INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE FORMER EMPLOYEES OF THE JUDICIARY V. GUATEMALA

JUDGMENT OF NOVEMBER 17, 2021

(*Preliminary Objections, Merits and Reparations*)

In the case *of the Former Employees of the Judiciary v. Guatemala,*

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

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

also present,

Pablo Saavedra Alessandri, Registrar
Romina I. Sijniensky, Deputy Registrar,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and with Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure" or the "Rules"), delivers this judgment, structured as follows:

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I
INTRODUCTION OF THE CASE AND CAUSE OF THE ACTION

1. *The case submitted to the Court.* On February 27, 2020, 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 the *Former Employees of the Judiciary regarding the Republic of Guatemala* (hereinafter "the State" or "Guatemala"). The Commission indicated that the case relates to the dismissal of 93 employees of the Judiciary (*Organismo Judicial)* of Guatemala[1], as a consequence of a strike held in 1996. The Commission requested that the State be declared responsible for the violation of the rights to be heard, the right of defense, and the rights to due process, to strike and to work, recognized in Articles 8(1), 8(2)(b) and c), 25(1) and 26 of the American Convention, in relation to the obligations established in Articles 1(1) and 2 of the same instrument, to the detriment of the 65 former employees who were not rehired.

2. *Processing before the Commission.* The following proceedings took place before the Commission:

a) *Petition.* On September 7, 2000, the Commission received an initial petition from the Human Rights Legal Action Center (hereinafter "CALDH").

b) *Admissibility Report.* On October 22, 2003, the Commission adopted Admissibility Report No. 78/03.

c) *Report on the Merits.* On September 28, 2019, the Commission adopted Merits Report No. 157/19 in which it reached a number of conclusions[2] and made various recommendations to the State.

d) *Notification to the State.* On November 27, 2019, the Merits Report was notified to the State, which was granted two months to report on its compliance with the recommendations. The State presented a brief in which it expressed its willingness to implement the recommendations. However, the State did not present a proposal for compliance or information to indicate that it had made contact with the alleged victims or their representatives. Furthermore, the State did not request an extension to present its report.

3. *Submission to the Court*. On February 27, 2020, the Commission[3] submitted to the jurisdiction of the Inter-American Court all of the facts and violations of human rights described in Merits Report No. 157/19. This Court notes with concern that, between the filing of the initial petition before the Commission and the submission of the case before the Court, more than nineteen years have elapsed.

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[1] The Commission specified that of a total of 93 alleged victims, 28 were rehired and 65 were not. Thus, the 65 persons who were not rehired are considered as alleged victims in this case. The alleged victims held different positions within the Judiciary and included court officials, court secretaries, maintenance staff, office workers, service staff, administrative personnel, janitors, messengers and technicians, among others.

[2] The Commission concluded that the State is responsible for the violation of the rights established in Articles 8(1), 8(2) (b), 8(2) (c), 25(1) and 26 of the American Convention in relation to Article 1(1) and 2 thereof, to the detriment of the 65 former employees identified in the Single Annex to the Report.

[3] The Commission appointed Commissioner Esmeralda Arosemena de Troitiño and the then Executive Secretary Paulo Abrão as its delegates before the Court. It also appointed Marisol Blanchard Vera, Assistant Executive Secretary, Jorge Humberto Meza Flores and Christian Gonzáles Chacón, lawyers of the Commission's Executive Secretariat, as legal advisers.

4. *Requests of the Commission.* Based on the foregoing considerations, the Commission asked the Court to declare the international responsibility of the State of Guatemala for the violations indicated in its Merits Report (*supra* para. 2(c). Likewise, as measures of reparation, the Commission asked the Court to order the State to implement those included in said Report.

II
PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and the representatives.* The submission of the case was notified to the State and to the representative of the alleged victims[4] by means of communications dated November 13, 2020.

6. *Failure to submit a brief with pleadings, motions and evidence.* On January 23, 2021, the representative of the alleged victims submitted a request to extend the term to present the brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief"), the deadline having expired on January 18, 2021. In a letter dated January 26, 2021, following the instructions of the President, the representative of the alleged victims was informed that the period for presenting the pleadings and motions brief could not be extended, and thus the processing of the case would continue without said brief.

7. *Preliminary objections and answering brief.*[5] On January 13, 2021, the State presented its brief containing its preliminary objections and answer to the submission of the case.[6] In said brief, the State raised two preliminary objections, denied the violations alleged and challenged the appropriateness of the measures of reparation requested.

8. *Observations on the preliminary objections.* On March 12, 2021, the representative and the Commission presented, respectively, their observations to the preliminary objections.

9. *Public hearing.* In an order issued on May 12, 2021,[7] the President of the Court called the parties and the Commission to a public hearing on the preliminary objections and possible merits, reparations and costs. In said order, the Court summoned *ex officio* two alleged victims to testify at the public hearing as well as an expert witness offered by the Commission. In

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[4] On June 8, 2020, the Court was notified that César Augusto Canil Xirum of CALDH would be representing the alleged victims. In briefs submitted on October 26, 2020, November 9, 2020, February 10, 2021, February 20, 2021, March 2, 2021, and May 5, 2021, the representative presented and clarified the powers of attorney granted by the alleged victims. On March 1, 2021, the State of Guatemala presented a brief alleging that some power of attorney letters were drafted after the deadline granted by the Court, and thus requested that such representation be disregarded. In a letter dated March 9, 2021, the Secretariat considered that, in order to respect the wishes of the alleged victims and the principle of procedural economy, the proceedings would continue with a single representative for all the alleged victims and, therefore, accepted the powers of attorney submitted and clarified by the representative.

[5] The State appointed Jorge Luis Donado Vivar, Attorney General of the Nation, as permanent agent and Lilian Elizabeth Nájera Reyes and María Gabriela Hernández Siguantay, of the Unit for International Affairs of the Attorney General's Office, as alternate agents.

[6] The State presented its preliminary objections and answer to the submission of the case on January 13, 2021, before the deadline for submitting the pleadings and motions brief. In a letter dated February 3, 2021, having refused to extend the period for the submission of the pleadings and motions brief, the State was asked to confirm whether this brief was its final version of the response or whether it wished to make additional observations or present a new brief. In a brief submitted on February 5, 2021, the State confirmed that the brief presented on January 13, 2021 was its final version of the answering brief.

[7] *Cf. Case of the Former Employees of the Judiciary v. Guatemala.* Order of the President of the Inter-American Court of Human Rights. May 12, 2021. Available at: http://www.corteidh.or.cr/docs/asuntos/extrabajadores del organismo judicial 12 05 21.pdf.

addition, the Court requested *ex officio* the affidavits of two alleged victims. The representative presented these affidavits on June 14, 2021.

10. *Public hearing.* Due to the exceptional circumstances caused by the COVID-19 pandemic, the hearing was held via videoconference, in accordance with the Rules of the Court, on June 22 and 23, 2021, during the Court's 142nd regular session. At the hearing, the Court received the statements of two alleged victims and an expert witness offered, respectively, by the representative and the Commission. The judges of the Court also requested certain information and explanations from the parties and the Commission.

11. *Amicus Curiae.* The Court received an *amicus curiae* brief submitted by the International Lawyers Assisting Workers Network (ILAW)[8].

12. *Final written arguments and observations.* On July 23, 2021, the representative and the State presented their final written arguments, as well as certain annexes. The Commission forwarded its final written observations on that same date.

13. *Observations on the annexes to the final arguments.* On August 13, 2021, the State submitted its observations on the annexes provided by the representative. On August 16, 2021, the Commission indicated that it had no observations to make to the annexes submitted together with the final arguments of the parties. The representative did not submit observations on the annexes presented by the State.

14. *Deliberation of the instant case.* The Court deliberated this judgment in a virtual session held on November 16 and 17, 2021.[9]

III
JURISDICTION

15. The Court is competent to hear the instant case, pursuant to Article 62(3) of the Convention, given that Guatemala has been a State Party to the American Convention since May 25, 1978, and recognized the contentious jurisdiction of this Court on March 9, 1987.

IV
PRELIMINARY OBJECTIONS

16. The State filed two preliminary objections, which will be analyzed in the following order: A) alleged configuration of the international "fourth instance" and B) alleged failure to exhaust domestic remedies.

A. Alleged configuration of the international "fourth instance"

A.1. Arguments of the parties and of the Commission

[8] The brief was signed by Jeffrey Vogt and contains an analysis of the right to strike, its conceptual definition, and interdependence with other human rights. It analyzes Guatemala's labor legislation and establishes conclusions.

[9] Owing to the exceptional circumstances caused by the COVID-19 pandemic, this judgment was deliberated and adopted during the Court's 145th regular session, which took place virtually using technological means in accordance with the Rules of Procedure. See press release No. 79/2021 of October 28, 2021, available at: https://www.corteidh.or.cr/docs/comunicados/cp_79_2021.pdf.

17. In its answering brief, the ***State*** argued that both the ordinary and higher courts of the domestic jurisdiction acted and ruled on the facts of the case in accordance with national legislation, the Constitution and the American Convention. It considered that the alleged victims are seeking to use the inter-American system as a fourth instance to admit claims which, under the principles, guarantees and rights enshrined in the Convention, have already been settled in the domestic courts. Thus, it argued that "the Inter-American Court does not have jurisdiction over the matter, since the present case does not comply with the subsidiarity requirement of the inter-American human rights system." In its final written arguments, the State added that the Court is not competent to review "decisions issued by the domestic courts, merely because the petitioners consider that the outcome of the collective process is not favorable to their interests."

18. The ***representative*** argued that the discussion as to whether or not the State of Guatemala had violated the conventional rights of the Judiciary workers should take place in an oral and public trial, not through a motion for preliminary objections. He did not present specific arguments on this preliminary objection.

19. The ***Commission*** argued that the instant case does not involve mere disagreements with the content of the jurisdictional rulings at the domestic level, but rather a series of violations of due process. In particular, the Commission found that the alleged victims were not afforded an administrative proceeding prior to the sanction of dismissal, which limited their right of defense. Likewise, the Commission, in its Merits Report, considered that the State violated the rights to strike, to work and to have access to an effective remedy with respect to the 65 former workers who were not rehired. Thus, it concluded that at no time was there any intention that the Court act as a fourth instance; rather a series of violations of rights guaranteed by the Convention were alleged.

A.2. Considerations of the Court

20. This Court has stated that the determination as to whether the actions of judicial bodies constitute a violation of the State's international obligations may require it to examine the respective domestic proceedings to establish their compatibility with the American Convention. Consequently, this Court is not a fourth instance of judicial review, since it examines the conformity of domestic judicial decisions with the American Convention and not in accordance with domestic law.[10]

21. In the instant case, the Court notes that the claims of the Commission, taken up by the representative of the alleged victims, are not limited to the review of the rulings of the national courts for possible errors in the assessment of evidence, in the determination of the facts or in the application of domestic law. On the contrary, the violation of various rights enshrined in the American Convention is alleged in the decisions taken by the national authorities, both in the judicial and administrative courts. Consequently, in order to determine whether said violations actually occurred, it is essential to analyze, on the one hand, the decisions issued by the different administrative and jurisdictional authorities, and on the other, their compatibility with the State's international obligations, which, in the end, is a substantive issue that cannot be resolved by means of a preliminary objection. Consequently, the Court dismisses the preliminary objection presented by the State.

[10] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 222, and *Case of Cuya Lavy et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of September 28, 2021. Series C No. 438, para. 42.

B. Alleged failure to exhaust domestic remedies

B.1. Arguments of the parties and of the Commission

22. The ***State*** pointed out that not all of the former employees of the Judiciary filed a motion for reconsideration of their dismissal. It also considered that other means were available to challenge these dismissals, such as a constitutional action of *amparo* or the ordinary lawsuit for reinstatement, which only some of the former employees used. Thus, it argued that all of the alleged victims should have exhausted the motion for reconsideration, the *amparo* or the ordinary reinstatement procedure, in order to clarify their legal situation in the national courts.

23. In his observations, the ***representative*** argued that the discussion of whether or not there were violations of the rights established in the Convention by the State of Guatemala against the workers of the Judiciary should take place in an oral and public trial, not by means of preliminary objections. In his final arguments, he noted that the State did not raise this objection during the admissibility stage before the Commission.

24. The ***Commission***, for its part, argued that the State did not raise the objection of failure to exhaust domestic remedies at the admissibility stage, and therefore this objection is inadmissible. It also noted that the petitioners filed a series of appeals to challenge the declaration of illegality of the strike, as well as against the dismissal order, and therefore the requirement to exhaust domestic remedies was met. It added that the State did not demonstrate that the remedies it invoked were suitable and effective.

B.2. Considerations of the Court

25. The Court recalls that an objection to the exercise of its jurisdiction based on the alleged failure to exhaust domestic remedies must be presented to the Commission during the admissibility stage of the case.[11] In order to do so, the State must, first of all, clearly specify before the Commission, during the admissibility stage of the case, the remedies that, in its view, have not yet been exhausted. Furthermore, the arguments that give content to the preliminary objection filed by the State before the Commission during the admissibility stage must correspond to those raised before the Court.[12]

26. However, in the instant case, the State did not argue the alleged existence of other mechanisms to challenge the dismissals that were not exhausted by all the workers during the admissibility stage before the Commission. Indeed, the initial petition was filed before the Commission on September 7, 2000;[13] subsequently, in a brief filed on November 28, 2000, the petitioners corrected some points of their original petition.[14] This petition was forwarded to the State on February 1, 2002, and the State was given two months to submit its observations.[15] On April 2, 2002, the State submitted its observations on the petition. However, no mention was made in this brief of the alleged failure to exhaust domestic remedies. Prior to the issuance

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[11] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 88, and *Case of Vera Rojas et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of October 1, 2021. Series C No. 439, para. 22.

[12] *Cf. Case of Furlan and Family v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2012. Series C No. 246, para. 29, and *Case of Vera Rojas et al. v. Chile, supra,* para. 22.

[13] *Cf.* Initial petition filed by CALDH before the Inter-American Commission on September 7, 2000 (evidence file, folios 651 to 668).

[14] *Cf.* Observations on the initial petition filed by CALDH before the Inter-American Commission the November 28, 2000 (evidence file, folios 431 to 450).

[15] *Cf.* Note of the Inter-American Commission of February 1, 2002 (evidence file, folio 408).

of Admissibility Report No. 78/03 of October 22, 2003, the State did not submit any other brief. Thus, the State raised this objection for the first time in its answering brief before this Court, and therefore, it was not presented at the appropriate procedural opportunity. For this reason, the Court considers that the preliminary objection raised by the State is inadmissible.

V
EVIDENCE

A. Admissibility of the documentary evidence

27. The Court received various documents submitted as evidence by the Commission and the State, attached to their main briefs (*supra,* paras. 1 and 7). As in other cases, the Court admits those documents submitted in a timely manner (Article 57 of the Rules)[16] by the State and the Commission, whose admissibility was neither challenged nor disputed, and whose authenticity was not questioned.

28. The Court also received documents attached to the final arguments submitted by the State[17] and by the representative.[18] On August 13, 2021, the State submitted observations on the document presented by the representative, objecting to its inclusion as it considered it time-barred. Neither the Commission nor the representative presented observations on the documents submitted as annexes.

29. The Court finds that the documents attached to the final arguments of the representative were not submitted at the proper procedural opportunity, and that in this case, none of the exceptions defined in the rules for the extemporaneous admission of evidence are applicable. For that reason, the Court does not admit those documents. With respect to the documents presented by the State together with its final arguments, this Court finds that three of them[19]

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[16] Documentary evidence may be presented, in general and in accordance with Article 57(2) of the Rules of Procedure, together with the briefs submitting the case, of pleadings and motions or answering briefs, as applicable. Evidence submitted outside these procedural opportunities is not admissible, except in the exceptions established in the said Article 57(2) of the Rules (namely, force majeure, serious impediment, or if it concerns a supervening fact, i.e. occurred after the aforementioned procedural moments. *Cf. Case of the Barrios Family v. Venezuela. Merits, reparations and costs.* Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18, and *Case Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala. Merits, reparations and costs.* Judgment of October 6, 2021. Series C No. 440, footnote 21.

[17] The State presented copies of the following documents:

- Governmental Agreement 99-2020 of the President of the Republic of Guatemala, of July 30, 2020 (evidence file, folios 3783 to 3787).
- Official letter No. 446-2021IIVMA of the Ministry of Labor and Social Welfare, of July 12, 2021 (evidence file, folios 3789 and 3790) certifying that Guatemala has not ratified the ILO Labour Relations (Public Service) Convention (Convention No. 151 of 1978).
- Official letter No. 2215-CRFR/Ibfg of the Personnel Department of the Judiciary of September 28, 1999 (evidence file, folios 3791 to 3799);
- Official letter No. 532-JAAF/aamg of the Personnel Department of the Judiciary of April 28, 2000 (evidence file, folios 3801 to 3805);
- Official letter No. 693-2021-MCDLT/bc of the Human Resources Management Unit of the Judiciary of July 7, 2021 (evidence file, folios 3807 to 3818) certifying the positions of the alleged victims Dora Carolina Portillo, Apolonio Salazar Carrillo, Abraham Teodoro Santizo Velásquez, José Francisco Pérez Sunay and Igmain Galicia Pimentel.
- Official letter No. OC-438-2021/WGLS/ifgn of the Financial Management Unit of the Accounting Division of the Judiciary of July 19, 2021 (evidence file, folios 3819 to 3830) which establishes the payment of compensation to the alleged victims dismissed by decision of the Supreme Court of Justice of September 1, 1999.

[18] The representative presented a report entitled "*Peritaje de reparación digna y transformadora*." Case of the Former Employees of the Judiciary v. the State of Guatemala" (evidence file, folios 3753 to 3780).

[19] These include the following documents: Official letter No. 446-2021IIVMA of the Ministry of Labor and Social Welfare, of July 12, 2021; Official letter No. 693-2021-MCDLT/bc of the Human Resources Unit of the Judiciary of July

correspond to documents issued after the State's answering brief, and therefore, by virtue of Article 57(2) of the Rules of the Court, they are admitted into the body of evidence. With respect to the other three documents,[20] since they are of an earlier date and none of the exceptions defined in the Rules of Procedure are met, the Court will not admit them.

B. Admissibility of the testimonial and expert evidence

30. The Court finds it pertinent to admit the statements rendered by affidavit[21] and in the public hearing,[22] insofar as they are in keeping with the purpose defined in the order that required them and the purpose of the present case.

31. In its final arguments, the ***State*** claimed that several points in the statements lacked veracity. The Court notes that these observations refer to their content and possible evidentiary assessment. Therefore, the Court deems it pertinent to admit them, taking into consideration, where pertinent, the observations of the State when assessing their evidentiary value.

VI
FACTS

32. In this chapter, the Court will establish the facts of the case based on the factual framework submitted by the Inter-American Commission, in relation to: A) the applicable regulatory framework; B) the renegotiation of the collective bargaining agreement and the strike of 1996 and C) the dismissals by the Supreme Court of Justice and the appeals filed against them.

A. Applicable legal framework

33. The present case is related to a labor dispute involving former employees of Guatemala's Judiciary (*Organismo Judicial*). This institution is in charge of the Judicial Branch of Guatemala[23] and consists of two main areas: the jurisdictional area composed of all the courts and the administrative area. Its highest body is the Supreme Court of Justice. At the time of the facts, labor disputes were regulated by the Constitution, the Labor Code, the Law on Unionization and Strike Regulations for State Employees and the Collective Working Agreement between the Judiciary Workers' Union (*Sindicato de Trabajadores del Organismo Judicial-STOJ)* (hereinafter STOJ) and the Judiciary of Guatemala. The main articles of these regulatory instruments, useful for understanding the case, are transcribed below.

A.1. Constitution of the Republic of Guatemala

7, 2021 and Official letter No. OC-438-2021/WGLS/ifgn of the Financial Management Unit of the Accounting Division of the Judiciary of July 19, 2021.

[20] These include the following documents: Governmental Agreement 99-2020 of the President of the Republic of Guatemala, of July 30, 2020; Official letter No. 2215-CRFR/Ibfg of the Personnel Department of the Judiciary, of September 28, 1999 and Official letter No. 532-JAAF/aamg of the Personnel Department of the Judiciary, of April 28, 2000.

[21] The Court received the statements rendered by affidavit of the alleged victims Floricelda Hernández Guerra and Orlan Manuel Morales Pineda, obtained *ex officio* by the Court (evidence file, folios 3729 to 3752).

[22] The Court received the statement of the alleged victims Freddy Eduardo Ávila Rodríguez and Edgar Arnoldo Luarca Domínguez, as well as the expert opinion of Miguel Francisco Canessa Montejo, offered by the Commission, in public hearing.

[23] According to the Constitution of Guatemala, the term "Organism" is used as a synonym of "Power," and thus, Article 141 establishes that "Sovereignty is vested in the people who delegate its exercise to the Legislative, Executive, and Judicial Organisms […]."

34. Article 116 of the Constitution of Guatemala regulates the right to strike of State workers, establishing the following:

> Article 116. Regulation of strikes for State workers. Associations, groups, and unions formed by workers of the State and its decentralized and autonomous entities, may not participate in partisan political activities.
> The right to strike of workers of the State and its decentralized and autonomous entities is recognized. This right may only be exercised in the manner provided for in the relevant laws and in no case may it affect the provision of essential public services.[24]

A.2. Law on Unionization and Strike Regulations for State Employees, Decree No. 71-86

35. This law is the main instrument for the regulation of collective disputes in the public sector. The articles applicable to this case are transcribed below in their current wording at the time of the facts.

