

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF RÍOS AVALOS *ET AL.* V. PARAGUAY
JUDGMENT OF AUGUST 19, 2021
(Merits, reparations and costs)

In the case of *Ríos Ávalos et al. v. Paraguay*,

the Inter-American Court of Human Rights (hereinafter also “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 Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure” or “the Court’s Rules of Procedure”), delivers this judgment structured as follows:

TABLE OF CONTENTS

I INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE	4
II PROCEEDINGS BEFORE THE COURT	5
III JURISDICTION	6
IV PRELIMINARY CONSIDERATION	7
<i>A. Arguments of the parties and the Commission</i>	7
<i>B. Considerations of the Court</i>	7
V EVIDENCE	7
<i>A. Admissibility of the documentary evidence</i>	7
<i>B. Admissibility of the testimonial and expert evidence</i>	8
VI FACTS	9
<i>A. Applicable legal framework</i>	9
<i>B. Appointments of Carlos Fernández Gadea and Bonifacio Ríos Ávalos as justices of the Supreme Court of Justice</i>	10
<i>C. Impeachment proceedings against Carlos Fernández Gadea and Bonifacio Ríos Ávalos</i>	10
<i>C.1. Events prior to the impeachment of the presumed victims</i>	10
<i>C.2. Procedure before the Chamber of Deputies</i>	11
<i>C.3. Procedure before the Senate</i>	13
<i>C.4. Dismissal of Bonifacio Ríos Ávalos and Carlos Fernández Gadea</i>	14
<i>D. Actions of unconstitutionality filed by the presumed victims</i>	14
<i>D.1. Judgments Nos. 951 and 952 of the Constitutional Chamber of the Supreme Court of Justice</i>	15
<i>D.2. Resolution No. 1 of the National Congress</i>	16
<i>D.3. Resolution No. 2382 of the Supreme Court of Justice</i>	16
<i>D.4. Appeals for clarification filed in relation to Judgments Nos. 951 and 952</i>	17
<i>E. Criminal proceedings against Bonifacio Ríos Ávalos and Carlos Fernández Gadea</i>	18
VII MERITS	18
VII.1 RIGHT TO JUDICIAL GUARANTEES IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE RIGHTS, AND ALLEGED VIOLATIONS OF PROTECTION OF HONOR AND DIGNITY, AND EQUALITY BEFORE THE LAW	18
<i>A. Arguments of the Commission and of the parties</i>	18
<i>A.1. General considerations on judicial independence and the guarantees applicable to impeachment proceedings</i>	18
<i>A.2. Competence of the disciplinary authority and applicable procedures</i>	19
<i>A.3. The right to an impartial authority</i>	19
<i>A.4. The right to be heard and the right of defense</i>	19
<i>A.5. The right to duly reasoned decisions</i>	20
<i>A.6. The right to appeal the judgment</i>	20
<i>A.7. The principle of legality</i>	20
<i>A.8. Protection of honor and dignity</i>	21
<i>A.9. Right to equal protection of the law</i>	21

<i>B. Considerations of the Court</i>	21
<i>B.1. The guarantee of irremovability of judicial authorities and the guarantee against external pressures</i>	21
<i>B.2. Judicial independence and the impeachment of judicial authorities</i>	25
<i>B.3. Analysis of the specific case</i>	29
<i>B.3.1. Judicial independence and the impeachment of Messrs. Ríos Ávalos and Fernández Gadea</i>	30
<i>B.3.2. Judicial guarantees in relation to judicial independence</i>	31
<i>B.3.2.1. The right to an impartial authority</i>	31
<i>B.3.3. Alleged violation of the protection of honor and dignity, and equality before the law</i>	36
<i>B.3.4. General conclusion</i>	37
VII.2 RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION, IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE RIGHTS	37
<i>A. Arguments of the Commission and of the parties</i>	37
<i>B. Considerations of the Court</i>	38
<i>B.1. The effectiveness of the judicial actions filed by the presumed victims to claim the protection of their rights, in relation to judicial independence</i>	38
<i>B.2. The guarantee of a reasonable time in processing and deciding the judicial actions filed by the presumed victims</i>	42
<i>B.3. General conclusion</i>	44
VIII REPARATIONS	44
<i>A. Injured party</i>	45
<i>B. Measures of restitution</i>	45
<i>C. Measures of satisfaction</i>	46
<i>D. Other measures requested</i>	47
<i>E. Compensation</i>	48
<i>E.1. Pecuniary damage</i>	48
<i>E.2. Non-pecuniary damage</i>	51
<i>F. Costs and expenses</i>	53
<i>G. Reimbursement of expenses to the Victims' Legal Assistance Fund</i>	56
<i>H. Method of complying with the payments ordered</i>	57
IX OPERATIVE PARAGRAPHS	58

I INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On October 3, 2019, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court the case of “Bonifacio Ríos Ávalos and Carlos Fernández Gadea” against the Republic of Paraguay (hereinafter also “the Paraguayan State,” “the State” or “Paraguay”). According to the Commission, the case relates to a series of violations that occurred in the context of the impeachment proceedings that culminated in the dismissal of Bonifacio Ríos Ávalos and Carlos Fernández Gadea from their functions as justices of the Supreme Court of Justice of Paraguay in 2003. The Commission considered that the State had violated the right to a competent authority and a previously established procedure because, following the charges brought by the Chamber of Deputies, the Senate issued Resolution No. 122 in which it established “the procedure for the impeachment proceedings,” and those rules had “a substantial impact” on the presumed victims’ exercise of their right of defense, as well as on other aspects related the guarantees of due process. The Commission also alleged that the State had violated the right to an impartial authority because the said rules did not allow members of the Senate to be recused. It also alleged the violation of the right to duly reasoned decisions and to the principle of legality, in relation to the principle of judicial independence, because the decision ordering the dismissal of the justices did not establish the reasons and the cause cited, relating to the “improper performance of their functions,” was extremely vague and gave a wide margin of discretion to the legislative authority. The Commission also concluded that the State had violated the right to appeal the decision and the right to judicial protection because the said procedural rules indicated that the decisions issued by the Senate were not subject to any type of appeal. It added that the presumed victims had filed actions of unconstitutionality that were decided in their favor approximately six years later. However, the National Congress had issued a resolution in which it “vigorously repudiated” the import of the rulings, and this had constituted “external pressure” on the Supreme Court of Justice to declare the said judgments null and void.

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

- a) *Petitions.* On November 13, 2003, and June 7, 2004, respectively, Bonifacio Ríos Ávalos and Carlos Fernández Gadea (hereinafter also “the presumed victims”), lodged their initial petitions before the Commission.
- b) *Admissibility Reports.* On March 19, 2009, the Commission adopted Admissibility Reports Nos. 18/09¹ and 47/09,² which were notified on April 20 that year, together with the decision to joinder the two petitions because they raised similar issues.³
- c) *Merits Report.* On February 12, 2019, the Commission adopted Merits Report No. 17/19 (hereinafter “the Merits Report” or “Report No. 17/19”), in which it reached a series of conclusions⁴ and made several recommendations to the State.

¹ IACHR. Report No. 18/09. Petition 525-04. Admissibility. Carlos Fernández Gadea. Paraguay. March 19, 2009.

² IACHR. Report No. 47/09. Petition 963-03. Admissibility. Bonifacio Ríos Avalos. Paraguay. March 19, 2009.

³ In both reports the Commission declared the petitions admissible with regard to the rights recognized in Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, and declared that they were inadmissible with regard to the rights ensured in Articles 11, 23(1)(c) and 24.

⁴ The Commission concluded that the State was responsible for the violation of the principle of judicial independence, the right to a competent and impartial authority, the right to a well-reasoned decision, the principle of legality, the right to appeal a decision, and the right to judicial protection, established in Articles 8(1), 8(2)(h), 9 and 25(1) of the American Convention, in relation to Articles 1(1) and 2 of this international instrument to the detriment of Bonifacio Ríos Avalos and Carlos Fernández Gadea. The Commission also concluded that the State was

3. *Notification to the State.* The Merits Report was notified to the State in a communication of July 3, 2019. According to the Commission, Paraguay responded to the Merits Report “rejecting the recommendations [...] and arguing that all the guarantees of due process had been respected in the proceedings against the victims.”

4. *Submission to the Court.* On October 3, 2019, the Commission submitted this case to the Court, owing to “the need to obtain justice and reparation for the [presumed] victims.”⁵ The Court notes, with concern, that 15 years and 11 months and 15 years and 4 months, respectively, elapsed between the lodging of the initial petitions before the Commission and the submission of the case to the Court.

5. *The Commission’s requests.* Based on the foregoing, the Commission asked the Court to conclude and declare the international responsibility of Paraguay for the violations contained in Report No. 17/19, and to order the State, as measures of reparation, those included in the said report.

II PROCEEDINGS BEFORE THE COURT

6. *Notification of the State and the representatives.* The submission of the case was notified to the State⁶ and to the representatives of the presumed victims⁷ (hereinafter “the representatives”) in communications of December 6, 2019.⁸

7. *Brief with pleadings, motions and evidence.* On January 27, 2020, the representatives presented their brief with pleadings, motions and evidence (hereinafter “pleadings and motions brief”) pursuant to Articles 25 and 40 of the Court’s Rules of Procedure. The representatives “fully endorsed” the Commission’s allegations and, in addition, indicated that the State had violated the right to be heard with due guarantees and within a reasonable time, the right to protection of honor and dignity, and the right to equality before the law. Furthermore, they asked that the Court order the State to adopt diverse measures of reparation and to reimburse certain costs and expenses. In this regard, they also identified as an injured party: Sara Concepción Parquet de Ríos, Shirley Rossana Ríos Parquet, Edgar Bonifacio Ríos Parquet and José Carlos Ríos Parquet, wife and children of Bonifacio Ríos Ávalos; and María Concepción Villalba Quevedo, Carlos Aníbal Fernández Villalba, José Luis Fernández Villalba, Julio Cesar Fernández Villalba, Jesús María Fernández Villalba and Catalina Fernández Ocampos, wife and children and “declared heirs”⁹ of Carlos Fernández Gadea.¹⁰

not responsible for the violation of the right to be heard and the right of defense.

⁵ The Commission appointed Commissioner Joel Hernández and then Deputy Executive Secretary Paulo Abrão as its delegates before the Court, and Marisol Blanchard, Deputy Executive Secretary, and Jorge Meza Flores and Christian González Chacón, Executive Secretariat lawyers, as legal advisers.

⁶ In a communication of January 8, 2020, the State appointed the lawyer Sergio Coscia, at the time Attorney General, as its Agent. Also, in a communication of February 21, 2020, Paraguay appointed Ambassador Marcelo Scappini, Director of the Human Rights Unit of the Ministry of Foreign Affairs, as its Deputy Agent. Then, in a communication of January 4, 2021, the Paraguayan State, substituted its Agent by the lawyer Juan Rafael Caballero González, Attorney General.

⁷ The lawyers Sara Concepción Parquet de Ríos, Raquel Talavera de Veloso, Nicolás Rafael Gaona Irún and Carlos Aníbal Fernández Villalba were appointed as representatives in the proceedings before the Court.

⁸ On November 14, 2019, in response to a request by the Court’s Secretariat, the Commission forwarded clarifications and documentation relating to the annexes to the Merits Report.

⁹ Carlos Fernández Gadea died on June 20, 2010. Cf. Certified death certificate of Carlos Fernández Gadea (evidence file, volume IV, annex II.C to the pleadings and motions brief, folio 6284).

¹⁰ On March 3, 2020, in response to a request by the Court’s Secretariat, the representatives forwarded clarifications and documentation relating to the annexes to the pleadings and motions brief.

8. *Answering brief.* On July 17, 2020, the Paraguayan State presented to the Court its brief answering the submission of the case and the Merits Report of the Inter-American Commission and also the pleadings and motions brief of the representatives (hereinafter “the answering brief”).¹¹ In this brief, the State contested the alleged violations and the requests for measures of reparation of the Commission and the representatives. It asked that the Court “reject the allegations in the [pleadings and motions brief]” and “all the claims made in Report No. 17/19.”¹²

9. *Public hearing.* In an order of December 11, 2020, the President of the Court called the parties and the Commission to a public hearing on the merits and eventual reparations and costs.¹³ The public hearing was held virtually on March 1, 2 and 3, 2021, during the Court’s 140th regular session.¹⁴

10. *Final written arguments and observations.* On March 31, April 1 and April 2, 2021, the Commission, the representatives and the State, respectively, forwarded their final written observations and final written arguments. In addition, the representatives forwarded annexes with their respective brief.

11. *Observations on the annexes to the final arguments.* On April 15, 2021, the Commission indicated that it had no observations to make on the annexes to the representatives’ final written arguments. On April 16, 2021, the State presented its observations in this regard.

12. The Court deliberated this judgment in virtual sessions on August 17, 18 and 19, 2021.¹⁵

III JURISDICTION

¹¹ On March 17, 2020, by Decision 1/20 (available at: http://www.corteidh.or.cr/docs/comunicados/cp_18_2020.pdf), the Court decided to suspend the calculation of all deadlines owing to the declaration of the Covid-19 pandemic by the World Health Organization and based on the “National Health Guidelines for Surveillance of Coronavirus Infection” issued by the Ministry of Public Health of the Republic of Costa Rica. By Decision 2/20 of April 16, 2020 (available at: http://www.corteidh.or.cr/docs/comunicados/cp_28_2020.pdf), this suspension was extended until May 20, 2020.

¹² On August 4, 2020, in response to a request by the Court’s Secretariat, the State forwarded clarifications and documentation related to the annexes to its answering brief.

¹³ Cf. *Case of Ríos Avalos et al. v. Paraguay. Call to a hearing.* Order of the President of the Inter-American Court of Human Rights of December 11, 2020. Available at: https://www.corteidh.or.cr/docs/asuntos/rios_avalos_11_12_2020.pdf.

¹⁴ At this hearing there appeared: (a) for the Inter-American Commission: Edgar Stuardo Ralón Orellana, Commissioner; Marisol Blanchard, Deputy Executive Secretary, and Jorge Meza Flores and Christian González, legal advisers; (b) for the representatives of the presumed victims: Sara Parquet de Ríos, Nicolás Gaona Irún, Raquel Talavera, Carlos Fernández Villalba, Bonifacio Ríos Avalos, Jesús María Fernández, Edgar Bonifacio Ríos Parquet, Shirley Rossana Ríos Parquet, José Carlos Ríos Parquet, Linda Isnelda Ríos, José Luis Fernández Villalba, Julio Fernández Villalba, Paola Teresita Gauto, Rosa Martínez de Vachetta, Amelia Báez and Jonatan Sebastián Suárez, and (c) for the State of Paraguay: José Félix Estigarribia, Ambassador of the Republic of Paraguay to Costa Rica; Juan Rafael Caballero González, Attorney General; María Noelia López, Director for Human Rights of the Ministry of Foreign Affairs; Roberto Benítez Fernández, official of the Ministry of Foreign Affairs; Patricia Sulín, official of the Human Rights Unit of the Ministry of Foreign Affairs; Sergio Benítez, official of the Human Rights Unit of the Ministry of Foreign Affairs; Belén Diana, Assistant Attorney General; Pablo Rojas, Assistant Attorney General; Renzo Cristaldo Garay, official of the Office of the Attorney General; Ramón Romero, official of the Office of the Attorney General; Rodolfo Barrios, adviser to the Office of the Attorney General; Mario Fabián Silva, official of the Embassy of the Republic of Paraguay in Costa Rica, and Raquel Cáceres, official of the Embassy of the Republic of Paraguay in Costa Rica.

¹⁵ Owing to the exceptional circumstances resulting from the Covid-19 pandemic, this judgment was deliberated and adopted during the 143rd regular session, which was held virtually, using technological means in accordance with the provisions of the Court’s Rules of Procedure.

13. The Court has jurisdiction to hear this case pursuant to Article 62(3) of the Convention, because Paraguay has been a State Party to the Convention since August 24, 1989, and accepted the contentious jurisdiction of the Court on March 26, 1993.

IV PRELIMINARY CONSIDERATION

A. Arguments of the parties and the Commission

14. The **representatives**, in their pleadings and motions brief, identified the following as presumed victims: Bonifacio Ríos Ávalos and his family members, Sara Concepción Parquet de Ríos, Shirley Rossana Ríos Parquet, Edgar Bonifacio Ríos Parquet and José Carlos Ríos Parquet, wife and children, respectively; and Carlos Fernández Gadea and "his heirs," María Concepción Villalba Quevedo, Carlos Aníbal Fernández Villalba, José Luis Fernández Villalba, Julio Cesar Fernández Villalba, Jesús María Fernández Villalba and Catalina Fernández Ocampos, wife and children, respectively. However, the **State** asked that the Court "maintain its uniform criteria" that only Bonifacio Ríos Ávalos and Carlos Fernández Gadea could be considered the injured party, the latter "represented by his heirs, who must be adequately identified." It argued that it corresponded to the Commission to identify the injured party and, in the instant case, the Commission had not considered that the members of the presumed victims' families were included in this category. The **Commission** did not comment in this regard.

B. Considerations of the Court

15. The Court recalls that, pursuant to Article 35(1) of the Rules of Procedure, the case is submitted to its jurisdiction by the presentation of the Merits Report, which must identify the presumed victims. Consequently, it corresponds to the Commission to identify the presumed victims precisely and at the appropriate procedural moment,¹⁶ save in the exceptional circumstances established in Article 35(2) of the said Rules of Procedure, according to which, when it has been justified that it was not possible to identify one or some presumed victims in cases of massive or collective violations, the Court will decide at the appropriate moment whether or not to consider them as such, based on the nature of the violations.¹⁷

16. Consequently, in application of the said Article 35(1) of the Rules of Procedure, since none of the exceptions established in Article 35(2) apply, the Court concludes that it is not possible to include presumed victims other than those identified in the Merits Report; namely, Bonifacio Ríos Ávalos and Carlos Fernández Gadea.

V EVIDENCE

A. Admissibility of the documentary evidence

17. The Court received diverse documents presented as evidence by the Commission and the parties together with their principal briefs (*supra* paras. 4, 7 and 8). As in other cases, this Court admits those documents presented at the appropriate moment (Article 57 of the

¹⁶ Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of Guachalá Chimbo et al. v. Ecuador. Merits, reparations and costs*. Judgment of March 26, 2021. Series C No. 423, para. 23.

¹⁷ Cf. *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 48, and *Case of Guachalá Chimbo et al. v. Ecuador, supra*, para. 23.

Rules of Procedure)¹⁸ by the parties and the Commission, whose admissibility was not contested or challenged, and the authenticity of which was not questioned.¹⁹

18. In addition, together with their final written arguments, the representatives presented various newspaper articles which they indicated were related to the facts of the case. The State, when presenting its observations, argued that the said “newspaper articles” were “irrelevant” and that they had been “added extemporaneously”; it therefore asked the Court not to admit them. The Commission indicated that it had no comments to make in this regard. The Court reiterates that evidence forwarded outside the appropriate procedural moments is not admissible, save in the case of the exceptions established in Article 57(2) of the Rules of Procedure, namely: *force majeure*, grave impediment, or if it relates to a fact that occurred following the said procedural moments.²⁰ Consequently, those newspaper articles forwarded with the final written arguments that were published prior to the presentation of the pleadings and motions brief are inadmissible because they are time-barred.

19. Lastly, it should be noted that the newspaper articles provided opportunely by the Commission and the parties²¹ and also the audiovisual material provided by the representatives²² are admitted and will be assessed, pursuant to the Court’s case law, when they relate to well-known public facts or statements by State officials, or when they corroborate aspects related to the case, provided that it is possible to verify their source and date of publication.²³ Therefore, the Court decides to admit the documents that are complete or that, at least, allow their source and date of publication to be verified, and will assess them taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.²⁴

B. Admissibility of the testimonial and expert evidence

20. The Court finds it pertinent to admit the statements made by affidavit²⁵ and during the

¹⁸ In general, according to Article 57(2) of the Rules of Procedure, documentary evidence may be presented together with the briefs submitting the case and with pleadings and arguments, or with the answering brief, as applicable, and evidence forwarded outside of these occasions is not admissible, subject to the exceptions established in the said Article 57(2) of the Rules of Procedure (namely, *force majeure*, grave impediment, or if it relates to a supervening fact; in other words, one that occurred following the said procedural moments).

¹⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Grijalva Bueno v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of June 3, 2021. Series C No. 426, para. 39.

²⁰ Cf. *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*. Judgment of October 13, 2011. Series C No. 234, para. 17, and *Case of Grijalva Bueno v. Ecuador, supra*, para. 40.

²¹ Cf. Annex 3 to the Merits Report (evidence file, volume I, folios 6 and 7); annexes III.A, III.B, III.C, III.D, III.E, III.G, V.C, V.D, V.F, VI.C, VI.D, VIII.A, X.A, XIII and XXI to the pleadings and motions brief (evidence file, volume IV, folios 6314 to 6378, 6380 to 6397, 6399 to 6414, 6416 to 6443, 6445 to 6453, 6457 to 6468, 6493 to 6495, 6499 to 6500, 6504 to 6512, 6867 to 6870, 6872 to 6873, 8321 to 8441, 8461 to 8512, 8715 to 8745 and 9202 to 9290), and annexes 2.1 to 2.5 to the answering brief (evidence file, volume V, folios 9465, 9467, 9469, 9471 and 9473).

²² Cf. Annex XVI to the pleadings and motions brief (evidence file, volume IV).

²³ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 146; *Case of Terrones Silva et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 360, para. 144, and *Case of Roche Azaña et al. v. Nicaragua. Merits and reparations*. Judgment of June 3, 2020. Series C No. 403, para. 13.

²⁴ Cf. *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37 para. 76, and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 13.

²⁵ The Court received affidavits from: Alexei Porres Piovot, Hilario Benjamín Fernández Bogado, Carmelo Juan Gregorio Benítez Cantero, Felipe Santiago Paredes, Luis Alberto Zarate Chávez, Hugo Ruiz Díaz Balbuena, Luis Adolfo Ramón Lezcano Claude, María Concepción Villalba viuda de Fernández, Myrian Concepción Areco Amaral, Bader Rachid Lichi, Amelio Ramón Calonga Arce, Arnaldo Martínez Prieto, Oscar Buenaventura Llanes Torres, Sindulfo Blanco, Juan Francisco Recalde Burgos (evidence file, volume VIII, affidavits, folios 13427 to 13605), Carlos Sebastián Acha Mendoza and Juan Carlos Ramírez Montalbetti (evidence file, volume IX, affidavits, folios 13607 to 13618). It also

public hearing²⁶ insofar as they are in keeping with the purpose defined by the President in the order requiring them and the purpose of this case.²⁷

VI FACTS

21. Based on the factual framework determined by the Commission and the evidence submitted, the Court will establish the facts of this case, and describe them in the following order: (A) applicable legal framework; (B) appointment of Carlos Fernández Gadea and Bonifacio Ríos Ávalos as justices of the Supreme Court of Justice; (C) impeachment proceedings against Bonifacio Ríos Ávalos and Carlos Fernández Gadea; c.1) events prior to the impeachment of the presumed victims; c.2) procedure before the Chamber of Deputies; c.3) procedure before the Senate; c.4) dismissal of Bonifacio Ríos Ávalos and Carlos Fernández Gadea; (D) actions of unconstitutionality filed by the presumed victims; d.1) Judgments Nos. 951 and 952 of the Constitutional Chamber of the Supreme Court of Justice; d.2) Resolution No. 1 of the National Congress; d.3) Resolution No. 2382 of the Supreme Court of Justice; d.4) appeals for clarification filed in relation to judgments Nos. 951 and 952, and (E) criminal proceedings against Bonifacio Ríos Ávalos and Carlos Fernández Gadea.

A. Applicable legal framework

22. The Constitution of the Republic of Paraguay²⁸ refers to the composition of the Supreme Court of Justice in its articles 258 and 264(1), as follows:

Article 258. On the composition and requirements. The Supreme Court of Justice shall be composed of nine members. It shall be organized in chambers, one of which shall be a constitutional chamber. Each year it shall elect a president from among its members. Its members shall be called justices. The requirements for membership of the Supreme Court of Justice are: to be a natural Paraguayan national; to have reached thirty years of age; to possess a doctorate in law, and to enjoy manifest good repute. In addition, to have exercised the profession, or held a judgeship, or a university chair in the field of law, jointly, separately or successively for ten years.

Article 264. On the duties and responsibilities. The duties and responsibilities of the Judicial Council are: (1) to propose the slates of candidates for the Supreme Court of Justice, following a selected based on aptness, which considers merits and aptitudes, and to forward these to the Senate so that [justices] may be appointed following the agreement of the Executive Branch; [...].

