INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF PETRO URREGO V. COLOMBIA

JUDGMENT OF JULY 8, 2020

(*Preliminary objections, merits, reparations and costs*)

In the case of *Petro Urrego v. Colombia*,

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

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

also present,

Pablo Saavedra Alessandri, Secretary, and
Romina I. Sijniensky, 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, 62, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure" or "the Court's Rules of Procedure"), delivers this judgment structured as follows:

[*] Judge Humberto Antonio Sierra Porto, a Colombian national, did not participate in the processing of this case nor in the deliberation and signature of this judgment, pursuant to articles 19(1) and 19(2) of the Court's Rules of Procedure.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On August 7, 2018, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission")[1] submitted to the jurisdiction of the Court the case of "Gustavo Petro Urrego" against the Republic of Colombia (hereinafter "the State" or "Colombia"). The dispute concerns the alleged violations of human rights committed in the context of the disciplinary process that led to the dismissal and disqualification of Gustavo Francisco Petro Urrego (hereinafter "Mr. Petro" or "the alleged victim") as Mayor of Bogota, Capital District. The Commission considered that the State violated Mr. Petro's political rights, the guarantees of impartiality in relation to the principle of presumption of innocence and Mr. Petro's right to appeal the ruling. It also considered that the State violated the guarantee of reasonable time and judicial protection together with the right to equality before the law because the disciplinary actions taken against Mr. Petro were motivated by discrimination.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

a) *Petition.* On October 28, 2013, the Commission received the initial petition, presented by the *Colectivo de Abogados Jose Alvear Restrepo* (CCAJAR) and the *Asociación para la Promoción Social Alternativa* (MINGA) (hereinafter "the representatives").

b) *Admissibility and Merits Reports.* On December 6, 2016, and October 25, 2017, the Commission adopted, respectively, Admissibility Report No. 60/16 (hereinafter "the Admissibility Report") and Merits Report No. 130/17 (hereinafter "the Merits Report"). In the Merits Report it reached a number of conclusions[2] and made several recommendations to the State.

3. *Notification to the State.* The Commission notified Report No. 130/17 to the State through a communication dated November 7, 2017, granting it two months to report on compliance with the recommendations.

4. *Reports on the Commission's recommendations.* On February 7, 2018, the Commission granted the State a three-month extension and on March 7, 2019, a second three-month extension was granted. In total, Colombia had nine months to comply with the recommendations of the Merits Report. The State provided information on the restitution of Mr. Petro's political rights; however, "it did not specifically mention its willingness and capacity to comply with one of the structural aspects identified by the Commission in its report, requiring the State to adapt its domestic constitutional and legal provisions to eliminate the authority of the Attorney General's Office to dismiss and disqualify elected officials."

5. *Submission to the Court.* On August 7, 2018, the Commission submitted all the facts and human rights violations described in the Merits Report to the Court.

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[1] The Commission appointed the then Commissioner Francisco Eguiguren Praeli and the Executive Secretary Paulo Abrão as delegates, and Silvia Serrano Guzmán and Christian González Chacón as legal advisors.

[2] The Commission concluded that Colombia is responsible for the violation of the rights to judicial guarantees, political rights and equality before the law and judicial protection established in the Articles 8(1), 8(2), 8(2)(h), 23(1), 23(2), and 25(1) of the American Convention, in relation to the obligations enshrined in Articles 24, 1(1) and 2 thereof.

6. *Requests of the Inter-American Commission.* Based on the foregoing, the Inter-American Commission asked the Court to declare the international responsibility of the State for the violations indicated in its Merits Report and to order the State to implement the measures of reparation included in that report. The Court notes that four years and nine months had elapsed between the filing of the initial petition to the Commission and the submission of the case to the Court.

II
PROCEEDINGS BEFORE THE COURT

7. *Notification to the State and to the representatives.* The submission of the case was notified to the representatives of the alleged victim and to the State on November 4, 2018.

8. *Brief with pleadings, motions and evidence.* On November 2, 2018, the representatives submitted their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief"), pursuant to Articles 25 and 40 of the Rules of Procedure. They agreed with the Commission's arguments and also asked the Court to declare the State responsible for the violation of the right to personal integrity to the detriment of Mr. Petro Urrego.

9. *Preliminary objections and answering brief.* On February 4, 2019, the State submitted its brief containing preliminary objections, its answer to the case and observations on the pleadings and motions brief (hereinafter "answering brief"), pursuant to Article 41 of the Rules of Procedure of the Court.[3] The State filed four preliminary objections, denied the alleged violations and questioned the validity of the measures of reparation requested.

10. *Observations on the preliminary objections*. On May 4 and 6, 2019, the representatives and the Commission presented, respectively, their observations on the preliminary objections.

11. *Amici curiae*. The Court received four *amicus curiae* briefs submitted by: a) the Office of the Comptroller General of the Republic of Colombia;[4] b) the *Semillero de Litigio ante Sistemas Internacionales de Protección de Derechos Humanos* (SELDH) of Antioquia University;[5] c) the Attorney General's Office;[6] and d) the Public Interest Clinic of the Sergio Arboleda University.[7]

12. *Public Hearing.* On December 12, 2019, the then President of the Court issued an order[8] calling the parties and the Commission to a public hearing on the preliminary objections and eventual merits, reparations and costs, and to hear the final oral arguments and observations

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[3] The State designated Mr. Camilo Alberto Gómez Alzate, Director General of the State National Legal Defense Agency, as agent for the case.

[4] The brief signed by Carlos Felipe Córdoba Larrarte on the tax control system and fiscal responsibility in Colombia.

[5] The brief signed by Ángela Patricia Benavides Cerón and Alejandro Gómez Restrepo on the scope of disciplinary law in Colombia.

[6] The brief signed by Iván Darío Gómez Lee on the disciplinary sanctions system in Colombia.

[7] The brief signed by Camilo Guzmán Gómez on corruption in Colombia and the legal system applicable to the Attorney General's Office of the Republic.

[8] *Cf. Case of Petro Urrego v. Colombia. Call to a hearing*. Order of the President of the Inter-American Court of Human Rights of December 12, 2019. Available at: http://www.corteidh.or.cr/docs/asuntos/petro_urrego_12_12_19.pdf

of the parties and the Commission, respectively.[9] The public hearing took place on February 6, 2020, during the 133rd Regular Session of the Court, held at its seat in San Jose, Costa Rica.[10]

13. *Final written arguments and observations.* On March 9, 2020, the Commission presented its final written observations and the State and the representatives forwarded their respective final written arguments.

14. *Observations on the annexes to the final arguments.* On March 24, 2020, the representatives presented their observations to the annexes forwarded with the final written arguments of the State. On March 25, 2020, the Commission asked the Court to assess the admissibility of the evidence provided by the State in its final written arguments. The State did not submit observations on the annexes to the final written arguments presented by the representatives.

15. *Deliberation of the case*. The Court deliberated on this judgment during a virtual session held on July 6, 7 and 8, 2020.[11]

III
JURISDICTION

16. The Court has jurisdiction to hear this case, pursuant to Article 62(3) of the Convention, given that Colombia has been a State party to the Convention since July 31, 1973, and accepted the contentious jurisdiction of the Court on July 21, 1985.

IV
PRELIMINARY OBJECTIONS

17. The State filed four preliminary objections, which will be analyzed in the following order: a) failure to exhaust domestic remedies; b) lack of jurisdiction to carry out conventionality control *in abstracto* on provisions of the Colombian legal system; c) lack of reasoning in the arguments related to Article 5 of the American Convention; and d) the presentation of facts that do not constitute a violation of that instrument.

A. Objection on the failure to exhaust domestic remedies

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[9] *Cf. Case of Petro Urrego v. Colombia. Summons to a hearing*. Order of the President of the Inter-American Court of Human Rights of January 27, 2020. Available at: http://www.corteidh.or.cr/docs/asuntos/petro_27_01_20.pdf

[10] This hearing was attended by: a) for the Inter-American Commission: Marisol Blanchard, Assistant Executive Secretary, Jorge H. Meza Flores and Christian González, Advisors; b) for the representatives of the alleged victim: Rafael Barrios Mendivil, Carlos Rodríguez Mejía, María Paula Lemus Parra and María Alejandra Escobar Cortázar, lawyers; and c) for the State: Camilo Gómez Alzate, Director General of the State National Legal Defense Agency, María del Pilar Gutiérrez Perilla and Nicolás Eduardo Ramos Calderón, Advisers to the Directorate of the International Legal Defense of the National Legal Defense Agency.

[11] Owing to the exceptional circumstances caused by the COVID-19 pandemic, this judgment was deliberated and approved during the 133rd Regular Session of the Court, which took place virtually, in accordance with the Rules of Procedure. See press release No. 39/2020, dated May 25, 2020, available at: http://www.corteidh.or.cr/docs/comunicados/cp_39_2020.pdf

A.1. Arguments of the State and observations of the Commission and the representatives

18. The ***State*** alleged that Mr. Petro exhausted the domestic remedies in only one[12] of the five[13] administrative proceedings brought against him. With respect to the other proceedings, the application for annulment and restoration of rights (hereinafter "application for annulment") was either pending or exhausted. The State affirmed that the application for annulment is an appropriate and effective remedy to protect the rights allegedly violated. Consequently, the arguments of the representatives were inadmissible. In addition, the State held that Mr. Petro could also have filed a petition for relief, which allows for the provisional suspension of administrative acts when it is necessary to prevent irremediable damage or when actions available in the contentious-administrative jurisdiction do not provide an appropriate remedy to obtain full protection of such rights. Finally, it affirmed that the alleged victim had available the remedy of direct reversal, which may be filed with the administrative authorities. The State argued that each one of these options provides an adequate and effective remedy that was not exhausted in this case, and that none of the exceptions provided for in Article 46(2) of the Convention were configured.

19. The ***Commission*** alleged that the State's argument regarding the petition for relief and the request for direct reversal is generic and was not filed at the admissibility stage, rendering it time-barred. In addition, the Commission argued that the requirement to exhaust domestic remedies does not mean that victims of human rights violations are obliged to exhaust all available remedies. If the alleged victim used any of the appropriate alternatives under the domestic legal system, and the State had the opportunity to remedy the issue within its jurisdiction, the purpose of the rule is accomplished. In this regard, the Commission stated that the alleged victim filed a series of appeals, such as the motion for annulment, reversal, and restoration of rights, and relief, none of which served to effectively challenge the Attorney General's power to impose the penalties of disqualification and removal. Likewise, it affirmed that the practice of the organs of the inter-American system is to require the exhaustion of domestic remedies against the main violation and not to address, in a separate and autonomous manner, each of the effects derived from a principal violation, since that would not abide by the parameters of reasonability. Second, with regard to the alleged failure to exhaust the remedy of annulment and restoration of rights in relation to the rulings on fiscal responsibility by the Comptroller's Office of Bogota, the Commission considered that those facts are supervening. Therefore, it is not necessary to require the exhaustion of domestic remedies and, in any case, the State should have presented such a plea at the appropriate procedural opportunity, something that did not occur in this case.

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[12] The State referred to the disciplinary process pursued by the Attorney General's Office for actions related to the adoption of the system for provision of sanitation services in the city of Bogota.

[13] The State referred to five administrative proceedings: a) disciplinary proceedings brought by the Attorney General's Office on actions related to the adoption of the system for provision of sanitation services in the city of Bogota; b) administrative proceedings brought by the Superintendence of Industry and Commerce for business practices restricting freedom of enterprise in the market for sanitation services in Bogota; c) proceedings for fiscal responsibility brought by the Comptroller's Office of Bogota in relation the financial harm caused to the Capital District through the adoption of a system for the provision of sanitation services; d) fiscal responsibility proceedings brought by the Comptroller's Office of Bogota regarding the financial damage caused to the Capital District by the reduction of fares for *Transmilenio* public transport services; and e) disciplinary proceedings brought by the Attorney General's Office in regarding the adoption, by decree, of the Territorial Planning Guidelines.

20. The ***representatives*** alleged that the State's arguments should not be taken into account by virtue of the principle of *estoppel*, since the State does not have the authority to alter the position held in the processing of the petition regarding the remedies to be exhausted by the alleged victim. They pointed out that the State did not affirm the existence and effectiveness of the remedy of direct reversal during the proceedings before the Commission, and did so only briefly with respect to the petition for relief. Regarding the petition for direct reversal, they stated that the State omitted to mention that the appeal is not of a judicial nature, and that the decisions on fiscal responsibility were challenged by filing the remedies of application for reconsideration and appeal. These latter motions were appropriate for the ruling to be overturned. As to the petition for relief, they argued that there was no specific mention of the failure to exhaust the remedy during the proceedings before the Commission. The representatives added that, given the nature of the remedy, it does not need be exhausted in order to appear before the inter-American system. In relation to the measures of annulment and restoration of rights, they stated that these are not effective remedies to address the violations committed against Mr. Petro, because it is not possible to challenge the Prosecutor's disciplinary authority of dismissal and disqualification. Furthermore, they indicated that the remedy related to the fiscal rulings was not filed at the appropriate procedural opportunity and would therefore be time-barred.

A.2. Considerations of the Court

21. Article 46(1)(a) of the American Convention establishes that admission by the Commission of a petition or communication presented in accordance with Articles 44 or 45 of this instrument, is subject to the requirement "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."[14] The Court recalls that the rule of prior exhaustion of domestic remedies is in the interest of the State, because it seeks to exempt it from responding before an international organ for acts attributed to it before it has had the opportunity to remedy them through its own means.[15] This implies that not only must these remedies exist formally, but also they must be adequate and effective, as shown by the exceptions established in Article 46(2) of the Convention.[16]

22. The Court will rule, in the first place, on whether the preliminary objections were raised by the State at the appropriate procedural opportunity. In that regard, the Court recalls that an objection to the exercise of its jurisdiction based on the alleged failure to exhaust domestic remedies must be lodged at the appropriate procedural moment, that is, during the admissibility of the procedure before the Commission.[17] Therefore, the State must first make clear to the Commission, during the admissibility stage of the case, the remedies which, in its opinion, would not have been exhausted. Moreover, the arguments that give content to the

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[14] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 24, 1987. Series C No. 1, para. 85, and *Case of Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of January 27, 2020. Series C No. 398, para. 24.

[15] *Cf*. *Case of Velásquez Rodríguez v. Honduras*. *Merits*, *supra*, para. 61, and *Case of Montesinos Mejía v. Ecuador, supra*, para. 25.

[16] *Cf*. *Case of Velásquez Rodríguez v. Honduras*. *Merits*, *supra*, para. 63, and *Case of Montesinos Mejía v. Ecuador*, *supra*, para. 25.

[17] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, *supra*, paras. 84 and 85, and *Case of Montesinos Mejía v. Ecuador*, *supra*, para. 25.

preliminary exceptions filed by the State before the Commission during the admissibility stage must correspond to those made before the Court.[18]

23. With regard to compliance with the requirement to exhaust domestic remedies, the Court notes that in their initial submission to the Commission, on October 28, 2013, the representatives argued that "the Colombian Constitutional Court found that the rules empowering the Attorney General to impose the sanctions of dismissal and disqualification for the exercise of public office were constitutional" and thereby "prevent the protection of the rights violated through domestic remedies."[19] For its part, the State, in its answer to the brief of the representatives, said that "the petitioner had not exhausted the domestic remedies in relation to the facts addressed in the contentious-administrative proceedings instituted by Gustavo F. Petro Urrego against the ruling of dismissal and disqualification issued by the Disciplinary Chamber of the Attorney General's Office." In particular, the State held that "the motion for annulment and restoration of rights is an adequate and effective remedy to counter the sanction imposed by the Attorney General's Office, declaring it null and void, if proven, as well as restoring the rights of the affected party. Therefore, this remedy should be filed and processed by Mr. Petro Urrego." Based on the foregoing, the State requested that the Commission "declare inadmissible the petition for non-compliance with the requirements established in Articles 47(a) and 46(1) of the American Convention […]."[20]

24. The Court notes that in the proceedings before the Commission, the State submitted preliminary objections for failure to exhaust domestic remedies at the appropriate procedural opportunity with respect to the appeal for annulment, pointing out that this was the appropriate and effective action available to Mr. Petro to appeal the sanction of dismissal and disqualification imposed on him by the Office of the Attorney General (hereinafter, "the Attorney General's Office") on December 9, 2013, for adopting the system for the provision of public sanitation services in the city of Bogota. However, the Court notes that in its answering brief to the Court, the State did not claim that Mr. Petro Urrego had not exhausted the remedy of annulment and restoration of rights at the appropriate procedural moment with regard to the sanction imposed, [21] but did allege this in its final written arguments. Thus, the final written arguments are not the appropriate procedural opportunity to allege that the domestic remedies were not exhausted with regard to the aforementioned disciplinary proceeding. Accordingly, the Court will not rule on that argument.

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[18] *Cf. Case of Furlan and Family v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012. Series C No. 246, para. 29, and *Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of November 22, 2019. Series C No. 395, para. 15.

[19] Petition of "Complaint against the State of Colombia for acts of persecution and violation of political rights of Gustavo Francisco Petra Urrego, Mayor of Bogotá" presented to the IACHR on October 28, 2013 (evidence file, folio 3206-3207).

[20] *Cf.* Brief of the State regarding issues of admissibility and jurisdiction of the Inter-American Commission on Human Rights of July 18, 2014 (evidence file, folio 1113).

[21] In its answering brief, the State alleged the following: "[] as previously explained, Senator Petro was convicted in the first four proceedings mentioned above. However, the domestic remedies have been exhausted only in respect of the first of these judgments. With regard to the others, the action for annulment and restoration of rights is pending or has yet to be exhausted, according to the case, as explained below. This action, as shown in the judgment issued by the Council of State in favor of Senator Petro, constitutes an adequate and effective judicial remedy to protect the rights he considers have been violated. Consequently, the fact that these remedies have not been exhausted renders the representatives' arguments inadmissible." Answering brief of the State of February 4, 2019 (merits file, folio 431).

25. Thus, the argument raised by the State in its answering brief submitted to this Court, regarding the failure to exhaust domestic remedies, stands with respect to the following proceedings:[22] a) administrative proceeding brought by the Superintendence of Industry and Commerce (hereinafter, "the SIC") for trade practices that restrict free competition in the market for the provision of sanitation services in Bogota; b) the proceeding related to fiscal responsibility brought by the Comptroller's Office of Bogota (hereinafter, "the Comptroller's Office") regarding the patrimonial losses caused to the Capital District by the adoption of the plan to provide sanitation services; c) the proceeding on fiscal responsibility brought by the Comptroller's Office regarding the patrimonial losses caused to the Capital District by the reduction of fares for the *Transmilenio* public transport service; and d) the disciplinary proceedings brought by the Attorney General's Office in connection with the modification, by decree, of the Territorial Planning Guidelines.[23]

26. Regarding these proceedings, the Commission argued that the State did not present the preliminary objection for failure to exhaust domestic resources at the appropriate procedural opportunity in relation to the Comptroller's ruling on fiscal responsibility and, therefore, it must be disregarded.[24] On this matter, the Court notes that the facts linked to the proceedings before the SIC, the proceedings before the Comptroller's Office for the reduction of fares for the *Transmilenio* services, as well as the proceedings before the Attorney General's Office for the modification of the Territorial Planning Guidelines, were brought to the attention of the Commission by the representatives in their briefs of March 9 and 13, 2017, and forwarded to the State on March 15, 2017.[25] In response, the State referred to those proceedings in a brief on October 27, 2017, where it declared that "[ ] this case has mutated from the time the petition was filed on October 28, 2013, to the present day," and proceeded to describe some facts related to those proceedings that were brought to its attention.[26] Moreover, it declared that "at present the only decision that is limiting the alleged victim's possibilities of running for public office is the one issued by the District Comptroller's Office."[27]

27. From the above situation it is clear that the facts related to the proceedings before the SIC, those before the Comptroller's Office for the modification the *Transmilenio* fares, and the proceedings before the Attorney General regarding changes to the Territorial Planning Guidelines, were made known to the State after the adoption of the Admissibility Report of December 6, 2016, but before the adoption of the Merits Report of October 25, 2017. In this regard, the Court notes that the preliminary objection raised by the State before the Commission on October 28, 2013, concerning the first trial before the Attorney General's Office (*supra* para. 23), was not submitted with respect to the other proceedings under analysis. Moreover, the Court notes that the State had an opportunity to object to the admissibility of

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22 Answering brief of the State of February 4, 2019 (merits file, folio 430).

23 The Court points out that the facts related to the proceedings on fiscal responsibility brought by the Comptroller of Bogota regarding the patrimonial losses caused to the Capital District by adopting the plan for public waste disposal services was not included by the Commission in its Merits Report. Therefore, since the facts related to that proceeding are not part of the factual framework of the dispute before the Court, it is not necessary to rule on compliance with the requirement to exhaust domestic remedies.

24 Observations of the Inter-American Commission on Human Rights to the preliminary objections filed by the State (merits file, folio 666).

25 Communications of the Inter-American Commission of March 15, 2017 (evidence file, folios 2756 and 2758).

26 Observations of the State, October 27, 2017 (merits file, folios 1620 to 1632).

27 Observations of the State, October 27, 2017 (merits file, folio 1632).

those proceedings before the Commission and before the Merits Report was issued, but limited itself to making factual assessments regarding these and putting forth arguments regarding the merits without invoking aspects of admissibility for failure to exhaust domestic remedies.

28. Therefore, the Court finds that, if the State considered that such proceedings were not admissible because the domestic remedies available in the Colombian legal system had not been exhausted, it should have noted that objection in its observations of October 27, 2017, or at any time prior to the issue of the Merits Report. By failing to do so, the Court concludes that it operated the principle of procedural preclusion. Therefore, the Court dismisses the preliminary objection of failure to exhaust domestic remedies filed by the State.

B. Objections regarding lack of jurisdiction to conduct conventionality control *in abstracto*; lack of reasoning in the allegations concerning the right to personal integrity; and, for submitting facts that do not constitute a violation of the American Convention

B.1. Arguments of the State and observations of the Commission and the representatives

29. The ***State*** alleged that the representatives are seeking to obtain a ruling in *abstracto* from the Court on the conventionality of a series of provisions, over which it lacks jurisdiction in the context of its contentious role. In relation to Article 5 of Law 1864, it held that there has been no investigation for the crime of wrongful election, and therefore it has not been applied in this case. Regarding the Articles 277(6) and 278(1) of the Constitution, Articles 44 and 45, 66 and 38 of Law of 2002, and Article 60 of Law 610 of 2000, it stated that although these laws were applied in the process against Mr. Petro, to conduct conventionality control would be abstract because such administrative acts did not in practice affect Mr. Petro's political rights. Moreover, these acts were annulled in their entirety by the Council of State. In addition, the State argued that the supposed violation of Article 5 of the Convention to the detriment of Mr. Petro is manifestly unfounded because there is no evidence that he was a victim of harassment and threats, much less how such harassment would be attributable to the State. On the other hand, the State held that there are no facts that could be characterized as a violation of the political rights provided for in the Convention, since no harm was done to Mr. Petro. In this regard, the State argued that the judicial means were adequate and effective in this case, since they allowed Mr. Petro to exercise his duties as mayor, to become a presidential candidate, and later to take office as a senator of the Republic.