> Article 4. Procedures
> In order to exercise the right to strike, employees of the State and its autonomous and decentralized entities shall observe the procedures established in the Labor Code, Decree 1441 of the Congress of the Republic, as applicable, and the following provisions:
> a) The direct procedure shall be mandatory for the conciliatory negotiation of collective agreements or settlements on working conditions, always taking into account for their solution the legal provisions of the General Budget of Income and Expenditures of the State and, if applicable, that of the decentralized and autonomous entities in question. Said procedure shall be deemed to be exhausted if, within thirty days of the filing of the request by the interested party, no agreement has been reached, unless the parties agree to extend said term.
> b) Workers may resort to strike action only for claims of an economic or social nature, after exhausting the direct procedure and complying with the requirements established by law.
> c) No strike may take place when it is intended to affect the essential services referred to in Article 243 of the Labor Code, Decree 1441 of the Congress of the Republic and others established by law, as well as those ordered by the Executive in compliance with the Public Order Law;
> d) Strikes motivated by inter-union solidarity or by interests unrelated to economic-social demands are strictly prohibited; and
> e) Workers and civil servants who have participated in a strike, whether *de facto* or declared illegal by the competent Labor and Social Welfare courts, shall be subject to the sanctions established in Article 244 of the Labor Code, Decree 1441 of the Congress of the Republic, without prejudice to any criminal and civil liabilities they may have incurred.

> Article 6. Jurisdiction and Competence
> The Labor and Social Welfare Courts of the economic zone where the workers have their main center of operations or workplace are competent to hear collective disputes of an economic or social nature that arise between workers of the State, and the State and its decentralized and autonomous entities. In the event of a dispute involving workers of the Judiciary, the Labor and Social Welfare Appeals Court shall hear the case in the first instance, and in the second instance, the Supreme Court of Justice, thorough its respective chamber. For such purposes, the State shall draw up lists of members of the Conciliation and Arbitration Tribunals, submitting these to the Supreme Court of Justice in January of each year, through the Attorney General of the Nation.[25]

A.3. Labor Code

[24] Constitution of the Republic of Guatemala of May 31, 1985. Text available at: https://www.congreso.gob.gt/assets/uploads/congreso/marco_legal/ab811-cprg.pdf.

[25] Law on Unionization and Strike Regulations for State Employees. Decree Law 71-86 of December 24, 1986. Text available at: https://www.congreso.gob.gt/detalle_pdf/decretos/1698#gsc.tab=0.

36. Although the Labor Code mainly regulates relations between private law subjects, the labor regulations governing public employees and civil servants constantly refer to this Code, and therefore the main articles on collective disputes, applicable in a supplementary manner to the area of public employment, are transcribed below.

> Article 51. [...] To negotiate a Collective Agreement on Working Conditions, the respective union or employer shall transmit to the other party, for its consideration, via the closest administrative authority for labor affairs, the draft agreement so that it can discussed directly or with the intervention of an administrative authority in labor affairs or any other friendly arbitrator. If, 30 days after the request was filed by the respective union or employer, the parties have not reached a full agreement on their stipulations, any one of them may approach the labor courts, presenting the corresponding collective dispute, so that the point or points of disagreement may be settled [...]
>
> Article 223. The following rules govern the functioning and membership of the Executive Committee:
> […] d) the members of the Executive Committee [of the union] benefit from irremovability from the job they are performing during the entire time they are in office and up to 12 months after they have finished discharging their duties in said office. These members cannot be dismissed unless they give just cause for their dismissal, to be duly substantiated by the employer in a regular proceeding with the competent Labor Court.
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> Article 239. A legal strike is the temporary suspension and stoppage of work in an enterprise, agreed upon, executed and maintained peacefully by a group of three or more workers, upon compliance with the requirements set forth in Article 241, for the exclusive purpose of improving or defending against their employer the economic interests that are specific to them and common to said group.
> The ordinary courts shall punish, in accordance with the law, any act of coercion or violence carried out on the occasion of a strike against persons or property.
> An illegal strike is one that does not meet the requirements established in Article 241.
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> Article 241. For a strike to be declared lawful, the workers must:
> a) strictly adhere to the provisions of Article 239, first paragraph;
> b) exhaust the conciliation procedures; and
> c) include at least two-thirds of the persons who work in the respective company or production center and who have initiated their labor relationship prior to the time of the collective economic-social dispute.
>
> Article 243. A strike may not be carried out:
> a) By the workers of transportation companies, while they are on a journey and have not completed it.
> b) By the workers of clinics, hospitals, hygiene and public cleaning services; and those who work in companies that provide power, lighting, telecommunications, and water processing and distribution plants for the service of the population, unless the necessary personnel is provided to prevent the suspension of such services, without causing serious and immediate harm to public health, safety and the economy;
> c) State security forces. […]
>
> Article 244. When a strike is declared illegal and the workers carry it out, the Court must grant the employer a period of 20 days during which the latter, without incurring any liability, can terminate the labor contracts of workers who participate in a strike. The same rules apply in the case of *de facto* or illegitimate strikes [...].
>
> Article 394. If no agreement is reached or commitment made to resort to arbitration, within 24 hours of the failure to achieve conciliation, any of the delegates may request the respective Labor and Social Welfare judge to rule on the lawfulness or unlawfulness of the strike action, a ruling that must be awaited before engaging in the strike or work stoppage. The corresponding order will be issued subject to subsequent circumstances changing the characterization made, in which case a ruling shall be made about whether or not the requirements set forth in Articles 241 and 246.[26]

A.4. Collective Agreement on Working Conditions

[26] Cited by the Commission in its Merits Report, folios 17 and 18.

37. On August 17, 1992, the STOJ entered into a Collective Agreement on Working Conditions with the Judiciary, for a two-year period. The agreement was approved by the Ministry of Labor and Social Welfare, through resolution No. 2956 of November 20, 1992. The denunciation of this agreement in 1994 and the difficulties in negotiating a new one were the origin of the dispute that led to the 1996 strike, as explained below.

38. The relevant provisions of the Collective Agreement are the following:

> Article 1. Purpose of the Agreement. The general purpose of this agreement is to regulate, harmonize and develop relations and the mutual interests of the Judicial Branch and its employees, with the aim of achieving stability and greater efficiency in its work, always preserving the correct and effective functioning of the institution.
>
> Article 3. Professional Law. This agreement has the character of a professional law between the institution and its employees, being superior to any norm, if the latter diminishes or misrepresents the economic and social benefits established herein.
>
> Article 21. Disciplinary Regime. Pursuant to the provisions of Article 108 of the Constitution of the Republic of Guatemala, and until the Civil Service Law of the Judicial Branch is enacted, the disciplinary regime pertaining to employees of the Judicial Branch shall be governed by the Civil Service Law, Decree 1748 of the Congress of the Republic, the Law of the Judiciary and Ruling 23-82 of the Supreme Court of Justice, insofar as it does not contravene the Constitution of the Republic of Guatemala.
>
> Article 22. Hearing for the worker. The dismissal of a worker shall be agreed upon after a five-day hearing with the interested party.
>
> Article 56. Term of the Agreement. This agreement shall remain in force for a period of two years from the date of its approval in accordance with the law.[27]

B. Renegotiation of the collective agreement and the strike of 1996

B.1. The denunciation process and renegotiation of the collective agreement

39. On October 18, 1994, the STOJ denounced the Collective Agreement on Working Conditions signed between the Judiciary and the Union before the General Labor Inspectorate for the purpose of starting direct negotiations to sign a new agreement. Since the direct negotiation of the new agreement was unsuccessful, on November 21, 1994, the STOJ filed an economic and social dispute before the First Chamber of the Labor and Social Welfare Appeals Court (hereinafter the "First Chamber").[28] On that same date, the First Chamber decided that the STOJ had not exhausted the direct procedures and therefore requested that it should pursue such actions.[29] On September 8, 1995, the STOJ asked the First Chamber to consider the direct procedure exhausted; however, the Chamber informed the STOJ that the process had been suspended until the appeals filed before the Constitutional Court by the Union itself were resolved. On November 28, 1995, the Second Chamber of the Labor and Social Welfare Appeals Court (competent due to the Judiciary's vacations schedule) ruled that the direct procedure had been exhausted.[30]

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[27] Collective Working Conditions Agreement signed between the Judiciary of the State of Guatemala and the Judiciary Workers' Union', August 17, 1992 (evidence file, folios 5 to 16).

[28] *Cf.* Brief presented before the First Chamber of the Labor and Social Welfare Appeals Court of Guatemala City by the Secretary General of the STOJ on November 21, 1994 (evidence file, folios 3527 to 3535).

[29] *Cf.* Ruling of the First Chamber of the Labor and Social Welfare Appeals Court in the context of Collective Dispute No. 730-94 on November 21, 1994 (evidence file, folios 3537 to 3539).

[30] *Cf.* Ruling of the Second Chamber of the Labor and Social Welfare Appeals Court in the context of Collective Dispute No. 730-94 of November 28, 1995 (evidence file, folios 3541 and 3542).

40. Having exhausted the negotiations, on December 12, 1995, a Conciliation Court was convened, consisting of three judges of the First Chamber of the Labor and Social Welfare Court, a delegate representing the workers and a delegate representing the employers.[31] On February 15, 1996, said court issued a series of recommendations[32] related to the draft collective agreement and, on that same day, the conciliation process concluded.[33]

41. On February 16, 1996, the STOJ requested that the First Chamber order the General Inspectorate to proceed with the count of the workers who had instituted the labor dispute to determine whether they accounted for at least two-thirds of the Judiciary and, thus declare the legality of the strike. This order was issued to the Judicial Inspectorate on the same date.[34] However, on February 19, 1996, the Judiciary filed a motion for annulment against this order. It argued that a strike was not a viable way to resolve the dispute, since the administration of justice is an essential public service and the only way to settle the conflict was through arbitration. This motion was dismissed on February 23, 1996.[35] In response to this decision, the Judiciary filed an appeal before the Supreme Court of Justice. For its part, the General Labor Inspectorate consulted the First Chamber to determine whether the count should proceed. On February 26, 1996, the First Chamber ordered the suspension of the count until the challenges filed by the State were resolved.[36] Finally, on April 2, 1996 the Civil Chamber of the Supreme Court of Justice dismissed the appeal filed by the Judiciary against the decision of the First Chamber to order the count of workers.[37] At the time of this decision, the strike had already ended.

B.2. The strike and its subsequent characterization

42. Between March 19 and April 2, 1996, members of the STOJ went on strike. At that time, the count remained at a standstill and therefore the strike had not been declared legal. As a consequence of this strike, the Judiciary decided to stop paying the salaries of the striking employees. In response, the workers filed a motion for *amparo* before the Constitutional Court, which ruled in their favor on April 2, 1996 and ordered the Judiciary to pay the employees' salaries', provided they returned to work immediately.[38] The State asserted that the Supreme Court of Justice paid all the salaries, which was confirmed by a statement issued by the Financial Management Unit of the Accounting Office of the Judiciary.[39]

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[31] *Cf.* Ruling of the First Chamber of the in the context of Collective Dispute No. 730-94 of December 12, 1995 (evidence file, folios 3546 and 3547).

[32] *Cf.* Ruling of the Court of Conciliation in the context of Collective Dispute No. 730-94 February 15, 1996 (evidence file, folios 3549 to 3552).

[33] *Cf.* Ruling of the Court of Conciliation in the context of Collective Dispute No. 730-94, February 15, 1996 (evidence file, folios 3553 and 3554).

[34] *Cf.* Ruling of the First Chamber of the Labor Court of Appeals in the context of Collective Dispute No. 730-94 on February 16, 1996 (evidence file, folios 27 and 28).

[35] *Cf.* Ruling of the First Chamber of the Labor and Social Welfare Appeals Court in the context of Collective Dispute No. 730-94 of February 23, 1996 (evidence file, folios 37 to 39).

[36] *Cf.* Ruling of the First Chamber of the Labor and Social Welfare Appeals Court in the context of Collective Dispute No. 730-94 on February 26, 1996 (evidence file, folios 41 and 42).

[37] *Cf.* Ruling of the Supreme Court of Justice, Civil Chamber on April 2, 1996 (evidence file, folios 50 to 55).

[38] *Cf.* Ruling of the Constitutional Court on April 2, 1996 (evidence file, folio 45).

[39] *Cf.* Official letter No. OC-438-2021/WGLS/ifgn of the Financial Management unit of the Accounting Division of the Judiciary of July 19, 2021 (evidence file, folios 3826 to 3830).

43. On April 23, 1996, the Office of the Attorney General of the Nation filed a motion before the First Chamber for the purpose of securing a declaration of illegality of the strike.[40] As grounds for its request, the Attorney General's Office argued, among other things, that:

> In accordance with Article 116 of the Constitution of the Republic of Guatemala, the Law on Unionization and Strike Regulations for State Employees, and the Labor Code, in order to hold a strike it is necessary to comply with the requirements indicated in said legal instruments, which were neither satisfied nor complied with and on the contrary were violated with the *de facto*, illegitimate and illegal strike, carried out by workers of the Judiciary. This undoubtedly violated the procedure established by the specific law intended to address this kind of dispute, which was totally unnecessary, unproductive and illegal, especially in the case of an essential public service.[41]

44. On May 13, 1996, the First Chamber declared this motion admissible and ruled that the strike action spearheaded by members of the STOJ was "illegitimate." On this point, it dismissed the argument presented by the STOJ according to which the workers were not on strike but in permanent General Assembly, making use of their constitutional right of peaceful resistance, considering that such argument lacked legal standing. It also granted the Supreme Court of Justice a period of 20 days to determine who had participated in the strike and to implement the dismissals. In this regard the Chamber determined that:

> In the case at hand, it merely falls to this court, under the aforementioned provision [244 of the Labor Code] to set a period of twenty days for the employer, which has the power to terminate labor contracts, to determine the workers who actually went on strike. This is a situation that must be established administratively in a precise manner after a review of the lists that were provided as evidence, since an examination of these reveals certain inaccuracies that could negatively affect the rights of workers who did not suspend work and are included in the list.[42]

B.3. Remedies to challenge the ruling on the illegality of the strike

45. On May 23, 1996, the STOJ filed a motion of *amparo* against the declaration of unlawfulness of the strike. This motion was ruled inadmissible on February 18, 1997, by the Chamber of Amparo Appeals and Preliminary Proceedings of the Supreme Court of Justice. The chamber considered that "[R]eading the transcribed documents shows that they are confusing for lack of clarity and therefore, the *amparo* action being filed is not viable."[43] On that same day, the STOJ appealed this judgment; however, on June 19, 1997 [44] it was upheld by the Constitutional Court. Among other arguments, the Constitutional Court stated that if the appellant (the STOJ) considered that the action of the challenged authority violated the law, it should have used the ordinary remedy,

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[40] *Cf.* Motion of illegitimacy and illegality of the *de facto* strike agreed and carried out by members of the STOJ filed by the Office of the Attorney General of the Nation before the First Chamber of the Labor and Social Welfare Appeals Court on April 23, 1996 (evidence file, folios 3559 to 3574).

[41] Motion of illegitimacy and illegality of the *de facto* strike agreed and carried out by members of the STOJ filed by the Office of the Attorney General of the Nation before the First Chamber of the Labor and Social Welfare Appeals Court on April 23, 1996 (evidence file, folio 3561).

[42] Decision of the First Chamber of the Labor and Social Welfare Appeals Court in the context of Collective Dispute No. 730-94 the May 13, 1996 (evidence file, folios 60 and 61).

[43] Ruling of the Supreme Court of Justice, Chamber of Amparo Appeals and Preliminary Trials, of February 18, 1997 (evidence file, folio 74).

[44] *Cf.* Ruling of the Constitutional Court of June 19, 1997 (evidence file, folios 80 to 87).

which was the appeal for annulment, to challenge the decision. By not doing so, the appellant failed to observe the "principle of definitiveness" [45] as a prerequisite for the petition for *amparo*.

46. The STOJ then appealed the ruling of the First Chamber that declared the strike unlawful. On February 23, 1999, the First Chamber referred this appeal to the Supreme Court of Justice. On March 17, 1999, the Supreme Court decided that it would not hear the appeal, arguing that ruling being challenged was issued by a court comprising several judges (*tribunal colegiado*) and, therefore, was not appealable,[46] pursuant to Article 140 of the Law on the Judiciary.[47]

47. On March 20, 1999, the STOJ filed a motion for *amparo* with the Constitutional Court against the decision of the Supreme Court, arguing that the Law on the Judiciary was not applicable since their right to appeal was contained in Article 6 of the Law on Unionization and Strike Regulations for State Employees. The latter establishes that the Supreme Court of Justice has jurisdiction to hear in second instance collective disputes of an economic social-disputes nature involving employees of the Judicial Branch. On July 8, 1999, the Constitutional Court declared the motion for appeal inadmissible, arguing that neither the Law on Unionization and Strike Regulations nor the Labor Code establish a specific procedure for declaring a strike unlawful, and the respective challenge of such a declaration, and therefore, the Law on the Judiciary should be applied, which establishes that there is no appeal against rulings issued by courts comprising several judges (*tribunales colegiados*).[48]

C. Dismissal of employees by the Supreme Court and subsequent motions of appeal

48. On September 1, 1999, the Supreme Court of Justice proceeded to dismiss 404 employees who had allegedly participated in the strike.[49] At least 18 members of the STOJ submitted evidence indicating that they had worked during the strike.[50] On September 6, 1999, the Supreme Court of Justice corrected the ruling of September 1, eliminating from the list those union members who were included despite not having participated in the strike and adding other employees.[51]

49. On September 25, 1999, the STOJ filed a motion for *amparo* against the decisions of the Supreme Court, arguing that the dismissals did not comply with Article 22 of the Collective

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45 *Cf.* Ruling of the Constitutional Court of June 19, 1997 (evidence file, folio 86).

46 *Cf.* Ruling of the Civil Chamber of the Supreme Court of Justice on March 17, 1999 (evidence file, folios 547 to 549).

47 According to this article on the resolution of motions: "The judge shall decide the motion without further proceedings, within a period of three days after the hearing and if it has been opened for evidence, the decision will be issued within the same term after the conclusion of the evidentiary period. The decision may be appealed only in those cases in which the special laws regulating the matter do not exclude this remedy. There shall be no appeal when the motion is decided by a court comprising several judges (*tribunal colegiado*). The time limit for resolving the appeal, when it is admissible to file it, shall be three days." (evidence file, folio 502).

48 *Cf.* Judgment of the Constitutional Court acting as a Special Court of Appeals the July 8, 1999 (evidence file, folios 562 to 575).

49 *Cf.* Ruling of the Supreme Court of Justice of September 1, 1999 (evidence file, folios 3583 to 3604).

50 In its Merits Report, the Commission indicated that it had information that the following employees had worked during the strike period: 1) Ajquejay Xec Rafael, 2) Arias Carlos Enrique, 3) Arriola Conde Luis René, 4) Caxaj Turnil Mario Juan Humberto, 5) Ejacalon Majzul Irrael, 6) Illescas Garcia de Suarez Rosa Nelly, 7) Leonardo Carlos Antonio, 8) Leonardo Oscar Moises, 9) López Arias Edgar Arturo, 10) López Giran Sandra Nineth, 11) Méndez Rodas Rolando Efraín, 12) Morales Matias Edgar Romeo, 13) Moya Ruiz Gloria Marina, 14) Ortiz Domínguez Edna Araceli, 15) Portillo Dora Carolina, 16) Quevedo Quezada de Marroquín Evelin Marleny, 17) Reyes Martínez, María Victoria and 18) Soto Godoy Sergio Eduardo (Merits Report, folio 23).

51 *Cf.* Ruling of the Supreme Court of Justice of September 6, 1999 (evidence file, folios 358 to 360).

Agreement that ordered a five-day hearing for all dismissed workers, or Article 12 of the agreement that established "union privilege or irremovability" (immunity from dismissal). In the context of this *amparo* proceeding, the Public Prosecutor's Office submitted a brief of considerations, in which it stated that:

> There is no evidence that, prior to the dismissal of the Judiciary workers referred to by the appellant, they were given the five-day hearing to which they are entitled, according to the aforementioned Collective Agreement on Working Conditions. Also, among those dismissed are members of the Executive Committee, the Advisory Council and members of branches of the Union of Judiciary Workers from the interior of the country, who as union leaders enjoy immunity from dismissal, which is extended to former union leaders, who may be dismissed only for just cause, as demonstrated by the employer in an ordinary trial before a competent court. This leads to the conclusion that the Judiciary workers were not given the corresponding hearing prior to their dismissal, which could have been carried out without any problem within the twenty days established by the First Chamber of the Court of Labor and Social Welfare Appeals in order to dismiss the workers who actually took part in the strike, provided that such circumstance had been established administratively, as stated by the relevant labor chamber. Likewise, by not pursuing an ordinary labor trial against workers who enjoy union immobility, in which the just cause for dismissal is based on the fact that they have been participants in an illegal strike movement, such circumstances constitute violations of the right to defense and due process of such workers of the Judiciary.[52]

50. On February 29, 2000, the Constitutional Court denied the motion for *amparo,* considering that, in view of the declaration of illegality of the strike, it was not necessary to initiate motions for dismissal and that, due to this very illegality, union privilege did not apply.[53]

51. On March 11, 2000, the STOJ filed a motion for clarification of the *amparo* ruling issued by the Constitutional Court on February 29, 2000.[54] The Constitutional Court rejected this motion in a decision on March 10, 2000.[55]

52. The STOJ also filed a complaint with the United Nations Verification Mission in Guatemala (hereinafter "MINUGUA"). On March 15, 2000, MINUGUA published the findings of its verification process. Among other considerations, it concluded that:

> [T]he result of the verification process indicates that freedom of association, in its modality of trade union freedom and the right to due process of law have been impaired by the following facts and/or actions:
> a) The reluctance to negotiate on the part of the Supreme Court of Justice […]
> b) The dismissal of union leaders […]
> c) The dual role of employer and judge of the Supreme Court of Justice […]

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[52] Considerations submitted by Carlos Ignacio Herrera Cordero as prosecuting agent of the Public Prosecution Service before the Constitutional Court in the context of the motion of *amparo* No. 841-99, of December 10, 1999 (evidence file, folios 640 to 641).