23. In addition, articles 225 and 261 of the Paraguayan Constitution establish the rules for possible impeachment proceedings against justices of the Supreme Court of Justice, as follows:

Article 225. On the procedure: The President of the Republic, the Vice President, the ministers of the Executive Branch, the justices of the Supreme Court of Justice, the Prosecutor General, the Ombudsman, the Comptroller General, the Sub-Comptroller, and the members of the Superior Electoral Court of Justice may only be subjected to impeachment based on improper performance of their functions, offenses committed in the exercise of their duties, or ordinary offenses. The charges shall be brought by a two-thirds majority of the Chamber of Deputies. It shall correspond to the Senate, by an absolute majority of

received the notarized expert opinions of Roberto P. Saba (evidence file, volume VI, expert opinion, folios 13276 to 13304) and Carlos Alberto Arestivo (evidence file, volume VIII, affidavits, folios 13412 to 13425).

²⁶ At the public hearing, the Court received the statements of Bonifacio Ríos Avalos, Jesús María Fernández Villalba, Edmundo Rolón and Marcelo Duarte Manzoni. During the hearing, it also received the expert opinions of Jorge Alejandro Amaya and José Ramón Cossío Díaz. In addition, the Court received the written opinion of Jorge Alejandro Amaya (evidence file, volume VII, written expert opinion, folios 13305 to 13409).

²⁷ The purposes of the statements was established in the order of the Court's President of December 11, 2020.

²⁸ Constitution of the Republic of Paraguay, promulgated on June 20, 1992. Available at: <http://digesto.senado.gov.py/archivos/file/Constituci%C3%B3n%20de%20la%20Rep%C3%BAblica%20del%20Paraguay%20y%20Reglamento%20Interno%20HCS.pdf>.

two-thirds, to try those accused by the Chamber of Deputies in a public trial and, if applicable, declare them guilty, merely to remove them from office. In cases of the supposed perpetration of offenses, the case file shall be forwarded to the ordinary jurisdiction.

Article 261. On the removal and termination of the justices of the Supreme Court of Justice. The justices of the Supreme Court of Justice shall only be removed following impeachment. Their appointment shall end when they reach seventy-five years of age.

24. Other than these constitutional provisions, the Court was not advised whether, at the time of the facts, any laws existed that regulated impeachment proceedings.

B. Appointment of Carlos Fernández Gadea and Bonifacio Ríos Ávalos as justices of the Supreme Court of Justice

25. Carlos Fernández Gadea was born in Asunción, Paraguay, on February 23, 1942. He was a lawyer, notary and notary public; he held a doctorate in law and social sciences, and was a university professor.²⁹ He was appointed a justice of the Supreme Court of Justice of Paraguay in April 1995.³⁰ On February 7, 2002, he was elected president of that court for the period from "February 2002 to February 2003."³¹ He died on June 20, 2010³².

26. Bonifacio Ríos Ávalos was born on June 5, 1956, in Coronel Oviedo, Paraguay. He is a lawyer, notary and notary public; he holds a doctorate in legal science and is a university professor.³³ He was appointed a justice of the Supreme Court of Justice of Paraguay on May 6, 1999.³⁴ On February 6, 2003, he was elected president of that court for the period from "February 2003 to February 2004."³⁵

C. Impeachment proceedings against Carlos Fernández Gadea and Bonifacio Ríos Ávalos

C.1. Events prior to the impeachment of the presumed victims

27. Even though it was not determinant, it is still significant as regards the subsequent political decision that, on September 6, 2003, the President of the Republic at the time, based on his own institutional authority and responding to the support he had in the Legislature, gave a speech in Santa Rosa del Aguaray, department of San Pedro, in which, according to newspaper articles, he referred to the Judiciary. The media indicated the following:

²⁹ Cf. Resumé of Carlos Fernández Gadea (evidence file, volume IV, annex II.A to the pleadings and motions brief, folios 6249 to 6251).

³⁰ Cf. Initial petition of Carlos Fernández Gadea (evidence file, volume II, procedure before the Commission, folio 567), and certificate of the cases heard by Carlos Fernández Gadea, issued by the Personnel Director of the Supreme Court of Justice of the Republic of Paraguay on August 17, 2010 (evidence file, volume V, annex 1 to the answering brief, folio 9458).

³¹ Cf. Record No. 1 of the regular session of February 7, 2002, of the Supreme Court of Justice of the Republic of Paraguay (evidence file, volume IV, annex XI.A to the pleadings and motions brief, folios 8518 and 8519).

³² Cf. Certified death certificate of Carlos Fernández Gadea (evidence file, volume IV, annex II.C to the pleadings and motions brief, folio 6284).

³³ Cf. Resumé of Bonifacio Ríos Avalos (evidence file, volume IV, annex II.B to the pleadings and motions brief, folios 6264 to 6268).

³⁴ Cf. Resolution No. 240 of the Senate of the Republic of Paraguay of May 6, 1999 (evidence file, volume I, annex 1 to the Merits Report, folio 2), and Decree No. 2998 of the President of the Republic of Paraguay of May 14, 1999 (evidence file, volume IV, annex XI.B to the pleadings and motions brief, folios 8523 and 8524).

³⁵ Cf. Decision No. 266 of the Supreme Court of Justice of the Republic of Paraguay of February 6, 2003 (evidence file, volume I, annex 2 to the Merits Report, folio 4), and Record No. 1 of the regular session of February 6, 2003, of the Supreme Court of Justice of the Republic of Paraguay (evidence file, volume IV, annex XI.B to the pleadings and motions brief, folio 8522).

Duarte Frutos indicated that he had assumed the Presidency of the Republic in order to ensure that there was justice for everyone and to bring an end to “justice that closes its eyes to the bosses, the powerful, and opens its eyes and directs the implacable arm of the law against the country’s poor and disinherited.” Amidst the sustained applause of hundreds of small farmers who attended the event, the leader emphatically warned that justice would change “and, if necessary, we are going to crush a corrupt Judiciary that does not want to adapt to the needs and aspirations of the Paraguayan people.”³⁶

28. Newspaper articles at the time also referred to the intention of different political players to substitute some of the justices who composed the Supreme Court of Justice at the time.³⁷

29. On October 25 and 27, 2003, Justices Jerónimo Irala Burgos³⁸ and Raúl Sapena Brugada presented their letters of resignations to the Senate.³⁹ In his letter, the latter indicated:

Following a series of negotiations between leaders of the political parties, the list of justices subject to impeachment was published. Even though several protagonists of this negotiation indicated that we would be given the chance to exercise the right to defend ourselves during the impeachment proceedings, it should also be noted that, in other statements, dismissal was repeatedly mentioned. In these circumstances, any defense that is put forward will be useless. It should be recalled that I acceded to this high office as the only Colorado candidate who had obtained the consensus of all political parties, a situation that I have honored with my impartiality. Recent events reveal that this consensus no longer exists and, for ethical reasons, this makes my resignation necessary.

30. Then, on November 17 that year, Justice Felipe Santiago Paredes resigned. In his letter of resignation, he indicated that he “consider[ed] it unacceptable to be exposed to subjective and selective impeachment proceedings, without guarantees, and with a guilty verdict already politically agreed upon and announced.”⁴⁰

C.2. Procedure before the Chamber of Deputies

³⁶ Cf. Newspaper article published in “*La Nación*” on September 7, 2003, entitled “Nicanor amenazó ‘pulverizar’ el Poder Judicial si hace falta” [Nicanor threatened to ‘crush’ the Judiciary if necessary] (evidence file, volume IV, annex III.A to the pleadings and motions brief, folio 6346). See also, newspaper article published in “*Noticias*” on September 8, 2003, entitled “*Reacciones encontradas en relación a ‘pulverizar al Poder Judicial corrupto’*” [Strong reactions to ‘crushing the corrupt Judiciary’] (evidence file, volume I, annex 3 to the Merits Report, folio 6); newspaper article published in “*La Nación*” on September 8, 2003, entitled “*Castiglioni apoya la ‘pulverización’*” [Castiglioni supports ‘pulverization’] (evidence file, volume I, annex 3 to the Merits Report, folio 7), and newspaper article published in “*Noticias*” on September 8, 2003, entitled “*Causan polémicas las palabras de Nicanor en torno a la justicia*” [Nicanor’s speech about the judiciary causes polemic] (evidence file, volume IV, annex III.A to the pleadings and motions brief, folio 6328).

³⁷ Cf. *Inter alia*, newspaper article published in “*La Nación*” on August 28, 2003, entitled “*El Ejecutivo y el Congreso buscarán consensuar el cambio de la Corte*” [Executive and Congress will seek consensus on changes to the Court] (evidence file, volume IV, annex III.A to the pleadings and motions brief, folio 6362); newspaper article published in “*La Nación*” on September 8, 2003, entitled “*Negociación política apunta a la salida de 7 miembros de la Corte*” [Political negotiation proposes the departure of 7 members of the Court] (evidence file, volume I, annex 3 to the Merits Report, folio 7); newspaper article published in “*ABC*” on October 1, 2003, entitled “*The president convoca a minicumbre para impulsar renovación de la Corte*” [President calls for mini-summit to expedite the Court’s renewal] (evidence file, volume IV, annex III.A to the pleadings and motions brief, folio 6357); newspaper article published in “*La Nación*” on October 14, 2003, entitled “*Ejecutivo y Congreso resolvieron llevar a juicio político a la Corte*” [Executive and Congress decide to impeach the Court] (evidence file, volume IV, annex III.A to the pleadings and motions brief, folio 6349), and newspaper article published in “*Noticias*” on October 23, 2003, entitled “*Corte: oposición definió seis nombres para juicio político*” [Court: opposition identified six names for impeachment] (evidence file, volume IV, annex III.A to the pleadings and motions brief, folio 6319).

³⁸ Cf. Resignation letter of Justice Jerónimo Irala Burgos of October 25, 2003 (evidence file, volume I, annex 5 to the Merits Report, folio 11).

³⁹ Cf. Resignation letter of Justice Raúl Sapena Brugada of October 27, 2003 (evidence file, volume I, annex 4 to the Merits Report, folio 9). See also, newspaper article published in “*Última Hora*” on October 28, 2003, entitled “*Sapena e Irala renuncian a la Corte para evitar el juicio*” [Sapena and Irala resign from the Court to avoid trial] (evidence file, volume IV, annex III.D to the pleadings and motions brief, folio 6432).

⁴⁰ Cf. Resignation letter of Justice Felipe Santiago Paredes of November 17, 2003 (evidence file, volume IV, annex V.C to the pleadings and motions brief, folio 6491).

31. On November 18, 2003, the Chamber of Deputies, in Resolution No. 134, "brought charges before the [...] Senate" against Justices Carlos Fernández Gadea, Luis Lezcano Claude and Bonifacio Ríos Ávalos, in order to file impeachment proceedings against them. To this end, the Chamber of Deputies invoked article 225 of the Constitution and charged the defendants with different conducts that it categorized as "improper performance" of their functions.⁴¹

32. The indictment included 20 cases or charges attributed to the justices.⁴² The charges were contained in a document entitled "Statement of reasons," and Resolution No. 134 established that this document "formed part of the said resolution."⁴³ The pertinent sections of this "Statement of reasons" relating to the charges based on which Messrs. Fernández Gadea and Ríos Ávalos were impeached are transcribed below:⁴⁴

Case 1: Declaration of the lifelong appointment [*sic*] of its own members; violation of the recusal obligations established in the Code of Civil Procedure. [...] Judgments [Nos.] 222 and 223, both dated May 5, 2000, delivered by the Supreme Court of Justice decided to admit [...] the actions of unconstitutionality filed against Senate Resolution [No.] 421 of November 5, 1999, [...].

Case 2: Amendment of the constitutional procedure for the confirmation of judges; interference in functions inherent in another judicial organ. [...] In its Judgment [No.] 1033 of December 19, 2001, the [Supreme Court of Justice] [...] decided: "[...] to determine the meaning and scope of art. 4 *in fine* of Law 1634/2000, in the sense that the Judicial Council could not exclude from the slates of candidates a judge who presented his candidacy claiming that he was already confirmed in the position." [...]

Case 4: Interference in the exercise of the constitutional functions of the Chamber of Deputies. [...] On April 24, 2002, the Chamber of Deputies was advised that the Constitutional Chamber of the Supreme Court of Justice had decided in the case: "Action of unconstitutionality against Resolution [No.] 864/2002 of the Chamber of Deputies [...] 'that summons and calls on the Paraguayan Director of the Yacyretá Binational Entity [...],' to issue A.I. [No.] 487 of April 24, 2002, ordering 'the suspension of the effects of Resolution No. 864/2002...'" [*sic*].

Case 7: Attribution of constitutional powers expressly reserved to the Legislature, seriously affecting the balance of power established in article 3 of the Constitution and constituting the punishable offense of "attack on the constitutional order" [...]. [The Supreme Court of Justice], by Judgment [No.] 979 of September 18, 2002, decided: "[...] to admit [...] the action of unconstitutionality filed by the Prosecutor General against article 5 of Law [No.] 1444/99 on the transition period [...]."

⁴¹ Cf. Resolution No. 134 of the Chamber of Deputies of the National Congress of the Republic of Paraguay of November 18, 2003 (evidence file, volume I, annex 6 to the Merits Report, folios 13 and 14). The resolution appointed an "Indictment Committee" composed of four deputies so that "together, separately, alternatively, indistinctly or successively, and representing the [...] Chamber of Deputies, they would prosecute the [...] indictment before the [...] Senate." To this end, the Indictment Committee was granted authority "to present briefs, examine documents, file remedies, offer, manage and contest evidence [...] and, in sum, undertake any other actions or procedures that were necessary."

⁴² During the session of November 26, 2003, the Indictment Committee appointed by the Chamber of Deputies explained to the Senate that cases 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13 and 15 corresponded to Justice Carlos Fernández Gadea; cases 1, 2, 3, 4, 5, 6, 7, 10, 12, 13, 14 and 15 to Justice Luis Lezcano Claude, and cases 1, 2, 3, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 to Justice Bonifacio Ríos Ávalos. Regarding case 8, the Committee indicated that it corresponded "merely to responsibilities of Justice [Felipe Santiago] Paredes," who had resigned before the indictment been drawn up. Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of November 26, 2003 (evidence file, volume V, annex 4.3. to the answering brief, folios 10167, 10176, 10184 and 10191).

⁴³ In that regard, Resolution No. 134 stipulated: "[it is] established that the statement of reasons that accompanies this resolution forms part of it and, consequently, it is hereby ordered that it be forwarded to the Senate, together with the other pertinent background information and documents as an annex and as grounds for the indictment that has been drawn up." Cf. Resolution No. 134 of the Chamber of Deputies of the National Congress of the Republic of Paraguay of November 18, 2003 (evidence file, volume I, annex 6 to the Merits Report, folios 13 and 14).

⁴⁴ The transcript includes the cases regarding which the impeachment before the Senate was processed after the Indictment Committee appointed by the Chamber of Deputies had withdrawn several of the cases included in the "Statement of reasons" that formed part of Resolution No. 134 (*infra* para. 36). Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of December 3, 2003 (evidence file, volume V, annex 4.5. to the answering brief, folios 10344, 10345 and 10352 to 10356).

Case 14: Case of M[undy Recepciones] or the case of the “*Croquetas de Oro*” [Golden Croquettes] [...] On February 28, 2002, the Constitutional Chamber of the Supreme Court of Justice [...] delivered Judgment [No.] 62 deciding to reject the action of unconstitutionality filed by I[taipu] Binacional [...].⁴⁵

33. These five cases are those that were finally ratified by the Indictment Committee appointed by the Chamber of Deputies before the Senate, and they all refer to judicial decisions.

C.3. Procedure before the Senate

34. On November 25, 2003, the Senate issued Resolution No. 122 establishing the procedure for the impeachment proceedings against the justices of the Supreme Court of Justice Carlos Fernández Gadea, Luis Lezcano Claude and Bonifacio Ríos Ávalos. The resolution included the following rules:

Article 2. Challenges, recusals, preliminary questions and special statements or confessional evidence shall not be admitted. [...] The resolutions issued by the Senate sitting as a court are not subject to any type of appeal. [...]

Article 4. The Senate shall sit as a court, following the swearing-in of its members [...] on Wednesday, November 26 this year [...]. Each indictment may not take more than one hour and thirty minutes and must be made specifically or individually. [...] Each defense may not take more than three hours. [...]

Article 6. At the special session at 8 a.m. on Wednesday, December 3 this year, the court shall decide to admit or to reject each item of evidence offered. [...]

Article 8. At the last special session to be held at 8.30 a.m. on Friday, December 12 this year: (a) the full Senate shall deliberate publicly on the claims made by the parties and on the evidence submitted, and (b) then, the corresponding nominal vote will be held; if the minimum number of votes required by the Constitution for this purpose are met, the defendants shall be declared guilty and removed *ipso jure* from their functions. In the case of a supposed perpetration of offenses, the file will be forwarded to the ordinary jurisdiction; to the contrary, the case will be closed.⁴⁶

35. On November 26, 2003, the impeachment proceedings were initiated before the Senate, sitting “as a court”; at that time, the Indictment Committee appointed by the Chamber of Deputies presented the indictment against the three justices.⁴⁷ During the session of December 1 that year, the indicted justices presented their defense and the parties offered their respective evidence.⁴⁸

36. On December 3, 2003, the Indictment Committee withdrew several of the charges contained in the indictment⁴⁹ and ratified the following in order to continue the impeachment proceedings: (a) cases 1, 2 and 4 with regard to Justice Carlos Fernández Gadea; (b) cases 1, 2, 4, 5, 7 and 14 with regard to Justice Luis Lezcano Claude, and (c) cases 1, 2, 7 and 14

⁴⁵ Cf. Resolution No. 134 of the Chamber of Deputies of the National Congress of the Republic of Paraguay of November 18, 2003, and Statement of reasons (evidence file, volume V, annex 5.1. to the answering brief, folios 10556, 10558 to 10560, 10562 to 10569, 10571 to 10582 and 10593 to 10595).

⁴⁶ Cf. Resolution No. 122 of the Senate of the National Congress of the Republic of Paraguay of November 25, 2003 (evidence file, volume IV, annex VI.B to the pleadings and motions brief, folios 6863 to 6865).

⁴⁷ Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of November 26, 2003 (evidence file, volume V, annex 4.3. to the answering brief, folios 10165 and 10166).

⁴⁸ Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of December 1, 2003 (evidence file, volume V, annex 4.4. to the answering brief, folios 10203 to 10341).

⁴⁹ Consequently, the Indictment Committee withdrew cases 3, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19 and 20. Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of December 3, 2003 (evidence file, volume V, annex 4.5. to the answering brief, folio 10345).

with regard to Justice Bonifacio Ríos Ávalos.⁵⁰ The Indictment Committee argued that, by withdrawing certain charges, this would “save the Senate time” and “permit a more extensive discussion of the more relevant issues,” in addition to ensuring that the justices indicted “were able to defend themselves fully.”⁵¹ The same day, the Senate decided to admit the evidence offered by the parties and, in this regard, issued Resolution No. 128.⁵²

37. Subsequently, during the session on December 10, 2003, the Indictment Committee and the defense counsel of each indicted justice presented their respective oral arguments.⁵³

C.4. Dismissal of Bonifacio Ríos Ávalos and Carlos Fernández Gadea

38. During the session of December 12, 2003, the Senate, sitting “as a court,” deliberated “on the arguments of the parties and on the evidence produced.” At the start of the session, the president of the Senate advised that Justice Luis Lezcano Claude’s resignation had been received, and the corresponding letter of resignation was read out.⁵⁴

39. Following the deliberations, the members of the Senate proceeded to vote “whether or not [the defendants were] guilty of the improper performance of functions.” In the case of Carlos Fernández Gadea, the result of the vote was “44 votes that he was [guilty] and one absence,” and in the case of Bonifacio Ríos Ávalos, “43 votes [that he was guilty], one abstention, and one absence.”⁵⁵

40. The same day, the Senate issued Resolution No. 134 removing Carlos Fernández Gadea and Bonifacio Ríos Avalos from their functions as justices of the Supreme Court of Justice.⁵⁶

D. Actions of unconstitutionality filed by the presumed victims

41. On November 27, 2003, the presumed victims filed separate actions of unconstitutionality against Senate Resolution No. 122 of November 25, 2003, establishing the procedure for the impeachment proceedings.⁵⁷

⁵⁰ Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of December 3, 2003 (evidence file, volume V, annex 4.5. to the answering brief, folios 10345, 10345, 10350 to 10353 and 10356 to 10360).

⁵¹ In response to the Indictment Committee’s statement, the president of the Senate indicated that “note [was] taken of the withdrawal.” Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of December 3, 2003 (evidence file, volume V, annex 4.5. to the answering brief, folios 10344, 10345, 10350 and 10351).

⁵² Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of December 3, 2003 (evidence file, volume V, annex 4.5. to the answering brief, folios 10352 to 10360), and Resolution No. 128 of the Senate of the National Congress of the Republic of Paraguay of December 3, 2003 (evidence file, volume IV, annex VI.A to the pleadings and motions brief, folios 6566 to 6570).

⁵³ Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of December 10, 2003 (evidence file, volume V, annex 4.6. to the answering brief, folios 10367 to 10483).

⁵⁴ Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of December 12, 2003 (evidence file, volume V, annex 4.7. to the answering brief, folios 10486 to 10546).

⁵⁵ Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of December 12, 2003 (evidence file, volume V, annex 4.7. to the answering brief, folios 10547 to 10550).

⁵⁶ Cf. Resolution No. 134 of the Senate of the National Congress of the Republic of Paraguay of December 12, 2003 (evidence file, volume I, annex 8 to the Merits Report, folios 77 and 78). In the same Resolution, the Senate “took note” of Justice Luis Lezcano Claude’s resignation in order to “exclude him [...] from this list of defendants.”

⁵⁷ Cf. Brief filing action of unconstitutionality against Senate Resolution No. 122 of November 27, 2003, submitted by Carlos Fernández Gadea, and Brief filing action of unconstitutionality against Senate Resolution No. 122 of November 27, 2003, submitted by Bonifacio Ríos Avalos (evidence file, volume II, procedure before the Commission, folios 335 to 339 and 813 to 819). Among other matters, the presumed victims argued that Resolution No. 122 violated the right of defense because the time frame for preparing their defense was limited to two working days and its presentation could not exceed three hours.

42. In addition, on December 24 and 26 2003, Carlos Fernández Gadea and Bonifacio Ríos Ávalos, respectively, filed actions of unconstitutionality against Resolution No. 134 of December 12, 2003, also issued by the Senate, ordering their removal from their functions as justices of the Supreme Court of Justice.⁵⁸

D.1. Judgments Nos. 951 and 952 of the Constitutional Chamber of the Supreme Court of Justice

43. During the processing of the actions of unconstitutionality, several justices of the Supreme Court of Justice, as well as members of other courts, recused themselves from hearing the arguments.⁵⁹

44. On December 30, 2009, the Constitutional Chamber of the Supreme Court of Justice, composed of three “interim justices [...] owing to the recusals of its natural justices,” decided the actions of unconstitutionality. By Judgment No. 951, the Chamber admitted the actions filed by Bonifacio Ríos Ávalos, and by Judgment No. 952, the actions filed by Carlos Fernández Gadea.⁶⁰ In general, these judgments have the same content.⁶¹

45. In its decision, the Chamber declared “the nullity of the [contested] resolutions” and, “consequently,” ordered the “reinstatement” of Messrs. Ríos Ávalos and Fernández Gadea “in their functions as justices of the [...] Supreme Court of Justice of the Republic of Paraguay, who shall immediately occupy any vacanc[ies] that exist [...] in the highest organ of the Judiciary.”⁶²

46. Regarding Senate Resolution No. 122, the Constitutional Chamber considered, *inter alia*:

The prohibition to file challenges, recusals, preliminary questions or any type of appeal established in art. 2 of the said administrative resolution of the Senate is a flagrant violation of the defense guarantee to be

⁵⁸ Cf. Brief filing action of unconstitutionality against Senate Resolution No. 134 of December 12, 2003, submitted by Carlos Fernández Gadea, and Brief filing action of unconstitutionality against Resolution No. 134 of the Senate of December 12, 2003, submitted by Bonifacio Ríos Avalos (evidence file, volume II, procedure before the Commission, folios 398 to 419, and 884 to 903). Among other matters, the presumed victims argued that Resolution No. 134 violated the rights to due process and to defense, and also the lack of independence and impartiality of the organ that removed them from their functions, which had infringed the principle of judicial independence.

