

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF MOYA SOLIS v. PERU

JUDGMENT OF JUNE 3, 2021

(Preliminary objections, merits, reparations and costs)

In the case of Moya Solís v. Peru,

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

Elizabeth Odio Benito, President
L. Patricio Pazmiño Freire, Vice President
Eduardo Vio Grossi, Judge
Humberto Antonio Sierra Porto, 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 Article 62(3) and 63(1) of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and Articles 31, 32, 42, 65 and 67 of the Court’s Rules of Procedure (hereinafter “the Rules of Procedure” or “the Court’s Rules of Procedure”), delivers this judgment, structured as follows:

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INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On January 9, 2020, the Inter-American Commission on Human Rights (hereinafter the "Commission") submitted the case of Moya Solís versus the Republic of Peru (hereinafter "the State", "Peru" or "the Peruvian State") to the Inter-American Court. According to the Commission, the case relates to alleged violations of Articles 8(1), 8(2) b), 8(2) c), 9, 23(1) c) and 25(1) of the American Convention on Human Rights, in relation to the obligations established in the Articles 1(1) and 2 of the same instrument, to the detriment of Mrs. Moya Solís. The alleged violations occurred within the framework of the administrative process for ratification, which ended with the removal of Mrs. Moya Solís from the position of Judicial Clerk of the Tenth Court with Privative Jurisdiction for Labor and Labor Communities. The Commission considered that the process against Mrs. Moya Solís disregarded her right to know in advance, and in detail, the accusation made and to have adequate time and means to form her defense. It also ignored Mrs. Moya Solís's right to expect a duly reasoned decision and the principle of legality, as there were no clearly defined grounds outlining the conduct that would be evaluated. In addition, the Commission considered that the right to judicial protection and a reasonable time frame were ignored, because the remedies filed by the presumed victim were rejected without a substantive analysis of the violations of due process, and because the processing of the action for *amparo* took more than 10 years. Finally, the Commission found that in this case the political rights of the presumed victim were violated because she was removed from her position in an arbitrary process, which affected her right to remain in her position on a basis of equality.

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

- a. *Petition.* - On March 21, 2000, Mrs. Moya Solís filed a petition before the Inter-American Commission.
- b. *Admissibility Report.* On August 12, 2016, the Inter-American Commission found the case admissible in Report No. 37/16. The Admissibility Report was notified to the parties on September 1, 2016.
- c. *Merits Report.* - On May 4, 2019, the Commission approved the Merits Report No. 63/19, in accordance with Article 50 of the Convention (hereinafter "Merits Report" or "Report No. 63/19").
- d. *Notification to the State.* The Merits Report was notified to the State in a communication dated July 9, 2019, and it was given a period of 2 months to report on compliance with the recommendations. The State requested an extension, which was granted by the Commission. In its second report on compliance, the State asked the Commission to publish the Merits Report No. 63/19 and did not present substantive information showing significant progress in compliance with the recommendations. The presumed victim asked the Commission for the case to be referred to the Inter-American Court of Human Rights.

3. *Submission to the Court.* On January 9, 2020, the Commission submitted to the Inter-American Court all the facts and alleged human rights violations described in Report No. 63/19, due to "the need to obtain justice".¹ This Court notes with concern that twenty years have elapsed

¹ The Commission appointed Commissioner Joel Hernández and the then Executive Secretary Paulo Abrão as its delegates. It also delegated the Deputy Executive Secretary, Marisol Blanchard and the Secretariat's lawyers Jorge Meza Flores and Christian González Chacón as legal advisers.

between the presentation of the initial petition before the Commission and the submission of the case before the Court.

4. *Requests from the Inter-American Commission.* The Commission asked the Court to declare the State internationally responsible for the violation of the rights to judicial guarantees, the principle of legality, political rights and judicial protection, enshrined in Articles 8(1), 8(2) b), 8(2) c), 9, 23(1) c) and 25(1) of the American Convention on Human Rights, in relation to the obligations established in Articles 1(1) and 2 of the same instrument, to the detriment of the presumed victim.

II PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and the presumed victim.* The submission of the case was notified to the State and the presumed victim on February 19, 2020

6. *Brief of pleadings, motions, and evidence.* On April 22, 2020, the presumed victim presented her brief of pleadings, motions and evidence (hereinafter "brief of pleadings and motions"), pursuant to Articles 25 and 40 of the Rules of the Court. Mrs. Moya Solís requested that the State be declared internationally responsible for the violation of the rights to judicial guarantees, the principle of legality and judicial protection, established in Articles 8(1), 8(2) b), 8(2) c), 9 and 25(1) of the American Convention on Human Rights. She also requested reparation measures.

7. *Answering brief.* On September 10, 2020, the State² presented its brief answering the submission of the case and the brief of pleadings and motions (hereinafter "answer" or "answering brief"), in which it filed three preliminary objections and objected to the alleged violations and the requests for reparation measures presented by the Commission and the presumed victim.

8. *Observations on the preliminary objections.* The presumed victim presented observations on the preliminary objections raised by the State on November 7, 2020. The Inter-American Commission submitted its observations on November 9, 2020.

9. *Final written proceeding.* By Order of February 1, 2021³, the President of the Court, in response to the situation caused by the pandemic due to the spread of Covid-19 and in accordance with the power granted by Article 50(1) of the Regulations, resolved not to convene a public hearing for this case and to request that a testimonial statement and two expert opinions be sent by affidavit.

10. *Additional information and evidence.* On March 18 and April 22, 2021, on the instructions of the President of the Court, the State was requested to send additional information.⁴ The State submitted this documentation on March 24, April 12, and May 4, 2021. The Commission did not submit observations on the documentation provided by the State. The presumed victim's observations and final written arguments were forwarded on April 19, and May 13, 2021 (*infra* para. 36).

² The State of Peru appointed Carlos Miguel Reaño Balarezo, Supranational Specialized Public Prosecutor as its lead representative in this case and, as alternate representatives, the Supranational Specialized Deputy Public Prosecutor Carlos Llaja Villena and the lawyer Silvana Lucía Gómez Salazar. On December 3, 2020, the State reported the end of the appointment of attorney Gómez Salazar as alternate representative.

³ Cf. Case of Moya Solís v. Peru. Order of the President of the Inter-American Court of Human Rights of February 1, 2021. Available at: http://www.corteidh.or.cr/docs/asuntos/Moya_Solis_1_02_2021.pdf.

⁴ On March 18, 2021, information was requested from the State regarding the current name of the position "grade V2 judicial clerk," the salaries earned by those who held that position, and the policies for promotion or promotion in the position. On April 22, 2021, information was requested from the State on the positions held by Mrs. Moya Solís in the judiciary after September 1982.

11. *Final written arguments and observations.* On April 19, 2020, the presumed victim and the State forwarded their final written arguments and annexures, and the Commission presented its final written observations. On the instructions of the President of the Court, the parties and the Inter-American Commission were asked to submit any considerations they deemed pertinent on the attached documentation submitted by the State and by the presumed victim. On April 26, 2021, the presumed victim submitted her observations. On April 27, 2021, the State ruled, and the Inter-American Commission stated, that it had no observations to make (*infra* para. 35).

12. *Deliberation of the case.* The Court deliberated this judgment in a virtual session, on May 25 and 26 and June 3, 2021.⁵

III JURISDICTION

13. The Inter-American Court has jurisdiction to hear this case, pursuant to Article 62(3) of the Convention, given that Peru ratified the American Convention on Human Rights on July 12, 1978 and accepted the contentious jurisdiction of the Court on January 21, 1981.

IV PRELIMINARY OBJECTIONS

14. In this case, Peru raised three preliminary objections. In this section, the Court will analyze: A) the request for review of legality by the Inter-American Court in relation to the alleged failure to exhaust domestic remedies; B) the alleged lack of jurisdiction of the Inter-American Court to act as a fourth instance; and C) the alleged improper inclusion of Articles 5 and 11 of the Convention in the pleadings and arguments brief.

A. Request for review of legality by the inter-American Court in relation to the alleged failure to exhaust domestic remedies

A.1 Arguments of the State, and observations of the Commission and the presumed victim

15. The **State** requested the Inter-American Court monitor the legality of the Commission's actions regarding the assessment and pronouncement on the requirement for exhaustion of domestic remedies for having violated the State's right to defense. This request was based on two arguments. First, that the case was not reviewed by the Constitutional Court, and second, that the presumed victim did not question the regulatory framework applied to her and, despite this, the Commission included a violation related to said regulatory framework in the Merits Report.

16. Regarding the first matter, it held that, despite the presumed victim indicating that she had exhausted domestic remedies, Law No. 26435 of 1995, Organic Law of the Constitutional Court established the possibility that the latter heard the decisions of the Supreme Court of Justice. Thus, the decision by which domestic remedies had been exhausted could actually have been known in the last and final instance by the Constitutional Court, and this did not occur due to the presumed victim's inaction.

⁵ Due to the exceptional circumstances caused by the COVID -19 pandemic, this Judgment was deliberated and approved during the 142nd Regular Session, which was held remotely using technological means in accordance with the provisions of the court's Rules of Procedure.

17. Regarding the second matter, the State argued that, within the framework of the amparo process, Mrs. Moya Solís did not indicate that her rights had been impacted under the regulatory framework applied in the ratification process. It also pointed out that this matter was not expressly invoked in the petition filed with the Inter-American Commission and it was not mentioned in the Admissibility Report. Notwithstanding, the Merits Report referred to the legal framework of the ratification process and indicated that “it did not establish duly defined grounds [...]”. Therefore, it alleged that it did not have the opportunity to present arguments in relation to this matter or to present the corresponding preliminary objection at the appropriate procedural stage, thereby affecting its right to defense. It asked the Court to duly monitor the legality of the actions of the Inter-American Commission and accept the preliminary objection.

18. The **presumed victim** argued that she had exhausted domestic remedies and that, according to Law 23,369, the available remedy was that of review before the Supreme Court. Regarding the State's argument that she had not questioned the regulatory framework applied to her, it indicated that challenges through appeal, complaint, review or any other means are against the immediate act in violation of the law.

19. The **Commission** indicated that the admissibility decision in this case was adopted in accordance with the information available at the time of that pronouncement and in light of the criteria historically applied in the exercise of said function under the Convention. Therefore, the content of its decision, adopted in accordance with the Convention and the Commission's Rules of Procedure, should not be subject to a new examination in later stages of the proceedings. It also indicated that the State did not make an allegation of failure to exhaust domestic remedies in a timely manner, therefore its preliminary objection is outside time limits. In this regard, it recalled that, in accordance with the reiterated case law of the Inter-American Court, the objection of failure to exhaust domestic remedies must be presented in a timely manner, otherwise, the State loses the possibility of presenting that defense before the Court. It also stressed that it is not necessary to exhaust extraordinary remedies.

20. In relation to the alleged violation of the principle of legality, the Commission held that the litigation throughout the process dealt with the punitive administrative process of ratification, which culminated in the removal of the presumed victim from her position and that this evidently encompasses the applicable regulatory framework. Therefore, it considered that the State's argument is not justified, in the sense that this matter was not part of the litigation and therefore it could not argue the lack of exhaustion of domestic remedies on that specific aspect at the appropriate procedural moment. In the Commission's opinion, the alleged violation of the principle of legality derives from the main violation. In addition, it highlighted that it is not the practice of the organs of the Inter-American System to demand the exhaustion of domestic remedies separately and autonomously against each of the effects derived from an alleged violation. It requested that the preliminary objection filed by the State be dismissed due to its extemporaneous nature and due to its lack of substantive legal basis.

A.2 Considerations of the Court

21. The Court recalls that an objection to the exercise of its jurisdiction based on the alleged failure to exhaust domestic remedies must be presented during the admissibility stage of the case before the Commission⁶. To this end, the State must, first, clearly specify before the Commission, during the admissibility stage of the case, the remedies that, in its opinion, have not yet been exhausted. On the other hand, the arguments that inform the preliminary objection filed by the

⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, Para. 88, and *Case of Martínez Esquivia v. Colombia. Preliminary Objections, Merits and Reparations*. Judgment of October 6, 2020. Series C No. 412, para. 21.

State before the Commission during the admissibility stage must correspond to those made before the Court. However, in this case, the State's arguments to the effect that the extraordinary appeal for review had not been filed before the Constitutional Court, and that for this reason domestic remedies had not been exhausted, were not presented at the appropriate procedural moment, that is, during the admissibility stage of the case. Indeed, the Court notes that the State raised for the first time the failure to exhaust domestic remedies in a communication sent on October 13, 2017 to the Inter-American Commission on Human Rights, to which it attached a communication dated August 17, 2017 signed by the Public Prosecutor of the Judiciary, which indicates that the presumed victim had not exhausted all the instances provided by law. This communication was received after the issuance of Admissibility Report No. 37/16 of August 12, 2016 (*supra* para. 2(b)). For this reason, the Court considers that the preliminary objection raised by the State is inadmissible.