30. The ***Commission*** alleged that the State's argument claiming that the Court does not have jurisdiction to carry out conventionality control *in abstracto* on Law 1864, does not constitute a preliminary objection because it does not concern the admissibility of the case, but rather concerns the merits of the *litis*. As to the State's argument regarding the Court's lack of jurisdiction to rule on the constitutional rules and the Disciplinary Code, the Commission held that, this being an argument regarding complementarity, the State should have accepted its international responsibility, ceased the wrongful act and made reparations to the victim. This situation has not occurred in the case and, furthermore, the assessment of this matter would have to be based on the merits of the case. The Commission added that the violation by the State has not ceased, since the regulatory framework continues to contravene the Convention by allowing sanctions for the disqualification and dismissal of elected officials to be imposed through administrative acts that do not constitute a firm criminal conviction, as stipulated in the Convention. The Commission recalled that it rejected Article 5 of the

Convention in its Admissibility Report, considering that "the petitioner does not offer any arguments or support for the alleged violation." Nevertheless, it stated that the facts underlying the violation of this article were related to the impact of the disciplinary proceedings on the alleged victim and, insofar as they form part of the factual framework of the Merits Report, could be invoked by the representatives.

31. The ***representatives*** argued that the debate regarding the effect of the regulatory framework is a dispute related to the merits of the case, and is therefore not admissible as a preliminary objection. They added that they did not request conventionality control *in abstracto*, but that in light of Article 2 of the Convention, the State should reform a legal system that is at variance with the American Convention, given the lack of judicial remedy in the domestic legal system, especially when this legislation was applied in this specific case. The representatives argued that the impact on the political rights of Mr. Petro continues owing to the failure to comply with Article 2 of the Convention. The representatives added that they have submitted updated information closely related to the initial request concerning the risks and security situation faced by Mr. Petro, as well as the moral and financial implications of the political persecution to which he has been subjected. Accordingly, they requested that the Court dismiss the preliminary objection related to Article 5 of the Convention.

B.2. Considerations of the Court

32. The Court recalls that, in accordance with its case law, it will only consider as preliminary objections only those arguments that have, or that might have those characteristics, in terms of their content and purpose; that is, if favorably resolved, they would prevent the continuation of the proceedings or a ruling on the merits.[28] The Court has consistently held that through a preliminary objection, matters are raised concerning the admissibility of a case or the Court's jurisdiction to hear a specific case or of one of its aspects, owing to the person, matter, time or place.[29] Accordingly, regardless of whether the State defines an approach as a "preliminary objection," if these arguments cannot be considered without previously analyzing the merits of a case, they cannot be examined by means of a preliminary objection.[30]

33. The Court finds that the State's arguments do not constitute preliminary objections, since it is precisely those issues that will be discussed when considering the merits of the case. In assessing the merits, the Court will decide whether the sanctions of dismissal and disqualification imposed on Mr. Petro by the Attorney General's Office constituted a violation of his political rights under Article 23 of the American Convention, in relation to Articles 1(1) and 2 of that instrument. Determining the applicability and scope of these sanctions, and whether the rules that authorized these are consistent with the Convention - matters disputed by the parties, together with the risk posed by Article 5 of Law 1864 of 2017 to the alleged victim's political rights - is an analysis that corresponds to the merits of the dispute. When

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[28] *Cf. Case of Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 35, and *Case of Gorigoitía v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of September 2, 2019. Series C No. 382, para. 19.

[29] *Cf. Case of Las Palmeras v. Colombia. Preliminary objections.* Judgment of February 4, 2000. Series C No. 67, para. 32, and *Case of Gorigoitía v. Argentina, supra*, para. 19.

[30] *Cf. Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of August 8, 2008. Series C No. 184, para. 39, and *Case of Gorigoitía v. Argentina, supra*, para. 19.

assessing the merits it is also necessary to determine whether the facts alleged by the representatives, which they consider affected Mr. Petro's morale and caused him distress and fear as a result of the sanctions applied to him, violated his right to personal integrity. Thus, the Court dismisses the preliminary objections raised by the State on the grounds that they do not relate to the admissibility of the case, but rather to the merits.

V
EVIDENCE

A. Admission of the documentary evidence

34. The Court received various documents submitted as evidence by the Commission, the representatives and the State (*supra* paras. 1, 5 and 6). As in other cases, the Court accepts these on the understanding that they were presented at the proper procedural opportunity (Article 57 of the Rules)[31] and that their admissibility was neither disputed nor challenged.

35. The ***representatives*** noted that Annex 2, submitted by the State with its final written arguments, contains "twelve files in total, six of which were not announced in the State's brief;" therefore they requested their exclusion. For its part, the ***Commission*** asked the Court to "assess [their] admissibility and relevance taking into account its Rules and its case law." The ***State*** did not comment on these objections.

36. Regarding the procedural opportunity for the presentation of documentary evidence, the Court recalls that pursuant to Article 57(1) of the Rules of Procedure, this must generally be presented with the briefs submitting the case, of pleadings and motions, or the answering brief, as appropriate. In this regard, the Court reiterates that evidence submitted outside of the appropriate procedural moment is inadmissible, save in the exceptions mentioned in Article 57(2) of the Rules of Procedure, namely: *force majeure*, serious impediment or in the case of an event which occurred after the procedural moments indicated.[32] As to the documents presented by the State with its final written arguments, the admissibility of which was challenged by the representatives, the Court notes that their extemporaneous submission was not justified by any of the exceptions provided for in the Rules, nor were they expressly requested by the Court as evidence. Therefore, they will not be taken into account.

B. Admission of testimonial and expert evidence

[31] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 140, and *Case of Roche Azaña et al. v. Nicaragua. Merits and reparations.* Judgment of June 3, 2020. Series C No. 403, para. 12.

[32] *Cf. Case of Barrios Family v. Venezuela. Merits, reparations and costs.* Judgment of November 24, 2011. Series C No. 237, para. 17, and *Case of Azul Rojas Marín et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 12, 2020. Series C No. 402, para. 34.

37. This Court deems it appropriate to admit the statements rendered by affidavit[33] and during the public hearing,[34] insofar as these are in keeping with the purpose defined by the Order of the President that required them and with the purpose of this case.[35]

VI
FACTS

38. Based on the arguments submitted by the parties and the Commission, and on the matters resolved in the chapter on preliminary objections, the relevant facts of this case will be described in the following order: a) background information, in which the Court will refer to the profile of the alleged victim and to information concerning the "waste collection services crisis" that affected the city of Bogota at the end of 2012; b) the disciplinary process for modifying the system for the provision of public sanitation services in the city of Bogota; c) disciplinary process for modifying the Territorial Planning Guidelines for the city of Bogota; d) SIC fine for anti-competitive practices in the provision of public sanitation services; e) proceeding before the Comptroller's Office for modifying fares for the public transportation service; and f) the applicable regulatory framework related to the authority of the Attorney General and other laws of interest to this case.

A. Background

A.1. The alleged victim

39. Mr. Gustavo Francisco Petro Urrego was born on April 19, 1960. He is a politician and economist who identifies himself as a "leader of the left and the opposition."[36] Initially he was a militant in the April 19 Guerrilla Movement ("M-19"),[37] and later became a member of the Central Region Directorate.[38] He served as an official[39] in Zipaquirá in 1981 and then as a councilor between 1984 and 1986. After the signing of the Peace Agreement between the

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[33] Statements of Gustavo Francisco Petro Urrego and Edgardo José Maya Villazón during the public hearing held on February 6, 2020, and expert opinions rendered by Roberto Gargarella and Matthias Herdegen during the same hearing.

[34] Statement made by Iván Cepeda Castro on January 23, 2020 (merits file, folios 1115 to 1133); statement made by Olga Lucía Durán Giraldo on January 27, 2020 (merits file, folios 1271 to 1283); statement made by Jaime Bernal Cuellar on January 20, 2020 (merits file, folios 1139 to 1197); expert opinion rendered by Alfredo Beltrán Sierra on January 27, 2020 (merits file, folios 1277 to 1283); and expert opinion rendered by Carlos Enrique Arévalo Narváez on January 27, 2020 (merits file, folios 1199 to 1265).

[35] The purpose of the statements were established in the Order of the President of the Court of December 12, 2019.

[36] Mr. Petro stated the following: "[…] I am a political leader of the left; I have always been in the opposition." *Cf.* Statement made by Gustavo Francisco Petro Urrego before the Inter-American Court of Human Rights in the public hearing held on February 6, 2020.

[37] *Cf. Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 14, 2014. Series C No. 287, para. 89.

[38] *Cf. Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 14, 2014. Series C No. 287, para. 89.

[39] The original text of Decree 1333 of 1986 states, "[i]n each municipality there will be an official who will have the role of ombudsman or civil monitor and agent of the Public Ministry, and will be called the Municipal Official (*Personero Municipal)*; an alternate will be appointed by the same person who selected the principal. The alternate shall replace the principal in all cases of absolute or temporary misconduct […]." Decree 1333 of April 25, 1986, "Municipal Code." Official Gazette No. 37.466 of May 14, 1986, Article 135.

Colombian State and M-19 in 1990, and the subsequent incorporation of M-19 members into political life through the Democratic Alliance M-19, Mr. Petro was elected to the following public positions: member of the House of Representatives in 1991, 1998 and 2002, and member of the Senate in 2006 and 2018.[40]

40. In 2010, Mr. Petro was a candidate for the Presidency of the Republic of Colombia. On October 30, 2011, he was elected Mayor of Bogota, D.C. (hereinafter, "Mayor of Bogota"), a position he held from January 1, 2012, to January 1, 2016. He held this position without interruption except for the period from March 30, 2014, to April 23, 2014, owing to his dismissal and disqualification from public office, ordered by the Attorney General's Office on December 9, 2013. On May 27, 2018, Mr. Petro was a candidate for the Presidency of the Republic of Colombia, obtaining the second highest vote count in the election.[41] He is currently a Senator of the Republic.[42]

A.2. The waste collection crisis in the city of Bogota at the end of 2012

41. Prior to Mr. Petro's inauguration as Mayor of Bogota, the *Unidad Administrativa Especial de Servicios Públicos* ("UAESP") or Special Administrative Unit of Public Services, issued Ruling 364 of May 25, 2011, ordering the opening of public bidding process No. 001 to award the concession for the provision of sanitation services in the city. The purpose of this bidding process was to award the concession under the system of "areas of exclusive services" for the provision of "public sanitation services in the city of Bogota, including waste collection, sweeping, cleaning of streets and public areas, grass cutting, pruning trees in public areas and transporting waste to disposal sites and all related financial, commercial, technical, operational, educational and administrative activities."[43] The Recyclers Association of Bogota (*La Asociación de Recicladores de Bogotá)* filed a petition for relief against the bidding process. In response, on August 18, 2011, the Third Review Chamber of the Constitutional Court of Colombia (hereinafter "Constitutional Court") issued Order 183, requiring the UAESP to suspend the bidding for failure to comply with Judgment T-724/03.[44]

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[40] *Cf.* Brief with pleadings, motions and evidence of November 2, 2018 (merits file, folios 160 and 161).

[41] Mr. Petro stated the following: "[…] in 2018, I became a presidential candidate again and received eight million votes on the country's second ballot […]". *Cf.* Statement of Gustavo Francisco Petro Urrego before the Inter-American Court of Human Rights during the public hearing held on February 6, 2020.

[42] Mr. Petro stated the following: "[…] I am currently a Senator of the Republic of Colombia." *Cf.* Statement of Gustavo Francisco Petro Urrego before the Inter-American Court of Human Rights at the public hearing held on February 6, 2020.

[43] Decision of the Disciplinary Chamber of the Attorney General's Office on December 9, 2013 (evidence file, folios 3 to 486).

[44] In 2003, the Recyclers Association of Bogota filed a petition for relief against the Capital District of Bogota and the UAESP for the public tender No. 001 of 2002. In this regard, the Constitutional Court of Colombia issued Judgment No. T-724 of August 20, 2003, in which it found that UEASP did not adopt effective measures to maintain and strengthen the work carried out by the Recyclers Association as a marginalized group in society. Consequently, in the operative part of the judgment, the Constitutional Court ordered the UAESP to include affirmative actions in future in favor of the recyclers of Bogota "when contracting public sanitation services, given that the work carried out by [the recyclers'] is linked to that service, in order to achieve real conditions of equality and to fulfill the social duties of the State, and to avoid repeating the omissions of Bidding Process No.1 of 2002, regarding the recyclers of Bogota." *Cf.* Judgment No. T-724/03 of the Constitutional Court of Colombia of August 20, 2003; Order No. 183/11 of the Constitutional Court of Colombia of August 18, 2011, and Ruling of the Disciplinary Chamber of the Attorney General's Office on December 9, 2013 (evidence file, folios 3 to 486).

42. In Resolution 552 of September 8, 2011, UAESP declared the "manifest urgency" of continuing to provide public sanitation services, and on September 12, 2011, it signed contracts Nos. 157E, 158E, 159E and 160E with the companies *Ciudad Limpia*, *Aseo Capital*, LIME and ATESA, all private operators, to provide public sanitation services in Bogota for a period of six months.[45] In the context of a request for compliance with Ruling T-724/03 and Order 268/10,[46] filed by the Recyclers Association of Bogota, the Third Review Chamber of the Constitutional Court issued Order 275/11 on December 19, 2011, in which it set aside the public tender No.001 of 2011 and all subsequent administrative acts, ordering UAESP to define a short-term "set of goals" for "the formalization and regularization of the population of recyclers, containing specific, quantified, measurable and verifiable actions," to be submitted to the aforementioned Court and the Attorney General's Office no later than March 31, 2012.[47]

43. On February 8, 2012, following Mr. Petro's inauguration as Mayor of Bogota, through Ruling 065, the UAESP declared "manifest urgency" to continue providing public sanitation services. On March 7, 2012, the UAESP contracted that service with the companies *Ciudad Limpia, Aseo Capital*, LIME and ATESA for a period of six months. On April 19, 2012, by Order 084, the Constitutional Court recognized that UAESP had met the deadline for the delivery of the "set of goals" requested in Order 275/11 and "urged it to continue the process." On August 16, 2012, the UAESP extended the contracts with the private operators for three months, starting from September 18, 2012. On October 11, 2012, the UAESP signed the inter-administrative contract 017 with the city's water and sewerage company, the *Empresa de Acueducto y Alcantarillado de Bogotá* (hereinafter "EAAB"), for the "management and operation of public sanitation services in the city of Bogota D.C."[48]

44. In relation to that contract, in 2012, contracts Nos. 1-06-263000848 and 1-06-263000851 were signed for "the acquisition of machinery and equipment to provide public sanitation services in the city of Bogota by the [EAAB]," for which "the public (procurement) invitation 804 was issued, with a budget of $80,888,107,999." On December 4, 2012, the EAAB signed with the company *Aguas de Bogota*, S.A.E.S.P. contract No. 1-07-10200-0809-2012 (hereinafter "contract 809") to provide public sanitation services in the city of Bogota,

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[45] *Cf.* Ruling of the Disciplinary Chamber of the Attorney General's Office on December 9, 2013 (evidence file, folios 3 to 486).

[46] On July 30, 2010, the Third Review Chamber of the Constitutional Court issued Order No. 268/10, stating that the UAESP had failed to comply with the provisions of judgment T-724/03; it granted a period of three days to submit an addendum "wherein the conditions of Tender 01 of 2010 are modified to include as an enabling requirement that bidders present themselves as members of a second tier organization of recyclers of Bogota," and ordered the Attorney General's Office to follow up on the order. *Cf.* Order No. 268/10 of the Constitutional Court of Colombia of July 30, 2010 (evidence file, folios 3681 to 3737).

[47] *Cf.* Order No. 275/11 of the Constitutional Court of Colombia of December 19, 2011 (evidence file, folios 3491 to 3680), and Ruling of the Disciplinary Chamber of the Attorney General's Office of December 9, 2013 (evidence file, folios 3 to 486).

[48] The following was specified in the contract: "[…] the services of collection, sweeping and cleaning of streets in public areas and the transport of waste to the final disposal site in the Capital District of Bogota, will have 100% coverage, and will be provided to all users and urban facilities in the localities that form part of it. In the execution of the contract, the CONTRACTOR will also support the UAESP in complying the Constitutional Court's Order No. 275 of 2011 and the Set of Goals presented by the UAESP and endorsed in Order 084 of 2012 by the same Court, with regard to ensuring the official inclusion of the population of recyclers in the recycling component, based on the contracts or agreements reached by the UAESP for this purpose, and charges to remunerate the recyclers' work in the components of collection and transportation of solid waste, and waste re-usage as a means of saving on final disposal costs, based on the current tariff models […]." Ruling of the Disciplinary Chamber of the Attorney General's Office on December 9, 2013 (evidence file, folios 3 to 486).

with a value of $116,000,000,000 for a period of four months and 14 days beginning on December 18, 2012.[49]

45. On December 10, 2012, Mr. Petro issued Decree 564, making "arrangements to ensure the provision of public sanitation services in the city in compliance with the orders issued by Constitutional Court in Judgment T-724/03 and in Orders Nos. 268 of 2010, 275 of 2011, and 084 of 2012" and thereby "comply with the obligation to fully implement the plan for the inclusion of recyclers, as well as to ensure the provision of quality services, without discrimination, to all the city's inhabitants and to ensure the fulfilment of obligations for the provision, coordination, supervision and control of services, as established by the Constitution and the laws of the Capital District."[50]

46. On December 14, 2012, days before the expiry of the contracts between the UAESP and the private operators, Mr. Petro issued Decree 570 in the context of the "transition model for the provision of public sanitation services,"[51] decreeing a state of prevention or yellow alert "in order to prevent and anticipate any situation that might threaten the environmental quality or health of the inhabitants of the Capital District from activities related to Integrated Solid Waste Management through the implementation of prevention and monitoring measures." Accordingly, the Mayor ordered the following measures: a) to authorize "the use of dump trucks to ensure the continuity of public sanitation services and, as a precautionary measure, to minimize eventual environmental and health impacts," and b) to implement an "Emergency Operational Plan for the transitional plan adopted under District Decree 564," by the city's public service companies.[52]

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[49] *Cf.* Ruling of the Disciplinary Chamber of the Attorney General's Office on December 9, 2013 (evidence file, folios 3 to 486).

[50] Ruling of the Disciplinary Chamber of the Attorney General's Office on December 9, 2013 (evidence file, folios 3 to 486).

[51] Ruling of the Disciplinary Chamber of the Attorney General's Office on December 9, 2013 (evidence file, folios 3 to 486).

[52] *Cf.* District Decree No. 570 of December 14, 2012 (evidence file, folios 4414 to 4419).

[53] In the addendum, the following clauses - among others - were added: "[...] PARAGRAPH: In the event that the UAESP should decide to hire persons other than EAAB workers for activities related to public sanitation services and complementary activities in the city of Bogota, it will be understood that, for all legal and contractual purposes, such activities will be removed from this contract, thereby reducing in a proportional manner 100% of the coverage assigned to the contractor, without requiring any other formality than a communication from the UAESP informing EAAB of the contract entered into, its scope and the date on which it will begin. (…) CLAUSE 35. PERIOD OF TRANSITION AND ADJUSTMENT. During the first four (4) months from the issuance of District Decree No. 57 of December 14, 2012, the CONTRACTOR shall carry out its contractual obligations, in application of said administrative act, during which time it shall adjust its operational tasks for the efficient provision of the service, under the terms of the technical and operational regulations that are an integral part of the contract. In any case, for the minimum frequencies during the Technical and Operational Regulation [...]." Ruling of the Disciplinary Chamber of the Attorney General's Office of December 9, 2013 (evidence file, folios 3 to 486).

[54] In particular, the following contracts were signed: a) Contract No. 257 of December 18, signed with *Ciudad Limpia* for Zone 6 of the city; b) Contract No. 260 of December 19, signed with *Aseo Capital* for Zone 4 of the city; c) Contract No. 261 of December 19, signed with LIME for Zone 1 of the city; d) Contract No. 268 of December 21, signed with ATESA for Zone 2 of the city; e) Addendum of December 22 for Contract No. 260 with *Aseo Capital* to include new locations; and f) Addendum of December 22 to Contract No. 261 with LIME to provide "support" to other locations. *Cf.* Ruling of the Disciplinary Chamber of the Attorney General's Office of December 9, 2013 (evidence file, folios 3 to 486).

47. On December 17, 2012, the UAESP and EAAB signed an addendum to inter-administrative contract 017.[53] On the same day, UAESP declared the "manifest urgency," under contracts it signed at the end of 2012 with private operators, to provide public sanitation services in the city.[54] Despite signing these contracts, on December 18, 19, and 20, 2012, the city of Bogota" faced a crisis and emergency in the provision of public sanitation services." During those days, approximately 5,841 tons of waste were not collected.[55] After the crisis, the private operators continued to provide public sanitation services to about 48% of the city.[56]

B. Disciplinary process before the Attorney General's Office for the modification of the plan to provide public sanitation services in the city of Bogota

B.1. Proceedings

48. In January 2013, the Secretary General of the Regional Worker's Federation of Workers, a council member of the District of Bogota, the Representative of the Bogota District and the Ombudsman filed a complaint against the Mayor of Bogota with the Attorney General. On January 13, 2013, the latter delegated to the Disciplinary Chamber of the Attorney General (hereinafter "Disciplinary Chamber") the authority to conduct a disciplinary investigation against Mr. Petro in his capacity as Mayor of Bogota, "for alleged irregularities related to the provision of public sanitation services."[57] On June 20, 2013, the Disciplinary Chamber brought charges against Mr. Petro on the basis of "three specific actions:"[58] a) the signing of contracts 017 on October 11, 2011, and 809 on December 4, 2012; b) issuing Decree 564 of December 10, 2012; and c) issuing Decree 570 on December 14, 2012. In relation to these actions, the Disciplinary Chamber brought the following charges against Mr. Petro:

> First charge: Very serious misconduct under paragraph 31 of Article 48 of the Single Disciplinary Code, with malice [..] for "[h]aving taken the decision, in the second semester of 2012, in his capacity as Mayor of Bogota and head of the district administration, to contract companies of the District of Bogota to assume the provision of public sanitation services, a decision that led the director of the [UAESP] and the manager of the [EAAB] to sign inter-administrative Contract 017 of October 11, 2012, without the company having the minimum experience and required capacity. [Likewise], the decision of the Mayor of Bogota led the managers of [EAAB] and of [*Aguas de Bogota*] to sign inter-administrative Contract 809 of December 4, 2012, without the company having the minimum experience and required capacity."

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[55] *Cf.* Ruling of the Disciplinary Chamber of the Attorney General's Office on December 9, 2013 (evidence file, folios 3 to 486).

[56] *Cf.* Ruling No. 02 of the Directorate of Fiscal Responsibility and Coactive Jurisdiction of the District Controller of Bogota of October 20, 2017 (evidence file, folios 4907 to 4954).

[57] Ruling of the Disciplinary Chamber of the Attorney General's Office of December 9, 2013 (evidence file, folios 3 to 486).

[58] Order of the Disciplinary Chamber of the Attorney General's Office of June 20, 2013 (evidence file, folios 3231 to 3489).