⁵⁹ Cf. *Inter alia*, recusals of Justices Antonio Fretes and Víctor Núñez Rodríguez, included in the case file of the actions of unconstitutionality filed by Bonifacio Ríos Avalos against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folios 10723, 10727, 10787, 10917 and 10937), and recusals of Justices Antonio Fretes and Víctor Núñez included in the case file of the actions of unconstitutionality filed by Carlos Fernández Gadea against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folios 11809, 11851, 12039 and 12063).

⁶⁰ As each ruling indicates, the actions filed Bonifacio Ríos Avalos were joindered by a judicial decision of August 24, 2007. Meanwhile, the actions filed by Carlos Fernández Gadea were joindered by a judicial decision also issued on August 24, 2007. Cf. Judgment No. 951 of December 30, 2009, delivered by the Constitutional Chamber of the Supreme Court of Justice of the Republic of Paraguay, and Judgment No. 952 of December 30, 2009, delivered by the Constitutional Chamber of the Supreme Court of Justice of the Republic of Paraguay (evidence file, volume I, annex 10 to the Merits Report, folios 102 and 132).

⁶¹ Cf. Judgment No. 951 of December 30, 2009, delivered by the Constitutional Chamber of the Supreme Court of Justice of the Republic of Paraguay, and Judgment No. 952 of December 30, 2009, delivered by the Constitutional Chamber of the Supreme Court of Justice of the Republic of Paraguay (evidence file, volume I, annex 10 to the Merits Report, folios 84 to 148).

⁶² Cf. Judgment No. 951 of December 30, 2009, delivered by the Constitutional Chamber of the Supreme Court of Justice of the Republic of Paraguay, and Judgment No. 952 of December 30, 2009, delivered by the Constitutional Chamber of the Supreme Court of Justice of the Republic of Paraguay (evidence file, volume I, annex 10 to the Merits Report, folios 84 to 148). In these decision, the Chamber also established: “notify [...] the [...] Finance Minister, for the budgetary effects and the corresponding pension contributions.”

tried by impartial judges [...]. The last part of art. 4 of the same contested administrative resolution states that "each defense may not take more than three hours, and we are aware that any limitation of the right of defense violates the cardinal principle of the inviolability of defense [...]. In these conditions, it is patent and unequivocal that the procedural regulation established in Senate R[esolution No.] 122 of 25/11/03 is manifestly unconstitutional."⁶³

47. In the case of Senate Resolution No. 134, the Constitutional Chamber argued, among other matters:

No specific acts were attributed to those who were removed in any of the submissions [...]. The judges have not considered any fact proved; the ruling is not based on either its factual or legal aspects. [...] In this case, the judgment is founded on the autocratic intention of the "voters" (rather than judges), because they did not explain why they had proceeded in this way, which inevitably results in the said decision or sanction being arbitrary. [...] It has been categorically demonstrated that the 2003 removal was not based on legal grounds, but rather for strictly political reasons. It is true that an "impeachment" may be for "political reasons" – and is generally due to such reasons. However, what cannot and should not be allowed is that "legal grounds" are cited for the impeachment and that the trial is concluded by convicting or sanctioning someone for "political reasons" [...]. The trial *sub judice* of the justices of the Supreme Court of Justice for the opinions expressed in the rulings listed *ut supra*, has been not only a serious error committed against the judicial immunity recognized in the Constitution itself for all court judges, but also, the contested ruling could even signify an "attack against the independence of the Judiciary."⁶⁴

D.2. Resolution No. 1 of the National Congress

48. On January 2, 2010, the National Congress issued Resolution No. 1, in which it "[repudiated and rejected the content and the terms of Judgments Nos. 951 and 952 of the Supreme Court of Justice, Constitutional Chamber, of December 30, 2009]." The resolution indicated the following, *inter alia*:

Article 3. To repudiate vigorously the content of Judgments [Nos.] 951 and 952, respectively, of December 30, 2009, delivered by the Constitutional Chamber of the Supreme Court of Justice [...].

Article 4. To reject as null and void the content of this decision because it was delivered in evident *ultra vires* in the exercise of its functions by the Judiciary [*sic*] [...].

Article 5. To advise the justices of the Supreme Court of Justice, the Judicial Council, the Jury for the Prosecution of Judges, and the Executive Branch that, if the validity of the judgment is admitted [*sic*], they will incur in grounds for impeachment, in addition to incurring criminal liability for acting as accomplices of the signatories of the said judgment.⁶⁵

D.3. Resolution No. 2382 of the Supreme Court of Justice

49. On January 5, 2010, the Supreme Court of Justice, acting as an "organ of government" and based on its "powers of supervision over all the bodies of the Judiciary," issued Resolution No. 2382, declaring that Judgments Nos. 951 and 952 "delivered by the members of the Government Accountability Office as members of the Constitutional Chamber [...] lacked legal validity" (*supra* para. 44), and also ordered that the said officials be "suspended from their functions." To this end, the Supreme Court considered, among other matters that, when issuing the said decisions, the judges who signed them "failed to observe the legal order of

⁶³ Cf. Judgment No. 951 of December 30, 2009, delivered by the Constitutional Chamber of the Supreme Court of Justice of the Republic of Paraguay, and Judgment No. 952 of December 30, 2009, delivered by the Constitutional Chamber of the Supreme Court of Justice of the Republic of Paraguay (evidence file, volume I, annex 10 to the Merits Report, folios 107 and 138).

⁶⁴ Cf. Judgment No. 951 of December 30, 2009, delivered by the Constitutional Chamber of the Supreme Court of Justice of the Republic of Paraguay, and Judgment No. 952 of December 30, 2009, delivered by the Constitutional Chamber of the Supreme Court of Justice of the Republic of Paraguay (evidence file, volume I, annex 10 to the Merits Report, folios 108, 110, 111, 140, 141 and 142).

⁶⁵ Cf. Resolution No. 1 of the National Congress of the Republic of Paraguay of January 2, 2010 (evidence file, volume I, annex 11 to the Merits Report, folios 150 and 151).

the Republic and violated cardinal principles of the legal system.”⁶⁶

50. Justices who had previously disqualified themselves from hearing the actions of unconstitutionality filed by the presumed victims (*supra* para. 43) intervened in the issue of Resolution No. 2382. Also, this Court was not informed and is unaware of whether the said resolution was issued in response to the filing of any action or contestation.

D.4. Appeals for clarification filed in relation to Judgments Nos. 951 and 952

51. On January 4, 2010, the Prosecutor General filed appeals for clarification against Judgments Nos. 951 and 952 of December 30, 2009. When filing the appeals, he requested, *inter alia*, an indication of “which state organ would be responsible for implementing” the orders to reinstate Messrs. Ríos Ávalos and Fernández Gadea as justices of the Supreme Court of Justice.⁶⁷

52. On February 1, 2010, Bonifacio Ríos Ávalos and Carlos Fernández Gadea filed separate appeals for clarification in relation to Judgment No. 951, and Judgment No. 952, respectively. In their appeals, they argued that the Constitutional Chamber “ha[d] failed to rule on the procedural costs [...]; therefore, a ruling [was] important [...] in order to make good this omission.”⁶⁸

53. On September 2, 2019, the Constitutional Chamber of the Supreme Court of Justice delivered Judgment No. 737, declaring that the appeal for clarification filed by the Prosecutor General was “[inadmissible]” and admitting the appeal filed by Mr. Ríos Ávalos, both with regard to Judgment No. 951. The decision established that, with regard to the procedural costs, “each party sh[ould] cover its own expenses.”⁶⁹

54. Regarding the appeals for clarification filed by the Prosecutor General and Mr. Fernández Gadea against Judgment No. 952, the case file contains no record that they have been decided.⁷⁰

⁶⁶ Cf. Resolution No. 2382 of the Supreme Court of Justice of January 5, 2010 (evidence file, volume I, annex 12 to the Merits Report, folios 153 to 155).

⁶⁷ Cf. Brief filing appeal for clarification submitted by the Prosecutor General, which is included in the file of the actions of unconstitutionality filed by Bonifacio Ríos Avalos against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folios 11431 to 11433), and Brief filing appeal for clarification submitted by the Prosecutor General, which is included in the file of the actions of unconstitutionality filed by Carlos Fernández Gadea against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folios 12677 to 12679).

⁶⁸ Cf. Brief filing appeal for clarification submitted by the petitioner, which is included in the file of the actions of unconstitutionality filed by Bonifacio Ríos Avalos against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folio 11439), and Brief filing appeal for clarification submitted by the petitioner, which is included in the file of the actions of unconstitutionality filed by Carlos Fernández Gadea against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folio 12693).

⁶⁹ Cf. Judgment No. 737 of September 2, 2019, delivered by the Constitutional Chamber of the Supreme Court of Justice, which is included in the file of the actions of unconstitutionality filed by Bonifacio Ríos Avalos against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folios 11737 to 11739). On September 9, 2019, the Constitutional Chamber, in Judgment No. 738, “clarified, *ex officio*, Judgment No. 737,” to the effect that the appeals for clarification had been filed with regard to Judgment No. 951, and not as had been indicated erroneously. Cf. File of the actions of unconstitutionality filed by Bonifacio Ríos Avalos against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folio 11743 and 11744).

⁷⁰ Cf. File of the actions of unconstitutionality filed by Carlos Fernández Gadea against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folios 11789 and 12890).

55. On October 11, 2019, the Constitutional Chamber “[declared the nullity] of the notifications of Judgment No. 951 of December 30, 2009, served [...] on the National Congress, the Judicial Council, and other State organs.” To this end, it argued, among other matters, that “the said notifications ha[d]not been ordered” by that Chamber and that “the judgment notified no longer had legal effects because it had been declared invalid by Resolution No. 2382 of January 5, 2010, [...] a resolution that ha[d] become final.”⁷¹

E. Criminal proceedings against Bonifacio Ríos Ávalos and Carlos Fernández Gadea

56. On December 17, 2003, several members of the National Congress “informed the Public Prosecution Service” of facts relating to the impeachment proceedings against the presumed victims, and asked this body “to examine the complaints filed by the Chamber of Deputies before the Senate [...] in order to determine whether there were sufficient grounds to file criminal proceedings.”⁷²

57. Also, on November 1, 2005, the Fourth Criminal Judge of Guarantees issued a ruling in which he “[rejected] the complaint filed” and “[ordered] the closure of the case.”⁷³

**VII
MERITS**

58. The instant case concerns the alleged violation of various rights in relation to the impeachment proceedings that culminated in the removal of Bonifacio Ríos Ávalos and Carlos Fernández Gadea from their functions as justices of the Supreme Court of Justice of the Republic of Paraguay. This Court will proceed to make the corresponding analysis in the following order: (a) right to judicial guarantees in relation to the obligations to respect and to ensure rights, and alleged violations of the protection of honor and dignity, and equality before the law, and (b) rights to judicial guarantees and to judicial protection, in relation to the obligations to respect and to ensure rights.

**VII.1
RIGHT TO JUDICIAL GUARANTEES IN RELATION TO THE OBLIGATIONS TO
RESPECT AND TO ENSURE RIGHTS,⁷⁴ AND ALLEGED VIOLATIONS OF PROTECTION
OF HONOR AND DIGNITY, AND EQUALITY BEFORE THE LAW⁷⁵**

A. Arguments of the Commission and of the parties

A.1. General considerations on judicial independence and the guarantees applicable to impeachment proceedings

59. The **Commission** argued that only those impeachment proceedings against judges “in

⁷¹ Cf. Resolution A.I.N. No. 1932 of October 11, 2019, issued by the Constitutional Chamber of the Supreme Court of Justice, which is included in the file of the actions of unconstitutionality filed by Bonifacio Ríos Avalos against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folios 11769 and 11770).

⁷² Cf. Brief of December 13, 2003, sent by members of the National Congress to the Prosecutor General (evidence file, volume IV, annex IX.A. to the pleadings and motions brief, folios 8451 and 8452).

⁷³ Cf. Ruling identified as A.I. No. 1755 of November 1, 2005, issued by the Fourth Criminal Judge of Guarantees in case No. 1-1-2-1-2004-1697, entitled “Luis Lezcano Claude and others re/atypical act” (evidence file, volume IV, annex IX.B. to the pleadings and motions brief, folios 8454 to 8460).

⁷⁴ Article 8 of the American Convention, in relation to Article 1(1) of this instrument.

⁷⁵ Articles 11 and 24 of the American Convention.

which the guarantees of due process are complied with" are compatible with the Convention. It indicated that the proceedings filed against the presumed victims "did not comply with the principle of judicial independence" because, among other matters, the proceedings meant that they were "prosecuted due to the import of their decisions."

60. The **representatives** indicated that the principle of judicial Independence was seriously affected by subjecting members of the Supreme Court of Justice to impeachment based on the rulings made in the exercise of their jurisdictional functions.

61. The **State** argued that impeachment is not an "assault on the independence of the powers [...], but endeavors to improve the functioning of the principle of the separation of powers." It indicated that this mechanism "respects a procedure in which those subject to impeachment are notified of the charges against them, offer and produce evidence, are heard and present their defense arguments."

A.2. Competence of the disciplinary authority and applicable procedures

62. The **Commission** argued that the incorporation of *ad hoc* procedural rules when the proceedings had already commenced violated Article 8(1) of the Convention, which "indicates that both the disciplinary authority and the procedure to be followed must be previously established by law."

63. The **representatives** indicated that the incorporation of procedural rules applicable to the specific case by Senate Resolution No. 122 violated Article 8(1) of the Convention.

64. The **State** argued that the procedure followed for impeachment proceedings was determined by the Constitution and that Resolution No. 122, establishing the "timetable for the impeachment proceedings," completed the constitutional rules.

A.3. The right to an impartial authority

65. The **Commission** argued that Senate Resolution No. 122 established that no recusals would be admitted and this prevented the presumed victims from questioning the impartiality of the disciplinary authority, "a guarantee that had special relevance" because "they argued that impeachment was based on discriminatory grounds." The Commission added that it "did not rule out that political deals had been made with regard to the result of the impeachment."

66. The **representatives** argued that there had been "prior agreement on the removal and the distribution of the posts in the Judiciary," and this had resulted in the "prejudgment" of the presumed victims. They added that the prohibition of recusals enabled members of the Senate to intervene who were allegedly prevented from participating for "personal reasons."

67. The **State** indicated that impeachment constitutes an "administrative and constitutional mechanism of political assessment," that is decided collectively, so that "disqualifications or recusals" are not applicable. It added that no evidence had been provided proving that there had been "meetings, arrangements, agreements or decisions before the facts."

A.4. The right to be heard and the right of defense

68. The **Commission** argued that it had insufficient evidence to determine how, in practice, the time frames established in Resolution No. 122 affected the right to be heard and the right of defense.

69. The **representatives** argued that the right to be heard had been violated because the prior notification of the charges had not been made within a reasonable time. In addition, insufficient time had been allotted to prepare the defense and to obtain the corresponding evidence. They indicated that, during the proceedings, "even though they let the [defense] counsel speak, they did not listen to them because a decision had already been taken to dismiss [the justices]."

70. The **State** argued that the application of Resolution No. 122 did not violate judicial guarantees because the presumed victims had 18 days to prepare themselves between the notification of the charges and the actual presentation of their defense. It indicated that the defendants took more time than established in the said resolution to present their arguments.

A.5. The right to duly reasoned decisions

71. The **Commission** argued that the resolution dismissing the presumed victims did not establish the reasons and merely indicated that the motion to remove them for improper performance of their functions had been adopted, indicating the number of votes issued. This prevented the presumed victims from understanding the reasoning behind the decision, including how their conduct corresponded to the disciplinary offense in question.

72. The **representatives** argued that the resolution dismissing the presumed victims from office lacked factual and legal reasons. They indicated that "[t]he absence of factual and legal reasons meant that the resolution was absolutely invalid."

73. The **State** argued that Senate Resolution No. 134 "cannot be read *in abstracto*, but must be read together with the debate," because the said resolution "is merely the operative part of a series of considerations that arise from the parliamentary debate and that explain the reasons for the measure adopted."

A.6. The right to appeal the judgment

74. The **Commission** argued that the principle of judicial independence required the application of the right to appeal the judgment pursuant to Article 8(2)(h) of the Convention, to proceedings for the dismissal of judges. In this specific case, the presumed victims did not have access to a higher authority to obtain a review of the decision that sanctioned them.

75. The **representatives** argued that, by barring the possibility of appealing the decision that was made in the impeachment proceedings, Senate Resolution No. 122 violated a fundamental rights that "cannot be denied."

76. The **State** argued that impeachment proceedings do not allow for a review of the evaluative aspect of the dismissal decision and that this is derived from the relevant international case law and legal doctrine.

A.7. The principle of legality

77. The **Commission** argued that the standard that was cited of "improper performance of their functions," was extremely vague and enabled the charges to include a series of jurisdictional decision protected by the principle of judicial independence.

78. The **representatives** argued that, although the concept of "improper performance" is established in the Constitution, it is not defined by law, and this could give rise to arbitrary actions, as in the instant case.

79. The **State** argued that “the alleged vagueness of the concept of improper performance does not result in its being an unknown quantity,” because “case law and legal doctrine have established a well-trodden path [...] of which the community, and obviously the petitioners owing to their profession, are aware.”

A.8. Protection of honor and dignity

80. The **representatives** argued that the impeachment proceedings created a negative image of the presumed victims in both judicial and social circles, and accusations against them were even published in the media. They pointed out that the fact that the charges had been forwarded to the criminal jurisdiction had resulted in “a long and distressing investigation.” All of this had caused severe suffering at a personal and family level.

81. The **State** argued that the facts on which the alleged violation was based had been rejected by the Commission at the admissibility stage. In addition, those facts were not examined at the merits stage of the procedure before the Commission. It asked the Court to “reject the arguments relating” to the said violations. The **Commission** did not rule in this regard.

A.9. Right to equal protection of the law

82. The **representatives** argued that the State had discriminated against the presumed victims, “for political reasons,” on two occasions: (a) when removing a group of justices from their functions based on judgments that had also been signed by other justices who had not been subject to impeachment, and (b) by preventing them – by Resolution No. 122 – from appealing the decision taken in the impeachment proceedings, “which was a right of everyone else in the State’s territory.”

83. The **State** argued that, in its Merits Report, the Commission had not considered the facts relating to the violation of Article 24 of the Convention and, therefore, they should be rejected. The **Commission** did not rule in this regard.

B. Considerations of the Court

84. The Court will now include some general considerations on judicial independence and the specific safeguards that are required by this principle in relation to the function of judges, and will then examine this specific case.

B.1. The guarantee of irremovability of judicial authorities and the guarantee against external pressures

85. On several occasions, this Court has had occasion to rule on the relevance of judicial independence under the rule of law.⁷⁶ In its consistent case law, the Court has indicated that

⁷⁶ Cf. *Inter alia*, *Case of the Constitutional Court v. Peru. Merits, reparations and costs*. Judgment of January 31, 2001. Series C No., paras. 73 to 75; *Case of Palamara Iribarne v. Chile. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 135, paras. 145 and 156; *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of August 5, 2008. Series C No. 182, paras. 43 to 45, 84 and 138; *Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2009. Series C No. 197, paras. 67, 68 and 70 to 81; *Case of Chocrón Chocrón v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2011. Series C No. 227, paras. 97 to 100; *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*. Judgment of February 24, 2012. Series C No. 239, para. 186; *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2013. Series C No. 266, paras. 144 to 154; *Case of*

this is one of the “basic pillars of the guarantees of due process,”⁷⁷ so that when the tenure in office of judges is affected arbitrarily, the right to judicial independence established in Article 8(1) of the Convention is violated.⁷⁸

86. In addition, the Court has asserted that one of the main objectives of the separation of public powers is, precisely, to guarantee the independence of the judicial authorities.⁷⁹ It has also emphasized that the State should ensure the autonomous exercise of the judicial function, both its institutional aspect – that is, in relation to the Judiciary as a system – and its individual aspect – that is, in relation to the person of the specific judge. The purpose of this protection is to avoid the judicial system, in general, and its members, in particular, potentially being subject to undue restrictions in the exercise of their functions by organs outside the Judiciary, or even by those who exercise functions of review or appeal.⁸⁰

87. Consequently, there is a direct relationship between the institutional dimension of judicial independence, and the right of judges to accede to and remain in their posts under general conditions of equality.⁸¹ On this basis, the Court has indicated that this judicial independence results in the following guarantees for the office of the judicial authorities: (i) an adequate appointment procedure; (ii) tenure and irremovability, and (iii) protection from external pressures.⁸²

88. Regarding the guarantee of the tenure and irremovability of these authorities, the Court has considered that this entails the following: (i) that separation from office should be due exclusively to permitted causes, either by means of a procedure that complies with judicial guarantees or because the term or mandate has concluded; (ii) that judges may only be dismissed due to serious disciplinary offenses or incompetence, and (iii) that any procedure instituted against judges should be decided based on the established rules for judicial conduct and by just, objective and impartial proceedings, pursuant to the Constitution or the law.⁸³

the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2013. Series C No. 268, paras. 188 to 198; *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 288, para. 147; *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of October 5, 2015. Series C No. 302, paras. 190 to 199; *Case of Valencia Hinojosa et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 29, 2016. Series C No. 327, para. 105; *Case of Acosta et al. v. Nicaragua. Preliminary objections, merits, reparations and costs.* Judgment of March 25, 2017. Series C No. 334, para. 171; *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs.* Judgment of February 8, 2018. Series C No. 348, para. 207; *Case of Colindres Schonenberg v. El Salvador. Merits, reparations and costs.* Judgment of February 4, 2019. Series C No. 373, paras. 68 and 69; *Case of Villaseñor Velarde et al. v. Guatemala. Merits, reparations and costs.* Judgment of February 5, 2019. Series C No. 374, paras. 75, 83 and 84; *Case of Rico v. Argentina. Preliminary objection and merits.* Judgment of September 2, 2019. Series C No. 383, paras. 54, 55 and 56; *Case of Urrutia Laubreaux v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of August 27, 2020. Series C No. 409, paras. 104 to 110, and *Case of Cordero Bernal v. Peru. Preliminary objection and merits.* Judgment of February 16, 2021. Series C No. 421, paras. 71 and 72.

⁷⁷ *Case of Reverón Trujillo v. Venezuela, supra*, para. 68, and *Case of Villaseñor Velarde et al. v. Guatemala, supra*, para. 75. See, Universal Declaration of Human Rights, Article 10; International Covenant on Civil and Political Rights, Article 14(1); European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6(1), and African Charter on Human and Peoples’ Rights, Article 26.

⁷⁸ *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, supra*, para. 155, and *Case of López Lone et al. v. Honduras, supra*, para. 192.

⁷⁹ *Case of the Constitutional Court v. Peru, supra*, para. 73, and *Case of Cordero Bernal v. Peru, supra*, para. 71.

⁸⁰ *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, supra*, para. 55, and *Case of Cordero Bernal v. Peru, supra*, para. 71.

⁸¹ *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, supra*, para. 154, and *Case of López Lone et al. v. Honduras, supra*, para. 194.

⁸² *Case of the Constitutional Court v. Peru, supra*, para. 75; *Case of Reverón Trujillo v. Venezuela, supra*, para. 70, and *Case of Cordero Bernal v. Peru, supra*, para. 72.

⁸³ *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, supra*, para. 155; *Case of López Lone et al. v. Honduras, supra*, para. 192, and *Case of Cordero Bernal v. Peru, supra*, para. 72.

This is essential because freely removing judicial authorities leads to objective concerns about their real possibility of exercising their functions without fear of reprisals.⁸⁴

89. All the foregoing is based on the important role that judges play in a democracy⁸⁵ as guarantors of human rights,⁸⁶ and this requires that their independence be recognized and safeguarded, especially in relation to the other powers of the State.⁸⁷ To the contrary, their work could be hindered to the point of preventing them from being able to determine, declare and eventually punish arbitrary acts that could involve the violation of those rights, and to order the corresponding reparation.⁸⁸

⁸⁴ *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra*, para. 44, and *Case of Cordero Bernal v. Peru, supra*, para. 72.

⁸⁵ *Cf. Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, supra*, para. 154, and *Case of López Lone et al. v. Honduras, supra*, para. 194. In this regard, the United Nations General Assembly has declared that "the independence of the judicial system, together with its impartiality and integrity, is an essential prerequisite for upholding the rule of law." United Nations, General Assembly Resolution A/RES/67/1 of September 24, 2002. For its part, in 2002, the then United Nations Human Rights Commission identified, among "essential elements for democracy," respect for human rights and fundamental freedoms and the independence of the judiciary. *Cf. United Nations Human Rights Commission, Further measures to promote and consolidate democracy*, UN Doc. E/CN.4/RES/2002/46, of April 23, 2002, para. 1. Furthermore, the Human Rights Council has indicated that the independence of the judicial system "is an essential prerequisite for the protection of human rights and fundamental freedoms, for upholding the rule of law and democracy." Human Rights Council, Integrity of the judicial system, A/HRC/37/L.11/Rev.1 (2018), and Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/44/L.7 (2020). Similarly, the European Court of Human Rights has indicated that judicial independence is "one of the most important values underpinning the effective functioning of democracies." ECHR, *Case of Oleksandr Volkov v. Ukraine*, No. 21722/11. Judgment of January 9, 2013, para. 199.