22. Additionally, the State requested monitoring of the legality of the actions of the Inter-American Commission in relation to the lack of exhaustion of domestic remedies, within the normative framework applied. The Court recalls that, in matters it oversees, it has the power to monitor the legality of the Commission's actions. However, this does not necessarily imply an *ex officio* review of the procedure that was carried out in that instance. In addition, the Court must maintain a fair balance between the protection of human rights, the ultimate goal of the Inter-American System, and the legal security and procedural fairness that ensure the stability and reliability of international protection. The aforementioned control may proceed, then, in those cases in which one of the parties alleges that there is a serious error that violates their right of defense, in which case they must effectively demonstrate such damage. A complaint or discrepancy of criteria in relation to the actions of the Inter-American Commission is not sufficient.⁷

23. In this case, the State indicated that, because the allegations referring to the regulatory framework and the violation of the principle of legality were not presented by the presumed victim or included in the Admissibility Report, it did not have the opportunity to raise the preliminary objection for failure to exhaust domestic remedies in relation to this matter at the appropriate procedural moment. In this regard, the Court finds that the litigation in this case has, from the beginning, been related to the process that gave rise to the presumed victim's non-ratification in office, and this necessarily includes the regulatory framework applied. Furthermore, this regulatory framework was identified by the presumed victim in her initial petition.⁸ Thus, the State has been aware of the subject of the dispute since then and could have presented arguments on this point or a preliminary objection at the appropriate procedural moment. Additionally, it should be noted that, among the requirements to file a complaint with the Commission, there is no provision that the petitioner identify the regulatory framework or make a specific reference to the articles of the Convention that are allegedly violated.

⁷ Cf. *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2007. Series C No. 172, para. 32, and *Case of Urrutia Laubreaux v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 27, 2020. Series C No. 409, para. 25.

⁸ The initial petition of the alleged victim states: "I DENOUNCE the Peruvian State, for violation of the stated Convention and for having violated the main rights of the Peruvian constitutional guarantee to the detriment of the undersigned, on the grounds of fact and law that I state: [...] 2. - Through Laws No. 23344 dated December 19, 1981 and 23369 dated December 31, 1981, legislation was passed on the appointments of Court Clerks and the ratification of the Court magistrates, secretaries and reporters of the Court, respectively. In order to fulfill these mandates, by Supreme Decree No. 003-82 JUS, dated January 13, 1982, a Commission of members was appointed to proceed with the ratification of the Clerks of the Courts. Thus, after the review of the files under my charge and the evaluation carried out by the Ratification Commission, the President of the Court informed me on September 13, 1982, that I had not been ratified in the position of Judicial Secretary, preventing me from entering my workplace without foundation [...]" Initial petition filed by Mrs. Norka Moya Solís before the Inter-American Commission on Human Rights, March 21, 2000 (evidence file, folios 314 to 315)

24. In light of the above, the Court concludes that neither the request for monitoring of legality nor the preliminary objection of failure to exhaust domestic remedies is admissible.

B. Alleged lack of jurisdiction of the Inter-American Court to act as a fourth instance.

B.1. Arguments of the State, observations of the Commission and the presumed victim

25. The **State** argued that the Inter-American System for the Protection of Human Rights cannot subrogate the work of the domestic courts of each State, nor act as a court of appeal when re-evaluating the jurisdictional decisions adopted within the framework of a process that respects international standards. In this regard, it considered that the Court does not have jurisdiction to hear this case, as it arises from the presumed victim's disagreement with the internal decisions emanating from a judicial process of protection that was respectful of her rights to procedural guarantees. The State highlighted that it presented this preliminary objection before the Commission at the admissibility stage.

26. The **presumed victim** indicated that the State, in the first brief presented before the Inter-American Commission, made no observations nor presented preliminary objections. She also argued that she resorted to the Inter-American System in relation to an act that violated rights contained in the American Convention and not because she seeks to review a decision that was unfavorable to her.

27. The **Commission** argued that, in this case, the presumed victim argued a series of violations of due process and other substantive rights, that occurred within the framework of the disciplinary administrative process of ratification that culminated in her dismissal from the post of Judicial Clerk. To that extent, the Commission held that, according to the precedents in the matter, the preliminary objection filed by the State is inadmissible.

B.2 Considerations of the Court

28. This Court has indicated that the finding as to whether the actions of judicial bodies constitute a violation of the State's international obligations, may then require it to examine the respective domestic processes to establish their compatibility with the American Convention. Therefore, when analyzing the compatibility of the domestic proceedings with the American Convention, the Court is only competent to decide on the content of judicial decisions that clearly arbitrarily contravene it.⁹ Consequently, this Court is not a fourth instance of judicial review, insofar as it examines the compliance of domestic judicial decisions with the American Convention and not in accordance with domestic law.

29. In this specific case, it is noted that the Commission and the presumed victim allege the violation of different rights enshrined in the American Convention, within the framework of the decisions taken by the national authorities, both in administrative and judicial proceedings. Consequently, in order to determine whether said violations actually occurred, it is essential to analyze, on the one hand, the resolutions issued by the different administrative and jurisdictional authorities, and on the other, their compatibility with the international obligations of the State, which ultimately sets up a substantive issue that cannot be settled by way of a preliminary

⁹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 222, and *Case of Cordero Bernal v. Peru. Preliminary Objections and Merits*. Judgment of February 16, 2021. Series C No. 421, para. 18.

objection. Consequently, the Court declares the preliminary objection presented by the State inadmissible.

C. Alleged improper inclusion of Articles 5 and 11 of the Convention in the motions and pleadings briefs

C.1. Arguments of the State, observations of the Commission and the presumed victim

30. The **State** argued that, despite the fact that the Commission in its Admissibility Report No. 37/16 dated August 12, 2016 found the petition in relation to Articles 5 (Right to humane treatment) and 11 (Right to privacy) of the American Convention inadmissible, and it did not consider those rights in its Merits Report, Mrs. Moya Solís made a series of general statements by means of which she intends to discuss the impacts on the aforementioned rights. Therefore, it asked the Court not to assess the presumed victim's allegations. It also indicated that, in this case, domestic remedies had not been exhausted in relation to the rights to privacy and humane treatment, for which it indicated that it also presented the preliminary objection of failure to exhaust domestic remedies in relation to this matter.

31. The **presumed victim** did not refer to this matter. The **Commission** indicated that the presumed victims and her representatives may invoke the violation of rights other than those included in the Merits Report, as long as they are framed by the facts contained in said document, insofar as the presumed victims are the holders of the rights enshrined in the Convention. It also highlighted that the State's argument regarding the due definition of the rights alleged by the presumed victim is a matter that corresponds to the substantive debate and could not be resolved by means of a preliminary objection.

C.2 Considerations of the Court

32. The Court reiterates that the presumed victims and their representatives may invoke the violation of rights other than those included in the Merits Report, provided that they remain within the factual framework defined by the Commission, insofar as the presumed victims are the holders of the all the rights enshrined in the American Convention. In such cases, it is up to the Court to decide on the admissibility of arguments concerning the factual framework, safeguarding the procedural balance of the parties.¹⁰

33. However, in this specific case the Court finds that, although the alleged victim mentioned Articles 5 and 11 of the Convention and made general reference to her honesty, integrity and life goals, she did not present specific allegations related to the violation of the rights contained in said articles, nor did she request the Court's permission to declare the violation of rights other than those indicated in the Merits Report. Thus, the petition contained in the motions and pleadings brief states: "I request the Honorable Inter-American Court of Human Rights to declare the responsibility of the Peruvian State for the following reasons: 5.1. For having violated my rights corresponding to the judicial guarantees, established in Articles 8(1), 8(2) b), 8(2)c); for having violated the principle of legality established in Article 9; and for having violated my judicial protection established in Article 25(1); as well as those related to articles 1(1) and 2 of the American Convention on Human Rights [...] ". Based on the foregoing, the Court finds that the

¹⁰ Cf. *Case of Pacheco Tineo Family v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 25, 2013. Series C No. 272, para. 22, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, Reparations and Costs*. Judgment of August 22, 2018. Series C No. 356, para. 133.

State's arguments in relation to an improper inclusion of Articles 5 and 11 of the Convention in the motions and pleadings brief are inadmissible.

V EVIDENCE

A. Admissibility of documental evidence

34. The Court received various documents, presented in evidence by the Commission, the alleged victim, and the State, attached to their main briefs (*supra* paragraphs 3, 6, and 7). As in other cases, this Court admits those documents presented in a timely manner (Article 57 of the Rules of Procedure)¹¹ by the parties and the Commission, admissibility of which was neither disputed nor opposed, and whose authenticity was not questioned¹².

35. The Court also received documents attached to the final written arguments presented by the State and by the alleged victim¹³ (*supra* paragraph 11). On April 26 and 27, 2021, the presumed victim and the State, respectively, submitted observations on these documents and the presumed victim submitted an attached document¹⁴. The State argued that the annexes to the final written arguments of the alleged victim were submitted extemporaneously and that, in this case, none of the exceptions provided for in Article 57(2) of the Court's Rules of Procedure appear and for that reason, it requested they be declared inadmissible. The presumed victim presented general observations on the documents presented by the State, and the Inter-American Commission, and indicated that she had no observations on the documents provided by the parties. The Court notes that the documents attached to the final written arguments of the State and the presumed victim and the document attached to the presumed victim's observations were not offered at the appropriate procedural opportunity and that, in this case, none of the exceptions defined in the regulations for the late admission of evidence exists. For that reason, these documents will not be accepted.

36. On March 18 and April 22, 2021, the State was requested to send additional clarifying documentation. The State, by means of briefs filed with the Secretariat of the Court on March 24, April 12 and May 4, forwarded the requested information, which was brought to the attention of the presumed victim and the Inter-American Commission, who had the opportunity to present observations (*supra* paragraph 10). These documents were incorporated into the body of evidence.

B. Admissibility of testimonial and expert evidence

¹¹ The documentary evidence may be presented, in general and in accordance with Article 57(2) of the Rules of Procedure, together with the case's submitting, requests and arguments or answering briefs, as appropriate. The evidence submitted outside of these procedural opportunities is not admissible, except for the exceptions established in the aforementioned article 57(2) of the Rules of Procedure (force majeure or serious impediment) or if it is a supervening event, that is, occurred after the aforementioned procedural moments.

¹² Cf. Article 57 of Rules of Procedure; also *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Cordero Bernal v. Peru*, *supra*, para. 20.

¹³ The State submitted two annexes to its final written arguments: (i) Evaluation Form. Non-hierarchical personnel - Moya Solís Norka, of July 1, 1976; and (ii) Corrida Resolution No. 000495-2020-CE-PJ, of December 29, 2020. The alleged victim attached four documents to her final written arguments: (i) Appeal for Reconsideration and Administrative Order No. 10-82- TRCCLL of July 26, 1982; (ii) Supreme Decree that increases the minimum living wage. Supreme Decree No. 005-201 6-TR; (iii) Table of evolution of the minimum living wage, November 1962 - February 2013; and (iv) Title of Judicial Clerk, granted by the Superior Court of Lima on January 4, 1983.

¹⁴ The alleged victim attached a work certificate issued by the Personnel Director of the Judiciary on April 24, 1981.

37. The Court received a testimony statement, given before a notary public¹⁵, by Jaime Gómez Valverde. This statement is admitted insofar as it conforms to the purpose defined by the Resolution that ordered its receipt and the purpose of the present case. Regarding the expert statements of Tania Zúñiga and Hernán Víctor Gullco, it is noted that they were not given before a notary public and that, instead, each of the experts sent a video certifying the preparation of the expert opinion and indicating that it was not possible to render it by affidavit due to difficulties derived from the pandemic due to the spread of COVID-19¹⁶. The Court notes that Ms. Zúñiga and Mr. Gullco should have communicated, prior to the preparation and submission of the respective expert opinions, the difficulties related to their appearance before a notary public, so that the Court could decide on the matter. For this reason, it will consider said statements, only to the extent that they concur, together with other means of proof, with the confirmation of a fact or situation in the case files.

VI FACTS

38. The facts of this case will be presented below in the following order: A) Relevant national regulatory framework b) On Mrs. Moya Solís and her ratification process; and C) Remedies filed by Mrs. Moya Solís.

A. Relevant national regulatory framework

39. The relevant national legal framework for this case comprises Laws No. 23344 of 1981 and No. 23369 of 1981 and Supreme Decree No. 003-82-JUS. Article 5 of Law No. 23344 establishes:

Article 5. - The Judicial Clerks will be ratified every three years by the Superior Court of the corresponding Judicial District, the first ratification must be made within the seventy days following the application of this law.¹⁷

40. Law No. 23369 states:

Article 1. - Once the ratification of all the Magistrates of the Republic has concluded, the Superior Courts of Justice will proceed to ratify the Clerks and Rapporteurs of the Court, within sixty days of the ratification of the Magistrates.