[53] *Cf.* Judgment of the Constitutional Court acting as Special Court of Appeals in the context of file No. 841-99 on February 29, 2000 (evidence file, folios 362 to 366). In this ruling, Judge Amado González Benítez issued a dissenting opinion in which he argued that: "the way in which they were dismissed violates due process of law for dismissing an employee of the Judiciary as established in Article 22 of the Collective Working Conditions Agreement [...]the appointing authority could well have made the employee the object of a subsequent dismissal in the case in question, in order to observe due process of law by conducting the hearing whereby it could have removed said cause by demonstrating his or her possible non-participation in the strike, thus avoiding unfair dismissals" (Separate dissenting opinion of Judge Amado González Benítez in the judgment of February 29, 2000, included in file 841-99, evidence file, folios 379 and 380).

[54] *Cf.* Motion for clarification presented by Igmain Galicia Pimentel before the Constitutional Court in file No. 841-99 on March 11, 2000 (evidence file, folios 618 and 619).

[55] *Cf.* Ruling of the Constitutional Court in the context of file No. 841-99, of March 10, 2000 (evidence file, folio 621). This Court notes that there is a problem with the date given for this ruling, since it predates the filing of the motion.

d) Disregard of judicial decisions […].[56]

53. Of the total of original petitioners who were dismissed, 28 were subsequently reinstated either because the appeals filed against their dismissal were successful or because they were rehired. Thus, the Inter-American Commission considered that the universe of alleged victims was limited to the 65 petitioners who were not rehired. It also noted that none of the six members of the STOJ's Executive Committee was rehired.[57] According to the Commission, of the 65 petitioners who were not reinstated, 49 filed some type of remedy against their dismissal.[58] However, the case file only contains evidence of the appeals filed by 14 persons.[59]

VII
MERITS

54. The instant case concerns the dismissal of a group of workers of the Judiciary[60] following the declaration of illegality of a strike organized after the failure of a process to renegotiate

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[56] Letter from MINUGUA to Víctor Hugo Godoy, president of COPRODEH, of March 15, 2000 (evidence file, folios 624 to 627).

[57] According to information provided by the Commission, six of the alleged victims formed part of the Executive Committee; however, in the information sheets on the alleged victims provided by the Commission there is only specific information on their role of the following persons on the STOJ's Executive Committee: Igmain Galicia Pimentel (evidence file, folio 188), Orlan Manuel Morales Pineda (evidence file, folio 248) and Adolfo Nery Rojas Martínez (evidence file, folio 321). In the case of Lorenzo David Cupul Luna, his personal file states that he is a member of the Labor and Dispute Secretariat of the Petén Branch, but it does not state whether this body forms part of the Executive Committee (evidence file, folio 172). Similarly, the file of Juan Girón Cáceres indicates that he was "Secretary of Interdepartmental Affairs" (evidence file, folio 194); the file of Oscar Moisés Leonardo indicates that he was "Vocal Secretary of the Branch of the Department of Baja Verapaz" (evidence file, folio 224); the file of Edgar Arturo López Arias, states that he was "Recording Secretary of the Baja Verapaz branch" (evidence file, folio 228); the file of Edgar Arnaldo Luarca Domínguez indicates that he was "General Secretary" (evidence file, folio 241); the file of Ramón Arístides Salazar Gálvez states that he was "Secretary of Disputes "(evidence file, folio 327). In addition, in the public hearing, the declarant Freddy Eduardo Ávila Rodríguez affirmed that at the time of the facts he was Secretary of Minutes and Agreements of the union branch in the Department of Chimaltenango.

[58] They are: 1) AJQUEJAY XEC Rafael; 2) ARIAS Carlos Enrique; 3) ARRIOLA CONDE Luis René; 4) BENITEZ Luis Eduardo; 5) BONILLA LÓPEZ Virgilio Marcos; 6) CANEL PÉREZ Alejandro; 7) CARIAS GÓMEZ Milton Rogers; 8) CASTAÑEDA VAIDES Oscar Leonel; 9) CASTILLO VERON Alfredo; 10) COCHOJIL MARTÍNEZ Héctor Aníbal; 11) CUPUL LUNA Lorenzo David; 12) CUYAN GONZALEZ Fidel; 13) CHEVES LUNA Gustavo Adolfo; 14) ESCALANTE Carlos Enrique; 15) GALICIA PIMENTEL Igmain; 16) GIRON Arnulfo; 17) GIRÓN CACEROS Juan; 18) GIRÓN GALINDO Gabriel de Jesús; 19) GONZÁLEZ Miguel; 20) GUERRA VALIENTE Carlos Enrique; 21) GUTIÉRREZ GARCÍA Roberto; 22) LEONARDO Carlos Antonio; 23) LEONARDO Oscar Moisés; 24) LETONA de GONZÁLEZ Alba Ninet; 25) LÓPEZ ARIAS Edgar Arturo; 26) LÓPEZ GARCÍA Gerardo; 27) LÓPEZ GIRÓN Marcos Humberto; 28) LÓPEZ LÓPEZ René Alberto; 29) MORALES MATÍAS Edgar Romeo (evidence file, folios 2104 and ff.); 30) MORALES PINEDA Orlan Manuel; 31) MORATAYA CASTELLANOS Ricardo; 32) MUÑOZ TALA Juan Francisco; 33) PADILLA IZEPPI Mynor Pablo; 34) PADILLA MENDEZ Oscar Basilo; 35) PALACIOS URIZAR Mario René; 36) PAXTOR Miguel Ángel; 37) PORTILLO Dora Carolina; 38) QUEVEDO QUEZADA de MARROQUIN Evelin Marleny; 39) REYNOSO MAS Minor Rolando; 40) RÍOS de LEÓN Armando Moisés; 41) ROJAS MARTÍNEZ Adolfo Nely; 42) RUANO SIAN Miguel Augusto; 43) SALAZAR GALVES Ramón Arístides; 44) SAMAYOA CARIAS Vicente; 45) SOLOGAISTOA MORAN Fernando Antonio; 46) SOTO GODOY Sergio Eduardo; 47) TECUN GARCÍA Edwin Remigio; 48) VELASQUEZ David Rubén; 49) VELASQUEZ Ramiro Fernando.

[59] They are: 1) CANEL PÉREZ Alejandro (appeal dismissed on (illegible date), evidence file, folio 2433); 2) CUPUL LUNA Lorenzo David (evidence file, folios 1980 and ff.; appeal dismissed on October 28, 1999, evidence file folio 2428); 3) GONZÁLEZ Miguel (appeal dismissed on September 14, 1999, evidence file folio 2430); 4) LEONARDO Carlos Antonio (evidence file, folios 975 and 976); 5) LEONARDO Oscar Moisés (evidence file, folios 2291 to 2293); 6) LETONA de GONZÁLEZ Alba Ninet (appeal granted in a ruling by the Fifth Labor and Social Welfare Court of the First Economic Zone of April 27, 2000, evidence file, folios 961 to 972); 7) LÓPEZ ARIAS Edgar Arturo (evidence file, folios 2075 and ff.); 8) LÓPEZ LÓPEZ René Alberto (appeal dismissed on September 14, 1999, evidence file folio 2432); 9) MORALES MATÍAS Edgar Romeo (evidence file, folios 2104 to 2107); 10) MUÑOZ TALA Juan Francisco (evidence file, folios 2132 1 2133; appeal dismissed on October 25, 1999, evidence file, folio 2945); 11) PORTILLO Dora Carolina (evidence file, folios 2164 to 2168); 12) QUEVEDO QUEZADA de MARROQUIN Evelin Marleny (evidence file, folio 2178); 13) REYNOSO MAS Minor Rolando (evidence file, folios 2196 to 2208) and 14) SOTO GODOY Sergio Eduardo (evidence file, folio 2411).

[60] According to the representative, the alleged victims held the following positions within the Judiciary:

the Collective Agreement on Working Conditions between the STOJ and the Judiciary. Accordingly, this Court will analyze, in a first chapter, the alleged violations of the guarantees of due process and judicial protection in the context of the declaration of illegality of the strike and the dismissal process (1). It will then examine the alleged violations of the rights to strike, to freedom of association, to freedom to organize and to work of the dismissed workers (2).

VII-1
RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS AND THE DUTY TO ADOPT PROVISIONS OF DOMESTIC LAW[61]

A. Arguments of the parties and of the Commission

55. The ***Commission*** recalled that the guarantees established in Article 8 of the Convention apply not only to criminal proceedings, but also to proceedings of another nature, in particular to disciplinary proceedings. Thus, it considered that the dismissal of the Judiciary workers was a punitive process, and therefore the guarantees relating to a criminal proceeding should be applied *mutatis mutandi*. It emphasized that, in this specific case, the alleged victims were not subject to an administrative procedure prior to the sanction of dismissal, that they were not notified of the start of a disciplinary procedure against them, nor did they have the opportunity to defend themselves. It considered that the argument that there was no need for a prior procedure with the guarantees of due process - since the cause of dismissal was provided for in the applicable regulations and was the direct consequence of the declaration of illegality of the strike - was not a reason to deprive the alleged victims of an opportunity to defend themselves in relation to the aforementioned strike action and whether or not it should entail a sanction.

56. The Commission also stressed that the alleged victims filed a series of appeals against the ruling of May 13, 1996, which declared the strike illegal. They also filed a series of appeals against the order of dismissal issued by the Supreme Court of Justice on September 1, 1999. Finally, after filing motions for reconsideration or other appeals, 28 persons were rehired. However, the Commission considered that the 65 alleged victims who were not rehired did not have access to an effective remedy for these human rights violations, and therefore held that the State violated the right to judicial protection established in Article 25(1) of the American Convention in relation to Article 1(1) thereof, to the detriment of the 65 employees who were not rehired.

57. For all the foregoing reasons, the Commission concluded that the State violated the right to be heard, the right of defense and the right to judicial protection established in Articles 8(1), 8(2) (b) and (c) and 25 of the Convention, in relation the obligations established in Article 1(1) of the same instrument, to the detriment of the 65 employees of the Judiciary who were dismissed from their posts and were not subsequently rehired.

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a) Justice operators: court secretaries, court officials, secretaries and officials of the Peace Courts and court commissioners.

b) Administrative workers: technicians, warehouse managers, office workers, budget analysts, receptionists, clerks and accounting assistants.

c) Maintenance workers: janitors, carpenters, elevator operators, upholsterers, parking attendants, drivers, welders.

[61] Articles 8 and 25 of the Convention in relation to Articles 1(1) and 2 thereof.

58. In his final arguments,[62] the ***representative*** agreed with the Commission, considering that the dismissal of the Judiciary workers as a result of the strike held in 1996 was a punitive measure that did not comply with the guarantees established in Article 8(2) of the Convention.

59. The ***State*** argued that there are different ways to comply with the duty to provide judicial protection. It indicated that, in this case, it could be established that the judicial guarantees were expressed through different mechanisms whereby the workers could defend themselves and be heard. In the first place, it held that the procedure for declaring the legality of a strike was the appropriate occasion for workers to present arguments in their defense. However, it alleged that they voluntarily decided not to make use of the procedural opportunity granted them by law to be heard, by going on strike in clear disregard of the legal provisions to the detriment of the public service. It pointed out that the Labor Code also protects the rights of the employer, and that the workers, by not exhausting the procedure to declare the legality of the strike, prompted its declaration of illegality and allowed the employer to proceed with the dismissal as a consequence of the very same declaration of unlawfulness.

60. The State further argued that the workers also had a second opportunity to be heard through a motion for reconsideration. Thus, if they considered that their dismissal was unfair, they could have challenged it through a motion for reconsideration. It indicated that this remedy is used as an acquired right by legal custom and, although it is not specifically established in the Labor Code, it is commonly used by workers in accordance with the principle of simplicity and minimum formalities of labor laws. It emphasized that some employees, after filing a motion for reconsideration, succeeded in being reinstated because they proved that there were no grounds for dismissal, thereby demonstrating the effectiveness of the remedy.

61. The State added that the workers also had at their disposal the ordinary labor proceeding for reinstatement, established in Article 321 of the Labor Code. It explained that this proceeding is used by the parties to allow a labor judge to examine the grounds for dismissal, in order to ratify or not such grounds. This process depends on the dispositive principle, and therefore it was up to the employees to initiate it or not. The State also argued that it was possible to file a motion for reinstatement, under Article 380 of the Labor Code, or to file a constitutional action for *amparo*. Thus, the State concluded that, at no time - from the beginning of the procedure to declare the strike illegal until the dismissals - were the workers deprived of judicial guarantees, since throughout the process they had access to suitable remedies and procedures to be heard and to defend themselves.

B. Considerations of the Court

62. The Court recalls that this case examines the dismissal of 65 workers of the Judiciary for participating in a strike action. The Court will now determine whether these procedures respected the procedural guarantees applicable to materially punitive proceedings (1). It will then analyze whether the State guaranteed the right to judicial protection by providing the alleged victims with a simple, prompt and effective remedy against the decisions taken in this case that allegedly violated their fundamental rights (2).

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[62] With regard to the effects of the failure to submit a pleadings and motions brief by the representatives of alleged victims, in application of Article 29(2) of the Rules of Procedure, the Court has, in other cases, allowed the parties to participate in certain procedural actions, taking into account the stages that have expired in accordance with the opportune procedural moment. In those cases, the Court considered that, in view of the absence of the pleadings and motions brief, it would not assess any arguments or evidence by the representative that added facts, rights, or alleged victims to the case, or any claims for reparations distinct from those requested by the Commission, since they were not submitted at the appropriate procedural moment. Those procedural rules will be applied in the instant case. Cf. *Case of Liakat Alibux v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of January 30, 2014. Series C No. 276, para. 29, and *Case of Martínez Esquivia v. Colombia. Preliminary objections, merits and reparations.* Judgment of October 6, 2020. Series C No. 412, para. 77 and footnote 79.

B.1. Right to judicial guarantees

63. This Court has repeatedly pointed out that although Article 8 of the American Convention is entitled "Judicial Guarantees," its application is not limited to judicial remedies in the strict sense, "but [to] the set of procedural requirements that must be observed"[63] so that individuals can adequately defend themselves against any act of the State that could affect their rights. Thus, due process of law must be respected in any act or omission on the part of State bodies in any proceeding, whether of an administrative, punitive or jurisdictional nature.[64]

64. In accordance with Article 8(1) of the Convention, in the determination of rights and obligations of a civil, labor, fiscal or of any other nature, individuals have the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial judge or tribunal, previously established by law. Failure to comply with any of these guarantees implies the violation of said conventional provision.[65]

65. Thus, in any matter, even in labor and administrative matters, the discretion of the administration has limits that may not be exceeded, one such limit being respect for human rights.[66] The Court has indicated that any public authority, whether administrative, legislative or judicial, whose decisions could affect the rights of individuals, must adopt such decisions with full respect for the guarantees of due legal process.[67] In this regard, Article 8 of the Convention establishes the guidelines of due process of law, which refers to the set of procedural requirements that must be observed so that individuals can adequately defend themselves in the face of any act by the State that could affect their rights.[68]

66. For its part, Article 8(2) of the Convention establishes the minimum guarantees that must be ensured by States in accordance with due process of law.[69] In its case law, the Court has ruled on the scope of this article and has established that it is not limited to criminal proceedings, but has been extended, where pertinent, to administrative processes before State authorities and to judicial proceedings of a non-criminal nature in the constitutional, administrative and labor areas.[70] Likewise, it has indicated that, both in these and in other types of matters, "the individual

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[63] *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights)*. Advisory Opinion OC-9/87 if October 6, 1987. Series A No. 9, para. 27, and *Case of Moya Solís v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of June 3, 2021. Series C No. 425, para. 66.

[64] *Cf. Case of Baena Ricardo et al. v. Panama. Merits, reparations and costs.* Judgment of February 2, 2001. Series C No. 72, para. 124 and *Case of Moya Solís v. Peru, supra*, para. 66.

[65] *Cf. Case of Claude Reyes et al. v. Chile. Merits, reparations and costs.* Judgment of September 19, 2006. Series C No. 151, para. 117, and *Case of Moya Solís v. Peru, supra*, para. 67.

[66] *Cf. Case of Baena Ricardo et al. v. Panama, supra*, para. 126, and *Case of Casa Nina v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2020. Series C No. 419, para. 88.

[67] *Cf. Case of the Constitutional Court v. Peru. Merits, reparations and costs.* Judgment of January 31, 2001. Series C No. 71, para. 71, and *Case of Casa Nina v. Peru, supra*, para. 88.

[68] *Cf. Case of the Constitutional Court v. Peru, supra*, para. 69, and *Case of Casa Nina v. Peru, supra*, para. 88.

[69] *Cf. Case of Baena Ricardo et al. v. Panama, supra,* para. 137, and *Case of Cuya Lavy et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of September 28, 2021. Series C No. 438, para. 152.

[70] *Cf. Case of the Constitutional Court v. Peru, supra*; *Case of Baena Ricardo et al. v. Panama, supra*; *Case of Ivcher Bronstein v. Peru. Merits, reparations and costs.* Judgment of February 6, 2001. Series C No. 74; *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2010. Series C No. 218; *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2013. Series C No. 268, *Case of Maldonado Ordóñez v. Guatemala. Preliminary*

also has the overall right to due process applicable in criminal matters."[71] This indicates that the guarantees of Article 8(2) of the Convention are not exclusive to criminal proceedings, but can be applied to proceedings of a punitive nature. Therefore, in each case it is necessary to determine the minimum guarantees that apply to a given non-criminal punitive process, according to its nature and scope.[72]

67. In the case *sub judice*, after the strike was declared illegal, the First Chamber of the Labor and Social Welfare Appeals Court, in a ruling of May 13, 1996, set a term of twenty days for the Judiciary to apply Article 244 of the Labor Code. This article states that when a strike is declared illegal and the workers carry it out, the court must grant the employer a period of twenty days during which, without any liability on its part, it may terminate the employment contracts of workers who strike. The Chamber expressly warned, with respect to the list of employees who participated in the strike, that this "must be established administratively in a precise manner, after a review of the lists that were provided as evidence, since an examination of these reveals certain inaccuracies that could negatively affect the rights of workers who did not suspend work and are included in the list."[73]

68. The Supreme Court of Justice, as the employer of the Judiciary workers, issued an order on September 1, 1999, in which it decided to immediately dismiss 404 employees, including the alleged victims in this case.[74] Among the reasons given to justify this decision, the Supreme Court took into account that: "a) the attitude adopted by the employees who went on strike prevented the population from exercising the right and access to justice […]; b) the harm caused to justice because of the above-mentioned unlawful strike was a blow to the rule of law; and c) the employees who participated in the unlawful strike put private interests above public ones, with the main party affected being the people of Guatemala […]."[75] Owing to certain inconsistencies in the list of dismissed employees, the Supreme Court had to issue a second ruling on September 6, 1999.[76]

69. Thus, the alleged victims were dismissed without any prior procedure, solely in application of an order that attributed unlawful conduct to them and established dismissal as a consequence. Thus, the dismissal was the sanction for having participated in a strike declared illegal, and therefore the individuals who were subject to this sanction of dismissal were entitled to due process guarantees in the disciplinary processes, although their scope, content or intensity might vary. The Court therefore considers that the violations alleged in this case should also be analyzed in light of the guarantees established in Article 8(1) and 8(2)(b) and (c), namely, the right to be heard, the right to be notified in advance and in detail of the accusation made and the right to have adequate time and means to prepare a defense. In the Court's opinion, these guarantees are applicable to the specific case.

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objection, merits, reparations and costs. Judgment of May 3, 2016. Series C No. 311, *Case of Moya Solís v. Peru, supra and Case of Cuya Lavy et al. v. Peru, supra*.

71 *Case of the Constitutional Court v. Peru, supra*, para. 70, and *Case of Cuya Lavy et al. v. Peru, supra,* para. 152.

72 *Cf. Case of Maldonado Ordóñez v. Guatemala, supra*, para. 75, and *Case of Cuya Lavy et al. v. Peru, supra,* para. 152.

73 Ruling of the First Chamber of the Labor and Social Welfare Appeals Court in the context of Collective Dispute No. 730-94 of May 13, 1996 (evidence file, folios 60 and 61).

