in the *Basic Principles on the Independence of the Judiciary* and in the *Bangalore Principles of Judicial Conduct* all point to the existence of a duty of loyalty and prudence on the part of judges that is bound in with the protection of the principles of judicial autonomy and independence. However, those same principles point to the existence of a protected scope for freedom of expression whereby judges may participate in public debates provided that those principles are not compromised.

259. Thus, an appropriate balance must exist between the right of free expression and the duty of reserve and prudence, whereby judges cannot be expected to remain silent about all matters of public importance. In all cases alleging a violation of the duty of prudence through a judge’s participation in a matter of national interest that is not the subject of proceedings before his court, there is a need to carefully assess whether the expression of his opinion harmed independence and impartiality to such an extent as to warrant the imposition of a sanction.

260. In particular, as noted by the European Court in the aforementioned case, it must be borne in mind that judges are in a privileged situation for defending the independence of the judiciary and for participating in discussions toward, for example, improving the mechanisms for protecting its autonomy and independence, or on judicial procedures and the right of access to justice. As has been stated, restrictions placed on that participation must have the limited purpose of protecting the principles of *judicial independence* and *impartiality*, and those restrictions must be interpreted in a limited way because they represent the exception to the general principle whereby freedom of expression is a broad right enjoyed by all persons on an equal footing and, most particularly, protected when it involves statements about matters of public interest.<sup>217</sup> As the European Court of Human Rights stated in the aforementioned case, freedom of expression “is subject to exceptions; however... [they must] be construed strictly, and the need for any restrictions must be established convincingly.”<sup>218</sup>

261. Since the judges’ exercise of freedom of expression in the case at hand took place outside their jurisdictional activities and involved neither information from cases they were hearing nor details obtained in the performance of their duties, it does not fall to the Commission to further explore the content of those duties in this area. Suffice it to say that judges must speak with discretion, neutrality, and prudence in the cases they are called on to resolve, both as regards their relations with the parties<sup>219</sup> and other players in the proceedings and in the public arena.

<sup>215</sup> European Court of Human Rights, *Case of Kudeshkina v. Russia*, Decision of February 26, 2009, para. 86.

<sup>216</sup> European Court of Human Rights, *Case of Kudeshkina v. Russia*, Decision of February 26, 2009, para. 95. See also: European Court of Human Rights, *Case of Wille v. Lichtenstein*, Decision of October 28, 1999, in which the Court found that constitutional matters always have political implications, but that that did not allow restrictions on the free expression of judges in connection with such matters.

<sup>217</sup> See: 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, para. 114. In that case, the Court ruled that “the 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 [American] Convention.”

<sup>218</sup> European Court of Human Rights, *Case of Pitkevich v. Russia*, Decision of February 8, 2001.

<sup>219</sup> See: *Case of Pitkevich v. Russia* (dec.), No. 47936/99, February 8, 2001, p. 10. In this case the European Court ruled that the dismissal of the petitioner, who was serving as a judge, was in proportion to the legitimate goal sought, in that through the exercise of free expression while performing judicial duties she raised doubts regarding her impartiality and damaged the authority of judiciary by  
[continues ...]

262. Accordingly, and bearing in mind the circumstances of this case, the Commission must examine whether the dismissal decisions adopted at the domestic level were necessary to protect the legitimate interest of ensuring the independence and impartiality of the judiciary.<sup>220</sup>

**(i) The judges' endorsement of the communiqué from the College of Lawyers**

263. According to the evidence submitted to the IACHR, the statements for which Judges Careaga and Maluf were prosecuted and convicted were made on February 7, 1997, in writing, in notes that they and another six judicial officials signed and sent to the President of the College of Lawyers of Villa Mercedes. Charges were not filed against Judge Careaga for signing that note, but the fact was included in the later accusation against her made by the prosecution service. In Judge Maluf's case, this was the single fact for which she was charged, prosecuted, and punished.

