

**INTER-AMERICAN COURT OF HUMAN RIGHTS\***  
**CASE OF COLINDRES SCHONENBERG VS. EL SALVADOR**  
**JUDGEMENT OF FEBRUARY 4, 2019**  
***(Merits, Reparations, and Costs)***

In the Case of *Colindres Schonenberg v. El Salvador*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal"), composed of the following judges:

Eduardo Ferrer Mac-Gregor Poisot, President;  
Eduardo Vio Grossi, Vice President;  
Elizabeth Odio Benito, Judge;  
Eugenio Raúl Zaffaroni, Judge, and  
Patricio Pazmiño Freire, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and  
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles, 31, 32, 65, and 67 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure" or "the Court's Rules of Procedure"), delivers this judgment, structured as follows:

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\* Judge Humberto A. Sierra Porto, for reasons of force majeure that were accepted by the Full Tribunal, did not participate in the deliberation and signing of this Judgment. Meanwhile, Judge Ricardo Pérez Manrique did not participate in the deliberation and signing of this Judgment because he joined the Court on January 1, 2019, when this case was in the judgment stage.

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## I

### INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* - On September 8, 2017, the Inter-American Commission on Human Rights (hereinafter, also "the Commission" or "the Inter-American Commission") submitted to the jurisdiction of the Court the case of *Eduardo Benjamín Colindres against the Republic of El Salvador* (hereinafter also "the State,"). The Commission indicated that "[t]he instant case relates to the dismissal of Mr. Eduardo Benjamin Colindres from his position as judge of the Supreme Electoral Tribunal by the Legislative Assembly." The Commission determined that his dismissal violated multiple guarantees of due process and the principle of legality. "These violations were analyzed in light of the principle of judicial independence, taking into account the position that the victim held." Likewise, the Commission "determined that, following the arbitrary dismissal [...], the State also violated the right of access to public service under conditions of equality."
2. *Procedure before the Commission.* - The procedure before the Commission was as follows:
  - a) *Petition.* - On May 4, 2000, the Human Rights Institute of José Simeón Cañas Central American University filed the initial petition on behalf of the alleged victim.
  - b) *Admission Report.* - On March 14, 2006, the Commission approved Admission Report No. 25/06.<sup>1</sup>
  - c) *Merits Report.* - On March 18, 2017, the Commission approved Merits Report No. 23/17, in which it reached a series of conclusions<sup>2</sup> and made several recommendations to the State.<sup>3</sup> The Merits Report was notified to the State on June 8, 2017.
  - d) *Report on the Commission's recommendations.* - On August 14, 2017, the State submitted certain information and requested an extension. However, "it did not provide information indicating its willingness to comply with all the recommendations of the merits report," so the Commission did not grant the requested extension.
  - e) *Submission to the Court.* - On September 8, 2017, the Commission submitted this case to the Court "due to the need to obtain justice." The Commission appointed Commissioner Margarette May Macaulay and Executive Secretary Paulo Abrão as its delegates, as well as Elizabeth Abi-Mershed, Deputy Executive Secretary, and

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<sup>1</sup> Cf. IACHR, Report No. 25/06, Case 12,311, Admissibility, *Eduardo Benjamin Colindres*, El Salvador, March 14, 2006.

<sup>2</sup> The Commission concluded that the State of El Salvador is responsible for violation of the right to a fair trial, the principle of legality, the right to participate in government, and the right to judicial protection recognized in Articles 8(1), 8(2)(b), 8(2)(c), 8(2)(h), 9, 23(1)(c), 25(1) and 25(2)(c) of the Convention taken in conjunction with Articles 1(1) and 2 of that treaty, to the detriment of Mr. Colindres.

<sup>3</sup> Consequently, the Commission made a series of recommendations to the State in relation to: 1. Reinstatement of Mr. Benjamín Eduardo Colindres to a position similar to the one he held, with the same pay, welfare benefits and rank as he would enjoy at present had he not been dismissed, for the length of time that remained under his term; or, if for justified reasons his reinstatement is not possible, pay him an alternative compensation. 2. Provide reparation for the consequences of the violations established in this report, including both material and nonpecuniary damages. 3. Take steps to implement the necessary legal reforms and training to ensure that disciplinary proceedings against judges of the Supreme Electoral Tribunal, both in terms of their regulation and in practice, are conducted in conformity with the guarantees of competency, independence, and impartiality, and in strict observance of the right of defense, and that the applicable disciplinary grounds and penalties are compatible with the principle of legality.

Silvia Serrano Guzmán, attorney at the Executive Secretariat of the IACHR, as legal advisors.

3. *The Commission's requests.* – Based on the foregoing, the Inter-American Commission asked this Court to conclude and declare the international responsibility of the State of El Salvador for the violations contained in its Merits Report, and order the State to comply with the reparation measures provided in the recommendations included in said report (*supra* para 2).

## II PROCEDURE BEFORE THE COURT

4. *Notification to the State and to the representatives.* - Submission of the case was notified to the representatives of the alleged victim and the State of El Salvador through communication dated November 6 and 8, 2017, respectively.

5. *Brief with pleadings, motions, and evidence.* - On December 20, 2017, the Human Rights Institute of José Simeón Cañas Central American University (hereinafter "the representatives") presented their brief with pleadings, motions, and evidence (hereinafter "pleadings, motions, and evidence"), in accordance with Articles 25 and 40 of the Rules of Procedure of the Court. The representatives substantially coincided with the object of the controversy presented by the Commission, as well as with the factual framework and the legal considerations. In addition, they alleged violation of the right to the presumption of innocence.

6. *Answering Brief.* - On March 23, 2018, the State submitted its answering brief to the court in response to the submission of the case by the Commission, as well as its observations on the pleadings and motions brief (hereinafter "answering brief").<sup>4</sup> In said letter, the State opposed the alleged violations, indicating that the facts presented "have been known and decided by the Constitutional Division of the Supreme Court of Justice of El Salvador."

7. *Supervening evidence.* – On May 22, 2018, the representatives submitted documents alleging that they gained access to them "after the submission of the of the brief with pleadings, motion, and evidence." On January 22, 2019, the State presented additional information provided by the Supreme Electoral Tribunal to complement the documentation submitted by the representatives on May 22, 2018.

8. *Public Hearing.* – On August 21, 2018, the President issued an Order by which he summoned the parties and the Commission to hold a public hearing on the merits, and possible reparations and costs, to hear the final oral arguments of the parties, and the final oral observations of the Commission regarding these matters<sup>5</sup>. Likewise, through said Resolution, the alleged victim and an expert witness proposed by the Commission were summoned to testify at the public hearing, however, the Commission subsequently withdrew said expert opinion. The public hearing was held on September 27, 2018, during the 127 Regular Period of Sessions, which took place at its headquarters.<sup>6</sup> During the hearing, the Judges of the Court requested certain information and explanations from the parties and the Commission.

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<sup>4</sup> The State appointed Tania Camila Rosa, General Director of Human Rights of this Ministry of Foreign Affairs, and Sebastián Vaquerano, Ambassador of the Republic of El Salvador in Costa Rica, as agents.

<sup>5</sup> Cf. *Case of Colindres Schonenberg v. El Salvador Call to a Hearing*. Order by the Court President of August 21, 2018. Available at: [http://www.corteidh.or.cr/docs/asuntos/colindres\\_21\\_08\\_18.pdf](http://www.corteidh.or.cr/docs/asuntos/colindres_21_08_18.pdf)

<sup>6</sup> The following parties appeared at the hearing: a) for the Commission: Margarette May Macaulay, President of the IACHR, and Christian Gonzalez Chacón, IACHR Advisor; b) for the representatives of the alleged victim: Kathia Gabriela López Hernández, and Arnau Baulenas Bardia, both from the Human Rights Institute of José Simeón Cañas Central American University, and c) for the State of El Salvador: Sebastián Vaquerano López, Ambassador of El Salvador in Costa Rica, and Tania Camila Rosa, General Director of Human Rights of the Salvadoran Foreign Ministry

9. *Helpful evidence and information.* - The parties submitted the information and helpful evidence requested by the Judges in a public hearing, together with their final written arguments. Additionally, on October 9 and November 30, 2018, the President of the Court requested that the State submit helpful documentation. El Salvador submitted said information together with its final written arguments on December 14, 2018.

10. *Final written arguments and observations.* - On October 26 and November 5, 2018, respectively, the representatives and the State submitted their final written arguments, as well as certain annexes, and the Commission presented its final written observations.

11. *Observations to the helpful information and evidence.* - On November 20, 2018, the representatives presented their observations on the documentation presented by the counterparty together with their final written arguments. On January 7 and 9, 2019, the Commission submitted its observations to the information sent by the State on December 14, 2018.

12. *Deliberation of this case.* - The Court began deliberating this Judgment on February 4, 2019.

### **III JURISDICTION**

13. The Court has jurisdiction to hear this case pursuant to Article 62(3) of the Convention, because El Salvador has been a State Party to said Convention since June 23, 1978, and accepted the contentious jurisdiction of the Court on June 6, 1995.

### **IV EVIDENCE**

#### **A. Admission of documentary evidence**

14. The Court received various documents presented as evidence by the Commission, the representatives, and the State, as well as those requested by the Court or its President as helpful evidence, which, as in other cases, it admits in the understanding that they were presented in the due procedural moment (article 57 of the Rules of Procedure)<sup>7</sup> and its Admission was not disputed or challenged.<sup>8</sup>

15. On May 22, 2018, the representatives submitted documents alleging that they gained access to them "after the submission of the brief with pleadings, motion, and evidence."<sup>9</sup> On May 29,

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and State Agent, and Gloria Evelyn Martínez Ramos, Director of International Human Rights Protection Systems of the Salvadoran Foreign Ministry.

<sup>7</sup> In accordance with article 57(2) of the Rules of Procedure, documentary evidence in general may be presented together with the briefs, requests, and arguments or answers the case, as appropriate, and evidence submitted outside of these procedural opportunities is not admissible except in the exceptions set out in said article 57(2) of the Rules of Procedure (namely, force majeure, serious impediment) or except in the case of a supervening event, meaning one that occurred after the aforementioned procedural moments. *Cf. Case of the Barrios Family v. Venezuela. Merits, Reparations, and Costs.* Judgment of November 24, 2011. Series C No. 237, para. 17 and 18, and *Case of Amrhein et al. v. Costa Rica Preliminary Objections, Merits, Reparations, and Costs.* Judgment of April 25, 2018. Series C No. 354, para. 138.

<sup>8</sup> *Cf. Case of Velásquez-Rodríguez v. Honduras Merits.* Judgment of July 29, 1988. Series C No.4, para. 18, and *Case of Amrhein et al. v. Costa Rica Preliminary Objections, Merits, Reparations, and Costs.* Judgment of April 25, 2018. Series C No. 354, para. 137.

<sup>9</sup> The documents provided by the representatives correspond to information requested from the Supreme Electoral Tribunal on January 12 and May 17, 2018. Specifically, the representatives provided the following official information from the Supreme Electoral Tribunal: (i) copy of the report presented by the Institutional Financial Director of the TSE on the salary earned by the public official Mártir Arnaldo Marín during the years 1998 and 1999; (ii) referral letter from the Administrative Director, of the reports provided by the Deputy Director of Human

2018, said documentation was transmitted to the State and to the Commission, indicating that they could submit observations in this regard in the final oral or written arguments. The Court notes that the documentation presented was requested by the representatives from the Supreme Electoral Tribunal on November 27, 2017, and January 26, 2018,<sup>10</sup> which responded on January 5 and May 15, 2018.<sup>11</sup> This means that the representatives did not have access to it at the time of submitting the pleadings and motions brief, and for this reason, the Court considers that it should be admitted.

16. On the other hand, together with the final written arguments, the State presented certain additional documentation to that requested as evidence to facilitate adjudication of the case. This Court notes that annexes 3, 4, 5, and 6 were already part of the file, for which it does not consider it necessary to make a separate ruling on the Admission of the copies provided together with the final written arguments.<sup>12</sup> Meanwhile, as to annexes 10, 11, and 16, the Court considers that the State has not justified making its submission of the answering brief after the appropriate procedural moment.<sup>13</sup> Consequently, said evidence is time-barred and, in accordance with Article 57(2) of the Rules of Procedure, it is not admissible to the body of evidence in this case.

17. Finally, on January 22, 2019, the State forwarded additional documentation provided by the Supreme Electoral Tribunal,<sup>14</sup> which was transmitted that same day to the representatives and to the Commission and they were given a deadline of January 31, 2019 to submit observations. The Court notes that no arguments were presented on the Admission of this evidence. Taking into account that said documentation complements what was requested by the representatives to the Supreme Electoral Tribunal, sent by them on May 22, 2018 (*supra* para 15), the Court considers that it should be admitted.

### ***B. Admission of testimonial and expert evidence***

18. The Court heard the statement of the alleged victim, Eduardo Colindres Schonenberg, given in a public hearing. This Court finds it pertinent to admit this statement, insofar as it keeps with the purpose that was defined by the President in the order requiring it to be received and in keeping with the purpose of this case.

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Development and the Head of the Department of Administrative Services of the TSE in relation to information on former judge Mártir Arnaldo Marín, and (iii) certifications of the agreements adopted by the TSE approving the official missions to Mr. Marín during the period between 1998 and 1999 (Merits file, folios 170 to 184).

<sup>10</sup> Cf. Communication from the representatives of November 27, 2017 (evidence file, folios 1495 and 1496), and communication of the representatives of January 26, 2018 (merits file, folio 165).

<sup>11</sup> Cf. Communication of the Supreme Electoral Tribunal of January 5, 2018 (merits file, folio 169), and communication of the Supreme Electoral Tribunal of May 15, 2018 (merits file, folio 167).