> Second charge: Very serious misconduct under paragraph 60 of Article 48 of the Single Disciplinary Code, with malice, for [h]aving issued Decree 564 of December 10, 2012, through which a scheme for the provision of public sanitation services for the city of Bogota was adopted, which was totally contrary to the legal system […]."
>
> Third charge: Very serious misconduct under paragraph 37 of Article 48 of the Single Disciplinary Code, a matter of grave fault, for issuing Decree 570 of December 14, 2012, by which the use of dump trucks was authorized "to guarantee the continuity of public sanitation services as a precautionary measure and to minimize possible environmental and health impacts" because said authorization "violated constitutional and legal provisions for the protection of the environment, creating a serious risk for the health of the inhabitants of the city of Bogota and for the environment."[59]

B.2. Disciplinary sanction

49. On December 9, 2013, following the disciplinary procedure, the Disciplinary Chamber declared the three charges against Mr. Petro proven and found him "disciplinarily responsible" for the following offenses: a) grave misconduct under paragraph 31 of Article 48 of the Single Disciplinary Code, for "taking part in the pre-contractual stage or in a contractual activity to the detriment of public property, or disregarding the principles that regulate State procurement and the administrative function contemplated in the Constitution and in the law;" b) the most serious offense established in paragraph 60 of Article 48 of the same Code, i.e. "exercising the authority conferred by his/her employment or functions for a purpose other than the one established in the granting provision;" and c) the most serious offense contained in paragraph 37 of Article 48 of the same Code, "to proffer administrative acts outside the performance of duty, in violation of the constitutional or legal provisions concerning the protection […] of the environment."[60]

50. Consequently, Mr. Petro was sanctioned with dismissal from his post as Mayor of Bogota and general disqualification to hold public office for 15 years.[61]

B.3. Appeals for reversal and reconsideration

51. Mr. Petro filed challenge briefs against the Attorney General, the Deputy Attorney General, the members of the Disciplinary Chamber, and "any other official of the Attorney General's Office who might be aware of the proceedings."[62] On January 2, 2014, the Deputy Attorney General rejected the challenge and the members of the Disciplinary Chamber did the same, issuing an order on the same date. Five days later, the Attorney General also rejected the appeal, ordering the Disciplinary Chamber to proceed with "the respective disciplinary process." Concomitantly with the appeals for reversal, Mr. Petro filed an appeal for reconsideration against the decision of December 9, 2013. In the context of this appeal, on

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[59] Order of the Disciplinary Chamber of the Attorney General's Office of June 20, 2013 (evidence file, folios 3231 to 3489).

[60] Order of the Disciplinary Chamber of the Attorney General's Office of June 20, 2013 (evidence file, folios 3231 to 3489).

[61] *Cf.* Ruling of the Disciplinary Chamber of the Attorney General's Office of December 9, 2013 (evidence file, folios 484 to 486).

[62] Ruling of the Disciplinary Chamber of the Attorney General's Office of June 20, 2013 (evidence file, folios 488 to 835).

December 31, 2013, Mr. Petro requested that certain assessments be conducted on sanctions imposed by the Attorney General's Office, together with expert reports on any possible risks to human health that could have been caused by exposure to waste.

52. In a decision of January 13, 2014, the Disciplinary Chamber refused to conduct the assessments requested, confirming the decision of December 9, 2013. In giving reasons for the evidentiary proceedings, the Disciplinary Chamber argued that these "should have been requested at the appropriate procedural opportunity and not after the issuance of a sole instance ruling." It further noted that "it does not see the need for the requested assessments to be conducted *ex officio* […], inasmuch as these relate to situations and facts that have been extensively analyzed […], regarding which there is ample evidence and sufficient examples."[63] Consequently, the punishment of dismissal and disqualification was upheld.

B.4. Petitions for relief, replacement of Mr. Petro as Mayor of Bogota and adoption of precautionary measures by the Commission

53. Both Mr. Petro and other persons simultaneously filed multiple petitions for relief against the sanction of the Disciplinary Chamber, before different jurisdictional authorities. Some of these appeals were admitted and others were rejected.

B.4.1. Actions before the Administrative Court of Cundinamarca and dismissal of Mr. Petro by presidential decree

54. On January 13, 2014, the Administrative Court of Cundinamarca Section Two - Subsection A accepted the petition for relief filed by citizen JGP, acting in his personal capacity and as an informal agent of Mr. Petro, and ordered the provisional suspension of the decisions of the Disciplinary Chamber of December 9, 2013, and January 13, 2014.[64] In turn, on January 17 of the same year, Subsection C of the Second Section of the aforementioned court declared "without merit" another petition for relief filed by Mr. Petro against the decisions of the Disciplinary Chamber. On March 5, 2014, the Plenary Chamber for Contentious-Administrative Matters of the Council of State confirmed the judgment issued on January 17, 2014, by Subsection C of the Administrative Court of Cundinamarca, "on the grounds that the affected party has other means of legal defense."[65]

55. On March 18, 2014, the Plenary Chamber for Contentious-Administrative Matters of the Council of State reversed the decision issued on January 13, 2014, by the Administrative Court of Cundinamarca, thereby rejecting the petition for relief and rescinded the provisional suspension of the rulings of the Disciplinary Chamber.[66] Thus, on March 20, 2014, by Decree

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[63] Ruling of the Disciplinary Chamber of the Attorney General's Office of June 20, 2013 (evidence file, folios 488 to 835).

[64] *Cf.* Ruling of the Administrative Court of Cundinamarca Second Section – Subsection A of January 13, 2014 (evidence file, folios 3738 to 3758).

[65] Ruling of the Plenary Chamber for Contentious-Administrative Matters of the Council of State of March 5, 2014 (evidence file, folios 3759 to 3814).

[66] *Cf.* Presidential Decree No. 570, March 20, 2014, "which gives effect to a decision of the Disciplinary Chamber of the Attorney General's Office that dismissed the Mayor of Bogota D.C. and an order is issued." Official Gazette No. 49.098 of March 20, 2014.

570, the President of the Republic ordered the dismissal of Mr. Petro.[67] On June 11, 2015, the Constitutional Court confirmed the judgment of the Plenary Chamber of the Council of State of March 5, 2014.[68]

B.4.2. Motions before the Sectional Council of the Judiciary of Bogota

56. On January 23, 2014, the Jurisdictional Disciplinary Chamber of the Sectional Council of the Judiciary of Bogota ruled on the motions filed by 368 persons and granted "the protection of the right to elect and participate in political control" to 173 of the petitioners and rejected the petition for relief of the remaining 195. This ruling also ordered the temporary suspension of the effects of the ruling of the Disciplinary Chamber of the Attorney General. The judgment was appealed and through a court decision on March 6, 2014, the Jurisdictional Disciplinary Chamber of the Superior Council of the Judiciary reversed the previous decision and instead refused the protection requested by the plaintiffs.[69] On April 30, 2014, the Jurisdictional Disciplinary Chamber of the Sectional Council of the Judiciary of Bogota rejected another petition for relief against the disciplinary ruling in the absence of active legal standing. This decision was confirmed by the Constitutional Court through Judgment T-976/14 of December 18, 2014.[70]

B.4.3. Precautionary measures of the Commission and replacement of Mr. Petro by presidential decree

57. In parallel with the above, on March 18, 2014, the Inter-American Commission granted precautionary measures in favor of the alleged victim and requested that the State immediately suspend the effects of the decisions of the Disciplinary Chamber of December 9, 2013, and January 13, 2014.[71] Consequently, between March 21 and 30, 2014, a group of voters who elected Mr. Petro filed several petitions for relief seeking compliance with the precautionary measure.

58. On March 20, 2014, through Decree 570, the President of the Republic decreed the dismissal of Mr. Petro's dismissal and designated Mr. RPR as Mayor of Bogota "while a shortlist was prepared for a new appointment under the terms of Law 1475 of 2011."[72] On April 21,

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[67] Decree 570 of 2014 stated: "Article 1. *Removal.* Mr. Gustavo Francisco Petro Urrego, with citizenship card number 208079, is hereby dismissed from the office of Mayor of Bogota D.C., in compliance with the single instance ruling of December 9, 2013, case number IUS 2012447489, IUC D 2013-661-576188, confirmed by the decision of January 13, 2014, pursuant to the reasons set forth in this decree." Presidential Decree No. 570 of March 20, 2014, "through which a decision of the Disciplinary Chamber of the Attorney General's Office ordering the removal of the Mayor of Bogota D.C. is executed." Official Gazette No. 49.098 of 20 March 20, 2014.

[68] *Cf.* Judgment No. SU355-15 of the Constitutional Court of Colombia of June 11, 2015.

[69] *Cf.* Presidential Decree 570 of March 20, 2014, "hereby enforcing a decision of the Disciplinary Chamber of the Attorney General's Office that ordered the dismissal of the Mayor of Bogota D.C." Official Gazette No. 49.098 of March 20, 2014.

[70] *Cf.* Judgment No. T-976/14 of the Constitutional Court of Colombia of December 18, 2014.

[71] *Cf.* Order for precautionary measures No. 5/2014 of the Inter-American Commission of Human Rights of March 18, 2014 (evidence file, folios 3180 to 3190).

[72] Presidential Decree 761 of April 21, 2014, Official Gazette No. 49.129 of April 21, 2014 (evidence file, folios 3226 and 3227), and Presidential Decree No. 570 of March 20, 2014, "enforcing a decision of the Disciplinary Chamber of the Attorney General's Office for the dismissal of the Mayor of Bogota D.C." Official Gazette No. 49.098 of March 20, 2014.

2014, the President ordered that Mrs. MMMC be entrusted with the duties of Mayor of Bogota, through Decree 761.[73]

B.4.4. Petition filed before the Civil Chamber of Land Restitution and the reinstatement of Mr. Petro by presidential decree

59. On April 21, 2014, the Civil Chamber of Land Restitution of the Superior Court of the Judicial District of Bogota upheld the petition for relief filed by the citizen OAV and ordered the President of the Republic, within 48 hours of notification of the Judgment, to "suspend Decree 570 of March 20, 2014, and to take the necessary decisions to comply with the precautionary measure […] ordered by the [Commission] in Order 05 of March 18, 2014."[74] On April 23, 2014, the President of the Republic issued Decree 797 annulling decrees 570 and 761, in "compliance with the ruling of April 21, 2014."[75] Accordingly, Mr. Petro was reinstated as Mayor of Bogota.

60. Regarding the appeal filed by the President of the Republic and the Attorney General's Office, on June 6, 2104, the Civil Cassation Chamber of the Supreme Court of Justice overturned the judgment of April 21, 2104, for lack of active legal standing.[76] On December 18, 2014, the Seventh Review Chamber of the Constitutional Court upheld the judgment of June 6, 2014, and other rulings[77] that had declared inadmissible various petitions for relief by citizens seeking compliance with the precautionary measures. The court considered that "there is no legal standing in the case, since the purpose and subject of the protection of the Commission's order for precautionary measures, of March 18, 2014, specifically relates to the exercise of the political rights of the Mayor of Bogota, Mr. Gustavo Francisco Petro Urrego, and in that regard, the citizens who acting in this matter […] are not entitled to do so."[78]

B.5. Application for annulment and restoration of rights

61. On March 31, 2014, Mr. Petro filed an application for annulment and restoration of rights before the Administrative Court of Cundinamarca, against the decisions issued on December 9, 2013, and January 13, 2014, by the Disciplinary Chamber. He requested urgent precautionary measures in order to be reinstated in his post and to have his political rights restored. That same day, the court referred the petition to the Contentious-Administrative Chamber of the Council of State for reasons of jurisdiction. On April 10, 2014, the Chamber admitted the petition, and on May 13, 2014, it decreed the provisional suspension "of the legal effects" of the decisions of December 9, 2013, and January 13, 2014, and notified the Records

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[73] *Cf.* Presidential Decree 761 of April 21, 2014, D.C." Official Gazette No. 49.129 of April 21, 2014 (evidence file, folios 3226 and 3227).

[74] Decision of the Civil Chamber of Land Restitution of the Superior Court of the Bogota Judicial District, April 21, 2014 (evidence file, folios 6864 to 6891).

[75] Presidential Decree 797 of April 23, 2014, "which ceases the effects of decrees in compliance with a judgment" (evidence file, folios 3228 to 3230).

[76] *Cf.* Judgment No. T-976/14 of the Constitutional Court of Colombia of December 18, 2014.

[77] Includes the judgment of the Disciplinary Chamber of the Sectional Council of the Judiciary of Bogota of April 30, 2014, and three decisions by Subsection A of the Second Section of the Administrative Court of Cundinamarca on April 9 and 11, 2014, respectively, that have also rejected petitions for relief.

[78] *Cf.* Judgment No. T-976/14 of the Constitutional Court of Colombia of December 18, 2014.

Division of the Attorney General's Office to take "note of the suspension of the sanction of disqualification against Mr. [Petro]."[79] The Attorney General's Office then filed an appeal against that decision, which was rejected by the Plenary of the Contentious-Administrative Chamber of the Council of State (hereinafter, "Council of State") on March 17, 2015, confirming the decision of May 13, 2014.[80]

62. On November 15, 2017, the Council of State endorsed the petition and declared the annulment of the decisions of the Disciplinary Chamber of December 9, 2013, and January 13, 2014, subsequently ordering the Attorney General's Office to pay Mr. Petro "the salaries and benefits which he did not receive during the time he was effectively separated from his position." The Council of State held that the contested decisions were flawed due to the "(i) lack of jurisdiction of the body that imposed the sanction, in violation of an essential guarantee of the right to due process of Mr. [Petro] and (ii) the rulings violated the principle that the criminality of the offenses is strictly related to the principle of the legality of the sanction."[81] As to the petition for reinstatement to the post of Mayor of Bogota, the Council of State argued that this "lacks purpose" because Mr. Petro has already been reinstated as a result of the decision of May 13, 2014. In the operative paragraphs of the judgment, the Council of State indicated the following:

> […] URGES the National Government, the Congress of the Republic and the Attorney General to implement, within a period no longer than two (2) years from notification of this judgment, the necessary reforms aimed at giving full effect under domestic law, to the regulatory precepts contained in Article 23 of the American Convention on Human Rights, based on the foregoing considerations and the *ratio decidendi* of this judgment."[82]

C. Disciplinary proceeding before the Attorney General for modification of the Territorial Planning Guidelines

63. On August 26, 2013, in his capacity as Mayor of Bogota, Mr. Petro issued Decree 364 for the "exceptional modification of the regulations of the Territorial Planning Guidelines for Bogota D.C." owing to "changes in the projections and composition of the population in Bogota" and the "need to develop projects that impact the mobility of the city," in order to "integrate risk management and climate change adaptation with spatial planning" and "harmonize rural land planning with national standards."[83]

64. In response to a petition for annulment filed by citizen JJM, on March 27, 2014, the Council of State decreed "the provisional suspension of District Decree 364 of August 26,

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[79] Ruling of the Plenary Contentious-Administrative Chamber of the Council of State of May 13, 2014 (evidence file, folios 4959 to 4988).

[80] *Cf.* Ruling of the Plenary Contentious-Administrative Chamber of the Council of State of November 15, 2017 (evidence file, folios 4990 to 5085).

[81] Ruling of the Plenary Contentious-Administrative Chamber of the Council of State of November 15, 2017 (evidence file, folios 4990 to 5085).

[82] Ruling of the Plenary Contentious-Administrative Chamber of the Council of State of November 15, 2017 (evidence file, folios 4990 to 5085).

[83] District Decree No. 364 of August 26, 2013, "which exceptionally modifies the urban planning regulations of the Territorial Planning Guidelines for Bogota D.C., adopted through District Decree 619 of 2000, revised by District Decree 469 of 2003 and enacted by District Decree 190 of 2004".

2013."[84] Based on a complaint filed on September 26, 2013, the Attorney General ordered "the opening of a disciplinary investigation" against Mr. Petro, on May 16, 2014.[85] On August 19, 2014, "he ordered the closure of the disciplinary investigation, pointing out that the remedy of reinstatement was granted." This decision was notified on August 21, 2014. On September 2, 2014, "the closure order was challenged by the representative of the disciplined party," an appeal that was resolved on September 26 of that same year.

65. On August 10, 2015, the Attorney General prepared a statement of charges against Mr. Petro for failing to comply with "the constitutional, legal and regulatory norms requiring him to execute the decision of the District Council regarding approval of the draft agreements presented for consideration of the collegiate body," as a result of his adoption "on an exceptional basis" of Decree 364 of August 26, 2013. Accordingly, Mr. Petro was accused of violating Article 34, paragraph 1, of the Single Disciplinary Code. On June 27, 2016, the Attorney General sanctioned Mr. Petro "in his capacity as Mayor of Bogota, for this serious and willful offense, with TWELVE MONTHS OF SUSPENSION AND SPECIAL DISQUALIFICATION for the same period."[86]

66. This ruling was challenged by Mr. Petro's defense lawyers, as a result of which the Attorney General declared the annulment of the proceeding based on the statement of charges, and the disciplinary ruling was revoked. The term for reassessing the charges expired, and therefore on September 16, 2019, the Attorney General's Office ordered the closure of the proceeding.[87]

D. Fine imposed by the Superintendence of Industry and Commerce

67. On April 4, 2013, through Resolution No. 14902, the SIC's Delegation for the Protection of Competition (hereinafter "SIC Delegation") opened an investigation and prepared a statement of objections based on complaints by private operators of the sanitation sector concerning alleged practices that restricted free competition. The investigation sought to determine whether the UAESP, the EAAB and Aguas de Bogota had breached Article 1 of Law 155 of 1959 and paragraph 10 of Article 47 of the Decree 2153 of 1992."[88] In addition to these institutions, the investigation included Mr. Petro and several UAESP officials in their personal capacity.

68. Through Resolution 43307 of July 26, 2013, the SIC Delegation incorporated the LIME company into the proceeding as a third party. On December 27, 2013, through Resolution No. 6083, the Minister of Commerce, Industry and Tourism accepted "the impediment" expressed by the Superintendent of Industry and Commerce to hear all matters related to the investigation. On January 16, 2014, through Decree 056, the Superintendent of Companies, Mr. LVC, was appointed as *Ad-hoc* Superintendent of Industry and Commerce to "hear and

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[84] Ruling of the Contentious-Administrative Chamber of the Council of State of March 27, 2014 (evidence file, folios 6893 to 6933).

[85] *Cf.* Ruling of the Attorney General of June 27, 2016 (evidence file, folios 837 to 921).

[86] Ruling of the Attorney General of June 27, 2016 (evidence file, folios 837 to 921).

[87] Graphs on the fiscal and disciplinary proceedings against Mr. Petro (evidence file, folios 7807 to 7812).

[88] Ruling No. 53788 of the Superintendence of Industry and Commerce of September 3, 2014 (evidence file, folios 974 to 1078).

decide on any matter pertaining to the investigation."[89] On February 7, 2014, Mr. Petro filed a request for annulment, which he expanded in a communication dated February 14.

69. In its report on the investigation, the SIC Delegation recommended "sanctioning the UASEP, the [EAAB] and Aguas de Bogota, considering that their conduct amounted to a violation of Article 1 of Law 155 of 1959," and recommending that the case be closed in relation to the violation of Article 47, paragraph 10, of Decree 2153 of 1992. The SIC Delegation also argued that the defendants "devised and implemented a plan to provide public sanitation services in Bogota, according to which a district company […] would take over 100% of the sanitation services in the city […], preventing any other service provider from entering or remaining in the market without the UAESP's authorization." The SIC Delegation added that "unjustified conditions" were imposed on private operators who had previously provided the service, such as the requirement to enter into a contract with the UAESP.

70. On April 7, 2014, the Advisory Council on Competition of the Superintendent of Industry and Commerce recommended sanctioning those investigated for the violation of Law 155 of 1959. On April 21, 2014, the *Ad-hoc* Superintendent of Industry and Commerce issued Resolution No. 25036 establishing that the UAESP, EAAB and Aguas de Bogota were in breach of Article 1 of Law 155 of 1959 and that the individuals involved were in breach of Article 4, paragraph 16, of Decree 2153 of 1992, and imposing the following fines: a) UAESP ($17,864,000,000); b) EAAB ($6,600,000,000); c) Aguas de Bogotá ($2,217,500,000); d) Mr. Petro ($410,256,000); and e) the others investigated (fines ranging from $40,040,000 to $410,256,000). The aforementioned resolution also ordered the UAESP, EAAB and Aguas de Bogota to "adapt the current waste collection plan" within six months, and to "refrain from […] any action seeking to block or limit the participation of competitors in the market for sanitation services in the city of Bogota."[90]

71. On May 9, 2014, Mr. Petro filed a petition for reconsideration of Resolution 25036. On June 16, 2014, Mr. Petro filed a motion of recusal of the *Ad-hoc* Superintendent of Industry and Commerce*,* which was rejected through resolutions Nos. 32186 and 32896. Mr. Petro then requested the annulment of those decisions and also filed an appeal for direct reversal, which were denied by the *Ad-hoc* Superintendent of Industry and Commerce*.* On September 3, 2014, the SIC issued Resolution No. 53788, in which it decided on the application for reconsideration, confirming "all parts of Resolution 25036 of 2014," except for the fact that it reduced the amounts of the fine imposed on two of the persons under investigation. In its decision, the SIC stated the following:

> "[...] [T]he conduct displayed by those investigated of not respecting the principle of free competition in the market for the provision of sanitation services in the city of Bogota, led to several companies losing their status as providers and becoming operators, as the only alternative to not being totally excluded from the contract (at least as long as UAESP wishes to maintain their contract."
>
> "[...] The Superintendence does not accept the arguments presented by the appellants regarding the inefficiency of implementing a plan for free competition […] as grounds for exonerating those investigated […] from all responsibility. It should

[89] Ruling No. 53788 of the Superintendence of Industry and Commerce of September 3, 2014 (evidence file, folios 974 to 1078).

[90] Ruling No. 53788 of the Superintendence of Industry and Commerce of September 3, 2014 (evidence file, folios 974 to 1078).

> be noted that it was the Constituent Assembly and the legislators who chose the models for the provision of public services in Colombia; therefore, it is not possible for a citizen or a company (public or private) to disregard these models with the argument that they are not considered efficient. If those investigated consider that the model chosen by the Constituent Assembly and the legislators is inadequate or insufficient, they must not disregard it or employ mechanisms of "self-protection" to discard it, but rather promote a legislative debate leading to a change of the model chosen by the Constitution and the law, in accordance with the democratic mechanisms provided for in the Colombian legal system."

On May 3, 2019, Mr. Petro filed a petition before the Administrative Court of Cundinamarca for the annulment and restoration of rights against the fine imposed by the SIC, the merits of which are pending resolution.[91]

E. Proceedings before the Comptroller for modification of transport service fares

72. On July 23, 2012, Mr. Petro issued Decree 356 in his capacity as Mayor of Bogota, establishing $1,700.00 Colombian pesos as "the maximum fare of the service of mass urban transportation of the mainline component" of the Integrated Public Transportation System (SITP) and $1,400.00 Colombian pesos as the fare for the "zonal component;" in addition, discounts were established for persons over the age of 62.[92]

73. On August 27, 2012, the Comptroller's Office of Bogota D.C. ordered a preliminary inquiry against Mr. Petro for "the reduction of public transportation fares on the *Transmilenio* System, ordered through Decree 356,"[93] amounting to $64,063,000,000.00 Colombian pesos. On December 26, 2012, a writ was issued to open the fiscal responsibility proceedings. On July 22, 2013, the investigation was extended to include the "reduction of the SITP's revenues" from December 1, 2012, to April 28, 2013, amounting to $46,743,160,150.00 Colombian pesos. On February 25, 2014, the investigation included a further period, from April 29 to October 30, 2013, estimated at $76,732,822,520.00 Colombian pesos.

74. On June 27, 2016, the Office of Fiscal Responsibility and Coactive Jurisdiction of the Comptroller's Office of Bogota issued Order No. 1, declaring the "fiscal responsibility"[94] of Mr. Petro, of other individuals and of some insurance companies, as joint guarantors of the sum of $217,204,847,989 Colombian pesos,[95] based on the "patrimonial losses" caused by the "generalized reduction of fares on the urban mass transportation service for passengers of the

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[91] Graphs of the fiscal and disciplinary proceedings against Mr. Petro (evidence file, folios 7807 to 7812).

[92] *Cf.* Decree No. 356 of July 23, 2012, "establishing the fare for the urban mass transport service for passengers of the *Transmilenio* System and the zonal component of the Integrated Public Transport System "SITP" in the Capital District."

[93] Judgment No. 1 of the Directorate of Fiscal Responsibility and Coactive Jurisdiction of the Comptroller's Office of Bogota D.C. of June 27, 2016 (evidence file, folios 5601 to 5956).