Similarly, the Agrarian Court and the Privative Labor Court shall proceed to ratify their Secretaries and Rapporteurs and the Secretaries of their respective Courts within the indicated term.

Article 2. - The officers who were not ratified according to the preceding article, may file an appeal for review before the Supreme Court, within the tenth day after the decision is known, the ruling of which will be decisive and final¹⁸.

¹⁵ The statement of Mr. Jaime Gómez Valverde was given on March 4, 2021 in the Province of Lima, Peru, before the notary Carlos Martín Luque Rázuri.

¹⁶ The expert Tania Zúñiga, in the video sent to the Inter-American Court, indicated: "for reasons of health and public health order, in the context of the COVID-19 pandemic, due to medical instruction regarding social distancing and isolation, the undersigned proceeds to issue the requested expert report with the exception of the certification by a notary public. I declare that the expert report that is sent from my email account has been prepared in its entirety by me and the signatures that appear on each of the pages of the aforementioned report are my own and authentic." For his part, the expert witness Hernán Víctor Gullco said: "I am making this video to replace the accreditation of my signature by a notary, which I cannot comply due to the measures taken to combat the COVID-19 pandemic. I am the author of the report presented in this case, Moya Solís v. Peru. This I do from the city of Buenos Aires, Republic of Argentina".

¹⁷ Cf. Law N° 23344 of December 18, 1981 (evidence file, folio 7).

¹⁸ Cf. Law N° 23369 of December 30, 1981 (evidence file, folio 9).

41. Supreme Decree No.003-82-JUS established the procedure to carry out the ratification process for judicial clerks:

Article 1. - Within the five days following publication of these Regulations, the President of the respective Superior Court - or whoever is replacing them in the position - will designate a Commission made up of no more than seven of the least senior Members, in the case of Lima; of five, in the cases of El Callao, Cusco and Arequipa, and of three, in those of the remaining Superior Courts of the Republic; and, among them, who will preside over it, for the purposes referred to in the following articles.

Article 2. - The members of the aforementioned Commission will distribute the work so that they are constituted in the offices of the clerks of the Courts of First Instance in Civil and Criminal matters, Juvenile, Enforcement and Small Claims Courts of the respective judicial district. Upon constitution, the member commissioned will proceed to:

- a) Review the files in process so that, when issuing the corresponding report, it gives the clearest idea of the actions of the clerk in charge of them;
- b) Specify the cases of breach of legal obligations incurred by the clerk, issuing the corresponding record; and
- c) Obtain a written report from the clerk on the cases indicated in the preceding paragraph and receive from them the appropriate evidence for the defense.

Article 3. - The member referred to in the preceding article shall obtain written reports from the corresponding judges on the performance and conduct of each one of the clerks assigned to his court.

They may also request reports on said aspects from the Bar Association of the Judicial District or, where appropriate, from the Bar Association of the province and to institutions and persons it deems appropriate.

The reports referred to in this article may not contain pronouncements on the ratification or non-ratification of the clerk on whom the report is concerned. Otherwise, the opinion expressed in this regard will not be taken into account.

Article 4. - With the minutes and the reports referred to in the previous articles, the member commissioned will create a file for each Clerk of the Court.

Once the province visit is over, the member commissioned shall issue his written report to the President of the Commission of which he is a member. At its meeting the Commission will examine the files and the aforementioned report and will pronounce on their merit in a written report that, with the necessary attachments, it will submit to the President of the Supreme Court within thirty days following the appointment of the Commission.

Article 5. - Once the first provincial report of the Commission has been received, the President of the Superior Court will summon the Plenary Chamber so that, in permanent session and as the other provincial reports are received, it can rule on the ratification or non-ratification of the clerks of the Judicial District.¹⁹

42. Finally, Decree Law No. 14605 of July 25, 1963, contained in the Organic Law of the Judiciary in force on the date of the events, regulated the requirements, actions, obligations, sanctions and other matters related to the clerks of the courts.²⁰

B. On Mrs. Moya Solís and her ratification process

43. Mrs. Moya Solís was 27 years old at the time of the events, with a bachelor's degree in business administration, a law and political science student, and a judicial clerk since December

¹⁹ Cf. Supreme Decree N° 003-82-JUS, of January 12, 1982 (evidence file, folio 11).

²⁰ Cf. Decree Law No. 14605 of July 25, 1963. Organic Law of the Judiciary (evidence file, folios 684 to 686).

1979.²¹ She served as Judicial Clerk of the Tenth Court with Privative Jurisdiction for Labor and Labor Communities of Lima.

44. The process of ratification of Mrs. Moya Solís²² began in 1982 and ended with her non-ratification. In this regard, the Minutes of the Plenary Chamber of September 10, 1982, in which the ratification of Mrs. Moya Solís was discussed, states:

That in the Register of Agreements of Plenary Chamber No. 2 of the Labor Law and Labor Communities Court, are found[...] the Minutes of Plenary Chamber dated September 10, nineteen hundred and eighty-two (sic), the express wording of which (relevant part) is as follows:

[...] The Labor and Labor Communities Court met in the [...] Plenary Chamber, with Dr. Pedro Pablo Gutiérrez Ferreyra as President, its members being Luis Felipe Barrientos, Sara Collazos de Manchego, Juan Parra Solís, Gonzalo Iturry Iturry, Victoria [...] de Fuertes, Felipe [...], Eduardo Gutiérrez Ballón, Jaime Beltrán Quirosa and Edmundo Villecorte Ramirez : on this occasion the last of the members mentioned acted as secretary, as the newest member. The meeting was opened by the President stating that [...] the Plenary Chamber was to comply with Law No. 23369, on the ratification of the [...] clerks of the Labor and Labor Communities Court of the entire public [...], (RELEVANT PART) Mrs. Norka Moya Solís de Rocha, has a favorable report in part; The Chamber was informed that the aforementioned clerk has financial debts amounting to approximately [...], and proof of them would be the [...] raised by the Ratifications Commission by [...] a worker of the Jurisdiction. In addition, it was reported that Mrs. Moya Solís had her own business that absorbed [sic] her time. The voting then proceeded: obtaining 5 white ballots to 5 black (NOT RATIFIED).

This is a true copy of the original minutes to which I refer as necessary.²³

45. For its part, Order No. 0015-82-TT, of September 13, 1982, indicates that deficiencies were found in the processing of files by Mrs. Moya Solís; that the report issued by the Judge in charge of the Tenth Court was not favorable; that Mrs. Moya Solís had been previously sanctioned; and that the charges presented were not disproved.²⁴

C. Remedies filed by Mrs. Moya Solís

C.1 Appeal for Review

46. On September 17, 1982, Mrs. Moya Solís filed an appeal for review with the Supreme Court of Justice, for not being ratified in her position. She argued that her job performance was good, that she did not have the opportunity to present evidence or support her defense within the ratification process and was never given the minutes of the meeting in which her performance was evaluated, despite having made a request and despite said obligation being regulated in Supreme Decree 003-82-JUS²⁵. In her appeal, Mrs. Moya Solís indicated that to date she had not

²¹ Mrs. Moya Solís served between 1973 and 1979 as an assistant to the Third Private Labor Court of Lima. From 1979, she went on to work as Judicial Clerk. Cf. Ministerial Resolution No. 419 of July 2, 1973, in which Mrs. Moya Solís is appointed for a trial period of 6 months as assistant to the Third Private Labor Court (evidence file, folio 2); Ministerial Resolution No. 008-74-TR of January 9, 1974, in which Moya Solís is ratified as auxiliary of the Third Private Labor Court of Lima (evidence file, folio 4); and Directorial Resolution No. 191-79-SA of December 21, 1979, in which the position of Judicial Clerk of the Privative Jurisdiction of Labor and Labor Communities was granted to Mrs. Moya Solís (evidence file, folio 5).

²² Cf. The file contains a copy of the minutes of an interview with Mrs. Moya Solís on August 12, 1982 and a copy of the minutes of the visit of August 26, 1982 of the Ratifications Commission to the Tenth Labor Privy Court in order to review the files and Mrs. Norka Moya Solís's office (evidence file, folios 727 and 729).

²³ Cf. Certificate of the Full Chamber Agreement regarding the non-ratification of Mrs. Moya Solís, issued on March 14, 1988 (evidence file, folio 13).

²⁴ Cf. Resolution N° 0015-82-TT of September 13, 1982 (evidence file, folio 756).

²⁵ The appeal filed by Mrs. Moya Solís states: "4. Since subsection c) of Article 2 of Supreme Decree 003-82-JUS, grants the Clerk examined the possibility as an immanent issue of their right, to take evidence and support their defense, if their behavior is challenged. I verbally requested the delivery of a copy of the minutes, to have an

received "any termination order, or any communication in writing, informing [her] of the non-ratification". She was simply prevented from continuing to work due to not having been ratified. She also indicated that the only document that had been delivered to her in relation to the ratification process was a memorandum of August 9, 1982, signed by the Secretary of the Ratifications Commission.²⁶

47. On October 12, 1983, the Plenary Chamber for Employment of the Supreme Court of Justice found the appeal filed against the "agreement of the Plenary Chamber of the Labor and Labor Communities Court that decides not to ratify her," as unfounded. It argued that the Ratifications Commission would have verified "serious deficiencies in the performance of her duties, verifying that a record did not bear the signature of the judge, but that of the Secretary; having authorized a proof of notification when the date of notification does not appear in the file; not having complied with official notices that were ordered in records; having failed to write down the dates on which the consignments were made, as well as the deliveries and did not write down the number of the certificate or the quantity; therefore, the appellant has not fully complied with the performance of her duties. Similarly, the appellant has not complied with paying the debts incurred, a situation that damages the Court's image".²⁷

C.2 First appeal for amparo

48. On February 17, 1984, Mrs. Moya Solís filed a writ of *amparo* against the Supreme Resolution of October 12, 1983. She maintained that the Supreme Court's decision had been based on a negative report of her duties, of which she was only aware when she was notified of the decision on the appeal for review. Mrs. Moya Solís also disputed the claims that she had performed poorly in the duties of her position.²⁸

49. On June 14, 1985, the Sixteenth Civil Court of Lima found the writ of *amparo* inadmissible. It established that the petitioner's non-ratification did not constitute a violation or threat of violation of a constitutional or fundamental right enshrined in the Constitution.²⁹

50. On July 1, 1985, Mrs. Moya Solís appealed the judgment and requested that the superior officer rule on the merits of the case.³⁰ On September 2, 1985, the Third Civil Chamber of the Supreme Court of Justice confirmed the decision of June 14, 1985.³¹

idea of my evaluation as Clerk; which was denied by the Commission, despite being legislated as an obligation. // 5. I have not been allowed to report in writing about my activity in the Jurisdiction [...]. 7. - The Evaluating Commission and the Magistrates who have decided on the issue that I challenge and whose review I request, have at no time made me aware of my 'demerits', my 'shortcomings', my 'errors', my 'defects' [...]. This silence made it impossible to present evidence in my defense against the possible charges that may be made." Cf. Appeal for review filed by Moya Solís before the Supreme Court on September 21, 1982 (evidence file, folios 16 to 17).

²⁶ Cf. Appeal for review filed by Moya Solís before the Supreme Court on September 21, 1982 (evidence file, folio 19).

²⁷ Cf. Resolution N° 752-82 of the Plenary Labor Chamber of the Supreme Court of October 12, 1983 (evidence file, folio 22).

²⁸ Cf. Amparo Action against Resolution of October 12, 1983, filed by Moya Solís on February 17, 1984 (evidence file, folio 25).

²⁹ Cf. Judgment of June 14, 1985 (evidence file, folio 30).

³⁰ Cf. Appeal filed by Moya Solís, on July 1, 1985 (evidence file, folio 32).

³¹ Cf. Judgment of September 2, 1985 (evidence file, folio 34).