<sup>12</sup> Annex 3 to the final written arguments of the State corresponds to a copy of the judgment of the cassation 02-C-200 1, of December 22, 2009, regarding the claim for damages filed by Mr. Eduardo Benjamín Colindres. On the other hand, Annex 4 corresponds to a copy of Legislative Agreement No. 281, by which a Commission was formed to issue an informational guidance that would guarantee Mr. Eduardo Benjamín Colindres the right to a hearing. Attachment 5 consists of a copy of the Commission's agreement granting a hearing to Mr. Colindres. Finally, annex 6 corresponds to a copy of the brief submitted to the Special Commission of the Legislative Assembly by Mr. Eduardo Benjamín Colindres.

<sup>13</sup> Annex 10 to the final written arguments of the State contains a certificate issued by the Secretary General of the Supreme Electoral Tribunal regarding the election of Mr. Colindres Schonenberg as principal representative of the Legislative Assembly in the elections held on March 17, 1991. For its part, Appendix 11 consists of a copy of the testimony of the public deed notarizing the Minutes of the Extraordinary National Convention of the Christian Democratic Party (PDC), held on September 11, 1994. Finally, annex 16 corresponds to a copy of a note dated February 13, 1992, signed by the Secretary General of the Christian Democratic Party, addressed to the President of the Legislative Assembly, which proposes issues for principal and substitute judges of the Supreme Electoral Tribunal.

<sup>14</sup> The State provided a copy of the payment statements corresponding to the months of November and December 1996, January to November 1997, and June 1998 to July 1999, which were "located in the Supreme Electoral Tribunal's file" (merits file, folios 369 to 397).

**V**  
**PROVEN FACTS**

19. This case refers to two dismissals of Mr. Colindres Schonenberg from his position as Principal Judge of the Supreme Electoral Tribunal. In this regard, the relevant facts regarding: (a) the regulatory framework; (b) the appointment of Mr. Colindres Schonenberg as a judge and the first dismissal; (c) the second dismissal of Mr. Colindres Schonenberg; (d) appeals filed by Mr. Colindres Schonenberg, and (e) the claim for damages regarding the first dismissal.

**A. Regulatory Framework**

20. The Constitution of the Republic of El Salvador provides:

Art. 208.- There will be a Supreme Electoral Tribunal that will be made up of five judges having five-year terms and will be elected by the Legislative Assembly. Three of them from each of the shortlists proposed by the three political parties or legal coalitions that obtained the highest number of votes in the last presidential election. The two remaining Judges will be elected with votes from at least two thirds of the elected members of the Assembly, from two shortlists proposed by the Supreme Court of Justice, who must meet the requirements to be Judges of the Chambers of Second Instance, and have no party affiliation.

There will be five alternate judges elected in the same way as the principal judges. If, for any reason, one of the three-candidate shortlists is not proposed, the Legislative Assembly will make the respective election without the missing list.

The Principal Judge will be the one proposed by the party or legal coalition that obtained the highest number of votes in the last presidential election.

The Supreme Electoral Tribunal will be the highest authority in this matter, notwithstanding the remedies set out in the Constitution for violation thereof.<sup>15</sup>

21. The Supreme Electoral Tribunal "is a body with full jurisdictional, administrative, and financial autonomy in electoral matters and, therefore, is not subject to any body of the [S]tate."<sup>16</sup> The duties and powers of the Supreme Electoral Tribunal include "convening, organizing, directing, and monitoring electoral processes,"<sup>17</sup> and "hearing and resolving of all kinds of actions, objections, petitions, remedies, and incidents that could be brought forward."<sup>18</sup>

22. According to the Electoral Code, there are different requirements to be a judge of the Supreme Electoral Tribunal, depending on whether the judge is elected from a shortlist made by a political party or by the Supreme Court of Justice. In this sense, it is established that:

a. For the three judges proposed by the Political Parties or Coalitions that have obtained the highest number of votes in the last presidential election, the candidate must be Salvadorian, over thirty years of age, laypersons, well-known for their level of education and honesty, to be in the exercise of their rights as a citizen and have been so for the five years prior to their election, and,

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<sup>15</sup> Constitution of El Salvador of 1983, amended on October 31, 1991 (evidence file, folio 24).

<sup>16</sup> Electoral Code, Decree No. 417, art. 56 (evidence file, folio 1731).

<sup>17</sup> Specifically, from the President and Vice President of the Republic; ii. Members of the Central American Parliament; iii. Members of the Legislative Assembly; and iv. Members of the Municipal Councils. Electoral Code, Decree No. 417, art. 79 (evidence file, folio 1737).

<sup>18</sup> Electoral Code, Decree No. 417, art. 80 (evidence file, folio 1740).

b. The two remaining judges proposed by the Supreme Court of Justice must meet the requirements to be judges of the Chambers of Second Instance and not have any party affiliation.<sup>19</sup>

23. As to the responsibility of the judges, the Constitution provides that "the President and judges of the Supreme Electoral Tribunal [...] will answer to the Legislative Assembly for official and common crimes they may commit."<sup>20</sup> Similarly, the Electoral Code provides that "[t]he judges shall answer before the Legislative [Body] for any official and common crimes they may commit, in accordance with [...] the Constitution."<sup>21</sup> The Constitution sets out a particular procedure that must be carried out in these cases.<sup>22</sup>

24. Meanwhile, the Constitution provides that "[n]o person may be deprived of the right to life, liberty, property, and possession, or any other of such rights without first being heard and defeated in court as provided by law; nor can a person be prosecuted twice for the same offense."<sup>23</sup>

### **B. Appointment of Mr. Colindres Schonenberg as judge and first dismissal**

25. Mr. Eduardo Benjamín Colindres Schonenberg is a lawyer, with a degree in Sociology and a Doctorate in History.<sup>24</sup> On August 11, 1994, he was appointed as Principal Judge of the Supreme Electoral Tribunal (hereinafter, "TSE") by decree of the Legislative Assembly.<sup>25</sup>

26. Mr. Colindres Schonenberg was one of the three judges who, according to the constitutional procedure, had to be elected from one of the shortlists submitted by political parties or legal coalitions that had obtained the highest number of votes in the last presidential election (*supra*

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<sup>19</sup> Electoral Code, Decree No. 417, art. 60 (evidence file, folio 1732).

<sup>20</sup> Cf. Constitution of El Salvador of 1983, amended on October 31, 1991, Art. 236 (evidence file, folio 25).

<sup>21</sup> Electoral Code, Decree No. 417, art. 78 (evidence file, folio 1737).

<sup>22</sup> "The Assembly, hearing a prosecutor from among its members and the defendant, or a special defender, as the case may be, will declare whether or not there are grounds for a case. In the first case, the proceedings will be passed to the Chamber of Second Instance determined by law for it to hear the case in the first instance, and, in the second case, they will be shelved. The resolutions issued by the mentioned Chamber will, in a second instance, be heard by one of the Supreme Court of Justice Chambers, and the remedies admitted under such resolutions will be decided by the full court. Any person has the right to report the crimes addressed in this article deals with, and to be a party to the case, if said person meets the legal requirements to do so. It is also provides that "[f]rom the time that the Legislative Assembly or the Supreme Court of Justice declares that there are grounds for a case to be filed, the defendant will be suspended from exercising their duties and for no reason whatsoever may such person continue in their position. Otherwise, the person will be guilty of the crime of prolongation of duties. If the ruling is condemnatory, for the that very reason the person will be removed from office. If it is an acquittal, the person will return to exercising their duties; if the position is one that is conferred for a specific period of time and the period for which they were elected or appointed has not expired. Cf. Constitution of El Salvador of 1983, amended on October 31, 1991, arts. 236 and 237 (evidence file, folios 25 and 26).

<sup>23</sup> Cf. Constitution of El Salvador of 1983, amended on October 31, 1991, Art. 11 (evidence file, folio 15).

<sup>24</sup> Cf. Brief of Mr. Colindres Schonenberg addressed to the Political Commission of April 20, 1998 (evidence file, folio 5), and statement of Eduardo Colindres Schonenberg given at the Public Hearing.

<sup>25</sup> Cf. Official Gazette of the Republic of El Salvador, Legislative Decree 102 of August 29, 1994 (evidence file, folio 11).



para 20). Mr. Colindres Schonenberg was elected from the shortlist presented by the Christian Democratic Party (hereinafter "PDC").<sup>26</sup> His term ended on July 30, 1999.<sup>27</sup>

27. In 1996, a dispute arose regarding who was the legitimate Secretary General of the PDC.<sup>28</sup> The TSE had to settle this dispute.<sup>29</sup> Members of the PDC questioned the actions of Mr. Colindres Schonenberg in relation to this conflict.<sup>30</sup>

28. On November 21, 1996, members of the PDC requested the dismissal of Mr. Colindres Schonenberg.<sup>31</sup> The following day, the Legislative Assembly issued a legislative decree resolving to dismiss Mr. Colindres Schonenberg from his post as TSE judge.<sup>32</sup> The decree stated:

That the election period [of five years] does not mean in any way that said officials cannot be removed from their positions if some of them cease to meet the requirements to be judges of the Supreme Electoral Tribunal, [established] in Art. 60 of the Electoral Code; what comes to constitute just and legal cause, so that the judge who ceases to meet those requirements, be removed from their position before the expiration of the period for which said person was elected[;]

The actions of Dr. Eduardo Benjamín Colindres as Principal Judge of the [TSE] has caused general ill effects among the Public Administration bodies, hindering its smooth operations, not responding to the needs and demands that the administrative dynamics of that Court, aggravating the situation due to his lack of experience, preparation, and trustworthiness in the performance of his duties, reflecting bias in his actions as judge, especially in relation to the internal problems of the Christian Democratic Party and not recusing himself from hearing the aforementioned crisis; [thereby] losing the objectivity and impartiality required in his capacity.<sup>33</sup>

29. On December 2, 1996, Mr. Colindres Schonenberg filed an application for constitutional relief (*amparo*) before the Constitutional Division of the Supreme Court of Justice against the decree that dismissed him.<sup>34</sup>

30. On November 4, 1997, the Constitutional Division reinstated Mr. Colindres Schonenberg as a TSE judge, since his dismissal did not guarantee his right to a hearing, ordering that he be paid

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<sup>26</sup> Cf. Statement of Eduardo Colindres Schonenberg rendered at the Public Hearing; Newspaper article published in the "El Mundo" newspaper on November 22, 1996, entitled "Colindres dismissed" (evidence file, folio 1317), and Newspaper article published in the "El Mundo" newspaper on November 28, 1996, titled "Removal of Colindres is 'terrorism'" (evidence file, folio 1322).

<sup>27</sup> Cf. Newspaper article published in the newspaper "La Prensa Gráfica" on November 8, 1997, entitled "Colindres reinstated to TSE" (evidence file, folio 1289).

<sup>28</sup> Cf. Newspaper article published in the "La Prensa Gráfica" newspaper on November 2, 1996, entitled "Judge will refrain from hearing conflict in PDC" (evidence file, folio 1283); Newspaper article published in the "Co Latino" newspaper on November 10, 1997, entitled "Colindres will reform certain TSE processes" (evidence file, folio 1253), and Newspaper article published in the "Co Latino" newspaper on November 8, 1997, entitled "Colindres returns to the TSE" (evidence file, folio 1251).

<sup>29</sup> Cf. Newspaper article published in the "La Prensa Gráfica" newspaper on November 2, 1996, entitled "Judge to refrain from hearing PDC conflict" (evidence file, folio 1283).

<sup>30</sup> Cf. Newspaper article published in the "El Mundo" newspaper on November 22, 1996, entitled "Colindres dismissed" (evidence file, folio 1317), and Newspaper article published in the newspaper "El Mundo" on November 28, 1997, titled "Removal of Colindres is 'terrorism'" (evidence file, folio 1322).

<sup>31</sup> Cf. Statement of Eduardo Colindres Schonenberg rendered at the Public Hearing; Newspaper article published in the "El Diario de Hoy" newspaper on November 22, 1996, entitled "PDC requests the dismissal of Colindres" (evidence file, folio 1273); Newspaper article published in the "La Prensa Gráfica" newspaper on November 24, 1996, entitled "Three groups dispute supremacy of the party" (evidence file, folio 1304), and Newspaper article published in the "La Prensa Gráfica" newspaper on December 11, 1996, entitled "Supreme Court protects TSE magistrate" (evidence file, folio 1296).

<sup>32</sup> Cf. Legislative Decree 899 of November 22, 1996 (evidence file, folio 39), and Statement of Eduardo Colindres Schonenberg rendered at the Public Hearing.

<sup>33</sup> Cf. Legislative Decree 899 of November 22, 1996 (evidence file, folios 38 and 39).

<sup>34</sup> Cf. *Amparo* application of December 2, 1996 (evidence file, folios 335 to 341).

"wages that he did not receive" and indicated that "a civil action for compensation of damages against the State" could be filed.<sup>35</sup> The Constitutional Division pointed out that in the law, "there are no express reasons for dismissal or removal before the end of the period [of the TSE judges]."<sup>36</sup> In this regard, the Constitutional Division advised that:

precisely to guarantee the independent action of the electoral entity, it is essential that the judge maintain a position ensuring that pressures and/or influences are reduced or rendered futile. Therefore, the requirements that the Constitution and the law establish for occupying the position of judge of the Supreme Electoral Tribunal must be met, not only at the time of election by the Legislative Assembly, but must also be maintained during the term of office for which they were elected.