[94] Resolution No. 4501 of the Comptroller's Office of Bogota D.C. of November 29, 2016 (evidence file, folios 923 to 972).

[95] *Cf.* Order No. 1 of the Directorate of Fiscal Responsibility and Coactive Jurisdiction of the Comptroller's Office of Bogota D.C. of June 27, 2016 (evidence file, folios 5601 to 5956).

Transmilenio System and the zonal component of the Integrated System of Public Transportation (SITP)."[96]

75. On July 15 and 18, 2016, Mr. Petro and the other defendants filed petitions for the annulment of Order 01, all of which were rejected by the Directorate of Fiscal Responsibility on July 25, 2016.[97] Two days later, on July 27, Mr. Petro filed another application for annulment that was also rejected on August 3, 2016. In response to the application for reconsideration, on October 27, 2016, the Directorate of Fiscal Responsibility confirmed Order No. 1.[98] On October 31, 2016, several appeals were referred to the Comptroller. On November 29, 2016, the Comptroller of Bogota issued Resolution No. 4501 in which he rejected the appeals and confirmed Order No. 1.[99] The Comptroller also stated the following:

> "[...] the proceedings of fiscal responsibility against Mr. Petro Urrego and others, were not undertaken for the simple act of issuing a decree, (….) but rather for the consequences arising from the economic and legal activities, *inter alia*, which caused (patrimonial) losses during his administration.
>
> Indeed, [...] the decision taken through Decree 356 of July 23, 2012, signed by Gustavo Petro Urrego, in his capacity as Mayor of Bogota D.C. […] did imply patrimonial losses for the Capital District, due to the generalized reduction in fares for mass urban transport of passengers of the *Transmilenio* System and the zonal component of the Integrated Public Transport System […], which did not comply with the financial sustainability framework of the system […].
>
> (...) [i]t is fully demonstrated that the generalized reduction in the fares implied patrimonial losses amounting to $217,204,847,989 owing to the transfer of funds from the Capital District […] to cover the difference in rates that resulted from the aforementioned general reduction in fares."[100]

76. On March 31, 2017, Mr. Petro filed an application for annulment and restoration of rights against the Comptroller's Office.[101] In that context, he requested a provisional suspension of the rulings of the Directorate of Fiscal Responsibility of June 27 and October 27, 2016, and the ruling of the Comptroller of November 29, 2016. This request was denied on July 21, 2017. Mr. Petro then appealed that decision and, on November 3, 2017, the Administrative Court of Cundinamarca overturned it and declared the provisional stay of these decisions. This judgment was then overturned by the Council of State on November 19, 2018. However, in a judgment delivered on January 31, 2019, the Administrative Court of

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[96] Ruling No. 4501 of the Comptroller's Office of Bogota D.C. of November 29, 2016 (evidence file, folios 923 to 972).

[97] Order No. 1 of the Directorate of Fiscal Responsibility and Coactive Jurisdiction of the Comptroller's Office of Bogota D.C. of July 25, 2016 (evidence file, folios 5957 to 6010).

[98] *Cf.* Order of the Directorate of Fiscal Responsibility and Coactive Jurisdiction of the Comptroller's Office of Bogota D.C. of October 27, 2016 (evidence file, folios 6011 to 6123).

[99] *Cf.* Ruling No. 4501 of the Comptroller's Office of Bogota D.C. of November 29, 2016 (evidence file, folios 923 to 972).

[100] Ruling No. 4501 of the Comptroller's Office of Bogota D.C. of November 29, 2016 (evidence file, folios 923 to 972).

[101] *Cf.* Ruling of the Administrative Court of Cundinamarca, First Section, Subsection B of November 3, 2017 (evidence file, folios 6349 to 6427).

Cundinamarca once again granted the precautionary measures in favor of Mr. Petro,[102] so that the effects of the ruling on fiscal responsibility are currently suspended and a decision on the merits of the application for annulment and restoration of rights is still pending.

F. Applicable regulatory framework

77. With regard to the legal framework relevant to this case, the Court confirms the following facts: a) that Article 277(6) of the Colombian Constitution establishes that the Attorney General shall "[] oversee at the highest level the official conduct of those who hold public office, including those popularly elected," and that Article 278 states that he/she may "exercise the following functions directly: [...] discharge from office, following a hearing and on the basis of justified reasons, any public official found guilty of any of the following offenses: violating the Constitution or the law in an obvious manner; deriving obvious and profitable material advantage from the exercise of his/her duties or functions [...];"[103] b) that the disciplinary functions of the Attorney General are regulated in the Single Disciplinary Code, Article 44 of which provides for sanctions of dismissal and disqualification, and Article 45 of which provides for the implications of those sanctions;[104] c) that Article 38 of the Code states that being declared "fiscally responsible" constitutes disqualification to hold public office;[105] d)

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[102] *Cf.* Ruling of the Administrative Court of Cundinamarca, First Section, Subsection B of January 31, 2019.

[103] Article 277 expressly establishes the following: "The Attorney General of the Nation, by himself/herself or through his/her delegates and agents, shall have the following functions: [...] 6. To oversee at the highest level the official conduct of those who hold public office, including those popularly elected; exercise on a preferential basis the disciplinary authority; initiate the appropriate investigations and impose the appropriate sanctions in accordance with the relevant statute […]." Moreover, Article 278 states the following: "The Attorney General shall exercise the following functions directly: 1. Discharge from office, following a hearing and on the basis of justified reasons, any public officials who are guilty of any of the following deficiencies: violating the Constitution or the laws in an obvious manner; deriving obvious and profitable material advantage from the exercise of their duties or functions; impeding in a serious manner investigations carried out by the Office of the Public Prosecutor or by an administrative or judicial authority; performing with obvious carelessness the investigation and sanctioning of the disciplinary deficiencies of employees under their authority or in the denunciation of punishable occurrences that they have cognizance of by virtue of exercising their office […]."Constitution of Colombia. Constitutional Gazette No. 114 of July 4, 1991.

[104] Article 44 of the Single Disciplinary Code establishes the following sanctions: a) dismissal and general disqualification for "very serious offenses committed with gross negligence;" b) suspension from (public) office and "disqualification for serious offenses;" c) suspension for "serious offenses committed with gross negligence;" d) fine for the "minor offenses of willful misconduct;" and e) written admonishment for "minor offenses committed by negligence." [104] Likewise, this article defines "extremely gross" negligence as a disciplinary offense resulting from "supine ignorance, basic lack of attention or manifest violation of binding rules;" "gross negligence" is defined as a disciplinary offense committed through "failure to observe the necessary care commonly observed by any ordinary person in his acts." For its part, Article 45 of this Code defines the types of sanction: "[...] 1. The dismissal and general disqualification implies: a) the termination of the relation of the public servant with the administration, whether or not it is of free appointment and removal, of career or election, or b) the removal from office, in the cases established in Articles 110 and 278, subsection 1, of the National Constitution, or c) the termination of the employment contract, and d) in all the foregoing cases, the impossibility to exercise the public function in any position or function, for the term set forth in the ruling, and the exclusion of the job scale or career. 2. The suspension means the separation from the exercise of the position in the performance of which the disciplinary fault was and the disqualification especial, the impossibility of exercising the public function, in any position other than that one, for the term determined in the ruling. 3. The fine is a monetary sanction. 4. The written admonishment implies a formal, written reprimand that must be entered in the employee's record." Law 734 of 2002 which establishes the "Single Disciplinary Code." Official Gazette No. 44.708 of February 13, 2002.

[105] In this regard, Article 60 of Law 610 of 2000 establishes that the "Office of the Comptroller General shall publish a quarterly bulletin naming the individuals or legal entities that have been issued with final and enforceable rulings on fiscal responsibility and have not satisfied the obligation contained therein […]." Law 610 of 2000, which

that on October 24, 2018, the Constitutional Court issued Judgment C-101/18, in which it ruled on the fiscal responsibility proceedings within the Comptroller's jurisdiction and on the scope of Article 23(2) of the American Convention;[106] and e) that Law 1864 of 2017 amended the Criminal Code to include offenses related to the mechanisms of democratic participation, criminalizing the "unlawful election of candidates."[107] Where appropriate, the Court will refer to aspects relating to that legislation.

VII
MERITS

78. The Court notes that the main argument in this case is whether the dismissal and disqualification ordered by the Attorney General's Office in the first disciplinary proceedings, and the procedures and regulatory framework underpinning those actions, as well as the remedies to contest them, violated Mr. Petro's political rights, his judicial guarantees, and his right to judicial protection, in relation to the principles of equality before the law and non-discrimination, and whether the State was in breach of its duty to adopt provisions of domestic law. Likewise, the Court must determine whether the effects of the sanctions imposed on Mr. Petro violated his right to personal integrity. The Court's analysis will also take into account substantive issues raised by the Commission and the representatives related to the proceedings before the SIC, the proceedings before the Comptroller's Office for reducing the fares of the *Transmilenio* public transport service, and proceedings before the Attorney General's Office for modifying the Territorial Planning Guidelines. Accordingly, the Court will examine the merits of this case in two chapters. In the first chapter, the Court will assess the following issues in relation to the alleged victim: a) the alleged violation of political rights, and b) the alleged violation of judicial guarantees and judicial protection. In the second chapter it will analyze: c) the alleged violation of the right to personal integrity.

"establishes the procedure for the prosecution of fiscal responsibility in the Comptroller's jurisdiction." Official Gazette No. 44.133 of August 18, 2010.

106 *Cf.* Judgment No. C-101/18 of the Constitutional Court of Colombia of October 24, 2018.

107 Article 4 of the aforementioned law provides for the amendment of Article 389 of the Criminal Code in order to establish the criminal offense of unlawful choice of candidates, which consists of the following: "[...] Article 389A. Illegal election of candidates. Anyone who is elected to a position by popular vote and is disqualified from holding office by a judicial, disciplinary or prosecutorial ruling shall be liable to a term of imprisonment of from four (4) to nine (9) years and a fine of two hundred (200) to eight hundred (800) minimum legal monthly salaries." Law 1864 of 2017, which "amends Law 599 of 2000 and includes additional provisions to protect the mechanisms of democratic participation." Official Gazette No. 50.328 of August 17, 2017.

VII-1
POLITICAL RIGHTS,[108] RIGHT TO JUDICIAL GUARANTEES [109] AND RIGHT TO JUDICIAL PROTECTION[110] IN RELATION TO THE RIGHT TO EQUALITY BEFORE THE LAW,[111] NON-DISCRIMINATION AND THE DUTY TO ADOPT PROVISIONS OF DOMESTIC LAW[112]

A. Arguments of the Commission and the parties

79. The ***Commission*** considered that the sanction of dismissal and disqualification of an elected official for mere administrative offenses that are not of a criminal nature does not satisfy the standard of strict proportionality, given the degree to which it affects political rights and also impairs the free expression of the will of electors through universal suffrage. It also considered that Article 23(2) is based on a clear rule according to which the sanction of disqualification from holding a position of popular election may only be imposed for a criminal conviction, and not for an administrative matter. In this case, the Commission observed that the sanctions imposed on Mr. Petro by the Attorney General's Office were not imposed for a conviction by a competent criminal court, as required by the standards of the Convention. It further considered that the Attorney General's Office is not the appropriate authority to impose such severe sanctions, owing to its administrative nature, and that the disciplinary offenses committed by Mr. Petro did not constitute a criminal offense.

80. The Commission argued that the guarantees established in Article 8 of the Convention are not limited to criminal proceedings, but apply to other types of proceedings. Accordingly, it held that the guarantees of independence, competence and impartiality must be satisfied by the authorities responsible for disciplinary proceedings, since this constitutes a materially jurisdictional function. In this case, the Commission considered the following: a) that the disciplinary process that imposed the penalties of disqualification and dismissal was conducted in such a way that the same body issued both the statement of objections and the sanction, which proved problematic in relation to the guarantee of impartiality and the presumption of innocence; b) the fact that the same authority that ruled on the decision to impose sanctions also decided on the appeal for reconsideration did not satisfy the minimum requirements set forth by Article 8(2)(h) of the Convention; c) the fact that the appeal for annulment and restoration of rights against the administrative sanction was not resolved for more than three years and six months, and that it had not been resolved by the time the Merits Report was issued, violated the guarantee of reasonable time; and d) finally, the Commission argued that, since Mr. Petro was unable to present evidence because the sanction prevented him from pursuing his claim of discrimination through administrative means, the legislation should allow a person to provide evidence on this matter.

81. In relation to Article 2 of the Convention, the Commission considered that the violation of the duty to adopt provisions of domestic law applies to this case because of the provisions

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108 Article 23 of the American Convention.

109 Article 8 of the American Convention.

110 Article 25 of the American Convention.

111 Article 24 of the American Convention.

112 Article 2 of the American Convention.

of the Constitution and the Single Disciplinary Code that authorize the Attorney General's Office to dismiss and disqualify elected officials, and the recent criminalization being elected to public office while disqualified through a disciplinary or fiscal ruling. In this regard, the Commission considered that the "recent promulgation of Article 5 of Law 1864 is extremely troubling," because anyone elected to a position of popular election while disqualified by a "judicial, disciplinary or fiscal" ruling may be punished with imprisonment. Lastly, it recalled that although the Constitutional Court has already established that the Attorney General's power to disqualify a person as a disciplinary measure does not violate the Convention, this interpretation is incompatible with the standards set by the Court and the Commission.

82. Consequently, the Commission concluded that the State is responsible for the violation of Articles 23(1) and 23(2), 8(1), 8(2), 8(2)(h) and 25(1) of the Convention in relation to Articles 24, 1(1) and 2 thereof, to the detriment of Mr. Petro.

83. The ***representatives*** argued that, under the American Convention, political rights are protected in all circumstances, and may only be suspended or revoked pursuant to the provisions of Article 23(2) of the Convention. In this regard, they emphasized that in order to restrict political rights thorough a sanction, the following requirements must be met: a) a conviction must exist; b) the conviction must be imposed by a competent judge; and c) the conviction must result from criminal proceedings. The representatives affirmed that under the American Convention, political rights enjoy enhanced protection, since they cannot be suspended even in states of emergency and, in addition, are essential rights for the consolidation of a democratic system. In this case, the representatives alleged that the disciplinary process regulated by the Single Disciplinary Code, and therefore the sanction imposed on Mr. Petro by the Attorney General's Office, violated his political rights because it was imposed by an administrative authority and his conduct did not constitute a criminal offense.

84. Furthermore, the representatives alleged that the State is responsible for the violation of Article 23 of the Convention in relation to Article 2 of the same instrument, because the country's legal system violated the American Convention and the judicial interpretation thereof was contrary to the conventional system. Specifically, they indicated that the Single Disciplinary Code, Law 610 of 2000 regulating the processes of fiscal responsibility, the Criminal Code in relation to the protection of mechanisms of democratic participation (Law 1864), and the interpretation of the disciplinary powers made by the Constitutional Court, are contrary to the American Convention and the duty to carry out conventionality control, in accordance with the interpretations of the Inter-American Court. The representatives argued that the sanctions imposed on Mr. Petro pursued a discriminatory purpose because of his political ideology, since these actions sought to restrict his participation in the 2018 presidential elections. They concluded that the discriminatory actions against Mr. Petro constituted a misuse of power, lacked the elements of appropriateness, necessity and proportionality, and noted that such discriminatory acts continue.

85. In relation to judicial guarantees and judicial protection, the representatives argued that the violations of Mr. Petro's political rights are based on the following circumstances: a) the absence of guarantees of impartiality and the principle of presumption of innocence, since the constitutional system allows proceedings to take place in a sole instance, whereby the prosecutor investigates and issues the penalty; b) in the absence of an opportunity to provide evidence, Mr. Petro's right to defense was infringed, as he did not have the opportunity to demonstrate the discriminatory motivation of the proceedings; c) the right to an adequate

and effective remedy was infringed because the appeal for reconsideration did not satisfy the requirements of Article 25 or the parameters of the Court's case law; and d) the guarantee of a reasonable time was breached since the application for annulment and restoration of rights, filed on March 31, 2014, was not settled by the date on which the Merits Report was issued.

86. Therefore, the representatives alleged that the State is responsible for the violation of Articles 23(1), 23(2), 8(1), 8(2) and 25 in relation to Articles 24, 1(1) and 2 of the Convention, to the detriment of Mr. Petro.

87. The ***State*** argued that there is no international standard that indicates that the only legitimate mechanism for restricting political rights as a consequence of the State's exercise of its punitive power is a criminal proceeding, since a systematic, teleological and evolutionary interpretation of Article 23(2) of the Convention allows for the legitimate restriction of political rights by authorities other than criminal judges, provided that the guarantees of due process are respected. Likewise, the State argued that limiting the exercise of control over public service promotes the criminalization of conduct that does not necessarily constitute a crime, and hinders the control of public service, transparency and the fight against corruption. It argued that these duties have been formulated in a universal convention and a regional treaty within a framework in which the States are required to adopt standards and implement adequate and effective mechanisms to prevent, identify and sanction acts of corruption. Moreover, the State argued that the standard established in the case of *Lopez Mendoza v. Venezuela* is not applicable to the present case because in that case the body that sanctioned Mr. Lopez was not jurisdictional, independent and impartial, and also in the case of Mr. Petro, the sanction that was imposed on him did not specify any restriction. On this basis, the State held that there are no factual or legal grounds to indicate that Mr. Petro's political rights were arbitrarily restricted as a result of the disciplinary and fiscal proceedings brought against him, and that the existing legal system in Colombia is adapted to the guarantees derived from the Convention.

88. With regard to judicial guarantees and judicial protection, the State argued that the fact that it is the same authority that formulates the statement of objections and subsequently prosecutes the defendant's liability is not contrary to the guarantees of impartiality and presumption of innocence, since the formulation of charges is a preliminary stage in the process in which no assessment or determination is made in relation to the liability of the person disciplined. It also stated that the Single Disciplinary Code is compatible with the right to defense and, in the case of the trial against Mr. Petro this right was respected because: a) he was notified of all charges against him and had ample opportunity to request and challenge evidence; b) the disciplinary judgment was properly reasoned; c) the Attorney General Office's decision to deny Mr. Petro's request to present evidence was not arbitrary, but based on the applicable law; and d) Mr. Petro had at his disposal an adequate and effective judicial remedy through which he could challenge the judgment, including the alleged discriminatory motivation. The State also argued that the duration of the process for annulment and restoration of rights was reasonable, given its complexity and importance. In addition, it held that the application for annulment and restoration of rights, and the petition for relief, are effective judicial remedies. It further argued that it was not demonstrated that the administrative sanctions ordered resulted from a misuse of power, since the representatives did not question the presumption of legality that covers them, nor was discrimination proven based on the alleged victim's political views.

89. Accordingly, the State concluded that it is not responsible for the violation of Articles 23(1), 23(2), 8(1), 8(2) and 25 of the American Convention, in relation to Articles 24, 1(1) and (2) of the same instrument.

B. Considerations of the Court

B.1. Political rights

B.1.1. The scope of Articles 23(1) and 23(2) of the American Convention

90. In relation to the protection of political rights, the Court has indicated that representative democracy is one of the pillars of the entire system of which the Convention forms part, and constitutes a principle reaffirmed by the American States in the Charter of the Organization of American States (hereinafter "OAS Charter").[113] In this regard, the OAS Charter, a constitutive treaty of the organization to which Colombia has been a party since July 12, 1951, establishes as one of its essential purposes "the promotion and consolidation of representative democracy, with due respect for the principle of nonintervention."[114]

91. In the inter-American System, the relationship between human rights, representative democracy and political rights in particular, was embodied in the Inter-American Democratic Charter, approved in the first plenary session of September 11, 2001, during the Twenty-eighth Special Session of the OAS General Assembly.[115] This instrument states in Articles 1, 2 and 3 that:

> Article 1
> The peoples of the Americas have the right to democracy and their governments have the obligation to promote and defend it. Democracy is essential for the social, political and economic development of the peoples of the Americas.
>
> Article 2
> The effective exercise of representative democracy is the basis of law and the constitutional systems of the Member States of the Organization of American States. Representative democracy is strengthened and deepened by the permanent participation of citizens within a framework of legality in accordance with the respective constitutional order.
>
> Article 3
> The essential elements of representative democracy are, *inter alia*, respect for human rights and fundamental freedoms, access to and exercise of power in accordance with the rule of law of the State, the holding of regular, free and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.

92. Accordingly, the Inter-American Democratic Charter refers to the peoples' right to democracy, and also stresses the importance, under representative democracy, of the

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113 *Cf. The expression "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 34, and *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of October 5, 2015. Series C No. 302, para. 149.

114 Article 2(b) of the Charter of the Organization of American States.

115 *Cf. Case of Castañeda Gutman v. Mexico, supra,* para. 142, and *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of October 5, 2015. Series C No. 302. para. 150.

permanent participation of citizens within the framework of the legal and constitutional order in force. Furthermore, it indicates that one of the constituent elements of representative democracy is "the access to and the exercise of power in accordance with the rule of law."[116] For its part, Article 23 of the American Convention recognizes the rights of citizens, which have an individual and collective dimension, protecting both those who participate as candidates and their electors. The first paragraph of this Article recognizes the rights of all citizens to: a) take part in the conduct of public affairs, directly or through freely chosen representatives; b) to vote and to be elected in genuine and periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c) to have access, under general conditions of equality, to the public service of their country.[117]

93. The effective exercise of political rights constitutes an end in itself and, also, an essential means that democratic societies have to ensure the other human rights established in the Convention.[118] Moreover, according to Article 23 of the Convention, the holders of these rights- in other words, the citizens- should enjoy not only these rights, but also "opportunities." The latter term entails the obligation to ensure, by taking positive measures, that anyone who is the formal holder of political rights has the real possibility of exercising them.[119] Political rights and their exercise promote the strengthening of democracy and political pluralism.[120] Consequently, the State must facilitate the ways and means to ensure that these political rights can be exercised effectively, respecting the principles of equality and non-discrimination.[121] Political participation may include diverse and wide-ranging activities that the population carries out individually or on an organized basis in order to intervene in the appointment of those who will govern a State or who will be in charge of managing public affairs, as well as to influence the development of State policies through direct participation mechanisms or, in general, to intervene in matters of public interest, such as the defense of democracy.[122]

94. At the same time, the Court recalls that political rights are not absolute rights, and their exercise may be subject to regulations or restrictions. However, the authority to regulate or restrict rights is not discretionary, but is limited by international law and is subject to compliance with certain requirements which, if not respected, render that restriction illegitimate and contrary to the American Convention. In this regard, paragraph 2 of Article 23 of the Convention establishes that the law may regulate the exercise of the rights and opportunities referred to in the first paragraph of this article "only" on the basis of "age, nationality, residence, language, education, civil and mental capacity, or sentencing by a

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116 *Cf. Case of López Lone et al. v. Honduras, supra*, para. 151.

117 *Cf. Case of Yatama v. Nicaragua. Preliminary objections, merits, reparations and costs.* Judgment of June 23, 2005. Series C No. 127, paras. 195 to 200, and *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 288, para. 221.

118 *Cf. Case of Castañeda Gutman v. Mexico, supra*, para. 143, and *Case of López Lone et al. v. Honduras, supra*, para. 162.

119 *Cf. Case of Yatama v. Nicaragua, supra*, para. 195, and *Case of López Lone et al. v. Honduras, supra*, para. 162.

120 *Cf. Case of Yatama v. Nicaragua, supra*, para. 192, and *Case of López Lone et al. v. Honduras, supra*, para. 162.

121 *Cf. Case of Yatama v. Nicaragua, supra*, para. 195, and *Case of López Lone et al. v. Honduras, supra*, para. 162.