264. In the note sent to the College of Lawyers, the admonished judges merely stated that they "share[d] the interpretation of the province's problems set out in the whereas clauses of the Resolution of the College of Lawyers" of February 4, 1997, and that "in light of the political and institutional circumstances facing the province of San Luis, accurately analyzed in the aforesaid document, it [was their] duty as members of the provincial judiciary to endorse it."

265. Most of the information and opinions contained in the whereas clauses of the communiqué from the College of Lawyers were related to the institutional situation of the judiciary in the province of San Luis and its relations with the provincial executive. Moreover, its sole "having seen" clause spoke of "the serious institutional crisis facing the province of San Luis, affecting the whole of the judiciary."

**(ii) The context of the endorsement**

266. As already explained, the note was issued during an institutional crisis caused by the alleged undue intervention of the executive branch in the judiciary. According to the trial record in the oral proceedings brought against Judge Maluf, in presenting her claims the prosecutor herself admitted that "after offering, in its whereas clauses, an essentially political analysis with a specific criticism of a situation that undeniably existed at the time in San Luis – something that we cannot deny – the College of Lawyers resolved [...]"<sup>221</sup> In addition, several agencies and institutions at the federal and provincial levels issued statements regarding the crisis in the San Luis provincial judiciary. Moreover, at the time when they expressed their opinions, several developments in the province allowed the perception that the independence of the judiciary was being undermined, and that situation grew worse between December 1996 and March 1997. These included: the legislative amendment reducing the pay of judges and officers of the judiciary; the failure to issue a final decision in the *amparo* remedies filed; the enactment of laws changing the procedure for the appointment of associate judges, suspending the enforcement of judgments, and ruling that precautionary measures against the provincial government were inadmissible; problems with paying salaries within the judicial branch; and the resignations of four of the five members of the Superior Court of Justice.

267. Consequently, the Commission notes that the alleged crisis in the San Luis provincial judiciary was a matter of national knowledge and public interest. The federal Senate even drafted a bill to order "federal intervention in the judiciary of San Luis province," the rationale for which included the "dependency and subordination of the judicial branch of San Luis," and which was studied by the Senate

[... continuation]

encouraging, as was found by the domestic courts, membership in her church and by making intimidating statements to the parties during the judicial proceedings, criticizing the morals of individuals appearing in various cases involving family law.

<sup>220</sup> See: *Case of Vogt v. Germany* [GC], No. 17851/91, § 53, September 26, 1995.

<sup>221</sup> See: Record of oral proceedings before the Impeachment Jury of October 28 and 29, 2002; and filing for special unconstitutionality remedy lodged against Ms. Silvia Maluf's dismissal ruling, p. 46 (Annex 5 of the petition lodged on June 11, 2003).

Committee on Constitutional Affairs. Thus, it was a true institutional crisis of undeniable public interest, particularly as regards the provincial executive branch's alleged interference in the judiciary.

**(iii) Assessment of the suitability, necessity, and proportionality of the sanction**

268. In the Commission's view, it is highly relevant that the opinions for which the alleged victims were punished addressed the institutional situation within the judiciary for which they worked.<sup>222</sup> The judges were not speaking out on any measure adopted by the executive branch of government related to an issue on which they might later be called to rule; instead, they made their statements in compliance with that they saw as their duty of defending the independence of the judiciary. Their statements were not intended to reduce or undermine the authority of the judiciary, but rather to defend its independence.

269. In addition, as shown by the established facts, the judges' opinion had a factual basis, which is another factor that must be taken into account in weighing up competing interests.<sup>223</sup>

270. In studying the judges' actions, the Impeachment Jury gave a broad and thorough interpretation of the provisions prohibiting judges from intervening in politics and performing acts of a political nature. As has already been explained, however, those limitations must be interpreted restrictively in such a way that they truly serve to ensure the independence and autonomy of the judiciary and not to affect those principles or to place absolute restrictions on judges' right of free expression in matters of public interest regarding which they are fully qualified to speak. In this case, as was already noted, the lax interpretation of the misdemeanors that can trigger dismissal from duty – such as the one contained in the provisions applied in this case – threatens the stability of judges, which is, as is well known, an institutional guarantee intended precisely to protect the principles of independence, impartiality, and autonomy.