It is not a question here [of] that the judge, once elected, must retain the political trust of the political party that proposed their name or of the parliamentary groups that intervened in his election, but rather that said judge must position him or herself with independence and, therefore, must meet the requirements and must not incur the disqualifications for [said] position.<sup>37</sup>

31. The Constitutional Division recognized that "the constitutional and infra-constitutional regulations do not establish an express procedure for the dismissal of judges" from the TSE.<sup>38</sup> However, it indicated that if the Legislative Assembly was the competent body to appoint the TSE judges, "it could perfectly be interpreted – given the political origin of the appointment – that [it also had the power] to decide on their dismissal."<sup>39</sup> It also warned that "in order for the dismissal or removal of a judge from the Supreme Electoral Tribunal to be consistent with [the] constitutional system, it is necessary to respect the person's right to a hearing," in accordance with article 11 of the Constitution.<sup>40</sup>

### **C. Second dismissal of Mr. Colindres Schonenberg**

32. On March 23, 1998, deputies from the PDC presented the Legislative Assembly a "request for a motion" to dismiss Judge Colindres Schonenberg.<sup>41</sup> To this effect, they indicated that the grounds for dismissing Judge Colindres Schonenberg continued and have been reinforced.<sup>42</sup>

33. On March 24, 1998, the Legislative Assembly agreed to form a Special Commission of five deputies "for the purpose of dictating an informational document guaranteeing the right to a hearing for Eduardo Benjamín Colindres."<sup>43</sup>

34. On April 15, 1998, three deputies from the PDC submitted an extension of the request for dismissal before the Special Commission, indicating that "on repeated occasions [Mr. Colindres Schonenberg] has publicly stated that he does not belong to the Christian Democratic Party, when it was [this party] who proposed him as a judge before the [TSE]."<sup>44</sup> In addition, they pointed out that in relation to the dispute within the PDC "he has not maintained adequate composure as a

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<sup>35</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folio 375). According to the evidence provided by the State, Mr. Colindres received payment of the wages he had not received beginning upon his dismissal in November 1996, and until his reinstatement in November 1997, for a total amount of 157,344.63 Salvadoran colones. Cf. Copy of the payroll receipts for Eduardo Benjamín Colindres for the months of December 1996 to November 1997 (evidence file, folios 1993 to 2007).

<sup>36</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folio 365).

<sup>37</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folio 366).

<sup>38</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folio 369).

<sup>39</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folio 369).

<sup>40</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folio 368).

<sup>41</sup> Cf. Motion request of March 23, 1998 (evidence file, folios 380 to 382).

<sup>42</sup> Cf. Motion request of March 23, 1998 (evidence file, folio 382).

<sup>43</sup> Cf. Legislative Agreement No. 281 of March 24, 1998 (evidence file, folio 384).

<sup>44</sup> Cf. Brief signed by three PDC deputies on April 15, 1998 (evidence file, folios 386 to 387).

judge."<sup>45</sup> That same day, the Special Commission considered that it had received an amendment of the dismissal request and agreed to "provide a hearing, for a third day, to [Mr. Colindres Schonenberg] so that he can submit his arguments to this commission in writing as to the mentioned request and amendment[s]."<sup>46</sup>

35. On April 20, 1998, Mr. Colindres Schonenberg submitted a brief addressed to the Special Commission indicating that the right to a hearing should be held before the plenary session of the Legislative Assembly. It also indicated that he should "know in advance what procedure will be used, the deadlines, be present [...] when evidence is presented against [him] and have the possibility and sufficient time to be able to defend [himself]," and that the grounds brought against him should be proven.<sup>47</sup>

36. On April 21, 1998, the Special Commission considered the hearing to be concluded and requested a wide range of information from the TSE.<sup>48</sup> According to a communication from the TSE, this information was sent by the TSE to the Special Commission on April 28, 1998, and to the Political Commission on May 26, 1998.<sup>49</sup>

37. On May 21, 1998, the Special Commission presented a report for the Assembly's plenary session.<sup>50</sup> In this report, the Special Commission stated that it had not received the documentation requested from the TSE.<sup>51</sup> On June 25, 1998, this report was sent to the Political Commission of the Legislative Assembly.<sup>52</sup>

38. In a letter dated May 26, 1998, Mr. Colindres Schonenberg told the Political Commission that he had learned through the media that the Special Commission had submitted a report to the Legislative Assembly, and subsequently to the Political Commission.<sup>53</sup> In his brief, he questioned the procedure, the jurisdiction of the Special Commission, indicated that he had not been guaranteed the right to a hearing, and attached certain evidence.<sup>54</sup> There is no evidence that this brief and its annexes have been included in the file.

39. Upon receiving the Special Commission's report, on June 24, 1998, the Political Commission stated that "only the Legislative Plenary can resolve or accept the aforementioned report, for which it returns it" to the Assembly's plenary session.<sup>55</sup>

40. On June 30, 1998, deputies from the PDC reiterated their request for the dismissal of Mr. Colindres Schonenberg before the Board of Directors of the Legislative Assembly.<sup>56</sup> The deputies accused Mr. Colindres of the crime of "disrespect for questioning, *a priori*, the same representatives who were guaranteeing him the right to be heard by the [...] Commission."<sup>57</sup> They also indicated that Mr. Colindres Schonenberg has "show[n] biased and malicious conduct, with

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<sup>45</sup> Cf. Brief signed by three PDC deputies on April 15, 1998 (evidence file, folio 386).

<sup>46</sup> Cf. Pronouncement of the Special Commission of April 15, 1998 (evidence file, folio 389).

<sup>47</sup> Cf. Brief of Mr. Colindres Schonenberg addressed to the Political Commission of April 20, 1998 (evidence file, folios 5 to 8).

<sup>48</sup> Cf. Statement of the Special Commission of April 21, 1998 (evidence file, folio 396), and communication of the Special Commission of April 21, 1998 (evidence file, folio 1710).

<sup>49</sup> Cf. Letter from the TSE addressed to the Political Commission of May 26, 1998 (evidence file, folio 399).

<sup>50</sup> Cf. Report of the Special Commission of May 21, 1998 (evidence file, folios 401 to 407).

<sup>51</sup> Cf. Report of the Special Commission of May 21, 1998 (evidence file, folio 407).

<sup>52</sup> Cf. Report of the Political Commission of June 24, 1998 (evidence file, folios 409 and 410).

<sup>53</sup> Cf. Brief of Mr. Colindres Schonenberg of May 26, 1998 (evidence file, folio 328).

<sup>54</sup> Cf. Brief of Mr. Colindres Schonenberg of May 26, 1998 (evidence file, folios 328 and 329).

<sup>55</sup> Cf. Report of the Political Commission of June 24, 1998 (evidence file, folio 410).

<sup>56</sup> Cf. Brief addressed to the managing board of the Legislative Assembly of June 29, 1998 (evidence file, folios 412 and 413).

<sup>57</sup> Cf. Brief addressed to the managing board of the Legislative Assembly of June 30, 1998 (evidence file, folio 412).

an inclination to rule with insidiousness against the Christian Democratic Party that proposed his name for the position he currently holds."<sup>58</sup>

41. On July 2, 1998, the Legislative Assembly, in the Plenary Session, introduced correspondence containing the document that reiterated the request for dismissal (*supra* para 40)<sup>59</sup>. In a plenary session that day, a representative of the PDC explained the party's institutional position, reiterating the grounds for the first dismissal (*supra* para 28) and requesting that votes be taken on his dismissal.<sup>60</sup> That day, the dismissal was approved with 47 votes in favor.<sup>61</sup> The decree established "that the causes that motivated [the first dismissal] still persist and having conferred the right to a hearing on Eduardo Benjamín Colindres, it is appropriate that he cease his duties as judge of the Supreme Electoral Tribunal."<sup>62</sup>

#### **D. Appeals filed by Mr. Colindres Schonenberg**

42. During the process of the second dismissal, Mr. Colindres Schonenberg filed several appeals. On April 20, 1998, the alleged victim filed an *amparo* application against the decree that created the Special Commission and requested the suspension of the act claimed.<sup>63</sup> The Constitutional Division admitted the appeal and ordered the provisional suspension of the agreement that created the Special Commission.<sup>64</sup> That same day, the Legislative Assembly approved the formation of a special commission to investigate "the institutional implications generated by the ruling of the Supreme Court of Justice" related to the suspension initially ordered.<sup>65</sup>

43. On April 30, 1998, the Constitutional Division indicated that "the claim has been improperly admitted" and dismissed the process indicating that there was "objective uncertainty of the act of authority against which the claim is based," as well as "subjective uncertainty in relation to the person suffering the offense, since, in his lawsuit, he affirme[d that it related to] a persecution to frighten and create legal uncertainty for the judges and the [TSE]."<sup>66</sup>

44. On May 5, 1998, Mr. Colindres Schonenberg filed another *amparo* application against the agreement that created the Special Commission.<sup>67</sup> On June 11, 1998, the Constitutional Division declared it to be inadmissible, indicating that there was no grievance due to the creation of the Special Commission that would guarantee the right to a hearing, "which does not imply a violation of the rights of the petitioner, but rather a compliance with constitutional requirements."<sup>68</sup>

45. After the dismissal, on July 15, 1998, Mr. Colindres Schonenberg filed a new *amparo* application before the Constitutional Division against the decree providing for his dismissal, questioning the absence of powers the Assembly had to dismiss him, having been prosecuted twice for the same charges, and other violations of due process.<sup>69</sup>

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<sup>58</sup> Cf. Brief addressed to the managing board of the Legislative Assembly of June 30, 1998 (evidence file, folio 413).

<sup>59</sup> Cf. Transcript of the plenary session of the Legislative Assembly of July 2, 1998 (evidence file, folio 415).

<sup>60</sup> Cf. Transcript of the plenary session of the Legislative Assembly on July 2, 1998 (evidence file, folios 416 to 418).

<sup>61</sup> Cf. Transcript of the plenary session of the Legislative Assembly of July 2, 1998 (evidence file, folio 465).

<sup>62</sup> Cf. Legislative Decree No. 348 of July 2, 1998 (evidence file, folio 377).

<sup>63</sup> Cf. *Amparo* application of April 20, 1998 (evidence file, folios 474). On April 22, 1998, Mr. Colindres Schonenberg filed a writ of habeas corpus before the Constitutional Division, which was declared inadmissible as it did not constitute the appropriate method. Cf. Writ of habeas corpus of April 22, 1998 (evidence file, folios 483 and 484), and dismissal decision of April 30, 1998 (evidence file, folio 1539).

<sup>64</sup> Cf. Decision of the Constitutional Division of the Supreme Court of April 20, 1998 (evidence file, folio 478).

<sup>65</sup> Cf. Transcript of the plenary session of the Legislative Assembly on April 30, 1998 (evidence file, folios 311 and 318).

<sup>66</sup> Cf. Resolution of the Constitutional Division of April 30, 1998 (evidence file, folio 481).

<sup>67</sup> Cf. *Amparo* application of May 5, 1998 (evidence file, folio 496).

<sup>68</sup> Cf. Resolution of the Constitutional Division of June 11, 1998 (evidence file, folio 1542).

<sup>69</sup> Cf. *Amparo* application of July 15, 1998 (evidence file, folios 505, 506, 507, and 508).

46. On January 11, 1999, the court prosecutor submitted a brief in which he indicated that the Special Commission does not have the authority to guarantee the right to a hearing. He also indicated that according to the Constitution "government officials have no more powers than those expressly given by law and not those that they arbitrarily attribute to themselves."<sup>70</sup>

47. On May 4, 1999, the majority of the Constitutional Division declared "there are no grounds" for the appeal.<sup>71</sup> The Constitutional Division analyzed whether the Legislative Assembly had the power to dismiss a judge of the Supreme Electoral Tribunal and whether Mr. Colindres Schonenberg had been prosecuted twice for the same reason.<sup>72</sup> The Chamber pointed out that the judge's period in office

is indisputably related to the right to stability in the position [...] and, in this regard, it should be clarified that [such right] in no way implies [a] fixed tenure within the term, since such right directly protects against arbitrary, capricious dismissals or those made in violation of the Constitution or by law, but this does not prevent a public servant from being removed from their position [...] when such person fails to comply with their duties or when they incur in grounds for dismissal, and it must be carried out strictly in observance of the Constitution and the principle of legality.<sup>73</sup>

48. The Constitutional Division reiterated that "there are no express reasons for dismissal or removal before the end of the period or term for which the [TSE] judges were elected."<sup>74</sup> However, he noted that:

[T]he requirements that the Constitution and the law sets out for holding the position of [TSE] judge must be met not only at the time of their election by the Legislative Assembly, but must also be maintained during the entire term of office for which they were elected. And precisely to guarantee the independent action of the electoral entity, it is essential that the judge remain in a position such that pressures and/or influences are reduced or rendered futile; such position is only achieved by maintaining the appointment requirements up to date. [H]ere, it is not a question that the judge, once elected, must retain the political trust of the political party that proposed their name or of the parliamentary groups that intervened in his or her election, but rather that said person must position him or herself with independence and, therefore, must meet the requirements and not incur in the disqualifications established for the position.<sup>75</sup>

49. He also indicated that "it can be perfectly interpreted" that the Legislative Assembly, as the competent authority to appoint the TSE judges, "also has the authority to decide on their dismissal."<sup>76</sup>

50. One judge issued a dissenting vote, considering that "[t]he Assembly has no powers beyond those set out in the Constitution itself," which does not include the power to dismiss members of the Supreme Electoral Tribunal. He added that, in the absence of regulation, the application of article 236 of the Constitution – which addresses the liability of public officials for committing crimes – was the only way to remove a member of the TSE from office.<sup>77</sup>

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<sup>70</sup> Cf. Brief presented by the court prosecutor on January 11, 1999 (evidence file, folio 513).

<sup>71</sup> Cf. Judgment of the Constitutional Division of May 4, 1999 (evidence file, folio 1579).

<sup>72</sup> Cf. Judgment of the Constitutional Division of May 4, 1999 (evidence file, folio 1552).