⁸⁶ The United Nations Special Rapporteur on the independence of judges and lawyers at the time stated that "[i]n any democratic society, judges are the guardians of rights and fundamental freedoms. Judges and courts undertake the judicial protection of human rights, ensure the right of appeal, combat impunity and ensure the right to reparation." Human Rights Commission, Report of the Special Rapporteur on the independence of judges and lawyers, Sr. Leandro Despouy, UN Doc. E/CN.4/2004/60, December 31, 2003, para. 30. Similarly, regarding the function of judges as "protectors of human acts" the expert opinion of José Ramón Cossío Díaz, provided during the public hearing before this Court.

⁸⁷ *Cf. Case of Palamara Iribarne v. Chile, supra*, para. 145. In this regard, the European Court of Human Rights has stated that "[t]he mission of the judiciary in a democratic state is to guarantee the very existence of the rule of law." ECHR, *Case of Harabin v. Slovakia*, No. 58688/11. Judgment of November 20, 2012, para. 133. That Court has indicated that, in a democratic society, the courts must remain free of any political pressure. In this regard, its case law has consistently reiterated that judicial independence necessarily requires that the irremovability of the judicial authorities is ensured and that they have "safeguards against external pressures," which makes it necessary to consider "how [such authorities] are appointed and the duration of their mandate." *Cf. Inter alia*, ECHR, *Case of Ringeisen v. Austria*, No. 2614/65. Judgment of July 16, 1971, para. 95; *Case of Le Compte, Van Leuven and De Meyère v. Belgium* [GS], No. 6878/75. Judgment of June 23, 1981, para. 55; *Case of X v. The United Kingdom*, No. 7215/75. Judgment of November 5, 1981, para. 53; *Case of Piersack v. Belgium*, No. 8692/79. Judgment of October 1, 1982, para. 27; *Case of Campbell and Fell v. The United Kingdom*, No. 7819/77. Judgment of June 28, 1984, paras. 78 and 80; *Case of Langborger v. Sweden* [GS], No. 11179/84. Judgment of June 22, 1989, para. 32; *Case of Stran Greek Refineries and Stratis Andreadis v. Greece*, No. 13427/87. Judgment of December 9, 1994, para. 49; *Case of Bryan v. The United Kingdom*, No. 19178/91. Judgment of November 22, 1995, para. 37; *Case of Findlay v. The United Kingdom*, No. 22107/93. Judgment of February 25, 1997, para. 73; *Case of Papageorgiou v. Greece*, No. 97/1996/716/913. Judgment of October 22, 1997, para. 37; *Case of Incal v. Turkey* [GS], No. 41/1997/826/1031. Judgment of June 9, 1998, para. 65; *Case of Galstyan v. Armenia*, No. 26986/03. Judgment of November 15, 2007, para. 62; *Case of Guja v. Moldova* [GS], No. 14277/04. Judgment of February 12, 2008, para. 86; *Case of Henryk Urban and Ryszard Urban v. Poland*, No. 23614/08. Judgment of November 30, 2010, para. 45; *Case of Khrykin v. Russia*, No. 33186/08. Judgment of April 19, 2011, para. 30; *Case of Fruni v. Slovakia*, No. 8014/07. Judgment of June 21, 2011, para. 145; *Case of Oleksandr Volkov v. Ukraine*, No. 21722/11. Judgment of January 9, 2013, para. 103; *Case of Maktouf and Damjanović v. Bosnia and Herzegovina* [GS], No. 2312/08 and 34179/08. Judgment of July 18, 2013, para. 49; *Case of Baka v. Hungary* [GS], No. 20261/12. Judgment of June 23, 2016, para. 108; *Case of Denisov v. Ukraine* [GS], No. 76639/11. Judgment of September 25, 2018, para. 60, *Case of Gudmundur Andre Ástráðsson v. Iceland* [GS], No. 26374/18. Judgment of December 1, 2020, para. 232, and *Case of Xhonxhaj v. Albania*, No. 15227/19. Judgment of February 9, 2021, para. 298.

⁸⁸ The Court has asserted that judicial independence "is not a 'privilege' of the judge or an end in itself; rather it is justified because it enables judges to perform their task satisfactorily." *Cf. Case of Villaseñor Velarde et al. v. Guatemala, supra*, para. 130.

90. Thus, since the case of *Velásquez Rodríguez v. Honduras*, the Court has affirmed that the obligation to ensure rights pursuant to Article 1(1) of the Convention entails the State duty to organize the whole governmental apparatus and, in general, all the structures through which public powers are exercised, so that they are capable of ensuring, legally, the free and full exercise of human rights.⁸⁹ In the context of this obligation to ensure rights, judicial independence stands out as an essential element of the organization of the governmental apparatus without which the State is unable to ensure the free and full exercise of rights.⁹⁰ Consequently, judicial independence is essential for the protection and effective guarantee of human rights.⁹¹

91. Ultimately, without judicial independence the rule of law does not exist and democracy is not possible (Article 3 of the Inter-American Democratic Charter⁹²) because judges must have adequate and sufficient guarantees to exercise their function to decide the disputes that occur in society in accordance with the law. The lack of independence and respect for their authority is synonymous with arbitrariness.

92. In this regard, in addition to being widely guaranteed at the international⁹³ and regional level,⁹⁴ judicial independence has been proclaimed in the Constitutions of the States that have

⁸⁹ *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 166.

⁹⁰ The United Nations Special Rapporteur on the independence of judges and lawyers at the time indicated that “[t]he enforcement of human rights ultimately depends upon the proper administration of justice, an independent, competent and impartial justice system is paramount if it is to uphold the rule of law”. *Cf.* Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, UN Doc. A/HRC/26/32, April 28, 2014, para. 3. See also, Human Rights Commission, Report of the Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, Doc. E/CN.4/1995/39, February 6, 1995, para. 100, and General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, UN Doc. A/69/2/94, August 11, 2014, para. 28. In addition, the Consultative Council of European Judges has considered that “Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial,” because “Judges are ‘charged with the ultimate decision over life, freedoms, rights, duties and property of citizens.’” *Cf.* Consultative Council of European Judges, Opinion No. 1 (2001) for the attention of the Committee of Ministers of the Council of Europe on standards concerning the independence of the judiciary and the irremovability of judges (Recommendation No. R (94) 12 on the independence, efficiency and role of judges and the relevance of its standards and other international standards to current problems in these fields), para. 10.

⁹¹ *Cf. Habeas Corpus in Emergency Situations (Arts. 27.2, 25(1) and 7.6 American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 30; *Case of Reverón Trujillo v. Venezuela, supra*, para. 68, and *Case of Villaseñor Velarde et al. v. Guatemala, supra*, para. 75.

⁹² *Cf.* OAS General Assembly, Inter-American Democratic Charter, Resolution AG/RES. 1 (XXVIII-E/01) of September 11, 2001.

⁹³ *Cf.* United Nations, Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan from August 26 to September 6, 1985, and endorsed by General Assembly resolutions 40/32 of November 29, 1985 and 40/146 of December 13, 1985, Principles 1, 2, 12 and 18, and the Bangalore Principles on Judicial Conduct adopted by the Judicial Group on Strengthening Judicial Integrity as revised at the Round Table Meeting of Chief Justices, under the auspices of the United Nations Office on Drugs and Crime and in the context of the Global Programme against Corruption, annexed to resolution 2006/23 of July 27, 2006, of the United Nations Economic and Social Council, principle 1 and application 1(1). For its part, the Human Rights Committee has indicated that “States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making.” Human Rights Committee, General Comment No. 32, Article 14. Right to equality before courts and tribunals and to a fair trial, August 23, 2007, UN Doc. CCPR/C/GC/32, para. 19.

⁹⁴ *Cf.* Council of Europe, Recommendation No. R (94) 12 of the Committee of Ministers of the Members States on the independence, efficiency and role of judges, adopted on October 13, 1994, Principles I.1., I.2.b. and d., and I.3, and European Charter on the Statute of Judges, 1998, (DAJ/DOC (98) 23), para. 1(1). See, Consultative Council of European Judges, Opinion No. 1 (2001) for the attention of the Committee of Ministers of the Council of Europe on standards concerning the independence of the judiciary and the irremovability of judges (Recommendation No. R (94) 12 on the independence, efficiency and role of judges and the relevance of its standards and other international standards to current problems in these fields), para. 60; Opinion No. 3 (2002) for the attention of the Committee of Ministers of the Council of Europe on “Ethics, incompatible behaviour and impartiality,” para. 16, and the Magna Carta of Judges (Fundamental Principles) adopted at the 11th plenary meeting, Strasbourg, November 17, 2010, Principle 10. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa establish that “[t]he independence of judicial bodies and judicial officers shall be [...] respected by the government, its agencies and

accepted the contentious jurisdiction of the Inter-American Court, either explicitly or by the inclusion of specific safeguards addressed at their protection.⁹⁵ In the case of the Republic of Paraguay, the relevant parts of articles 248, 252 and 255 of the Constitution Nacional should be noted:

Article 248. On the independence of the Judiciary. The independence of the Judiciary is guaranteed. [...] Anyone who infringes upon the independence of the Judiciary and that of its judges, shall be disqualified from exercising any public office for five consecutive years, in addition to the penalties established by law.

Article 252. On the irremovability of judges. Judges are irremovable from their position, court or rank, during the term for which they were appointed. They may not be transferred or promoted without their prior express consent. [...]

Article 255. On immunity. No judge may be judicially indicted or questioned for opinions issued in the exercise of his functions. [...]

B.2. Judicial independence and the impeachment of judicial authorities

93. This Court has also heard cases concerning the dismissal of judicial authorities by means of impeachment proceedings⁹⁶ in which it has examined the possible interference that this

authorities." *Cf.* African Commission Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted as part of the Commission's annual report at its second Summit and Meeting of Heads of State of the African Union, held in Maputo from July 4 to 12, 2003, Principles A.4.a. and I. See also, IBA Minimum Standards of Judicial Independence adopted by the International Bar Association in 1982; Conference of Supreme Court Chief Justices from the Asia Pacific Region, Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, adopted in 1995 by the 6th Conference, Principle 3; Parliamentary Supremacy and Judicial Independence: Latimer House Guidelines for the Commonwealth, adopted on June 19, 1998, by representatives of the Commonwealth Parliamentary Association, the Commonwealth Magistrates' and Judges' Association and the Commonwealth Legal Education Association, Guidelines II, VI and VII; Ibero-American Summit of Presidents of Supreme Courts, Statute of the Ibero-American Judge, adopted at the 6th Summit held in Santa Cruz de Tenerife, Canary Islands, Spain, from May 23 to 25, 2001 articles 1, 2 and 14; Burgh House Principles on the Independence of the International Judiciary, adopted by the Study Group of the International Law Association on the Practice and Procedure of International Courts and Tribunals, in association with the Project on International Courts and Tribunals, in 2004, and the Declaration of Minimal Principles about Judiciaries and Judges' Independence in Latin America, Campeche Declaration, adopted by the Latin American Federation of Judges in 2008.

⁹⁵ *Cf.* Constitution of the Argentine Nation, articles 109 and 114(6); Constitution of the Plurinational State of Bolivia, article 178; Constitution of the Federative Republic of Brazil, articles 95 and 103-B, paragraph 4, numeral I; Constitution of the Republic of Chile, article 73; Constitution of Colombia, articles 228 and 230; Constitution of the Republic of Costa Rica, article 154; Constitution of the Republic of Ecuador, articles 168(1) and 431; Constitution of El Salvador, article 172; Constitution of the Republic of Guatemala, article 203; Constitution of the Republic of Haiti, article 177; Constitution of the Republic of Honduras, articles 303 and 307; Constitution of the United Mexican States, article 94; Constitution of the Republic of Nicaragua, article 166; Constitution of the Republic of Panama, article 207; Constitution of Peru, articles 139(2) and 146; Constitution of the Dominican Republic, article 151; Constitution of the Republic of Suriname, article 10, and Constitution of the Oriental Republic of Uruguay, article 118.

⁹⁶ Several States that have accepted the contentious jurisdiction of the Court have established in their Constitutions the possibility of indicting certain judicial authorities before the Legislature, establishing the dismissal of those authorities as an eventual consequence of the procedure. An overview of their constitutional systems results in the following classification: (1) States that establish the impeachment of judicial authorities before the Legislature, including the power of the latter to order the dismissal of those authorities: (i) Argentina Republic, articles 53, 59 and 60 of the Constitution; (ii) Republic of Honduras, article 234 of the Constitution; (iii) United Mexican States, articles 74, 76, 109 and 110 of the Constitution; (iv) Republic of Paraguay, articles 225 and 261 of the Constitution, and (v) Oriental Republic of Uruguay, articles 93, 102 and 103 of the Constitution; (2) States that, without referring to impeachment, establish the power of the Legislature to indict judicial authorities and decide on the indictment, establishing the power to dismiss such authorities as a result of the procedure: (i) Federative Republic of Brazil, article 52 of the Constitution; (ii) Plurinational State of Bolivia, articles 159 and 160 of the Constitution; (iii) Republic of Chile, articles 48 and 49 of the Constitution; (iv) Republic of Colombia, articles 174, 175 and 178; (v) Republic of Haiti, articles 184-1, 185, 186 and 189-1; (vi) Dominican Republic, articles 80 and 83 of the Constitution, and (vii) Republic of Peru, articles 99 and 100 of the Constitution; (3) States that, without regulating the impeachment or indictment procedures, establish the power of the Legislature to dismiss judicial authorities: (i) Republic of El Salvador, article 186 of the Constitution, and (ii) Republic of Nicaragua, article 138 of the Constitution, and (4) States that do not establish impeachment or the power of the Legislature to dismiss the Judiciary's judges: (i) Republic of Costa Rica; (ii) Republic of Ecuador (the Constitution establishes the power of the Legislature to impeach members

could entail with the principle of judicial independence.

94. For example, in the case of the *Constitutional Court v. Peru*, the Court included specific considerations that it ratifies in this judgment. Thus, the Court specified the content of impeachment under the rule of law and indicated that “it is a means of controlling senior officials of both the Executive and other State organs exercised by the Legislature” and that its purpose is “that an organ that represents the people may examine and take decisions on the actions of senior officials.”⁹⁷

95. Similarly, both in the above case, and in the cases of the *Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, the *Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, and *Rico v. Argentina*, the Inter-American Court asserted that the guarantees of due process established in the American Convention are applicable in the substantiation of impeachment proceedings.⁹⁸ In this regard, Article 8 of the Convention establishes the guidelines for due process of law; these refer to a series of requirements that must be met by the procedural bodies to ensure that individuals are able to defend their rights adequately in relation to any act of the State that could affect those rights.⁹⁹ The Court has indicated in its consistent case law that any public authority, whether administrative, legislative or judicial, whose decisions may affect the rights of the individual is required to adopt those decisions fully respecting the guarantees of due process of law,¹⁰⁰ and that although non-judicial authorities are not required to ensure the guarantees inherent in a jurisdictional organ, they must comply with those that are aimed at ensuring that the decision is not arbitrary.¹⁰¹

96. In the case of *Rico v. Argentina*, the Court indicated that impeachments proceedings that could eventually result in the removal of judicial officials “are not contrary to the Convention *per se*, provided they comply with the guarantees of Article 8 and that rules exist that limit the discretionality of the adjudicator [in reference to the body that processes and decides the impeachment proceeding] in order to protect the guarantee of independence.”¹⁰²

97. Based on the foregoing, it should be pointed out, first, that the requirement to observe the guarantees of due process during impeachment proceedings against a judge,¹⁰³ requires ensuring that the competences of the authorities who intervene in its processing and decision “are not exercised subjectively or based on political discretionality,”¹⁰⁴ because this could

of the Electoral Contentious Court, article 131); (iii) Republic of Guatemala; (iv) Republic of Panama (article 154 of the Constitution establishes the competence of the Legislature to try judicial authorities in criminal cases and, consequently, if it finds them guilty, to apply the sanctions established in the Criminal Code), and (v) Republic of Suriname (the Constitution establishes the power of the President of the High Court of Justice to suspend judicial authorities in certain circumstances, article 143).

⁹⁷ *Case of the Constitutional Court v. Peru*, *supra*, para. 63, and *Case of Rico v. Argentina*, *supra*, para. 56.

⁹⁸ *Cf. Case of the Constitutional Court v. Peru*, *supra*, para. 77; *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, *supra*, para. 158; *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, *supra*, para. 171, and *Case of Rico v. Argentina*, *supra*, para. 56.

⁹⁹ *Case of the Constitutional Court v. Peru*, *supra*, para. 69; *Case of Casa Nina v. Peru*, *supra*, para. 88, and *Case of Moya Solís v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 3, 2021. Series C No. 425, para. 66.

¹⁰⁰ *Case of the Constitutional Court v. Peru*, *supra*, para. 71, and *Case of Casa Nina v. Peru*, *supra*, para. 88.

¹⁰¹ *Case of Claude Reyes et al. v. Chile. Merits, reparations and costs*. Judgment of September 19, 2006. Series C No. 151, para. 119, and *Case of Rico v. Argentina*, *supra*, para. 50.

¹⁰² *Case of Rico v. Argentina*, *supra*, para. 57.

¹⁰³ The expert opinions of Jorge Alejandro Amaya and José Ramón Cossío Díaz, provided during the public hearing before this Court, as well as the written opinion of Roberto P. Saba all agree in affirming that the guarantees of due process must be observed in impeachment proceedings. *Cf.* Expert opinion signed by Roberto P. Saba (evidence file, volume VI, affidavits, folio 13282).

¹⁰⁴ *Cf. Case of Rico v. Argentina*, *supra*, para. 66.

entail an arbitrary infringement of the function of the judicial authorities.¹⁰⁵

98. Consistent with this, even though impeachment proceedings take place within political organs when they are instituted against judicial authorities, the control that such organs exercise, rather than being based on reasons of political pertinence, opportunity or convenience, must be subject to legal criteria in the sense that the proceedings and the final decision should relate to whether or not the charges have been proved, and whether or not the conduct meets the criteria on which the indictment was based, all while observing the guarantees of due process. This does not signify denaturing or altering the essence of the control that has been democratically entrusted to an organ such as the Legislature; rather it seeks to ensure that this control, when applied to judges, reinforces the system of separation of powers and constitutes an adequate mechanism for accountability without undermining judicial independence.¹⁰⁶

99. Second, it should be recalled that in both the case of the *Constitutional Court v. Peru* and the case of the *Constitution Tribunal (Camba Campos et al.) v. Ecuador*, this Court indicated that, pursuant to the domestic law in force in each case, the Legislature was prohibited from conducting the respective impeachment proceedings and, consequently, from removing the defendants on the basis of issues relating to the exercise of the jurisdictional function. In this context, in both cases the Court affirmed that the organ in charge of the impeachment proceedings – the Congress of the Republic of Peru and the National Congress of Ecuador, respectively – were prohibited from examining jurisdictional acts, and concluded that the opinions pronounced in the judgments of the judicial authorities could not be used as a reason to remove them.¹⁰⁷ Moreover, in the latter case, the Legislature's action was described as "clear evidence of the undermining of judicial independence."¹⁰⁸

100. Based on the above precedents, it is essential to determine whether the said standard for cases of impeachment proceedings instituted against judicial authorities could constitute a parameter that limits the discretionality of the organs in charge of the procedure in order to safeguard judicial independence.

101. In this regard, it should be noted that several international instruments explicitly recognize the prohibition to subject the judicial decisions of the courts to review – other than by the procedural mechanism of appeal – as a specific mechanism for the protection of judicial independence. This is indicated, for example, in the United Nations Basic Principles on the Independence of the Judiciary,¹⁰⁹ and the Principles and Guidelines on the Right to a Fair Trial

¹⁰⁵ In this regard, in 2006, the Human Rights Committee expressed its concern to the Paraguayan State owing to "the lack of objective criteria governing the [...] removal of judges, including Supreme Court justices," a situation which could, in the Committee's opinion, "undermine the independence of the judiciary." Human Rights Committee, Concluding observations of the Human Rights Committee: Paraguay, April 24, 2006, UN Doc. CCPR/C/PRY/CO/2, para. 17.

¹⁰⁶ The United Nations Special Rapporteur on the independence of judges and lawyers at the time indicated that in view of the "tensions" that exist between judicial independence and the accountability of judges, the latter concept "must be in line with international standards of due process and fair trial." Cf. Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, UN Doc. A/HRC/26/32, April 28, 2014, paras. 51 and 106.

¹⁰⁷ Cf. *Case of the Constitutional Court v. Peru*, *supra*, paras. 76, 80 and 82, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, *supra*, paras. 204 and 206.

¹⁰⁸ Cf. *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, *supra*, para. 206.

¹⁰⁹ Cf. United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of November 29, 1985 and 40/146 of December 13, 1985, Principle 4: "[t]here shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial

and Legal Assistance in Africa.¹¹⁰ The Council of Europe has ruled similarly.¹¹¹

102. Regarding the impossibility of removing judges from office based on the content of decisions issued in exercise of their jurisdiction function, the Universal Charter of the Judge, adopted by the International Association of Judges, indicates that, “[s]ave in case of malice or gross negligence [...], no disciplinary action can be instituted against a judge as the consequence of an interpretation of the law or assessment of facts or weighing of evidence, carried out by him/her to determine cases” in exercise of his/her functions.¹¹²

103. On this issue, the Council of Europe has indicated that “[t]he interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence,” or “to criminal liability, except in cases of malice.”¹¹³ Likewise, the European Commission for Democracy through Law (Venice Commission) has considered that judges, as a measure of protection against undue external influence, “should enjoy functional – but only functional – immunity (immunity from prosecution for acts performed in the exercise of their functions, with the exception of intentional crimes, e.g. taking bribes).”¹¹⁴

104. The Human Rights Committee has expressed its particular concern at situations that undermine the independence of the judiciary by imposing sanctions or declaring the responsibility of judges for the content of their decisions and, in general, for the exercise or performance of their jurisdictional functions.¹¹⁵

review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.”

¹¹⁰ Cf. African Commission on Human and Peoples’ Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted as part of the Commission’s annual report at its second Summit and Meeting of Heads of State of the African Union, held in Maputo from July 4 to 12, 2003, Principle A.4.f.: “[t]here shall not be any inappropriate or unwarranted interference with the judicial process nor shall decisions by judicial bodies be subject to revision except through judicial review, or the mitigation or commutation of sentence by competent authorities, in accordance with the law.” Meanwhile, Principle A.4.n.2. indicates that “[j]udicial officials shall not be: [...] removed from office or subject to other disciplinary or administrative procedures by reason only that their decision has been overturned on appeal or review by a higher judicial body.”

¹¹¹ Cf. Council of Europe, Recommendation No. R (94) 12 of the Committee of Ministers of the Members States on the independence, efficiency and role of judges, adopted on October 13, 1994, Principle I.2.a.i.: “decisions of judges should not be the subject of any revision outside any appeals procedures as provided for by law.” Similarly, Recommendation CM / Rec (2010) 12 of the Committee of Ministers of the Members States on Judges: independence, efficiency and responsibility, adopted on November 17, 2010, para. 16.

¹¹² International Charter of the Judge, adopted by the Central Council of the International Association of Judges in Taipei (Taiwan) on November 17, 1999, and updated in Santiago de Chile on November 14, 2017, article 7-1. Meanwhile, the Latin American Federation of Judges has stated that: “[j]udges shall receive the guarantee that, due to their jurisdictional activity and the way in which they decide the cases entrusted to them, they shall not be rewarded or punished and that those decision will only be subject to the review of higher courts as indicated by the respective domestic law,” and that judicial authorities shall not “be disciplinarily prosecuted or held responsible for the content or the sense in which they adopt their judicial decisions.” Declaration of Minimal Principles about Judiciaries and Judges’ Independence in Latin America, Campeche Declaration, adopted in 2008, by the General Assembly of the Latin American Federation of Judges.

¹¹³ Council of Europe, Recommendation CM / Rec (2010) 12 of the Committee of Ministers of the Members States on Judges: independence, efficiency and responsibility, adopted on November 17, 2010,, paras. 66 and 68.