271. In its reasoning, the Impeachment Jury failed to distinguish between judges expressing their opinions on the institutional situation within the judiciary they serve and other actions or statements that could be deemed to be involvement in politics, such as participation or collaboration in party-political activities or statements of support or rejection of a given political party or candidate. When the judges signed the note in question, no election was underway, and neither did it contain any statement for or against any political party or movement. Neither do any of the Impeachment Jury's deliberations indicate that the judges' statements could have compromised the independence and impartiality of the judiciary.

272. Its interpretation is in contrast to the one offered by the new Impeachment Jury of those same provisions. Thus, according to the evidence submitted, the domestic regulations covering the grounds for dismissal applied in the cases of Judges Careaga and Maluf were not interpreted uniformly and clearly in the province of San Luis (*supra* paras. \*\*). As already noted, in the case of the fourth judge who signed the note and who is not an alleged victim in the proceedings before the IACHR, the Jury found that "Again, the correct interpretation of Article 193 of the provincial Constitution and its regulatory provision (Art. 21.II.j of the Jury Law) is the idea of 'intervention in politics' in the sense of 'involvement in party-political activity,' and not merely any kind of activity or statement that could be understood as political in the broad sense of the term [...]."

273. If the ban on involvement in politics is intended to safeguard the principles of independence and impartiality, it does not therefore seem necessary to deem any opinion expressed by a judge on matters of public interest not involving a case before the court or in support of a party or candidate to be an "intervention in politics." In particular, sanctioning a judge for expressing a critical opinion on the alleged responsibility of the executive branch during a clear institutional crisis within the judiciary does not appear to be suited to satisfying the principles of judicial independence and autonomy. This is of particular relevance if the context prevailing in San Luis province at the time the statement was made and the factual grounds on which the opinion was based are taken into consideration.

<sup>222</sup> See: *Case of Kudeshkina v. Russia*, No. 29492/05, § 86, February 26, 2009.

<sup>223</sup> See: *Case of Kudeshkina v. Russia*, No. 29492/05, § 91-93, February 26, 2009.

274. Neither does respectfully asking the competent authorities to apply the institutional corrective measures that exist in the legal framework to resolve the purported institutional crisis appear useful for defending the principles of independence and impartiality.

275. Clearly, there are matters of public interest whose discussion may have political implications, but it cannot be concluded that any statement by a judge on a question of public interest entails participation in political activity. On this point, the European Court has held that even when the matter under discussion has political implications, that is not sufficient reason to prevent a judge from expressing an opinion on it.<sup>224</sup>

276. For that reason, the Commission does not concur with the conclusion of the Impeachment Jury that found that, by signing the note, Judge Careaga was “a proponent, along with the signatories of that document, of an authentic institutional coup aimed at subverting the constitutional order that exists in the province of San Luis, in that it sought, through judicial channels, to replace the authorities that were legally established” (*supra* para. \*\*). The Commission notes that although federal intervention in a province is an extraordinary measure and one of a political nature, it is provided for in Argentina’s national Constitution.

277. Similarly, the Commission disagrees with the analysis offered by the Impeachment Jury that dismissed Judge Maluf, and with the judgment of the Superior Court of Justice of the province of San Luis that upheld her dismissal. In the case of Judge Maluf, the Impeachment Jury found that by signing the note in question, she had “compromised the impartiality and dignity of the position by expressly violating the ban established in Art. 193 of the provincial Constitution.”<sup>225</sup> In turn, the Superior Court ruled that it was not within the legal competence of the judge to state whether or not an “institutional crisis” existed in the San Luis provincial government; that the ban on participation in politics was not limited to party activities, but rather to any activity (or statement) of political relevance; that “judges must be meek and respectful toward those appearing before them,” and their public statements must not be “disturbing to the correct functioning, credibility, or image of public functions”; and that Judge Maluf’s actions were “undoubtedly, political proposals,” in that they concluded with a request for institutional intervention in the province by the federal authorities.<sup>226</sup> In this regard, the Superior Court rejected the alternative interpretation of Article 193 of the provincial Constitution offered by the Impeachment Jury that acquitted Judge Neirotti, ruling that in finding that Article 193 “prohibited judges from intervening in party politics,” the Jury adopted an “arbitrary decision without due grounding” that was “divergent from the extremely clear text of the Constitution.”<sup>227</sup>