<sup>73</sup> Cf. Judgment of the Constitutional Division of May 4, 1999 (evidence file, folio 1559).

<sup>74</sup> Cf. Judgment of the Constitutional Division of May 4, 1999 (evidence file, folio 1560).

<sup>75</sup> Cf. Judgment of the Constitutional Division of May 4, 1999 (evidence file, folios 1560 and 1561).

<sup>76</sup> Cf. Judgment of the Constitutional Division of May 4, 1999 (evidence file, folio 1565).

<sup>77</sup> Cf. Vote against the Judgment of the Constitutional Division of May 4, 1999, of Dr. Jose Enrique Argumedo (evidence file, folio 1580).

51. On July 27, 1999, Mr. Colindres Schonenberg filed a new *amparo* application against the decree that dismissed him, indicating, among other arguments, that the Constitutional Division had not ruled on the violation of due process.<sup>78</sup>

52. On November 5, 1999, the Constitutional Division declared the *amparo* to be inadmissible.<sup>79</sup> The Chamber indicated that Mr. Colindres Schonenberg's claim "was based on a simple disagreement with the procedure followed by the Legislative Assembly."<sup>80</sup> In addition, it established that "the Chamber is not an instance that exists to review the criteria expressed by the Legislative Assembly in the Legislative Decree [that dismisses him], nor the material judgement of the value of law or procedural actions in direct application of [art. 11] of the Constitution."<sup>81</sup>

### **E. Claim for damages regarding the first dismissal**

53. On January 12, 1999, Mr. Colindres Schonenberg filed a claim for damages for those caused by the first dismissal.<sup>82</sup> On December 23, 1999, the First Civil Chamber of the First Section of the Center sentenced the State to pay one million Salvadoran colones for pain and suffering.<sup>83</sup> The First Chamber did not consider it appropriate to grant redress for pecuniary losses.<sup>84</sup> The State representative appealed this decision, and Mr. Colindres Schonenberg joined said appeal.<sup>85</sup>

54. In the second instance, on June 13, 2001, the Civil Chamber of the Supreme Court of Justice sentenced the State to pay "two million Salvadoran colones" for pain and suffering.<sup>86</sup> The representative of the State filed a cassation remedy, as it considered the amount set to be unreasonable.<sup>87</sup>

55. On December 22, 2009, the Supreme Court of Justice decided to uphold the decision of the First Civil Chamber of the First Section of the Center.<sup>88</sup> On February 7, 2014, the State made a payment of USD \$114,285.71, an amount equivalent in US dollars to the amount established.<sup>89</sup> This payment for damages is in addition to that made for the salaries that Mr. Colindres Schonenberg did not receive during the time he was dismissed (*supra* para 30).

## **VI MERITS**

56. The facts of this case are related to the dismissal of Mr. Colindres Schonenberg from his position as judge of the Supreme Electoral Tribunal. On November 22, 1996, the Legislative Assembly removed Mr. Colindres Schonenberg from his position as judge. Mr. Colindres Schonenberg filed an *amparo* application against this decision. On November 4, 1997, the

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<sup>78</sup> Cf. *amparo* application of July 27, 1999 (evidence file, folios 552 to 559).

<sup>79</sup> Cf. Resolution of the Constitutional Division of November 5, 1999 (evidence file, folio 1586).

<sup>80</sup> Cf. Resolution of the Constitutional Division of November 5, 1999 (evidence file, folio 1585).

<sup>81</sup> Cf. Resolution of the Constitutional Division of November 5, 1999 (evidence file, folio 1585).

<sup>82</sup> Cf. Brief of January 12, 1999 presented before the First Civil Chamber of the First Section of the Center (evidence file, folios 570 to 575).

<sup>83</sup> Cf. Judgment of the First Civil Chamber of the First Section of the Center of December 23, 1999 (evidence file, folio 1646).

<sup>84</sup> Cf. Judgment of the First Civil Chamber of the First Section of the Center of December 23, 1999 (evidence file, folio 1637).

<sup>85</sup> Cf. Second instance judgment of the Civil Chamber of the Supreme Court of Justice of June 13, 2001 (evidence file, folios 1658 and 1660).

<sup>86</sup> Cf. Judgment of the Civil Chamber of the Supreme Court of Justice of June 13, 2001 (evidence file, folio 1672).

<sup>87</sup> Cf. Judgment of the Supreme Court of Justice of December 22, 2009 (evidence file, folios 1678 to 1681).

<sup>88</sup> Cf. Judgment of the Supreme Court of Justice of December 22, 2009 (evidence file, folio 1692).

<sup>89</sup> Cf. Copy of the certification of the check dated February 7, 2014 (evidence file, folio 1618), and notarial certificate of settlement of February 6, 2014 (evidence file, folios 1615 and 1616).

Constitutional Division ordered his reinstatement and clarified that the Legislative Assembly had to guarantee the right to a hearing so that the dismissal would be in following with the Constitution. After a procedure carried out before the Legislative Assembly, on July 2, 1998, Mr. Colindres Schonenberg was dismissed again. The alleged victim filed various appeals against this decision and none were considered to have grounds for continuing.

57. The Commission and the representatives maintain that the dismissals of Mr. Colindres Schonenberg were carried out with no legal basis and in violation of his right to judicial guarantees, political rights, judicial protection, and the principle of legality. The State, for its part, emphasized that the dismissal process was in accordance with the law, for which it is not internationally responsible. According to the arguments of the parties and the Commission, in this case, the Court will examine the rights to judicial guarantees, judicial protection, political rights, and the principle of legality.

## VI-1

### **RIGHTS TO JUDICIAL GUARANTEES<sup>90</sup>, JUDICIAL PROTECTION<sup>91</sup> AND POLITICAL RIGHTS<sup>92</sup>, RELATED TO THE OBLIGATION TO RESPECT RIGHTS<sup>93</sup>, AND THE DUTY TO ADOPT DOMESTIC LEGAL PROVISIONS<sup>94</sup>**

#### ***A. Arguments of the Commission and the parties***

58. The **Commission** argued that "the Constitution did not expressly attribute the Legislative Assembly the power to dismiss or remove TSE judges," and there was no regulation on the procedure to be followed. In this regard, it stressed that the ruling by the Constitutional Division "cannot, in itself, replace the function of the law in offering [...] the necessary legal certainty in terms of the predictability of the competent authority" and the procedure to be followed. It pointed out that "it was a sanctioning proceeding that aimed to evaluate [its] conduct [...] as a judge of the [TSE], which culminated in the sanction of dismissal." Also it argued that the removal of the alleged victim was carried out by a political body, which, in itself, "results in problems with the guarantee of independence." It also indicated that in this case, the guarantee of impartiality fulfilled, since "the PDC deputies in the Legislative Assembly therefore formed part of the disciplinary body, had the intention of sanctioning Judge Colindres for his actions in cases involving the PDC, having a vested interest in the outcome of such cases." It alleged that the duty to state reasons had been violated since neither of the two decrees that ordered the alleged victim's dismissal described "specific acts committed by Mr. Colindres" that could be linked to possible disciplinary grounds. It also highlighted that the lack of regulation "had a severe impact on the opportunities and predictability for Judge Colindres to be able to exercise his means of defense." Likewise, it indicated that "the period of three days [granted to Mr. Colindres] to exercise [his]

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<sup>90</sup> Article 8(1) of the Convention provides: "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."

<sup>91</sup> Article 25(1) of the Convention provides: " Everyone has the right to simple and pro 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."

<sup>92</sup> Article 23(1)(c) of the American Convention provides: "[e]very citizen shall enjoy the following rights and opportunities: [...] to have access, under general conditions of equality, to the public service of his country."

<sup>93</sup> Article 1.1 of the Convention provides: "[T]he 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."

<sup>94</sup> Article 2 of the Convention establishes that "Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

right of defense was not foreseeable” and that other irregularities also occurred during the procedure that violated the right of defense. Meanwhile, it argued that with respect to the first dismissal, redress was only granted for pain and suffering for violation of the right to a hearing, and not for any other violation. Likewise, the Commission noted that, “Since the possibility of appealing the Legislative Assembly’s decision was not regulated, to the detriment of Mr. Colindres, the State failed to comply with the right established in Article 8(2)(h) of the Convention.” It added that “the Constitutional Division breached its obligation by not analyzing compatibility of the arguments raised by Mr. Colindres in light of the rights protected under the Constitution and in the Convention, thereby violating article 25.” The Commission alleged that the arbitrary dismissal of Mr. Colindres also violated Article 23(1)(c) of the American Convention in relation to Article 1(1) of the same instrument.

59. The **Commission** also pointed out that “The State had not adopted legislative measures to create a disciplinary regime for TSE magistrates, and therefore[,] at the time of the events[,] there were no disciplinary grounds or applicable sanctions. A disciplinary process in these circumstances was, in itself, contrary to the principle of legality.” It indicated that the application by analogy of the requirements for appointing TSE judges to exercise disciplinary authority also violated the principle of legality. Similarly, the Commission indicated that Article 2 of the Convention had been violated due to the inadequacy of the domestic legal system.

60. The **representatives** pointed out that Mr. Colindres Schonenberg was removed without the existence of a law that established which was the competent body and without a predetermined procedure. They argued that “the Legislative Assembly, in a *sui generis* and improvised fashion, developed a sanctioning disciplinary procedure.” They indicated that in the dismissal proceedings, the right to be heard was violated and that “he had no real opportunity to defend himself, much less to prepare his defense.” They also pointed out that the right to due process within a reasonable time was violated since in the first dismissal, there was no process and in the second, he was only given three days to argue against his dismissal. They argued that “any means of evidence showing” that the alleged victim had acted incorrectly was “disregarded, thus violating the right to the presumption of innocence. They pointed out that in the first dismissal, the right to know the accusation in advance and in detail was not respected. They indicated that the lack of legal basis for a procedure to remove a TSE judge violated the principle of legality. They argued that there were no disciplinary grounds or applicable sanctions, since the decrees under which Mr. Colindres was removed did not establish a clear list of the specific matters in which he had been involved, what facts compromised his impartiality, nor was any rule or law named to justify the sanction.

61. The **representatives** pointed out that “the Legislative Assembly did not consider incorporating an appeal in the removal of [Mr. Colindres Schonenberg]” and that upon deciding on the *amparo* application, the Constitutional Division” put the alleged victim’s “human rights at total risk.” As to the judgment following the first dismissal, it said that the Constitutional Division “should have addressed many other elements and not only the right to a hearing.” They also indicated that although the State did provide compensation as to the first dismissal, the damage caused not only affected his person, but also Salvadoran institutions and, that damage has not yet been repaired.” Likewise, they argued that “[n]ot only were” Mr. Colindres’s “duties interrupted as a TSE judge, but the actual possibility of holding any other public office was also restricted.” Lastly, they argued that the State violated Article 2 of the Convention since “it continues to fail to establish a norm that determines the assumptions and [...] procedures to be followed when it is considered that a TSE judge should be removed.”

62. The **State** indicated “that the rights to judicial guarantees, to the principle of legality, and to judicial protection have been respected and guaranteed to Mr. [Colindres Schonenberg], by having exercised control through domestic remedies, [and] the actions of the Legislative Assembly



in the instant case." It indicated that "despite the absence of a specific procedure to hear and decide on the dismissal of judges of the Supreme Electoral Tribunal, the Constitutional Division has already established a jurisprudential criterion that determines the obligation to observe a prior procedure that guarantees the right to hearing and defense, in direct application of the Constitution, by [...] the Legislative Assembly." In addition, he stressed that "constitutional jurisprudence has indicated breach of duties or failure to comply with the requirements for appointment to the position as judge of the Supreme Electoral Tribunal as grounds for dismissal, which must be maintained during the entire term."

### **B. Considerations of the Court**

63. Article 8 of the Convention establishes the guidelines of the due legal process, which is made up of a set of requirements that must be observed in the procedural instances, so that people are in a position to adequately defend their rights in the face of any type of State act that may affect them.<sup>95</sup>

64. In accordance with article 8(1) of the Convention, in determining the rights and obligations of a civil, labor, fiscal, or any other nature of all persons, "the due guarantees" must be observed, ensuring, specifically for the procedure in question, the right to due process.<sup>96</sup> Failure to comply with one of these guarantees entails a violation of said provision from the convention.<sup>97</sup>

65. In this sense, this Court has indicated that the guarantees set out in article 8(1) of the Convention are also applicable in the event that a non-judicial authority adopts decisions that affect the determination of people's rights,<sup>98</sup> taking into account that those of a jurisdictional body are not required, but it must comply with those intended to ensure that the decision is not arbitrary.<sup>99</sup>

66. The dismissal of Mr. Colindres Schonenberg involved a determination of his rights since it resulted in his immediate removal from his position as a judge. Therefore, this Court must examine whether the procedure carried out by the Legislative Assembly was in accordance with the guarantees of due process established in Article 8(1) of the American Convention.

67. This Court notes that Mr. Colindres Schonenberg was a judge of the Supreme Electoral Court. The TSE is not part of the Judiciary. However, its duties include hearing and resolving on "all kinds of actions, exceptions, requests, remedies, and incidents that could be presented."<sup>100</sup> Consequently, the TSE fulfills jurisdictional functions in electoral matters. This means that TSE judges like Mr. Colindres Schonenberg must be offered the same guarantees as judges in general.

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<sup>95</sup> Cf. *Judicial Guarantees in States of Emergency (arts. 27.2, 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 27, and *Case of Ruano Torres et al. v. El Salvador Merits, Reparations, and Costs*. Judgment of October 05, 2015. Series C No. 303, para. 151.

<sup>96</sup> Cf. *Exceptions to the Exhaustion of Domestic Remedies (arts. 46.1, 46.2.a and 46.2.b, American Convention on Human Rights)*. Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 28, of the *Case of the Pacheco Tineo Family v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 25, 2013. Series C No. 272, para. 130.