¹¹⁴ European Commission for Democracy through Law (Venice Commission). Report on the Independence of the Judicial System – Part I: The Independence of Judges, adopted at its 82nd plenary meeting (Venice, March 12 and 13, 2010), para. 61.

¹¹⁵ Cf. *Inter alia*, Human Rights Committee, Concluding observations of the Human Rights Committee: Venezuela, April 26, 2001, UN Doc. CCPR/CO/71/VE, para. 13; Concluding observations on the fourth periodic report of the Bolivarian Republic of Venezuela, August 14, 2015, UN Doc. CCPR/C/VEN/CO/4, para. 15; Concluding observations on the sixth periodic report of Costa Rica, April 21, 2016, Doc. CCPR/C/CRI/CO/6, para. 31; Concluding observations on the sixth periodic report of Ecuador, August 11, 2016, Doc. CCPR/C/EQU/CO/6, para. 25, and Concluding observations on the sixth periodic report of Mexico, December 4, 2019, Doc. CCPR/C/MEX/CO/6, para. 40.

105. For its part, the United Nations Special Rapporteurship on the independence of judges and lawyers has made important analyses regarding the accountability of judges, the possibility of holding them accountable, and the safeguard of their independence. In this regard, it has indicated that “[i]nternational and regional standards recognize that no disciplinary action can be instituted against a judge as a consequence of the content of her or his decisions, differences in legal interpretation or judicial mistakes.”¹¹⁶ In this regard, the Special Rapporteur at the time considered the following:

In order to safeguard the independence of justice operators, accountability mechanisms and proceedings must therefore have a restricted application. [...] judges should not be removed or punished for bona fide errors or for disagreeing with a particular interpretation of the law. [...] justice operators should be held accountable for instances of professional misconduct that are gross and inexcusable and that also bring the judiciary into disrepute. However, in order to ensure the independent exercise of their functions, they should not be subject to disciplinary proceedings or sanctions relating to the content of their rulings, verdicts, or judicial opinions, judicial mistakes or criticism of the courts.¹¹⁷

106. The Court also notes that, in keeping with the aforementioned standards, Article 70(2) of the American Convention provides a safeguard for the autonomy of the judges of this Court; the text of the article reveals an interpretation standard to ensure judicial independence in the terms of the Convention. Thus, the provisions established that “[a]t no time shall the judges of the Court [...] be held liable for any decisions or opinions issued in the exercise of their functions.”

107. Consequently, the Court considers that the guarantee of the independence of the judiciary requires that, when instituting impeachment proceedings against judicial officials, the organ or organs that intervene in their processing, deliberation and decision are prohibited from reviewing the grounds for, or the contents of, the decisions of those authorities. Also, the impeachment or the eventual removal of a judge as a result of this procedure cannot be founded on the content of the decisions that he or she has issued, in the understanding that the protection of judicial independence prevents inferring responsibility owing to the votes and opinions issued in the exercise of the jurisdictional function,¹¹⁸ with the exception of intentional violations of the law or proven incompetence.

108. To the contrary, judicial authorities could be subject to undue interference in the exercise of their functions, in evident detriment to the independence they should necessarily be ensured in order to fulfill their vital role under the rule of law effectively.

B.3. Analysis of the specific case

109. The Court will now examine what happened in the impeachment proceedings that culminated in the removal of the presumed victims from their functions as justices of the Supreme Court of Justice of Paraguay. To this end, it will analyze, first, the grounds for instituting the impeachment proceedings and, then for deciding to dismiss them. Second, it

¹¹⁶ General Assembly. Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, UN Doc. A/75/172, July 17, 2020, para. 21. The Special Rapporteur has also indicated that “judges should in principle be immune from criminal proceedings in relation to the content of their orders and judgments.” General Assembly. Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, UN Doc. A/72/140, July 25, 2017, para. 101.

¹¹⁷ Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, UN Doc. A/HRC/26/32, April 28, 2014, paras. 84 and 87. In her analysis, among other documents, the Special Rapporteur cited the Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia of the Organization for Security and Cooperation in Europe (OSCE), which indicated that the: “[d]isciplinary responsibility of judges shall not extend to the content of their rulings or verdicts, including differences in legal interpretation among courts.”

¹¹⁸ Cf. Expert opinion of José Ramón Cossío Díaz, provided during the public hearing before this Court, and written expert opinion of Roberto P. Saba (evidence file, volume VI, affidavits, folio 13293).

will examine whether the procedural guarantees were respected. Lastly, the Court will rule on the arguments relating to the violation of the protection of honor and dignity, and to equal protection by the law.

B.3.1. Judicial independence and the impeachment of Messrs. Ríos Ávalos and Fernández Gadea

110. The analysis of the actions taken in the instant case allows the Court to note that, in the indictment filed against the three justices who were originally subject to impeachment, the Chamber of Deputies included 20 charges that it considered constituted “improper performance of their functions.”¹¹⁹ Subsequently, once the proceedings before the Senate sitting “as a court” had commenced, the Indictment Committee withdrew several of those charges and ratified five in order to continue processing the impeachment of the presumed victims (cases 1, 2 and 4 with regard to Justice Fernández Gadea, and cases 1, 2, 7 and 14 with regard to Justice Ríos Ávalos). For its part, the Senate “t[ook]note of the [...] withdrawal by the prosecution” and continued the proceedings.¹²⁰ Also, at the start of the session of December 12, 2003, the Senate was informed of Justice Luis Lezcano Claude’s resignation¹²¹ and consequently excluded him from its final decision.¹²²

111. Therefore, the subsequent impeachment proceedings and, in particular, the final decision taken by the Senate referred to the five aforementioned charges contained in the articles of impeachment filed against the presumed victims.

112. The examination of each of these five charges reveals that they all, without exception, referred to decisions delivered by the defendants in the exercise of their jurisdictional functions as justices of the Supreme Court of Justice (*supra* paras. 32 and 33). Consequently, these were judicial decisions that, in general according to the indictment, the Chamber of Deputies had considered to be “[violations of the Constitution and the law, attacks against the principle of the separation of, and balance between, the powers, abuse of authority and rupture of the institutional framework].”¹²³

113. It is worth mentioning that, during the impeachment proceedings, on several occasions during the debates before the Chamber of Deputies and the Senate, the issue was addressed of the authority of the Legislature to “review” decisions issued by the judicial authorities as part of their inherent functions. Accordingly, when proposing the draft articles of impeachment, the argument was made that the Chamber’s intention was not to review the said decisions, but rather to “evaluate whether [...] they ha[d] been issued in keeping with the Constitution and the law.”¹²⁴ Then, during the debate before the Senate, it was indicated that the intention of this organ was not to revoke judicial decisions, but rather to “refer” to certain

¹¹⁹ Cf. Resolution No. 134 of the Chamber of Deputies of the National Congress of the Republic of Paraguay of November 18, 2003, and Statement of reasons (evidence file, volume V, annex 5.1. to the answering brief, folios 10556, 10558 to 10560, 10562 to 10569, 10571 to 10582 and 10593 to 10595).

¹²⁰ Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of December 3, 2003 (evidence file, volume V, annex 4.5. to the answering brief, folios 10345, 10345, 10350 to 10353 and 10356 to 10360).

¹²¹ Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of December 12, 2003 (evidence file, volume V, annex 4.7. to the answering brief, folios 10486 to 10546).

¹²² Cf. Resolution No. 134 of the Senate of the National Congress of the Republic of Paraguay of December 12, 2003 (evidence file, volume I, annex 8 to the Merits Report, folios 77 and 78).

¹²³ Cf. Resolution No. 134 of the Chamber of Deputies of the National Congress of the Republic of Paraguay of November 18, 2003, and Statement of reasons (evidence file, volume V, annex 5.1. to the answering brief, folio 10562).

¹²⁴ Cf. Transcript of the session of the Chamber of Deputies of the National Congress of the Republic of Paraguay of November 18, 2003 (evidence file, volume I, annex 7 to the Merits Report, folio 49).

rulings regarding which it “maintain[ed] that these violated the Constitution or the law, or [that the justices indicted] had exceeded their authority.”¹²⁵

114. In this regard, the Court reiterates that the impeachment and subsequent dismissal of the presumed victims were based on charges related to judicial decisions that the National Congress, through the two Chambers, did not have the authority to review. Essentially, the mention of an “evaluation” or a “referral” aimed at determining whether, in the opinion of the deputies and the senators, these decisions had been issued in keeping with the law and the Constitution constituted a review of their content. Therefore, the Legislature had assumed the authority to question the legal criteria and the legal interpretation made in the votes and opinions expressed by the judicial authorities when issuing those decision, all of which is prohibited, in congruence with the considerations in this judgment (*supra* paras. 107 and 108). The foregoing does not preclude members of other branches of the State, based on the nature of their political task, issuing criticism or opinions on judicial decisions, a matter that, to the extent that it is not a hidden mechanism of external pressure and does not determine the removal of judicial authorities, does not involve an attack on the latter’s inherent independence.

115. Ultimately, the content of those judicial decisions was the determinant factor when drawing up the articles of impeachment and, subsequently, when deciding to dismiss the presumed victims. Moreover, in addition to entailing failure to respect the express prohibition established in article 255 of the Paraguayan Constitution, it represented a serious infringement of judicial independence because it failed to uphold the guarantees of irremovability and protection against external pressures which safeguard the function of judges and that it is the State’s duty to defend (*supra* para. 87).

116. Therefore, the actions of the Legislature arbitrarily violated the tenure of Justices Bonifacio Ríos Ávalos and Carlos Fernández Gadea, thereby violating judicial independence and, as indicated in this judgment and in the Court’s consistent case law, it also prejudiced the democratic order.¹²⁶

117. Consequently, the Court considers that the impeachment proceedings and the subsequent dismissal of the presumed victims based on decisions issued in exercise of their judicial functions, without proving that these were arbitrary or irrational, entailed a violation of the judicial independence established in Article 8(1) of the American Convention.

B.3.2. Judicial guarantees in relation to judicial independence

B.3.2.1. The right to an impartial authority

118. This Court has considered that the guarantee of impartiality requires that the judge who intervenes in a particular dispute must approach the facts of the case free of any subjective prejudice and also offer sufficient guarantees of an objective nature to exclude any doubts that the justiciable or the community may entertain as to his or her lack of impartiality.¹²⁷ Thus, this guarantee means that the members of the court, or of the authority in charge of the proceedings, should not have a direct interest, preconceived position, or preference for

¹²⁵ Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of November 26, 2003 (evidence file, volume V, annex 4.3. to the answering brief, folio 10168).

¹²⁶ Cf. *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, *supra*, para. 155, and *Case of López Lone et al. v. Honduras*, *supra*, para. 192 and 201.

¹²⁷ Cf. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, *supra*, para. 44, and *Case of Urrutia Laubreaux v. Chile*, *supra*, para. 118.

any of the parties, and that they are not involved in the dispute,¹²⁸ but rather act only and exclusively in accordance with, and based on, the law.¹²⁹

119. Personal or subjective impartiality is presumed unless there is evidence to the contrary. This consists in demonstrating that a member of the Court or the competent authority has personal prejudices or biases against the litigants. Meanwhile, objective impartiality involves determining whether the authority in question has provided convincing proof that allows legitimate fears or well-founded suspicions of his or her partiality to be eliminated.¹³⁰ In addition, the Court has indicated that recusal is a procedural instrument that protects the right to be tried by an impartial organ, while seeking to give credibility to the functions of the jurisdiction.¹³¹

120. Regarding proceedings instituted against judicial authorities that could eventually result in their removal, as established in this judgment, the guarantee of irremovability that protects them to safeguard their independence requires that such proceedings be processed and decided objectively and impartially; in other words, as required by the guarantees of due process (*supra* paras. 95 and 98).

121. In the instant case, it is worth noting that, in their arguments, both the representatives and the Commission referred to the existence of a prior political pact that had allegedly determined the result of the impeachment proceedings. Meanwhile, the State submitted arguments to deny such an agreement. The Court understands that this specific fact, in addition to being directly related to the factual framework established in the Commission's Merits Report, constitutes a disputed issue regarding which the parties have had the opportunity to make the pertinent arguments and that is of interest to decide the case *sub judice*.

122. In this regard, the Court notes that, at the time of the facts, in the context of questions raised regarding the Judiciary,¹³² several Paraguayan politicians had publicly indicated their interest in making changes in the composition of the Supreme Court of Justice at that time.¹³³ The numerous newspaper articles incorporated into these proceedings are the main source to infer this interest and, as indicated previously, the Court assesses these together with the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion (*supra* para. 19). Thus, an examination of what happened allows the Court to indicate that, as an initial option to achieve the desired changes, the political authorities had envisaged adopting an "exceptional" law that would allow the justices to take "early

¹²⁸ *Case of Palamara Iribarne v. Chile, supra*, para. 146, and *Case of Urrutia Laubreaux v. Chile, supra*, para. 118.

¹²⁹ *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra*, para. 56, and *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs. Judgment of July 8, 2020. Series C No. 406, para. 124.*

¹³⁰ *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra*, para. 44, and *Case of Urrutia Laubreaux v. Chile, supra*, para. 118.

¹³¹ *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra*, para. 63; *Case of Rico v. Argentina, supra*, para. 70, and *Case of Petro Urrego v. Colombia, supra*, para. 125.

¹³² See, Testimonial statement of Marcelo Duarte Manzoni, provided during the public hearing before this Court, and testimonial statement of Carlos Sebastián Acha Mendoza, provided by affidavit(evidence file, volume IX, affidavits, folios 13609 and 13610).

¹³³ *Cf. Inter alia*, newspaper article published in "La Nación" on August 28, 2003, entitled "El Ejecutivo y el Congreso buscarán consensuar el cambio de la Corte" [Executive and Congress will seek to agree on changes to the Court] (evidence file, volume IV, annex III.A to the pleadings and motions brief, folio 6362); newspaper article published in "La Nación" on September 15, 2003, entitled "Cumbre entre la ANR y Nicanor para analizar cambios en la Corte" [Meeting between ANR and Nicanor to analyze changes in the Court] (evidence file, volume IV, annex III.A to the pleadings and motions brief, folio 6365), and newspaper article published in "ABC" on October 1, 2003, entitled "El Presidente convoca a minicumbre para impulsar renovación de la Corte" [President calls for a mini-summit to promote renewal of the Court] (evidence file, volume IV, annex III.A to the pleadings and motions brief, folio 6357).

retirement,¹³⁴ and expressly required them to resign to this end.¹³⁵ Since this objective was not achieved,¹³⁶ the other option was impeachment, and this was used.¹³⁷

123. In this regard, the Court notes that there is supporting evidence – consisting in the transcripts of the sessions of the Chamber of Deputies and the Senate – to affirm that, at the time of the events, there was a “political agreement” between the Executive and members of both chambers of the Legislature and its objective was to impeach members of the Supreme Court of Justice and remove them from office. Thus, this Court was able to verify that, during the impeachment proceedings, several members of the two legislative chambers explicitly referred to the existence of a “political agreement,” indicating that this involved the Executive, and directly mentioning the President of the Republic at the time, and members of the National Congress.¹³⁸

124. Thus, during the session of November 18, 2003, in which the wording of the articles of impeachment against the three justices of the Supreme Court of Justice was discussed, several members of the Chamber of Deputies referred to the existence of a “political agreement,” an “undertaking” or a “political pact” between the Executive and members of the political parties represented in the National Congress aimed at achieving a “purge,” “renewal” or “change” in the Judiciary, an agreement that materialized precisely in the impeachment proceedings.¹³⁹

¹³⁴ Cf. *Inter alia*, newspaper article published in “*La Nación*” on September 9, 2003, entitled “*La ley de jubilaciones es la vía más adecuada*” [Retirement law is most appropriate mechanism] (evidence file, volume IV, annex III.A to the pleadings and motions brief, folio 6361); newspaper article published in “*La Nación*” on September 10, 2003, entitled “*Analizan otorgar a miembros de la Corte una jubilación excepcional*” [Analyzing whether to grant members of the Court a golden handshake] (evidence file, volume IV, annex III.D to the pleadings and motions brief, folio 6428); newspaper article published in “*Noticias*” on September 10, 2003, entitled “*Gobierno analiza instalar método de cambio de la Corte en 30 días*” [Government analyzes establishing way to change the Court in 30 days] (evidence file, volume IV, annex III.A to the pleadings and motions brief, folio 6359), and newspaper article published in “*La Nación*” on September 17, 2003, entitled “*En 30 días se aprobaría ley de jubilación*” [Retirement law to be adopted in 30 days] (evidence file, volume IV, annex III.A to the pleadings and motions brief, folio 6353).

¹³⁵ Cf. *Inter alia*, newspaper article published in “*Última Hora*” on September 10, 2003, entitled “*Castiglioni instó a Irala Burgos a renunciar para instar reforma*” [Castiglioni urges Irala Burgos to resign to undertake reform] (evidence file, volume IV, annex III.D to the pleadings and motions brief, folio 6418); newspaper article published in “*ABC*” on September 10, 2003, entitled “*Vicepresidente pide de nuevo a Irala Burgos que renuncie*” [Vice President again asks Irala Burgos to resign] (evidence file, volume IV, annex III.D to the pleadings and motions brief, folio 6425); newspaper article published in “*ABC*” on September 11, 2003, entitled “*Congreso y Ejecutivo piden a miembros de la Corte que renuncien*” [Congress and Executive ask members of the Court to resign] (evidence file, volume IV, annex III.D to the pleadings and motions brief, folio 6419), and newspaper article published in “*Noticias*” on October 6, 2003, entitled “*En nombre del Presidente piden a la Corte su ‘retiro voluntario’*” [On behalf of the President the Court is asked to resign voluntarily] (evidence file, volume IV, annex III.D to the pleadings and motions brief, folio 6438).

¹³⁶ Cf. *Inter alia*, newspaper article published in “*Última Hora*” on October 14, 2003, entitled “*Ministros no renunciarán y PE y oposición preparan juicio*” [Justices won’t resign and Executive and opposition prepare trial] (evidence file, volume IV, annex III.D to the pleadings and motions brief, folio 6436), and newspaper article published in “*La Nación*” on October 29, 2003, entitled “*Ministros cuestionados desafían y afirman que no renunciarán*” [Justices in dispute defiant say they won’t resign] (evidence file, volume IV, annex III.D to the pleadings and motions brief, folios 6423 and 6424).

¹³⁷ Cf. *Inter alia*, newspaper article published in “*La Nación*” on October 14, 2003, entitled “*Ejecutivo y Congreso resolvieron llevar a juicio político a la Corte*” [Executive and Congress decide to impeach the Court] (evidence file, volume IV, annex III.A to the pleadings and motions brief, folio 6349), and newspaper article published in “*Noticias*” on November 5, 2003, entitled “*Duarte Frutos sale a liderar la negociación por los votos*” [Duarte Frutos leads negotiation for the votes] (evidence file, volume IV, annex III.A to the pleadings and motions brief, folio 6344).

¹³⁸ See also the statements of Bonifacio Ríos Avalos and Edmundo Rolón, provided during the public hearing before this Court. Also the testimonial statements provided by affidavit by Hilario Benjamín Fernández Bogado, Carmelo Juan Gregorio Benítez Cantero, Felipe Santiago Paredes, Luis Alberto Zarate Chávez, Luis Adolfo Ramón Lezcano Claude, Myrian Concepción Areco Amaral, Bader Rachid Lichi, Amelio Ramón Calonga Arce and Oscar Buenaventura Llanes Torres (evidence file, volume VIII, affidavits, folios 13436, 13444, 13445, 13458, 13479, 13487 to 13489, 13511 to 13515, 13526, 13531, 13544 and 13571).

¹³⁹ Cf. Transcript of the session of the Chamber of Deputies of the National Congress of the Republic of Paraguay of November 18, 2003 (evidence file, volume I, annex 7 to the Merits Report, folios 28, 33, 34, 35, 57, 62 and 63).

125. Even more specifically, before the start of the impeachment proceedings, during the Senate session of November 25, 2003, several members of that chamber explicitly mentioned a “political agreement,” a “political undertaking” or a “consensus” that presumably included the impeachment proceedings resulting in the “dismissal of the justices.”¹⁴⁰

126. Lastly, during the session of December 12, 2003, at which the Senate deliberated and decided the dismissal of Messrs. Fernández Gadea and Ríos Ávalos, several members of the chamber again mentioned and cited the “political agreement” that existed, indicating that their vote responded to compliance with the “undertaking” assumed and to the “consensus” to remove the indicted justices from office.¹⁴¹

127. Accordingly, it is reasonable to assume that the decision to undertake impeachment proceedings against several members of the Supreme Court – three of whom resigned beforehand – was taken as a result of the political agreement.¹⁴² Ultimately, the said agreement formed the grounds for deciding to indict three other justices¹⁴³ and, eventually, for removing the presumed victims from office as a result of the impeachment proceedings. This is confirmed by the vote taken by the Senate at the end of the session of December 12, 2003, in which, by a substantial majority and almost unanimously, the senators decided to dismiss the presumed victims (44 and 43 affirmative votes, respectively, out of the 45 members of the Chamber, without any votes against the decision, and one absence in both cases and one abstention in the case of Mr. Ríos Ávalos, *supra* para. 39).

128. The Inter-American Court does not have any evidence to allow it to understand the exact reasons for the interest in removing the members of the Supreme Court; particularly because different reasons were mentioned during the impeachment proceedings and throughout the actual proceedings,¹⁴⁴ added to which no information has been provided

¹⁴⁰ Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of November 25, 2003 (evidence file, volume V, annex 4.2. to the answering brief, folios 10152, 10153 to 10155, 10157 and 10159). During the discussions on the date on which the Chamber would hold the last session of the impeachment proceedings, one of the senators even stated the following:

Here, the reasons have already been indicated; these men have been sentenced and, for a while now, the decision has been taken to remove them; at least, let us advise them when they must go. [...] It has been said that since there is a political agreement; if there is a political agreement, what importance can the indictment, the defense, and the evidence have – whether the evidence is admitted, whether the evidence is not admitted – if this is a political agreement to dismiss them? Since it has already been decided that they must go, then this should be as soon as possible [...] and then we can get on with other things, because then the arguments will start about who should replace them.

¹⁴¹ Cf. Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of December 12, 2003 (evidence file, volume V, annex 4.7. to the answering brief, folios 10515, 10517, 10524, 10529 and 10538). Thus, one of the senators stated the following:

Let us stand up and say that we are not dishonorable politicians; that we are not intimidated by the claim that these impeachment proceedings are not important because there was already a political pact, and I say that we are not dishonorable politicians because we acknowledge the existence of a political pact, which is a well-known public fact [...].

¹⁴² In their letters of resignation, Justices Raúl Sapena Brugada and Felipe Santiago Paredes expressly mentioned the impeachment to be instituted against them; Justice Jerónimo Irala Burgos did not. Cf. Resignation letter of Justice Jerónimo Irala Burgos of October 25, 2003 (evidence file, volume I, annex 5 to the Merits Report, folio 11); resignation letter of Justice Raúl Sapena Brugada of October 27, 2003 (evidence file, volume I, annex 4 to the Merits Report, folio 9), and resignation letter of Justice Felipe Santiago Paredes of November 17, 2003 (evidence file, volume IV, annex V.C to the pleadings and motions brief, folio 6491).

¹⁴³ As indicated, Justice Luis Lezcano Claude, also included in the articles of impeachment, presented his resignation before the Senate had debated and voted on the dismissal of the indicted justices (*supra* para. 38).

¹⁴⁴ This disparity in the possible reasons is reflected, for example, by the words of one of the justices who resigned before the start of the impeachment proceedings. In the letter he presented to the Senate, he indicated that his resignation was due to the fact that the “consensus of all the political parties” that had allowed him to assume office “no longer exist[ed].” Cf. Resignation letter of Justice Raúl Sapena Brugada of October 27, 2003 (evidence file, volume

regarding the moment and the procedure used for the substitution of the justices who resigned or were dismissed, or on the existence of specific matters submitted to the consideration of the Supreme Court at the time that may have resulted in a special interest in substituting its members.

129. Based on the foregoing, it is evident that the impeachment proceedings to which the presumed victims were subject did not observe the guarantees of due process and, in particular, did not comply with the requirement of the impartiality of the authority in charge of the proceedings. Indeed, given that a position had been taken in advance, owing to the existing political agreement, the members of the Senate lacked subjective impartiality to decide on the removal of the defendants. In this Court's opinion, the impeachment of the justices was merely a means of creating vacancies on the Supreme Court of Justice.