51. On September 19, 1985, Mrs. Moya Solís filed an appeal for nullity against the decision of the Third Civil Chamber of Lima, arguing that "it intended to declare an Administrative Order immovable as if it had the character of *res judicata*".³²

52. On January 17, 1986, the Public Prosecutor indicated that the first and second instance judgments had been issued without having Mrs. Moya Solís' ratifications file in view, so it could not be established whether the Labor Court engaged in irregularities or not. The Public Prosecutor considered it appropriate to declare the Order of September 2, 1985, null and void, and that of June 14, 1985, groundless, and requested that a new ruling be issued.³³

53. On August 4, 1986, the Supreme Court found the decision of September 2, 1985 null and void and the judgment of June 14, 1985 non-subsistent. The decision orders that "the judge of the case issues a new ruling, having the ratifications file in view".³⁴

C.3 Second appeal for amparo

54. After the decision on the annulment appeal, the presumed victim asked on several occasions that the Sixteenth Civil Court of Lima request her ratifications file from the Labor Court. Said court submitted two requests in this regard, without any response recorded on the file.³⁵

55. In June 1995, the 33rd Civil Court of Lima also requested the ratifications file.³⁶ In response, the Administrative Delegate of the Chambers and Courts indicated that, after searching the archives, no file had been found on the matter requested.³⁷

56. On December 30, 1996, the Sixteenth Civil Court of Lima issued a new ruling in relation to the *amparo* action. It concluded that Mrs. Moya Solís had resorted to the *amparo* action to question the Order that declared her appeal for review of non-ratification unfounded, not the Agreement of the Full Chamber Session of the Labor Court in which her non-ratification was agreed and that, when said Order was issued, no constitutional right was violated or infringed. Due to the foregoing, it found the *amparo* action filed by Mrs. Moya Solís unfounded.³⁸

57. On May 19, 1997, Mrs. Moya Solís appealed the ruling of December 30, 1996, arguing that she had not been aware of the Agreement in which it was decided not to ratify her and that the ratification file had not been found.³⁹

³² Cf. Appeal for annulment filed before the Third Civil Chamber of Lima by Norka Moya Solís on September 17, 1985 (evidence file, folio 36).

³³ Cf. Opinion sent by the Public Ministry to the President of the Second Civil Chamber of the Supreme Court on January 17, 1986 (evidence file, folios 39 to 40).

³⁴ Cf. Decision of August 4, 1986 (evidence file, folio 43).

³⁵ Cf. Official letter sent by the Judge of the Sixteenth Civil Court of Lima to the President of the Superior Court of Lima on November 27, 1986 (evidence file, folio 57) and Official Letter No. 1195-84 sent by the Judge of the Sixteenth Civil Court Lima to the President of the Labor Court on March 13, 1987 (evidence file, folio 46). See also: Official letters sent on different dates by Mrs. Moya Solís requesting that the file of ratifications be sent to the 16th Civil Court of Lima (evidence file, folios 47 to 49)

³⁶ Cf. Official letter sent by the Specialized Civil Judge of the 33rd Civil Court of the Judicial District of Lima to the President of the Superior Court of Lima on June 22, 1995 (evidence file, folio 63)

³⁷ Cf. Official Letter No. 076-DA-SYJTL sent by the Administrative Delegate of the Labor Chambers and Courts of Lima to the President of the Superior Court of Justice of Lima on March 4, 1996 (evidence file, folio 65).

³⁸ Cf. Decision of the Sixteenth Specialized Civil Court in Lima of December 30, 1996 (evidence file, folios 68 and 69).

³⁹ Cf. Appeal filed by Mrs. Norka Moya Solís before the Sixteenth Specialized Civil Court of Lima on May 19, 1997 (evidence file, folios 72 to 73).

58. On March 20, 1998, the Transitory Commercial Public Law Chamber confirmed the appealed judgment. It indicated that the *amparo* action proceeds when "the violating act infringes a certain and imminent constitutional right that is possible to restore to the state prior to the threatened violation" and that Mrs. Moya Solís alleged facts that required an evidentiary stage, which is not applicable in a constitutional process.⁴⁰

59. On April 8, 1998, the alleged victim filed an appeal for annulment against the pronouncement of March 20, 1998. She reiterated that the ratification file had not been taken into account in deciding the appeal for *amparo* and that the procedure followed in her case showed procedural errors, among them, that there was no order to search for the ratification file after it was not found; that when the decision of non-ratification was adopted, ten members or magistrates were present and the decision was the result of a tie, which should be settled by the President of the Chamber or in application of the guiding principle of any doubt being resolved in the employee's favor (*in dubio pro operario*); and that when resolving the appeal, the Sixteenth Court had indicated that the petitioning party should have questioned the Non-Ratification Agreement, but she was never notified, only informed verbally. Regarding the ruling of the Sixteenth Court and its evidentiary action, Mrs. Moya Solís indicated that she had never requested any evidence.⁴¹ On October 29, 1998, the Constitutional and Social Law Chamber of the Supreme Court of Justice found that there was no nullity of said judgment.⁴² This decision was notified to Mrs. Moya Solís on September 23, 1999.

VII MERITS

60. In accordance with the arguments of the parties and the Commission, in this case the Court will examine 1) the rights to judicial guarantees and the principle of legality; 2) the guarantee of a reasonable time and the right to judicial protection; and 3) political rights.

VII-1 JUDICIAL GUARANTEES AND PRINCIPLE OF LEGALITY⁴³

1. Arguments of the parties and of the Commission

61. The **Commission** argued that the procedure followed against Mrs. Moya Solís was punitive in nature and that, for that reason, the guarantees established in Articles 8(1), 8(2) and 9 of the American Convention were applicable. Regarding the right to know the accusation in detail and in advance, it indicated that the alleged victim was not notified of charges or accusations, nor was she informed of reports or complaints for which she could present evidence or a defense. This is because the current regulatory framework did not provide for the filing of charges or an accusation that would explain the reasons behind the decision of non-ratification, making a defense against

⁴⁰ Cf. Decision of the Transitory Commercial Public Law Chamber of March 20, 1998 (evidence file, folio 78).

⁴¹ Cf. Appeal for annulment filed by Moya Solís on April 8, 1998 (evidence file, folios 80 to 85)

⁴² Cf. Decision of October 29, 1998 (evidence file, folio 87). This ruling has a dissenting vote from Judge Castillo La Rosa Sánchez, that states: "Two. - that, the resolution of non-ratification of the Plenary Chamber of the Labor Law and Labor Communities, was based on what was done in said labor file, especially in the final report of the same, which refers to a favorable report in part to the plaintiff and it is clear that the non-ratification was agreed when there was a tie of votes for ratification; Three. - that, the non-ratification agreement must be preceded by an interview of the evaluated person, making them aware of the charges brought against their performance, so that they can exercise the right of defense; that the omission or not of these requirements that must emerge from the aforementioned file of ratifications make it entirely essential to have it in view for the issuance of judgments what has not happened, indicating that the file is not found, so in its case it must be remade (sic); MY VOTE is because the hearing judgment is declared NULL [...] and the appealed judgment is GROUNDLESS [...] ". Dissenting opinion of Judge Castillo La Rosa Sánchez (evidence file, folios 90 to 91).

⁴³ Articles 8 and 9 of the American Convention.

them impossible. The Commission also found that the alleged victim was verbally notified of the decision adopted in the ratification process, which affected her right to defense at the appeal stages. It further alleged that the ratification process did not establish duly defined grounds that would allow the alleged victim to understand the conduct that would be evaluated, and that the decision not to ratify lacked adequate rationale to justify the reasons Mrs. Moya Solís was not ratified.

62. The **presumed victim** alleged that the State violated her right to know in advance and in detail the accusation made and the right to have adequate time and means of defense, as well as the right to expect duly reasoned decisions and the principle of legality.

63. The **State** alleged that the Commission intends to equate the ratification procedure for judicial clerks with a disciplinary procedure. However, not all administrative procedures involve the filing of charges. In this sense, a ratification procedure is a procedure that evaluates job performance, but does not refer to misdemeanors or crimes, because no charges or accusations are made against the individual. It indicated that in the ratification processes it is not appropriate to notify accusations or charges, as if it were a criminal process or a disciplinary administrative procedure, rather that the evaluation and ratification process constitutes a guarantee of efficiency and quality of the public service of the administration of justice. It acknowledged that general principles and guarantees are applicable to all administrative proceedings, including due process and the right to defense, which does not necessarily imply the right to know in advance and in detail the charge made, and that the ratification procedure did provide the means for the alleged victim to know which elements were considered when deciding to ratify her or not.

64. It also indicated that the presumed victim had knowledge of commencement of the ratification process and of the related actions. It indicated that Mrs. Moya Solís had the opportunity to hear the decision of non-ratification in a timely manner, otherwise she would not have been able to make the corresponding appeal. Regarding the rationale, it argued that the standards currently in force did not exist at the time of the events. In addition, it indicated that the decision not to ratify the presumed victim was based on deficiencies that were detected in the processing of some files. Finally, on the principle of legality, it reiterated that during the progress of the case in the domestic arena and before the Inter-American Commission, the legal framework of the ratification process was not questioned, for which it reiterated the request made on presentation of its preliminary objections. It also highlighted that the degree of precision of a regulation depends on the matter evaluated and asked the Court to take into account that, in this case, the nature of the process was not disciplinary. In any case, the State indicated that the Organic Law of the Judiciary established the duties and obligations of judicial clerks.

D. Considerations of the Court

65. The Court will then proceed to present its considerations (1) in relation to the right to know in advance and in detail the accusation made and to have adequate time and means to prepare a defense and (2) in relation to the right to expect duly reasoned decisions and the principle of legality.

B.1 Regarding the right to know in advance and in detail the accusation made and to have adequate time and means to prepare a defense

66. This Court has repeatedly indicated that, although Article 8 of the American Convention is entitled "Right to a Fair Trial" its application is not limited to judicial remedies in the strict sense,

"but [to] the set of requirements that must be observed in the procedural stages" ⁴⁴ so that individuals can adequately defend themselves against any type of action by the State that may affect their rights, so that any action or omission by state bodies within a process, be it administrative, punitive or jurisdictional, must respect due legal process.⁴⁵

67. In this context, in accordance with the provisions of Article 8(1) of the Convention, in determining the rights and obligations of a criminal, civil, labor, fiscal or any other nature, individuals have the right to be heard, with due guarantees and within a reasonable timeframe, by a competent, independent and impartial judge or court, previously established by law. The breach of any of these guarantees implies the violation of said provision of the Convention.⁴⁶

68. Article 8(2) of the Convention establishes the minimum guarantees that must be ensured by the States based on due legal process.⁴⁷ The Court has ruled in its case law on the scope of this article and has established that it is not limited to criminal proceedings, but has extended it, as appropriate, to administrative proceedings before state authorities and to non-criminal judicial proceedings in the constitutional, administrative and labor sphere.⁴⁸ Additionally, it has indicated that, both in these and in other types of matters, "the individual also has the right, in general, to due process that is applied in criminal matters."⁴⁹ This indicates that the guarantees of Article 8(2) of the Convention are not exclusive to criminal proceedings but can be applied to proceedings of a punitive nature. The issue in each case is to determine the minimum guarantees that concern a specific non-criminal punitive process, in accordance with its nature and scope.⁵⁰

69. However, this case refers to a process of ratification of a judicial officer. This process evaluated the performance of the alleged victim, in order to establish whether she was ratified in her position or dismissed. The State alleged that evaluation processes differ from disciplinary processes, since the former seek to evaluate the officer from time to time, while the latter seek to establish whether the officer committed an administrative infringement. However, both processes are aimed at evaluating an officer's conduct and suitability, either periodically or as a result of an alleged infringement. In addition, when an evaluation process concludes that the officer's performance rating was not satisfactory and the officer must therefore be removed from their position, it becomes a materially punitive process, since the dismissal of the person evaluated is a penalty for poor performance.

70. Thus, in the opinion of the Court, insofar as the process involves possible dismissal of judicial officers evaluated in cases of incompetence or poor performance, the guarantees of due process inherent to disciplinary processes are applicable to an evaluation or ratification process although the content or intensity of their scope may vary.

⁴⁴ *Judicial Guarantees in States of Emergency (arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 27.*

⁴⁵ *Cf. Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, para. 124 and Case of Pollo Rivera et al. v. Peru. Merits, Reparations and Costs. Judgment of October 21, 2016. Series C No. 319, para. 209.*

⁴⁶ *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 Maldonado Ordóñez v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, para. 72.*

⁴⁷ *Cf. Case of Baena Ricardo et al. v. Panama, supra, para. 137, and Case of Maldonado Ordóñez v. Guatemala, supra, para. 73.*

⁴⁸ *Cf. Case of the Constitutional Court v. Peru. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71; Case of Baena Ricardo et al. v. Panama, supra; Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74; Case of Vélez Loo v. Panama. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218; Case of the Constitutional Court (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2013. Series C No. 268, and Case of Maldonado Ordóñez v. Guatemala, supra.*

⁴⁹ *Case of the Constitutional Court v. Peru, supra, para. 70.*

⁵⁰ *Cf. Case of Maldonado Ordóñez v. Guatemala, supra, para. 75.*

In this case, the Commission and the presumed victim alleged the violation of Article 8(2), subsections b and c, that is, of the right to know in advance and in detail the accusation made and the right to have adequate time and means for a defense, guarantees that, in the Court's opinion, are applicable to the specific case, although their scope must be specified according to the characteristics of the evaluation or ratification processes.