74 *Cf.* Ruling of the Supreme Court of Justice of September 1, 1999 (evidence file, folios 3583 to 3604).

75 Ruling of the Supreme Court of Justice of September 1, 1999 (evidence file, folio 3585).

76 *Cf.* Ruling of the Supreme Court of Justice of September 6, 1999 (evidence file, folios 358 to 360).

70. In this regard, the Court has developed the right to be heard protected under Article 8(1) of the Convention, in the general sense of understanding the right of every person to have access to a court or State body responsible for determining their rights and obligations.[77] In this sense, the Court reiterates that the guarantees established in Article 8 of the American Convention suppose that victims should have ample possibilities of being heard and acting in their respective proceedings,[78] so that they can make their claims and present evidence, and that these will be fully analyzed in a serious manner by the authorities before a decision is taken on the facts, responsibilities, punishments and reparations.[79] In this specific case, the Court finds that this guarantee meant that a proceeding should be initiated in relation to each of the alleged victims in order to determine whether they had actually participated in the strike, during which their right to a hearing and defense would be guaranteed.

71. With regard to an individual's right to receive prior and detailed notification of an accusation against him, in accordance with Article 8(2)(b) of the Convention, the Court has established that this means that a defendant must be provided with a full description of the conduct attributed to him, including factual information regarding the charges, as an essential reference document for the defendant to be able to defend himself. Therefore, the defendant has the right to be informed of the facts of which he is accused, described in a clear, detailed and precise manner.[80] In the case of *Barreto Leiva v. Venezuela*, the Court referred to this guarantee and stated that, to satisfy it "the State must notify the accused not only of the charges against him, that is, the crimes or offenses with which he is charged, but also of the reasons for them, the evidence for such charges and the legal definition of the facts."[81]

72. Furthermore, in accordance with this Court's jurisprudence, the right to adequate time and means to prepare the defense, enshrined in Article 8(2)(c) of the Convention, requires the State to guarantee the defendant's access to the case file against him. Similarly, it must respect the adversarial principle, which guarantees the defendant's involvement in the analysis of the evidence.[82] In addition, the adequate means to prepare the defense includes all the material and evidence used, as well as the exculpatory documents.[83]

73. The alleged victims in this case were not afforded a hearing prior to their dismissal, which would have allowed them to know beforehand the conduct of which they were accused and to present exculpatory evidence, in order to effectively exercise their defense. They were merely notified of the Supreme Court's decision, without being given the opportunity to prove that they

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77 *Cf. Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs.* Judgment of January 29, 1997. Series C No. 30, para. 74, and *Case of Roche Azaña et al. v. Nicaragua. Merits and reparations.* Judgment of June 3, 2020. Series C No. 403, para. 85.

78 *Cf. Case of the Constitutional Court v. Peru, supra*, para. 81, and *Case of Roche Azaña et al. v. Nicaragua, supra,* para. 90.

79 *Cf. Case of Baldeón García v. Peru. Merits, reparations and costs.* Judgment of April 6, 2006. Series C No. 147, para. 146, and *Case of Roche Azaña et al. v. Nicaragua, supra,* para. 90.

80 *Cf. Case of Fermín Ramírez v. Guatemala. Merits, reparations and costs.* Judgment of June 20, 2005. Series C No. 126, para. 67, and *Case of Grijalva Bueno v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of June 3, 2021. Series C No. 426, para. 101.

81 *Case of Barreto Leiva v. Venezuela. Merits, reparations and costs.* Judgment of November 17, 2009. Series C No. 206, para. 28.

82 *Cf. Mutatis Mutandi, Case of Palamara Iribarne v. Chile. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 135, para. 178, and *Case Cuya Lavy et al. v. Peru, supra,* para. 154.

83 *Cf. Case of Álvarez Ramos v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2019. Series C No. 380, para. 154, and *Case of Cuya Lavy et al. v. Peru, supra,* para. 154.

had not participated in the strike. Moreover, according to the statements of one of the alleged victims, this notification was not even made in person.[84]

74. The State claimed that the workers had the opportunity to be heard both in the proceeding declaring the strike illegal and through the remedies that they could have attempted against the order for their dismissal (*supra* paras. 59 to 61). However, with regard to the procedure for declaring a strike unlawful, it should be emphasized that this is not a process that allows for an analysis of the personal situation of each of the workers or of their possible participation or not in the strike. With respect to the appeals against the order of dismissal, the guarantee analyzed in this chapter implies a prior procedure that allows the worker to present evidence in his defense before a decision on his dismissal is taken. Thus, this Court agrees with the Commission in considering that the argument claiming that a prior procedure with the guarantees of due process was not necessary, because the reason for dismissal was already provided for in the applicable law and was a direct consequence of the declaration of illegality of the strike, is not a reason to deprive workers of the possibility of defending themselves as to whether or not they were involved in the strike and whether or not it should entail a sanction.[85]

75. It is clear from the records of the Supreme Court of Justice that the specific situation of each worker was not taken into account and that, despite the fact that the First Chamber of the Labor and Social Welfare Appeals Court itself warned of the need to correct the lists, these were not reviewed, which implied including workers who had not participated in the strike, as evidenced by the rehiring of at least 28 of the original petitioners (*supra* para. 53). Thus, having implemented the dismissals by means of an order that did not take into account the individual situation of each worker, the employer - in this case the Supreme Court of Justice- did not guarantee due process to the workers, whereby they could present evidence and exercise their right to defense, prior to dismissal.

76. Consequently, this Court considers that the State, by dismissing the 65 former employees of the Judiciary without affording them a prior proceeding in which they could hear the charges against them and submit evidence of not having participated in the strike, thereby exercising their right of defense, did not respect the judicial guarantees established in Articles 8(1), 8(2) (b) and 8(2)(c) of the American Convention.

B.2. Judicial protection

77. This Court recalls that Article 25 of the Convention establishes the obligation of States Parties to guarantee, to all persons under their jurisdiction, a simple, prompt and effective judicial remedy before a competent judge or court, against acts that violate their fundamental rights.[86] Thus, Articles 8, 25 and 1 of the Convention are interrelated to the extent that "[…] effective judicial remedies […] must be substantiated in accordance with the rules of due process of law,

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[84] In his statement, Orlan Manuel Morales Pineda indicated that he was never legally notified of his dismissal (Statement rendered by affidavit by Orlan Morales Pineda of June 19, 2021, evidence file, folio 3750).

[85] This argument was also included in the dissenting opinion of Judge Amado González Benítez in the judgment of February 29, 2000, issued by the Constitutional Court in response to a motion for *amparo* presented by the STOJ (dissenting opinion of Judge Amado González Benítez, judgment of February 29, 2000, file 841-99, evidence file, folios 379 and 380).

[86] *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 Cuya Lavy et al. v. Peru, supra,* para. 170.

[…] in keeping with the general obligation of […] 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)).”[87]

78. The Court has also considered that the effectiveness of the remedies must be assessed in this particular case, bearing in mind whether "there were domestic remedies that guaranteed real access to justice to claim reparation for the violations.”[88]

79. In addition, the Court's constant case law has indicated that, under Article 25 of the Convention, it is possible to identify two specific obligations pertaining to the States. The first obligation consists of embodying in law and ensuring the proper application of effective remedies before the competent authorities that protect all persons under their jurisdiction against acts that violate their fundamental rights or that entail the determination of their rights and obligations. The second obligation requires States to guarantee the means to enforce the respective decisions and final judgments issued by such competent authorities, so that the rights declared or recognized are effectively protected.[89]

80. With specific reference to the effectiveness of a remedy, the Court has established that the meaning of the protection guaranteed under Article 25 is the real possibility of having access to a judicial remedy whereby a competent authority, capable of issuing a binding decision, may determine whether or not there has been a violation of a right claimed by an individual and that, if a violation is found, the remedy will be useful to restore that person's enjoyment of his or her right and to provide redress.[90]

81. The Court will now analyze the arguments related to the violation of judicial protection with respect to the facts of the case in the following order: 1) the remedies filed by the alleged victims, through the STOJ,[91] to challenge the declaration of illegality of the strike and 2) the remedies filed by the alleged victims and by the STOJ with respect to their dismissals.

B.2.1 Remedies to challenge the declaration of illegality of the strike

82. The alleged victims pursued different remedies through the STOJ to challenge the declaration of illegality of the strike. First, during the strike, the workers filed a motion for *amparo* before the Constitutional Court against the Judiciary's decision to withhold payment of the strikers' wages. In a ruling on April 2, 1996, said court ordered the payment of the employees' wages, provided they immediately returned to work.[92] As to the effectiveness of this remedy, the State provided evidence that the salaries were actually paid, and therefore the remedy was effective.

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87 *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case Bedoya Lima et al. v. Colombia. Merits, reparations and costs.* Judgment of August 26, 2021. Series C No. 431, para. 125.

88 *Cf. Case of Goiburú et al. v. Paraguay. Merits, reparations and costs.* Judgment of September 22, 2006. Series C No. 153, para. 120, and *Case of Cuya Lavy et al. v. Peru, supra,* para. 170.

89 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra*, para. 237, and *Case Ríos Avalos et al. v. Paraguay. Merits, reparations and costs.* Judgment of August 19, 2021. Series C No. 429, para. 148.

90 *Cf.* Advisory Opinion OC-9/87, *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 Ríos Avalos et al. v. Paraguay, supra*, para. 149.

91 The economic and social dispute that is the subject of this case was instituted by the STOJ, as one of the two parties that negotiated the renewal of the collective work agreement, in accordance with Article 51 of the Labor Code (*supra* para. 36). For this reason, in most of the proceedings related to this economic and social dispute that led to the strike, it is the STOJ that acts on behalf of the workers of the Judiciary.

92 *Cf.* Ruling of the Constitutional Court of April 2, 1996 (evidence file, folio 45).

83. With respect to the declaration of illegality of the strike by the First Chamber of the Labor and Social Welfare Appeals Court, issued in response to a motion filed by the Office of the Attorney General on April 23, 1996, the STOJ filed a motion for *amparo*. On February 18, 1997, the Chamber of Amparo Appeals and Preliminary Trials of the Supreme Court of Justice ruled that the motion for *amparo* was inadmissible, considering that the arguments presented were "confusing for lack of clarity and because of that, the appeal being filed cannot succeed."[93] On that same day the STOJ appealed this decision; however, the Constitutional Court upheld this ruling on June 19, 1997, indicating that if the appellants considered that there were errors in the procedure to declare the strike unlawful, they could have challenged these by means of ordinary remedies. In this regard, the Constitutional Court considered that "if the appellant observed that the action of the authority being challenged entailed a violation of the law, it should have used the ordinary remedy (annulment) provided for by law to challenge the ruling being questioned, and by not doing so the appellant failed to observe the principle of definitiveness."[94]

84. At the same time, the STOJ filed an appeal against the declaration of illegality of the strike before the Supreme Court, which was rejected outright in a ruling on March 17, 1999. The Supreme Court considered that in this case Article 140 of the Law of the Judiciary should be applied, which establishes that a ruling issued by a court composed of several judges (*tribunal colegiado*) cannot be appealed.[95] The Union then challenged this interpretation by filing a motion for *amparo*, which was dismissed.[96] In fact, the procedure for declaring a strike illegal does not expressly establish the possibility of appeals. In view of this, the interpretation followed by both the Supreme Court and the Constitutional Court was that the Law of the Judiciary, which provides for the impossibility of appeal against a decision taken by a collegiate court (*tribunal colegiado*), should be applied in a supplementary manner. However, the Union argued that the law that should be applied was Article 6 of the Law on Unionization and Strike Regulations, which states that:

> "The Labor and Social Welfare Courts of the economic zone where the workers have their main center of operations or workplace are competent to hear collective disputes of an economic and social nature which occur between workers of the State and the State and its decentralized and autonomous entities. In the event of disputes between workers of the Judiciary, the Labor and Social Welfare Courts of Appeals shall hear the case in the first instance, and in the second instance, the Supreme Court of Justice, through its respective chamber […]."

85. In this regard, the Court highlights the lack of clarity in the domestic regulations with respect to the procedure for declaring a strike illegal and, above all, regarding the possibility of appealing such a decision. This situation left the Judiciary employees unprotected.[97] Thus, the workers did not have effective and straightforward access to judicial protection owing to the lack of certainty and clarity regarding the appropriate remedies that should be pursued to challenge the declaration of illegality of the strike. This constituted a violation of the right to judicial protection, established in Article 25 of the Convention, in relation to the obligation to respect and guarantee rights and the duty to adopt provisions of domestic law contained in Articles 1(1) and 2 of the same instrument.

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93 Ruling issued by the Chamber of Amparo Appeals and Preliminary Proceedings of the Supreme Court of Justice on February 18, 1997 (evidence file, folio 74).

94 Ruling of the Constitutional Court of June 19, 1997 (evidence file, folio 86).

95 *Cf.* Decision of the Civil Chamber of the Supreme Court of Justice of March 17, 1999 (evidence file, folios 547 and ss.).

96 *Cf.* Judgment of the Constitutional Court acting as a Special Court of Appeals on July 8, 1999 (evidence file, folios 562 and ff.).

97 *Cf. Case of Maldonado Ordóñez v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of May 3, 2016. Series C No. 311, para. 120.

B.2.2. Remedies filed to challenge the dismissals

86. In response to an act of dismissal, under domestic legislation the former employees could have filed an ordinary labor proceeding, a motion for *amparo* or a motion for reconsideration. With regard to the latter, the State itself explained that this remedy is not specifically contemplated in the Labor Code, but is commonly used and accepted by virtue of the provisions of Article 15 of said Code.[98]

87. With respect to the 65 alleged victims in this case, the Commission noted that 49 of them filed some type of appeal against the act of dismissal. However, the case file only contains evidence of the appeals filed by 14 persons (*supra* para. 53). The Commission itself indicated that, in at least four cases, the worker voluntarily did not file any appeal.[99] Likewise, the decisions of the pertinent authorities are not available in all cases. Consequently, this Court does not have sufficient information to assess the effectiveness of these remedies, and will therefore not rule on this aspect of the Commission's allegations.

88. The STOJ also filed a collective motion for *amparo* before the Constitutional Court, which was rejected on February 29, 2000.[100]In this case, the appeal judges examined the challenged ruling and concluded that due process had not been violated.[101] In response to this conclusion, the STOJ filed a motion for clarification, which was rejected in a ruling on March 10, 2000.[102] All these rulings were reasoned and allowed the STOJ to present arguments against the dismissals. The negative outcome of these does not necessarily imply that the State has failed in its duty to guarantee an effective remedy. In the Court's opinion, the conclusions reached by the appeal judges are not manifestly arbitrary or unreasonable; furthermore, as indicated in the preceding paragraphs, the analysis of the effectiveness of the remedies does not depend on an eventual decision in favor of the interests of the alleged victims.

89. Therefore, on this point, given the lack of evidence regarding the appeals for reconsideration and the existence of reasoned decisions in the *amparo* proceeding followed by the STOJ, the Court considers that the State of Guatemala did not violate the right to judicial protection of the 65 former employees of the Judiciary.

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98 According to this article "Cases not contemplated by this Code, by its regulations or by the other labor laws, must be resolved, firstly, in accordance with the principles of Labor Law; secondly, in accordance with equity, custom or local usage in harmony with said principles, and, finally, in accordance with the principles and provisions of Common Law."

99 These are the cases of the workers Freddy Eduardo Ávila Rodríguez, Manuel Armando García Avendaño, Marvin Manolo López Reyna and Genaro Orellana (folios 6 to 11).

100 *Cf.* Judgment of the Constitutional Court acting as a Special Court of Appeals in the context of case No. 841-99 of February 29, 2000 (evidence file, folios 362 ff.).

101 In fact, the Constitutional Court considered that, "On the basis of the examination of the background, it was established that the authority being challenged took the decision to dismiss several of its employees, including members of the Executive Committee of the Workers Union, because, as the appointing authority it was required to implement what had been decided by the Labor Chamber which heard the case […] which declared that the action being promoted by the Union was unlawful. Since that ruling was a final ruling and, on that basis, had fully established the cause for dismissal, it was unnecessary to file preliminary proceedings of dismissal or hold a regular trial to determine the contracts according to the case, because the power to terminate labor relationships had already been granted by the competent judicial authority. It had ruled that the strike was unlawful and as a result concluded that the consequence of that action was the dismissal of the striking employees, the only limitation being that it should be previously administratively proven that they had gone on strike […] Because its course of action is to abide by the provisions of the final court ruling, this Court considers that it has respected court proceedings and is not violating the constitution at all." (Judgment of the Constitutional Court acting as a Special Court of Appeals in the context of file No. 841-99 on February 29, 2000, evidence file, folio 365).

102 *Cf.* Ruling of the Constitutional Court in the context of file No. 841-99 of March 10, 2000 (evidence file, folio 621).

C. Conclusion

90. In accordance with the foregoing paragraphs, the Court finds that the State is responsible for the violation of the rights to be heard, to have prior and detailed notification of the charges made, and to have adequate time and means to prepare a defense, contained in Articles 8(1), 8(2)(b) and 8(2)(c) of the American Convention, in relation to the obligation to respect and guarantee the rights contained in Article 1(1) of the same instrument, to the detriment of the 65 former employees of the Judiciary listed in the Single Annex. With respect to the possibility of challenging the declaration of illegality of the strike, this Court considers that the State is responsible for the violation of the right to judicial protection, contained in Article 25 of the Convention, in relation to the obligation to respect and guarantee rights and the duty to adopt provisions of domestic law contained in Articles 1(1) and 2 of the same instrument, to the detriment of the 65 former employees of the Judiciary listed in the Single Annex.

VII-2
RIGHTS TO STRIKE, TO FREEDOM OF ASSOCIATION, FREEDOM TO ORGANIZE AND THE RIGHT TO WORK IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS AND THE DUTY TO ADOPT PROVISIONS OF DOMESTIC LAW[103]

A. Arguments of the parties and of the Commission

91. The ***Commission*** recalled that the right to strike is protected under Article 26 of the Convention, and is expressly recognized in Article 45 (c) of the OAS Charter. It added that Article 26, interpreted within the framework of Article 29, in light of Articles 1(1) and 2 of the Convention, imposes immediately enforceable obligations to respect and guarantee rights, to apply non-discrimination, to adopt measures to ensure the enjoyment of these rights and to provide suitable and effective remedies for their protection.

92. At the time of the facts, according to Article 241 (c) of the Labor Code, for a strike to be declared legal, at least two-thirds of the total number of workers of the Judiciary had to participate. The Commission pointed out that this requirement was contrary to ILO Convention 87 on freedom of association, and this had already been emphasized by the ILO Committee of Experts.[104] Indeed, in assessing the proportionality of this restriction on the right to strike, the Commission considered that, whereas the requirement for a prior vote by workers to hold a strike may serve a legitimate purpose and is a suitable measure, the requirement to have the support of two-thirds of the workers constitutes an excessive restriction on the right to strike that that could be understood as rendering it, in practice, ineffective. Thus, it considered that this requirement did not comply with the principle of proportionality.

93. The Commission also considered that the direct consequence of declaring the strike illegal was the collective dismissal of the workers. Therefore, taking into account that in the view of the Commission the State violated the right to strike, and that the corresponding authorities based the dismissals on the fact that the strike was carried out, there are also sufficient elements to declare the violation of the right to work of those employees who were dismissed and were not rehired.

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[103] Article 26 of the Convention in relation to Articles 16, 1(1) and 2 thereof.

[104] *Cf.* Observation (CEACR) adopted in 1989, published in 76th ILO session (1989), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

94. Accordingly, the Commission concluded that the State violated the rights to strike and to work contained in Article 26 of the American Convention, in relation to the obligations established in Articles 1(1) and 2 thereof, to the detriment of the 65 alleged victims.

95. In his final arguments, the ***representative*** agreed with the Commission, considering that the State did not respect the right to strike and that the dismissals affected the alleged victims' right to work.

96. The ***State*** argued that, according to the ILO Committee on Freedom of Association, the recognition of the right to engage in strike action generally admits as possible exceptions only those that could be imposed on certain types of public servants and workers in essential services, in the strict sense of the term. It emphasized that all civil servants working in the Judicial Branch are considered as public servants who exercise functions on behalf of the State, and therefore their right to strike may be restricted or suspended. It further argued that, although Article 243 of the Labor Code concerning essential services that are subject to restrictions of the right to strike does not include the administration of justice, Article 4 (d) of the Law on Unionization and Strike Regulations for State Employees establishes that the administration of justice and its auxiliary institutions are essential public services. Thus, it considered that the restriction imposed on Judiciary workers to go on strike is legitimate and complies with international standards. It added that, as a compensatory measure, Article 4(e) of the Law of Unionization and Strike Regulations for State Employees establishes the possibility of workers resorting to conciliation and arbitration procedures in order to assert their labor claims.

97. Regarding the proportionality of the requirement of the vote of two-thirds of the workers for a strike to be declared lawful, it argued that this requirement was not applicable to employees of the Judiciary, since the latter could not go on strike, but had to resort directly to the aforementioned arbitration procedure. It pointed out that this requirement, established by Article 241(c) of the Labor Code, was reformed by means of Decree No. 13-2001, which reduced the voting requirement from two-thirds to half plus one. It claimed that this reform ensures that the declaration of strike legality is more accessible to workers. It added that, since 2016, a bill was submitted with a new reform to Article 241 of the Labor Code, further reducing the quorum required to declare a strike legal.