<sup>97</sup> Cf. *Case of Claude Reyes et al. v. Chile. Merits, Reparations, and Costs*. Judgment of September 19, 2006. Series C No. 151, para. 119, and *Case of Barbani Duarte et al. v. Uruguay Merits, Reparations, and Costs*. Judgment of October 13, 2011. Series C No. 234, para. 117.

<sup>98</sup> Cf. *Case of the Constitutional Court v. Peru, Merits, Reparations, and Costs*. Judgment of January 31, 2001, para. 71, and *Case of Flor Freire v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2016. Series C No. 315, para. 165.

<sup>99</sup> Cf. *Case of Claude Reyes et al. v. Chile. Merits, Reparations, and Costs*. Judgment of September 19, 2006. Series C No. 151, para. 119, and *Case of Flor Freire v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2016. Series C No. 315, para. 165.

<sup>100</sup> Electoral Code, Decree No. 47, art. 80 (evidence file, folios 1384 and 1385).

68. According to this Court's case law, in proceedings brought before judges, the scope of judicial guarantees and effective judicial protection for judges must be analyzed in relation to the standards on judicial independence. The Court has specified that the judges have specific guarantees due to the necessary independence of the Judiciary, which the Court has understood as "essential for the exercise of the judicial function."<sup>101</sup> The following guarantees derive from judicial independence: an appropriate appointment process, tenure in office, and the guarantee against external pressure.<sup>102</sup>

69. This Court has established, specifically regarding the guarantee of stability and tenure for judges, that: (i) their removal must be exclusively the result of the permitted reasons, either by means of a procedure that respects judicial guarantees or because their mandate has ended; (ii) judges may only be dismissed owing to serious disciplinary offenses or incompetence; (iii) any disciplinary procedure against a judge must be decided in accordance with the established norms for judicial conduct in fair proceedings that ensure objectivity and impartiality pursuant to the Constitution or the law.<sup>103</sup>

70. Meanwhile, the Court has noted that, unlike other cases related to the removal of judges that have been decided by this Court, in this case, the nature of the process to which Mr. Colindres Schonenberg was subject is unclear, since it was not established by law. When asked at the public hearing whether said process constituted political control by the Legislative Assembly or a disciplinary process, the **Commission** pointed out that the process has a punitive nature, the **representatives** pointed out that it was a punitive disciplinary procedure, and the **State** did not make a specific statement in this regard, although it argued that the appointment of Mr. Colindres Schonenberg was political. In view of this lack of clarity, the Court, when ruling on this case, will analyze whether the guarantees applicable to any type of process were fulfilled.

71. Taking into account the foregoing considerations, we will proceed to analyze the alleged violations of the American Convention that allegedly occurred in the first and second dismissals of Mr. Colindres Schonenberg. Next, the right to judicial protection and the reasonable term in the civil lawsuit will be examined.

### **B.1 First dismissal of Mr. Colindres Schonenberg**

72. Mr. Colindres Schonenberg was dismissed for the first time on November 22, 1996. After the dismissal: i) Mr. Colindres Schonenberg was reinstated to his post; ii) he was paid the wages he stopped receiving, and iii) the State paid Mr. Colindres Schonenberg the amount of USD \$114,285.60 for pain and suffering.

73. Based on the foregoing, first of all, we underscore that the American human rights system has a national level through which the State is responsible for guaranteeing the rights and liberties set out in the Convention and investigate, and as the case may be, judge and prosecute violations committed. In the event that a given case is not resolved at the domestic or national stage, the Convention provides for an international level in which the main agencies are the Commission and the Court. This Court has also maintained that when an issue has been resolved domestically under the Convention, it is not necessary to bring it before the Inter-American Court for approval

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<sup>101</sup> Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 67, and *Case of López Lone et al. v. Honduras Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 05, 2015. Series C No. 302, para. 190.

<sup>102</sup> Cf. *Case of the Constitutional Court v. Peru Merits, Reparations, and Costs*. Judgment of January 31, 2001, para. 75, and *Case of López Lone et al. v. Honduras Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 05, 2015. Series C No. 302, para. 191.

<sup>103</sup> Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 77, and *Case of López Lone et al. v. Honduras Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 05, 2015. Series C No. 302, para. 200.

or confirmation. The foregoing is based on the principle of complementarity, which informs the inter-American human rights system across the board, which is, as expressed in the Preamble of the American Convention, "reinforcing or complementing the protection provided by the domestic law of the American states."<sup>104</sup>

74. The complementary nature of international jurisdiction means that the system of protection established by the American Convention does not replace national jurisdictions, but rather complements them.<sup>105</sup> This means that the State is the main guarantor of people's human rights, and therefore, if there is an act that violates said rights, it is the State that must resolve the matter domestically and, if applicable, make reparations, before having to respond to international bodies.<sup>106</sup>

75. The above means that, in the inter-American system, a dynamic and complementary control of the States' treaty-based obligations to respect and ensure human rights has been established between the domestic authorities (who have the primary obligation) and the international instances (complementarily), so that their decision criteria can be established and harmonized.<sup>107</sup> Thus, the Court's case law includes cases in which decisions of domestic courts have been examined in order to approach and to found the violation of the Convention in the specific case;<sup>108</sup> in other cases, it has been recognized that, in keeping with their international obligations, the domestic organs, instances and courts have adopted adequate measures to redress the situation that gave rise to the case,<sup>109</sup> and have settled the alleged violation,<sup>110</sup> ordered reasonable reparations,<sup>111</sup> or exercised an adequate control of conventionality with the Convention.<sup>112</sup> In this sense, the Court has indicated that State responsibility under the Convention can only be demanded at the international level after the State has had the opportunity to recognize, as the

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<sup>104</sup> Cf. *Case of Las Palmeras v. Colombia Merits*. Judgment of December 06, 2001. Series C No. 90, para. 33, and *Case of Acevedo Jaramillo et al. v. Peru Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2006. Series C No. 157, para. 66; *Case of the Santo Domingo Massacre v. Colombia Preliminary Objections, Merits and Reparations*. Judgment of November 30, 2012. Series C No. 259, para. 142; *Case of the Peasant Community of Santa Bárbara v. Peru Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 01, 2015. Series C No. 299, para. 159, and *Case of Garcia Ibarra et al. v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 17, 2015. Series C No. 306, para. 103; *Case of Duque v. Colombia Preliminary Objections, Merits, Reparations, and Costs*. Judgment of February 26, 2016. Series C No. 310, para. 128; *Case of Andrade Salmon v. Bolivia. Merits, Reparations, and Costs*. Judgment of December 01, 2016. Series C No. 330, para. 18, and *Case of Amrhein et al. v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of April 25, 2018. Series C No. 354, para. 97.

<sup>105</sup> Cf. *Case of Duque v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of February 26, 2016. Series C No. 310, para. 128, and *Case of Villamizar Durán et al. v. Colombia Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2018. Series C No. 364, para. 129.

<sup>106</sup> Cf. *Case of Acevedo Jaramillo et al. v. Peru. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs*, para. 66, and *Case of Villamizar Durán et al. v. Colombia Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2018. Series C No. 364, para. 129.

<sup>107</sup> Cf. *Case of the Santo Domingo Massacre v. Colombia Preliminary Objections, Merits and Reparations*, para. 143, and *Case of Amrhein et al. v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of April 25, 2018. Series C No. 354, para. 99.

<sup>108</sup> See for example, *Case of the Santo Domingo Massacre v. Colombia Judgment on Preliminary Objections, Merits, Reparations, and Costs*, para. 143, 196, 200, 203, 206, 209, 220, 221, 225. See also, *Case of the Mapiripán Massacre v. Colombia Merits, Reparations, and Costs*. Judgment of September 15, 2005. Series C No. 134, para. 167 ff., *Y Case of Gelman v. Uruguay Merits and Reparations*. Judgment of February 24, 2011. Series C No. 221, para. 124.

<sup>109</sup> Cf. *Case of Tarazona Arrieta et al. v. Peru Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 15, 2014. Series C No. 286, para. 139 to 141. See also, *Case of Las Palmeras v. Colombia. Merits*. Judgment of December 06, 2001. Series C No. 90, para. 32 to 24 and operative paragraph 1.

<sup>110</sup> See for example, *Case of Amrhein et al. v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of April 25, 2018. Series C No. 354, para. 97 to 115.

<sup>111</sup> See for example, *Case of the Santo Domingo Massacre v. Colombia Preliminary Objections, Merits and Reparations*. Judgment of November 30, 2012. Series C No. 259, para. 334 to 336.

<sup>112</sup> See for example, *Case of Gelman v. Uruguay Merits and Reparations*. Judgment of February 24, 2011. Series C No. 221, para. 239, and *Case of Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs*. Judgment of June 22, 2016. Series C No. 31, para. 230 and ff.

case may be, a violation of a right, and to itself redress the damage caused.<sup>113</sup> Therefore, not declaring state responsibility requires evaluating whether the state made it stop and if it redressed the consequences of the measure or situation that caused it.<sup>114</sup>

76. In the instant case, as to the first condition, which refers to whether the violations ceased, the Court concludes in the affirmative, based on the fact that the *amparo* application filed by Mr. Colindres Schonenberg after his first dismissal was resolved favorably by the Constitutional Division, reinstating him to his position. In particular, the Constitutional Division pointed out that

the dismissal decision was carried out without prior procedure, since it does not appear that any process was carried out to determine whether Mr. Colindres did in fact incur in the justifiable grounds for his dismissal, nor was he granted any opportunity to defend himself. After analyzing the facts from the normative perspective, [the] Division concluded[ed] that the Legislative Assembly disrespected Dr. Eduardo Colindres' constitutional right to a hearing, which consists of [...] granting a hearing before the competent authority to be able to defend – within a reasonable time – in a full and comprehensive manner, his remaining in office for the period for which he was elected, allowing him to provide evidence that is conducive and applicable to the matter.<sup>115</sup>

77. The Constitutional Division also pointed out that, "a materialization of this stability in the position means that he has the right to remain in the position during the period for which he was elected," and therefore, it concluded that "the restorative effect translates, necessarily, into his reinstatement to the post."<sup>116</sup> Similarly, the Constitutional Division ordered that Mr. Colindres Schonenberg be paid the wages he had not received.<sup>117</sup>

78. Therefore, in the judgment issued by the Constitutional Division on November 4, 1997, the State effectively guaranteed Mr. Colindres Schonenberg's judicial guarantees, thereby ceasing the alleged violation.<sup>118</sup>

79. As to the second condition, which refers to whether the violations were redressed, this Court found that Mr. Colindres Schonenberg was paid the wages he did not receive during the time he was dismissed, in addition to the amount of USD \$114,285.60 for pain and suffering caused. To this effect, and pursuant to the Court's practice in granting the amounts awarded in cases where arbitrary dismissals have been determined similar to those in the instant case, the Court holds that this redress is appropriate to redress the damage caused to Mr. Colindres Schonenberg.

80. Based on the foregoing, and in accordance with the principle of complementarity, the Court holds that the State is not responsible for the alleged violations of the Convention that allegedly caused the first dismissal of Mr. Colindres Schonenberg.

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<sup>113</sup> Cf. *Case of the Santo Domingo Massacre v. Colombia Judgment on Preliminary Objections, Merits, Reparations, and Costs*, para. 143, and *Case of Amrhein et al. v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of April 25, 2018. Series C No. 354, para. 99.

<sup>114</sup> Cf., *mutatis mutandis*, *Case of the Santo Domingo Massacre v. Colombia Preliminary Objections, Merits and Reparations*. Judgment of November 30, 2012. Series C No. 259, para. 171; *Case of Duque v. Colombia Preliminary Objections, Merits, Reparations, and Costs*. Judgment of February 26, 2016. Series C No. 310, para. 137, and *Case of Andrade Salmon v. Bolivia. Merits, Reparations, and Costs*. Judgment of December 01, 2016. Series C No. 330, para. 96.

<sup>115</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folio 372).

<sup>116</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folio 373).

<sup>117</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folio 375). According to the evidence provided by the State, Mr. Colindres received payment of the wages he had not received beginning upon his dismissal in November 1996, and until his reinstatement in November 1997, for a total amount of 169,571.76 Salvadoran colones and seventy-six cents. Cf. Copy of the payroll receipts for Eduardo Benjamín Colindres for the months of December 1996 to November 1997 (evidence file, folios 1993 to 2007).

<sup>118</sup> *Mutatis Mutandis, Case of Andrade Salmón v. Bolivia. Merits, Reparations, and Costs*. Judgment of December 01, 2016. Series C No. 330, para. 100.

## **B.2 Second dismissal of Mr. Colindres Schonenberg**

81. Taking into account the arguments presented, the Court will analyze a) the Legislative Assembly's lack of jurisdiction; b) the absence of a previously established procedure; c) other alleged violations of due process and the principle of legality; d) the right to remain in office under general conditions of equality, and e) the inadequacy of domestic law.

### B.2.a Lack of Jurisdiction of the Legislative Assembly

82. Article 8(1) of the Convention guarantees that the decisions in which the rights of individuals are determined must be adopted by the competent authorities determined by domestic law. In the instant case, it was already mentioned that the process by which the alleged victim was dismissed needed to comply with the guarantees set out in article 8(1) (*supra* para. 66). Therefore, and first of all, it must be examined whether the Legislative Assembly had the power to dismiss Mr. Colindres Schonenberg.

83. As mentioned by the Constitutional Division, Salvadoran law does not include "express reasons for dismissal or removal before the end of the term [of TSE judges],<sup>119</sup>" nor does it "establish an express procedure for the dismissal of judges" from the TSE,<sup>120</sup> or which body would be competent to do so.<sup>121</sup> The legislation only establishes an assumption of responsibility in relation to the Legislative Assembly for cases in which a judge commits an official or ordinary crime (*supra* para. 23). In the instant case, there is no dispute that the dismissal of Mr. Colindres Schonenberg was not made in application of this assumption.