71. In relation to the first of these rights, the Court has established that it implies that a material description of the imputed conduct is made containing the factual data collected in the accusation, which constitutes the essential point of reference for the defense. Hence, the accused has the right to know, through a clear, detailed and accurate description, the conduct attributed to them.⁵¹ In the Case of Barreto Leiva v. Venezuela, the Court referred to this guarantee and indicated that, in order to satisfy it, "the State must notify the accused not only of the charges against him, that is, the crimes or offenses he is charged with, but also of the reasons for them, and the evidence for such charges and the legal definition of the facts".⁵² However, the Court finds that, in the case of processes of evaluation or ratification of public officers, the right to know in advance and in detail the accusation made implies that the persons evaluated have precise knowledge of the general evaluation criteria used by the competent authority to determine their tenure in office. The above implies the ability to establish whether the breach identified by the authority is of such magnitude that it may lead to their non-ratification, which is also essential for the exercise of the right to defense.

72. Furthermore, according to the jurisprudence of this Court, the right to have adequate time and means to prepare a defense, obliges the State to allow the person access to knowledge of the proceedings brought against them and implies that the adversarial principle must be respected, which guarantees the person's participation in analyzing the evidence.⁵³ In addition, the appropriate means of presenting the defense includes all the materials and evidence used, as well as the exculpatory documents.⁵⁴ In relation to the processes for evaluation of public officers, the Court finds that this guarantee implies that the person evaluated has the right to know the reasons the competent authorities consider that there is incompetence or non-compliance, to offer arguments aimed at refuting the authorities' position before a final decision and, in general, to offer evidence of the adequacy of their performance

73. Pursuant to the foregoing, it is for the Court to analyze the specific case to establish whether it guaranteed the rights of Mrs. Moya Solís to (i) know precisely the general evaluation criteria used by the competent authority to determine her tenure in her role; (ii) know the reasons why the competent authorities considered that she was not suitable to continue performing her duties; (iii) present, before making a decision, the arguments aimed at disproving the alleged breaches; and (iv) offer evidence.

74. In this case, the Court finds that, in accordance with the regulations in force at the time of the events, within the framework of the evaluation process of the judicial clerks, the commissioned member for the investigation should (a) review the files pending to issue the report on the performance of the clerk; (b) specify the cases of non-compliance with the legal obligations incurred by the clerk; and (c) obtain a written report from the clerk in the cases of non-compliance

⁵¹ Cf. *Case of Fermín Ramírez v. Guatemala. Merits, Reparations and Costs. Judgment of June 20, 2005. Series C No. 126, para. 67, and Case of Urrutia Laubreaux v. Chile, supra, para. 113.*

⁵² *Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, para. 28.*

⁵³ Cf. *Mutatis Mutandi, Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, para. 178 and Case of Álvarez Ramos v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2019. Series C No. 380, para. 153.*

⁵⁴ Cf. *Mutatis Mutandi, Caso Álvarez Ramos v. Venezuela, supra, para. 154.*

and receive the necessary evidence in defense.⁵⁵ To that effect, the regulations were aimed at ensuring that, in the cases in which the member in charge of the investigation found a breach by a Clerk, this situation would be brought to the attention of the person evaluated who would be given the opportunity to submit a written report and to provide evidence in defense. The foregoing implies that the evaluated person should, at least, know of the alleged non-compliance and its consequences and have adequate time and means to defend themselves.

75. According to the evidence in the case file, the proceedings against Mrs. Moya Solís began with a personal interview that took place on August 12, 1982. According to the record provided by the State, there was no observation and the following was recorded: "RESULT: Good".⁵⁶ Two weeks after the interview, on August 26, 1982, a visit was made by the Committee of Members to Mrs. Moya Solís' office. During the visit the files in process were reviewed and some cases of alleged non-compliance were identified. The report, signed by the Ratifications Commission, states:

2. In file No. 1155-82 [...] there is a power of attorney that does not bear the signature of the judge, but is authorized by the Clerk; in Exp. 1025-81 [...] the date of notification does not appear, however, the Clerk has authorized said proof of notification, in Exp. No. 3084-81 the subpoena was issued on September 25, 1981, where in points 3 and 4 of the answering brief it has been provided that a letter be sent to the Institutions, without having complied with said letters to date, leaving said file paralyzed due to said omission;

3. The Consignment Register was reviewed, finding that there are three annotations up to page eight, but neither the date on which the consignment is made, nor the date on which it is delivered, has not been noted in many of them. Furthermore, in some, no certificate number or quantity is noted, as in the case of Exp. 3121-81 [...]. The claim entry register was reviewed and found to be compliant. The register of deliveries to the Judge for sentencing was also found to be compliant.

4. The office is up to date.⁵⁷

76. In addition, the State provided a document entitled "Summary of the reports obtained for the ratification of the secretaries," without a date, which indicates:

Clerk:	MOYA SOLIS DE ROCHA
DOCUMENTATION:	LAW STUDENT
VISIT, REVIEW OF RECORDS AND REGISTERS:	FAIR
REPORT OF THE JUDGE:	PARTLY FAVORABLE
PERSONAL EXTREVIEW:	GOOD
REPORT OF THE VISITING MEMBER FROM 1980 AND 1981:	SATISFACTORY
REPORT OF THE JUDICIAL VISIT CARRIED OUT BY THE OFFICE [...] OF INTERNAL CONTROL 1981:	SATISFACTORY
REPORT FROM THE COLLEGE OF LAWYERS:	NONE
COMPLAINTS [...]:	NONE
MISCELLANEOUS:	PENALTY - HAS WARNING
CONCLUSION:	PARTLY FAVORABLE ⁵⁸

77. The Court notes that, in the documents provided by the parties, there is no record that Mrs. Moya Solís was informed about the general criteria under which the ratification process was

⁵⁵ Cf. Supreme Decree No. 003-82-JUS of January 12, 1982 (evidence file, folio 11).

⁵⁶ Cf. Record of personal interview of August 12, 1982 (evidence file, folio 727).

⁵⁷ Cf. Record of the Ratification Commission of August 26, 1982 (evidence file, folios 729 to 730).

⁵⁸ Cf. Summary of the reports obtained for the ratification of the Clerks (evidence file, folio 732).

carried out or about the reasons why she could be dismissed from her position. To that extent, the alleged victim was unaware that the breaches identified by the competent authority were serious and that she could exercise her right to defend herself against them.

78. There is also no record in the file to show that she was given the opportunity to present a written report and to submit defense evidence, as provided by the applicable regulations (*supra* para. 41). On this matter, the State argued that the personal interview was the appropriate mechanism for persons evaluated to exercise their right to defense, and that this opportunity was guaranteed to Mrs. Moya Solís. However, the interview took place on August 12, 1982, that is, before the visit to the court on August 26, 1982, in which the alleged cases of non-compliance were identified. To that extent, it is not reasonable to maintain that Mrs. Moya Solís could have exercised her right to defense in the interview, because at that time she had not been informed of any breach.

79. The State also argued that, because Mrs. Moya Solís signed the record of the committee members' visit to the office, "she was aware of the observations on which the decision not to ratify her would be based[and] was able to present observations on statements in the aforementioned minutes if she did not agree with statements on her evaluation" and that, "[i]n Order No. 0015-82-TT dated September 13, 1982, to resolve the issue, it was recorded that the aforementioned considerations were not disproved by the alleged victim". However, the Court notes that the file does not show that Mrs. Moya Solís was given the opportunity to exercise her right to defense during the Committee Members' visit or subsequent to that date.

80. Pursuant to the foregoing, although Mrs. Moya Solís was informed of some cases of alleged non-compliance, during the visit on August 26, 1982, she was not informed that these could lead to non-ratification. This resulted because Mrs. Moya Solís did not know the evaluation criteria for judicial clerks. This situation, in the opinion of the Court, constitutes a violation of the right to know in advance and in detail the accusation made, referred to in Article 8(2)b) of the American Convention. On this matter, the Court also notes that the criteria for evaluating the judicial clerks were not defined in law, which will be analyzed in light of the principle of legality (*infra* para. 80).

81. Furthermore, Mrs. Moya Solís was not informed of the reasons the identified breaches made her unsuitable to continue performing her duties, nor was she allowed to present her defense to the cases of non-compliance, nor was she given time to provide evidence to support her position. For this reason, her right to have adequate time and means of defense, contained in Article 8(2)c) of the American Convention, was violated.

82. Finally, the Court notes that the decision of non-ratification was notified to Mrs. Moya Solís through a communication sent by the President of the Labor and Labor Communities Court, which, however, did not indicate the reasons that led to the non-ratification, nor was it accompanied by a copy of the Order of September 13, 1982. Therefore, although Mrs. Moya Solís did not stop exercising the remedies available to her, as she did not know the reasons for her non-ratification, she did not have the appropriate means to exercise her right to defense. This situation also constitutes a violation of Article 8(2)c) of the Convention.

B.2 In relation to the right to expect duly reasoned decisions and the principle of legality

83. In this case, the Commission and the presumed victim alleged the violation of the right to duly reasoned decisions (Article 8(1)) and the principle of legality (Article 9). In relation to the right to expect duly reasoned decisions, the Court reiterates that the motivation "is the

externalization of the reasoned justification that allows a conclusion to be reached"⁵⁹ and that the duty to give reasons for the decisions is a guarantee that follows from Article 8(1) of the Convention, linked to the correct administration of justice, as it protects the right of citizens to be judged for reasons provided for in law and gives credibility to legal decisions in a democratic society.⁶⁰ Therefore, decisions adopted by internal bodies that may affect human rights must be duly substantiated, otherwise they become arbitrary decisions.⁶¹

84. Thus, the statement of reasons shows the parties that they have been heard and, in those cases in which the decisions can be appealed, provides them with the possibility of criticizing the resolution and obtaining a new examination before higher courts.⁶² In accordance with the above, the rationale of a ruling and of certain administrative acts must communicate the facts, motives and norms on which the authority based its decision, in order to rule out any indication of arbitrariness.⁶³

85. On this matter there are two documents in the case file, the first, a certified copy of the Minutes of the Plenary Chamber of September 10, 1982, date on which Mrs. Moya Solís' case was discussed (*supra* para. 44) and, the second, Order No. 0015-82-TT of September 13, 1982, in which it was decided not to ratify Mrs. Moya Solís. The latter indicates that deficiencies were found in the processing of the files under her charge, that the report issued by the Judge in charge of the Tenth Court was not favorable, that Mrs. Moya Solís had been previously sanctioned, and that the charges presented were not disproved.⁶⁴ Mrs. Moya Solís argued during the processing of this matter that she was not notified of the Minutes of the Plenary Chamber in a timely manner and that she was never made aware of the decision of non-ratification. The State affirmed, for its part, that the proof that the Order had been notified is the presumed victim's activation of the remedies available to her.⁶⁵ However, from the mere filing of remedies it does not appear that Mrs. Moya Solís was notified of Order No. 0015-82-TT. In addition, it was up to the State to prove that it notified the content of the Order in a timely manner, despite this, it did not provide evidence in

⁵⁹ Case of *Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 107.

⁶⁰ Cf. Case of *Apitz Barbera et al. ("First Court of Contentious Administrative Proceedings") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 77, and Case of *Casa Nina v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2020. Series C No. 419, para. 89.

⁶¹ Cf. Case of *Yatama v. Nicaragua*, Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, paras. 152 and 153 and Case of *Casa Nina v. Peru*, *supra*, para. 89.

⁶² Cf. Case of *Apitz Barbera et al. ("First Court of Contentious Administrative Proceedings") v. Venezuela*, *supra*, para. 78 and Case of *Casa Nina v. Peru*, *supra*, para. 89.

⁶³ Cf. Case of *Claude Reyes et al. v. Chile*, *supra*, para. 122 and Case of *Casa Nina v. Peru*, *supra*, para. 89.

⁶⁴ "That, in the visit made by the Ratifications Commission of this Court to the Clerk Mrs. Moya Solís de Rocha, reporting deficiencies in the processing of the files under her charge, such as N ° 1152-82, 1025-81, 3084 -81, 3121-81, 1040-81, 3120-81 and 3117-81; That the report issued by the Judge in charge of the Tenth Court regarding said Clerk, has not been favorable; That, having imposed a disciplinary penalty of warning by the court, in the Resolution of the case No. 2568-81, she filed her appeal for reconsideration, in writing addressed to the President of the Chamber, presenting it to the Panel of Parties and signed by the sponsoring lawyer, which was resolved by the Presidency, declaring it inadmissible, severely calling attention to the Clerk Moya Solís de Rocha; That, during the exercise of the position, the aforementioned Clerk has been admonished; That the charges set forth in the preceding considerations have not been disproved by the Clerk; With the Report issued by the Ratifications Commission, agreed in the Extraordinary Session of the Full Chamber, dated September 10, 1982, and in accordance with the provisions of Law No. 23369, IT IS RESOLVED: SOLE ARTICLE: NOT RATIFY Mrs. NORKA NMZ SOLIS DE ROCHA in the position of Secretary of the Tenth Private Court of Labor and Labor Communities". Cf. Resolution No. 0015-82-TT of September 13, 1982 (evidence file, folio 756).