98. With respect to the right to work, the State reiterated that, as public officials in an essential service, the workers of the Judicial Branch were restricted in their access to strike action, for which reason they had to resort to compulsory arbitration as a compensatory measure. It indicated that arbitration is an expeditious, objective and impartial process that complies with the guidelines established by the Committee on Freedom of Association. However, the workers decided to hold a *de facto* and illegal strike, for which reason the sanction of dismissal was lawful and based on legal norms consistent with international standards. For all of the above reasons, the State considered that it was not responsible for the violation of Article 26 of the Convention in relation to Articles 1(1) and 2 of the same instrument.

B. Considerations of the Court

99. The Court will analyze the arguments presented by the parties and the Commission and to this end considers it pertinent to recall the content and scope of Article 26 of the Convention (1). It will then examine the right to strike (2) and its impact on the right to work in the specific case (3).

B.1. General considerations regarding the content and scope of Article 26 of the American Convention

100. Regarding the scope of Article 26 of the American Convention in relation to Articles 1(1) and 2 thereof, this Court has understood that the Convention incorporates the so-called economic, social, cultural and environmental rights (ESCER) into its catalog of protected rights, derived from the norms recognized in the Charter of the Organization of American States (OAS), as well as the rules of interpretation set forth in Article 29 of the Convention. This instrument prevents the limitation or exclusion of the enjoyment of the rights established in the American Declaration, including those recognized in domestic law. Likewise, in accordance with a systematic, teleological and evolving interpretation, the Court has drawn on the international and national *corpus iuris* on the matter to give specific content to the scope of the rights protected by the Convention, in order to determine the scope of the specific obligations of each right.[105]

101. Accordingly, the Court uses the sources, principles and criteria of the international *corpus iuris* as special applicable norms to determine the content of the ESCER protected by Article 26 of the Convention. The Court has also indicated that the aforementioned norms are used to determine the rights in question as a complement to the provisions of the Convention. Thus, it has repeatedly affirmed that it is not assuming jurisdiction over treaties in which it has none; nor is it granting conventional rank to norms contained in other national or international instruments related to ESCER.[106] On the contrary, the Court makes an interpretation in accordance with the guidelines set forth in Article 29 and in line with its case law, which allows it to update the significance of the rights derived from the OAS Charter that are recognized by Article 26 of the Convention.

102. Moreover, in determining the content and scope of the ESCER involved, the Court gives special emphasis to the American Declaration, since, as this Court has established:

> […][T]he member states of the Organization have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus, the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS.[107]

103. The Court also reiterates that human rights treaties are living instruments, the interpretation of which must evolve with the times and with current living conditions. This evolutive interpretation is consistent with the general rules of treaty interpretation established in Article 29 of the American Convention, and in the Vienna Convention. Furthermore, the third paragraph of Article 31 of the Vienna Convention authorizes the use of interpretative means such as agreements or the relevant rules or practice of international law that States have expressed on the subject matter of the treaty, which are some of the methods related to an evolving view of the Treaty. Thus, in order to determine the scope of the rights derived from the economic, social, educational, scientific and cultural norms contained in the OAS Charter, the Court refers to the relevant instruments of the international *corpus iuris*.[108]

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105 *Cf. Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2017. Series C No. 340, para. 141 to 149, and *Case of Vera Rojas et al. v. Chile, supra*, para. 95.

106 *Cf. Case of the Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations and costs.* Judgment of November 25, 2013. Series C No. 272, para. 143, and *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras.* Judgment of August 31, 2021. Series C No. 432, para. 63.

107 *Interpretation of the American Declaration of the Rights and Duties of Man, in the context of Article 64 of the American Convention on Human rights.* Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 43.

108 *Cf. The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Legal Process.* Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 114, and *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras, supra*, para. 65.

104. The Court also finds it pertinent to recall that there are two types of obligations derived from the recognition of ESCER, which are protected by Article 26 of the Convention: those that are immediately enforceable and those of a progressive nature. In relation to the former (immediately enforceable obligations), the Court recalls that the States must adopt effective measures to ensure access, without discrimination, to the benefits recognized by the ESCER, and in general to advance toward their full realization. With regard to the latter (obligations of a progressive nature), progressive realization means that the States Parties have the specific and constant obligation to advance as rapidly and efficiently as possible toward the full realization of those rights, subject to available resources, through legislation or other appropriate means. There is also an obligation of non-retrogression with respect to the realization of the rights achieved. Thus, the conventional obligations of respect and guarantee, as well as the adoption of measures of domestic law (Articles 1(1) and 2), are essential to achieve their effectiveness.[109]

105. In consideration of the foregoing, this case does not require an analysis of State conduct related to the progressive development of the ESCER; rather, the Court must determine whether the State guaranteed the protection of such rights to the 65 former employees who were dismissed from the Judiciary as a result of the strike. In other words, the Court must determine whether the State fulfilled its immediately enforceable obligations with respect to the right to work and the right to strike. It is therefore incumbent upon this Court to rule on the State's conduct with respect to compliance with its obligations to guarantee the right to strike and the right to work and to job security.

B.2. The right to strike, in relation to the right to freedom of association and freedom to organize

106. In its advisory role, this Court has already established that the right to strike is one of the fundamental human rights of workers, which may be exercised independently of their organizations.[110] This is specified in Article 45(c) of the OAS Charter (right to strike "by the workers"), and is indicated by the deliberate placement of its wording separately from the rights of trade union associations, in Articles 8(b) of the Protocol of San Salvador and 8(1)(d) of the ICESCR.[111] It is also enshrined in Article 27 of the Inter-American Charter of Social Guarantees ("workers have the right to strike"). Otherwise, the negative dimension of freedom of association in its individual aspect could be impaired. It is also a right of trade associations in general.

107. The Court notes that although the right to strike is not expressly recognized in the ILO Conventions, it is significant that Article 3 of Convention 87 on Freedom of Association and Protection of the Right to Organize, to which Guatemala is a party, recognizes the right of workers' organizations to "organize […] their activities in full freedom and to formulate their program of action." In that regard, the Committee on Freedom of Association has recognized the importance of the right to strike as "an intrinsic corollary to the right to organize protected by Convention No. 87."[112]

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[109] *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 190, and *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras, supra*, para. 66.

[110] *Cf. Rights to Freedom to Organize, Collective Bargaining, and Strike, and their Relation to other Rights, with a Gender Perspective.* Advisory Opinion OC-27/21 of May 5, 2021. Series A No. 27, para. 95.

[111] The positioning of a provision may be a factor of great importance for its interpretation. *Cf. Enforceability of the Right to Reply.* Advisory Opinion OC-5/85 7/86 of August 29, 1986. Series A No. 5, para. 47, and Advisory Opinion OC-27/21, *supra*, para. 95.

[112] *Cf.* Compilation of decisions of the Committee on Freedom of Association, Sixth Edition, 2018, para. 754. Cf. Committee on Freedom of Association, Report 344, Case No. 2471, paragraph 891; Report 346, Case No. 2506,

108. The Court also notes that, in addition to being widely recognized in the international *corpus iuris*, the right to strike has also been recognized in the constitutions and legislation of the OAS Member States.[113] In this sense, it can be considered as a general principle of international law. In particular, the Constitution of Guatemala states:

> Article 104. Right to strike and work stoppage. The right to strike is recognized and is to be exercised in accordance with the law, after all conciliation procedures have been exhausted. These rights may be exercised only for reasons of an economic or social order. The laws shall establish the cases and situations in which a strike or work stoppage shall not be allowed.[114]

109. According to the Committee on Freedom of Association, a strike is generally defined as "a temporary work stoppage (or slowdown) willfully effected by one or more groups of workers with a view to enforcing or resisting demands or expressing grievances, or supporting other workers in their demands or grievances."[115] The Court agrees with this definition, and considers that the right to strike is one of the fundamental rights of workers and their organizations, as it constitutes a legitimate means of defending their economic, social and professional interests. It is a measure exercised by workers as a means of exerting pressure on the employer in order to correct an injustice or to seek solutions to economic and social policy issues and problems arising in companies that are of direct interest to workers.[116] In this regard, the European Court has described the strike as the "most powerful" instrument for the protection of labor rights.[117]

110. The Inter-American Court has already mentioned the close links existing between freedom of association, freedom to organize and the right to strike. In this sense, the Court has emphasized that the relationship between freedom of association and freedom to organize is akin to one of genus and species, since the former recognizes the right of individuals to create organizations and act collectively in pursuit of legitimate goals, based on Article 16 of the American Convention, while the latter should be understood in relation to the specificity of the activity and the importance of the objective pursued by union activities, as well as its specific protection derived from Article 26 of the Convention and Article 8 of the Protocol of San Salvador. Similarly, it has indicated that the protection of the rights to collective bargaining and to strike, as essential tools of the rights of association and freedom to organize, is fundamental.[118]

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paragraph 1076, Case No. 2473, paragraph 1532; Report 349, Case No. 2552, paragraph 419; Report 354, Case No. 2581, paragraph 1114; and Report 362, Case No. 2838, paragraph 1077.

113 *Cf.* Constitution of the Argentine Nation, Article 14 bis; Constitution of the Plurinational State of Bolivia, Article 53; Constitution of Brazil, Article 9; Constitution of the Republic of Chile, Article 16; Constitution of Colombia, Article 56; Constitution of the Republic of Costa Rica, Article 61; Constitution of the Republic of Ecuador, Article 35.10; Constitution of El Salvador, Article 48; Constitution of Guatemala, Article 104; Constitution of the Republic of Honduras, Article 128; Constitution of the United Mexican States, Article 123 A XVIII; Constitution of the Republic of Nicaragua, Article 83, Constitution of Panama, Article 69; Constitution of the Republic of Paraguay, Article 98; Constitution of Peru, Article 28; Constitution of the Dominican Republic, Article 62(6), and Constitution of the Oriental Republic of Uruguay, Article 57, Canadian Charter of Rights and Freedoms, signed in 1982, Article 2.b.

114 Constitution of the Republic of Guatemala of May 31, 1985. Text available at: https://www.congreso.gob.gt/assets/uploads/congreso/marco_legal/ab811-cprg.pdf.

115 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, para. 783; *Cf.* Committee on Freedom of Association, Report 358, Case No. 2716, paragraph 862.

116 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, para. 758; *Cf.* Committee on Freedom of Association Report 344, Case No. 2496, paragraph 407; Report 353, Case No. 2619, paragraph 573; Report 355, Case No. 2602, paragraph 668; Report 357, Case No. 2698, paragraph 224; Report 371, Case No. 2963, paragraph 236, Case No. 2988, paragraph 852; and Report 378, Case No. 3111, paragraph 712.

117 ECHR, *Hrvatski Liječnički sindikat v. Croatia*, No. 36701/09. Judgment of November 27, 2014, para. 59.

118 *Cf.* Advisory Opinion OC-27/21, *supra*, para. 121.

111. With respect to freedom of association, Article 16(1) of the American Convention recognizes the right of persons to associate freely for ideological, religious, political, economic, labor, cultural, sporting or any other purpose. This Court has pointed out that the right of association enables individuals to create or participate in entities or organizations for the purpose of acting collectively in pursuit of the most diverse objectives, as long as these are legitimate.[119] The Court has established that those under the jurisdiction of the States Parties have the right to associate freely with other persons, without any intervention by the public authorities that could limit or impair the exercise of the respective right. This matter, therefore, is about the basic right to constitute a group for the pursuit of a lawful goal, without pressure or interference that may alter or denature its objective.[120] The Court has likewise noted that freedom of association also gives rise to positive obligations to prevent attacks on it, to protect those who exercise it and to investigate violations of that freedom; this requires the adoption of positive measures, even in the sphere of relations between individuals, should the case merit it.[121]

112. In labor matters, this Court has established that freedom of association protects the right to form trade union organizations and to implement their internal structure, activities and action programs, without intervention by the public authorities that would limit or hinder the exercise of the respective right.[122] At the same time, this freedom presupposes that each person may determine, without coercion, whether he or she wishes to join the association.[123] In addition, the State has the duty to ensure that individuals can freely exercise their freedom of association without fear that they will be subjected to violence of any kind; otherwise, the ability of groups to organize for the protection of their interests could be diminished.[124] In this regard, the Court has emphasized that freedom of association in labor matters "is not exhausted with the theoretical recognition of the right to form [trade unions], but also corresponds, inseparably, to the right to use any appropriate means to exercise this freedom."[125]

113. With regard to the right to freedom of association, Article 45(c) and (g) of the OAS Charter expressly states that employers and workers may associate freely for the defense and promotion of their interests, including the right of workers to collective bargaining and to strike. Likewise, Article XXII of the American Declaration recognizes the right of every person "to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature."

114. Thus, the Court has established that the protection of freedom of association fulfills an important social function, since the work of trade unions makes it possible to safeguard or improve the working and living conditions of workers, and to that extent its protection enables the realization of other human rights. In this sense, the protection of the right to collective bargaining

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119 *Cf. Case of Escher et al. v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of July 6, 2009. Series C No. 200, para. 169 and Advisory Opinion OC-27/2, *supra*, para. 121.

120 *Cf. Case of Baena Ricardo et al. v. Panama, supra*, para. 156 and Advisory Opinion OC-27/21, *supra*, para. 121.

121 *Cf. Case of Huilca Tecse v. Peru. Merits, reparations and costs.* Judgment of March 3, 2005. Series C No. 121, para. 76, and Advisory Opinion OC-27/21, *supra*, para. 121.

122 *Cf. Case of Baena Ricardo et al. v. Panama, supra*, para. 156 and Advisory Opinion OC-27/21, *supra*, para. 71.

123 *Cf. Case of Baena Ricardo et al. v. Panama, supra*, para. 158, and Advisory Opinion OC-27/21, *supra*, para. 71.

124 *Cf. Case of Huilca Tecse v. Peru, supra*, para. 77, and Advisory Opinion OC-27/21, *supra*, para. 71.

125 *Cf. Case of Huilca Tecse v. Peru, supra*, para. 70, and Advisory Opinion OC-27/21, *supra*, para. 71.

and strike, as essential tools of the rights of association and freedom to organize, is fundamental.[126]

115. In relation to the foregoing, this Court finds that the sphere of protection of the right to freedom of association in labor matters is not only subsumed to the protection of trade unions, their members and their representatives. Trade unions and their representatives enjoy specific protection for the effective performance of their functions, since, as this Court has established in its jurisprudence,[127] and as stated in various international instruments, [128] including Article 8 of the Protocol of San Salvador, in trade union matters, freedom of association is of the utmost importance for the defense of the legitimate interests of workers, and is part of the *corpus juri*s of human rights.[129]

116. In the instant case, given the failure of direct negotiations to reach a new collective agreement on working conditions, the STOJ initiated an economic-social dispute before the First Chamber of Appeals of Labor and Social Welfare. The conciliation procedure established in the Labor Code was followed, but concluded on February 15, 1996, without the parties reaching an agreement. Given this impasse in the negotiations, the STOJ filed a brief before the First Chamber of the Court of Appeals requesting that the General Labor Inspectorate be ordered to proceed with the count to determine whether the requirements to hold a legal strike under the Labor Code were met.

117. Indeed, according to Article 241 of the Labor Code in force at the time of the facts, in order to declare a strike lawful, the workers must "constitute at least two-thirds of the persons working in the respective company or production center, who have initiated their labor relationship prior to the collective economic or social dispute." Moreover, pursuant to Article 4 of the Law of Unionization and Strike Regulations for State Employees, in its version in force at the time of the facts, for State workers to exercise the right to strike, the law established the prior requirement of having exhausted the direct procedure and subparagraph c) stated that "No strike may be carried out when it is intended to affect the essential services referred to in Article 243 of the Labor Code, Decree 1441 of the Congress of the Republic and others established by law, as well as those ordered by the Executive in compliance of the Public Order Law."[130]

118. In its advisory role, this Court has already pointed out that the criterion of legality of the strike is a central element with respect to the possibility of exercising the right to strike. Thus, the prior terms and conditions established by law for a strike to be considered lawful should not be complicated to the point of making it impossible, in practice, to hold a legal strike. On the other hand, this Court considers it possible for States to establish compliance with certain preconditions within the framework of collective bargaining before resorting to the strike mechanism in defense

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126 *Cf.* Advisory Opinion OC-27/21, *supra*, para. 124.

127 *Cf. Case Baena Ricardo et al. v. Panama, supra*, para. 156, and Advisory Opinion OC-27/21, *supra*, para. 72.

128 *Cf.* ILO. Convention No. 87 Freedom of Association and Protection of the Right to Organize, June 17, 1948 and Convention No. 98 Right to Organize and Collective Bargaining, of June 8, 1949.

129 *Cf. Case of Baena Ricardo et al. v. Panama, supra*, para. 158, and Advisory Opinion OC-27/21, *supra*, para. 72.

130 Article 243 of the Labor Code established as essential services: "The following workers may not go on strike: a) workers of transportation companies, while they are on a journey and have not completed it. b) workers in clinics, hospitals, hygiene and public cleaning services; and those who work in companies that provide power, lighting, telecommunications and water processing and distribution services for the population, unless the necessary personnel is provided to avoid the suspension of such services, without causing grave and immediate harm to health, safety and public economy; c) the State's security forces […]".

of workers. However, these conditions must be reasonable and must not affect, in any way, the essential content of the right to strike or the autonomy of trade union organizations.[131]

119. In this case, the requirements for the legality of a strike by State workers were: 1) the exhaustion of direct negotiations; 2) that the strike be held for demands of an economic or social nature; 3) that it not affect essential services and 4) compliance with the legal requirements, in this case, with the provisions of Article 241 of the Labor Code in force at the time, which implied a minimum participation of at least two-thirds of the workers in the strike. The STOJ complied with the first requirements and, in order to comply with the provisions of the Labor Code, on February 16, 1996, it asked the competent judicial authority to order the General Labor Inspectorate to carry out the count. This request was granted. Despite the fact that the authorities rejected the various appeals attempted by the State against the decision to order the count (*supra* para. 41), it was never carried out. In fact, the Inspector General's Office consulted the First Chamber to determine whether the count should proceed, but on February 26, 1996, the First Chamber ordered the suspension of the count until the challenges were resolved.[132] In view of the material impossibility of complying with the legal requirements, the STOJ held a *de facto* strike from March 19 to April 2, 1996.

120. Thus, in the instant case, the declaration of illegality was linked to the fact that the STOJ did not comply with this requirement because the General Labor Inspectorate was unable to carry out the count. However, the count was not carried out for reasons beyond the Union's control. It should be noted that, in this case, both the employer and the authorities in charge of implementing and verifying compliance with the requirements form part of the State. Although the State-employer had the right to oppose the decision to carry out the count of the strike participants ordered by the First Chamber and executed by the General Labor Inspectorate, it should be noted that, once the final decision rejecting these appeals was issued, the count was not carried out and the case moved directly to the consideration of the motion of illegality filed by the State-employer itself to have the strike declared illegal. Between the two decisions - the final decision on the count and the filing of the motion for the declaration of illegality - more than twenty days passed, during which time the count could have been carried out.

121. With regard to the excessive complexity and lengthy delays in the prior procedures required to exercise the right to strike, the ILO's oversight bodies have stressed that the legal mechanisms for declaring a strike should not be so complex or cause such long delays that, in practice, it becomes impossible to carry out a lawful strike or that the action loses all its effectiveness. Similarly, the Committee on Economic, Social and Cultural Rights has brought to the attention of the States that the lengthy procedure required to declare a strike legal may constitute a restriction of the right recognized in Article 8(1) of the International Covenant on Economic, Social and Cultural Rights.[133]

122. Given that more than two years had passed between the start of the dispute in 1994 and the strike action, during which time all attempts at direct negotiation with the State-employer failed,[134] it may be concluded that the only tool left to the workers was the strike, as a last resort.

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131 *Cf.* Compilation of decisions of the Committee on Freedom of Association, *supra*, para. 789-790. Cf. Committee on Freedom of Association, Report 343, Case No. 2432, paragraph 1026; Report 346, Case No. 2488, paragraph 1331; Report 357, Case No. 2698, paragraph 225; Report 359, Case No. 2203, paragraph 524; Report 371, Case No. 2988, paragraph 850; and Report 375, Case No. 2871, paragraph 231.

132 *Cf.* Ruling of the First Chamber of the Labor and Social Welfare Appeals Court in the context of Collective Dispute No. 730-94 of February 26, 1996 (evidence file, folios 41 and 41).

133 CESCR. Compilation of final observations of the Committee on Economic, Social and Cultural Rights on countries of Latin America and the Caribbean (1989-2004).

134 In the results of the verification of the complaint filed by the STOJ, MINUGUA considered that "successive legal challenges and motions filed by the Attorney General's Office and the Supreme Court of Justice prevent, in fact, the

Therefore, the numerous appeals filed by the State against the decision authorizing the count by the General Labor Inspectorate, and its lack of diligence in implementing that decision, constituted an arbitrary obstruction by the State of the exercise of the right to strike by the former workers of the Judiciary.