278. The Commission believes that the decisions adopted by the Impeachment Jury and the Superior Court of Justice of the province of San Luis did not convincingly explain what damage the dismissed judges’ statements caused to the guarantees of judicial independence and impartiality, nor did they establish that those statements had negative repercussions for the proper functioning of the justice administration. They did not establish that those actions could affect the performance of their duties by implying an advance opinion on a given matter that might be placed before them and on which they might have to rule.<sup>228</sup> Neither was it proven that those actions could pose an objective danger to impartiality by representing the judges’ commitment to defending the particular interests of a given interest or pressure group, in that the document published by the College of Lawyers was not a defense of interests to the benefit of the College or its

<sup>224</sup> *Case of Wille v. Liechtenstein* [GC], No. 28396/95, § 67, ECHR 1999-VII; and *Case of Kudeshkina v. Russia*, No. 29492/05, §95, February 26, 2009.

<sup>225</sup> **Annex 11.** Judgment dismissing Judge Silvia Maluf, issued on November 1, 2002, by the Impeachment Jury of Judges and Officers of the Province of San Luis, p. 12 (Annex 5 of the petition lodged on June 11, 2003).

<sup>226</sup> **Annex 72.** Judgment of the Superior Court of Justice of the Province of San Luis of March 10, 2011, resolving the special unconstitutionality remedy. Annex 14 of the petitioners’ submission of May 30, 2011.

<sup>227</sup> **Annex 72.** Judgment of the Superior Court of Justice of the Province of San Luis of March 10, 2011, resolving the special unconstitutionality remedy. Annex 14 of the petitioners’ submission of May 30, 2011.

<sup>228</sup> *Bączkowski and Others v. Poland*, No. 1543/06, § \*\*, May 3, 2007.

members, but instead addressed a series of institutional problems that affected the situation of the branch of government in which Ms. Careaga and Ms. Maluf served.

279. In short, in the case under analysis the petitioners had a limited participation in a matter of high public interest regarding which they were particularly qualified to speak, in order to protect the independence and impartiality of the judiciary. As ruled by the European Court in the case cited above, the simple fact that a question of public interest may have political implications is not by itself sufficient to prevent a judge from making a statement on the matter.<sup>229</sup>

280. For the reasons given in the preceding paragraphs, the Commission believes that the dismissal of the petitioners was not a suitable or necessary measure for protecting the guarantees of *independence* and *impartiality* that are required to govern judicial functions. The petitioners exercised their right of free expression legitimately in that their statements did not entail participation in matters of party politics that could have affected their independence from other branches of government and political powers, and they made no reference to cases pending resolution by their courts wherein their impartiality could have been compromised.

281. To rule otherwise would trigger an unacceptable paradox whereby defending judicial independence would require punishing judges who expressed opinions in a national debate of public interest with the purpose of defending that independence.

282. In addition, the Commission also believes that not only was the measure useless for defending the principles of independence and impartiality, but also completely disproportionate. Thus, in the case at hand the harshest penalty allowed by law was applied, without being justifiable by the seriousness of a harm that was never established. The Impeachment Jury paid no attention to the fact that the only reproachable act for which Judge Maluf, with 18 years of service, was being prosecuted was having signed the aforesaid note endorsing the whereas clauses of the communiqué issued by the College of Lawyers. The severity of this measure curtailed the judicial career of Judges Careaga and Maluf in the province of San Luis, with all the consequent negative implications that entailed. They were dismissed from their jobs and prevented from performing the functions for which they had studied, trained, and acquired experience for years.