⁶⁵ In this regard, the witness Jaime Gómez Valverde, proposed by the State, stated that "the facts show that Mrs. Norka Moya Solís would have been notified in writing with the act of non-ratification, because, with the knowledge of her non-ratification, she formulated the planned appeal for review in Supreme Decree 003-82-JUS, thus exercising her right to defense and to double appeal "(Evidence file, folio 1002).

this regard. Therefore, the Court finds that Mrs. Moya Solís was unable to know the reasons that led to the decision of non-ratification, recorded in the Minutes and in the Order, which not only impacted her right to defense (*supra* para. 82), but also violated the right to reasoned decisions referred to in Article 8(1) of the Convention.

86. Notwithstanding the above, even in the event that Mrs. Moya Solís had been informed in a timely manner of the minutes of the session in which her non-ratification was decided and the order adopting that decision, these documents do not show adequate motivation. Thus, the Minutes of the Plenary Chamber in which the non-ratification was decided refers to the debts and businesses of Mrs. Moya Solís, but does not state why this is related to the breach of her professional obligations or to a possible conflict of interest. In any case, the Court notes that having personal debts or businesses, provided that these do not imply a conflict of interest defined in the law, is not a reason to dismiss a person from their position. This Court also finds that the Order of September 13, 1982, adopting the decision of non-ratification, includes as grounds matters other than those discussed at the Plenary Meeting in which non-ratification was decided. However, there is no explanation in the record for this inconsistency. Furthermore, the decision not to ratify Mrs. Moya Solís was adopted in the Plenary Chamber of the Labor and Labor Communities Court and was the result of a divided vote that counted with five votes in favor and five against⁶⁶, without explanation as to why the tie was resolved in favor of non-ratification. Based on the above, the Court finds that the decision of non-ratification was not adequately reasoned and was arbitrary.

87. Additionally, the Court notes that the record of the Plenary Chamber and the Order of non-ratification do not give an account of the grounds on which the non-ratification was decided. This happened because these grounds were not contained in any norm, which must be analyzed in light of the principle of legality. Thus, Article 9 of the American Convention establishes that “[n]o one can be sentenced for actions or omissions that were not criminal according to the applicable law at the time they were committed” and that it is not possible “to impose a more serious penalty than that applicable at the time of the commission of the crime”. This Court has interpreted that these mandates are applicable not only to the criminal sphere, but that their scope extends to administrative sanctioning matters.⁶⁷

88. Regarding this matter, it must be taken into account that this Court has already determined that when a process of evaluation of public officers establishes the non-ratification of a person's position, the process is materially punitive (*supra* para. 69). However, administrative sanctions are, like criminal sanctions, an expression of the punitive power of the State and can have a similar nature, since they can imply the impairment, deprivation or alteration of people's rights. Therefore, in a democratic system it is necessary to take extreme precautions so that the filing of this type of sanctions is done with strict respect for people's rights and following careful verification of the existence of conduct contrary to the law. In this sense, it is essential that the sanctioning norm exists and is known or could be, prior to occurrence of the action or omission that contravenes it and that it is intended to sanction.⁶⁸

⁶⁶ On this matter, the witness Jaime Gómez Valverde, proposed by the State, indicated that “if the Minutes of the Session dated September 10, 1982 (referred to in the Resolution issued by the Labor Court) they cast 10 votes, this was because the Full Chamber of the Labor and Labor Communities Court was made up of 10 Members (3 members for three Labor Courts, 1 President of the Jurisdiction)”(evidence file, folio 998)

⁶⁷ Cf. *Case of Baena Ricardo et al. v. Panama*, *supra*, para. 106, and *Case of Urrutia Laubreaux v. Chile*, *supra*, para. 129.

⁶⁸ Cf. *Case of Baena Ricardo et al. v. Panamá*, *supra*, para. 106, and *Case of Maldonado Ordóñez Vs. Guatemala*, *supra*, para. 89

89. In this case, the State argued that the Organic Law of the Judiciary established the duties and obligations of Judicial clerks. In effect, said norm contains a catalog of 35 obligations for this category of officers⁶⁹. However, there was no norm indicating what type of non-compliance with

⁶⁹ In relation to the obligations of judicial clerks, article 233 of the Organic Law of the Judiciary stated:

"ARTICLE 233. - The following are the obligations of the Judicial Clerks:

- 1.- Act only in the court to which they are attached and have their office at the courthouse;
- 2.- Deliver the processes, in case of impediment or challenge, to the Clerk who must replace them within two days from the respective notification;
- 3.- Keep secret the opinions that they have heard the Judge issue about the matters heard by them;
- 4.- Write down or seal in the margin of the documents and resources the day they receive them, signing such proof when the seal does not automatically indicate the time;
- 5.- Present these appeals and briefs to the Judge within twenty-four hours of their receipt.;
- 6.- Authorize the procedural steps and resolutions issued by the Judge;
- 7.- Enact personally the procedures to which they are obliged by responsibility, except those indicated in art. 247 giving the commissions to the Notaries Proceedings;
- 8.- Notify according to law the decisions of the Court the day after their issuance, except in the case of extensive resolutions, in which case the notification of them will be made within two days;
- 9.- Carry out under charge the first notification, the summons for the confession and the decisive oath, its requirements, and the request of files for sentencing; as well as the notifications that must be made through the Prosecutor;
- 10.- Issue the reasons and reports ordered by their superiors;
- 11.- Give the parties, when so requested, proof of receipt of the briefs and documents;
- 12.- Do not enter into the files papers that lack the required stamp;
- 13.- Take care that with all appeals the corresponding number of simple copies and the collections, if any, are presented, and in case this does not happen, leave a record of the omission at the bottom of the appeal at the time of receiving it;
- 14.- Supply knowledge, to any person who requests it, of archived proceedings: and display those in process only when, in their opinion, they are in the legitimate interest of the applicant, consulting the Judge or Court in case of a complaint;
- 15.- Send the expired files, after ten years, to the court archive;
- 16.- Not admit cash or check on consignment, except with special authorization from the Judge, which will contain, at the same time, the order for the Secretary to formalize the funds in the Deposit and Consignment Fund or entity authorized for it, on the first business day;
- 17.- Put in each file a cover page detailing the name of the parties, the Judge hearing the matter, its nature and purpose, the date it begins and its corresponding number in the register of cases admitted.;
- 18.- Examine the proceedings when returned to them, and if they notice that missing sheets or some other defect, report this immediately, in writing, to the Judge;
- 19.- Note in the margin of the statements, the name of the declarants and the pages where the resulting citations are acquitted;
- 20.- Take care of the files and documents in their charge, preserving and guarding them, taking responsibility for their loss or for mutilations and alterations that are made in them;
- 21.- Not submit to one party of briefs presented by the other, before being approved;
- 22.- Take care that the foliation of the files is done in successive order of presentation of the briefs and documents; and that the resolutions are numbered in sequential order;
- 23.- Note on the reverse of the cover page the incidents derived from the main file, as they are formed, numbering them;
- 24.- Keep the following registers:
 - a)- Of charges of the files delivered to the Superior Court, to the Public Prosecutor, to the administrative offices, to solicitors and lawyers, to other Judges, to the Post Office and to the Court archive;
 - b)- Noting grounds on which the sentences and orders are copied, chronologically, before they are issued, with an indication of their numbering and the causes to which they refer;
 - c)- Of inventories, in which they note down the files in which they participate;
- 25.- Keep the files that, by court order, they receive from other Clerks;
- 26.- Deliver under receipt the files in his charge, to the Secretary designated for this purpose; and to the solicitors or lawyers of the parties only when the law authorizes it, under responsibility;
- 27.- Issue certified copies only by court order;
- 28.- Keep the office open at least three hours a day in the mornings and during judicial dispatch, indicating the hours in a notice posted on the office door;
- 29.- Attend the court premises during corresponding court business hours, or in which they must carry out proceedings;
- 30.- Take part in the delivery of consignments; inserting the respective record in the process, which will be signed by the person who receives the consignment;

these duties could lead to non-ratification, or the value of the report of the judge in charge of the court, of the interview with the person assessed or of any other element forming part of the ratification process. This means that the actions and omissions that could lead to a non-ratification decision were not defined in the law or in any other norm. The foregoing also has an impact on the right to know in advance and in detail the accusation made, to the extent that within the framework of evaluation processes of public officers, the scope of this right requires that the evaluated person be able to establish if a breach is of such magnitude that it may lead to non-ratification in the post (supra para. 71) and implies a violation of the principle of legality in relation to the duty to adopt provisions of domestic law.

90. In addition to the foregoing, the Court confirms that, from the provisions of the aforementioned article 233 of the Organic Law of the Judiciary, it follows that the Judicial Clerk works directly with the Judge, exercises the functions of a certifying officer and, consequently, makes it possible for the former to have timely access to all the necessary information to adopt resolutions, to enact them and for them to be known by the parties in the relevant case. They are a relevant auxiliary of justice, without whose collaboration, the exercise of the judiciary would become impossible or, at least, very difficult, which justifies the application of the provisions of articles 8(1) and 8(2) of the Convention.

B.3. Conclusion

91. In accordance with statements in the above paragraphs, the Court finds that the State is responsible for the violation of the rights to know in advance and in detail the accusation made, to have adequate time and means for a defense, to expect duly reasoned decisions, as well as the principle of legality, contained in Articles 8(1), 8(2) and 9 of the American Convention, in relation to the obligations to respect and guarantee the rights and adopt provisions of domestic law, contained in Articles 1(1) and 2 of the same Treaty.

VII-2 REASONABLE TIME PERIOD AND JUDICIAL PROTECTION⁷⁰

A. Arguments of the parties and the Commission

92. The **Commission** indicated that the State must provide effective judicial remedies to those who claim to be victims of human rights violations, which must be substantiated in accordance with the rules of due process. It recalled the elements developed in the Court's case law to determine the effectiveness of the term, and it argued that the States must guarantee compliance with the decisions in which a remedy has been granted. Pursuant to the foregoing, the Commission considered that after the decision of non-ratification, the presumed victim filed appeals that were rejected without a substantive analysis of the violations of due process and, in particular, without taking into account the ratification file. It also held that, after the decision of August 4, 1986, in which the Supreme Court ordered the judge in the case to issue a new ruling,

31.- Give the Deposit and Consignment Fund and entities that make deliveries a full or partial certified copy, of the respective certificate as proof of payment;

32.- Post a copy of the Judicial Tariff in the front of office for public view;

33.- Keep the files duly registered in boxes or files, classifying them in alphabetical order according to the claimant's first surname;

34.- Add ten percent to the regulated procedural costs, which will preferably be deducted from the first sums delivered by the principal, and remit it to the Judicial Mutual Association, with the corresponding official letter from the Court and proceed in the same way with the judicially ordered ten percent surcharge on personal costs and fees, which must be sent to the Bar Association of the corresponding District; and

35.- Fulfill remaining obligations required of them by law." Decree Law No. 14605 of July 25, 1963. Organic Law of the Judiciary (evidence file, folios 684 to 686).

⁷⁰ Articles 8(1) and 25 of the American Convention.

a decision was not issued in ten years. In the Commission's opinion, the period of more than ten years is unreasonable and constitutes a violation of the right to a guarantee of effective and prompt compliance with judicial decisions.

93. The **presumed victim** alleged that the State is responsible for the violation of the right to a reasonable time period and to judicial protection in relation to the obligations derived from Article 1(1) of the Convention.

94. The **State** alleged that Mrs. Moya Solís had access to all the remedies defined in the law and obtained final decisions that were duly reasoned and justified in law. It considered that the duty of the State to satisfy the requirements of justice prevails over the guarantee of a reasonable time period. In any case, it considered that the right to a reasonable period of time was not violated, because although the matter was not complex, Mrs. Moya Solís's position changed during the processing of the appeal. It also alleged that, although Mrs. Moya Solís submitted briefs to advance her matter, between 1989 and 1995 there is no evidence that she submitted briefs to progress the appeal. It also highlighted that the alleged victim did not file the constitutional grievance appeal so that the case could be heard in the last and final instance by the Constitutional Court. In relation to the damage caused by the time that elapsed, it pointed out that Mrs. Moya Solís did not present any particular circumstance that made her especially vulnerable.