123. With respect to the violation of freedom of association and freedom to organize, this Court notes that neither the Commission nor the representative expressly alleged the violation of these rights in this case. However, under the *iura novit curia* principle,[135] and given the close relationship that exists between the aforementioned rights (see *supra* paras. 110 to 115) the Court will rule on these violations in connection with the right to strike.

124. Indeed, in the instant case, the Court finds that a significant number of the alleged victims were Judiciary workers who, in the exercise of their rights to freedom of association and freedom to organize, had joined the STOJ.[136] Between March 19 and April 2, 1996, members of the STOJ went on strike, which was declared illegal and as a result of this declaration, the 65 alleged victims were dismissed, including some who were union leaders and who, therefore, enjoyed union privilege (immunity from dismissal) established in Article 223 of the Labor Code. This Court has already stated that trade unions and their representatives enjoy specific protection for the effective performance of their functions, since freedom of association in trade union matters is of the utmost importance for the defense of the legitimate interests of workers and is part of the *corpus juris* of human rights.[137] Therefore, the Court concludes that the declaration of illegality of the strike not only violated the right to strike but also the right to freedom of association and freedom to organize of the 65 alleged victims in this case.

125. Finally, in view of the requirement established by Guatemalan legislation at the time of the facts that a count had to be carried out and that this must reflect the participation of at least two-thirds of the workers, the Court deems it appropriate to analyze whether these preconditions for opting for the strike mechanism are reasonable and do not affect the essential content of the right to strike, freedom of association and freedom to organize. In this regard, the ILO Committee on Freedom of Association has already commented on the impact of this requirement on the right to strike and on union activities:

> "With regard to the majority vote required by one law for the calling of a legal strike (two-thirds of the total number of members of the union or branch concerned), non-compliance with which might entail a penalty by the administrative authorities, including the dissolution of the union, the Committee recalls the conclusions of the Committee of Experts (…) that such legal provisions constitute an intervention by the public authorities in the activities of trade unions which is of such a nature as to restrict the rights of these organizations, contrary to Article 3 of the Convention (Convention 87)."[138]

126. Indeed, the requirement of such a high rate of participation in the action makes a legal strike impossible in practice, so that its imposition implies an arbitrary restriction of the right to strike, of freedom of association and of freedom to organize.

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collective bargaining from materializing or delayed the procedure required to implement it." (Letter from MINUGUA to Víctor Hugo Godoy, president of COPRODEH of March 15, 2000, evidence file folio 625).

135 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 163 and *Case of González et al. v. Venezuela. Merits and reparations.* Judgment of September 20, 2021. Series C No. 436, para. 144.

136 According to the information provided by the Commission, 51 of the 65 alleged victims were members of the STOJ. Five expressly stated that they were not members and there is no information with respect to nine of them.

137 *Case of Baena Ricardo et al. v. Panama, supra*, para. 158, and Advisory Opinion OC-27/21, *supra*, para. 72.

138 ILO. Compilation of decisions of the Committee on Freedom of Association, *supra*, para. 805.

127. Consequently, the Court considers that the Guatemalan State is responsible for the violation of the right to strike, freedom of association and freedom to organize recognized in Articles 16 and 26 of the American Convention, in relation to Articles 1(1) and 2 of the same instrument, to the detriment of the 65 former employees of the Judiciary listed in the Single Annex.

B.2. The right to work and to job security

128. With regard to the specific labor rights protected by Article 26 of the American Convention, the Court has already determined that the wording of said article indicates that these rights are derived from the economic, social, educational, scientific and cultural standards contained in the OAS Charter.[139] In this sense, Articles 45(b) and (c),[140] 46,[141] and 34(g)[142] of the Charter establish that "[w]ork is a right and a social duty" and that this should be performed with "fair wages, employment opportunities, and acceptable working conditions for all." These articles also establish the right of workers to "associate themselves freely for the defense and promotion of their interests." They also require the State to "harmonize the social legislation" for the protection of such rights. In its Advisory Opinion OC-10/89, the Court indicated that:

> […] The Member States […] have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus, the Charter of the Organization cannot be interpreted and applied, as far as human rights are concerned, without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration.[143]

129. In this regard, Article XIV of the American Declaration establishes that "[e]very person has the right to work, under proper conditions, and to follow his vocation freely." This provision is relevant in defining the scope of Article 26, given that "the American Declaration constitutes, where applicable and in relation to the OAS Charter, a source of international obligations."[144] Furthermore, Article 29(d) of the American Convention expressly establishes that "[n]o provision of this Convention may be interpreted as: […] d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature have."

130. The Committee on Economic, Social and Cultural Rights, in General Comment No. 18 on the right to work, has stated that this right "also implies the right not to be unfairly deprived of

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139 *Cf. Case of Lagos del Campo v. Peru, supra*, para. 143, and *Case of Vera Rojas et al. v. Chile, supra,* para. 33.

140 Article 45 of the OAS Charter. - The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: […] b) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working; c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws […].

141 Article 46 of the OAS Charter. - The Member States recognize that, in order to facilitate the process of Latin American regional integration, it is necessary to harmonize the social legislation of the developing countries, especially in the labor and social security fields, so that the rights of the workers shall be equally protected, and they agree to make the greatest efforts possible to achieve this goal.

142 Article 34(g) of the OAS Charter. - The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: […] g) Fair wages, employment opportunities, and acceptable working conditions for all.

143 Advisory Opinion OC-10/89, *supra*, para. 43.

144 Advisory Opinion OC-10/89, *supra*, paras. 43 and 45.

employment."[145] It has also indicated that "[v]iolations of the obligation to protect follow from the failure of States Parties to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to work by third parties," which includes "the failure to protect workers against unlawful dismissal."[146]

131. It should be noted that job security does not entail an unrestricted permanence in the job; rather it implies respecting this right, among other measures, by granting due guarantees of protection to the worker so that, in case of dismissal, this is carried out with proper justification. This means that the employer must provide sufficient reasons for imposing this sanction with due guarantees, and that the worker may appeal this decision before the domestic authorities, who must ascertain that the justification given is not arbitrary or unlawful.[147] Likewise, in the case of *San Miguel Sosa et al. v. Venezuela,* the Court considered that the State fails to meet its obligation to guarantee the right to work and, therefore, to job security, when it does not protect its government officials from arbitrary dismissal.[148]

132. In the instant case, the 65 alleged victims were all employees of the Guatemalan Judiciary. This Court has already established that their dismissal violated the guarantee of the right to be heard and the right to be previously notified of the charges against them and to have adequate time and means to prepare their defense (*supra* para. 90). Furthermore, it found that the State violated the right to strike because it imposed numerous obstacles that prevented the strike from being carried out effectively, and that, in addition, in this specific case, it applied legislation that established disproportionate requirements for holding a strike (*supra* para. 127). In view of the foregoing, the Court considers that the dismissal of the alleged victims also constituted a violation of job security, as part of the right to work to which they were entitled.

133. In accordance with the foregoing, the State is responsible for the violation of the right to work of the 65 alleged victims, recognized in Article 26 of the Convention in relation to Article 1(1) thereof, to the detriment of the 65 former employees of the Judiciary listed in the Single Annex.

C. Conclusion

134. By virtue of the above considerations, this Court concludes that the State is responsible for the violation of Articles 16 and 26 of the Convention in relation to the obligations established in Articles 1(1) and 2 of the same instrument, for having established arbitrary restrictions on the right to strike, freedom of association and the freedom to organize of the 65 former employees of the Judiciary listed in the Single Annex. Likewise, Guatemala is responsible for the violation of Article 26 of the Convention, in relation to the general obligations established in Article 1(1) thereof, for not having ensured the right to work and job security of the 65 former employees of the Judiciary listed in the Single Annex.

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145 UN. Committee on Economic, Social and Cultural Rights, General Comment No 18: Right to Work, U.N. Doc. E/C.12/GC/18, November 24, 2005.

146 UN. Committee on Economic, Social and Cultural Rights, General Comment No18: Right to Work, *supra*.

147 *Cf. Case of Lagos del Campo v. Peru, supra*, para. 150, and *Case of Casa Nina v. Peru, supra*, para. 107.

148 *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs.* Judgment of February 8, 2018. Series C No. 348, para. 221, and *Case of Casa Nina v. Peru, supra*, para. 107.

VIII
REPARATIONS

135. 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 produced harm entails the obligation to make adequate reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[149] This Court has also established that reparations must have a causal nexus with the facts of the case, the violations declared, the damage proven, and the measures requested to redress the respective harm. Thus, the Court must analyze the concurrence of these factors in order to rule appropriately and according to the law.[150]

136. Therefore, taking into account the considerations on the merits and the violations of the American Convention declared in this judgment, the Court will now examine the claims presented by the Commission and the representatives of the victims, together with the corresponding observations of the State, in light of the criteria established in its case law concerning the nature and scope of the obligation to make reparation, for the purpose of ordering measures to redress the harm caused.[151]

A. Injured party

137. Pursuant to Article 63(1) of the Convention, this Court considers that anyone who has been declared a victim of the violation of any right recognized therein is an injured party. In this case, the Court considers as "injured party" the 65 persons listed in the Single Annex, which is an integral part of this judgment, who, as victims of the violations declared in Chapter VII, shall be the beneficiaries of the reparations ordered by the Court.

B. Measures of restitution

138. The ***Commission*** requested, in general terms, full reparation for the violation of the rights declared in the Merits Report.

139. The ***State*** alleged that the Commission did not specify the type of reparations requested nor did it justify why these should be ordered. It argued that this lack of precision violated its right of defense, since it made it impossible for it to challenge them. Thus, it considered that the reparation measures requested by the Commission were inadmissible.

140. According to the jurisprudence developed by this Court, in the event of an arbitrary dismissal of a public employee or official, the appropriate action is his or her reinstatement. However, in the instant case, this restitution measure of difficult to implement, due to the time that has elapsed between the facts and this judgment. Indeed, several of the victims have passed away and many of them are already retired, so it is not feasible to reinstate them. Therefore, given the violations declared in this judgment, the Court considers that the State must compensate the victims; this will be taken into account when establishing compensatory damages (*infra* paras. 154 to 158).

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149 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs.* Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala, supra*, para. 173.

150 *Cf. Case of Ticona Estrada v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala, supra,* para. 175.

151 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra*, paras. 25 and 26, and *Case Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala, supra,* para. 176

C. Measures of satisfaction

141. The ***Commission*** did not make specific recommendations on this point.

142. The ***State*** alleged that the Commission did not specify the type of reparations requested nor did it explain why these should be ordered. It argued that this lack of precision violated its right of defense, since it made it impossible for it to challenge such requests.

143. As it has done in other cases,[152] the ***Court*** orders the State to publish, within six months of notification of this judgment: a) the official summary of the judgment prepared by the Court, once, in the Official Gazette, in a legible and appropriate font; b) the official summary of the judgment prepared by the Court, once, in a newspaper with wide national circulation, and in a legible and appropriate font, and c) this judgment, in its entirety, available for at least one year, on an official website of the State, in a manner accessible to the public and from the home page of the website. The State shall immediately inform the Court once it has issued each of the publications ordered, regardless of the one-year term granted to present its first report as ordered in the ninth operative paragraph of this judgment.

D. Guarantees of non-repetition

144. The ***Court*** notes that the violation of the right to judicial protection, with respect to the appeals filed against the declaration of illegality of the strike, was due to a lack of clarity in the regulations governing this matter (*supra* para. 85). Thus, it finds it necessary to order the State, within two years, to clearly specify or regulate, through legislative or other measures, the remedy, procedure and judicial competence for challenging the declaration of illegality of a strike.

145. With respect to the regulations governing the right to strike, the Court reiterates that the different State authorities are obliged to exercise *ex officio* control of conventionality between the domestic provisions and the American Convention, within the framework of their respective competencies and the corresponding procedural regulations. In this task, the domestic authorities must take into account not only the treaty, but also the interpretation made of it by the Inter-American Court, the ultimate interpreter of the American Convention and, in particular, the standards established in this judgment.[153]

E. Other measures requested

146. The ***Commission*** requested, in general terms, that the State adopt the necessary measures of non-repetition to prevent similar events from occurring in the future. In particular, it requested that the rules of due process be applied in processes for the dismissal of civil servants, in accordance with the standards of the Convention and that domestic legislation and practices be adapted so that restrictions on workers' right to strike, which require a prior favorable vote by the workers, comply with international standards.

147. The ***State*** pointed out that in 1999, Congress issued the Law of the Judiciary Service for the purpose of regulating labor relations between the Judiciary and its employees and officials. With regard to the disciplinary process and the dismissal of workers, Article 65 establishes that: "The disciplinary sanctions provided for in this law shall be imposed by the corresponding unit of

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[152] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001, Series C No. 88, para. 79, and *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala, supra*, para. 185.

[153] *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 Cuya Lavy et al. v. Peru, supra*, para. 206.

the Judiciary's human resources system, except in the case of the sanction of dismissal which shall be imposed by the appointing authority." According to Article 66, the disciplinary process against any employee or official of the Judiciary begins with a complaint that must be filed before the appointing authority or any other judicial authority. Once the process is initiated, the Civil Service Law of the Judicial Branch guarantees procedural immediacy.

148. Continuing with the procedure, the appointing authority must summon the parties to a hearing within a period no longer than 15 days, so that they may present their respective evidence. At this hearing, the employee may be accompanied by an attorney and present all evidence. Once the process is completed, the employee may make use of several administrative remedies of review, revocation and appeal in order to challenge the decision. The State added that, on the issue of public service in general, there is a Civil Service Law, in force since 1969, which regulates the minimum guarantees in favor of public servants. With regard to dismissal, Articles 79 of this law and 80 of its regulations guarantee that all public servants who are subject to dismissal proceedings may exercise their right of defense and present exculpatory evidence, thus guaranteeing due process.

149. Thus, the State concluded that the Court should not accede to the reparations requested by the Commission regarding the measure of non-repetition on the application of the rules of due process in the context of proceedings for the dismissal of public officials, since such rules already exist in the domestic legal system.

150. With respect to the adaptation of the legislation concerning prior voting to go on strike, the State reiterated that Article 241(c) of the Labor Code was amended in 2001, reducing the voting requirement of two-thirds to half plus one. Therefore, the State has already adapted its legislation on this point.

151. The ***Court*** recognizes and appreciates the progress made by the State in relation to the guarantees of non-repetition. In this regard, as it has done in other cases, the Court deems it appropriate for the State to continue implementing these measures, but does not consider it necessary to monitor compliance in the context of this specific case. Therefore, in relation to these requests for measures of non-repetition, the Court considers that the issuance of this judgment and the reparations ordered in this chapter are sufficient and adequate to remedy the violations suffered by the victims.

F. Compensation

152. In general terms, the ***Commission*** requested that the State make full reparation for the human rights violations declared in its Merits Report, including pecuniary and non-pecuniary damage. In its final oral arguments during the public hearing, the victims' representative calculated the loss of earnings for each of the 65 victims at USD$ 272,000.00 (two hundred and seventy-two thousand United States dollars).

153. The ***State*** considered that, since the pleadings and motions brief was filed extemporaneously, no evidence was provided to prove the harm allegedly suffered by the victims.

F.1. Pecuniary damage

154. This Court has developed the concept of pecuniary damage in its case law and has established that this encompasses the loss of or detriment to the income of the victim, 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.[154] Moreover, the Court reiterates and emphasizes the entirely compensatory nature of the indemnities, whose nature and amount depend on the harm caused; therefore reparations cannot serve to enrich or impoverish the victims or their heirs.[155]

155. In the present case, by failing to file the pleadings and motions brief within the statutory time limit, the representative of the victims did not submit evidence of pecuniary damage at the appropriate procedural moment.

156. Thus, given the lack of evidence, this Court proceeds to determine in equity the pecuniary damage, estimating it at the sum of USD $40,000.00 (forty thousand United States dollars), which the State shall pay to each of the 65 victims listed in the Single Annex or to their beneficiaries, in accordance with domestic law.

F.2. Non-pecuniary damage

157. The ***Court*** has established in its case law that non-pecuniary damage "may include both the suffering and distress caused to the direct victims and their next of kin, the impairment of values that are very significant to them, as well as changes of a non-pecuniary nature in the living conditions of the victims." However, since it is not possible to assign a precise monetary equivalent to non-pecuniary damage, for the purposes of full reparation to the victims, this can only be compensated through the payment of a sum of money or the delivery of goods or services, as determined by the Court, through the reasonable application of judicial discretion and the principle of equity.[156]

158. Therefore, considering the circumstances of the instant case and the violations committed, the Court now establishes, in equity, the compensation for non-pecuniary damage in favor of the victims. Accordingly, the Court orders payment of the sum of USD$ 3,000.00 (three thousand United States dollars), for non-pecuniary damage in favor of each of the 65 victims listed in the Single Annex. The amounts established by the Court shall be paid within one year from notification of this judgment.

G. Costs and Expenses

159. The ***Commission*** and the ***State*** did not present arguments on this point. The ***representative***, in his final written arguments, requested that the State be ordered to pay costs, with an amount established in equity.

160. The ***Court*** has indicated that the claims of the victims or their representatives for costs and expenses, and the supporting evidence, must be presented to the Court at the first procedural opportunity granted to them, that is, in the pleadings and motions brief, without prejudice to those claims being updated subsequently, with the new costs and expenses

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[154] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala, supra*, para. 208.

[155] *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 *Julien Grisonas Family v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of September 23, 2021. Series C No. 437, para. 300.

[156] *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 the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala, supra*, para. 209.

arising from the proceedings before this Court.[157] Given that the representative did not submit a pleadings and motions brief, no specific claims or evidence on costs and expenses have been submitted, and therefore it is not appropriate to order their payment.

161. At the stage of monitoring compliance with this judgment, the Court may order the State to reimburse the victims or their representatives for any reasonable expenses incurred during that procedural stage.[158]

H. Method of compliance with the payments ordered

162. The State shall pay compensation for pecuniary and non-pecuniary damage as established in this judgment directly to the persons indicated herein, within one year of notification of this judgment.

163. If the beneficiary is deceased or dies before he or she receives the respective compensation, this shall be delivered directly to their heirs, in accordance with the applicable domestic law.

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

165. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the time frame indicated, the State shall deposit said amounts in their favor, in an account or certificate of deposit in a solvent Guatemalan financial institution, in United States dollars, and on the most favorable financial terms permitted by banking law and practice. If the corresponding compensation is not claimed within ten years, the amounts shall be returned to the State with the accrued interest.

166. The amounts established in this judgment as compensation for pecuniary and non-pecuniary damage shall be delivered in full to the beneficiaries, namely the persons listed in the Single Annex, as established in this judgment, without any deductions arising from possible charges or taxes.

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

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[157] *Cf.* Article 40(d) of the Court's Rules of Procedure. See also, *Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of August 27, 1998. Series C No. 39, paras. 79 and 82, and *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala, supra*, para. 220.

[158] *Cf. Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of August 24, 2010. Series C No. 214, para. 331, *and Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala, supra*, para. 222.

IX
OPERATIVE PARAGRAPHS

168. Therefore,

THE COURT

DECIDES,

Unanimously:

1. To dismiss the preliminary objection regarding the "fourth instance", pursuant to paragraphs 20 and 21 of this judgment.

2. To dismiss the preliminary objection regarding the failure to exhaust domestic remedies, pursuant to paragraphs 25 and 26 of this judgment.

DECLARES,

Unanimously, that:

3. The State is responsible for the violation of the rights recognized in Articles 8(1), 8(2)(b), 8(2)(c) and 25 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the 65 persons listed in the Single Annex, pursuant to paragraphs 62 to 90 of this judgment.

By six votes in favor and one against, that:

4. The State is responsible for the violation of the right to strike, to freedom of association, to freedom to organize and the right to work and to job security, recognized in Articles 16 and 26 of the American Convention on Human Rights, in relation to the obligation to respect and guarantee these rights and the duty to adopt provisions of domestic law, recognized in Articles 1(1) and 2 thereof, to the detriment of the 65 individuals listed in the Single Annex, pursuant to paragraphs 99 to 134 of this judgment.

Dissenting, Judge Eduardo Vio Grossi.

AND ESTABLISHES,

Unanimously, that:

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

6. The State shall issue the publications indicated in paragraph 143 of this judgment.

7. The State shall adapt its regulations regarding the remedy, procedure and judicial competence for challenging the declaration of illegality of a strike, pursuant to paragraph 144 of this judgment.

8. The State shall pay the amounts established in paragraphs 156 and 158 of this judgment as compensation for pecuniary and non-pecuniary damage, pursuant to paragraphs 162 to 167 of this judgment.

9. The State, within one year from notification of this judgment, shall provide the Court with a report on the measures adopted to comply with it, without prejudice to the provisions of paragraph 143 of this judgment.

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

Judges Humberto Antonio Sierra Porto and Eduardo Ferrer Mac-Gregor Poisot advised the Court of their separate concurring opinions. Judge Eduardo Vio Grossi advised the Court of his partially dissenting opinion.

DONE at San José, Costa Rica, on November 17, 2021, in a virtual session, in the Spanish language.

IACtHR. *Case of the Former Employees of the Judiciary v. Guatemala. Preliminary objections, merits and reparations.* Judgment of November 17, 2021, adopted by means of a virtual session at San Jose, Costa Rica.