283. Accordingly, in the case of *Kudeshkina* cited above, in assessing the requirement of necessity the European Court found that the judge's dismissal for criticizing the lack of judicial independence "was undoubtedly a severe penalty [...]. This was the strictest available penalty that could be imposed in the disciplinary proceedings and [...] 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."<sup>230</sup>

284. According to the European Court, the notable chilling effect caused by the dismissal of the judge in that case "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."<sup>231</sup>

285. The Commission holds that the thoughts offered by the European Court on the impact of the restrictions imposed on free expression in that case are fully applicable to the cases of petitioners Maluf and Careaga.

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<sup>229</sup> European Court of Human Rights, *Case of Kudeshkina v. Russia*, Decision of February 26, 2009, para. 95. See also: European Court of Human Rights, *Case of Wille v. Lichtenstein*, Decision of October 28, 1999 (in which the Court found that constitutional matters always have political implications, but that that did not allow restrictions on the free expression of judges in connection with such matters).

<sup>230</sup> *Case of Kudeshkina v. Russia*, Decision of February 26, 2009, para. 98.

<sup>231</sup> *Case of Kudeshkina v. Russia*, Decision of February 26, 2009, para. 99.

286. Indeed, the severity of the restriction of free expression in this case is heightened because not only was Ms. Careaga's and Ms. Maluf's right of free expression affected: in addition, the dismissals ordered could have fueled fears among other judges tempted to exercise that right in connection with any other matter that, in the broadest sense, could be deemed a political activity. This chilling effect and its resultant silencing is another factor that must be duly addressed in assessing the proportionality of a restriction on freedom of expression.<sup>232</sup>

287. Finally, the Commission would like to make specific mention of the fact that petitioner Gallo was not charged with the grounds for dismissal provided in Article 193 of the provincial Constitution or in Article 21.II.j of Law 5.124. It should be noted that the proceedings against her were initiated before she sent the letter adhering to the statement issued by the College of Lawyers of Villa Mercedes. The Commission finds that since she was not dismissed for sending the letter of endorsement that led to the removal of petitioners Careaga and Maluf from their posts, it cannot be ruled that her freedom of expression was violated to the same extent as in Careaga and Maluf's cases. However, the Commission believes that her dismissal cannot be separated from the context in which the proceedings against all the petitioners were brought. Thus, charges were brought against all the judges who signed the note, and the College of Lawyers that issued the statement on the topic was dissolved. Those actions alone constitute an indication of the alleged persecutory nature of the proceedings brought against the petitioners. For that reason, the Commission finds that, to a lesser extent than in the cases of petitioners Careaga and Maluf, the freedom of expression of petitioner Gallo was also violated.

#### **V. MEASURES TAKEN SINCE REPORT No. 72/12**

288. The Commission adopted Merits Report No. 72/12 on July 17, 2012, and forwarded it to the State on November 1, 2012.

289. On November 30, 2012, the petitioners filed their brief, pursuant to Article 44(3) of the IACHR's Rules of Procedure. In that brief, the petitioners asked the IACHR to refer the case to the Inter-American Court and outlined their claims in the matter of reparations.

290. On January 2, 2013, the Argentine State requested an extension to submit information on its compliance with the recommendations. The extension was granted until January 18, 2013. On that very date, Argentina requested yet another extension to file the compliance report. The Commission acceded to that request on January 31, 2013, giving Argentina a three-month extension. Then, in a communication received on April 29, 2013, the State and the petitioners jointly requested another three-month extension in light of the fact that they were negotiating what they called a "friendly settlement" agreement. The Commission granted the extension on April 30, 2013. Subsequently, in communications dated May 7 and July 2, 2013, the State requested that the Commission add another four months –not three– to the most recent extension. On July 10, 2013, the Commission informed the State that another one month would be added.

291. By a communication dated August 8, the State informed the IACHR that the parties had reached an agreement regarding compliance with the recommendations and asked for an extension for a reasonable period of time to work out the details of the agreement. On August 30, 2013, the Commission granted an extension of another four months.