130. The Court is aware that agreements and consensuses may constitute efficient decision-making mechanisms in the political arena. However, in the instant case and as previously indicated, judicial independence required that the decisions taken respected the guarantees of due process – ruling out arbitrariness – in order to reinforce the system of the separation of powers and to avoid undue interference in the jurisdictional function (*supra* paras. 95 and 98). Consequently, the subjective impartiality of the organ in charge of the procedure was essential.

131. In addition, article 2 of Senate Resolution No. 122 establishing the procedure for the impeachment proceedings stipulated that "recusals [would] not be admitted."¹⁴⁵ This prohibition prevented the defendants from calling for the separation of those members of the legislative body who were suspected of bias. Thus, notwithstanding the lack of subjective impartiality that has been verified, during the impeachment proceedings, specifically at the session of November 26, 2003, the defense of one of the defendants cited specific reasons for doubting the objective impartiality of certain members of the Senate, indicating that the impossibility of filing a recusal motion against them violated procedural guarantees.¹⁴⁶

132. In conclusion, the right to an impartial authority was violated during the impeachment proceedings due to the existence of a prior political agreement and also to the impossibility of filing recusal motions against members of the Senate. Therefore, the State violated Article 8(1) of the Convention, to the detriment of Bonifacio Ríos Ávalos and Carlos Fernández Gadea.

133. Consequently, verification of the existence of a prior agreement on the result of the impeachment proceedings renders it unnecessary to examine the arguments concerning the violation of Article 8(1) of the Convention owing to the inexistence of specific standards that

I, annex 4 to the Merits Report, folio 9). Also, during the debate before the Chamber of Deputies, one of its members stated that the "the real reason for the impeachment was merely the loss of trust in, or the lack of political support for, the justices of the Court." Transcript of the session of the Chamber of Deputies of the National Congress of the Republic of Paraguay of November 18, 2003 (evidence file, volume I, annex 7 to the Merits Report, folio 2960). To the contrary, in their testimonial statements, Marcelo Duarte Manzoni and Carlos Sebastián Acha Mendoza mentioned, respectively, the "extremely alarming" situation of the Judiciary and the "improper functioning of justice," which "was well-known." Testimonial statement of Marcelo Duarte Manzoni, provided during the public hearing before this Court, and testimonial statement of Carlos Sebastián Acha Mendoza (evidence file, volume IX, affidavits, folios 13609 and 13610). In addition, numerous statements were made in both the Chamber of Deputies and the Senate to justify the alleged "improper performance" of the justices. *Cf. Inter alia*, Transcript of the session of the Chamber of Deputies of the National Congress of the Republic of Paraguay of November 18, 2003 (evidence file, volume I, annex 7 to the Merits Report, folios 23 to 67), and Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of December 12, 2003 (evidence file, volume V, annex 4.7. to the answering brief, folios 10489 to 10546).

¹⁴⁵ *Cf.* Resolution No. 122 of the Senate of the National Congress of the Republic of Paraguay of November 25, 2003 (evidence file, volume IV, annex VI.B to the pleadings and motions brief, folios 6863 to 6865).

¹⁴⁶ *Cf.* Transcript of the session of the Senate of the National Congress of the Republic of Paraguay of November 26, 2003 (evidence file, volume V, annex 4.3. to the answering brief, folios 10204 and 10205).

established the regulations for the applicable procedure beforehand, as well as the alleged violation of the rights to be heard and of defense, and the right to a duly reasoned decision and the principle of legality.

134. The Court also notes that, despite the explicit prohibition contained in article 2 of Senate Resolution No. 122 that its decisions could “not be subject to any type of appeal,” Messrs. Ríos Ávalos and Fernández Gadea filed several actions of unconstitutionality to claim judicial protection of their rights. Consequently, the presumed victims were able to argue their claims for protection in relation to the impeachment proceedings and the decision to remove them from office by filing judicial actions that, ultimately, were heard and decided by the competent authority. Therefore, the Court finds it unnecessary to examine the arguments concerning Article 8(2)(h) of the Convention, Rather, in light of what happened in this specific case, the respective analysis must be made with regard to the alleged violation of the right to judicial protection (*infra* paras. 145 and *ff.*).

B.3.3. Alleged violation of the protection of honor and dignity, and equality before the law

135. The Court recalls that the presumed victims’ representatives are authorized to cite rights other than those indicated by the Commission because the presumed victims are entitled to all the rights established in the American Convention. Therefore, denying them this authority would mean an undue restriction of their condition as subjects of international human rights law. However, case law has requires that such arguments be based on the factual framework established in the Merits Report.¹⁴⁷

136. With regard to the allegation of the violation of the right to protection of honor and dignity, the representatives argued that the impeachment proceedings “created a negative image [of the presumed victims], especially in judicial and social circles,” and “accusations [against them were even] published in all the media.” These arguments correspond to facts that were not included in the Commission’s Merits Report and, consequently, they do not form part of the dispute that this Court is called on to decide because to do so would involve a violation of the procedural guarantees of the parties in the context of these proceedings. Since the allusion to opinions expressed outside the context of the impeachment proceedings exceeds the factual framework of this case, it is not in order to make the requested analysis.

137. The representatives also indicated that the alleged violation stemmed from the suffering caused to the presumed victims, at both a personal and a family level, by the impeachment proceedings and the investigation undertaken after the complaints against them had been forwarded to the criminal jurisdiction. Therefore, the Court notes that the arguments relate to the eventual harm allegedly caused to the presumed victims, a matter that forms part of the analysis of reparations. It should be added that the representatives reiterated these arguments precisely with regard to their claims for reparation. Consequently, the Court considers that it is not appropriate to make the requested analysis in relation to the violation of the right to protection of honor and dignity.

138. In the case of the alleged violation of Article 24 of the Convention, which establishes the right to equality before the law, the representatives argued that the presumed victims had been discriminated against “for political reasons.” They argued that this violation had occurred because the impeachment proceedings and the subsequent dismissal were based on judicial decisions that had also been signed by other justices of the Supreme Court of Justice, who

¹⁴⁷ Cf. *Case of the “Five Pensioners” v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 155; *Case of Casa Nina v. Peru, supra*, para. 26, and *Case of Moya Solís v. Peru, supra*, para. 32.

were not subject to impeachment and, consequently, had not been dismissed.

139. In the Court's opinion, these arguments do not allow it to make the requested analysis because no specific arguments were submitted that would allow it to assess how the said discrimination had occurred. Furthermore, the Court was not provided with precise information on the composition of the Supreme Court of Justice when each ruling included in the articles of impeachment drawn up by the Chamber of Deputies against the presumed victims was issued; the position of each justice when, one by one, those rulings were issued and, if applicable, the position assumed by the two chambers of the Legislature in relation to those circumstances.

140. The representatives added that the said discrimination had also occurred due to Senate Resolution No. 122, because this prohibited them from appealing against the decision issued as a result of the impeachment proceedings, and prevented them from exercising "a right of everyone in the State's territory." This argument does not enable the Court to examine the alleged violation of Article 24 of the Convention because, technically, it relates to the failure to respect procedural guarantees during the impeachment proceedings. In any case, as previously indicated (*supra* para. 134), in light of the fact that the presumed victims filed judicial actions to contest the proceedings and the final decision, and that their claims were heard and decided in court, the pertinent analysis will be made in relation to the violation of the right to judicial protection. Consequently, the Court will not make the requested analysis.

B.3.4. General conclusion

141. Because it failed to respect the necessary guarantees to safeguard judicial independence in the impeachment proceedings and the consequent decision to remove Messrs. Ríos Ávalos and Fernández Gadea from their functions as justices of the Supreme Court of Justice, the Paraguayan State is responsible for the violation of Article 8(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of these persons.

VII.2

RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION, IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE RIGHTS¹⁴⁸

A. Arguments of the Commission and of the parties

142. The **Commission** alleged that it took more than six years for the judicial actions filed by the presumed victims to protect their rights to be decided without any justification being provided for this delay. It indicated that the 2009 judgments in favor of the presumed victims were invalidated by the Supreme Court of Justice after Congress had "vigorously" repudiated those judgments, which reveals that the right to an effective judicial remedy was not ensured and that the Judiciary had been subject to external pressures. Added to this, the appeal for clarification filed by Mr. Fernández Gadea has not yet been decided.

143. The **representatives** argued that the actions of unconstitutionality that were filed "suffer[ed] from unjustified delay." They pointed out that the appeal for clarification filed by Bonifacio Ríos Ávalos was decided after almost 10 years, while the one filed by Carlos Fernández Gadea remains pending. They added that an "administrative ruling" by six justices who were not part of the case, all of them disqualified, could not annul Judgments Nos. 951 and 952, added to which, as already indicated, in 2019, one of the appeals for clarification that had been filed was decided; therefore, the 2009 judgment "was fully valid, because [...]"

¹⁴⁸ Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 of this instrument.

it is not possible to clarify a ruling that does not exist.”

144. The **State** argued that, owing to their content, Judgments Nos. 951 and 952 “constituted an excess” and this had led the Supreme Court, in exercise of its authority, to issue Resolution No. 2382, in which it declared that they were null and void. The State indicated that the facts proved that “the remedy available against the Senate’s decision was implemented and used by the petitioners,” even though the respective procedure “was excessively delayed by the successive disqualifications of the justices.”

B. Considerations of the Court

145. This Court has indicated that the judicial guarantees contained in Article 8(1) of the Convention are closely linked to due process of law, which includes the conditions necessary to ensure the adequate defense of those whose rights or obligations are under consideration by the courts.¹⁴⁹ In addition, Article 25 of the Convention establishes the obligation of States Parties to ensure to all persons subject to their jurisdiction a simple, prompt and effective remedy before a competent judge or court against acts that have violated their fundamental rights.¹⁵⁰ Thus, Articles 8, 25 and 1 of the Convention are interrelated insofar as “effective judicial remedies [...] must be substantiated in accordance with the rules of due process of law, [...] in keeping with the general obligation of [the] States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1(1)).”¹⁵¹

146. The Court has also considered that the effectiveness of the remedies should be assessed in each specific case taking into account whether “there were domestic mechanisms that ensured real access to justice to claim reparation for the violation.”¹⁵²

147. The facts described in the instant case require the Court to make an analysis of the arguments of the parties and the Commission in the following order: (a) the effectiveness of the judicial actions filed by the presumed victims to claim the protection of their rights, in relation to judicial independence and (b) the guarantee of a reasonable time in processing and deciding the judicial actions filed by the presumed victims.

B.1. The effectiveness of the judicial actions filed by the presumed victims to claim the protection of their rights, in relation to judicial independence

148. This Court’s consistent case law has indicated that two specific State obligations can be identified under Article 25 of the Convention. The first consists in the obligation to establish by law and to ensure the due application of effective remedies before the competent authorities that protect all persons subject to their jurisdiction against acts that violate their fundamental rights or that result in the determination of their rights and obligations. The second is the obligation to ensure the means to execute the respective decisions and final

¹⁴⁹ Cf. *Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 28; *Case of the Constitutional Court v. Peru*, *supra*, para. 73, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of July 15, 2020. Series C No. 407, para. 216.

¹⁵⁰ Cf. *Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of July 5, 2011, Series C No. 228, para. 95, and *Case of Cordero Bernal v. Peru*, *supra*, para. 71.

¹⁵¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of Guerrero, Molina et al. v. Venezuela. Merits, reparations and costs*. Judgment of June 3, 2021. Series C No. 424, para. 136.

¹⁵² Cf. *Caso Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, para. 120, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, *supra*, para. 217.

judgments delivered by those competent authorities, so that the rights that have been declared or recognized are truly protected.¹⁵³

149. Specifically with regard to the effectiveness of the remedy, the Court has established that the meaning of the protection granted by Article 25 is that there is a real possibility of access to a judicial remedy so that a competent authority determines whether there has been a violation of a right claimed by the person filing the action, and that the remedy is useful to reconstitute to the interested party the enjoyment of his right and to provide reparation, if it is found that there has been a violation.¹⁵⁴

150. In principle, the Court recalls that, despite the explicit prohibition contained in article 2 of Senate Resolution No. 122, Messrs. Ríos Ávalos and Fernández Gadea filed actions of unconstitutionality to contest both Resolution No. 122, which established the procedure for the impeachment proceedings, and Resolution No. 134, which ordered their removal from their functions. These actions were decided in their favor by the Constitutional Chamber of the Supreme Court of Justice in Judgments Nos. 951 and 952 delivered on December 30, 2009, declaring "the nullity of the [contested] resolutions" and, "consequently," ordering the "reinstatement" of Messrs. Ríos Ávalos and Fernández Gadea in their functions as justices of the Supreme Court of Justice.¹⁵⁵

151. Therefore, the presumed victims had access to a judicial remedy that allowed them to claim the protection of their rights in response to actions of the public authorities that they considered violated those rights. This would correspond to the first State obligation derived from the provisions of Article 25 of the Convention. Nevertheless, the rulings of the Constitutional Chamber were not executed in light of subsequently events.

152. Indeed, because the judgments of December 30, 2009, were favorable to the claims of the two appellants, the National Congress,¹⁵⁶ by Resolution No. 1 of January 2, 2010, publicly indicated that it "vigorously repudiated" and "rejected as totally null and void" the decisions of the Constitutional Chamber (*supra* para. 44). In addition, the Legislature "advise[d] the justices of the Supreme Court of Justice, the Council of the Judiciary, the Jury for the Prosecution of Judges, and the Executive that, if the validity of the judgment[s] [was] admitted, they w[ould] incur in grounds for impeachment."¹⁵⁷

153. Consequently, on January 5, 2010, the Supreme Court of Justice issued Resolution No. 2382, declaring that Judgments Nos. 951 and 952 "lack[ed] legal force," and also ordered that the justices who had delivered those judgments be "suspended from their functions," based on the argument that they had acted "contrary to the Constitution and the applicable legal framework."¹⁵⁸

¹⁵³ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 237, and *Case of Casa Nina v. Peru, supra*, para. 116.

¹⁵⁴ Cf. *Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights)*, *supra*, para. 24; *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 100, and *Case of Casa Nina v. Peru, supra*, para. 117.

¹⁵⁵ Cf. Judgment No. 951 of December 30, 2009, delivered by the Constitutional Chamber of the Supreme Court of Justice of the Republic of Paraguay, and Judgment No. 952 of December 30, 2009, delivered by the Constitutional Chamber of the Supreme Court of Justice of the Republic of Paraguay (evidence file, volume I, annex 10 to the Merits Report, folios 84 to 148).

¹⁵⁶ That is, "both Chambers" meeting together, pursuant to article 183 of the Constitution of the Republic of Paraguay.

¹⁵⁷ Cf. Resolution No. 1 of the National Congress of the Republic of Paraguay of January 2, 2010 (evidence file, volume I, annex 11 to the Merits Report, folios 150 and 151).

¹⁵⁸ Cf. Resolution No. 2382 of the Supreme Court of Justice of January 5, 2010 (evidence file, volume I, annex 12 to the Merits Report, folios 153 to 155).

154. An analysis of the general context of the facts of this case, added to the specific dates and moments at which each of the said decisions was issued and, in particular, the content of Resolution No. 1 of the National Congress, allows the Court to deduce that the decision to invalidate the judgments that were favorable to the presumed victims was conditioned by the Legislature's forceful pronouncement and express admonitions.

155. Therefore, despite the Constitutional Chamber's rulings admitting the actions of unconstitutionality and, consequently, declaring the violation of the rights of Messrs. Ríos Ávalos and Fernández Gadea and ordering specific measures to redress the harm caused (*supra* paras. 44 and 45), the course of action taken by the National Congress and the Supreme Court of Justice rendered the intended judicial protection ineffective and, consequently, also the remedies filed to obtain this.

156. It should be added that, on September 2, 2019, the Constitutional Chamber delivered Judgment No. 737 deciding the appeals for clarification filed by the Prosecutor General and Mr. Ríos Ávalos with regard to Judgment No. 951 of December 30, 2009, and admitted the objection filed by the latter. Days later, Mr. Ríos Ávalos asked that the necessary arrangements be made to comply with the decision taken in the 2009 judgment.¹⁵⁹ On September 26, 2019, the Supreme Court of Justice responded to this requirement, and indicated that the parties had been notified of its decision.¹⁶⁰ However, on October 11, that year, the Constitutional Chamber declared that the notifications were null and void.¹⁶¹

157. In this regard, this Court has considered that the purpose of legal proceedings should be materialization of the protection of the right recognized in the judicial decision by the appropriate application of that decision. Therefore, the effectiveness of a judgment depends on its execution.¹⁶² A judgment that is *res judicata* grants certainty concerning the right or dispute debated in the particular case; consequently, one of its effects is the need for or the enforceability of its execution.¹⁶³ The contrary would be tantamount to the very denial of the right involved.¹⁶⁴

158. The Court has also affirmed that those remedies that are illusory, owing to the general situation of the country or even the particular circumstances of a case, cannot be considered effective. This may occur, for example, when their futility has been demonstrated in the practice because the Judiciary lacks the necessary independence to decide impartially, because the means to execute its decisions are absent, or due to any other situation that

¹⁵⁹ Cf. Brief of September 19, 2019, submitted by the petitioner, included in the file of the actions of unconstitutionality filed by Bonifacio Ríos Avalos against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folios 11749 to 11751).

¹⁶⁰ Cf. Resolution of the Supreme Court of Justice of September 26, 2019, included in the file of the actions of unconstitutionality filed by Bonifacio Ríos Avalos against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folios 11749 to 11751).

¹⁶¹ Cf. Resolution A.I.N. No. 1932 of October 11, 2019, issued by the Constitutional Chamber of the Supreme Court of Justice, included in the file of the actions of unconstitutionality filed by Bonifacio Ríos Avalos against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folios 11769 and 11770).

¹⁶² *Case of Baena Ricardo et al. v. Panama. Jurisdiction.* Judgment of November 28, 2003. Series C No. 104, para. 73, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil, supra*, para. 242.

¹⁶³ *Case of Acevedo Jaramillo et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of February 7, 2006. Series C No. 144, para. 167, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil, supra*, para. 242.

¹⁶⁴ *Case of Baena Ricardo et al. v. Panama. Jurisdiction, supra*, para. 82, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil, supra*, para. 242.

constitutes denial of justice.¹⁶⁵ In this regard, pursuant to Article 25(2)(c) of the Convention,¹⁶⁶ the State's responsibility does not end when the competent authorities deliver a ruling or judgment, but also require the State to ensure the means to execute final judgments in order to provide effective protection to the rights that have been declared.¹⁶⁷ Specifically, the Court has indicated that execution of judgment must be governed by those standards that respect the principles, *inter alia*, of judicial protection, due process, legal certainty, judicial independence and the rule of law.¹⁶⁸

159. Consequently, the refusal of the Legislature and the Supreme Court of Justice to recognize the validity and the effects of the judgments handed down by the Constitutional Chamber, and the consequent failure to execute the actions ordered by the latter (*supra* paras. 44 and 45), signified that the judicial remedies filed by the presumed victims to claim the protection of their rights were ineffective.

160. In this regard, the Inter-American Court must underscore the serious interference in the judicial authorities' functions that the actions of the Legislature signified in this specific case. Indeed, the content of Resolution No. 1, in addition to directly questioning the legal criteria underlying Judgments Nos. 951 and 952, included an explicit admonition that had the serious consequence of impeding the independent exercise of the jurisdictional function and, under no circumstances, can this be considered compatible with a democratic regime of the separation of powers.

161. The Court recalls that Article 3 of the Inter-American Democratic Charter includes, as one of the "essential elements of representative democracy, [...] the separation of powers and independence of the branches of government." In this regard, as recently indicated in Advisory Opinion OC-28/21, the separation of powers "is closely related to the purpose of preserving freedom" because, by limiting the scope of the functions of each state organ, it avoids a concentration of power. Thus, the separation of powers, although it supposes the existence of a system of control and oversight ("checks and balances"), is addressed at ensuring an adequate equilibrium or "balance between the branches of government."¹⁶⁹ Moreover, under a democratic regime, arbitrary interference by any state organ in the tasks that correspond to another cannot be tolerated.

162. Ultimately, the vigorous and threatening pronouncement of the National Congress resulted in an action by the members of the Supreme Court of Justice that was evidently problematic from different perspectives, including the procedural aspect, and their intervention contributed to ensure the ineffectiveness of the judicial remedies that had been filed and, in the end, prevented the protection of the presumed victims' rights in the domestic sphere.

163. As evidence of the above, it is sufficient to indicate that when issuing a resolution that

¹⁶⁵ *Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights)*, *supra*, para. 24, and *Case of Cordero Bernal v. Peru*, *supra*, para. 100.

¹⁶⁶ Article 25(2)(c) of the American Convention establishes: "Judicial Protection. [...] 2. The States Parties undertake: [...] (c) to ensure that the competent authorities shall enforce such remedies when granted."

¹⁶⁷ *Cf. Case of San Miguel Sosa et al. v. Venezuela*, *supra*, para. 208, and *Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2019. Series C No. 395, para. 130.

¹⁶⁸ *Case of Mejía Idrovo v. Ecuador*, *supra*, para. 105, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, *supra*, para. 243.

¹⁶⁹ *Cf. Indefinite Presidential Re-election under Presidential Systems in the Context of the Inter-American System of Human Rights (Interpretation and scope of Articles 1, 23, 24 and 32 of the American Convention on Human Rights, XX of the American Declaration of the Rights and Duties of Man, 3.d of the Charter of the Organization of American States and of the Inter-American Democratic Charter)*. Advisory Opinion OC-28/21 of June 7, 2021. Series A No. 28, paras. 80 to 82.

invalidated the said judgments, the Supreme Court of Justice was composed of justices who previously, in the corresponding procedural actions, had indicated that they were disqualified from hearing the actions filed by the presumed victims (*supra* para. 50).¹⁷⁰

164. The Court considers that it is not incumbent on it to enter into a discussion on whether or not Resolution No. 2382 of the Supreme Court of Justice was valid, or with regard to any legal or procedural effects that this could have had with regard to Judgments Nos. 951 and 952. However, the conflicting rulings of the Constitutional Chamber and the Supreme Court allow this Court to reiterate the ineffectiveness of the procedural actions filed and, thus, the non-binding nature of the judicial decisions, reflected in the fact that they could not be enforced; all without ignoring that a context of significant interference in judicial independence existed.

165. Consequently, the Court concludes that the ineffectiveness of the judicial remedies filed by the presumed victims, in a context of failure to respect the guarantees against external pressures that protect the function of judges, resulted in a violation of the right to judicial protection pursuant to Article 25(2)(c), in relation to the judicial independence recognized in Article 8(1) and the obligations to respect and to ensure rights established in Article 1(1), all of the American Convention.

B.2. The guarantee of a reasonable time in processing and deciding the judicial actions filed by the presumed victims

166. The Court has established that a prolonged delay in the proceedings may, in itself, constitute a violation of judicial guarantees.¹⁷¹ In each specific case, the assessment of the reasonable time must be analyzed in relation to the total duration of the proceedings, from the first procedural act until the final judgment is handed down, including any appeals that may eventually be filed.¹⁷²

167. Case law has considered that four elements should be analyzed to verify whether the guarantee of a reasonable time has been satisfied: (a) the complexity of the matter;¹⁷³ (b) the procedural activity of the interested party;¹⁷⁴ (c) the conduct of the judicial authorities,¹⁷⁵

¹⁷⁰ The representatives included in their arguments other facts related to the actions of the Legislature and the Supreme Court of Justice in the context of the delivery of Judgment No. 737 of September 2, 2019, and Resolution A.I.N. No. 1932 of October 11, 2019. However, these facts exceed the factual framework contained in the Merits Report and, therefore, will not be analyzed in this judgment.

¹⁷¹ Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, *supra*, para. 145, and *Case of Moya Solís v. Peru*, *supra*, para. 98.

¹⁷² Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 71, and *Case of Moya Solís v. Peru*, *supra*, para. 98.

¹⁷³ In order to analyze the complexity of the matter, the Court has taken into account, among other criteria, the complexity of the evidence, the plurality of procedural subjects or the number of victims, the characteristics of the remedy contained in domestic law, and the context in which the violation occurred. Cf. *Case of Genie Lacayo v. Nicaragua. Preliminary objections*. Judgment of January 27, 1995. Series C No. 21, para. 78, and *Case of Olivares Muñoz et al. v. Venezuela. Merits, reparations and costs*. Judgment of November 10, 2020. Series C No. 415, para. 123.

¹⁷⁴ Regarding the activity of the parties interested in obtaining justice, the Court has taken into consideration whether their procedural activity has contributed in any way to unduly prolonging the proceedings. Cf. *Case of Cantos v. Argentina. Merits, reparations and costs*. Judgment of November 28, 2002. Series C No. 97, para. 57, and *Case of Olivares Muñoz et al. v. Venezuela*, *supra*, para. 123.