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
Registrar

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Registrar

SINGLE ANNEX
List of Victims

	Surnames	Name	Identification
1	AJQUEJAY XEC	Rafael	Deceased[1]
2	ALBUREZ	Oscar David	3459758470403
3	ARIAS	Carlos Enrique	1732637710101
4	ARRIOLA CONDE	Luis René	Deceased[2]
5	AVILA RODRIGUEZ	Freddy Eduardo	9824687550401[3]
6	BENITEZ	Luis Eduardo	2431355800506
7	BONILLA LOPEZ	Virgilio Marcos	1728139691201[4]
8	CANEL PEREZ	Alejandro	1746910680108
9	CARIAS GOMEZ	Milton Rogers	2424030852205
10	CASTAÑEDA VAIDES	Oscar Leonel	1679275902101[5]
11	CASTILLO VERON	Alfredo	000165328 (pasaporte)[6]
12	COCHOJIL MARTINEZ	Hector Anibal	Deceased[7]
13	CUPUL LUNA	Lorenzo David	1974824301703
14	CUYAN GONZALEZ	Fidel	Deceased[8]
15	CHEVES LUNA	Gustavo Adolfo	2331308450101
16	ESCALANTE	Carlos Enrique	1956187690603
17	ESTRADA ARRIAZA	Eldo Elfego	1679673710507
18	GALICIA PIMENTEL	Igmain	1583703331107
19	GARCIA AVENDAÑO	Manuel Armando	1811552300101
20	GIRON	Arnulfo	Deceased[9]
21	GIRON CACEROS	Juan	1788072570401
22	GIRON GALINDO	Gabriel de Jesús	Deceased[10]

[1] Represented in the proceedings by his widow Ciriaca Mucia Cap, I.D. number 1863470490407 (power of attorney granted to CALDH, folio 75).

[2] Represented in the proceedings by his daughter Clara Luz Arriola Ramírez, I.D. number 2699003650101 (power of attorney granted to CALDH, folio 76).

[3] The power of attorney attached to the file does not clearly distinguish the first number of the identification which can be read as a 1, a 9 or a 4 (folio 76).

[4] In the file, Residence Card L-12, Record 9,377 also appears as identification (evidence file, folio 152).

[5] The power of attorney attached to the file does not clearly distinguish the first number of the identification which can be read as a 1 or a 4 (folio 77).

[6] Represented in the proceedings by María Esperanza Morán Castillo. In a power of attorney granted on April 6, 2021 before a notary public, she indicated that in the event of her death the beneficiaries would be her children Marvin Alfredo Castillo Morales and Karla Michel Castillo Moral (folio 357).

[7] Represented in the proceedings by his widow Floricelda Hernández Guerra de Cochojil, I.D. number 2579629720401 (power of attorney granted to CALDH, folio 75).

[8] Represented in the proceedings by his widow Josefina Ortíz Guzmán, I.D. number 2532513891564 (power of attorney granted to CALDH, folio 236).

[9] Represented in the proceedings by his widow Nolberta Rubila Díaz Calderón de Girón, I.D. number 2352999602011 (power of attorney granted to CALDH, folio 76).

[10] Represented in the proceedings by his son Gabriel Estuardo Girón Garay, I.D. number 2747335600101 (power of attorney granted to CALDH, folio 222).

23	GONZALEZ	Miguel	1648288180301
24	GONZALEZ SANCHEZ	Miguel Angel	1678152100101
25	GUERRA VALIENTE	Carlos Enrique	1777768030802
26	GUTIERREZ GARCIA	Roberto	Deceased[11]
27	LEONARDO	Carlos Antonio	1874909101502
28	LEONARDO	Oscar Moisés	Deceased[12]
29	LETONA FIGUEROA DE GONZALEZ	Alba Ninet	2497655510110
30	LOPEZ ARIAS	Edgar Arturo	1593325402009
31	LOPEZ GARCIA	Gerardo	2328096070101
32	LOPEZ GIRON	Marcos Humberto	1598778142011
33	LOPEZ LOPEZ	René Alberto	1579937790101
34	LOPEZ REYNA	Marvin Manolo	2276688550506
35	LUARCA DOMINGUEZ	Edgar Arnaldo	2330466071001
36	MAYEN	Concepción	2566486170208
37	MINER RAMOS	César Augusto	Deceased[13]
38	MORALES HERNANDEZ	Carlos Eduardo	1858963670101
39	MORALES MATIAS	Edgar Romeo	1578707441211
40	MORALES PINEDA	Orlan Manuel	1766545180101
41	MORATAYA CASTELLANOS	Ricardo	Deceased[14]
42	MUÑOZ TALA	Juan Francisco	2654323910101
43	ORELLANA ORELLANA	Genaro	1861591370201
44	PADILLA IZEPPI	Mynor Pablo	Deceased[15]
45	PADILLA MENDEZ	Oscar Basilio[16]	2389917410101
46	PALACIOS URIZAR	Mario René	Deceased[17]
47	PAXTOR	Miguel Angel	1970152200101
48	PEREZ SUNAY	José Francisco	1807460650108
49	PORTILLO DE DÍAZ	Dora Carolina	2350097680301
50	QUEVEDO QUEZADA DE MARROQUÍN	Evelyn Marleny[18]	1993065241401
51	REYES XITIMUL	Fermin	Deceased[19]

[11] Represented in the proceedings by his widow Mirian Iliana Ovando Gil de Gutiérrez, I.D. number 2416952280114 (power of attorney granted to CALDH, folio 222).

[12] Represented in the proceedings by his widow María Candelaria González de Leonardo, I.D. number 1841651131507 (power of attorney granted to CALDH, folio 76).

[13] Represented in the proceedings by his granddaughter Evelyn Mariela Rodríguez Miner, I.D. number 1764007020101 (power of attorney granted to CALDH, folio 222).

[14] Represented in the proceedings by Clara Domínguez Alvarado de Morataya, I.D. number 1778596600101 (power of attorney granted to CALDH, folio 222) and subsequently by his stepson Sergio Vicente Carrera Domínguez, I.D. number 2494053690101 (power of attorney granted to CALDH, folio 265).

[15] Represented in the proceedings by his widow Aida Elizabeth Orellana Escobar de Padilla, I.D. number 1802566960101 (power of attorney granted to CALDH, folio 77).

[16] In the list of the Commission attached to its Merits Report he appears as "Oscar Basilo" (folio 9).

[17] Represented in the proceedings by his widow Vilma Leticia Barrios de Palacios.

[18] In the list of the Commission attached to its Merits Report she appears as "Evelin Marleny" (folio 10).

[19] Represented in the proceedings by his widow Carmen de Jesús López Asetun de Reyes, I.D. number 1931047091502 (power of attorney granted to CALDH, folio 222).

52	REYNOSO MAS	Minor Rolando	1745429841703
53	RIOS DE LEON	Armando Moisés	2379307731201
54	RODAS CONDE	Marco Aurelio	Deceased[20]
55	ROJAS MARTINEZ	Adolfo Nery[21]	1749911850101
56	RUANO SIAN	Miguel Augusto	1593723640612
57	SALAZAR CARRILLO	Apolunio	2185965020105
58	SALAZAR GALVES	Ramón Aristides	2447393660404
59	SAMAYOA CARIAS	Vicente	2383189580614
60	SANTIZO VELASQUEZ	Abraham Teodoro	Deceased[22]
61	SOLOGOSTOA MORAN[23]	Fernando Antonio	1811532031101
62	SOTO GODOY	Sergio Eduardo	2327810520101
63	TECUN GARCÍA	Edwin Remigio	1634385440114
64	VELASQUEZ	David Ruben	2387571290101
65	VELASQUEZ	Ramiro Fernando	2626341980101

[20] Represented in the proceedings by his widow Alma Iris de León Escobar de Rodas, I.D. number 1620342370911 (power of attorney granted to CALDH, folio 78).

[21] In the list of the Commission attached to its Merits Report he appears as "Adolfo Nely" (folio 10).

[22] Represented in the proceedings by his mother María de la Luz Velásquez Argueta, I.D. number 1861471390902 (power of attorney granted to CALDH, folio 221).

[23] On the list of the Commission attached to its Merits Report he appears as "SOLOGAISTO MORAN" (folio 10).

CONCURRING OPINION OF

JUDGE HUMBERTO ANTONIO SIERRA PORTO

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE FORMER EMPLOYEES OF THE JUDICIARY V. GUATEMALA

JUDGMENT OF NOVEMBER 17, 2021

(*Preliminary objections, Merits and Reparations*)

1. With my customary respect for the decisions of the Inter-American Court of Human Rights (hereinafter the Court), I issue this opinion in order to explain my partial disagreement with the fourth operative paragraph in which the Court declared the international responsibility of the State of Guatemala (hereinafter "the State" or Guatemala) for the violation of the rights to strike, freedom of association, freedom to organize and the right to work and to social security, in relation to the obligation to respect and guarantee rights and the duty to adopt provisions of domestic law, to the detriment of the 65 former employees of the Judiciary of Guatemala listed in the Single Annex of the Judgment. This opinion complements the position I have already expressed in my partially dissenting opinions in the cases of *Lagos del Campo v. Peru,*[1] *Dismissed Workers of Petroperú et al. v. Peru,*[2] *San Miguel Sosa et al. v. Venezuela,*[3] *Cuscul Pivaral et al. v. Guatemala,*[4] *Muelle Flores v. Peru,*[5] *National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru,*[6] *Hernández v. Argentina,*[7] *Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina*[8]*, Guachalá Chimbo et al. v. Ecuador,*[9]

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[1] *Cf. Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2017. Series C No. 340. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[2] *Cf. Case of the Dismissed Workers of PetroPeru et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[3] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs.* Judgment of February 8, 2018. Series C No. 348. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[4] *Cf. Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2018. Series C No. 359. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[5] *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[6] *Cf. Case of the National Association of Discharged 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. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[7] *Cf. Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of November 22, 2019. Series C No. 395. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[8] *Cf. Case of the Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs.* Judgment of February 6, 2020. Series C No. 400. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[9] *Cf. Case of Guachalá Chimbo et al. v. Ecuador.* Merits, reparations and costs. Judgment of March 26, 2021. Series C No. 423. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

as well as in my concurring opinions in the cases of *Gonzales Lluy et al. v. Ecuador,*[10] *Poblete Vilches et al. v. Chile,*[11] *Casa Nina v. Peru,*[12] *Vera Rojas et al. v. Chile,*[13] *and Manuela et al. v. El Salvador,*[14] in relation to the justiciability of Article 26 of the American Convention on Human Rights (hereinafter "the Convention" or "ACHR)."

2. I have consistently held that the direct justiciability of economic, social, cultural and environmental rights (hereinafter "ESCER") through Article 26 of the American Convention suffers from multiple logical and legal inconsistencies. Among other points, this jurisprudential position ignores the literal wording of the American Convention;[15] ignores the rules of interpretation of the Vienna Convention on the Law of Treaties;[16] modifies the nature of the obligation of progressive development;[17] ignores the will of the States embodied in Article 19 of the Protocol of San Salvador;[18] and undermines the legitimacy of the Court in the regional sphere.[19] All these considerations prevent me from voting in favor of the declaration of State responsibility based on the direct and autonomous violation of the ESCER through Article 26 of the Convention.

3. In this regard, I have pointed out the difficulties created by the Court's practice of grouping together all or a significant group of violations of treaty obligations in a single operative paragraph, particularly because it reduces the ability of the judges to express their discrepancies in relation to the justiciability of the ESCER.[20] This reasoning is what motivates my separate opinion because, although I agree with the declaration of the violation of the rights to freedom of association (Article 16 ACHR) and to freedom

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[10] *Cf. Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2015. Series C No. 298**.** Concurring opinion of Judge Humberto Antonio Sierra Porto.

[11] *Cf. Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 349. Concurring opinion of Judge Humberto Antonio Sierra Porto.

[12] *Cf. Case of Casa Nina v. Peru.* Preliminary objections, merits, reparations and costs. Judgment of November 24, 2020. Series C No. 419. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[13] *Cf. Case of Vera Rojas et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2021. Series C No. Concurring opinion of Judge Humberto Antonio Sierra Porto.

[14] *Cf. Case of Manuela et al. v. El Salvador. Preliminary objections, merits, reparations and costs.* Judgment of November 2, 2021. Series C No. 441.

[15] *Cf. Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2017. Series C No. 340. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[16] *Cf. Case of Muelle Flores v. Peru*. Preliminary objections, merits, reparations and costs. Judgment of March 6, 2019. Series C No. 375.

[17] *Cf. Case of Cuscul Pivaral et al. v. Guatemala.* Preliminary objection, merits, reparations and costs. Judgment of August 23, 2018. Series C No. 359.

[18] *Cf. Case of Poblete Vilches et al. v. Chile*. Merits, reparations and costs. Judgment of March 8, 2018. Series C No. 349.

[19] *Cf. Case of the Dismissed Workers of PetroPeru et al. v. Peru.* Preliminary objections, merits, reparations and costs. Judgment of November 23, 2017. Series C No. 344.

[20] *Cf. Case of the National Association of Discharged 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. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto, para. 6; *Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of November 22, 2019. Series C No. 395. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto, para. 17; *Case of Casa Nina v. Peru*. Preliminary objections, merits, reparations and costs. Judgment of November 24, 2020. Series C No. 419. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto, para. 7; *Case of Guachalá Chimbo et al. v. Ecuador*. Merits, reparations and costs. Judgment of March 26, 2021. Series C No. 423. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto, para. 6.

of association (Article 26 of the American Convention in relation to Article 8 (a) of the Protocol of San Salvador) and consequently voted in favor of the fourth operative paragraph, I must reaffirm my position against the direct and autonomous justiciability of the rights to strike and to work and to social stability through Article 26 of the American Convention.

4. I consider that the rights to strike, to work and to social stability, for which there is no conventional clause granting jurisdiction to the Court, could have been protected through the theory of connection. Indeed, the violations of these rights could be analyzed in relation to the right to freedom of association recognized in Article 16 of the Convention and to freedom of association in Article 8 (a) of the Protocol of San Salvador.[21] In this way, it would be possible to respect the norms on which the jurisdiction of the Inter-American Court is based. In the past, this was an interpretative path that allowed the Court to respond to factual situations such as those of the present case, without engaging in logical or legal inconsistencies, or undermining the legitimacy of the Court's decisions in relation to the will of the American States, as expressed in the Convention and in the Protocol of San Salvador.

5. In conclusion, I consider it essential to state that, although the position according to which the ESCER are autonomously and directly justiciable by virtue of Article 26 of the American Convention is consistently reiterated in inter-American case law, and has thus acquired a kind of legal force, its rationale still exhibits the contradictions that I have pointed out since the case of *Lagos del Campo v. Peru*.

Humberto Antonio Sierra Porto
Judge

Pablo Saavedra Alessandri
Registrar

[21] According to Article 19 of the Protocol of San Salvador, the violation of Article 8 (a) may be the basis for the individual petition mechanism before the Inter-American Commission on Human Rights and the Court. "*Article 19. Means of Protection […] 6. Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Articles 44 through 51 and 61 through 69 of the American Convention on Human Rights*."

SEPARATE OPINION OF
JUDGE EDUARDO FERRER MAC-GREGOR POISOT

CASE OF THE FORMER EMPLOYEES OF THE JUDICIARY V. GUATEMALA

JUDGMENT OF NOVEMBER 17, 2021
(Preliminary objections, Merits and Reparations)

I. INTRODUCTION: ANOTHER STEP FORWARD IN THE REAFFIRMATION OF INTER-AMERICAN SOCIAL RIGHTS

1. This judgment marks an important contribution to inter-American case law since it is the first precedent, in a contentious case, in which the violation of the right to strike and of the right to freedom to organize is declared autonomously. In this case, the Inter-American Court of Human Rights (hereinafter "Inter-American Court" or "the Court") analyzes various aspects that have a significant impact on labor rights of individuals.

2. I fully agree with the decision reached in the judgment, which declares the responsibility of the State, *inter alia*, for the violation of the right to strike, freedom to organize, the right to work and, specifically, job security, contained in Article 26 and the right to freedom of association contemplated in Article 16, both of the American Convention, in relation to the obligations to respect and guarantee rights and the duty to adopt provisions of domestic law, referred to in Articles 1 and 2 of the same instrument.[1]

3. In issue this separate opinion to highlight certain aspects of the right to strike as one of the rights of particular importance in this case. I will emphasize, *inter alia*, the special function of the right to strike as the main mechanism for the protection of the labor rights of workers, as well as the recognition it has enjoyed both in inter-American law and in international human rights law. In conclusion I will highlight novel aspects that were not considered by the Inter-American Court when it issued its recent Advisory Opinion No. 27 on the rights to freedom to organize, collective bargaining and right to strike.[2]

II. THE GRADUAL DEVELOPMENT OF THE CONTENT OF THE INDIVIDUAL AND COLLECTIVE LABOR RIGHTS OF WORKERS IN THE JURISPRUDENCE OF THE INTER-AMERICAN COURT

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[1] *Cf. Case of Former Employees of the Judiciary v. Guatemala.* Judgment of November 17, 2021. *Preliminary objections, merits and reparations.* Series C No. 445, fourth operative paragraph.

[2] *Cf. Rights to freedom to organize, collective bargaining, and strike, and their relation to other rights, with a gender perspective (interpretation and scope of Articles 13, 15, 16, 24, 25 and 26, in relation con Articles 1.1 and 2 of the American Convention on Human Rights, of Articles 3, 6, 7 and 8 del Protocol of San Salvador, of Articles 2, 3, 4, 5 and 6 of the Convention of Belem do Pará, of Articles 34, 44 and 45 of the Charter of the Organization of American States, and of Articles II, IV, XIV, XXI and XXII of the American Declaration of the Rights and Duties of Man).* Advisory Opinion OC-27/21 of May 5, 2021. Series A No. 27.

4. Labor rights have long been present in inter-American jurisprudence. However, it is from 2017 with the case of *Lagos del Campo v. Peru*[3] that these rights (and their multiple individual and collective facets) were granted autonomy and direct justiciability.

5. In relation to labor rights, the Court's jurisprudence has focused essentially on the dismissal of trade union members and the execution of union leaders. In the cases of *Baena Ricardo v. Panama*[4], *Huilca Tecse v. Peru,*[5] *Cantoral Huamaní and García Santa Cruz v. Peru*[6]*,* the Court has developed the content of that right, not from the standpoint of Article 8(1)(a) (trade union rights) of the Additional Protocol to the American Convention in the area of Economic, Social and Cultural Rights, but from the right to association enshrined in Article 16 of the American Convention.[7]

6. In the case *Baena Ricardo*, the Court considered that to determine whether a violation of the right to freedom of association has occurred, this should be analyzed in in relation to trade union freedom. Thus, it stated that, in trade union matters, freedom of association consists basically of the ability to constitute labor union organizations, and to set into motion their internal structure, activities and action program, without any intervention by the public authorities that could limit or impair the exercise of the respective right. On the other hand, under such freedom it is possible to assume that each person may determine, without any pressure, whether or not he or she wishes to form part of an association. This issue, therefore, is about the basic right to constitute a group for the pursuit of a lawful goal, without pressure or interference that may alter or denature its objective.[8] In this regard, the Inter-American Court considered that in trade union matters, freedom of association is of the utmost importance for the defense of workers' legitimate interests and forms part of the *corpus juris* on human rights.[9] Freedom of association in labor issues, under the terms of Article 16 of the American Convention, encompasses a right and a freedom, namely: a) the right to form associations without restrictions other than those provided for in subparagraphs 2 and

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3 *Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340.

4 *Case of Baena Ricardo et al. v. Panama. Merits, reparations and costs*. Judgment of February 2, 2001. Series C No. 72.

5 *Case of Huilca Tecse v. Peru. Merits, reparations and costs*. Judgment of March 3, 2005. Series C No. 121.

6 *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of July 10, 2007. Series C No. 202.

7 We should recall that Article 8(1)(a) contemplates one of the two rights referred to in Article 19(6) of the Protocol of San Salvador that "may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights."

8 *Cf. Case of Baena Ricardo et al. v. Panama. Merits, reparations and costs*. Judgment of February 2, 2001. Series C No. 72, para. 156.

9 *Cf. Case of Baena Ricardo et al. v. Panama, supra* nota 13, para. 158.

3 of Article 16,[10] and the freedom of all persons not to be compelled or forced to join an association.[11]

In the case *Huilca Tecse*, the Court stated that "[…] in its individual dimension, labor-related freedom of association is not exhausted by the theoretical recognition of the right to form trade unions, but also corresponds, inseparably, to the right to use any appropriate means to exercise this freedom. When the Convention proclaims that freedom of association includes the right to associate freely "for [… any] other purpose," it is emphasizing that the freedoms to associate and to pursue certain collective goals are indivisible. Thus, any restriction on the possibilities of association represents directly, and to the same extent, a restriction of the right of the collective to achieve its proposed objectives. Hence, the importance of bringing the legal provisions applicable to trade unions into line with the Convention, along with the actions of the State - or those that occur with its tolerance – that could render this right inoperative in practice." Furthermore, "[…] in its social dimension, freedom of association *is a mechanism that allows the members of a labor collectivity or group to achieve certain objectives together and to obtain benefits for themselves."*[12]

8. Among the rights enjoyed by individual workers, i.e., the right to work and to fair and satisfactory working conditions, perhaps the most relevant precedents are the cases of the *Dismissed Congressional Employees*[13] and *Canales Huapaya,*[14] both against the Peruvian State. Similarly, given the characteristics of this right, the Court had also expressed itself indirectly when it protected the non-removability (immunity from dismissal) of justice operators at the time of performing their duties, since one the facets of the right to work is *security* of tenure in the exercise thereof.[15] Thus, the right to work has been protected through Articles 2, 6, 8, 9, 24 and 25 of the American Convention.[16]

9. Notwithstanding these precedents of indirect justiciability, the greatest development of labor rights occurred beginning with the case of *Lagos del Campo v. Peru* in 2017,[17] in which the Court declared the direct violation of the right to job

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[10] In that case, the Court also considered that the American Convention is very clear in pointing out, in Article 16, that freedom of association can only be subject to the restrictions provided by law, that are necessary in a democratic society and are established in the interests of national security, public order, public health or public morals or of the rights or freedoms of others. (*Case of Baena Ricardo et al. v. Panama, supra*, para. 168).