292. On December 19, 2013, the State forwarded the official bulletin for that week, which contained Decree No. 2131/2013 whereby the Chief Executive of the Nation approved the compliance agreement signed by the parties, an authenticated copy of which is appended to that decree. Based on the foregoing, the State asked the Commission to publish the report pursuant to Article 51 of the Convention.

<sup>232</sup> See: *Kudeshkina v. Russia*, No. 29492/05, § 83, 99-100, February 26, 2009; and *Kayasu v. Turkey*, No. 64119/00 and 76292/01, November 13, 2008.

293. The petitioners, for their part, submitted information on December 8, 2013.

294. On December 29, 2013, the IACHR decided not to refer the case to the Court based on the terms of the compliance agreement that the parties signed and presented to the IACHR.

295. The Commission observes that in the compliance agreement the parties signed, the State acknowledges its international responsibility for violations of the rights protected under articles 8(1), 8(2)(h), 25, 13 and 9 of the Convention, read in conjunction with the obligations established therein. Furthermore, the agreement makes provision for the appointment of an *Ad Hoc* Arbitration Tribunal to determine the pecuniary reparations measures; payment of the personal and employer contributions that would have been owed had the victims remained in their posts; and an apology to the victims. The agreement also makes provision for measures of non-repetition consisting of the following: i) engagement with the authorities of the province of San Luis with a view to their guaranteeing due process and judicial oversight of dismissal proceedings and, in general, judges' freedom of expression; and ii) sustaining the momentum of these measures through the Federal Human Rights Council. The agreement also features a clause on the agreement's publication.

296. Toward the end of the agreement, the IACHR notes another clause that reads, *verbatim*, as follows: "once the present agreement is approved by decree of the Chief Executive of the Nation, the petitioners shall waive or desist from any claim or action, either in domestic or international jurisdiction, whether already filed or about to be filed; they shall also relinquish or desist from any right on which those actions are or may be based, in respect of the claim made in Case No. 12,663 (sic) from the register of the Inter-American Commission on Human Rights (...)."

297. The Commission also observes that under the terms of the following clause, the compliance agreement took legal effect as of the date of publication of the aforementioned decree, which was December 19, 2013:

298. The parties hereby state that the present agreement is being signed *ad referendum* of the terms of the decree issued by the Chief Executive of the Nation approving the agreement. Once that happens, the Inter-American Commission on Human Rights shall be asked to adopt the report provided for in Article 51 of the American Convention on Human Rights.

299. The Commission observes that, by mutual agreement, the parties decided to ask the IACHR to continue the compliance process after publication of Decree No. 2131/2013 and the compliance agreement. The specific commitments as to compliance are still pending.

300. The Commission very much appreciates the efforts made by the parties to reach an agreement on compliance with the recommendations made in Merits Report No. 72/12; it is also grateful for its approval through Decree No. 2131/2013, adopted by the Chief Executive of the Nation. The Commission must underscore the importance of the acknowledgement of international responsibility for the violations of the rights protected under articles 8(1), 8(2)(h), 25, 13 and 9 of the American Convention, read in conjunction with the obligations set forth in articles 1 and 2 thereof. Nevertheless, this report must reflect the fact that thus far, the State has not carried out the recommendations aimed at adequately redressing Adriana Gallo, Ana María Careaga and Silvia Maluf for the violations established in the previous report, for which the IACHR will continue to monitor.

301. Finally, the IACHR would like to point out that given the particular circumstances of this case, which include the parties' signing of a compliance agreement and its approval by a decree from the Chief Executive of the Nation, whose issuance the parties mutually agreed would be a precondition for requesting resumption of the compliance process and publication of Merits Report No. 72/12, the Inter-American Commission, in keeping with its Rules of Procedure, decided not to refer this case to the Inter-American Court.

302. On April 2, 2014, during its 150th session, the Inter-American Commission approved Report No. 11/14 reiterating the recommendations made in Report No. 72/12 and adding the following recommendation:

1. Adopt the measures necessary for implementation of the points included in the agreement the parties signed concerning compliance with recommendations.