¹⁷⁵ The Court has understood that, to fully achieve the effectiveness of the judgment, the judicial authorities must act promptly and without delay because the principle of effective judicial protection requires that execution procedures be implemented without undue delays or obstructions in order to achieve its purpose rapidly, simply and fully. Cf. *Case of Mejía Idrovo v. Ecuador*, *supra*, para. 106, and *Case of Olivares Muñoz et al. v. Venezuela*, *supra*, para. 123.

and (d) the effects on the legal situation of the presumed victim.¹⁷⁶ The Court recalls that it is for the State to justify, based on these criteria, why it has required the time that has passed to process a case and, if it does not do so, the Court has broad powers to form its own opinion in this regard.¹⁷⁷

168. Regarding the guarantee of a reasonable time, based on the arguments of the parties and the Commission, the Court notes two issues that merit examination in this case. On the one hand, the passage of approximately six years between the filing of the actions of unconstitutionality by the presumed victims on November 27, and December 24 and 26, 2003, and the handing down of Judgments Nos. 951 and 952 on December 30, 2009. On the other hand, the delay in deciding the appeal for clarification filed on February 1, 2010, by Mr. Ríos Ávalos and admitted on September 2, 2019, and the inexistence to date of a decision on the appeal for clarification, also filed in 2010, by Mr. Fernández Gadea.

169. It should be pointed out that the State justified the Constitutional Chamber's delay in deciding the actions of unconstitutionality filed by the presumed victims, by "the successive disqualifications of the justices."

170. When examining the parameters established by this Court's case law, it can be observed that the purpose of the actions of unconstitutionality – although they undoubtedly included issues that had political and constitutional repercussions – from a legal point of view, were no different from the disputes that fall within the competence of a constitutional court. Furthermore, the specific issues contested in the appeals for clarification filed by the Prosecutor General and the presumed victims corresponded to issues that were eminently procedural and without any broader scope. Consequently, the complexity of the judicial actions and of the appeals for clarification that were filed did not justify the delay in deciding them.

171. Regarding the procedural activity of the interested parties – in this case the two appellants – an examination of the case files reveals that, over the years, their intervention was continuously and repeatedly addressed at requesting that the court sit and noting the "urgency" of issuing the corresponding decisions with regard to both the actions of unconstitutionality and, once these had been decided, the appeals for clarification.¹⁷⁸

172. Regarding the conduct of the judicial authorities, numerous officials called on to compose the Constitutional Chamber to hear the arguments disqualified themselves. This delayed the issue of the corresponding rulings for several years. This happened before the actions of unconstitutionality were decided and was repeated following the requests for clarification. Even though the cases involved two former justices of the Supreme Court – which allows this

¹⁷⁶ As regard the effects on the legal situation of the presumed victim, the Court has indicated that, in order to determine whether the time has been reasonable, the effects that the duration has had on the legal situation of the individual concerned must be taken into account, considering, among other factors, the matter in dispute. *Cf. Case of the National Association of Dismissed and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2019. Series C No. 394, para. 148, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 123.

¹⁷⁷ *Cf. Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 156, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 123.

¹⁷⁸ *Cf. Inter alia*, briefs presented by the petitioner on February 26, 2004, December 28, 2004, April 7, 2005, August 25, 2005, June 9, 2006, August 9, 2006, August 16, 2007, February 1, 2010, and May 10, 2010, included in the case file of the actions of unconstitutionality filed by Bonifacio Ríos Avalos against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folios 10789, 10791, 10813, 10815, 10921, 10923, 10927, 11445, 11447 and 11461), and briefs presented by the petitioner on April 27, 2004, August 16, 2004, July 8, 2005, February 27, 2006, July 28, 2007, December 17, 2007, and February 1, 2010, included in the case file of the actions of unconstitutionality filed by Carlos Fernández Gadea against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folios 11841, 11849, 12053, 12057, 12077, 12185 to 12189, 12687 and 12688).

Court to presume that some officials would have reasons to consider that their impartiality was compromised – there is no justification for the fact that over approximately six years in the case of the actions of unconstitutionality, and more than nine years with regard to the appeals for clarification, the Constitutional Court was unable to sit owing to the disqualifications, without there being any way of assessing and, as applicable, verifying the validity of the reasons cited to refuse to hear matters that the said Chamber was obliged to decide.

173. Lastly, regarding the effects on the legal situation of the presumed victims, the Court has no evidence to analyze this aspect in this specific case.

174. Based on the above, the Court considers that the processing and deciding of the actions of unconstitutionality filed by the presumed victims, as well as the appeal for clarification filed by Mr. Ríos Ávalos, were unreasonably delayed.

175. The fact that, to date, the appeal for clarification filed by Mr. Fernández Gadea against Judgment No. 952 has not been decided merits special mention. His appeal was filed on February 1, 2010, and more than eleven years have passed without a response. It should be added that, following the decease of the interested party, “his heirs” continued taking steps to obtain the corresponding decision.¹⁷⁹ In this regard, although the jurisdictional organ admitted the different briefs that were submitted and even processed a disqualification that they filed,¹⁸⁰ it did not respond to the request for clarification. It could be supposed that diverse factors might explain the omission of a decision; however, this was not the case with regard to the appeals for clarification filed by the Prosecutor General and Mr. Ríos Ávalos in relation to Judgment No. 952. Nonetheless, the right to judicial protection required the jurisdictional organ to issue a ruling in which, at least, it indicated whether or not it was in order to hear the appeal and stated the reasons for its decision.¹⁸¹

176. Consequently, the State violated the guarantee of a reasonable time recognized in Article 8(1) of the Convention.

B.3. General conclusion

177. Based on the foregoing, the Court concludes that the State violated the rights to judicial guarantees and to judicial protection established in Articles 8(1) and 25(2)(c) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Bonifacio Ríos Ávalos and Carlos Fernández Gadea.

VIII REPARATIONS

¹⁷⁹ Cf. Briefs presented on December 28, 2010, May 21, June 5, September 28 and October 3, 2012; June 12 and 20, 2013; March 15, 2016, and September 17, 19 and 26, 2019, that appear in the case file of the actions of unconstitutionality filed by Carlos Fernández Gadea against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folios 12699, 12719, 12721, 12722, 12725 to 12733, 12737 to 12745, 12791, 12793, 12873, 12877 and 12887).

¹⁸⁰ Cf. *Inter alia*, Resolution of October 23, 2012, of the Supreme Court of Justice, and report of November 19, 2013, on the disqualification filed, included in the case file of the actions of unconstitutionality filed by Carlos Fernández Gadea against Resolutions Nos. 122 and 134 of the Senate of the Republic of Paraguay (evidence file, volume V, annex 8.4. to the answering brief, folios 12735, 12755 and 12756).

¹⁸¹ In their arguments, the representatives included other facts related to the lack of access of the members of Mr. Fernández Gadea’s family to the case file of his action of unconstitutionality. However, these facts exceed the factual framework contained in the Merits Report; therefore, the Court will not analyze them.

178. 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 obligation to redress this adequately and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.¹⁸²

179. The reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not feasible, the Court will determine measures to ensure the rights that have been violated and to redress the consequences of the violations.¹⁸³ Therefore, the Court has considered the need to grant diverse measures of reparation in order to redress the harm fully; thus, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction and guarantees of non-repetition have special relevance for the harm caused.¹⁸⁴ In addition, the Court has established that reparations must have a causal nexus with the facts of the case, the violations that have been declared, the harm proved, and the measures requested to redress the respective harm.¹⁸⁵

180. Consequently, based on the violations of the American Convention declared in the preceding chapter, the Court will proceed to examine the claims presented by the Commission and the representatives, together with the arguments of the State.

A. Injured party

181. Pursuant to Article 63(1) of the Convention, the Court considers that anyone who has been declared a victim of the violation of any right recognized in that international instrument is the injured party. Therefore, the Court considers that Bonifacio Ríos Ávalos and Carlos Fernández Gadea are the injured party.

182. The Court recalls that Mr. Fernández Gadea died on June 20, 2010 (*supra* para. 25). In this regard, the representatives provided a copy of the judicial decision declaring that “his surviving spouse,” María Concepción Villalba Quevedo, and his sons, Carlos Aníbal, José Luis, Julio Cesar and Jesús María, with the last name Fernández Villalba, and his daughter Catalina Fernández Ocampos, were the said victim’s “heirs.”¹⁸⁶ Consequently, the Court will take this information into account when making the pertinent decisions with regard to the payment of the respective compensations, without this supposing the inclusion of anyone other than those indicated in the preceding paragraph as an injured party (*supra* para. 16).

B. Measures of restitution

183. The **Commission** asked that the State “[r]einstate Bonifacio Ríos Ávalos, should he so wish, in a position similar to the one he held in the Judiciary, with the same remuneration, social benefits, and equivalent rank to which he would have been entitled if he had not been

¹⁸² Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Grijalva Bueno v. Ecuador, supra*, para. 163.

¹⁸³ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, para. 65, and *Case of Grijalva Bueno v. Ecuador, supra*, para. 164.

¹⁸⁴ Cf. *Case of the Las Dos Erres Massacre v. Guatemala, Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Grijalva Bueno v. Ecuador, supra*, para. 164.

¹⁸⁵ 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 Grijalva Bueno v. Ecuador, supra*, para. 163.

¹⁸⁶ Cf. Decision declaring Carlos Fernández Gadea’s heirs of September 28, 2010 (evidence file, volume IV, annex II.D to the pleadings and motions brief, folios 6287 and 6288).

removed from office.” It added that, “[i]f, for well-founded reasons, it is not possible to reinstate him, [the State should] pay him alternative compensation.” In the case of Carlos Fernández Gadea, the IACHR notes that, as he was deceased, it was necessary to provide “alternative compensation in his favor.”

184. The **representatives** asked the Court to “order the reinstatement [...] in office” of Mr. Ríos Ávalos, “in the first vacancy that exists or arises, with the same remuneration, social benefits, and equivalent rank to which he would have been entitled [...] if he had not been removed from office [...]; unpaid wages from 2004 to date, [...] and budgetary provision for the corresponding retirement contribution.” They added that, “[i]f, for well-founded reasons, the State proves that his reinstatement is not possible [...], it must pay alternative compensation, and also unpaid wages until he reaches 75 years of age,” which is the age at which justices of the Supreme Court must retire according to article 261 of the Paraguayan Constitution. In the case of Mr. Fernández Gadea, they asked for “payment of the alternative compensation that the Court considers fair,” and requested that the Court order the payment of “unpaid wages up until the date of his death.”

185. The **State** argued that, at this time, there were no vacancies on the Supreme Court of Justice. It added that the court had indicated that restitution, in the sense requested, was impossible as regards reinstatement in the high courts.

186. This Court notes that, at this time, there are no vacancies on the Supreme Court of Justice of Paraguay, and that no information was provided on the specific time at which such vacancies would arise. This situation, added to the time that has elapsed since the facts of this case occurred and the particularities of the function of the justices of the Supreme Court means that it is impossible to grant the representatives’ request. Therefore, since it is not viable to order the reinstatement of Mr. Ríos Ávalos, the State must pay him an alternative compensation which the Court establishes, in equity, at US\$80,000.00 (eighty thousand United States dollars). This sum must be paid within one year of notification of this judgment.

187. With regard to Carlos Fernández Gadea, the Court considers that it is not appropriate to rule on the request for restitution owing to his decease before this judgment was delivered, which makes this measure of reparation impossible.

188. It should be added that the representatives mentioned other concepts, such as the payment of unpaid wages, which relates to another type of measure of reparation – specifically to eventual pecuniary damage – and this will be examined opportunely.

C. Measures of satisfaction

189. The **representatives** asked the Court to order the publication of this judgment, “for one year, on the official websites of the National Congress, the Presidency of the Republic, and the Judiciary, and in the Official Gazette.” The **State** argued that the publication of the judgment constituted a measure that was “sufficient to redress the alleged violations.” The **Commission** did not comment in this regard.

190. The Court, based on the arguments of the parties and as it has in other cases,¹⁸⁷ establishes that the State must publish the following within six months of notification of this judgment, in an adequate and legible font and in Paraguay’s official languages: (a) the official summary of this judgment prepared by the Court, once, in the Official Gazette, and (b) this

¹⁸⁷ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Grijalva Bueno v. Ecuador, supra*, para. 177.

judgment, in its entirety, available for one year on the official websites of the Legislature and the Judiciary. The State must inform this Court immediately when it has made each of the said publications, regardless of the one-year time frame for presenting its first report, as indicated in the ninth operative paragraph of this judgment.

D. Other measures requested

191. The **Commission** asked that the State “[a]dapt domestic law to ensure that sanction proceedings against agents of justice are compatible with the standards on judicial independence.” It requested that the State “ensure that sanction proceedings against judges are subject to legal control and not political control”; that it “regulate applicable sanctions appropriately so that they comply with the principle of legality”; that it “allow judges to appeal to a higher authority in any sanction procedure,” and that “the authorities in charge of proceedings to sanction judges provide reasons for their decisions.”

192. The **representatives** asked, as other measures of satisfaction, that the Court order the State “to hold a public act” during which it “apologized,” and also “to place a plaque with the victims’ names [...] in recognition of, and in order to recall, [...] the struggle for the [...] independence of the Judiciary.” Regarding Mr. Fernández Gadea, they asked that the Court order “the Executive to issue a decree recognizing that [...] he died while a justice of the Supreme Court of Justice.”

193. Regarding guarantees of non-repetition, they asked that the Court order the State to “enact a law adapting the domestic laws on impeachment,” which should function “both for those who exercise political office and for judges.” They asked that the Court order the “reform of the system for prosecuting lower court judges, eliminating political representation and *ex officio* proceedings. They asked that the Court order the State to “incorporate into the educational *curricula* [...] the rights and guarantees established in the Convention,” and that it arrange “training on human rights for judges and other officials [...], and establish [...] courses and programs on the theory and practice of judicial independence and impartiality.” Lastly, they asked that the Court order the State “to forward the judgment [...] to the universities [...], so that [...] it is incorporated into their *curricula*.”

194. The **State** argued that it was unnecessary to order measures of satisfaction other than the publication of the judgment because the other measures requested “exceeded the scope of the case.” Regarding the guarantees of non-repetition, it argued that, when calling for the requested measures, “confusion existed between the impeachment of justices of the [Supreme] Court [of Justice] and the procedure for the dismissal of lower-ranking judges.” It indicated that, in Paraguay, Law No. 3759/2009 regulated the procedure for the prosecution and removal of justices and that, in addition to establishing remedies against final judgments, article 14 of that law included “twenty specific causes that exemplify the improper performance of functions.” It also indicated that Senate Resolution No. 825 of July 3, 2015, established that the impeachment procedure regulated in that instrument “will be used hereafter [...] in all cases,” and this has been respected in practice. Regarding the training activities requested by the representatives, it indicated that they are unrelated to the facts of the case.

195. With regard to the measures of satisfaction requested by the representatives, the Court agrees with the State that the publication of this judgment constitutes *per se* an adequate measure; accordingly, it does not find it necessary to order additional measures under this heading.

196. Regarding guarantees of non-repetition, the Court notes that everything relating to the impeachment procedure or the eventual prosecution and sanction of judicial authorities, other

than the provisions of article 225 of the Paraguayan Constitution, exceeds the purpose of this case. Similarly, the Court recalls that this judgment has not declared a violation based on the alleged failure to establish a prior regulation of impeachment proceedings or a violation of Article 8(2)(h) of the Convention or the principle of legality. Consequently, since there is no causal nexus, it is not appropriate to grant the measures requested in this regard.

197. In relation to the requests relating to training and educational programs, the Court notes that the violations of the rights declared in this judgment were not the result of shortcomings in the training or professionalization of the members of the branches of government or agents of justice. Consequently, there is no causal nexus between such measure and the facts of the case. Therefore, it is not appropriate to grant the measures requested.

198. Lastly, the information provided by the State indicates that, since 2015, the impeachment procedure has been regulated by Senate Resolution No. 825. This legislation was not applied in the instant case or analyzed in this judgment. Therefore, the Court considers that it is not appropriate to order the reparation requested concerning the amendment of the law. Nevertheless, the Court deems it pertinent to recall that the different state authorities are obliged to exercise *ex officio* a control of conventionality between domestic laws and the American Convention within the framework of their respective terms of reference and the corresponding procedural rules. In this task, the domestic authorities must take into account not only the treaty, but also the interpretation that has been made of it by the Inter-American Court, ultimate interpreter of the Convention.¹⁸⁸

E. Compensation

199. The **Commission** asked that the State provide full reparation for the violations declared in the Merits Report, including the pecuniary and non-pecuniary damage.

E.1. Pecuniary damage

200. With regard to the loss of earnings of Mr. Ríos Ávalos, the **representatives** asked the Court to order the State to “pay the unpaid wages from the date of the decision to remove him from office [...] until the date of his reinstatement” and, if the latter was not possible, “to pay this until he reached 75 years of age.” They indicated that the amount corresponding to unpaid wages was “5,615,361,268.00 guaranis, equivalent to [US\$]871,635.00 in [United States] dollars, and this [was] justified by the report on the salaries received by the justices of the Supreme Court of Justice from 2004 to 2019. They added that, “in order to update the amount in keeping with the evolution of the Consumer Price Index [...] the sum resulting from the expert appraisal prepared by [...] Celso Cañiza Paredes [was] claimed; [...] this amounted to 7,340,304,834.00 guaranis, equivalent to [US\$]1,139,386.66 [United States] dollars.”

201. In the case of Mr. Fernández Gadea, they asked that the Court order the payment of unpaid wages “from 2004 until the date of his decease.” They asked the Court to determine the corresponding amount.

202. They added that the respective calculations should be made based on the payroll and other benefits of the justices of the Supreme Court provided as evidence and on the variation in the Consumer Price Index published by the Central Bank of Paraguay. They indicated that the State “must deposit in the Retirement and Pension Fund the sums corresponding to all the

¹⁸⁸ Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 124, and *Case of Casa Nina v. Peru, supra*, para. 139.

years since 2004 that no deposits had been made [...] in order to ensure a decent retirement” for the two victims.

203. The **State** argued that it had not established any amount as compensation for the concept of loss of earnings. However, in its opinion, this amount could not be calculated based on the annexes provided by the representatives; rather it should be adapted to the equity standard used uniformly by the Supreme Court of Justice of Paraguay “based on article 82 of the Labor Code, which establishes the possibility of a compensation, based on equity, equivalent to twelve (12) months’ salary in cases of dismissal in which just cause has not been proved.” It asked that the Court take this equity standard into account. It argued that the appraisal prepared by an accountant and offered by the representatives was not valid because it had not been prepared within the framework of the proceedings.

204. The State also indicated that Mr. Fernández Gadea had taken early retirement in 2007 and, since his death, his wife had received the corresponding pension. It added that, Mr. Ríos Ávalos, who had been unable to accede to retirement as a justice because he had not made the minimum number of contributions, had continuously recorded pension contributions from the *Universidad Nacional de Asunción* since December 2003. Therefore, when calculating the compensation, “the amounts received since December 2003, corresponding to functions incompatible with the exercise of judicial office, must be deducted.”

205. In its case law, this Court has indicated that the concept of pecuniary damage supposes the loss of, or detriment to, the victims’ income, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.¹⁸⁹ In addition, the Court reiterates and underscores the compensatory character of damages, the nature and amount of which will depend on the harm caused; thus, they should not either enrich or impoverish the victims or their heirs.¹⁹⁰

206. To substantiate their claim for compensation for loss of earnings over the period 2004 to 2019, the representatives provided a document entitled: “Expert opinion on salary revaluation,” signed by an “accountant and valuation expert,” that included amounts identical to those claimed for Mr. Ríos Ávalos. Different items were taken into account to make the corresponding calculation (salaries, representation expenses, bonuses and allowances), with the indication that the sums had been updated “due to the variation in the Consumer Price Index,” on the basis of data from the Central Bank of Paraguay.¹⁹¹

207. The Court recalls that the annexes that the representatives had attached to their pleadings and motions brief were admitted as documentary evidence (*supra* para. 17); consequently, the State’s objection that the procedural rules for expert evidence were not complied with has no merit.

208. The representatives also provided a “print-out of a payroll” of “salaries and emoluments” relating to the earnings “corresponding to the justices of the Supreme Court of Justice” for the period 2004 to 2019, issued by that organ’s Human Resources Directorate. This document, which the State did not challenge, provides details for each of the said years of the remunerations corresponding to the justices of the Supreme Court for salaries, representation

¹⁸⁹ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Grijalva Bueno v. Ecuador, supra*, para. 185.

¹⁹⁰ Cf. *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 25, 2001. Series C No. 76, para. 79, and *Case of Chinchilla Sandoval et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of February 29, 2016. Series C No. 312, para. 300.

¹⁹¹ Cf. Document entitled: “Expert opinion on salary revaluation” signed by Celso Cañiza Paredes (evidence file, volume IV, annex XV.F to the pleadings and motions brief, folios 8846 to 8860).

expenses, thirteenth month, bonuses and allowances.¹⁹²

209. When establishing the compensation amount, the Court recalls that the victims exercised judicial functions in the highest court of justice of Paraguay and article 261 of the Constitution stipulated a mandatory retirement age of 75 years (*supra* para. 23). The Court also notes that it has not been alleged that the victims received any type of compensation owing to their removal from office, and there is no evidence to this effect.

210. Regarding the specific claims of the representatives, the Court indicates that the fact that it is not feasible to reinstate Mr. Ríos Ávalos in office does not have an impact on the compensation for pecuniary damage; not only because these are two different concepts, but also because the precise purpose of the alternative compensation previously established is to compensate the consequences of his non-reinstatement (*supra* para. 186).

211. The Court also considers that the diverse arguments of the parties concerning the pension benefits of the two victims were imprecise, and their opposing positions in this regard were not clearly explained. Nevertheless, the Court notes that, in Judgments Nos. 951 and 952, the Constitutional Chamber, when requiring that the two victims be reinstated in their functions, ordered “notify [...] the [...] Finance Minister, for the budgetary effects and the corresponding pension contributions,” in order to “regularize” their situation.¹⁹³

212. Therefore, it is pertinent to order the State that, in compliance with the decisions of the said Chamber, it proceed to regularize the pension regime of the two victims from the time of their dismissal as justices of the Supreme Court, based on the salary and benefits regime that would correspond to those functions over the years, until the date of death of Mr. Fernández Gadea and, in the case of Mr. Ríos Ávalos, until the date of notification of this judgment. This regularization must include the amount of the contributions that would have corresponded both to the State and to each of the former justices over the said period, as well as the estimate of any new pension benefits in the case of each victim. Then, Bonifacio Ríos Ávalos and María Concepción Villalba Quevedo (who receives the pension corresponding to her husband) must be informed of these amounts and estimates so that they may know the amount of the respective contributions they would have to make and, if they find this appropriate, so that each of them can make those contributions and, together with the State’s contributions, a new calculation can be made of the pension benefits.¹⁹⁴ The State must proceed as indicated above, including with the deposit of its respective contributions, if applicable, within one year of notification of this judgment.

213. It should be added that the State’s allegation concerning the exercise of “functions incompatible with the exercise of judicial office,” will not be considered because it lacked precise and well-founded arguments. Paraguay also asked that, in order to calculate the amount due to loss of earnings, the Court apply the “equity standard” used by the Supreme Court of Justice, which required the payment of a sum equivalent to twelve months salary for the concept of unpaid wages. In the Court’s opinion, the application of this standard, given its nature as a fixed and limited amount, does not respond to the reparatory nature of

¹⁹² Cf. Payroll of salaries and emoluments corresponding to the justices of the Supreme Court of Justice, issued on July 15, 2019, by the General Directorate of Human Resources of the Supreme Court of Justice of the Republic of Paraguay (evidence file, volume IV, annex XV.G to the pleadings and motions brief, folios 8891 to 8894).

¹⁹³ Cf. Judgment No. 951 of December 30, 2009, delivered by the Constitutional Chamber of the Supreme Court of Justice of the Republic of Paraguay, and Judgment No. 952 of December 30, 2009, delivered by the Constitutional Chamber of the Supreme Court of Justice of the Republic of Paraguay (evidence file, volume I, annex 10 to the Merits Report, folios 115, 116, 146 and 148).

¹⁹⁴ Cf. *Case of López Lone et al. v. Honduras. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of March 9, 2020.

compensation for loss of earnings, which should be determined in each case in keeping with the harm caused.

214. Therefore, in the case of Mr. Ríos Ávalos, the Court establishes, in equity, the sum of US\$400,000.00 (four hundred thousand United States dollars), that the State must pay to this victim as pecuniary damages for loss of earnings.