84. In view of the foregoing, and following the first dismissal of Mr. Colindres Schonenberg, the Constitutional Division mentioned that if the Legislative Assembly was the competent body to appoint the TSE judges, "it could perfectly be interpreted – given the political origin of the appointment–" that it also had the power to decide on their dismissal.<sup>122</sup>

85. The Court recalls that Article 8(1) expressly guarantees the right to be tried by a "competent tribunal [...] previously established by law." This means that the existence and jurisdiction of the competent tribunal derives from the law, which has been defined by the Court as the general legal norm tied to the general welfare, passed by democratically elected legislative bodies established by the Constitution, and formulated according to the procedures set forth by the constitutions of the States Parties for that purpose.<sup>123</sup> Consequently, in a Rule of Law, only the Legislative branch is able to regulate, by means of laws, the jurisdiction of the courts<sup>124</sup>.

86. This Court notes that the decision of the Constitutional Division did not replace the duty of the State to establish, through a law issued by the legislature, a definition of which was the competent body to carry out a process to dismiss TSE judges. This legal vacuum was not filled by the Legislative Agreement that created the Special Commission to guarantee Mr. Colindres Schonenberg's right to a hearing, since, despite coming from the Legislative Assembly, it does not have the character of a general and prior law, since it was created as an *ad hoc* process for the specific case of Mr. Colindres Schonenberg. In addition, the objective of the Special Commission

<sup>119</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folio 365).

<sup>120</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folio 369).

<sup>121</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folio 369).

<sup>122</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folio 369).

<sup>123</sup> Cf. *Case of Barreto Leyva v. Venezuela. Merits, Reparations, and Costs*. Judgment of November 17, 2009. Series C No. 206, para. 76.

<sup>124</sup> Cf. *The expression "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 09, 1986. Series A No. 6, and *Case of Barreto Leyva v. Venezuela. Merits, Reparations, and Costs*. Judgment of November 17, 2009. Series C No. 206, para. 76.

was to guarantee Mr. Colindres Schonenberg the right to a hearing, and not to carry out the dismissal, which was ordered by the Legislative Assembly based on what was determined by the Constitutional Division.

87. Therefore, since the competence of the Legislative Assembly was not established by law, the dismissal of Mr. Colindres Schonenberg violated his right to be tried by a competent tribunal, as provided in Article 8(1) of the Convention.

#### B.2.b Absence of a previously established procedure

88. The Court has indicated that people have the right to be tried in accordance with prior and legally established procedures, which is why the State should not create courts that do not apply duly established procedural rules to replace the jurisdiction that normally corresponds to ordinary courts.<sup>125</sup>

89. Salvadoran legislation did not establish an "express procedure for the removal of judges" from the TSE (*supra* para 83). The Constitutional Division interpreted that the Legislative Assembly could order the dismissal of a TSE judge provided that the right to a hearing was guaranteed.<sup>126</sup> Following this decision, for the second dismissal of Mr. Colindres Schonenberg, the Legislative Assembly agreed to form a Special Commission of five deputies "for the purpose of dictating an informational document guaranteeing the right to a hearing for Eduardo Benjamín Colindres."<sup>127</sup>

90. As noted (*supra* para 86), the decision of the Constitutional Division did not replace the duty of the State to previously establish the procedure through which a dismissal of a TSE judge could be carried out. The absence of a previously established procedure prevented Mr. Colindres Schonenberg from knowing what procedure he was going to be subject to and when he could defend himself. This constitutes an additional violation of the judicial guarantees established in Article 8(1) of the Convention.

#### B.2.c Other alleged violations of due process and the principle of legality

91. The **Commission** and the **representatives** also alleged that the principle of legality, the right to be heard, the right to be tried by an impartial body, the right to a defense, including the prior and detailed communication of the accusation and the granting of adequate time and means to prepare a defense, the duty to provide reasons and the right to the presumption of innocence were all violated.

92. Because the Court has determined that the procedure used and the body involved in the dismissal of the alleged victim was not established by law, it is not necessary to analyze the other guarantees established in Articles 8 and 9 of the Convention.<sup>128</sup> For this reason, the court deems it unnecessary to find on the alleged violations of the principle of legality, the right to be heard, the right to be tried by an impartial body, the right to a defense, including the prior and detailed communication of the accusation and the granting of adequate time and means to prepare defense, the duty to provide reasons and the right to the presumption of innocence.

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<sup>125</sup> Cf. *Case of Castillo Petruzzi et al. v. Peru Merits, Reparations, and Costs*. Judgment of May 30, 1999. Series C No. 52, para. 129, and *Case of Aritz Barbera et al. ("First Court of Administrative disputes") v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of August 05, 2008. Series C No. 182, para. 50.

<sup>126</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folio 369).

<sup>127</sup> Cf. Legislative Agreement No. 281 of March 24, 1998 (evidence file, folio 384).

<sup>128</sup> Similarly, cf. *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs*. Judgment of August 23, 2013. Series C No. 266, para. 181, and *Case of López Lone et al. v. Honduras Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 05, 2015. Series C No. 302, para. 241.

B.2.d Right to remain in the post under general conditions of equality

93. Article 23(1)(c) of the Convention establishes the right to have access, under general conditions of equality, to the public service of his country. This Court has interpreted that access, under equal conditions would constitute an insufficient guarantee if it were not accompanied by the effective protection of tenure in the post held.<sup>129</sup>

94. In cases of arbitrary dismissal of judges, this Court has held that the guarantee of stability or tenure of the judge is related to the right to remain in public office.<sup>130</sup> Respect for and the guarantee of this right is complied with when the criteria and procedures for the appointment, promotion, suspension, and dismissal are reasonable and objective, and that those concerned are not subject to discrimination in the exercise of this right.<sup>131</sup> In this regard, the Court has indicated that equal opportunities in access and tenure ensures freedom from any political interference or pressure.<sup>132</sup>

95. As a result of the procedure to which he was subjected, the alleged victim was removed from his position as a TSE judge. The Court considers that this dismissal constituted an arbitrary dismissal because it was carried out by an incompetent body and through a procedure that was not legally established. Therefore, this arbitrary dismissal unduly affected Mr. Colindres Schonenberg's right to remain in office under equal conditions, in violation of Article 23(1)(c) of the American Convention.

B.2.e Inadequate domestic law

96. The Court recalls that Article 2 of the Convention obliges the States Parties 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.<sup>133</sup> Said duty implies the adoption of measures of two kinds: on the one hand, elimination of any norms and practices that in any way violate the guarantees provided under the Convention<sup>134</sup>; whether because they are unaware of those rights or freedoms or because they hinder their

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<sup>129</sup> Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 138, and *Case of López Lone et al. v. Honduras Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 05, 2015. Series C No. 302, para. 235.

<sup>130</sup> Cf. *Case of Apitz Barbera et al. ("First Court of Administrative disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 05, 2008. Series C No. 182, para. 43, and *Case of López Lone et al. v. Honduras Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 05, 2015. Series C No. 302, para. 235.

<sup>131</sup> Cf. *Case of Apitz Barbera et al. ("First Court of Administrative disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 05, 2008. Series C No. 182, para. 206, and *Case of López Lone et al. v. Honduras Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 05, 2015. Series C No. 302, para. 236.

<sup>132</sup> Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 72, and *Case of López Lone et al. v. Honduras Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 05, 2015. Series C No. 302, para. 236.

<sup>133</sup> Cf. *Caso Gangaram Panday v. Suriname. Preliminary Objections*. Judgment of December 04, 1991. Series C No. 12, para. 50, and *Case of Cuscul Pivaral et al v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 23, 2018. Series C No. 359, para. 79.

<sup>134</sup> Cf. *Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations, and Costs*. Judgment of May 30, 1999. Series C No. 52, para. 207, and *Case of Maldonado Ordóñez v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 03, 2016. Series C No. 311, para. 111.

exercise.<sup>135</sup> On the other hand, the promulgation of norms and the development of practices conducive to effective observance of those guarantees.<sup>136</sup>

97. The violations of the Convention already determined in this chapter originated in the application of the general criteria established by the Constitutional Division in its ruling of November 4, 1997, on the possibilities of dismissal of TSE judges. In particular, the ruling established that, notwithstanding the absence of a law, it could be interpreted that the Legislative Assembly was the competent body to dismiss judges, while at the same time it broadened the grounds for dismissal of TSE judges to include others not established as such by law.<sup>137</sup> The application of these criteria developed by the Constitutional Division constitutes a practice contrary to the American Convention.

98. The Court notes that by virtue of Article 2 of the Convention, the State was obliged to suppress practices of any nature that entail a violation of the guarantees provided for in the Convention. Therefore, there was an omission by the State in not taking measures to prevent the application of these criteria produced by the Constitutional Division, and thus ensure that TSE judges were not dismissed for reasons not established in the legislation nor through judicial processes before incompetent bodies and without the existence of a previously established procedure. This omission led to a violation of Article 2 of the Convention and affected the legal certainty and rights of the alleged victim at the time his dismissal was determined.

#### B.2.f Conclusion regarding the dismissal of Mr. Colindres Schonenberg

99. Based on all of the foregoing considerations, the Court concludes that Salvadoran law did not provide for the dismissal of TSE judges except in cases in which they committed a crime. The procedure to which the alleged victim was subjected does not fall within this assumption, therefore it was not legally established and there was no competent body to decide on his dismissal.

100. Consequently, the State violated Article 8(1) of the Convention, in relation to Articles 1(1), 2, and 23(1)(c) thereof, to the detriment of Eduardo Benjamín Colindres Schonenberg.

### **B.3 Right to judicial protection**

101. This Court has indicated that Article 25(1) of the Convention contemplates the obligation of the States Parties to guarantee, to all persons under their jurisdiction, the right to simple and prompt recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights.<sup>138</sup> Regarding the effectiveness of the remedy, the Court has established that for such an effective remedy to exist, it is not enough that it be provided for by the Constitution or the law or that it be formally admissible, but rather that it be truly suitable to establish whether a human rights violation has been incurred and provide what is necessary to remedy it. Those remedies that, due to the general conditions of the country or even due to the particular circumstances of a given case, are illusory, cannot be considered effective.<sup>139</sup> This can occur, for

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<sup>135</sup> Cf. *Hilaire, Constantine, and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations, and Costs*. Judgment of June 21, 2002. Series C No. 94, para. 113, and *Case of López Lone et al. v. Honduras Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 05, 2015. Series C No. 302, para. 213.

<sup>136</sup> Cf. *Case of Castillo Petruzzi et al. v. Peru, Merits, Reparations, and Costs*. Judgment of May 30, 1999. Series C No. 52, para. 207, and *Case of López Lone et al. v. Honduras Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 05, 2015. Series C No. 302, para. 213.

<sup>137</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folios 365 and 366).

<sup>138</sup> *Case Mejía Idrovo v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of July 05, 2011, Series C No. 228, para. 95, and *Case of López Lone et al. v. Honduras Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 05, 2015. Series C No. 302, para. 245.

<sup>139</sup> Cf. *Case of Ivcher Bronstein v. Peru Merits, Reparations, and Costs*. Judgment of February 06, 2001. Series C No. 7, para. 137, and *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of August 28, 2013. Series C No. 268, para. 228.



example, when their futility has been revealed in the practice, because there is no way of executing decisions or due to any other situation that constitutes a denial of justice.<sup>140</sup> The process should lead to materialization of the protection of the right recognized in the judicial ruling, by the proper application of this ruling.<sup>141</sup>

102. On the other hand, this Court has indicated that Article 8(1) of the Convention implies that the State must guarantee that the decision produced by the proceedings satisfies the end for which it was conceived. The latter does not mean that the right must always be granted, but rather that the capacity of the body to produce the result for which it was conceived be guaranteed.<sup>142</sup>

103. In the previous cases related to the removal of judges by the legislative power, the Court has found that actions conducted before Congress in the procedure for the dismissal of judges, which were subject to legal provisions that should have been precisely observed, may be the object of a legal action or recourse on due legal process.<sup>143</sup> In the Case of *Constitutional Court v. Peru*, it was specifically pointed out that "this control does not imply an evaluation of the acts of a strictly political nature that the Constitution attributes to the Legislature."<sup>144</sup>

104. In this case, the amparo application was available to examine compliance with due process in the dismissal procedure.

105. After the second dismissal, Mr. Colindres Schonenberg filed an application for constitutional relief alleging that: i) "the Legislative Assembly does not have constitutional powers to dismiss a [TSE] judge"<sup>145</sup>; ii) he was "tried twice for the same charges,"<sup>146</sup> and iii) a variety of violations of due process.<sup>147</sup> In response, the Constitutional Division declared the application to be inadmissible, only examining whether the Legislative Assembly has the power to dismiss a judge of the Supreme Electoral Tribunal and whether Mr. Colindres Schonenberg has been prosecuted twice for the same charges.<sup>148</sup>

106. Mr. Colindres Schonenberg filed a second amparo application against the decree that dismissed him in which he indicated, among other arguments, that the Constitutional Division in the already resolved amparo application had not ruled on the violation of due process.<sup>149</sup> Specifically, Mr. Colindres Schonenberg argued that his right to a hearing was not respected since, among other things, he would not have had a real opportunity to defend himself, that the Special Commission concealed evidence, that his brief presented before the Political Commission had not

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<sup>140</sup> Cf. *Case of Las Palmeras v. Colombia Reparations and Costs*. Judgment of November 26, 2002. Series C No. 96, para. 58, and *Case of López Lone et al. v. Honduras Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 05, 2015. Series C No. 302, para. 247.