#### **VI. MEASURES TAKEN SINCE REPORT No. 11/14**

303. Based on Article 47.2 of its Rules of Procedure, on May 14, 2014 the IACHR forwarded the report to the parties, granting the State a period of one month to submit information on compliance with the final recommendations.

304. In a communication dated July 1, 2015 the State reported on a series of measures it implemented with respect to the compliance agreement. Specifically, it indicated that the parties have defined the rules of procedure of the *Ad Hoc* Arbitration Tribunal, the proposed arbitrators have accepted their positions, and the petitioner's appointment of the third arbitrator is pending. It also indicated that the administrative file is being processed for the State to pay the victims' employer and personal contributions. Finally, it reported in general terms that with respect to the public apologies, "they have been sent to the public and private agencies that were informed at the time by the Province of San Luis of the removal of the magistrates." In a communication dated July 7, 2015 the State reported that it authorized coverage of the case in the *El Diario de la República* of San Luis.

305. Prior to the reports from the State, the petitioner had sent information to the Commission on July 28 and December 17, 2014, April 14 and 24 and May 11, 2015. The content of the petitioner's communications are summarized as follows. In its communication of July 28, 2014 the petitioner reported that it sent the State observations and changes to the rules of procedure for formation of the Arbitration Tribunal. In addition, in its communication of December 17, 2014, the petitioner expressed concern regarding the failure to complete the process of recognizing and paying the benefits for the alleged victims, indicating that more than a year after the agreement was signed and despite the efforts of the victims in the case, this point of the agreement has not been fulfilled. Finally, the petitioner sought information from the State regarding efforts made to guarantee due process in the proceeding of removal of judges, as well as the steps taken by the State to publicize the public apology and the publicity it has given to the agreement before various public and private bodies. On April 14, 2015 the petitioner reiterated its concern regarding the failure to comply with the compliance agreement. In a communication dated April 24, 2015, the petitioner reported that it was awaiting notice initiating the work of the *Ad Hoc* Arbitration Tribunal and that it was withdrawing its pending observations regarding the rules of procedure of the *Ad Hoc* Arbitration Tribunal in the interests of streamlining the process to set up the tribunal. It also reported that it was awaiting progress on the remaining points in the agreement. Finally, on May 11, 2015 the petitioner expressed its concern regarding cancellation of a meeting during which the plan was to sign the rules of procedure for the Arbitration Tribunal and swear in two of the arbitrators.

#### **VII. ANALYSIS OF COMPLIANCE WITH THE RECOMMENDATIONS**

306. With respect to the first recommendation on reinstating the victims to the Judicial Branch, in a position similar to their former one, with compensation, social benefits, and rank comparable to those they would now have had they not been removed, or paying reasonable reparations to the victims or their successors as applicable, including moral damages caused, if reinstatement is not possible, the Commission has no information that anything has been done to comply with that recommendation.

307. Regarding the recommendation on paying the victims the salaries, pensions, and labor benefits they failed to receive from the time of their removal to the date of their reinstatement or the payment of alternative reparations, according to information provided by the petitioner, in February, April, and October of 2014 the victims took steps to obtain recognition of the personal and employer contributions the State assumed. Pursuant to the compliance agreement signed by the parties, the State agreed to make

personal and employer contributions once the decree approving the agreement was issued by the Chief Executive of the Nation. That decree was issued on December 11, 2013. Despite this, as reported by the State, as of July 1, 2015 those procedures were still in process.

308. In its third recommendation, the IACHR asked the State to adopt the measures necessary to align domestic law, including Article 193 of the Constitution of the Province of San Luis, with inter-American standards in the area of freedom of expression. The State provided no information regarding compliance with that recommendation; however, according to public information, Article 193 of the Constitution of the Province of San Luis continues to prohibit judges' participation in "politics of any kind other than through the casting of votes."

309. In the same recommendation, the State was asked to ensure access to a simple, prompt, and effective judicial remedy allowing judges to question their removal and obtain review of the sanction imposed. The Commission notes that in its communication of December 17, 2014 the petitioner asked the State for information regarding measures taken to comply with that recommendation; however, to date it has no knowledge of any action taken by the State to that effect.