122 *Cf. Case of Yatama v. Nicaragua, supra*, para. 195, and *Case of López Lone et al. v. Honduras, supra*, para. 162.

competent court in criminal proceedings."[123] It should also be recalled that, pursuant to Article 29 of the Convention, no provision of the Convention may be interpreted as restricting rights to a greater extent than is provided for in the Convention.

95. The Court points out that the Commission and the parties hold different interpretations regarding the scope of Article 23(2) of the Convention, in particular whether said article allows for restrictions on the political rights of democratically elected authorities as a result of sanctions imposed by authorities other than a "competent judge in criminal proceedings," and the conditions under which such restrictions may be valid. In this regard, the Court recalls that in the *Case López Mendoza v. Venezuela,* it ruled on the scope of the restrictions imposed by Article 23(2) on the disqualification of Mr. Leopoldo López Mendoza by the Comptroller General of the Republic, who banned him from participating in the 2008 regional elections in Venezuela. In that case, the Court stated the following:

> 107. Article 23(2) of the Convention sets out the various causes that can restrict the rights recognized in Article 23(1) and, where applicable, the requirements that must be met for such a restriction to be applied appropriately. In this case, which concerns a restriction imposed by way of a sanction, it should be about a "conviction by a competent court in criminal proceedings." None of these requirements have been fulfilled, given that the body that imposed the sanctions was not a "competent court," there was no "conviction," and the sanctions were not applied as a result of a "criminal proceeding," where the judicial guarantees enshrined in Article 8 of the American Convention should have been respected.[124]

96. The Court reiterates that Article 23(2) of the American Convention makes clear that this instrument does not allow any administrative body to apply a sanction involving a restriction (for example, imposing a sanction of disqualification or dismissal) on a person for social misconduct (in the performance of public service or outside of it) on the exercise of their political rights to elect and be elected. This may only occur through a judicial act (judgment) by a competent judge in the corresponding criminal proceedings. The Court considers that the literal interpretation of this provision makes it possible to reach this conclusion, since both dismissal and disqualification are restrictions on the political rights, not only of popularly elected public officials, but also of their constituents.[125]

97. This literal interpretation is corroborated by considering the object and purpose of the Convention to understand the scope of Article 23(2). The Court has stated that the object and purpose of the Convention is "the protection of the fundamental rights of human beings,"[126] as well as the consolidation and protection of a democratic system.[127] Article 23(2) of the

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123 *Cf. Case of Yatama v. Nicaragua, supra*, paras. 195 to 200, and *Case of Argüelles et al. v. Argentina, supra*, para. 222.

124 *Case of López Mendoza v. Venezuela. Merits, reparations and costs.* Judgment of September 1, 2011. Series C No. 233, para. 107.

125 *Cf.* Expert opinion of Roberto Gargarella rendered during the public hearing (merits file, folio 1553). The expert Gargarella stated that Article 23(2) is "very clear" in the sense that the words "conviction," by a "competent judge" in "criminal proceedings" mean exactly what we all understand by that, which is what the Court firmly determined in *López Mendoza* (an affirmation perfectly applicable to our case)."

126 *Cf. The Effect of Reservations on the Entry into Force of the American Convention on Human Rights.* Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 29, 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. 91.

127 *Cf. Case of Castañeda Gutman v. Mexico, supra*, paras. 141 and 142.

Convention corroborates that objective, since it allows for the possibility of establishing regulations that facilitate conditions for the enjoyment and exercise of political rights. Similarly, the American Declaration does so in Article XXVIII, by recognizing the possibility of establishing restrictions on the exercise of political rights when these are "necessary in a democratic society." For the same purposes, Article 32(2) of the Convention is relevant inasmuch as it provides that "[t]he rights of each person are limited by the rights of others, by the security of all and by the just demands of the general welfare, in a democratic society."

98. A teleological interpretation emphasizes that, in any restrictions on the rights recognized by the Convention, there must be strict respect for the guarantees established in the treaty. The Court considers that Article 23(2) of the Convention, in providing a list of possible reasons for restricting or regulating political rights, aims to identify clear criteria and specific systems under which such rights may be limited. This seeks to ensure that the restriction of political rights is not left to the discretion or will of the incumbent government, in order to allow the political opposition to exercise its rights without undue constraints. Thus, the Court considers that the sanctions of dismissal and disqualification of democratically elected public officials by a disciplinary administrative authority are restrictions on political rights not included among those permitted by the American Convention. They are incompatible not only with the literal meaning of Article 23(2) of the Convention, but also with the object and purpose of that instrument.

B.1.2. Analysis of the specific case

99. The Court recalls that on December 9, 2013, Mr. Petro was sanctioned by the Disciplinary Chamber of the Attorney General's Office with the penalty of dismissal and general disqualification for a period of 15 years, for having committed: a) a very serious offense under paragraph 31 of Article 48 of the Single Disciplinary Code, for "taking part in the pre-contractual stage or in a contractual activity to the detriment of public property, or disregarding the principles that regulate State procurement and the administrative function contemplated in the Constitution and in the law," by signing the inter-administrative Contracts 017 of October 11, 2012 and 809 of December 4, 2012;[128] b) a very serious offense under paragraph 60 of Article 48 of the same code, consisting of "exercising the authority conferred by his/her employment or functions for a purpose other than the one established in the granting provision," for issuing Decree 564 of December 10, 2012;[129] and c) a very serious

[128] The Disciplinary Chamber considered this "totally irregular because the companies contracted to provide public sanitation services did not have the experience or the technical and operational capacity to do this work." The signing of these contracts allegedly constituted a "breach of several principles of State procurement," namely: the principles of transparency, economy, objective selection and accountability. As to the matter of willful intent, Mr. Petro was described as giving specific instructions that District institutions would assume the provision of services, despite multiple warnings about the inability of these companies to perform such work. *Cf.* Ruling of the Disciplinary Chamber of the Attorney General's Office of December 9, 2013 (evidence file, folio 394).

[129] In the view of the Disciplinary Chamber, "the Mayor of Bogota used the norms of the legal system, which allowed him to issue administrative orders related to the public sanitation system, to violate the principle of free enterprise, a purpose entirely different from the constitutional and legal rules governing the matter." Also "the principles of public service, such as legality and impartiality were seriously affected by the adoption of a sanitation system for the city of Bogota outside the legal system." The Attorney General's Office indicated that Mr. Petro acted with intent because when he issued Decree 564 of 2012, he knew that imposing restrictions and limitations on the principle of free enterprise was contrary to the legal system, as evidenced by the multiple warnings he received directly and indirectly from some entities, including the Office of the District Attorney and the Office of the District Comptroller […]." *Cf.* Resolution of the Disciplinary Chamber of the Attorney General's Office of December 9, 2013 (evidence file, folio 399).

offense under paragraph 60 of Article 48 of the said Code, consisting of "proffering administrative acts outside the performance of duty, in violation of the constitutional or legal provisions concerning the protection […] of the environment," for adopting Decree 570 of December 14, 2012.[130] This ruling was upheld by the Disciplinary Chamber on January 13, 2014.

100. As noted previously, Article 23(2) of the Convention establishes requirements for the restriction of the political rights recognized in Article 23(1) arising from a sanction of dismissal and disqualification of a democratically elected public official. In the case of the sanction imposed on Mr. Petro, none of these requirements were met, since the body that imposed the sanction was not a "competent judge," there was no "conviction" and the sanctions were not applied as a result of a "criminal proceeding," in which the judicial guarantees set forth in Article 8 of the American Convention should have been respected. In addition, the sanction of dismissal - even if it occurred for a period of one month -constituted a restriction on the political rights of both the democratically elected official, who could not continue to hold office, and on the rights of those who elected him. This also affects the general dynamics of the democratic system by interfering with the will of the electors.

B.1.2.1. Application of the principle of complementarity

101. The State noted that the effects of the sanction of dismissal and disqualification were suspended pending a decision on the petition for annulment and restoration of rights by the Council of State, so that Mr. Petro could have completed his term as Mayor of Bogota. It also pointed out that the decision of the Council of State of November 15, 2017, which ruled on the merits of the case, dismissed the administrative sanctions ordered by the Attorney General's Office, so that Mr. Petro could exercise his political rights and enjoy all the guarantees to participate in subsequent elections. In this regard, it held that the order annulling the penalties of dismissal and disqualification resulted in the case having no purpose, since the actions challenged were dismissed. Consequently, it argued that it is not for this Court to rule on the State's responsibility for violations that occurred as a result of the sanctions of the Attorney General's Office and the provisions that were applied, since this would constitute a form of abstract control. The Court will analyze this argument in application of the principle of complementarity.

102. In view of the foregoing, the Court first reiterates that the inter-American system and the national systems both have jurisdiction to guarantee the rights and freedoms provided for in the Convention, and to investigate, prosecute and punish, as appropriate, any offenses committed. Secondly, if a particular case is not settled at the domestic level, the Convention provides for an international level, the principal organs of which are the Commission and the Court. In this regard, the Court has indicated that when a matter has been settled in the domestic courts, pursuant to the clauses of the Convention, it is not necessary to bring it before the Inter-American Court for its approval or confirmation. This is based on the principle

[130] For the Disciplinary Chamber, the Mayor's authorization of the use of dump trucks to provide sanitation services "violated constitutional and legal provisions concerning the protection of the environment, creating a serious risk to human health of the inhabitants of the city of Bogota and to the environment." The Attorney General's Office described these acts as malicious because before taking the decision "he knew that compacting vehicles were needed for the sanitation service, a situation he mentioned to the then manager of EAAB […] in July and August 2012," and that "his professional training and rank in one of the highest positions within the State made him aware that it was his duty to comply with the rules contained in the legal system." *Cf.* Ruling by the Disciplinary Chamber of the Attorney General's Office of December 9, 2013 (evidence file, folio 480).

of complementarity, which informs the inter-American human rights system and is expressed in the Preamble of the American Convention as "reinforcing or complementing the protection provided by the domestic law of the American States."[131]

103. The complementary character of international jurisdiction means that the system of protection established by the American Convention does not replace the national jurisdiction, but rather complements it.[132] However, the State is the principal guarantor of human rights, and therefore if violation of said rights occurs, the State must resolve the matter in the domestic system and redress the victim before resorting to international bodies.[133] In this regard, recent case law has recognized that all authorities of a State party to the Convention have an obligation to exercise conventionality control in such a way that the interpretation and application of national law is consistent with the State's international human rights obligations.[134]

104. From the foregoing it is clear that within 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 instance (complementarily), so that their decision criteria can be established and harmonized.[135] Thus, the Court's jurisprudence includes cases in which, in a manner consistent with international obligations, the domestic organs or courts have taken appropriate steps to remedy the situations that gave rise to the case,[136] have settled the alleged violation,[137] have ordered reasonable reparations,[138] or have exercised proper conventionality control.[139] In this regard, the Court has pointed out that State's responsibility under the Convention can only be demanded at the international level after the State has had

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131 *Cf. Case of Las Palmeras v. Colombia. Preliminary objections.* Judgment of February 4, 2000. Series C No. 67, para. 33, and *Case of Rodríguez Revolorio et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of October 14, 2019. Series C No. 387, para. 57.

132 *Cf. Case of Tarazona Arrieta et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 137, and *Case of Rodríguez Revolorio et al. v. Guatemala, supra*, para. 58.

133 *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 *Rodríguez Revolorio et al. v. Guatemala, supra*, para. 58.

134 *Cf. Case of Andrade Salmón v. Bolivia. Merits, reparations and costs.* Judgment of December 1, 2016. Series C No. 330, para. 93, and *Case of Rodríguez Revolorio et al. v. Guatemala, supra*, para. 58.

135 *Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations.* Judgment of November 30, 2012. Series C No. 259, para. 143, and *Case of Rodríguez Revolorio et al. v. Guatemala, supra*, para. 59.

136 *Cf. Case of Tarazona Arrieta et al. v. Peru, supra,* paras. 139 to 141, and *Case of Colindres Schonenberg v. El Salvador. Merits, reparations and costs.* Judgment of February 4, 2019. Series C No. 373, para. 80.

137 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, paras. 97 to 115, and *Case of Colindres Schonenberg v. El Salvador, supra*, para. 80.

138 See, for example, *Case of the Santo Domingo Massacre v. Colombia, supra,* paras. 334 to 336, and *Case of Colindres Schonenberg v. El Salvador, supra*, para. 80.

139 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 Andrade Salmón v. Bolivia, supra*, para. 100.

the opportunity to acknowledge, as appropriate, a violation of a right and to make amends for the harm caused.[140]

105. In this case, the Court finds that the decision of the Council of State of November 15, 2017, concluded that the punitive administrative acts of December 9, 2013, and January 13, 2014, issued by the Attorney General's Office, were null and void because the body imposing the sanction lacked jurisdiction, violating a minimum guarantee of the right of due process, and for violating the principle of defining the disciplinary offense, which is strictly related to the principle of the legality of the sanction. Accordingly, the Council of State decided to "[d]eclare the annulment" of the rulings of December 9, 2013, and January 13, 2014, which punished Mr. Petro with the sanction of dismissal and general disqualification for a period of 15 years, and ordered the Attorney General's Office to "pay the salaries and benefits forfeited by the plaintiff during the time he was separated from the service."[141] Furthermore, it ordered the "reversal of the sanctions imposed" and urged the National Government and the Congress of the Republic to implement the relevant reforms in this area. In the words of the Council of State:

> "FIRST. DECLARE THE ANNULMENT of the following administrative acts: 1. Sole instance ruling of the Disciplinary Chamber of the Attorney General's Office, of December 9, 2013, which imposed the sanction of dismissal and general disqualification for a period of 15 years on Mr. Gustavo Francisco Petro Urrego.
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> 2. Ruling of January 13, 2014, issued by the Disciplinary Chamber of the Attorney General's Office, which ruled not to reverse and therefore confirm the sole instance ruling of December 9, 2013.
>
> SECOND. In relation to the restoration of rights TO ORDER the Attorney General's Office to pay the salaries and benefits not received by the plaintiff during the time he was effectively separated from the service, in accordance with the grounds for this ruling.
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> [...]
>
> THIRD. NOTIFY the Registry and Control Division of the Attorney General's Office [...] to carry out the corresponding reversal of the sanctions imposed.
>
> [...]
>
> SIXTH: URGE the National Government, the Congress of the Republic and the Attorney General's Office to implement, within a period not exceeding two (2) years from notification of this order, the necessary reforms, directed at fully enacting the normative precepts contained in Article 23 of the American Convention on Human Rights in the domestic system, based on the considerations and the *ratio decidendi* of this judgment. For the purposes of this paragraph, to communicate this decision to the President of the Republic, the President of the Congress and the Attorney General of the Nation."

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[140] *Cf. Case of the Santo Domingo Massacre v. Colombia, supra,* para. 143, and *Case of Rodríguez Revolorio et al. v. Guatemala, supra*, para. 59.

[141] *Cf.* Judgment of the Plenary Contentious-Administrative Chamber of the Council of State of November 15, 2017 (evidence file, folios 4990 to 5085).

106. The Council of State indicated the above conclusion was based on two reasons: first, "because Mr. Petro was not punished for conduct that constituted an act of corruption, the Attorney General's Office contravened a higher-ranking provision (Article 23(2)) which requires, through the principle of *pacta sunt servanda*, mandatory observance by the Member States of the Convention [...]," and second, "because Article 23(2) supposes the preservation of the democratic principle and the preponderance of the right to elect enjoyed by the citizens of Bogota, in observance of the principle of popular sovereignty."[142] Thus, it reasoned that the Attorney General did not have jurisdiction to impose a sanction involving dismissal and general disqualification of Mr. Petro owing to his actions or omissions which, although they might be contrary to the law, did not constitute acts of corruption.[143] The Court emphasizes that the Council of State considered that its role "as the judge of conventionality for this process, [was] to examine the jurisdiction of the Attorney General's Office in light of the conventional norms" and stated the following:

> "Colombia, as a State party to the Pact of San Jose, Costa Rica, signed in 1969, undertakes to "respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth or other social condition," in accordance with Article 1 of the Convention, in such a way that, "where the exercise of any of the rights and 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 procedures and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to such rights and freedoms."
>
> [...]
>
> Since the Inter-American Court of Human Rights is a means of protection and the authorized interpreter of the standards agreed upon in the ACHR, its decisions have binding and enforceable effects on the States Parties, inasmuch as they are subject to verification to ensure that the provisions of their domestic legal system are compatible with multilaterally agreed rules and, where this is not the case, that the necessary measures are taken to comply with them. This is what inter-American jurisprudence has termed 'conventionality control'.
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> [...]
>
> However, the conventionality control of Article 44(1) of Law 734 of 2002, as the basis for the sanctions ordered in this case, allows us to notice an incompatibility between that provision and Article 23(2) and to conclude, in a transparent manner, that the Attorney General's Office did not have the authority to impose a sanction that restricted, almost in perpetuity, the political rights of a person to be elected to a

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[142] Among its considerations, the Council of State mentioned the following: "[...][I]n light of the powers granted by the 1991 Constitution to the judiciary, and the integration of these powers with the safeguarding of the political rights held by elected public servants, it is possible to establish that, in light of Article 23 of the Convention, only the judges of the Republic are competent to impose sanctions involving the dismissal and general disqualification of political rights whenever these arise from acts or omissions which, although contrary to law, do not constitute cases of corruption." Judgment of the Plenary Contentious-Administrative Chamber of the Council of State of November 15, 2017 (evidence file, folio 5023).

[143] *Cf.* Judgment of the Plenary Contentious-Administrative Chamber of the Council of State of November 15, 2017 (evidence file, folios 5020 and 5021).

position of public office, or to remove him from the office of Mayor of Bogota to which he was elected by universal suffrage, for the following reasons:

The first, because Mr. Gustavo Petro was not sanctioned for conduct that constituted an act of corruption, the Attorney General's Office contravened a higher-ranking provision (Article 23(2) of the Convention) which, through the *pacta sunt servanda* principle, of mandatory observance by the Member States of the Convention, which establishes that a person's political rights may only be restricted by a criminal judge through a conviction handed down in criminal proceedings.

[...]

The [s]econd, because Article 23(2) of the Convention supposes the preservation of the democratic principle and the right to elect enjoyed by the citizens of Bogota, in observance of the principle of popular sovereignty. Therefore, to maintain a sanction that restricts the political rights of the elected person would not only limit the rights of the sanctioned person, but would also invalidate the political rights of his electors who, as primary constituents, have agreed to define the ways and means for self-determination, to elect their authorities and to establish the designs and plans by which they are to be governed.

[...]

Accordingly, the Attorney General's Office maintains its duties to investigate and punish elected public servants. However, it is not permitted to punish popularly elected public servants with sanctions of dismissal and disqualification, or suspension and disqualification from exercising their political rights, for any conduct that is not classified as an act of corruption. In those cases, the Attorney General's Office is responsible for informing the criminal justice system so that a sentence may be imposed by means of due process, if the actions of the public servant warrant criminal punishment."

107. In relation to the foregoing, the Court recalls that control of conventionality has been conceived as an institution used to apply international law, in this case international human rights law, and specifically the American Convention and its sources, including the case law of this Court." [144] When a State is a party to an international treaty such as the American Convention, all its powers, organs or authorities[145] are obliged to conduct conventionality control, within their respective jurisdictions and corresponding procedural obligations, and ensure that the human rights of the persons under its jurisdiction are respected and

[144] When a State is Party to an international treaty such as the American Convention, all its organs, including its judges, are subject to that treaty, and this obliges them to ensure that the effects of the provisions of the Convention are not impaired by the application of norms contrary to its object and purpose. Judges and organs involved in the administration of justice at all levels are obliged to exercise *ex officio* a "control of conventionality" between domestic laws and the American Convention, evidently within their respective jurisdictions and corresponding procedural rules. In this task, they must take into account not only this treaty, but also its interpretation by the Inter-American Court, the ultimate interpreter of the American Convention. *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. 124, and *Case of Azul Rojas Marín el at. v. Peru, supra*, para. 269.

[145] *Cf. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 26, 2010. Series C No. 220, para. 225, and *Case of Gelman v. Uruguay, supra*, para. 239.

guaranteed.[146] Judges and judicial bodies must also prevent potential violations of human rights recognized in the American Convention, or address these at the domestic level when they have already occurred, taking into account the interpretations of the Inter-American Court.[147] Only in other cases may they be considered by this Court, which exercises an additional control of conventionality. In this sense, adequate control of conventionality at the domestic level strengthens the complementarity of the inter-American system and the effectiveness of the American Convention by ensuring that the national authorities act as guarantors of human rights from international sources.[148]

108. In this regard, the Court considers the ruling of the Council of State's constituted an adequate and opportune control of conventionality of the sanctions of dismissal and disqualification imposed against Mr. Petro by the Attorney General's Office, inasmuch as it suspended and redressed the violations of Mr. Petro's political rights resulting from those sanctions. The Council of State duly took account of the standards developed by this Court in relation to the limits on the restrictions permitted by Article 23(2) of the Convention, in order to properly guarantee Mr. Petro's political rights by: a) declaring the sanction null and void; b) ordering the payment of unpaid salaries for the time he was removed from his post; c) ordering the lifting of the sanctions imposed; and d) urging the government to carry out reforms aimed at ensuring compatibility between the authority of the Attorney General with Article 23 of the American Convention. Moreover, the Judgment of the Council of State recognized that in this specific case, not only were Mr. Petro's political rights affected, but the sanction of dismissal and disqualification imposed by the Attorney General's Office breached the democratic principle and the political rights of voters, in contravention of Article 23(2) of the Convention. Nevertheless, in accordance line with the observations made in paragraph 100 (*supra* para. 100), while the ruling of the Council of State is commendable, the Court notes that, given the nature of the rights concerned, the violation was not fully remedied, because the right to exercise a position of popular election was interrupted for more than a month by the sanction imposed by the Attorney General's Office.

109. Based on the above, the Court will analyze those matters that were not covered by the judgment of the Council of State of November 15, 2017, but which, having been alleged by the Commission or the representatives before the Court, could constitute violations of the American Convention to the detriment of Mr. Petro. In this regard, the Court notes that the Council of State urged several government bodies to carry out legislative reforms aimed at

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146 *Cf. Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2006. Series C No. 158, para. 128, and *Case of Azul Rojas Marín et al. v. Peru*, *supra,* para. 269.

147 *Cf. Case of the Santo Domingo Massacre v. Colombia, supra,* para. 143, and *Case of Rodríguez Revolorio et al. v. Guatemala, supra*, para. 58.

148 See, for example, the Judgment of the Constitutional Court of Ecuador of September 17, 2014, which stated the following: "By virtue of the constitutional influence on the Ecuadorian legal system, which not only expressly recognizes constitutional supremacy, but also the hierarchy of international human rights instruments, the control of conventionality is a basic mechanism to guarantee rights, to the extent that it allows the courts not to limit themselves to an analysis of their domestic provisions, but also to have recourse to international instruments and their interpretations, in order to give full content to those rights, and hence to human dignity, from which comprehensive respect for constitutional / human rights is derived." *Cf.* Constitutional Court of Ecuador, Judgment No. 003-14-SIN-CC, September 17, 2014, page 20. Also see, Constitutional Court of Ecuador, Judgment No. 113-14-SEP-CC, July 30, 2014; Constitutional Court of Ecuador, Judgment No. 146-14-SEP-CC, Case No. 1773-11-EP, October 1, 2014; Supreme Court of Justice (Mexico), Case Law 1ª./J 4/2016, Gazette of the Judicial Weekly of the Federation, Vol. 1, published February 19, 2016; and Supreme Court of Justice (Argentina), "Mazzeo, July Lilio s/appeal for dismissal and unconstitutionality," Judgment of July 13, 2007, Rulings 330.3248.