<sup>141</sup> Cf. *Case of Baena Ricardo et al. v. Panama. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 73, and *Case of Flor Freire v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2016. Series C No. 315, para. 198.

<sup>142</sup> Cf. *Case of Barbani Duarte et al. v. Uruguay Merits, Reparations, and Costs*. Judgment of October 13, 2011. Series C No. 234, para. 122, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 23, 2018. Series C No. 359, para. 170.

<sup>143</sup> Cf. *Case of the Constitutional Court v. Peru Merits, Reparations, and Costs*. Judgment of January 31, 2001, para. 94, and *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of August 28, 2013. Series C No. 268, para. 236.

<sup>144</sup> Cf. *Case of the Constitutional Court v. Peru Merits, Reparations, and Costs*. Judgment of January 31, 2001, para. 94.

<sup>145</sup> Cf. Amparo application of July 15, 1998 (evidence file, folio 507).

<sup>146</sup> Cf. Amparo application of July 15, 1998 (evidence file, folio 508).

<sup>147</sup> Cf. Amparo application of July 15, 1998 (evidence file, folios 505 and 506).

<sup>148</sup> Cf. Judgment of the Constitutional Division of May 4, 1999 (evidence file, folio 1552).

<sup>149</sup> Cf. Amparo application of July 27, 1999 (evidence file, folio 555).

been added to the file, and that he had not been given the opportunity to defend himself with respect to the brief of July 2, 1997, presented by deputies of the PDC.<sup>150</sup>

107. On November 5, 1999, the Constitutional Division declared the second amparo application to be inadmissible.<sup>151</sup> The Constitutional Division stated that:

[F]rom the argumentation of the plaintiff, only a matter of mere legality emerges, lacking a constitutional basis, observing circumstances that affect the valid configuration of the claim discussed in this proceeding. Such circumstances are the verification that the factual basis of the claim is based on a simple disagreement with the procedure followed by the Legislative Assembly and with the content of the resolution through which he was removed from office, since both the underlying arguments of the same – even when they refer to legal categories protected by the amparo – such as the alleged concepts of violation expressed, are not specific to the matter of amparo, since the Chamber is not an instance to review the criteria expressed by the Legislative Assembly in the Legislative Decree [that dismisses him], nor the material assessments or procedural actions in direct application of art. 11 of the Constitution.<sup>152</sup>

108. The Court notes that the Constitutional Division did not conduct an analysis of the alleged violations of due process in the dismissal proceeding. On the contrary, it indicated that “it is not an instance to review [...the] procedural actions in direct application of art. 11 of the Constitution,” which stipulates the right to a hearing.<sup>153</sup>

109. In relation to the foregoing, the Court reiterates that the States have the duty to guarantee, to all persons under their jurisdiction, an effective judicial remedy against acts that violate their fundamental rights. This implies that the judicial remedy must be suitable to combat the violation, so the competent authority must examine the reasons invoked by the plaintiff and rule on them.<sup>154</sup> In this regard, the Court has indicated that the analysis that the competent authority makes of a judicial appeal – which contests constitutional rights such as the right to a hearing in this case – cannot be reduced to a mere formality and omit arguments submitted by the parties, because it must examine their reasons and rule on them pursuant to the standards established by the American Convention.<sup>155</sup> In the instant case, this Court notes that the Constitutional Division did not carry out an analysis of the alleged violations of due process, since it considered that it is not an instance to review the criteria of the Legislative Assembly regarding the procedural actions in direct application of the Constitution.

110. The Court considers that the Constitutional Division was obliged to carry out an adequate judicial review of the facts claimed as violations by the alleged victim, which implied examining the allegations and arguments submitted to its knowledge regarding the dismissal procedure carried out by the Legislative Assembly. This analysis could not be limited to examining whether the Legislative Assembly had taken any measure to guarantee the right to a hearing, such as the creation of the Special Commission; rather it should cover whether said right was effectively guaranteed. This Court finds that by not conducting an analysis of whether the constitutional and conventional rights at stake were violated, the Constitutional Division disassociated the substantive right from the procedural right, thus preventing the analysis of the main subject matter of the dispute. In this sense, the Court concludes that the lack of sufficient judicial review

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<sup>150</sup> Cf. Amparo application of July 27, 1999 (evidence file, folios 554 to 557).

<sup>151</sup> Cf. Resolution of the Constitutional Division of November 5, 1999 (evidence file, folio 1586).

<sup>152</sup> Cf. Resolution of the Constitutional Division of November 5, 1999 (evidence file, folio 1585).

<sup>153</sup> Cf. Resolution of the Constitutional Division of November 5, 1999 (evidence file, folio 1585).

<sup>154</sup> Cf. *Case of Dismissed Employees of Petroperú et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 23, 2017. Series C No. 344, para. 177.

<sup>155</sup> Cf. *Case of Lagos del Campo v. Peru Preliminary Objections, Merits, Reparations, and Costs*. Judgment of August 31, 2017. Series C No. 340, para. 184, and *Case of Dismissed Employees of Petroperú et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 23, 2017. Series C No. 344, para. 177.

of the actions of the Legislative Assembly by the Constitutional Division resulted in the ineffectiveness of the amparo application.

111. In relation to the above, the Court recalls that, by virtue of the contributing or complementary nature of international protection, the State is the main guarantor of people's human rights, and therefore, if there is an act that violates said rights, it is the State that must resolve the matter domestically and, if applicable, make reparations, before having to respond to international bodies.<sup>156</sup>

112. Consequently, the Court concluded that the State is internationally responsible for violation of articles 8(1) and 25 of the American Convention, in relation to the obligations established in article 1(1) of the same instrument when it comes to Eduardo Benjamín Colindres Schonenberg.

113. Meanwhile, in the case at hand, the Court has already indicated that Mr. Colindres Schonenberg was removed from office without this possibility being established by law. Therefore, the existence of an appeal that could be filed against the decision of the Legislative Assembly was not regulated, either. Therefore, the Court does not consider it necessary to analyze the alleged violation of Article 8(2)(h) of the Convention.

#### **B.4 Reasonable time regarding the civil claim**

114. The **Commission** indicated that the civil proceeding exceeded the reasonable term, without any elements arising that would allow it to be considered that the lawsuit and its resolution were of a special complexity that would justify the delay. The **representatives** and the **State** did not present arguments in this regard.

115. This Court has considered that a prolonged delay constitutes, in principle, and on its own, a violation of judicial guarantees.<sup>157</sup> In this sense, this alleged wrongful act, related to the first dismissal, has not been repaired by the State.

116. The Court has indicated that the "reasonable period" referred to in Article 8(1) of the Convention must be assessed in relation to the total duration of the procedure that takes place until the final judgment is delivered.<sup>158</sup> In this case, the period corresponding to the stage of execution of the judicial sentence must also be taken into account in order to effectively collect the compensation.<sup>159</sup>

117. Mr. Colindres Schonenberg filed the lawsuit on January 12, 1999. After a second instance decision and a judgment of cassation, on December 22, 2009, the Supreme Court of Justice issued a final judgment.<sup>160</sup> On February 7, 2014, the State made the payment.<sup>161</sup> Therefore, the procedure lasted for a total of fifteen years.

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<sup>156</sup> Cf. *Case of Acevedo Jaramillo et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs*. Judgment of February 07, 2006. Series C No. 144, para. 66, and *Case of Villamizar Durán et al. v. Colombia Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2018. Series C No. 364, para. 129.

<sup>157</sup> Cf. *Case of Hilaire, Constantine, and Benjamin et al. Trinidad and Tobago. Merits, Reparations, and Costs*. Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Carvajal Carvajal et al v. Colombia Merits, Reparations, and Costs*. Judgment of March 13, 2018. Series C No. 352, para. 105.

<sup>158</sup> Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 71, and *Case of Munárriz Escobar et al. v. Peru Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 20, 2018. Series C No. 355, para. 107.

<sup>159</sup> Cf. *Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of August 31, 2012. Series C No. 246, para. 151.

<sup>160</sup> Cf. Judgment of the Supreme Court of Justice of El Salvador of December 22, 2009 (evidence file, folio 598).

<sup>161</sup> Cf. Copy of the certification of the check dated February 7, 2014 (evidence file, folio 1618), and notarial certificate of settlement of February 6, 2014 (evidence file, folios 1615 and 1616).

118. The Court has generally considered the following elements to determine the reasonableness of the term: a) complexity of the matter; b) procedural activity of the interested party; c) conduct of the judicial authorities, and d) affectation generated in the legal situation of the person involved in the process. In the instant case, the ruling of the Constitutional Division that reinstated Mr. Colindres Schonenberg after the first dismissal declared admissible "the civil action for compensation of damages against the State."<sup>162</sup> As the Civil Chamber pointed out when deciding the appeal, the decision of the Constitutional Division gave him "a right [...] to obtain compensation for the damage, and this is specified in the civil proceeding at hand."<sup>163</sup> Indeed, the controversy in the civil process was only for the value of the damages, so it was not a complex process. Additionally, the Court notes that the State has not shown that the delay is due to the procedural activity of the alleged victim. Consequently, the Court considers that it is not necessary to carry out a detailed analysis of the elements related to the reasonable time mentioned above, since it considers it evident that a term of fifteen years to resolve and execute a proceeding for damages constitutes a violation of reasonable time.

119. Consequently, the State violated the right to judicial guarantees established in Article 8(1), in relation to Article 1(1) of the American Convention, with respect to Mr. Eduardo Benjamín Colindres Schonenberg.

## **VII REPARATIONS (Application of Article 63(1) of the American Convention)**

120. Based on Article 63(1) of the American Convention,<sup>164</sup> the Court has indicated that any violation of an international obligation that has caused damage entails the duty to adequately remedy it, and that this provision includes a customary norm that constitutes one of the principles of contemporary International Law in relation to a State's responsibility.<sup>165</sup> Likewise, this Court has established that the reparations must have a causal link with the facts of the case, the alleged violations, the proven damages, as well as the measures requested to repair the resulting damages.<sup>166</sup> Therefore, the Court must observe such coincidence in order to adjudge and declare according to law.<sup>167</sup>

121. Consequently, and without prejudice to any form of reparation that is subsequently agreed upon between the State and the victim, and in accordance with the considerations set forth on the merits and the violations of the Convention declared in this judgment, the Court will proceed to examine the arguments of the parties and the Commission, in light of the criteria established

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<sup>162</sup> Cf. Resolution of the Constitutional Division of November 4, 1997 (evidence file, folio 375).

<sup>163</sup> Cf. Judgment of the Civil Chamber of the Supreme Court of Justice of June 13, 2001 (evidence file, folios 1669). See *in the same vein*, Judgment of the First Civil Chamber of the First Section of the Center of December 23, 1999 (evidence file, folio 1636).

<sup>164</sup> Article 63(1) of the American Convention provides: "[i]f the Court finds that there has been a violation of a right or freedom protected by [the] Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

<sup>165</sup> Cf. *Case of Velásquez-Rodríguez v. Honduras Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 24 and 25, and *Case of Órdenes Guerra et al. v. Chile. Merits, Reparations, and Costs*. Judgment of November 29, 2018. Series C No. 372, para. 103.

<sup>166</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia, Merits, Reparations, and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 25, and *Case of Órdenes Guerra et al. v. Chile. Merits, Reparations, and Costs*. Judgment of November 29, 2018. Series C No. 372, para. 104.

<sup>167</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations, and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 25, and *Case of Órdenes Guerra et al. v. Chile. Merits, Reparations, and Costs*. Judgment of November 29, 2018. Series C No. 372, para. 104.

in its case law concerning the nature and scope of the obligation to make full reparation, in order to establish measures to redress the harm caused to the victims.<sup>168</sup>

### **A. Injured Party**

122. Pursuant to Article 63(1) of the Convention, this Court considers the injured party to be anyone who has been declared a victim of the violation of any right established therein. Therefore, this Court considers Eduardo Benjamín Colindres Schonenberg to be the "injured party," who, as a victim of the violations declared in Chapter VI, will be the beneficiary of the reparations ordered by the Court.

### **B. Measures of Satisfaction**

123. As a measure of satisfaction, the **representatives** requested to order publication of the judgment's text "on the electronic page[s] of the Supreme Court of Justice, the Legislative Assembly, the Supreme Electoral Tribunal, and the Ministry of Foreign Affairs."

124. As it has done in other cases<sup>169</sup>, the Court orders that within a period of six months counted from the notification of this Judgment, the State publish: a) the official summary of this Judgment, prepared by the Court, one time only in the Official Gazette; b) the official summary of the Judgment prepared by the Court, one time only, in a newspaper with wide national circulation, in a legible and adequate font size, and c) this Judgment in its entirety, available for a period of one year on the official websites of the Supreme Court of Justice, the Legislative Assembly, and the Supreme Electoral Tribunal.

125. The State must inform this Court immediately once it proceeds to make each of the publications ordered, regardless of the one-year term it has to present its first report, as provided in operative point 8 of this Judgment.

### **C. Guarantees of Non-Repetition**

126. The **Commission** requested, as a measure of non-repetition in this case, "to order the normative modifications [...] necessary to ensure that the disciplinary proceedings against judges of the Supreme Electoral Tribunal, both in regulation and in practice, are carried out with guarantees of competence, independence, and impartiality," in strict adherence to the right of defense, as well as that the disciplinary causes and the applicable sanctions are compatible with the principle of legality." The **representatives** adhered to what was requested by the Commission, clarifying that at present "there is no previously established and specific procedure for dismissing a TSE judge from their functions, and therefore there is a regulatory vacuum," also requesting the stipulation of a term for El Salvador to make the pertinent regulatory changes.