215. In the case of Carlos Fernández Gadea, the Court recalls that he died on June 20, 2010. Therefore, this Court, in response to the representatives' request to establish the corresponding amount based on the equity principle, orders the payment in his favor of US\$250,000.00 (two hundred and fifty thousand United States dollars) as pecuniary damages for loss of earnings. The State must pay this amount as follows: (a) fifty percent (50%) to his wife, María Concepción Villalba Quevedo, and if she is already deceased, the part that would correspond to her will increase that of Mr. Fernández Gadea's children, as indicated in the following subparagraph, and (b) the remaining fifty percent (50%) to be shared equally between his sons Carlos Aníbal, José Luis, Julio Cesar and Jesús María, with last names Fernández Villalba, and daughter Catalina Fernández Ocampos. If one or several of the children is already deceased, the part that would have corresponded to them will increase the share of the others.

E.2. Non-pecuniary damage

216. The **representatives** argued that, owing to the impeachment proceedings, the victims "suffered serious insults, defamation, slurs, harm and personal discredit," detrimental to their reputation and honor, that "warranted compensation for non-pecuniary damage, the amount of which should be established, in equity," by the Court. They indicated that the dismissal decision "cause[d] [both victims] undeniable suffering, unparalleled anguish and [...] serious health problems." They indicated that all this had caused "and continued to cause suffering and harm to the whole family [...], wives and children."

217. They indicated that Mr. Fernández Gadea had "died from cancer; which was not an isolated fact because [...] extreme anguish is associated with psychological stress experienced repeatedly over a prolonged period." Thus, the moment at which he began to develop health problems was "exactly one year after being impeached," so that it is "logical to attribute the development of the disease to factors related to the persecution suffered."

218. They noted that the facts also had serious repercussions "on the health of Bonifacio Ríos Ávalos," and affected "his wife's health." They added that Mr. Ríos Ávalos had suffered reprisals such as the fact that he had been dismissed from his post as a lecturer "at the Judicial Academy and at the *Universidad Católica de Asunción*."

219. They argued that "the victims' whole life project was cut short," because "they had [...] the definite expectation of ending their days as justices." They indicated that the life project "is intimately linked to family, personal and financial projections [...] because, with a position such as the one they held, [...] they envisaged being able to provide the best education for their family [...] and [...] fulfilling their dreams."

220. The **State** argued that the victims' life project was not thwarted because they and their family members "continued to work in their respective professions and other public or private positions, and this has allowed them to support their lifestyle." This is reflected by the resumé of Mr. Ríos Ávalos, who continued exercising his profession and dedicated himself to academia as a professor and researcher.

221. The State indicated that the alleged expectation that they would end their lives as justices referred to “a certainty that was far from being a reasonable prospect for a person who exercises public office with political accountability.” In the case of Mr. Fernández Gadea, it argued that there was no causal nexus between the terminal disease that he died of and the impeachment proceedings against him. It added that the sum claimed as non-pecuniary damage “bore no relationship [...] to the alleged violations and was the result of weighting factors [...] that had not been proved.” It asked that, if the Court established reparations for this concept, it should take a decision based on the observations made and the relevant precedents.

222. In its case law, this Court has developed the concept of non-pecuniary damage and has established that it may include both the suffering and affliction caused to the direct victims and their closest family and the impairment of values of great significance for the individual, as well as the changes, of a non-pecuniary nature, in the living conditions of victims or their families.¹⁹⁵

223. To prove the non-pecuniary damage caused to Mr. Ríos Ávalos, the representatives provided an expert appraisal prepared by a psychiatrist who had interviewed the victim, two of his children, and an individual who worked as his driver. In his report, the expert concluded that “when the facts [of the case] occurred,” the victim suffered “anxiety disorders characterized by agitation, nervousness, chest tightness, apparently unrelated to the heart, and difficulty in sleeping,” due to the “intense stress” to which he was subjected.¹⁹⁶ Also, in his statement during the public hearing, Mr. Ríos Ávalos referred to the consequences of the impeachment proceeding against him and his resulting removal from office.¹⁹⁷

224. In the case of Mr. Fernández Gadea, in his testimonial statement, Jesús María Fernández Villalba referred to the anxiety and other problems suffered by his father as a result of the impeachment proceedings and his subsequent dismissal.¹⁹⁸ Similarly, his widow, María Concepción Villalba spoke of the suffering endured by her husband following those events.¹⁹⁹ For his part, witness Alexei Porres referred to the stress, anxiety, depression, and other circumstances affecting the victim, which he had diagnosed in his capacity as treating physician.²⁰⁰

225. The Court rejects the alleged impairment of honor and reputation as an element relating to the non-pecuniary damage caused to the victims, because this relates to arguments based on facts that exceed the purpose of these proceedings (*supra* para. 136). In addition, it will not take into account the references to the reprisals suffered or the separation of Mr. Ríos Ávalos from academic establishments because, similarly, they are unrelated to the facts of this case.

226. With regard to the serious disease suffered by Mr. Fernández Gadea that resulted in his death, the Court notes that, other than the stress, anxiety and anguish suffered by the victim,

¹⁹⁵ 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 Grijalva Bueno v. Ecuador, supra*, para. 190.

¹⁹⁶ Cf. Expert opinion signed by Carlos Alberto Arestivo (evidence file, volume VIII, affidavits, folios 13412 to 13425).

¹⁹⁷ Cf. Statement provided by Bonifacio Ríos Avalos during the public hearing before this Court.

¹⁹⁸ Cf. Testimonial statement provided by Jesús María Fernández Villalba during the public hearing before this Court.

¹⁹⁹ Cf. Testimonial statement of María Concepción Villalba, widow of Fernández, provided by affidavit (evidence file, volume VIII, affidavits, folios 13498 to 13506).

²⁰⁰ Cf. Testimonial statement of Alexei Porres Piovet, provided by affidavit (evidence file, volume VIII, affidavits, folios 13427 to 13433).

it cannot be concluded that the events that occurred were directly related to the disease or that they would have had an impact on its origin, evolution or exacerbation.

227. Based on the foregoing and the particular circumstances of the case, the Court considers that impeachment proceedings against the victims, the procedure applied and the decision to remove them from their functions as justices of the Supreme Court of Justice, as well as the ineffectiveness of the judicial actions they filed and the excessive delay in deciding them, caused them non-pecuniary damage reflected in the anguish, uncertainty and suffering they experienced. The Court also finds that non-pecuniary damage resulted from the situation in which the two victims were unable to continue exercising their professional activities as judicial officials, with the consequence that they were unable to continue receiving the corresponding financial remuneration. In addition, the Court takes into account that the events affected the expectations that the two victims, as members of the highest domestic court, had with regard to their professional development; moreover, their removal undoubtedly had an impact on their state of mind and their future perspectives.

228. Based on all the above, for non-pecuniary damage, the Court establishes, in equity, the sum of US\$25,000.00 (twenty-five thousand United States dollars) for each victim. In the case of Mr. Fernández Gadea, the respective payment must be made as follows: (a) fifty percent (50%) to his wife, María Concepción Villalba Quevedo, and if she is already deceased, the part that would correspond to her will increase that of Mr. Fernández Gadea's children, as indicated in the following subparagraph, and (b) the remaining fifty percent (50%) to be shared equally between his sons, Carlos Aníbal, José Luis, Julio Cesar and Jesús María, with last names Fernández Villalba, and daughter, Catalina Fernández Ocampos. If one or several of the children is already deceased, the part that would have corresponded to them will increase the share of the others.

229. The Court considers that the representatives' arguments regarding the effects on the life project of the two victims are focused on the interruption of their professional development, which has been addressed in the preceding paragraphs, so that it is unnecessary to make an additional ruling in this regard. Lastly, the Court recalls that the victims declared to be the injured party are only Messrs. Ríos Ávalos and Fernández Gadea (*supra* para. 181), so that it is inappropriate to examine the arguments relating to any effects on their family members.

F. Costs and expenses

230. The **representatives** asked the Court to order the State to pay the costs and expenses relating "to the impeachment proceedings and the filing of the action of unconstitutionality, as well as to the criminal case instituted in relation to the grounds for the impeachment proceedings: fees, photocopies, notifications, notarizations and other expenses."

231. They indicated that Mr. Ríos Ávalos had hired several professionals, "having disbursed [...] for the payment of fees, 30,000.00 [...] [United States] dollars to the lawyer, Adolfo Ferreiro, and 20,000.00 [...] [United States] dollars to the lawyer, Roberto Hirsch, in addition to additional expenses for photocopies, notifications and other consequential expenditure," for which he did not have supporting documents "owing to the time that has passed." In addition, he had paid fees for an assistant professional in the criminal case, in which the "principal defense lawyers [were] Sara Parquet de Ríos [and] Roberto Hirsch [...] to whom he had to pay the sum of 21,500.00 [United States] dollars."

232. In the case of Mr. Fernández Gadea, they indicated that he had disbursed "the sum of 40,000.00 [United States] dollars to the professional [...] N[icolás] R. G[aona] I[rún], under a contingency agreement signed with the heirs until the culmination of the current litigation [...],

plus the costs and expenses entailed by [...] photocopies, notarizations, notifications, mailing documents and others.”

233. They asked the Court to “appraise all the professional work, the costs and expenses of 16 years of litigation before the Inter-American Commission [...], the payment of the fees of the lawyers of the two victims, [...] and also the expenditure [...] in photocopies, notarizations, and travel expenses for the hearings before the Commission [...] in Washington [and] in Buenos Aires.” They indicated that “it is very difficult to present all the vouchers; therefore, “the Court may make a just analysis and assessment” of the years of litigation at the national and international level.” Lastly, they asked that, “since they did not have [...] the [respective] vouchers,” “the reimbursement of the expenses incurred during the proceedings before the Court should be considered, based on equity, at U\$50,000.00 [United States] dollars for both victims.”

234. The **State** indicated that the representatives sought to validate the payments made to lawyers for professional fees by “documents produced unilaterally, instead of legal invoices.” Also, they had requested the reimbursement of disbursements for photocopies and notifications without indicating any amount or attaching vouchers. Similarly, they were claiming costs and expenses for 16 years of litigation before the inter-American system based on different documents, but without including an estimated amount. The State asked that, if the Court decided to establish compensation for this concept, it consider that the claim had no “documentary support and several items lack a direct causal nexus with the disputed facts,” so that the claim should not be admitted.

235. The Court has indicated that costs and expenses form part of the concept of reparation because the activity deployed by the victims in order to obtain justice at both the national and the international level entails disbursements that should be compensated when the international responsibility of the State has been declared in a judgment. Regarding the reimbursement of costs and expenses, it is for the Court to make a prudent assessment of their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction and those incurred during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided the *quantum* is reasonable.²⁰¹

236. This Court has also indicated that it is not sufficient merely to forward probative documents; rather the parties are required to include arguments that relate the evidence to the fact that it is considered to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly established.²⁰²

237. The representatives requested compensation for the expenses that the victims had incurred as a result of the impeachment proceedings filed against them, the actions of unconstitutionality that they filed, and the criminal proceedings instituted based on the complaint filed by several members of the Legislature that culminated in the decision issued by the Fourth Criminal Judge of Guarantees dismissing that complaint (*supra* para. 57). In addition, they asked for compensation for the expenses incurred during the proceedings before the Inter-American Commission and Court.

²⁰¹ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Guerrero, Molina et al. v. Venezuela, supra*, para. 192.

²⁰² Cf. *Case of Chaparro Álvarez and Lapo Íñiguez, supra*, para. 277, and *Case of Guachalá Chimbo et al. v. Ecuador, supra*, para. 270.

238. To authenticate the expenses incurred by Mr. Ríos Ávalos, the representatives provided the following documents: (a) special power of attorney granted by the victim to the lawyers Adolfo Ferreiro, Roberto Hirsh and Sara Parquet de Ríos to represent him during the impeachment proceedings and to file appeals, including the action of unconstitutionality;²⁰³ (b) power of attorney granted by Mr. Ríos Ávalos to the lawyers Roberto Hirsh and Sara Parquet de Ríos to act in the criminal proceedings;²⁰⁴ (c) contract for professional services and fees between Bonifacio Ríos Ávalos and the lawyer Roberto Hirsh, for defense in the impeachment proceedings and the filing of actions of unconstitutionality, stipulating the payment of US\$20,000.00 (twenty thousand United States dollars), with a “readjustment” of US\$30,000.00 (thirty thousand United States dollars), “in case it is necessary to have recourse to the Inter-American Commission [...] or Court”;²⁰⁵ (d) contract for professional services and fees between Bonifacio Ríos Ávalos and the lawyer Adolfo Ferreiro, to intervene on behalf of the former in the impeachment proceedings and the filing of actions of unconstitutionality, stipulating the payment of US\$30,000.00 (thirty thousand United States dollars);²⁰⁶ (e) document recording the payment of US\$20,000.00 (twenty thousand United States dollars) to the lawyer Roberto Hirsh;²⁰⁷ (f) document recording the payment of US\$30,000.00 (thirty thousand United States dollars) to the lawyer Adolfo Ferreiro;²⁰⁸ (g) quote for professional fees to be paid to the lawyer Roberto Hirsh for his intervention in the criminal proceedings,²⁰⁹ and (h) document recording the payment of US\$10,000.00 (ten thousand United States dollars) to the lawyer Roberto Hirsh, for his intervention in the criminal proceedings.²¹⁰

239. They also provided various documents concerning measures taken in relation to the national and international actions that were filed (*inter alia*, plane tickets, postage expenses, accommodation, notary fees, photocopies and office supplies).²¹¹

240. In the case of Mr. Fernández Gadea, the representatives provided a document recording the “contingency fee arrangement” between the members of the victim’s family (wife and children) and the lawyer Nicolás R. Gaona Irún, in relation to his representation of the family

²⁰³ Cf. Special power of attorney granted on November 26, 2004, by Bonifacio Ríos Avalos to the lawyers Adolfo Ferreiro, Roberto Hirsh and Sara Parquet de Ríos to represent him in the impeachment proceedings before the National Congress and to file objections (evidence file, volume IV, annex XV.A to the pleadings and motions brief, folios 8823 to 8826).

²⁰⁴ Cf. Undated letter granting power of attorney by Bonifacio Ríos Avalos to the lawyers Roberto Hirsh and Sara Parquet de Ríos to act in criminal case No. 1697/2004, entitled “Luis Lezcano Claude, Bonifacio Ríos Avalos, Carlos Fernández Gadea and Felipe Santiago Paredes ref/ atypical act” (evidence file, volume IV, annex XV.B to the pleadings and motions brief, folio 8828).

²⁰⁵ Cf. Professional services and fees contract signed on November 27, 2003, by Bonifacio Ríos Avalos and Roberto Hirsh (evidence file, volume IV, annex XV.C to the pleadings and motions brief, folio 8832).

²⁰⁶ Cf. Professional services and fees contract signed on November 27, 2003, by Bonifacio Ríos Avalos and Adolfo Ferreiro (evidence file, volume IV, annex XV.C to the pleadings and motions brief, folio 8833).

²⁰⁷ Cf. Document dated December 12, 2003, recording the payment of US\$20,000.00 (twenty thousand United States dollars) made by Bonifacio Ríos Avalos to the lawyer Roberto Hirsh (evidence file, volume IV, annex XV.C to the pleadings and motions brief, folio 8831).

²⁰⁸ Cf. Document dated December 12, 2003, recording the payment of US\$30,000.00 (thirty thousand United States dollars) made by Bonifacio Ríos Avalos to the lawyer Adolfo Ferreiro (evidence file, volume IV, annex XV.C to the pleadings and motions brief, folio 8830).

²⁰⁹ Cf. Document dated February 20, 2004, which includes the quote for professional fees to be paid to the lawyer Roberto Hirsh for his participation in case No. 1697/2004, for the sum of US\$21,500.00 (twenty-one thousand five hundred United States dollars), which includes administrative expenses (evidence file, volume IV, annex XV.D to the pleadings and motions brief, folio 8838).

²¹⁰ Cf. Document dated November 10, 2005, recording the payment of US\$10,000.00 (ten thousand United States dollars) made by Bonifacio Ríos Avalos to the lawyer Roberto Hirsh (evidence file, volume IV, annex XV.D to the pleadings and motions brief, folio 8839).

²¹¹ Cf. Various documents on costs and expenses (evidence file, volume IV, annex XV.H to the pleadings and motions brief, folios 8899 to 8956).

before “administrative and judicial instances and/or before the Inter-American Commission [...] and Court,” in the “actions undertaken” based on the dismissal of Mr. Fernández Gadea. This document records that the lawyer would receive 20% (twenty percent) of any amounts received and that, in November 2003, the victim had paid this professional the sum of US\$40,000.00 (forty thousand United States dollars), an amount that “w[ould] not be counted within or deducted from the [agreement]” signed.²¹²

241. In this regard, this Court notes that the claim for compensation for the expenses incurred in the processing of the criminal proceedings filed against the victims cannot be considered because although these proceedings originated in a complaint made by members of the Legislature by virtue of the cases included in the articles of impeachments that constituted the grounds for the impeachment proceedings, in this judgment no violation of any right derived from the said criminal proceedings has been declared. Consequently, there is no causal nexus to support the said request.

242. Regarding the different documents provided by the parties, their content allows the Court to verify the professional services that both victims had to contract to claim the protection of their rights at the domestic and international level. However, the Court has no way to verify the effective payment of the sums that, according to the said documents, were agreed on as fees for those services. Furthermore, no information was provided to determine the general parameters used to establish the fees; in other words, for both the different proceedings in the domestic jurisdiction, and those that corresponded to the inter-American system. Added to this, the series of documents concerning the measures undertaken does not allow the Court to verify the amount that was effectively disbursed.

243. Consequently, based on the different instance before which Messrs. Ríos Ávalos and Fernández Gadea had to appear and the actions that it was necessary to file to claim their rights, the Court establishes, in equity, a sum of US\$20,000.00 (twenty thousand United States dollars) for costs and expenses that the State must pay to each of them. In the case of Mr. Fernández Gadea, the respective payment must be made as follows: (a) fifty percent (50%) to his wife, María Concepción Villalba Quevedo, and if she is deceased, the part that corresponds to her will increase that of the children of Mr. Fernández Gadea, as indicated in the following subparagraph, and (b) the other fifty percent (50) to be shared equally between his sons, Carlos Aníbal, José Luis, Julio Cesar and Jesús María, with the last names Fernández Villalba, and his daughter, Catalina Fernández Ocampos. If one or several of the children are deceased, the part that would have corresponded to them will increase that of the other children.

244. At the stage of monitoring compliance with this judgment, the Court may establish that the State must reimburse the victims or their representatives any reasonable expenses that they incur at that procedural stage.²¹³

G. Reimbursement of expenses to the Victims’ Legal Assistance Fund

245. In an order of December 11, 2020, the President of the Court declared admissible the request presented by the representatives to access the Victims’ Legal Assistance Fund of the Court (hereinafter “the Fund”) in the instant case. In this order, the President established that

²¹² Cf. Document dated November 5, 2019, recording the contingency fee arrangement between Carlos Aníbal Fernández Villalba, Julio César Fernández Villalba, Jesús María Fernández Villalba, and María Concepción Villalba widow of Fernández with the lawyer, Nicolás R. Gaona Irún (evidence file, volume IV, annex XV.E to the pleadings and motions brief, folios 8842 and 8843).

²¹³ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010. Series C No. 217, para. 29, and *Case of Grijalva Bueno v. Ecuador, supra*, para. 195.

the necessary financial assistance would be granted to cover the reasonable expenses for the preparation and mailing of four affidavits indicated by the representatives.

246. On June 1, 2021, the report on the disbursements made in this case in application of the Legal Assistance Fund was forwarded to the State. These amounted to US\$685.32 (six hundred and eighty-five United States dollars and thirty-two cents) and, as established in Article 5 of the Court's Rules for the Operation of the said Fund, Paraguay was granted a time frame for presenting any comments it deemed pertinent. The State presented a brief on June 11, 2021, in which it indicated that, according to Article 2 of the Court's Rules for the Operation of the Fund, the presumed victims "must demonstrate satisfactorily [...] that they lack the economic resources necessary to cover the costs of litigation," and therefore asked the Court to make a "prudent assessment of the need for the State to make this reimbursement, given the particularities of the case."

247. In this regard, the Court recalls that, on the President's instructions, in communications of July 28, 2020, the parties were informed that "the request presented by the representatives of the presumed victims to access the Fund was admissible," precisely because they had met the requirements of the Court's Rules for the Operation of the said Fund. The same communications noted that, in its answering brief, the Paraguayan State "had not contested the authorization to apply" the Fund. In the said order of the President of December 11, 2020, based on the contents of the communications of July 28, that year, "application of the Fund was declared admissible."

248. Thus, the comment made by Paraguay refers to a matter examined and decided at the proper procedural moment, so that it is not in order for this judgment to include further considerations in this regard, especially when the State has failed to make any specific arguments addressed at questioning the application of the Fund in this specific case and did not do so in its answering brief either.

249. Consequently, the Court orders the State to reimburse the said Fund the sum of US\$685,32 (six hundred and eighty-five United States dollars and thirty-two cents). This amount must be reimbursed within six months of notification of this judgment.

H. Method of complying with the payments ordered

250. The State shall pay the compensation established in this judgment in favor of Bonifacio Ríos Ávalos for the concepts of restitution, pecuniary and non-pecuniary damage, and to reimburse costs and expenses directly to him, within one year of notification of this judgment. If the beneficiary should die before the respective compensation is delivered to him, this shall be delivered directly to his heirs pursuant to the applicable domestic law.

251. In the case of the compensation established in favor of Carlos Fernández Gadea for pecuniary and non-pecuniary damage, and to reimburse costs and expenses, the State shall pay this as indicated in paragraphs 215, 228 and 243, within one year of notification of this judgment.

252. The State shall comply with the monetary obligations by payment in United States dollars or the equivalent in domestic currency, using the market exchange rate published or calculated by a pertinent banking or financial authority on the date nearest to the day of payment.

253. If, for causes that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit the said amounts in their favor in a deposit account or certificate in a

solvent Paraguayan financial institution, in United States dollars, and in the most favorable financial conditions allowed by banking practice and law. If the corresponding compensation is not claimed, when ten years have passed the sums shall be returned to the State with the interest accrued.

254. The sums allocated in this judgment as a measure of restitution, compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses shall be delivered to the persons indicated in full, as established in this judgment, without any deductions derived from possible taxes or charges.

255. If the State should incur in arrears, including in the reimbursement of expenses to the Victims' Legal Assistance Fund, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Paraguay.

IX OPERATIVE PARAGRAPHS

256. Therefore,

THE COURT

DECLARES,

unanimously, that:

1. The State is responsible for the violation of judicial independence recognized in Article 8(1) of the American Convention on Human Rights, in relation to the obligations to respect and to ensure rights established in Article 1(1) of this instrument, to the detriment of Bonifacio Ríos Ávalos and Carlos Fernández Gadea, pursuant to paragraphs 110 to 133 and 141 of this judgment.

2. The State is responsible for the violation of the right to judicial protection recognized in Article 25(2)(c) of the American Convention on Human Rights, in relation to judicial independence established in Article 8(1) and the obligations to respect and to ensure rights established in Article 1(1), both of this instrument, to the detriment of Bonifacio Ríos Ávalos and Carlos Fernández Gadea, pursuant to paragraphs 148 to 165 and 177 of this judgment.

3. The State is responsible for the violation of the guarantee of a reasonable time recognized in Article 8(1) of the American Convention on Human Rights, in relation to the obligations to respect and to ensure rights established in Article 1(1) of this instrument, to the detriment of Bonifacio Ríos Ávalos and Carlos Fernández Gadea, pursuant to paragraphs 166 to 177 of this judgment.

AND ESTABLISHES:

Unanimously, that:

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

5. The State shall make the publications indicated in paragraph 190 of this judgment.

6. The State shall proceed to regularize the retirement regime of Bonifacio Ríos Ávalos and Carlos Fernández Gadea as established in paragraph 212 of this judgment.

7. The State shall pay the amounts established in paragraphs 186, 214, 215, 228 and 243 of this judgment as a measure of restitution, compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses, pursuant to paragraphs 250 to 255 of this judgment.

8. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the sum disbursed during the processing of this case, pursuant to paragraphs 249 and 255 of this judgment.

9. The State, within one year of notification of this judgment, shall provide the Court with a report on the measures taken to comply with it, without prejudice to the provisions of paragraph 190 of this judgment.

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

DONE, at San José, Costa Rica, on August 19, 2021, in the Spanish language.

IACtHR. *Case of Ríos Ávalos et al. v. Paraguay*. Merits, reparations and costs. Judgment of August 19, 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