[11] *Cf. Case of Baena Ricardo et al. v. Panama, supra*, para. 158.

[12] *Cf. Case of Huilca Tecse v. Peru, supra*, paras, 70 and 71 (underlining added).

[13] *Cf. Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2006. Series C No. 158, para. 129.

[14] *Case of Canales Huapaya et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 24, 2015. Series C No. 296, para. 108.

[15] Subsequently, in 2020, in the Case of *Casa Nina v. Peru*, the Court declared an autonomous violation of the right to work with respect to persons involved in the administration of justice.

[16] *Cf. Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary objection, Merits, reparations and costs.* Judgment of August 23, 2013. Series C No. 266, para. 153 and *Case of López Lone et al. v. Honduras. Preliminary objection, Merits, reparations and costs*. Judgment of October 05, 2015. Series C No. 302, para. 193.

[17] *Case of Lagos del Campo v. Peru, supra*.

security. Subsequently, this right was further developed in the cases of the *Dismissed Workers of PetroPeru et al. v. Peru*[18] and *San Miguel Sosa et al. v. Venezuela.*[19] Regarding content of this right, the Court has pointed out that "job security does not consist of an unrestricted permanence in the post, but rather of respecting this right, among other measures, by granting due guarantees of protection to the worker so that, if he or she is dismissed this is done with justification. This means that the employer must provide sufficient reasons for imposing such a sanction with due guarantees, and that the worker may appeal this decision before the domestic authorities, who must verify that the justification given is not arbitrary or unlawful."[20]

10. The same interpretation was applied in the case of *Casa Nina et al. v. Peru,*[21] in which the Court stated that justice operators must enjoy job security guarantees as an essential condition for their independence in the effective performance of their duties. Likewise, in the case of provisional prosecutors, safeguarding their independence and objectivity entails granting them a certain level of stability and continuity in the position, since provisional status is not equivalent to free removal. The Inter-American Court understood that, as an expression of the position occupied by justice operators, they have the right to job security and, therefore, the States must respect and guarantee this right.[22]

11. On the other hand, in the case of *Spoltore v. Argentina,*[23] the Court recognized the facet of access to justice in the search for compensation arising from occupational accidents in the workplace. Thus, in this case, the Inter-American Court emphasized that both General Comment No. 18 and General Comment No. 23 of the Committee on Economic, Social and Cultural Rights establish that the right of access to justice forms part of the right to work and to working conditions that ensure the worker's health. In this regard, the Committee noted in General Comment No. 23 that "workers affected by a preventable occupational accident or occupational disease should have a right to a remedy, such as courts, to resolve disputes, including access to appropriate grievance mechanisms. In particular, States parties should ensure that workers suffering from an accident or disease, and where relevant, their dependents receive adequate compensation, including for costs of treatment, loss of earnings and other costs as well as access to rehabilitation services."[24]

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[18] *Case of the Dismissed Workers of PetroPeru et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344, operative paragraph 7.

[19] *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, operative paragraph 4.

[20] *Cf. Case of Lagos del Campo v. Peru, supra*, para. 150.

[21] *Case of Casa Nina v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2020. Series C No. 419.

[22] *Cf. Case of Casa Nina v. Peru, supra*, paras. 81 and 108.

[23] *Case of Spoltore v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of June 9, 2020. Series C No. 404.

[24] *Cf. Case of Spoltore v. Argentina, supra*, para. 96.

12. In the *cases* of the *Workers of the Fireworks Factory of Santo Antônio de Jesus and their Families v. Brazil*[25] and the *Miskito Divers (Lemoth Morris et al.) v. Honduras,*[26] the Court developed and applied the content of the right to fair, equitable and satisfactory working conditions that ensure the safety, health and hygiene of workers. Regarding this right, the Court has indicated that it implies that the worker can perform his or her work in adequate conditions of safety, hygiene and health that prevent occupational accidents and diseases, which is especially relevant in activities that involve significant risks to the life and integrity of persons, and particularly of children.[27]

13. Finally, the present case forms part of this broad and now robust line of jurisprudence by declaring the right to strike and the right to freedom of association in favor of workers in contentious proceedings. In this sense, the judgment constitutes an important contribution to the development of individual and collective labor rights. Although the judgment declares the violation of the right to freedom of association, in the following section I will focus on the right to strike, since, unlike the former, this right had not been the subject of attention in inter-American case law, including that established prior to 2017, that is, the jurisprudence on indirect justiciability.

III. THE RIGHT TO STRIKE AS THE WORKERS' "MOST POWERFUL" INSTRUMENT

14. Notwithstanding its recognition in the original text of Constitution of Querétaro of 1917 (Art. 123, fractions XVII and XVIII)[28] — the first constitutional text to enshrine social rights— and its progressive constitutional recognition in the countries of the

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[25] *Case of the Workers of the Fireworks Factory of Santo Antoĥio de Jesus v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of July 15, 2020. Series C No. 407.

[26] *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras.* Judgment of August 31, 2021. Series C No. 432.

[27] *Cf. Case of the Workers of the Fireworks Factory of Santo Antoĥio de Jesus v. Brazil, supra,* para. 174, and *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras*, *supra*, para. 75.

[28] The original text of the Federal Mexican Constitution of 1917 established: "Art. 123… XVII. The laws shall recognize strikes and stoppages as rights of workers and employers. XVIII. Strikes shall be legal when they have as their purpose the attaining of an equilibrium among the various factors of production, by harmonizing the rights of labor with those of capital. In public services, it will be mandatory for workers to give ten days' notice to the Conciliation and Arbitration Board of the date set for the suspension of work. Strikes will be considered illegal only when the majority of the strikers exercise violent acts against persons or property, or in case of war, when they belong to establishments and services that depend on the Government. Strikes shall be considered illegal only when the majority of strikers engage in violent acts against persons or property, or in the event of war, when they belong to Government establishments or services. The workers of the military manufacturing establishments of the Government of the Republic shall not be included in the provisions of this section, since they are assimilated to the National Army." (underlining added).

region,[29] including Guatemala,[30] the right to strike has been recognized since 1948 in our continent in Article 27 of the Inter-American Charter of Social Guarantees[31] and in Article 45(c) of the Charter of the Organization of American States.[32]

15. Subsequently, it was recognized in the Additional Protocol to the American Convention on Human Rights or Protocol of San Salvador in Article 8(1)(b).[33] It is also enshrined in the International Covenant on Economic, Social and Cultural Rights in Article 8(1)(d)[34] and in Article 6(4) of the European Social Charter (as part of the right to collective bargaining).[35]

16. Moreover, the European Committee of Social Rights, the body responsible for overseeing the European Social Charter, has indicated in the case of the *Italian General Confederation of Labor v. Italy*, that "Article 6(4) of the Social Charter does not distinguish between the public and the private sector, nor between restrictions or limitations on the rights guaranteed to the police and those guaranteed to the armed forces, as does Article 5 of the Charter."[36] For its part, the European Commission has recognized the right of police forces to strike and that, when their rights are restricted, the State must provide convincing reasons of why an absolute prohibition of the police forces' right to strike is justified in the specific national context.[37] The Committee has recalled that restrictions on the right to strike by members of the armed forces may be in compliance with the Charter provided that they meet certain requirements, i.e. that

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[29] *Cf.* Para. 110 and footnote 111 of the judgment: Constitution of the Nation Argentina, Article 14 bis; Constitution of the Plurinational State of Bolivia, Article 53; Constitution of Brazil, Article 9; Constitution of the Republic of Chile, Article 16; Constitution of Colombia, Article 56; Constitution of the Republic of Costa Rica, Article 61; Constitution of the Republic of Ecuador, Article 35.10; Constitution of El Salvador, Article 48; Constitution of Guatemala, Article 104; Constitution of the Republic of Honduras, Article 128; Constitution of the United Mexican States, Article 123 A XVIII; Constitution of the Republic of Nicaragua, Article 83, Constitution of Panama, Article 69; Constitution of the Republic of Paraguay, Article 98; Constitution of Peru, Article 28; Constitution of the Dominican Republic, Article 62(6), and Constitution of the Oriental Republic of Uruguay, Article 57, Canadian Charter of Rights and Freedoms, signed in 1982, Article 2.b.

[30] Art. 104. Right to strike and payment. The right to strike is recognized and exercised (sic) in accordance with the law, after the conciliation procedures have been exhausted. These rights may be exercised only for economic or social reasons. The laws shall establish the cases and situations in which a strike or stoppage shall not be permitted.

[31] RIGHT TO STRIKE. Article 27. Workers have the right to strike. The law shall regulate the conditions and the exercise of the right.

[32] Article 45(c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of their associations and the protection of their freedom and independence, all in accordance with applicable laws (underlining added).

[33] Article 8. Trade Union Rights. 1. The States Parties shall ensure: […] b. The right to strike (underlining added).

[34] Article 8(1) The States Parties to the present Covenant undertake to ensure: […] d) the right to strike, provided that it is exercised in conformity with the laws of the particular country.

[35] Article 6. The right to bargain collectively. With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake: […] 4. The right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

[36] *Cf. ECSR, Italian General Confederation of Labor v. Italy*, decision of September 11, 2019, para. 145.

[37] *Cf. ECSR, European Organisation of Military Associations and Trade Unions (EUROMIL) v. Ireland*, decision of October 21, 2020, paras. 113-117.Case No. 83/2012, paras. 211 to 214

the restrictions are prescribed by law and pursue a legitimate objective, such as the protection of the rights and freedoms of others or the protection of the public interest, national security, public health or morals, and are necessary in a democratic society.[38]

17. In its *Report on Labor and Trade Union Rights (Inter-American Standards)*, the Inter-American Commission on Human Rights has considered that the strike is part of trade union rights which must be guaranteed by the States and that the Protocol of San Salvador protects this right (Art. 8(1)(b)). Thus, in the opinion of the Commission, the "strike is a tool that workers have at their disposal to defend their interests; it also establishes the connection between the right to strike, freedom of association and collective bargaining."[39] However, the Commission has pointed out that the right to strike —together with the right to collective bargaining— while not expressly stated in the American Declaration of the Rights and Duties of Man, is closely related to basic labor rights. Therefore, the Inter-American Commission considers that the right to strike must be considered, implicitly, as a fundamental component of collective rights.[40]

18. Likewise, in its report on *Democracy and Human Rights in Venezuela*, the Inter-American Commission stated that "trade union organizations play a very important role in protecting the human rights of workers faced with precarious labor conditions in the workplace, and that they have become key protagonists of organized political expression aimed at furthering the presentation of labor and social demands of many sectors in society. One of the mechanisms available to trade unions to press for an answer to such demands is the right to strike. That is why the IACHR calls upon the State to refrain from subjecting labor leaders to judicial proceedings when they exercise that right legitimately and peacefully."[41]

19. In the context of the European System of Human Rights, the European Court of Human Rights, in the case *Hrvatski Liječnički Sindikat v. Croatia,* has described the strike as the "most powerful" instrument for the protection of workers' rights. [42]

20. For its part the Court, in Advisory Opinion No. 27 on *Rights to freedom to organize, collective bargaining, and strike, and their relation to other rights, with a gender perspective*, considered some elements that may be regarded as fundamental for consolidating the right to strike: i) the legality of the strike, ii) the power to declare the illegality of the strike and iii) restrictions on the right to strike.

21. Regarding the first element (legality) the Court has considered that: a) the States must take into consideration that, with the exceptions allowed by international law, the law protects the exercise of the right to strike of all workers; b) the conditions and prior requirements established by law for a strike to be considered lawful, should not be

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[38] *Cf. ECSR, European Organisation of Military Associations and Trade Unions (EUROMIL) v. Ireland*, decision of October 21, 2020, paras. 113 to 117.

[39] *Cf.* IACHR*, Report on Labor and Trade Union Rights - Inter-American standards*, para. 53.

[40] *Cf.* IACHR, *The situation of human rights in Cuba – Seventh Report. OAS/Ser.L/V/II.61 Doc. 29 rev. 1. October 4, 1983*, paras. 52 and 54.

[41] *Cf.* IACHR, *Democracy and human rights in Venezuela. OAS/Ser.L/V/II. Doc. 54. December 30, 2009,* para. 1119.

[42] ECHR*, Hrvatski Liječnički Sindikat v. Croatia*, No. 36701/09, judgment of November 27, 2014, para. 59.

complicated to the point of making it impossible, in practice, to hold a legal strike; and c) the obligation to give notice to the employer before calling a strike is admissible, provided that such notice is reasonable.[43]

22. Regarding the second element (the power to declare the strike illegal), the Inter-American Court has held that this power should not be vested in an administrative body, but rather in the Judiciary, in application of the grounds previously established by law, and in accordance with the rights to judicial guarantees established in Article 8 of the American Convention. Furthermore, the Inter-American Court considers that the State must refrain from applying sanctions to workers when they participate in a legal strike, since it is a lawful trade union activity that also constitutes the exercise of a human right, and must ensure that such sanctions are not applied by private companies.[44]

23. Finally, the right to strike may only be limited or prohibited with respect to: a) public officials acting as organs of the public administration exercising authority on behalf of the State, and b) workers in essential services.[45] Regarding the latter, the Inter-American Court has considered that they should be understood in the strict sense of the term, that is, those who provide services whose disruption poses a clear and imminent threat to the life, safety, health or liberty of all or part of the population (for example, workers in hospitals, electricity or water supply services).[46] However, with respect to these workers, the Court has pointed out that States must create compensatory guarantees in favor of those services considered essential and for the public administration, so that the limitation of the right to strike must be accompanied by adequate, impartial and expeditious conciliation and arbitration procedures in which the interested parties may participate at all stages, and in which the decisions issued are fully and promptly enforced.[47]

24. In sum, although the right to strike has had little development within the framework of the regional human rights systems, we cannot deny the importance of this right, especially in the collective aspect of workers' rights.

IV. THE RIGHT TO STRIKE AS A JUSTICABLE RIGHT IN THE CONTENTIOUS CASE LAW OF THE INTER-AMERICAN COURT

25. The right to strike is a basic right that is closely related to workers' rights; the way in which inter-American labor law has gradually developed is a process in which the

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43 *Cf.* Advisory Opinion OC-27/21, *supra*, para. 100.

44 *Cf.* Advisory Opinion OC-27/21, *supra*, para. 101.

45 *Cf.* Advisory Opinion OC-27/21, *supra*, para. 102. The Court has also stated that: "104. […] in relation to essential services, the Court emphasizes that States should seek alternative solutions for those cases in which the total prohibition of strikes can be avoided when a minimum service would be an adequate solution to guarantee the basic needs of users or the safe operation of the facilities in which the service considered "essential" is provided. In this regard, it should be emphasized that the minimum service must be limited to those operations that are necessary to meet the basic needs of the population or the minimum requirements of the service, ensuring that the scope of the minimum services does not result in the strike becoming inoperative. Negotiations on minimum services should take place before a labor dispute has arisen, so that all parties concerned (public authorities, workers' and employers' organizations) can negotiate as objectively and calmly as possible."

46 *Cf.* Advisory Opinion OC-27/21, *supra*, para. 103.

47 *Cf.* Advisory Opinion OC-27/21, *supra*, para. 103.

claims of workers have been recognized within the framework of the Inter-American Human Rights System.

26. As I have already stated on other occasions,[48] the right to work has been a fundamental component of the jurisprudential approach developed by the Inter-American Court as of 2017 since the *Case of Lagos del Campo v. Peru,*[49] regarding economic, social, cultural and environmental rights (hereinafter "ESCER"). This is the context of the present case, where the judgment determined that the right to strike is protected - along with other rights in favor of workers – under Article 26 of the American Convention.[50] Since the *Lagos del Campo* case, the jurisprudence of the Inter-American Court has been identifying the different ways in which the right to work is expressed, such as "the right of employers and workers to associate freely for the defense and promotion of their interests," for example.[51]

27. In this sense, the present case is part of the development of social and labor rights. The Court had not ruled on the right to strike in an autonomous manner. Hence, the importance of the parameters developed in Advisory Opinion OC-27, which were of fundamental importance for the analysis of this contentious case, for example, when the Inter-American Court determined that the principle of legality did not materialize.[52]

28. However, the Court also analyzed other components of the right to strike that had not previously been considered in Advisory Opinion OC-27, such as the excessive duration and long delays in the prior procedures required to exercise the right to strike;[53] or that the requirement of a very high rate of participation to declare the strike legal "makes a legal strike impossible in practice, so that its imposition implies an arbitrary restriction of the right to strike, of freedom of association and of freedom to organize."[54]

29. The Court's contentious case law now has one more component to make justiciable the rights of workers and their collective guarantee of defense of their interests and rights. Although the right to strike has been one of the rights that has achieved the least recognition in international law, the case under analysis constitutes a valuable contribution to the materialization of this right.

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[48] In the Case of *San Miguel Sosa et al.,* I stated that "[t]he case of San Miguel *Sosa et al. v. Venezuela* complements the vision that the Inter-American Court has rapidly developed regarding social rights and their direct justiciability before this judicial body. In this regard, the triad of labor-related cases, namely, *Lagos del Campo, Dismissed Workers of Petroperú et al.* and now the case of *San Miguel Sosa et al.,* allow us to align a series of standards that should be taken into consideration in the exercise of conventionality control by the domestic courts and to expand the current jurisprudential dialogue between the international or inter-American sphere and the domestic courts of the States Parties to the American Convention." *Cf. Partially dissenting opinion in the Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 27.

[49] *Cf. Case of Lagos del Campo v. Peru, supra*, paras. 153 and 154.

[50] *Cf. Case of Former Employees of the Judiciary v. Guatemala, supra*, operative paragraph 4.

[51] The Inter-American Court concluded that "the State is responsible for the violation of Articles 16(1) and 26 in relation to Articles 1(1), 13 and 8 of the American Convention, to the detriment of Mr. Lagos del Campo". *Cf. Case of Lagos del Campo v. Peru, supra*, para. 158, 163 and sixth operative paragraph.

[52] *Cf. Case of the Former Employees of the Judiciary v. Guatemala, supra*, para. 120.

[53] *Cf. Case of the Former Employees of the Judiciary v. Guatemala, supra*, para. 121.

[54] *Case of the Former Employees of the Judiciary v. Guatemala, supra*, para. 126.

V. CONCLUSION

30. This is the first contentious case in which the Inter-American Court develops and declares a violation of the right to strike in light of Article 26 of the American Convention, which had previously been considered in Advisory Opinion OC-27 on the rights to freedom of association, collective bargaining, and the right strike.

31. I believe that this development in contentious case law is a fundamental step forward in the justiciability of the inter-American social rights of workers. The judgment is part of a series of cases that reaffirm labor rights, and is particularly important in setting standards in the region, especially in these pressing times affected by the pandemic and its effects.[55]

32. The right to strike is also positioned as another element in international law which, although with few jurisprudential manifestations and a lack of regulatory development, contributes to the understanding and consolidation of this right as a powerful mechanism for the defense of workers' interests.

Eduardo Ferrer Mac-Gregor Poisot
Judge

Pablo Saavedra Alessandri
Registrar

[55] *Cf.* Economic Commission for Latin America and the Caribbean (ECLAC)/International Labour Organization (ILO), *Employment Situation in Latin America and the Caribbean. Policies to protect labour relations and hiring subsidies amid the COVID-19 pandemic,* No. 25 (LC/TS 2021/163), Santiago, 2021.

PARTIALLY DISSENTING OPINION OF JUDGE EDUARDO VIO GROSSI

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE FORMER EMPLOYEES OF THE JUDICIARY V. GUATEMALA

JUDGMENT OF NOVEMBER 17, 2021
(Preliminary objections, Merits and Reparations)

1. I submit this separate opinion regarding the judgment indicated in the title because I do not agree with the reference made therein, in the fourth operative paragraph,[1] with respect to Article of 26 the American Convention on Human Rights, which, consequently, makes the violation of the rights referred to in said provision justiciable before the Court.

2. To this effect, I wish to reiterate the points I made in my partially dissenting opinion regarding the *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala,* of October 6, 2021, except in relation to the last paragraph.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri

Registrar

[1] *"The State is responsible for the violation of the right to strike, to freedom of association, to freedom to organize and the right to work and to job security, recognized in Articles 16 and 26 of the American Convention on Human Rights, in relation to the obligation to respect and guarantee these rights and the duty to adopt provisions of domestic law, recognized in Articles 1(1) and 2 thereof, to the detriment of the 65 individuals listed in the single annex, pursuant to paragraphs 99 to 134 of this judgment."*