"fully enforcing the normative precepts contained in Article 23 of the American Convention," regarding the authority of the Attorney General. Thus, while the violations of the alleged victim's political rights ceased with the ruling by the Council of State, the State has not made full reparation for the wrongful act because it has not modified the legal provisions that allowed the imposition of those sanctions, which still remain in force in the Colombian legal system. Accordingly, it is first appropriate to address the representatives' claim that the legal system is not compatible with Article 23 of the American Convention in relation to Article 2 of the same instrument, owing to various provisions included in the Single Disciplinary Code, in Law 610 of 2000 and Law 1864 of 2017 regarding to the protection of mechanisms of democratic participation, and the Constitutional Court's interpretation of the disciplinary authority. The Court will then settle the remaining dispute over the alleged violations of due process, judicial protection, equality before the law and the principle of non- discrimination.

B.1.2.2 The powers of the Attorney General's Office, the Comptroller's Office, and other legal provisions of the Colombian legal system

110. The representatives argued that the legal system applied to Mr. Petro violates Article 23 in relation to Article 2 of the Convention with regard to: "i) the powers [of the Attorney General's Office] to restrict political rights through a system of sanctions that includes disqualification from the exercise of public office, and ii) other rules that have the same effect of limiting political activity." In the context of this argument, the representatives referred to Articles 277 of the Constitution and Articles 44 and 45 of the Single Disciplinary Code, regarding the Attorney General's powers to impose sanctions of dismissal and disqualification, Articles 38 and 66 of the Single Disciplinary Code regarding the effects that a sanction imposed by oversight bodies such as the Comptroller's Office or the *Personerías* may have, Article 60 of Law 610, which establishes a "bulletin" naming those fiscally responsible, and Article 4 of Law 1864 of 2017 that contemplates the criminal act of "unlawful election of candidates." The representatives also argued that several interpretations by the Constitutional Court which consider that the Attorney General's Office "would be entitled to restrict or limit political rights" are in contravention of the American Convention. The Court will now analyze those arguments.

111. The Court recalls that Article 2[149] of the Convention establishes the general obligation of State Parties to bring their domestic law into line with the provisions of the Convention in order to guarantee the rights enshrined therein. This 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; on the other hand, the promulgation of norms and the development of practices conducive to effective observance of those guarantees.[150] With regard to the rights recognized in Article 23 of the Convention, the duty to adapt domestic law means that any rules that restrict political rights – or that empower authorities to do so– must comply with Article 23(2) of that instrument (*supra* paras. 90 to 98). As to the adoption of such practices, this Court has recognized that all authorities of a State Party

[149] Article 2 of the Convention establishes the following: "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 State 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."

[150] *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 Gorigoitía v. Argentina, supra*, para. 55.

to the Convention have an obligation to exercise conventionality control (*supra* paras. 103 and 107).

112. In this case, the Court confirms that Article 277(6) of the Colombian Constitution authorizes the Attorney General "to oversee at the highest level the official conduct of those who hold public office, including those popularly elected; exercise on a preferential basis the disciplinary authority; initiate the appropriate investigations and impose the appropriate sanctions in accordance with the relevant statute." For its part, Article 278 of the constitution establishes that the Attorney General shall directly carry out the following functions "1. Discharge from office, following a hearing and on the basis of justified reasons, any public officials who are guilty of any of the following deficiencies […]." The Court observes that the sixth paragraph of Article 277 and the first paragraph of 278 of the Colombian Constitution allow for the possibility of an interpretation that is compatible with the American Convention and with the model of the rule of law established by Article 1 of the Constitution itself,[151] on the understanding that the reference to popularly elected officials applies only to the Attorney General's authority for oversight. Based on the rule that no provision should be declared to be in violation of the Convention as long as it allows for an interpretation compatible with the Convention, the Court finds that the sixth paragraph of Article 277 and the first paragraph of Article 278 of the Colombian Constitution are not incompatible with Article 23 of the American Convention.

113. Furthermore, in Articles 44 and 45, the Single Disciplinary Code establishes the authority of the Attorney General's Office to dismiss and disqualify public officials, and defines the implications of such sanctions in the following terms: "a) the termination of the public servant's relations with the administration, whether or not it is a political, career or elected position; or b) removal from office, in the cases established in articles 110 and 278, subsection 1, of the Constitution; or c) termination of the employment contract; and d) in all the above cases, the impossibility of holding public office in any position or function, for the term established in the ruling, and the exclusion of the job scale or career." The Court previously concluded that a sanction of disqualification or dismissal of a democratically elected public official by an administrative authority and not by "a conviction by a competent judge in criminal proceedings" is contrary to Article 23(2) of the Convention and to the object and the purpose of the Convention (*supra* para. 100). For the same reasons, the Court concludes that the State failed to comply with its obligations under Article 23 of the Convention, in relation to Article 2 of thereof, owing to the existence and application of the Single Disciplinary Code rules that authorize the Attorney General's Office to impose such sanctions on democratically elected public officials, as in the case of Mr. Petro.

114. The Court also notes that Article 60 of Law of August 18, 2000, states that, "the Office of the Comptroller General shall publish a quarterly bulletin naming the individuals or legal entities that have been issued with final and enforceable rulings on fiscal responsibility and have not satisfied the obligation contained therein." The same article states that, "those named as (fiscally) responsible in the bulletin" cannot be appointed to public office until the penalty is cancelled. For the purposes of this analysis, this rule must be understood in relation to

[151] *Cf.* Political Constitution of Colombia, Article 1. Said article states the following: "Colombia is a social state under the rule of law, organized in the form of a unitary republic, decentralized, with autonomy of its territorial units, democratic, participatory, and pluralistic, based on the respect of human dignity, the work and solidarity of the individuals who belong to it, and the prevalence of the general interest."

Article 38 of the Single Disciplinary Code, which establishes that, "[t]he following shall also constitute impediments to the exercise of public office, following the execution of a judgment: [...] 4. To have been declared fiscally responsible." From the foregoing it is clear that, even though the Comptroller's Office does not have direct authority to dismiss or disqualify elected public officials, the financial penalties it may impose, when these imply an obligation to pay a high-value tax debt, as in the case of Mr. Petro, may have the practical effect of disqualifying him under the provisions of Article 38 of the Single Disciplinary Code as well as the fact that competent officials are prohibited from appointing anyone appearing in the bulletin of fiscally responsible persons.

115. Consequently, the Court concludes that the sanctions imposed by the Comptroller's Office may have the practical effect of restricting political rights, thereby failing to comply with the terms established in Article 23(2) of the Convention, which have been reiterated in this judgment. Therefore, the Court considers that Article 60 of Law 610 of 2010 and Article 38, section 4 of the Single Disciplinary Code are contrary to the American Convention in relation to Article 2 of the same instrument.

116. The Court also notes that Law 1864 of 2017 amended Law 599 of 2000 of the Criminal Code, to include offenses related to mechanisms of democratic participation. Article 5 of the that law amended Article 389 of the Criminal Code to establish the criminal offense of "unlawful election of candidates," which consists of the following: "[...] anyone who is elected to a position of popular election and is disqualified from holding it by a judicial, disciplinary or fiscal decision shall be liable to a term of imprisonment of from four (4) to nine (9) years and a fine of two hundred (200) to eight hundred (800) minimum legal monthly wages currently in force." The Court notes that although this provision does not establish powers to restrict political rights, and was not applied in the specific case of Mr. Petro, it may have the effect of disqualifying individuals from running for public office when they have been subject to a disciplinary or fiscal sanction, thereby posing a risk to their political rights and those of their constituents. Thus, the Court considers that Article 5 of Law 1864 of 2017 does not comply with Article 23 of the American Convention in relation to Article 2 of that instrument, inasmuch as it could have the effect of inhibiting a person from running for elected public office after being subject to a disciplinary or fiscal sanction, since he or she could commit an offense punishable by a prison term of four to nine years.

117. Finally, regarding the representatives' argument that the Constitutional Court of Colombia's interpretations concerning disciplinary powers are not compatible with the Convention, the Court advises that they do not pose a risk, in themselves, to the exercise of Mr. Petro's political rights and therefore do not constitute a violation of Article 23 of the Convention in relation to Article 2 thereof. Nevertheless, the Court recalls that Article 2 of the Convention entails an obligation by the State to develop practices conducive to the effective observance of the rights and freedoms enshrined in that treaty. Consequently, the interpretation and application of disciplinary powers be necessarily be consistent with the purpose pursued by Article 2 of the Convention. In practical terms, the Court recalls that the interpretation of the provisions related to the powers of the Attorney General's Office or the Comptroller's Office by the Constitutional Court and other authorities of the Colombian State must be consistent with the conventional principles related to political rights established in Article 23 of the Convention, as reiterated in this case.

B.2. Rights to judicial guarantees and judicial protection

118. Despite the foregoing observations concerning the lack of jurisdiction of an administrative authority to restrict the political rights of democratically elected public officials through the sanctions of disqualification and dismissal, this Court considers it opportune to analyze the guarantees applied in the disciplinary proceedings against Mr. Petro. This Court has indicated that Article 8(1) of the Convention recognizes the right of everyone to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial judge or court, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights, all within the general obligation of the States to ensure to all persons subject to their jurisdiction the free and full exercise of those rights (Article 1(1)).[152] Under the provisions of Article 8 of the Convention, in order to ensure true judicial guarantees in a proceeding, this must adhere to all the requirements that "are designed to protect, to ensure or to assert the entitlement to or exercise of a right,"[153] that is, "the prerequisites necessary to ensure the adequate protection of those persons whose rights or obligations are pending judicial consideration."[154]

119. With regard to the above, although Article 8 of the Convention is entitled "Judicial Guarantees" [in the Spanish version - "Right to a Fair Trial" in the English version] its its application is not strictly limited to judicial remedies, "but rather the procedural requirements that should be observed"[155] so that a person may defend himself adequately in the face of any act of the State that affects his rights.[156] Thus, when the Convention refers to the right of everyone to be heard by a competent judge or court to "determine his rights", this expression refers to any public authority, whether administrative, legislative or judicial, which, through its decisions determines individual rights and obligations.[157] Therefore, this Court considers that any State organ that exercises functions of a materially jurisdictional nature has the obligation to adopt decisions that are in consonance with the guarantees of due legal process in the terms of Article 8(1) of the American Convention.[158] For this reason, when determining the rights and obligations of the individual, in any type of procedure, "due process" must be

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[152] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, *supra*, para. 91, and *Case of Noguera et al. v. Paraguay, supra*, para. 78.

[153] *Cf. Habeas Corpus under suspension of guarantees (Articles 27(2), 25(1) and 7(6) of the American Convention on Human Rights).* Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 25; *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs.* Judgment of June 21, 2002. Series C No. 94, para. 147, and *Case of Montesinos Mejía v. Ecuador, supra*, para. 175.

[154] *Cf. Case of the Constitutional Court v. Peru. Merits, reparations and costs.* Judgment of January 31, 2001, Series C No. 71, para. 69, and *Case of Indigenous Communities Members of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, reparations and costs.* Judgment of February 6, 2020. Series C No. 400, para. 294.

[155] *Cf. Judicial Guarantees in States of Emergency (Articles 27(2), 25 and 8 of the American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 27, and *Case of Montesinos Mejía v. Ecuador, supra*, para. 174.

[156] *Cf. Case of the Constitutional Court v. Peru. Merits, reparations and costs*. Judgment of January 31, 2001. Series C No. 71, para. 69, and *Case of Montesinos Mejía v. Ecuador, supra*, para. 174.

[157] *Cf. Case of the Constitutional Court v. Peru, supra*, para. 71, and *Case of Maldonado Ordoñez v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of May 3, 2016. Series C No. 311, para. 26.

[158] *Cf. Case of the Constitutional Court v. Peru, supra*, para. 71, and *Case of Maldonado Ordoñez v. Guatemala, supra*, para. 26.

observed to ensure that right in the corresponding procedure.[159] Failure to comply with any of these guarantees necessarily entails a violation of this provision of the Convention.[160]

120. For its part, Article 8(2) of the Convention also establishes minimum guarantees that must be ensured by the States in accordance with due process of law.[161] The Court has indicated that these minimum guarantees must be observed in administrative proceedings and in any other procedure whose decisions may affect the rights of persons.[162] In other words, the due process of law must be respected in any act or omission on the part of the State bodies in a proceeding, whether of a punitive administrative, or judicial nature.[163] In particular, in the case *Maldonado Ordoñez v. Guatemala,* the Court stressed that "disciplinary law is part of punitive law [...] insofar as it consists of a set of rules allowing sanctions to be imposed on persons who engage in conduct defined as a disciplinary offense." Therefore, it closely follows the provisions of criminal law" and, because of its "punitive nature," the procedural guarantees of criminal law "are applicable *mutatis mutandis* to disciplinary law."[164]

121. Based on the foregoing, and regarding the administrative dismissal of public officials, the Court has pointed out that, because of the procedure's punitive nature and its determination of rights, the procedural guarantees provided for in Article 8 of the American Convention are part of the minimum guarantees that must be respected in order to reach a decision that is not arbitrary and observes due process.[165] In light of this, the Court will analyze whether the administrative proceedings conducted by the Disciplinary Chamber of the Attorney General's Office against Mr. Petro complied with the guarantees of due process established in Article 8 of the Convention.

122. The Commission argued that the State violated Mr. Petro's right to a hearing by an impartial judge or court because the "authority that brought the charges, was the same authority that ruled on disciplinary responsibility," which in this case resulted in the imposition of "severe penalties." It also pointed out that "this is contrary to the principle of presumption of innocence." The representatives agreed with the Commission and added that Mr. Petro's right of defense was violated owing to his "lack of an opportunity to present evidence." For its part, the State held that "the model of the disciplinary process applied in this case […] fully respected the guarantees of impartiality and presumption of innocence," and that "Mr. Petro's right of defense was fully respected and guaranteed."

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159 *Cf. Case of Claude Reyes et al. v. Chile. Merits, reparations and costs.* Judgment of September 19, 2006. Series C No. 151, para. 117, and *Case of Montesinos Mejía v. Ecuador, supra*, para. 176.

160 *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 117, and *Case of Montesinos Mejía v. Ecuador, supra*, para. 176.

161 *Cf. Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs*. Judgment of January 29, 1997. Series C No. 30, para. 74, and *Case of Montesinos Mejía v. Ecuador, supra*, para. 176.

162 *Cf. Case of Baena Ricardo v. Panama. Merits, reparations and costs.* Judgment of February 2, 2001. Series C No. 72, para. 127, and *Case of López et al. v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of November 25, 2019. Series C No. 396, para. 200.

163 *Cf. Case of Baena Ricardo v. Panama, supra*, para. 124, and *Case of the Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C No. 282, para. 349.

164 *Cf. Case of Maldonado Ordoñez v. Guatemala, supra*, para. 75.

165 *Cf. Case of Maldonado Ordoñez v. Guatemala, supra*, para. 79, and *Case of Rosadio Villavicencio v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of October 14, 2019. Series C No. 388, para. 126.

123. Based on the arguments of the parties, the Court concludes that, in relation to the proceedings before the Disciplinary Chamber of the Attorney's General's Office, the dispute focuses on the following guarantees of due process: the impartiality of the judicial authority, the principle of presumption of innocence and the right of defense. The Court will analyze this specific matter in the same order, taking into consideration the representatives' arguments regarding the violation of the principles of equality before the law and non-discrimination, to the detriment of Mr. Petro.

124. The Court has indicated that the right to be tried by an impartial judge or court is a fundamental guarantee of due process; this allows courts to inspire the necessary trust and confidence in the parties to the case and in the citizens of a democratic society.[166] In other words, the person on trial must have the guarantee that the judge or court presiding over his case brings to it the utmost objectivity,[167]and approaches the facts of the case subjectively free of all prejudice and also offers sufficient objective guarantees[168] to exclude any doubt that the parties or the community might entertain as to a lack of impartiality.[169] Thus, the impartiality of a court implies that its members do not have a direct interest, predefined position or preference for any of the parties and that they are not involved in the dispute,[170] but that they act solely and exclusively in accordance with —and on the basis of— the law.[171]

125. The Court has also indicated that the principle of presumption of innocence, as the basis of judicial guarantees,[172] implies that the defendant enjoys a legal state of innocence while his responsibility is being determined[173] and that he does not have to prove that he has not committed the offense of which he is accused, because the *onus probandi* is on those who have made the accusation.[174] The presumption of innocence is closely linked to impartiality because it implies that judges should not start a proceeding with a preconceived idea that the accused has committed the crime as charged.[175] The presumption of innocence is violated if,

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166 *Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of July 2, 2004. Series C No. 107, para. 171, and *Case of Rosadio Villavicencio v. Peru, supra*, para. 186.

167 *Cf. Case of Herrera Ulloa v. Costa Rica, supra*, para. 171, and *Case of Rosadio Villavicencio v. Peru, supra*, para. 186.

168 *Cf. Case of Herrera Ulloa v. Costa Rica, supra*, para. 171, and *Case of Rosadio Villavicencio v. Peru, supra*, para. 186.

169 *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of August 5, 2008. Series C No. 182, para. 56, and *Case of Rico v. Argentina*. *Preliminary objection and merits.* Judgment of September 2, 2019. Series C No. 383, para. 70.

170 *Cf. Case of Palamara Iribarne v. Chile. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 135, para. 146, and *Case of Rosadio Villavicencio v. Peru, supra*, para. 186.

171 *Cf. Case of Apitz Barbera et al. ("First Administrative-Contentious Court") v. Venezuela, supra*, para. 56, and *Case of Rosadio Villavicencio v. Peru, supra*, para. 186.

172 *Cf. Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, para. 77, and *Case of Rodríguez Revolorio et al. v. Guatemala, supra*, para. 109.

173 *Cf. Case of Suárez Rosero v. Ecuador. Merits, supra,* paras. 76 and 77, and *Case of Rodríguez Revolorio et al. v. Guatemala, supra*, para. 109.

174 *Cf. Case of Ricardo Canese v. Paraguay. Merits, reparations and costs*. Judgment of August 31, 2004. Series C No. 111, para. 154, and *Case of Valenzuela Ávila v. Guatemala. Merits, reparations and costs.* Judgment of October 11, 2019. Series C No. 386, para. 113.

175 *Cf. Case of Cabrera García and Montiel Flores v. Mexico, supra,* para. 184, and *Case of Rodríguez Revolorio et al. v. Guatemala, supra*, para. 109.

prior to the accused being found guilty, a judicial decision concerning him reflects the opinion that he is guilty.[176] The Court has also considered that the institution granting the right to challenge judges has a twofold purpose: on one hand, it provides a guarantee for the parties to the proceedings, and on the other hand, it seeks to give credibility to the role played by the jurisdiction.[177]

126. The representatives argued that in the disciplinary process against Mr. Petro the guarantee of impartiality was not respected for two reasons: first, because having issued the statement of objections at the time of considering the disciplinary ruling, the Disciplinary Chamber had already "taken a position on Mr. Petro's disciplinary responsibility," and second, because "we are faced with a scenario of discrimination based on the political ideology of Gustavo Petro, since the type of sanction applied to him lacks an objective and reasonable justification, considering that it was extremely severe compared with other cases in which there was an ongoing criminal process or even convictions that established the criminal liability of former officials." The Court notes that the representatives' arguments question the lack of objective impartiality due to deficiencies in the normative design of the disciplinary process against Mr. Petro, on the one hand, and on the other, the absence of subjective impartiality on grounds of discrimination, which was the basis for initiating the disciplinary investigation.

127. Regarding the lack of objective impartiality, the Court recalls that the administrative proceedings against Mr. Petro are contemplated the Single Disciplinary Code. The guiding principles of this Code are legality,[178] due process[179] and the presumption of innocence,[180] and a reasoned decision.[181] Specifically, Article 9 establishes the principle of presumption of innocence in the following terms: "[a] those to whom a disciplinary offense is attributed are presumed innocent before their liability is declared in a ruling. During the proceedings any reasonable doubt will be resolved in favor of the person being investigated."[182] Similarly, Article 94 states that disciplinary action shall adhere to the principles of contradiction and impartiality, while Article 129 states the following: "[t]he official will seek the real truth. In doing so, he shall investigate with equal rigor the facts and circumstances that prove the existence of the disciplinary offense and the liability of the investigated person, and those that

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176 *Cf. Case of Ricardo Canese v. Paraguay. Merits, reparations and costs*. Judgment of August 31, 2004. Series C No. 111, para. 154, and *Case of López Mendoza v. Venezuela, supra*, para. 128.

177 *Cf. Case of Apitz Barbera et al. ("First Administrative-Contentious Court") v. Venezuela, supra*, paras. 63-64; *Case of Acosta et al. v. Nicaragua. Preliminary objections, merits, reparations and costs.* Judgment of March 25, 2017. Series C No. 334, para. 172, and *Case of Rico v. Argentina*, *supra*, para. 70.

178 Law 734 of 2002, "enactment of the Single Disciplinary Code." Official Gazette No. 44.708 of February 13, 2002. Article 4.

179 Law 734 of 2002, enactment of the Single Disciplinary Code Official Gazette No. 44.708 of February 13, 2002. Article 6.

180 Law 734 of 2002, enactment of the Single Disciplinary Code Official Gazette No. 44.708 of February 13, 2002. Article 9.

181 Law 734 of 2002, enactment of the Single Disciplinary Code Official Gazette No. 44.708 of February 13, 2002. Article 19.

182 Law 734 of 2002, enactment of the Single Disciplinary Code Official Gazette No. 44.708 of February 13, 2002. Article 9.

disprove its existence or absolve the accused from liability. For such purposes, the official may order *ex-officio* evidence.[183]

128. The Court observes that during the pre-trial phase of the proceedings, Mr. Petro filed a requests for their annulment owing to the lack of impartiality of the disciplinary authorities, and considering that "the entire legal and constitutional framework that supports the defense of the mayor will be useless if the Attorney General's Office prejudges his conduct, as has occurred so far, merely for the fact of disregarding the considerations of that same Office, concerning a matter that corresponds to the independent and autonomous functions of the mayor."[184] These requests for annulment were rejected by the Disciplinary Chamber in its rulings of July 25, 2013, and August 12, 2013. The first of these rulings stated that:

> The defense is based on an error, which consists of equating the demonstration of certain facts with confirmation of disciplinary responsibility. Indeed, it is one thing for the disciplinary judge to determine that certain facts have been proven, based on evidence collected in the proceedings, such as the circumstances of the time, manner and place of the offense committed, and a very different matter to prove disciplinary responsibility, an aspect that includes not only the conduct, but also the definition of the offenses, their unlawfulness and culpability.[185]

129. Despite the guarantees contemplated in the Single Disciplinary Code, and the above considerations of the Disciplinary Chamber, the Court confirms that this authority issued the statement of objections that initiated the disciplinary proceedings against Mr. Petro and, at the same time, issued a ruling on this matter. The Court advises that the concentration of the investigative and punitive powers in the same entity, a common feature of administrative disciplinary processes, is not *per se* incompatible with Article 8(1) of the Convention, provided that those powers are vested in different bodies or units of the entity concerned, and that their composition varies so that the officials who decide on the merits of the accusations made are different from those who have brought the disciplinary charges and that they are not subordinate to the latter.

130. In this case, that condition was not met because the Disciplinary Chamber presented the statement of objections on June 20, 2013, and on December 9 of that year, it issued the disciplinary ruling upholding the charges, establishing Mr. Petro's administrative responsibility and, consequently, ordering his dismissal and disqualification. Consequently, the Court points out that the actual design of the proceedings against Mr. Petro reflects a lack of impartiality from an objective point of view: it is logical that, having brought charges against Mr. Petro, the Disciplinary Chamber already had a preconceived idea about his disciplinary responsibility. Also, given that the Single Disciplinary Code establishes as a requirement for the formulation of charges that "the offense is objectively proven and there is evidence that compromises the

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183 Law 734 of 2002, enactment of the Single Disciplinary Code Official Gazette No. 44.708 of February 13, 2002. Article 129.