127. This Court has already concluded that in this case, the dismissal of Mr. Colindres Schonenberg was carried out following a decision of the Constitutional Division without the existence of regulations that would permit and regulate it. Existing laws in El Salvador provide that TSE judges are elected for a period of five years, during which they can only be removed from office in cases in which they have committed an official or common crime and as a result of the application of a procedure expressly established in the Constitution (*supra* para. 23). The

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<sup>168</sup> Cf. *Case of Velásquez-Rodríguez v. Honduras Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25 and 26, and *Case of Alvarado Espinoza et al. v. Mexico Merits, Reparations, and Costs*. Judgment of November 28, 2018. Series C No. 370, para. 288.

<sup>169</sup> Cf. *Case of Cantoral Benavides v. Peru Reparations and Costs*. Judgment of December 03, 2001. Series C No. 88, para. 25, and *Case of Órdenes Guerra et al. v. Chile. Merits, Reparations, and Costs*. Judgment of November 29, 2018. Series C No. 372, para. 125.

Court considers that it is not contrary to the American Convention that a Supreme Electoral Tribunal judge can only be removed when he or she commits a crime, especially taking into account that they are elected for a period of five years. Therefore, it is unnecessary to order a legislative change in this regard.

128. However, it is contrary to the American Convention, as concluded in this case, that a judge be removed without there being a prior law that provides for this possibility. In this sense, in this Judgment it was concluded that the State has the obligation to suppress the practice through which the dismissal of TSE judges is allowed in circumstances other than those established by law (*supra* paras. 96 to 98). This obligation can be fulfilled through a correct application of control of conventionality.

129. This Court has indicated that all the authorities of a State Party to the Convention have the obligation to exercise a "control of conventionality" between the acts or omissions and the internal norms and the American Convention, in such a way that the interpretation and application of the national law is consistent with the State's international human rights obligations.<sup>170</sup> This control of conventionality must be carried out within the framework of their respective competences and the corresponding procedural regulations and in this task, taking into account not only the treaty, but also the interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention.<sup>171</sup>

130. To this effect, then, the interpretation made by the competent bodies as to the possibility of dismissing Supreme Electoral Tribunal judges in cases other than when they commit a crime is consistent with the principles established in this Court's case law, which have been reiterated in this case. With that understanding, this Court considers that it is not necessary to order any legislative amendment.

#### **D. Other Measures Requested**

131. The **Commission** ordered that the State "reinstate Benjamín Eduardo Colindres to a position similar to the one he held, with the same pay, welfare benefits and rank as he would enjoy at present had he not been dismissed, for the length of time that remained under his term; or, if for justified reasons his reinstatement is not possible, pay him an alternative indemnity." The **representatives** did not fully request the reinstatement of Mr. Colindres to his position as requested by the Commission.

132. In the briefs filed by the representatives, as well as in Mr. Colindres Schonenberg's statement at the public hearing, the victim did not express his desire to be reinstated to the position he held as principal judge of the Supreme Electoral Tribunal. Therefore, it does not consider it necessary to order the measure requested by the Commission.

133. Meanwhile, the **Commission** requested that the State take steps to implement the necessary legal reforms and training to ensure that disciplinary proceedings against judges of the Supreme Electoral Tribunal, both in terms of their regulation and in practice, are conducted in conformity with the guarantees of competency, independence, and impartiality, and in strict observance of the right of defense, as well as the compatibility between applicable disciplinary grounds and penalties are with the principle of legality."

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<sup>170</sup> Cf. *Case of Andrade Salmón v. Bolivia. Merits, Reparations, and Costs*. Judgment of December 01, 2016. Series C No. 330, para. 93.

<sup>171</sup> Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 25, and *Case of Ordenes Guerra et al. v. Chile. Merits, Reparations, and Costs*. Judgment of November 29, 2018. Series C No. 372, para. 135.

134. For their part, the **representatives** requested ordering to the State that “the Legislative Assembly issue a decree declaring that Eduardo Benjamín Colindres always complied with the requirements of suitability, training, and competence [and] notorious morality for the exercise as Principal Judge of the Supreme Electoral Tribunal, as well as the admission of the arbitrariness committed by that State agency for having removed him from office.” Likewise, they requested that “in a solemn plenary session, with the presence of all the Supreme Electoral Tribunal judges, the President of the Supreme Court of Justice and judges of the Constitutional Division, the President of the Legislative Assembly” read the preceding decree in its entirety.

135. The Court considers that the issue of this Judgment and the reparations ordered in this chapter are sufficient and adequate to remedy the violations suffered by the victim. Therefore, it does not find it necessary to order said additional measures, without prejudice to the State deciding to adopt and grant them internally.

### **E. Compensation**

136. The **Committee** requested “providing reparation for the consequences of the violations established in the [Merits Report] including both pecuniary and nonpecuniary damages.” For their part, the **representatives** requested payment of compensation for pecuniary damage and non-pecuniary damage. The **State** requested that if the international responsibility of the State is upheld, it be taken into account that Mr. Colindres has already been paid the salary and compensation under the framework of domestic proceedings filed by him.

137. Regarding the State's request, the Court notes that the payment of wages not received and the compensation for non-pecuniary damage granted internally to Mr. Colindres Schonenberg corresponds only to the time of his dismissal following the first dismissal. At the domestic level, no compensation has been awarded for the second dismissal. Therefore, the victim has not received reparations for the violations determined in this judgment.

#### **E.1 Pecuniary damages**

138. The **representatives** argued that “one year and twenty-eight days remained, precisely, for Eduardo Benjamín Colindres to finish out his post as Supreme Electoral Tribunal judge.” In this sense, they asked the Court to take as a parameter for determining the amount of compensation for pecuniary damage “salaries, representation expenses, trips abroad to seminars, conferences, electoral observations, or other activities, travel allowances, benefits and/or services that Dr. Eduardo Benjamín Colindres should have received and that, in practice, the judge [who replaced him] received.” However, they indicated that they would not request the pertinent compensation for the consequential damages caused.

139. The **State** argued that “trips abroad as such are not an inherent part of the exercise of a position, nor can they be considered detrimental to the income of the alleged victim, since the travel expenses paid constitute recognition of the costs that the exercise of the public office performed within the framework of a mission abroad.” It added that the public administration in El Salvador “has applied austerity criteria that limit trips abroad paid for with public funds by officials, which is subject to robust citizen control; similar criteria are applied to benefits paid to public officials.

140. The Court takes note of the timely information provided by the representatives regarding the victim’s desire in the event he were not to receive compensation for consequential damages, and as a result, it will proceed to assess the arguments of the parties regarding the lost income.

141. In the evidence contained in the file, the Court has identified that Mr. Colindres Schonenberg would have received approximately USD\$31,314.62 as salary between July 2, 1998, and July 30, 1999.<sup>172</sup> Regarding the other amounts requested, the Court does not have sufficient evidence to consider that they should be considered as part of the salary, and therefore, as lost income.

142. Therefore, the Court deems it reasonable to set the amount of US\$32,000.00 (thirty-two thousand U.S. dollars) for lost income to be paid to Mr. Eduardo Benjamín Colindres Schonenberg.

## **E.2 Non-Pecuniary Damages**

143. The **representatives** argued that the human rights violations caused by the State to the detriment of Eduardo Benjamín Colindres, "damaged his public image, his honor, his self-esteem, and his dignity [because] they entailed pressure, instability, uncertainty, frustrations, disappointments, and anguish that have transcended time." They added that the fact that Mr. Colindres was accused of lacking a respectable education and of being immoral; this constituted a grievance that he carries with him to this day. Consequently, they requested ordering that the State pay the amount of one million U.S. Dollars for pain and suffering. Finally, the representatives requested compensatory damages for damage to his life plan. In this regard, the representatives argued that the disqualification from holding any public office meant for Mr. Colindres the loss of the right to "opt for a public office, whose constitutional requirement is to possess morality, honesty, and respectable education." Therefore, they requested an additional payment of one million U.S. Dollars.

144. The **State** it argued that the amount requested by the representatives is not "related to the nature and seriousness of the violations attributed to the State in this case, nor to the damage allegedly caused to Mr. Colindres." They added that the amount of compensation for the first dismissal of Mr. Colindres for a period similar to his second dismissal, for pain and suffering, was set at \$114,285.71. Based on the foregoing, the State asked the Court to establish, in equity, an amount "consistent with the nature and seriousness of the violations" upon estimating its international responsibility in this case.

145. This Court has produced case law on the subject of non-pecuniary damages, establishing that it may include both the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to them, as well as other sufferings that cannot be assessed in financial terms that it can cause to the living conditions of the victim or their family.<sup>173</sup>

146. The Court notes that in the statement made by the victim, he made reference to the suffering and afflictions endured as a result of the violations declared in this case. In this regard, Mr. Colindres Schonenberg stated that after spending "25 years of [his] life [...] studying and [having declared] that he had no respectable education, [...] that [he was] immoral; all of this undoubtedly affected [his] entire family in the deepest sense because they threatened everything that [his] life had represented."<sup>174</sup>

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<sup>172</sup> The evidence provided refers to the salaries received by the judge who replaced Mr. Colindres Schonenberg. Salary information for April 1999 was not included. The Court took as reference the salary of March and May 1999 to include in the total sum an estimate corresponding to April 1999. Cf. Communication from the Supreme Electoral Tribunal of December 18, 2017 (merits file, folio 170).

<sup>173</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Terrones Silva et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 26, 2018. Series C No. 360, para. 267.

<sup>174</sup> Statement made by Eduardo Benjamín Colindres Schonenberg on September 27, 2018, at the public hearing held in this case.



147. Taking into account the aforementioned statement, the Court considers that the dismissal process and his removal from office caused pain and suffering to the victim in this case. By virtue of this, in view of the circumstances of this case and the violations found, the Court considers it pertinent to establish, in equity, the amount of US\$10,000.00 (ten thousand U.S. dollars).

148. Taking into account the previously granted reparations, it is not necessary to refer to the arguments presented by the representatives related to the presumed impact on his life project.<sup>175</sup>

#### **F. Costs and Expenses**

149. In their brief of arguments and evidence, the **representatives** indicated that "they have accompanied Dr. Eduardo Benjamín Colindres *ad honorem* since 2003, the year in which the procedures and proceedings began in order to promote the establishment of justice in the inter-American instance." Therefore, they told the Court that they "would refrain from requesting pecuniary compensation in consideration of legal costs and expenses." In view of the foregoing, the Court will not order the payment of costs and expenses in this case, notwithstanding that the State may decide to award some compensation to this effect at the domestic level.

#### **G. Method of compliance with the ordered payments**

150. The State must pay the compensation for pecuniary and non-pecuniary damages established in this Judgment directly to the person stated herein, within a period of one year after this Judgment is notified.

151. In the event the beneficiary dies before the amount is paid, such payments will be made directly to his heirs, in accordance with the applicable domestic law.

152. The State must comply with its pecuniary obligations by paying in U.S. dollars.

153. If, for reasons attributable to the beneficiary of the compensation or his heirs, it is not possible to pay the amounts determined within the indicated period, the State shall deposit said amounts to them in an account or certificate of deposit in a solvent Salvadoran financial institution, in U.S. dollars, and under the most favorable financial conditions permitted by law and banking practice. If the corresponding compensation is not claimed after ten years have elapsed, the amounts will be returned to the State with accrued interest.

154. The respective amounts set out in this Ruling as compensation for pecuniary and non-pecuniary damage must be paid to said persons in full, in accordance with this Judgment, without any reductions arising from possible tax obligations.

### **VIII OPERATIVE PARAGRAPHS**

155. Therefore,

**THE COURT**

**DECLARES**

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<sup>175</sup> Cf. *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 23, 2013. Series C No. 266, para. 262.

Unanimously that:

1. The State is responsible for violation of Article 8(1) of the American Convention on Human Rights, in relation to Articles 1(1) and 2 thereof, as well as in relation to Article 23(1)(c) of the Convention, to the detriment of Eduardo Benjamín Colindres Schonenberg, due to the dismissal process to which he was subjected, in the terms of paragraphs 81 to 90 and 93 to 100 of this Judgment.
2. The State is responsible for the violation of Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Eduardo Benjamín Colindres Schonenberg, due to the ineffectiveness of the amparo applications filed after the second dismissal, under the terms of paragraphs 101 to 112 of this Judgment.
3. The State is responsible for the violation of Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Eduardo Benjamín Colindres Schonenberg, for having exceeded a reasonable term, under the terms of paragraphs 115 to 119 of this Judgment.
4. The State is not responsible for the violation of articles 8(2) and 9 of the American Convention on Human Rights, in the terms of paragraphs 92 and 113 of this Judgment.

**AND ESTABLISHES:**

Unanimously that:

5. This Judgment constitutes, in and of itself, a form of reparation.
6. The State will make the publications indicated in paragraph 124 of this Judgment.
7. The State must pay the amounts established in paragraphs 142 and 147 of this Judgment as compensation for pecuniary and non-pecuniary damage, in the terms set out in the aforementioned paragraphs and paragraphs 150 to 154.
8. The State, within one year from notification of this Judgment, will submit a report to the Court on the measures adopted to comply with it, without prejudice to paragraph 125 of this Judgment.
9. The Court will monitor full compliance with this Judgment, in the exercise of its powers and in compliance with its duties under the American Convention on Human Rights, and will consider this case closed once the State has fully complied with the provisions hereof.

Written in Spanish in San José, Costa Rica, on February 04, 2019.

IAHR Court. *Case of Colindres Schonenberg v. El Salvador Merits, Reparations, and Costs.*  
*Judgment of February 4, 2019.*

Eduardo Ferrer Mac-Gregor Poisot  
President

Eduardo Vio Grossi

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri  
Secretary

So ordered,

Eduardo Ferrer Mac-Gregor Poisot  
President

Pablo Saavedra Alessandri  
Secretary