B. Considerations of the Court

95. This Court recalls that the first paragraph of Article 25 of the Convention establishes that "[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention [...] ". For its part, the Paragraph two, subparagraph c) of the same article provides that the States party to the Convention undertake to "ensure that the competent authorities shall enforce such remedies when granted." On this matter, the Court has considered that the execution of the judgments must be complete, perfect, comprehensive and without delay.⁷¹

96. Regarding the effectiveness of the remedy, the Court has established that it is not enough for it to be provided for by the Constitution or the law or for it to be formally admissible, but rather that it must be truly suitable to establish whether a violation of human rights has been committed and provide whatever is necessary to remedy it. In this regard, although in this case the appeal for amparo was provided for in Peruvian law and was formally admissible, it was not an effective remedy. First, because despite the fact that Mrs. Moya Solís alleged that she had not been formally notified of the decision of non-ratification and that her rights had not been guaranteed during the process, the amparo judges declared the appeal inadmissible as they found that the decision of non-ratification did not constitute a violation or threat of violation of a constitutional right, without studying the alleged violations. To that extent, the remedy was not effective

97. In addition, when the first amparo process was found null and void, the Supreme Court ordered the judge in the case to issue the new ruling "having the ratifications file before it."⁷² However, when the court found that said file was missing, it proceeded to issue a new sentence,

⁷¹ *Cr. Case of Mejía Idrovo v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 5, 2011. Series C No. 228, para. 105, and *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 15, 2020. Series C No. 407, para. 243.

⁷² *Cf. Decision of August 4, 1986 (evidence file, folio 43).*

without complying with the order of the Supreme Court of Justice. What should have occurred, as was recorded in the dissenting vote that accompanies the decision of October 29, 1998 of the Constitutional and Social Law Chamber of the Supreme Court of Justice, was to proceed to reconstruct the ratification casefile.⁷³

98. Finally, this Court has indicated that the right of access to justice implies that settlement of the dispute occurs within a reasonable time, since a prolonged delay may in itself constitute a violation of judicial guarantees. The Court has also established that the evaluation of the reasonable period of time must be analyzed in each specific case, in relation to the total duration of the process, including the appeals that may be presented.⁷⁴ In this way, four elements have been considered in analyzing whether the guarantee of the reasonable period of time was complied with, namely: (i) the complexity of the matter, (ii) the procedural activity of the interested party, (iii) the conduct of the judicial authorities, and (iv) the impact generated in the legal situation of the presumed victim.⁷⁵ In this case, it is alleged that the guarantee of the reasonable period of time would have been denied because more than 10 years passed between the Supreme Court decision of August 4, 1986, which found the decision of September 2, 1985 null and void and the amparo judgment of June 14, 1985 as groundless, and the new amparo ruling. Therefore, the Court will analyze the elements of the reasonable period of time to determine if said guarantee was breached in the amparo action process.

99. Firstly, in order to analyze the reasonable time period for proceedings, the overall duration of the process must be considered. In this case, the duration of the amparo appeal filed by Mrs. Moya Solís is analyzed. This appeal was filed on February 17, 1984 and processed for the first time between 1984 and 1986, when the Supreme Court of Justice found the second instance decision invalid and ordered a new ruling be issued. After the Supreme Court's decision, the process of the amparo appeal was extended for the second time, until September 1999, the date on which the Supreme Court's decision on the alleged nullity of the second amparo decision was notified. In other words, the total processing of the amparo appeal took more than 15 years, while the processing of the second amparo action took more than 13 years. In the Court's opinion, a delay of this magnitude in the resolution of an appeal aimed at guaranteeing fundamental rights is, by all accounts, disproportionate

100. However, the Court will proceed to analyze the elements that have been defined in its case law, in response to the State's arguments on this matter. Firstly, *in relation to the complexity of the matter*, the State acknowledged that "the matter was not inherently complex". However, it alleged that the application for amparo was filed to question aspects related to the appeal for review, but that, as a result of the ruling that the ratification file was required to be viewed, Mrs. Moya Solís "modified her arguments to take that position". In the Court's opinion, the requirement to have the ratification file in view did not modify the purpose of the debate and, in any case, did not add any special complexity to the matter. Furthermore, this occurred in 1986, that is, 13 years before the final decision. Therefore, the matter studied did not present a degree of complexity that warranted the time taken to resolve it.

⁷³ Cf. *Dissenting opinion of Judge Castillo La Rosa Sánchez to the ruling of October 29, 1998 (evidence file, folios 90 to 91)*.

⁷⁴ Cf. *Case of Suárez Rosero v. Ecuador. Bottom. Judgment of November 12, 1997. Series C No. 35, para. 71, and Case of Mota Abarullo et al. v. Venezuela. Merits, Reparations and Costs. Judgment of November 18, 2020. Series C No. 417. para. 122.*

⁷⁵ Cf. *Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs. Judgment of January 29, 1997. Series C No. 30, para. 78, and Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil., supra, para. 223.*

101. Second, *in relation to the procedural activity of the interested party*, the Court notes that Mrs. Moya Solís gave impetus to the process. In this regard, she submitted briefs in April 1987, February 1988, February 1995, and August 1996. Furthermore, there is no record in the casefile that she took actions that hindered advancement of the process, so the Court cannot find that Ms. Moya Solís' conduct contributed in any way to the delay.

102. Third, *with regard to the conduct of the judicial authorities*, the Court finds that they limited themselves to requesting a copy of the ratification file that they should have had before them at the time of ruling, without making any findings on the fact that said file was not forwarded. In this regard, the State argued that this occurred because Mrs. Moya Solís did not carry out any procedural activity between 1989 and 1995. In the Court's opinion, the processing of the appeal for amparo did not depend on the possible procedural impulse from the presumed victim, and therefore said argument is not accepted by this Court. On the contrary, the Court finds that the conduct of the judicial authorities did not follow guidelines for due diligence.

103. Finally, *in relation to the damage caused to the person involved in the process*, the Court finds that there are insufficient elements in the casefile to establish the damage caused to Mrs. Moya Solís due to the delay in processing the appeal. Having analyzed the preceding elements, the Court considers that the amparo appeal, whose overall duration exceeded 15 years, denied the guarantee of a reasonable timeframe.

104. In conclusion, the Court finds the State of Peru responsible for the violation of the right to a reasonable timeframe and to judicial protection, recognized in Articles 8(1) and 25, in relation to the duty of respect and guarantee contained in Article 1(1) of the American Convention, to the detriment of Mrs. Moya Solís.

VII-3 POLITICAL RIGHTS ⁷⁶

A. Allegations of the parties and the Commission

105. The **Commission** argued that all citizens should have equal access to public service in their country and the Court has interpreted that when the tenure of judges in office is arbitrarily affected, that right is violated, extending this interpretation to the job security of prosecutors. According to the Commission, in addition, when the tenure of public officers in their positions is arbitrarily affected, that right is violated.

106. The **presumed victim** alleged that the State violated her political rights, enshrined in Article 23(1)c) in relation to Article 1(1) of the American Convention.

107. The **State** argued that Mrs. Moya Solís was not removed from her position in an arbitrary process. Instead, she assumed a position as a public servant under conditions of equal access. It pointed out that the ratification procedure applied to the Judicial clerks at the time of the events did not violate the rights of those evaluated.

B. Considerations of the Court

108. Article 23(1)c) of the Convention establishes the right to equal access to public service. In this regard, this Court has interpreted that equal access is an insufficient guarantee if it is not

⁷⁶ Article 23 of the American Convention.

accompanied by the effective protection of tenure in the position⁷⁷, which indicates that the procedures for appointment, promotion, suspension and dismissal of public officers must be objective and reasonable, that is, they must respect the applicable guarantees of due process.⁷⁸

109. This Court has repeatedly ruled on this right in relation to processes of dismissal of judges⁷⁹ and prosecutors⁸⁰ and has considered that it is related to the guarantee of stability or tenure in office. Thus, the respect and guarantee of this right is fulfilled when the criteria and procedures for the appointment, promotion, suspension and dismissal of judges and prosecutors are reasonable and objective, and their exercise does not discriminate against individuals.⁸¹ In any case, the Court notes that the guarantees contained in Article 23(1)c) of the Convention are applicable, not only to those categories of officers, but to all those who perform public functions, in accordance with the literal wording of Article 23(1)c). For this reason, when the tenure of a person in the exercise of such functions is arbitrarily affected, their political rights are ignored.

110. In addition, equal opportunities of access and secure tenure in the position of judicial officer, as in the case of Mrs. Moya Solís, guarantees freedom from any interference or pressure.⁸² This is particularly relevant when taking into account that those who held the position of Judicial Clerks in Peru, on the date of the events, were in charge of presenting the appeals and briefs submitted by the parties to the judge, authorizing the procedural steps issued by the judge, notifying the decisions of the court, and keeping and protecting the files under their charge,⁸³ among other relevant responsibilities for the correct administration of justice.

111. Pursuant to the foregoing, the Court finds that, as evidenced in the previous sections, Mrs. Moya Solís' dismissal ignored the guarantees of due process, which arbitrarily affected her tenure in public office and, consequently, constitutes a violation of Article 23(1)c) of the American Convention, in relation to Article 1(1) of the same instrument.

VIII REMEDIES

112. 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 this provision includes a customary norm that constitutes one of the fundamental principles of contemporary International Law on State responsibility.⁸⁴ In addition, this Court has established that the reparations must have a causal link with the facts of the case, the stated violations, the proven damages, as well as the measures requested to repair the

⁷⁷ Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 138, and *Case of Casa Nina v. Peru, supra*, para. 97.

⁷⁸ Cf. Human Rights Committee. *Soratha Bandaranayake v. Sri Lanka* (Communication No. 1376/2005), UN Doc. CCPR / C / 93 / D / 1376/2005, August 4, 2008, para. 7.1.

⁷⁹ Cf. *Case of Reverón Trujillo v. Venezuela, supra*, para. 138, and *Case of Colindres Schonenberg v. El Salvador. Merits, Reparations and Costs*. Judgment of February 4, 2019. Series C No. 373, para. 93.

⁸⁰ Cf. *Case of Martínez Esquivia v. Colombia, supra*, para. 115, and *Case of Casa Nina v. Peru, supra*, para. 97.

⁸¹ Cf. *Case of Reverón Trujillo v. Venezuela, supra*, para. 138, and *Case of Casa Nina v. Peru, supra*, para. 98.

⁸² Cf. *Mutatis mutandis, Case of Reverón Trujillo v. Venezuela, supra*, para. 72, and *Case of Casa Nina v. Peru, supra*, para. 98.

⁸³ Cf. Article 233. Decree Law No. 14605 of July 25, 1963. Organic Law of the Judiciary (evidence file, folios 684 to 686).

⁸⁴ 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 Casa Nina v. Peru, supra*, para. 126.

respective damages.⁸⁵ Therefore, the Court must analyze said concurrence to decide effectively and in accordance with the law.

113. Consequently, in accordance with the considerations set forth on the merits and the violations of the Convention declared in this Judgment, the Court will proceed to analyze the claims of the Commission and the victim, as well as the observations of the State, in light of the criteria established in its case law in relation to the nature and scope of the obligation to repair, in order to provide the measures aimed at repairing the damage caused.⁸⁶

A. Injured Party

114. This Court considers, pursuant to Article 63(1) of the Convention, an injured party to be an individual declared a victim of the violation of any right recognized therein. Therefore, this Court considers Mrs. Moya Solís to be an “injured party”, who, as the victim of the violations declared in Chapter VII of this Judgment, will be considered the beneficiary of the reparations that the Court orders.

B. Restitution Measures

115. The **Commission** requested that Mrs. Moya Solís be reinstated, should this be her wish, in a position similar to the one she held in the Judiciary, with remuneration, social benefits, and rank comparable to those that would correspond to her today if she had not been removed. If, for well-founded reasons, reinstatement is not possible, the Commission requested the payment of an alternative compensation.

116. The **victim** stated that she does not wish to be reinstated in the Judiciary and that she opts for the alternative of compensation. She also pointed out that she has not renounced her retirement, since she entered the judiciary by competitive exam in 1973 and is under the regime of Law 20530 “Cédula Viva” (“Living Decree”) pension regime.

117. The **State** informed the Court that during the stage of follow-up on compliance with the recommendations, it consulted the victim about her position regarding a possible reinstatement, to which Mrs. Moya Solís replied that it was not her wish to be reinstated to the Judiciary.

118. The Court notes that Mrs. Moya Solís does not wish to be reinstated to the Judiciary, for that reason it is not appropriate to order this restitution measure, without prejudice to the resolution in the section on compensatory damages (supra para. 127).

C. Satisfaction Measures

119. The **Commission** made no statement specifically on this matter. The **victim** requested that, as a measure of satisfaction, a public act of redress and recognition of the State's responsibility be undertaken.