184 Ruling of the Disciplinary Chamber of the Attorney General of December 9, 2013 (evidence file, folios 13 to 486).

185 Order of the Disciplinary Chamber of the Attorney General of July 25, 2013 (merits file, folios 520 and 521).

responsibility of the person under investigation."[186] On the other hand, the Court does not have sufficient evidence to determine whether the actions of the Attorney General were motivated by discrimination.

131. In relation to the representatives' arguments concerning the violation of the right to defense, the Court notes that, while Mr. Petro was actively involved in different phases of the disciplinary process, and was offered opportunities to present arguments and evidence during that proceeding, the fact that the Disciplinary Chamber did not act impartially implied a violation of his right to defense. The Court recalls that the right to defense should be exercised from the moment in which a person is identified as a possible perpetrator or participant in a criminal act, and ends only when the proceedings have concluded. To prevent a person from exercising his or her right of defense is to strengthen the investigative powers of the State at the expense of the fundamental human rights of the person under investigation. The right to defense requires the State to treat the individual at all times as a true subject of the proceeding, in the broadest sense of the concept, and not merely as the target thereof.[187]

132. The Court recalls that Article 8(1) of the Convention guarantees the right to be judged "by a competent court [...] previously established by law."[188] In this case, Mr. Petro was dismissed as mayor and disqualified from holding public office through a disciplinary administrative process before the Disciplinary Chamber of the Attorney General's Office. Given that the sanction of dismissal and disqualification can only be imposed by a competent judge after conviction in criminal proceedings, the Court finds that the principle of jurisdiction was breached. This is so because the sanction against Mr. Petro was ordered by an administrative authority which, pursuant to the provisions of Article 23(2) of the Convention and the case law of this Court, [189] has no jurisdiction in this matter.

133. Consequently, the Court finds that the disciplinary process against Mr. Petro violated the principle of jurisdiction, the guarantee of impartiality, the principle of presumption of innocence and the right to defense, pursuant to Articles 8(1) and 8(2)(d) of the American Convention in relation Article 1(1) of the same instrument.

134. Accordingly, and in light of the violations previously declared, the Court does not find it necessary to examine the violations alleged by the Commission and the representatives concerning other procedural guarantees and judicial protection.

C. Conclusion of the chapter

135. The Court concludes that Mr. Petro's political rights were impaired by the sanction of dismissal and disqualification imposed by the Attorney General's Office on December 9, 2013, and confirmed on January 13, 2014. However, although the Council of State declared the sanction null and void and ordered the payment of unpaid salaries and the deletion of the

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[186] Law 734 of 2002, enactment of the Single Disciplinary Code Official Gazette No. 44.708 of February 13, 2002. Article 162.

[187] *Cf. Case of López Mendoza v. Venezuela, supra*, para. 117, and *Case of López et al. v. Argentina, supra*, para. 206.

[188] *Cf. Case of Barreto Leiva v. Venezuela. Merits, reparations and costs.* Judgment of November 17, 2009. Series C No. 206, para. 75, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 383.

[189] *Cf. Case of López Mendoza v. Venezuela, supra*, para. 107.

penalties imposed by the judgment of November 15, 2017, the Court finds that this decision did not provide full reparation for the violation of Mr. Petro's right to hold elected public office, since his mandate was interrupted for more than one month while he was removed from office by virtue of the ruling by the Attorney General's Office. This also impaired the political rights of his constituents and of the democratic principle. Moreover, the State has not amended the provisions that permitted those sanctions to be imposed.

136. In addition, the Court concludes that the provisions authorizing the Attorney General's Office to disqualify and dismiss democratically elected officials, as established in the Colombian legal system and particularly in the Single Disciplinary Code, together with the rules that could result in the Comptroller's Office ordering an individual's disqualification from exercising their political rights, as mentioned in this chapter, violated the obligation to adopt provisions of domestic law.

137. The Court further concludes that the disciplinary proceedings against Mr. Petro did not respect the guarantee of impartiality or the principle of presumption of innocence, because the design of the process meant that the Disciplinary Chamber was responsible for issuing the statement of objections and at the same time ruling on the matter, thereby concentrating the investigative, accusatory and punitive powers in the same entity. The Court considers that the lack of objective impartiality affected the entire process, rendering Mr. Petro's right to defense illusory. Furthermore, the Court finds that the principle of jurisdiction was violated since the sanction against Mr. Petro was ordered by an administrative authority.

138. Therefore, the Court concludes that the State is responsible for the violation of Article 23 of the American Convention in relation to Articles 1(1) and 2 thereof, and for the violation of Articles 8(1) and 8(2)(d) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Mr. Gustavo Francisco Petro Urrego.

VII-2
RIGHT TO PERSONAL INTEGRITY[190]

A. Arguments of the Commission and the parties

139. The ***representatives*** alleged that Mr. Petro's right to personal integrity was violated because of the moral damage he suffered as a result of the stigmatization and political persecution that culminated in a series of disciplinary and fiscal sanctions, which were widely reported in the media. They alleged that this prompted aggressive comments and opinions against him in the social networks, which undermined his good name and dignity. They claimed that the effects of the decisions adopted by the Comptroller's Office and the SIC for the alleged patrimonial losses, caused Mr. Petro great anguish and resulted in his bank accounts being embargoed, including his salary, depriving him of his means of subsistence. Similarly, information concerning threats against his life created feelings of fear and risk that weighed on him. The representatives alleged that, in fact, during the presidential campaign there was an attempt on his life. They argued that this showed that Mr. Petro has been the victim of constant persecution because of his political ideology, and that the State is responsible for the violation of Article 5 of the Convention. The ***Commission*** made no comments in this regard.

190 Article 5 of the American Convention.

140. The ***State*** argued that of the three specific allegations made by the representatives concerning the violation of the right to personal integrity, none involve the State's responsibility for the following reasons: first, because there is no evidence that Mr. Petro suffered political persecution during the proceedings conducted by the State's oversight bodies, which was also demonstrated by their respect for due process, and the only objective pursued by these proceedings was to ensure the legality of the exercise of power; second, because as stated in the chapter on preliminary objections, there is no proof that Mr. Petro was deprived of his means of subsistence; third, because there is no evidence that the harassment and threats to which Mr. Petro was allegedly subjected are attributable to the State. The State pointed out that it had adopted multiple security measures on behalf of Mr. Petro, which allowed him to hold various public offices throughout his career. It added that Mr. Petro is currently the beneficiary of strong protection measures by the National Protection Unit, and that as a Senator of the Republic he enjoys police protection.

B. Considerations of the Court

141. Article 5 of the American Convention recognizes that every person has the right to have his physical, mental, and moral integrity respected, and that no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. It also establishes that all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. The Court has established that the violation of personal integrity has different connotations of degree with physical and psychological consequences that vary in intensity according to endogenous and exogenous facts, which must be analyzed in each specific situation.[191] The Court has also pointed out that the right to personal integrity is of such importance that it cannot be suspended under any circumstance.[192] Likewise, the Court has pointed out that the general obligations to respect and guarantee rights established in Article 1(1) of the American Convention entail special duties that are determined according to the particular protection needs of the subject of law, either owing to his personal situation or to the specific situation in which he finds himself.[193]

142. The Court has held that the mere threat of an act prohibited under Article 5 of the Convention, when sufficiently real and imminent, can in itself violate the right to personal integrity. Likewise, threatening or creating a situation that threatens a person's life can constitute at least inhuman treatment in some circumstances.[194] However, in this case there is no evidence of the State's participation -either directly or by acquiescence- in the alleged threats that Mr. Petro received following the disciplinary sanctions imposed by the Attorney General's Office which, if proven, might have constituted an affront to his personal integrity attributable to the State. Furthermore, it is not possible to establish a causal link between the

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191 *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 57, and *Case of Azul Rojas Marín el al. v. Peru, supra*, para. 139.

192 *Cf. Case of "Juvenile Reeducation Institute" v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, para. 157, and *Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of November 22, 2019. Series C No. 395, para. 55.

193 *Cf. Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140, para. 111, and *Case of Hernández v. Argentina, supra*, para. 55.

194 *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs, supra*, para. 108, and *Case of Barrios Family v. Venezuela, supra*, para. 82.

disciplinary sanctions imposed on December 9, 2013, and the alleged threatening reactions they caused in the social networks among third parties.

143. As to the claim by the representatives that Mr. Petro was deprived of his means of subsistence because of the decisions of the Comptroller and the SIC, the Court notes that there is no dispute that Mr. Petro's salary was subject to a precautionary measure of embargo in order to ensure payment of the fine imposed by the SIC. However, the Court finds that, pursuant to Article 155 of the Substantive Labor Code, only "one-fifth of the […] minimum monthly wage may be subject to embargo."[195] Therefore, only 20% of Mr. Petro's salary would have been affected by this measure. As mentioned previously, Mr. Petro was suspended from his position as Mayor of Bogota from March 20, 2014, to April 23, 2014. Furthermore, according to information provided to the Court, because Mr. Petro is currently a Senator of the Republic, for which he receives a salary, it cannot be argued that the embargo has deprived the alleged victim of his means of subsistence. In this regard, the Court finds no evidence in the file to indicate that during the time he stopped receiving his salary as mayor, or during the embargo to which he was subjected, Mr. Petro suffered such a degree of anguish that it would have infringed his right to personal integrity. Nor can this be inferred from the application of the measures themselves.

144. Nevertheless, the Court recalls that, by virtue of its "nutritional" nature,[196] the provision of a salary is closely related to the protection of the right to a decent life, inasmuch as it provides the means to ensure one's subsistence. Therefore, it should not be subject to unlawful, arbitrary or disproportionate restrictions. The Court notes that Article 10 of the Inter-American Charter of Social Guarantees expressly establishes that "wages and social benefits in the amount determined by law shall not be subject to seizure,"[197] and recalls that Convention 95 of the International Labor Organization, ratified by Colombia on June 7, 1963, establishes in Article 10(2) that "the salary should be protected against seizure or transfer to the extent deemed necessary to ensure the maintenance of the worker and his family."[198] Thus, States must avoid the seizure of wages in a proportion greater than that which allows a person to enjoy a dignified life, and this must always be established by law and be proportional.

145. Accordingly, the Court concludes that the State is not responsible for the violation of Article 5 of the Convention, in relation to Article 1(1) of the same instrument, to the detriment of Mr. Petro.

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195 Substantive Work Code, adopted through Decree 2663 of August 5, 1950. Official Gazette No. 27.407 of September 9, 1950. Modified by Law 11 of 1984.

196 *Cf. Mutatis mutandis, Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 137.

197 American International Charter of Social Guarantees, approved by the Ninth American International Conference held in Bogota, 1948.

198 ILO. Convention on the protection of wages, 1949 (No. 95), adopted July 1, 1949, at the thirty-second session of the General Conference of the International Labor Organization.

VIII
REPARATIONS

146. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the duty to provide adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[199] The Court has also established that reparations must have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to redress the respective harm. Therefore, the Court must examine the concurrence of these factors in order to rule appropriately and in accordance with the law.[200]

147. Consequently, notwithstanding any form of reparation that may subsequently be agreed between the State and the victim, and based on the foregoing considerations on the merits and the violations of the Convention declared in this judgment, the Court will proceed to examine the claims presented by the Commission and the victim's representatives, together with the corresponding arguments of the State, in light of the criteria established in its case law on the nature and scope of the obligation to make reparation, in order to establish measures to redress the harm caused.[201]

A. Injured party

148. The Court considers that, pursuant to Article 63(1) of the Convention, the injured party is anyone who has been declared a victim of the violation of any right recognized in that instrument. Therefore, the Court finds that Gustavo Francisco Petro Urrego is the "injured party" and as a victim of the violations declared in Chapter VII, he will be considered the beneficiary of the reparations ordered by the Court.

B. Measures of restitution, satisfaction and guarantees of non-repetition

B.1. Measures of satisfaction

149. The ***representatives*** requested that the Court order the State to publish: i) the official summary of the judgment in the Official Gazette; ii) the official summary of the judgment in a newspaper with wide national circulation; and iii) the judgment in its entirety on the website of the Presidency of the Republic, the Office of the Mayor of Bogota and the Attorney General's Office for one year. The ***State*** did not refer to this measure.

150. The Court establishes, as it has it other cases,[202] that the State must publish, within six months of notification of this judgment, in an adequate and legible font: (a) the official

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199 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, paras. 24 and 25, and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 103.

200 *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and costs.* Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 105.

201 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 and 26, and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 106.

202 *Cf. Case of Cantoral Benavides v. Peru. Merits.* Judgment of August 18, 2000. Series C No. 69. para. 79, and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 118.

summary of this judgment prepared by the Court, once, in the Official Gazette; (b) the official summary of this judgment prepared by the Court, once, in a national newspaper with wide national circulation; and (c) this judgment, in its entirety, available for one year, on the official website of the Attorney General's Office. The State shall advise this Court immediately when it has implemented each of these publications, regardless of the one-year time frame to present its first report, as indicated in the seventh paragraph of this judgment.

B.2. Guarantees of non-repetition

151. The ***Commission*** requested that the State adapt its domestic legislation, particularly the provisions of the Constitution and the Single Disciplinary Code that establish, respectively, the power of the Attorney General's Office to dismiss and disqualify elected officials, in exercise of their disciplinary authority. It also requested that the State adapt the criminal laws to ensure that references to disciplinary or prosecutorial proceedings are not included in the criminal offences related to the election of disqualified persons. In this regard, it requested that Colombia refrain from applying the criminal offense established in Article 5 of Law 1834 of 2017, taking into account the rulings on the lack of compatibility with the Convention of disciplinary or fiscal dismissal, without a final criminal conviction.

152. The ***representatives*** requested that the State reform the rules on the sanctioning authority of the Attorney General's Office with respect to officials elected by popular vote. In this regard, they noted that the risk of opening disciplinary investigations against Mr. Petro is latent, repeating the violations of due process and the conventional regulation on political rights. They also requested that the State revoke Article 5 of Law 1864 of 2017 - which amends the Colombian Criminal Code by introducing, as a punishable offense, the act of being elected to a position of popular election while being disqualified by a 'judicial, disciplinary or fiscal decision' - taking into account the conventional parameters on the restriction of political rights.

153. The ***State*** alleged that the Court does not have jurisdiction to rule on and order the amendment of the constitutional and legal provisions that establish the sanctioning powers of the Attorney General's Office, and the repeal of Article 5 of Law 1864, since this would constitute control of conventionality *in abstracto* and would disregard the autonomy of democratic states to determine their legal systems, under international standards. The State also argued that throughout the process, the Colombian legal system's adherence to the Convention was demonstrated regarding the authority of the Attorney General's Office to sanction elected officials, emphasizing the enactment of the new General Disciplinary Code that broadens the guarantees granted to the accused.

154. This Court has determined that the State failed to comply with its obligations under Article 23 of the Convention in relation to Article 2 thereof, owing to the existence of various provisions in the Colombian legal system. Therefore, the Court decides that, as a guarantee of non-repetition, the State must update its domestic legal system, within a reasonable time, pursuant to paragraphs 111 to 116 of this judgment.

C. Other measures requested

155. The ***Commission*** asked the Court to order the State to: a) annul the punitive administrative acts that imposed the sanction of disqualification on Mr. Petro Urrego; b) adopt legislative or other measures that may be necessary to guarantee the impartiality of the disciplinary authority, ensuring that the authority that formulates the charges is not the same

as the authority that rules on disciplinary responsibility; c) adopt legislative or any other measures that may be necessary to ensure an opportunity to appeal disciplinary rulings before an authority different to the one which ruled on disciplinary responsibility, thereby allowing for a comprehensive review of punitive rulings; and d) adopt the necessary measures to ensure that the legal actions for annulment and restoration of rights are settled within a reasonable time, including those under the direct jurisdiction of the Council of State.

156. The ***representatives*** asked the Court to order the State to: a) annul the judgment of the Constitutional Court allowing the "excessive use of punitive power with respect to popularly elected officials;" b) order the State to offer public apologies; c) cancel the fiscal rulings issued by the Attorney General's Office and the effects of the sanctions of the Superintendence of Industry and Commerce; d) desist from referring to the case of Mr. Petro Urrego in the context of the Attorney General's fight against corruption; e) refrain from using legal means as a mechanism for the political persecution and exclusion of Mr. Petro Urrego, who advocates an alternative progressive and leftist political project; f) design and implement a public policy that sets guidelines for sanctioning of popularly elected public officials; and g) hold awareness-raising sessions for public officials on the right to exercise opposition and to profess different political ideologies.

157. The ***State*** reiterated that the power of the Attorney General's Office to sanction elected officials is consistent with the Constitution, and was not exercised arbitrarily or for the purpose of political persecution. It also pointed out that the reparations requested by the representatives regarding legal and constitutional reforms affect the core of Colombia's constitutional architecture and its system for the defense of legality. It stressed that all these instruments were adopted by a democratic and participatory system and that even Mr. Petro voted in favor of the Single Disciplinary Code. It further argued that there is no evidence that in this case Mr. Petro's right to exercise opposition and to profess different ideologies was breached. Therefore, it asked the Court to dismiss the requests of the Commission and the representatives.

158. The Court considers that in this case it is not necessary to order a restitution measure in favor of Mr. Petro, since Mr. Petro's mandate as Mayor of Bogota has already concluded and the Council of State has declared the annulment of the dismissal and disqualification sanctions imposed by the Attorney General's Office. Furthermore, the Court does not deem it appropriate to order the adoption of legislative or other measures in relation to the disciplinary procedure established in the Single Disciplinary Code or regarding the time when petitions for annulment and restoration of rights in Colombia must be resolved, since there are no elements to suggest that a structural problem exists that warrants the modification of that procedure, or the need to implement public policies aimed at raising awareness of officials of the Attorney General's Office. Also, the Court considers that it is not appropriate to require the suspension of the fiscal decisions ordered by the Comptroller's Office and the fine imposed by the SIC, since there is no causal link between the violations declared in this judgment and the request of the representatives. In this regard, the Court considers that this Judgment and the reparations ordered in this chapter, particularly the measures of satisfaction and the guarantees of non-repetition mentioned above, are sufficient and appropriate. Consequently, it will not order the measures of reparation requested by the representatives in this section. Nevertheless, the State may decide to adopt and grant them at the domestic level.

D. Compensation

D.1. Pecuniary damage

159. The ***Commission*** requested that the State make full reparation for the violations of the rights declared in the Merits Report, including the pecuniary and non-pecuniary aspects. The ***representatives*** considered that the compensation established in the judgment of the Council of State of November 15, 2017, which ordered the reestablishment of salaries and benefits not received by the alleged victim, are sufficient as regards loss of earnings. However, they requested that the Court set a sum, in equity, as consequential damage, to acknowledge the pecuniary resources, in time and transport, invested by Mr. Petro to conduct his defense in the disciplinary and fiscal proceedings against him. The State argued that, in the absence of a violation of the American Convention, any order for compensation is inadmissible.

160. In its case law, this Court has developed the concept that pecuniary damage supposes the loss of or detriment to the income of the victims, the expenses incurred owing to the facts and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.[203] In this case, the Court orders the State to ensure the full and immediate payment of the salaries and benefits that Mr. Petro did not receive during the time he was removed from the office of Mayor of Bogota, in accordance with the judgment of the Council of State of November 15, 2017. The Court rejects the representatives' request for payment of consequential damages, since the costs in time, material resources and transport that Mr. Petro incurred in the normal course of an administrative and judicial process, did not constitute damage that is subject to reparations in this case.

D.2. Non-pecuniary damage

161. The ***Commission*** requested that the State make full reparation for the violations of the rights declared in the Merits Report, including pecuniary and non-pecuniary aspects. The ***representatives*** asked the Court to take into account the moral damage caused by the worries and afflictions suffered by Mr. Petro and his family after the rulings of the District Comptroller of Bogota, which resulted in an embargo on his bank accounts. They also requested that the Court consider the moral damage caused by the fine imposed by the SIC which resulted in his salary being seized, as well as the suffering caused to Mr. Petro Urrego and his family because of the violations of their human rights, including harm to their good name, honor and tranquility. Consequently, they requested that the Court order compensation for non-pecuniary damage in the amount of USD $40,000 (forty thousand United States dollars). The State argued that, in the absence of a violation of the American Convention, any order to provide compensation for damages is inadmissible. It also pointed out that the representatives' arguments regarding the alleged moral damage suffered by Mr. Petro and his family are unfounded.

162. Considering the violations of Mr. Petro's political rights and judicial guarantees declared in this case, the Court decides to set, in equity, the sum of USD $ 10,000.00 (ten thousand United States dollars) as compensation for non-pecuniary damage.

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[203] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 123.

E. Costs and expenses

163. The ***representatives*** requested payment of costs and expenses incurred by: a) the *Asociación para la Promoción Social Alternativa* (MINGA) and b) the 'Javier Alvear Restrepo' Lawyer's Collective (CCAJAR). As annexes to their pleadings and motions brief, the representatives provided proof of payment as follows: a) USD $14,889.82 (fourteen thousand eight hundred and eighty-nine United States dollars and eighty-two cents) for expenses incurred by CCAJAR, and b) USD $3,858 (three thousand eight hundred and fifty-eight United States dollars) for expenses incurred by MINGA. Subsequently, in their closing arguments, the representatives provided receipts for their participation in the public hearing of the case for the following amounts: c) USD $2,944.62 (two thousand nine hundred and forty-four United States dollars and sixty-two cents) for transport, food and lodging expenses of three CCAJAR lawyers; d) USD $900 (nine hundred United States dollars) for transport, food and lodging expenses of one MINGA lawyer; and e) USD $388.91 (three hundred eighty-eight United States dollars and ninety-one cents) for transport and lodging expenses of Mr. Petro Urrego.

164. The Court reiterates that, in accordance with its case law,[204] costs and expenses form part of the concept of reparation, because the efforts undertaken by victims in order to obtain justice, both at the national and international levels, entail expenditures that must be compensated when the international responsibility of the State has been declared in a judgment. Regarding the reimbursement of costs and expenses, it is for the Court to make a prudent appraisal of their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction and those generated during the process before the inter-American system, taking into account the circumstances of the case and the nature of the international jurisdiction for the protection of human rights. This appraisal may be made on the basis of the equity principle and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.[205]

165. Taking into account the amounts requested by each of the organizations and the vouchers of expenses presented, the Court orders the following payments: a) a total of USD $17,834.44 (seventeen thousand eight hundred and thirty-four United States dollars and forty-four cents) for costs and expenses in favor of the *Asociación para la Promoción Social Alternativa* (MINGA); b) a total of USD $5,146.91 (five thousand one hundred and forty-six United States dollars and ninety-one cents) for costs and expenses in favor of the Lawyer's Collective 'Jose Alvear Restrepo' (CCAJAR). The amount in favor of CCAJAR includes the transportation and lodging costs of Mr. Petro for his participation in the public hearing. These amounts must be delivered directly to the named organizations. At the stage of monitoring compliance with this judgment, the Court may order the State to reimburse the victim or his representatives for any reasonable expenses incurred at that procedural stage.[206]

F. Method of compliance with the payments ordered

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[204] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 274.

[205] *Cf. Case of Garrido and Baigorria v. Argentina, supra,* para. 82, and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 274.

[206] *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010. Series C No. 217, para. 29, and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 275.

166. The State shall make payments for compensation for non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the person named therein, within one year of notification of this judgment, without prejudice to the possibility of bringing forward the full payment in a shorter period, in the terms of the following paragraph.

167. If the beneficiary has died or dies before the respective amount is delivered to him, it shall be delivered directly to his heirs, in accordance with the applicable domestic law.