310. Finally, the IACHR also recommended that the State adopt the measures necessary to implement the points included in the compliance agreement signed by the parties. When that agreement was signed, provision was made to form an *Ad Hoc* Arbitration Tribunal to determine pecuniary reparation measures; payment of the personal and employer contributions that would have been owed had the victims remained in their posts; and an apology to the victims. The agreement contains measures of non-repetition consisting of: i) engagement with the authorities of the Province of San Luis to guarantee due process and judicial oversight of dismissal proceedings and, in general, judges' freedom of expression; and ii) sustaining the momentum of these measures through the Federal Human Rights Council. The agreement also features a clause on the agreement's publication.

311. Regarding that recommendation, as reported by the parties, the text of the rules of procedure for the Arbitration Court were defined and two of the three arbitrators were appointed; nonetheless, the Tribunal has not started to function. The Commission notes that according to the compliance agreement signed by the parties "the Tribunal shall be established no later than 30 days following the approval of this agreement by Decree of the Chief Executive of the Nation," which was approved on December 11, 2013.

312. Also with respect to that recommendation, the State reported in general terms that it has sent an expression of public apology to the public and private agencies that were at the time informed by the Province of San Luis of the removal of the judges, and approval regarding coverage of the case in *El Diario de la República* of San Luis. However, there is no detailed information on the content and scope of the public apologies, or on the concrete strategy for publicizing the case.

## VIII. CONCLUSIONS AND FINAL RECOMMENDATIONS

313. Based on all the foregoing, the Commission concludes that the State of Argentina is responsible for violating the rights to a fair trial, the principle of legality, freedom of thought and expression, and judicial protection, enshrined in Articles 8, 9, 13, and 25 of the American Convention, in conjunction with the obligations established in Articles 1.1 and 2 of the same instrument, to the detriment of Adriana Gallo, Ana María Careaga, and Silvia Maluf.

314. In addition, the Commission believes it does not have sufficient evidence to rule on possible violations of the rights established in Articles 8.2.b) and 8.2.c) of the American Convention.

315. The Commission takes note of the actions taken by the Argentine State, which represent the first steps towards compliance with the recommendations indicated in report on the merits 11/14. However, based on the facts and information provided, the IACHR concludes that to date the State has not fully

complied with those recommendations. Accordingly, the Inter-American Commission on Human Rights reiterates the following recommendations to the Argentine State:

- a) Reinstatement of the victims in the Judicial Branch, in positions similar to those that they held, with the same remuneration, social benefits, and rank comparable to that they would hold today if they had not been dismissed.
  - b) If, for well-founded reasons, reinstatement is not possible, the State shall pay reasonable indemnification to the victims or, if applicable, to their assigns, including the moral damages inflicted.
1. Pay the victims the professional salaries, pensions, and/or social and labor benefits they failed to receive between the time they were terminated and the time of their reinstatement, or the alternative indemnification provided for in the previous recommendation.
  2. Adopt measures of non-repetition that bolster the judiciary's independence, including the following:
    - a) The measures necessary for domestic laws, including article 193 of the Constitution of the Province of San Luis, to be made to conform to the inter-American standards on the subject of freedom of expression,
    - b) The measures necessary to ensure access to a simple prompt, and effective judicial remedy so that judges can question their dismissal and review the penalty imposed.
  3. Adopt the measures necessary for implementation of the points included in the agreement the parties signed concerning compliance with recommendations.

#### **IX. PUBLICATION**

316. Based on the considerations expressed, and in accordance with Article 47.3 of its Rules of Procedure, the IACHR decides to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, pursuant to the provisions of the instruments governing its mandate, will continue to evaluate the measures adopted by the Argentine State with respect to the referenced recommendations until it determines that the State has fully complied therewith.

Done and signed in the city of Washington, D.C. on the 28<sup>th</sup> day of the month of August, 2015.  
(Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, Vice-President; José de Jesús Orozco Henríquez, Second Vice-President; Felipe González, Rosa María Ortiz, and Tracy Robinson, Commissioners.