⁸⁵ 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 Casa Nina v. Peru, supra, para. 126.*

⁸⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra, paras. 25 and 26, and Case of Montesinos Mejía v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 27, 2020. Series C No. 398, para. 220.*

120. The **State** pointed out that acts of recognition of international responsibility and public apologies are not necessarily measures of satisfaction in themselves in all cases, because the Judgment of the Court itself constitutes a form of reparation.

121. The Court orders, as it has done in other cases,⁸⁷ that the State publish, within six months from the notification of this Judgment, in a legible and adequate font size, the following: a) the official summary of this Judgment prepared by the Court, once only, in the Official Gazette, and b) this Judgment in its entirety, available for a period of one year, on the official website of the Judiciary. The State must immediately inform this Court once it proceeds to make each of the publications ordered, regardless of the period of one year to present its first report, provided for in operative paragraph 10 of this Judgment. The Court considers that the issuance of this judgment and the order for the publication of its summary in the Official Gazette and of the Judgment on the website of the Judicial Power, are sufficient measures of satisfaction in this case, so it will not order the execution of an act of redress.⁸⁸

D. Other measures requested

122. The **Commission** requested the necessary non-repetition measures be ordered to ensure that the ratification processes of judicial officers, in law and in practice: i) to duly regulate offenses committed that give rise to the non-ratification of a judicial officer based on objective criteria and in a proportional manner; ii) allow the officer subject to the process to defend themselves against the specific charges made against them in the light of objective criteria, as well as access to an effective remedy to amend possible violations of due process.

123. The **State** indicated that, to date, ratification of judicial clerks is not regulated under Peruvian law. In this respect, it reported that Article 154 of the Political Constitution of Peru refers to the process of ratification of judges and prosecutors by the National Board of Justice, and that these are the only officers to whom this is currently applied. It indicated that, due to the fact that to date there are no ratification processes applicable to court personnel, it is not possible for events such as those in this case to be repeated. In relation to judicial officers, it pointed out that the "Standards for the Evaluation of Performance of Workers in the Judicial Power" Directive is currently in force, which was approved on September 1, 2020. The Directive does not constitute a mechanism for dismissal, but to improve the skills and qualifications of Judicial employees. For this purpose it conducts an annual performance evaluation, in confidence, which seeks to improve the work performance of the judicial employee evaluated, and develop their potential, thereby improving the quality of the service. The State also reported that it has established an administrative disciplinary procedure that respects all guarantees of due process, so that, if a judicial employee incurs an offense outlined in the norm, the employee has the benefit of all guarantees to exercise his or her rights and conduct an adequate defense.

124. Due to the above and, in particular, considering that according to the information provided by the State and not disputed on the record, the norms on which the ratification process of Mrs. Moya Solís was based are not in force, the Court does not deem it pertinent to grant the measures requested by the Inter-American Commission.

E. Compensation

⁸⁷ Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs. Judgment of December 3, 2001. Series C No. 88, para. 79, and Case of Casa Nina v. Peru, supra, para. 133.*

⁸⁸ Cf. *Case of Apitz Barbera et al. ("First Court of Contentious Administrative Proceedings") v. Venezuela, supra, para. 250, and Case of Urrutia Laubreaux v. Chile, supra, para. 154.*

E.1 Pecuniary Damage

125. The **Commission** did not rule specifically on this matter. The **victim** requested the payment of S /. 4,425,578.30 Peruvian Soles (USD \$ 1,265,000 approx.) for unearned remuneration and S /. 4,185,941.94 (USD \$ 1,195,000 approx.) for consequential damages and lost profits. Additionally, it pointed out that, due to her dismissal, she experienced an additional financial loss, as, having started to work in 1973, her retirement was under the protection of the regime established in Law 20530, one of the advantages of which was that she could retire on 100% of her final salary, allowing that amount to be increased based on the increases made for the position in which she would have retired. In that regard, she requested that her retirement be processed immediately, respecting her date of entry and the corresponding regime.

126. The **State** maintained that it was fully willing to comply with the recommendations made by the Inter-American Commission, however, it stated that it was impossible to comply with the pecuniary claim made by Mrs. Moya Solís. It stressed that the amounts alleged by Mrs. Moya Solís are based on entering the judicial profession and holding the position of magistrate. However, it maintained that having held the position of judicial clerk did not ensure that she could be appointed as a judge. The State also indicated that, if Mrs. Moya Solís had wanted to enter the judicial profession, she could have done so through the corresponding public tender. Regarding the request related to the retirement pension, it indicated that Mrs. Moya Solís started working in the public administration on July 3, 1973. At that time, the social security regime of Decree Law No. 20530 was closed. This regime was opened in 1985, through Law No. 24366, for employees who as of February 24, 1974 had seven (7) years or more of service and continue to do so without interruption, a requirement that Mrs. Moya Solís did not meet, who at that time had less than one (1) year of service. It also indicated that, to be eligible for the pension corresponding to the full final salary, the person must have rendered their services for 25 years, which did not happen in this case. It also pointed out that, to date, Mrs. Moya Solís also does not meet the requirements to access a retirement pension under Decree Law No. 19990, since according to what was reported by the Social Security Office (ONP) there are only five (5) months of contributions, and the regulations require that for women to access a pension they must have twenty (20) years of contributions and be sixty-five (65) years of age.

127. The Court has established in its case law that pecuniary damage involves the loss or detriment of income for victims, the expenses incurred as a result of the events and the pecuniary consequences with a causal link to the facts of the case.⁸⁹ In this case, taking into account the time that has elapsed since Mrs. Moya Solís' termination from office and that it was not possible to order her reinstatement to her position, the Court resolves to establish, for pecuniary damage, a compensation in equity corresponding to USD \$ 50,000.00, (fifty thousand United States dollars).

E.2 Non-pecuniary damage

128. The **Commission** did not rule specifically on this matter. The **victim** requested the payment of S /. 6,270,000 (USD \$ 1,790,000 approx.) for non-pecuniary damage.

129. The **State** argued that the calculation of the amount for non-pecuniary damage was based on the amount used to calculate the loss of profits, which is incorrect, insofar as the non-pecuniary damage is different from pecuniary damage and the same basis could not be used for its quantification. Additionally, it maintained that, although Mrs. Moya Solís indicated that the damage to her life plan cannot be compensated, she also pointed out that she has been able to

⁸⁹ Cf. *Case of Bámaca Velásquez v. Guatemala. Repairs and Costs. Judgment of February 22, 2002. Series C No. 91, para. 43, and Case of Casa Nina v. Peru, supra, para. 143.*

forge a career in the world of law, therefore, in the State's opinion, the supposed damage does not correspond to the professional trajectory that Mrs. Moya Solís alleges.

130. This Court has developed the concept of non-pecuniary damage in its case law and has established that it can include both the suffering and hardship caused by the violation, as well as the impairment of very significant personal values, as well as adjustments of a non-pecuniary nature in the victims' life.⁹⁰ Additionally, since it is not possible to assign a precise monetary equivalent to non-pecuniary damage, it can only be compensation for the purposes of comprehensive reparation to the victim, through the payment of an amount of money or the delivery of goods or services having monetary value determined by the Court, in reasonable application of judicial discretion and in terms of equity.⁹¹

131. Based on the above, and taking into account the circumstances of the case, the Court considers that the decision to remove Ms. Moya Solís from her post caused her non-pecuniary damage, therefore it establishes in equity the sum of USD \$ 20,000.00 (twenty thousand United States dollars) for non-pecuniary damage.

F. Costs and expenses

132. The **Commission** did not rule specifically on this matter. The **victim** requested that the State be ordered to compensate the expenses and costs incurred in processing this case.

133. The **State** argued that, according to the Court's consistent case law, the payment of costs and expenses only proceeds if there are receipts, tickets or other documents that prove that the disbursement was made during the process. In addition, expenses and costs must be directly related to the case and the development of the process itself, with the understanding that all amounts presented for inclusion that are not directly related or linked to the specific case are excluded.

134. In this case, there is no evidential support in the file regarding the costs and expenses incurred by Mrs. Moya Solís in processing this matter before the Inter-American System. In addition, the victim did not specify a particular amount in her request. However, the Court considers that such procedures necessarily implied financial expenditures, for which reason it determines that the State must deliver in equity to Mrs. Moya Solís the amount of USD \$ 15,000.00 (fifteen thousand United States dollars) for costs and expenses. It should be added that, at the stage of monitoring compliance with this Judgment, the Court may order that the State reimburse the victim or his representative for the reasonable expenses incurred in said procedural stage.

G. Method of complying with the payments ordered

135. The State must pay the compensation ordered for pecuniary and non-pecuniary damage and the reimbursement of costs and expenses established in this Judgment, directly to Mrs. Moya Solís, within a period of one year, as of the date of the notification of this ruling.

136. In the event that the beneficiary dies before the respective compensation is delivered to her, these will be made directly to her heirs, in accordance with applicable domestic law.

⁹⁰ Cf. *Case of the "Street Children" (Villagrán Morales et al.) V. Guatemala. Reparations and Costs. Judgment of May 26, 2001. Series C No. 77, para. 84, and Case of Casa Nina v. Peru, supra, para. 151.*

⁹¹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) V. Guatemala. Reparations and Costs, supra, para. 84, and Case of Carranza Alarcón v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 3, 2020. Series C No. 399, para. 108*

137. The State must comply with its monetary obligations by paying in United States dollars or its equivalent in national currency, using for the respective calculation the market exchange rate published or calculated by a relevant banking or financial authority, on the date closest to the day of payment.

138. If, due to causes attributable to the beneficiary of the compensation or to her successors, it is not possible to pay the amounts determined within the indicated period, the State will deposit said amounts in her favor in an account or certificate of deposit in a solvent Peruvian financial institution, in United States dollars, and under the most favorable financial conditions permitted by law and banking practice. If the corresponding compensation is not claimed after ten years, the amounts will be returned to the State with the accrued interest.

139. The amounts assigned in this Judgment as compensation for pecuniary and non-pecuniary damages and as reimbursement of costs and expenses, must be delivered to the person indicated in full, in accordance with the provisions of this Judgment, without reductions derived from possible tax charges.

140. In the event that the State is in default, it must pay an interest on the amount owed corresponding to the default bank interest in the Republic of Peru.

IX OPERATIVE PARAGRAPHS

141. Therefore,

THE COURT

DECIDES,

Unanimously,

1. To reject the preliminary objection related to the request for review of legality in relation to the alleged failure to exhaust domestic remedies, in accordance with paragraphs 21 to 24 of this Judgment.
2. To reject the preliminary objection of "fourth instance", in accordance with paragraphs 28 to 29 of this Judgment.
3. To reject the preliminary objection related to the alleged improper inclusion of Articles 5 and 11 of the American Convention on Human Rights in the pleadings and motions brief, in accordance with paragraphs 32 to 33 of this Judgment.

DECLARES,

Unanimously, that:

4. The State is responsible for the violation of the rights recognized in Articles 8(1), 8(2) and 9 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of the same Treaty, to the detriment of Mrs. Moya Solís, pursuant to paragraphs 66 to 91 of this Judgment.
5. The State is responsible for the violation of the rights recognized in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) of the same Treaty, to the

detriment of Mrs. Moya Solís, pursuant to paragraphs 95 to 104 of this Judgment.

6. The State is responsible for the violation of the right recognized in Article 23(1)c) of the American Convention on Human Rights, in relation to Article 1(1) of the same Treaty, to the detriment of Mrs. Moya Solís, pursuant to paragraphs 108 to 111 of this Judgment.

AND ESTABLISHES,

Unanimously, that:

7. This Judgment constitutes, in itself, a form of reparation.

8. The State will make the publications indicated in paragraph 121 of this Judgment

9. The State will pay the amounts established in paragraphs 127 and 131 of this Judgment for compensatory damages, and in paragraph 134 for the reimbursement of costs and expenses, pursuant to paragraphs 135 to 140 of this Judgment.

10. The State, within a period of one year from the notification of this Judgment, will submit to the Court a report on the measures adopted to comply with it, without prejudice to the provisions of paragraph 121 of this Judgment

11. The Court will monitor full compliance with this Judgment, in the exercise of its powers and in compliance with its duties pursuant to the American Convention on Human Rights and will consider this case closed once the State has fully complied with the provisions arranged contained in this judgment.

Done, at San José, Costa Rica, on June 3, 2021, in the Spanish language.

Inter-American Court of Human Rights. *Case of Moya Solís v. Perú*. Preliminary objections, merits, reparations and costs. Judgment of June 3, 2021.

Inter-American Court of Human Rights. *Case of Moya Solís v. Perú*. Preliminary objections, merits, reparations and costs. Judgment of June 3, 2021. Judgment adopted in San José, Costa Rica, in a virtual session.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

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