168. The State shall comply with its monetary obligations by payment in United States dollars or the equivalent in national currency, based on the exchange rate in force on the New York Stock Exchange (United States of America) on the day before payment.

169. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the time frame indicated, the State must deposit said amounts in an account or certificate of deposit in a solvent Colombian financial institution in United States dollars, and in the most favorable financial terms permitted by banking law and practice of the State. If, after ten years, the amount assigned has not been claimed, the amounts will be returned to the State with the accrued interest.

170. The amounts allocated in this judgment as compensation for non-pecuniary damage, and to reimburse costs and expenses, must be paid in full to the persons and organizations indicated, as established in this judgment, without any deductions arising from possible taxes or charges.

171. If the State should fall into arrears, it shall pay interest on the amount owed corresponding to the banking interest on arrears in the Republic of Colombia.

IX
OPERATIVE PARAGRAPHS

172. Therefore,

THE COURT

DECIDES,

Unanimously:

1. To reject the preliminary objection regarding the alleged failure to exhaust domestic remedies, pursuant to paragraphs 21 to 28 of this judgment.

1. To reject the preliminary objections regarding lack of jurisdiction to conduct conventionality control *in abstracto*; lack of reasoning in the allegations concerning the right to personal integrity; and, for submitting facts that do not constitute a violation of the American Convention, pursuant to paragraphs 32 to 33 of this judgment.

DECLARES,

Unanimously, that:

3. The State is responsible for the violation of the right recognized Article 23 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Gustavo Petro Urrego, pursuant to paragraphs 90 to 117 and paragraphs 135 to 138 of this judgment.

4. The State is responsible for the violation of the rights recognized Articles 8(1) and 8(2)(d) of the American Convention on Human Rights, in relation to the obligations to respect and ensure said rights, enshrined in Articles 1(1) of this instrument, to the detriment of Gustavo Petro Urrego, pursuant to paragraphs 118 to133.

By four votes in favor and two against, that:

5. The State is not responsible for the violation of the rights enshrined in Article 5(1) of the American Convention on Human Rights, in relation to the obligations to respect and ensure said rights without discrimination, to the detriment of Gustavo Petro Urrego, pursuant to paragraphs 141 to 145 of this judgment.

Dissenting, Judges Patricio Pazmiño Freire and Raúl Zaffaroni.

AND ESTABLISHES:

Unanimously, that:

6. This judgment constitutes, *per se,* a form of reparation.

7. The State shall issue the publications indicated in paragraph 150 of this judgment.

8. The State shall, within a reasonable time, update its domestic legal code in accordance with the parameters established in this judgment, pursuant to paragraph 154.

9. The State shall pay the amounts stipulated in paragraph 162 of this judgment as compensation for non-pecuniary damage, pursuant to paragraph 165 and paragraphs 166 to 171 of this judgment.

10. The State, within one year of the notification of this judgment, shall provide a report to the Court on the measures taken to comply with it, without prejudice to paragraph 150 of this judgment.

11. The Court will monitor full compliance with this judgment in exercise of its authority and in fulfillment of its obligations under the American Convention on Human Rights, and will consider the case closed when the State has fully complied with its provisions.

Judges L. Patricio Pazmiño Freire and Eugenio Raúl Zaffaroni advised the Court of their individual partially dissenting opinions.

Done in Spanish, in San Jose, Costa Rica, on July 8, 2020.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Secretary

PARTIALLY DISSENTING OPINION
JUDGE L. PATRICIO PAZMIÑO FREIRE
JUDGMENT OF JULY 8, 2020. CASE PETRO URREGO V. COLOMBIA

I. The violation of the political rights and the judicial guarantees of Gustavo Petro Urrego

In the judgment in the case *Petro Urrego v. Colombia*, the Court reiterated the interpretation established in the previous case of *López Mendoza v. Venezuela* with respect to the scope of Article 23(2) of the American Convention, in the sense that the disqualification of democratically elected public officials by an administrative disciplinary authority is incompatible with the literal meaning, object and purpose of this provision. It is important to recall that Mr. Petro was dismissed as Mayor of Bogota on December 9, 2013, as a result of a disciplinary process brought against him by the Office of the Attorney General and that the sanction also disqualified him from holding public office for fifteen (15) years.

The Court concluded that this sanction constituted a violation of Mr. Petro's political rights under Article 23 of the American Convention because it was not imposed by a competent judge in criminal proceedings, in accordance with the judicial guarantees established in Article 8 of this instrument. The Court specified that since the dismissal of an elected official represents an infringement of political rights in its individual and collective dimension, it cannot be ordered by an administrative authority of a disciplinary nature. There is therefore no doubt that Mr. Petro's political rights were violated by the decision of the Attorney General's Office.

The Court properly determined that the design of the disciplinary proceedings that culminated in the imposition of the said sanction violated the guarantee of impartiality because the authority that brought the charges was the same as the one that issued a ruling on Mr. Petro's responsibility, concentrating the investigative, prosecutorial and sanctioning powers in the Disciplinary Chamber of the Attorney General's Office, which meant that this body harbored and upheld a preconceived and consistent opinion. This is clear from the complaint filed by the same authority that subsequently investigated and ratified the accusation, and finally issued the sanction regarding Mr. Petro's disciplinary responsibility. These violations of due process made Mr. Petro's right of defense pointless.

II. The failure to condemn the State for acts of discrimination against the victim

I agree with the central reasoning of the majority regarding political rights and judicial guarantees in this case, mainly because this decision clearly and beyond any doubt ratifies and reaffirms that political rights are protected in their entirety by the conventional and international human rights system, making it clear that their restriction or limitation is prevented by decisions taken outside this system, whether political, judicial or administrative, that do not respect the guarantees of due process.

However, the majority decision which, as already mentioned, was the proper one, is insufficient and limited, because, in my opinion, it unfortunately failed to include a right of immense consequences: discrimination for reasons of ideas or political creed.

In the regional and international context, where academia, the judiciary, as well as social and political actors, are raising their concerns in the face of possible, and not so isolated, practices of interference in the dynamics of democratic debate, under the guise of legality, it is essential that we reaffirm some of the original sources that feed and sustain a republican state: the right to dissent, to the diversity of opinions and

beliefs and to political participation within the framework of a system of representative electoral democracy. Principles, values and rules that, by assuming them already incorporated into institutional practice, we have taken for granted their convenient existence, without realizing that they are slowly but systematically diluted in the heat of practice, whether of a veiled or explicit nature, or, by increasingly less concealed, actions taken within institutional frameworks that, if not identified opportunely and contained legally, could foster a progressive and irreparable deterioration of the founding principles of the inter-American system and its public order, seriously challenging the republican model of law.

III. Reasons for dissent

On this point, it is necessary to ask oneself whether it is possible to overcome the inflexibility of the procedural analysis limited to the facts and evidence examined and recognized by the Merits Report of the Commission, considering them conclusive and therefore exclusive. In this regard, the first aspect to remember is that Article 58 of the Court's Rules of Procedure empowers the Court, "at any stage of the proceedings," to "obtain, on its own motion, any evidence it considers useful and necessary. In particular, it may hear as an alleged victim, witness, expert witness or in any other capacity, any person whose statement, testimony or opinion it deems to be relevant." It is clear from this Article that, as judges, we are empowered to examine diverse elements that allow us to obtain verifiable information in order to reach a just decision. In fact, the Court has carried out this practice on several occasions, when it conducts its own investigations or summons witnesses *ex officio,* in order to gain a better appreciation of the evidence even when it has not been provided by the parties or the Commission.[1]

In this case, it was necessary to use the powers recognized by the Rules of Procedure and to turn to other means of evaluation and deliberation in order to obtain elements, facts and evidence that would make it possible to reject or accept the representatives' arguments concerning their assertion that the plurality of disciplinary proceedings filed against Mr. Petro were not merely isolated actions by the Attorney General's Office and other supervisory bodies within the Colombian legal system, but were part of a broader context. In this sense, it is pertinent to reflect on whether or not it is true, as pointed out by the representatives during these proceedings, that in Mr. Petro's case it can be noted that "people with different political ideologies and views on social change have been silenced in various ways, including by institutionally imposing obstacles that disproportionately affect their political and social activism."[2]

It should be remembered that during the public hearing Mr. Petro stated that he was "a leftist political leader." Regarding the proceedings filed against him by the Attorney General's Office, he indicated that, owing to the democratic lines of action proposed by his administration when he was Mayor of Bogota, "there was institutional resistance against that administration, not from society, but from the State itself. The disciplinary proceedings by administrative authorities such as the Attorney General or the supervisory bodies were merely actions taken against the public policy I was implementing through the decrees I was issuing."[3]

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[1] See, for example, *Case of Véliz Franco et al. v. Guatemala. Preliminary objections, merit, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 53, and *Case of Suárez Peralta v. Ecuador. Preliminary objections, merit, reparations and costs.* Judgment of May 21, 2013. Series C No. 261, para. 37.

[2] *Cf.* Brief with pleadings, motions and evidence of November 2, 2018 (merits file, folio 164).

[3] *Cf.* Statement made by Gustavo Francisco Petro Urrego before the Inter-American Court of Human Rights during the public hearing held on February 6, 2020.

A "ramified and relational" reading of the public statements made by the then Attorney General, who presented himself as a candidate for the presidency in the 2018 elections, elections in which Mr. Petro also took part, would have allowed for a greater understanding of the motives behind the sanctioning decisions issued by the Attorney General's Office. When read in this way, the public statements of the then Attorney General when referring to the need to "recover the country and move it away from the threat of socialism of the 21st century embodied by the left"[4] cannot go unnoticed. Or when referring specifically to Mr. Petro and, in particular, to the disciplinary proceedings brought against him, he publicly stated the following: "Speaking of fanatics: Gustavo Petro murdered Colombians, burned the Palace of Justice and did not pay for his crimes. Now he wants to victimize himself because we sanctioned his proven inefficiency as mayor of Bogota."[5] In other statements, the then Attorney General accused Mr. Petro of having politically negotiated the Council of State resolution of November 15, 2017.[6]

It is also important to remember that in his written statement to the Court, the current Senator Ivan Cepeda, who, like Mr. Petro, identifies himself as an opposition politician and who had been investigated by the Attorney General's Office, described actions taken by the then Attorney General during the disciplinary proceedings against him that, in his opinion, were "politically motivated," and intended to "limit [his] exercise of [his] functions as a member of Congress, particularly the right to exercise political control and also [his] work in defense of peace and human rights." In particular, he stated that "the intention to undermine my rights and the exercise of my parliamentary activity is evident, and also the interest revealed by the then Attorney General […], who […] violated my rights to the presumption of innocence, to due process, and to defend myself during the proceedings."

The use by the then Attorney General of the disparaging and pejorative adjective of "fanatic" to refer to Mr. Petro in specific statements regarding the disciplinary proceedings filed against him, as well as the public accusation of having committed serious criminal offences, added to the defense's questioning of the lack of subjective impartiality in the said proceedings and, finally, the statement by Senator Ivan Cepeda about the political motives underlying the disciplinary measures taken by the Attorney General's Office, allowed it to be inferred that, not only were the disciplinary proceedings and the resulting decisions and actions not based on the law, as declared in the judgment, but, moreover, these measures were compounded to the detriment of the appellant by the fact that they were clearly supported by, and resulted from, prejudice concerning Mr. Petro's political ideology and convictions; they therefore constituted acts of covert discrimination and misuse of power.

In the cases of *Granier et al. (Radio Caracas Televisión) v. Venezuela* and *San Miguel Sosa et al. v. Venezuela,* the Court has already reflected on proceedings that enjoy a semblance of legality, but that, in reality, have a discriminatory motivation.[7] In those cases, the Court has referred to discrimination as any distinction, exclusion,

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[4] *'La realidad del país demanda la unidad'* (consulted on line). In: El Tiempo, January 27, 2018. Available at: https://www.eltiempo.com/elecciones-colombia-2018/presidenciales/alejandro-ordonez-habla-sobre-candidatura-presidencial-en-coalicion-uribe-pastrana-175998.

[5] Tweet published on November 15, 2017, by AOM from his Twitter account (consulted on line). In: Las 2 Orillas, November 16, 2017. Available at: https://www.las2orillas.co/gustavo-petro-asesino-colombianos-quemo-el-palacio-de-justicia-y-no-pago-por-sus-crimenes-alejandro-ordonez/

[6] Tweet published on November 16, 2017, by AOM from his Twitter account (consulted on line). In: Las 2 Orillas, November 16, 2017. Available at: https://www.las2orillas.co/gustavo-petro-asesino-colombianos-quemo-el-palacio-de-justicia-y-no-pago-por-sus-crimenes-alejandro-ordonez/

[7] *Cf. Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of June 22, 2015. Series C No. 293, para. 189, and *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations, and costs.* Judgment of February 8, 2018. Series C No. 348, para. 190.

restriction or preference based on certain grounds, such as race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition, that have the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, under conditions of equality, of the human rights and fundamental freedoms of everyone.[8]

It has also stressed that Article 1(1) of the Convention is a general rule the content of which extends to all provisions of the treaty, and has established the obligation of State Parties to respect and to ensure the full and free exercise of the rights and freedoms recognized therein "without any discrimination." In other words, whatever its origin or form, any treatment that may be considered discriminatory with respect to the exercise of any of the rights guaranteed in the Convention is *per se* incompatible with it.[9] The Court has also pointed out that the State's failure to respect and to ensure human rights, by any discriminatory treatment, generates its international responsibility. That is why there is an indissoluble link between the obligation to respect and to ensure human rights and the principle of equality and non-discrimination.[10]

Based on this case law, in the case of Petro Urrego it was necessary to determine whether, beyond the formal possibility or power invoked by the State authority to act, there was evidence to consider that the real motivation or purpose of the disciplinary proceedings against him was to exercise some form of covert reprisal, persecution or discrimination. In that regard, the Court has held that, when an act of covert persecution, discrimination or reprisal or arbitrary or indirect interference in the exercise of a right is alleged, it is relevant to consider the motive or purpose of a particular act of the state authorities becomes significant for the legal analysis of a case,[11] because a motive or purpose other than that of the law granting the state authority the power to act may reveal whether the action may be regarded as arbitrary[12] or a misuse of power. [13]

The Court could have taken as a starting point the fact that the actions of state authorities are presumed to be lawful;[14] therefore, an irregular action on the part of those authorities must be proved in order to disprove this presumption in good

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8 *Cf. Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs.* Judgment of February 24, 2012, para. 81, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, reparations and costs.* Judgment of March 9, 2018. Series C No. 351, para. 269.

9 *Cf. Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica,* Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 53, and *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs.* Judgment of November 30, 2016. Series C No. 329, para. 239.

10 *Cf. Juridical status and rights of undocumented migrants.* Advisory Opinion OC-18/03 of September 17, 2003, para. 85, and *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016. Series C No. 318, para. 335.

11 *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. 173, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of August 28, 2013. Series C No. 268, para. 210.

12 *Cf. Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, supra,* para. 173. In this regard, the European Court has taken into account the purpose or motivation that the state authorities revealed when exercising their functions, to determine whether or not the European Convention on Human Rights had been violated. See ECHR, *Case of Gusinskiy v. Russia*, (No. 70276/01), Judgment of May 19, 2004, paras. 71 to 78; *Case of Cebotari v. Moldavia*, (No. 3615/06), Judgment of November 13, 2007, paras. 46 to 53, and *Case of Lutsenko v. Ukraine* (No. 6492/11), Judgment of July 3, 2012, paras. 100 to 110.

13 *Cf. Case of Granier et al. (*Radio Caracas Televisión*) v. Venezuela, supra* note 7*,* para. 189.

14 *Cf. Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, *supra* note 12*,* para. 173, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, *supra* note 11, para. 210.

faith.[15] To this end, the Court could have proceeded to consider the evidence in the file – and the evidence it considered appropriate to request *ex officio*, some of which has already been mentioned in this opinion – with regard to the alleged undeclared purpose, and to examine this evidence.[16]

In my opinion, by making a comprehensive analysis of the different probative elements – and having assessed all of these, plus the facts mentioned by the representatives to prove that the actions of the Attorney General's Office were motivated by evident and undeniable disagreement with the political option manifested and defended by Mr. Petro – the Court could have noted that there were clearly sufficient elements to disprove the presumption of legality of the actions of the Attorney General's Office, because the representatives had provided reliable evidence that exceeded mere conjecture. In my opinion, these elements, taken as a whole, are consistent enough to prove that the actions of the Colombian state, at its different levels, were influenced by these discriminatory perceptions that ultimately violated Mr. Petro's political rights and prejudiced his continued exercise of the city's government and, eventually, his participation in the 2018 presidential elections.

The context of institutional harassment against Mr. Petro, in addition to constituting a violation of his political rights and to due process, also violated his right to personal integrity due to the anguish and feeling of insecurity arising from being a constant target of the authorities and being unable to implement his political project democratically, on behalf of his constituents. The Court could have addressed those elements in the judgment and described the consequences they had on the personal integrity of Mr. Petro and his family. If it had done so, this would have demonstrated how the State's discriminatory actions violated the victim's political rights, judicial guarantees, judicial protection and personal integrity transversally.

IV. Final considerations

In the instant case, the Court chose to disregard this opportunity to reflect on what, in the current circumstances in the region and the world, has resulted in numerous publications and is the subject of academic and even judicial scrutiny, as pointed out by Telma Luzanni when referring to the contents of the article, "Gaslighting y las FF.AA.," [Gaslighting and the Armed Forces] by the political scientist Ernesto Calvo, of the University of Maryland, who, when analyzing the "transgressions" of the rules of democracy, called attention to the new experiments that are being carried out in South America that we must be very alert to, because they represent an abuse of the institutional system and a denial of the rule of law. There are no limits that cannot be ignored if the power of the State wishes to obtain a result… In this way, the principles of political tolerance can be deconstructed and the pillars of democracy, such as freedom of expression, the independence of the different powers, the sanctity of the vote and the constitutional status of the right of citizenship, damaged. And also the premonitory reflections that "[t]his is now being tested in South America and could subsequently be used in other parts of the world."[17]

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[15] *Cf. Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, *supra* para. 173, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, *supra,* para. 210. The Inter-American Court has pointed out that "direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, indicia and presumptions may be considered, provided they lead to conclusions consistent with the facts." *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 130.

[16] *Cf. Case of Granier et al. (Radio Caracas Televisión) v. Venezuela, supra,* para. 189, and *Case of San Miguel Sosa.*

[17] *Cf.* Luzzani, Telma, *Lawfare, el nuevo ensayo neoliberal*, available at: https://cronicon.net/wp/lawfare-el-nuevo-ensayo-neoliberal/.

Nowadays, when it would seem that, by act or omission, encouragement is being given to the transgression of the higher hierarchical order that protects the universal, interdependent and indivisible human rights, as well as the founding principles of the OAS Charter, the Democratic Charter and the American Convention on Human Rights, the Court – I am convinced – did not take advantage of the historic and decisive opportunity to vigorously contain any practice, overt or veiled, involving discrimination on the grounds of ideas, confessions or beliefs against politicians who exercise their legitimate choice of opposition status peacefully, democratically and legally, as the case of Petro Urrego *v.* Colombia has revealed.

Accordingly, I consider that there was sufficient evidence and compelling reasons to declare the responsibility of the State for the violation of Article 5 of the Convention, in relation to the prohibition of discrimination enshrined in its Article 1(1), which is why I am expressing my partially dissenting opinion.

Patricio Pazmiño Freire
Judge

Pablo Saavedra Alessandri
Secretary

DISSENTING OPINION OF JUDGE EUGENIO RAÚL ZAFFARONI
ON OPERATIVE PARAGRAPH 5

OF THE JUDGMENT OF JULY 8, 2020
OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

IN THE CASE PETRO URREGO *V.* COLOMBIA

It is a public and well-known fact that Mr. Petro is a politician, even a candidate for the Presidency of the Republic. He has also been subjected to an irregular proceeding, and even to a reversal of the decision by the State itself that interrupted the completion of his popular mandate. This case did not involve an acquittal or dismissal in regular proceedings before a judicial authority. Clearly, the annulment and reparation required him to take certain steps entailing the inconvenience of having to go to the corresponding courts and to endure the negative consequences of the enforceable nature of an administrative act.

There are strong indications of bias in the first decision, but, although these were not taken into account, it is clear that the decision was arbitrary and taken on the basis of a purported administrative disciplinary power that, based on an elemental separation of powers, did not correspond to that branch of the legal system. The consequences of proceedings always limit rights and, therefore, the citizen's obligation to bear them is only admissible in cases of regular proceedings carried out by constitutionally and conventionally competent authorities.

Although pecuniary reparation and reinstatement in his functions was ordered, the truth is that, except in private law proceedings – where guarantees (*contracautelas*) are in force and the harm is pecuniary and reparable in kind – in no other sanctioning proceeding is it possible to redress the consequences of the precautionary measures imposed comprehensively and, even less, the sanctions that are immediately enforceable. Although the case did not involve the deprivation of liberty, the fact is that a null and void decision interrupted the popular mandate of someone who plays an important political role in the State.

It would be ignoring a basic fact to overlook or pretend to ignore that a political accusation of corruption, by a null and void proceeding in the case of a politically active person, always, to some extent, involves harm to objective honor; that is, as regards its effects on third parties and on the electorate itself, because it is a known fact that, regardless of the legal matter, any proceeding is likely to raise doubts or tarnish public opinion with regard to that person's reputation or the trust placed in him by his fellow citizens.

There is an longstanding rule that is attributed to Göbbels, but appears to originate from Fouché or from a revolutionary of that time in this regard. It is obvious that, under such conditions, every State has the duty to prevent arbitrary and null and void proceedings even if, subsequently, the State itself then declares the nullity, because some of the damage has already been done and cannot be repaired.

I understand that, as this Court has repeatedly ruled, the information provided in a case must be evaluated in context. The national context presents a panorama of political struggle in which, in practice, the individual has the role of principal opponent.

Meanwhile, in the regional context, it is also a public and well-known fact that the pattern of regrettable political persecution by means of a perverse use of the law - which has been called "lawfare" – is expanding in the countries of the region. It is so well-known and worrying that its practice has become the subject of study and research in academic circles (for example, Dale Stephens, *The Age of Lawfare*, International Law Studies, vol. 87; David M. Crane, *The Take Down: Case Studies Regarding "Lawfare" in International Criminal Justice: The West African Experience,* Case Western Reserve Journal of International Law, vol. 43, issue 1; in the same journal, Michael P. Scharf - Shannon Pagano, *Foreward: Lawfare!* etc.).

Outside this national and regional context and, in the case of regular proceedings, it would not be legitimate to condemn the State. However, taking into consideration that this was not a regular proceeding but rather one that was null and void; that the party concerned plays a very important political role in the national context and that the said practice of perverse manipulation of the law is spreading throughout the region; in other words, within such contexts, I believe that that indications of political persecution are sufficiently serious, specific and congruent to conclude that the State's decision was discriminatory, even if it is necessary to weigh the State's conduct in mitigating the harm by annulling the sanctioning measure.

In view of the gravity of persecution using arbitrary proceedings, including accusations of corruption, and taking into account the extension, repetition and increasing frequency of the so-called *"lawfare*," it is incumbent upon States to exercise the utmost care, transparency and prudence possible in the case of people with high political prominence; otherwise, instead of the rational fight against any form of corruption, an inquisitional framework capable of undermining the healthy and democratic political struggle would be re-established.

For the above reasons I understand that the State is responsible for the violation of Article 5 of the Convention in relation to Article 1(1) of this instrument to the detriment of Mr. Petro.

This is my opinion.

Eugenio Raúl Zaffaroni
Judge

Pablo Saavedra Alessandri
Secretary