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REPORT No. 115/18
CASE 12.827
REPORT ON MERITS

HÉCTOR FIDEL CORDERO BERNAL
PERU

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I. SUMMARY

1. On November 11, 1998, the Inter-American Commission on Human Rights (hereinafter the Inter-American Commission, the Commission, or the IACHR) received a petition filed by Héctor Fidel Cordero Bernal (hereinafter the petitioner) in which he alleges the international responsibility of the Republic of Peru (hereinafter the Peruvian state, the state, or Peru) to his detriment.

2. The Commission approved Admissibility Report No. 112/11 of July 22, 2011. On August 9, 2011, the Commission notified said report to the parties and indicated it was at their disposal in order to reach a friendly settlement, although both parties did not voice any interest in said proceeding. The parties benefited from the regulatory time-limits to submit their additional observations on the merits. All the information received was duly forwarded between the parties.

3. The petitioner indicated that, in 1995, he was acting as a Special Criminal Judge in the Fourth Special Court for Criminal Matters of the city Huánuco. He pointed out that, while he was discharging his duties, he ordered the unconditional release of those charged in criminal proceedings for drug trafficking, and, as a result of this decision, he was subjected to a punitive disciplinary proceeding that culminated in 1996 when the National Council of the Judiciary (*Consejo Nacional de la Magistratura*, hereinafter CNM) ordered his dismissal. He also indicated that, for the same incidents, he was the target of a criminal proceeding for the offenses of cover-up (*encubrimiento personal*) and breach of legal duty (*prevaricato*), for which he was finally acquitted. He alleged that the state is responsible for violating the right to work and job stability, and he contended that Peru is obliged to compensate him for the damages caused as a result of his dismissal, which he qualified as arbitrary.

4. The state indicated that, in the framework of the punitive disciplinary proceeding and the criminal proceeding brought against the alleged victim, due process of law was respected and there was no administrative arbitrariness at all, nor was there any impediment to gaining access to the remedies under domestic law that the legal system offered. It reiterated that, in the merits stage, the alleged victim did not exhaust remedies under domestic law and that the Commission is not competent to review judgments issued by national judicial bodies.

5. On the basis of the determinations of fact and law, the Inter-American Commission concluded that the state is responsible for violating Article 8.1 and 8.2(h) (fair trial), Article 9 (principle of legality), Article 23.1(c) (political rights), and Article 25.1 (judicial protection) of the American Convention in connection with the obligations set forth in Articles 1.1 and 2 of the same instruments, to the detriment of Héctor Fidel Cordero Bernal. The Commission made the respective recommendations.

II. ALLEGATIONS OF THE PARTIES

A. Petitioner

6. The petitioner indicated that, on November 9, 1993, he was admitted into the judiciary as an interim judge, initially assigned as a civil court judge in the city of Tingo María in the Department of Huánuco. He pointed out that, on December 14, 1994, he was provisionally appointed as Special Criminal Judge in the Fourth Special Court for Criminal Matters of the city of Huánuco. He stated that, on July 11, 1995, in the context of a criminal proceeding for illegal drug trafficking, he ordered the unconditional release of those charged.

7. He pointed out that, because of the above-mentioned decision, on August 11, 1995, the Judicial Oversight Office ordered him to stop discharging his duties and requested the Executive Council of the Judiciary to dismiss him on the basis of a disciplinary proceeding. He stated that the proceeding culminated with the issuance of Resolution No. 008-96-PCNM of August 14, 1996, in which the National Council of the Judiciary (CNM) decided on his dismissal claiming that, by ordering the unconditional release of persons for whom evidence provided enough indications of their criminal responsibility, Mr. Cordero committed “a serious act which, though not a crime, compromises the dignity of the office and is unworthy in eyes of the public.” It stated that the grounds for this disciplinary action came under the provisions set forth in Article 31.2 of Law No. 26397, the Basic Law of the National Council of the Judiciary, which had been subsequently repealed by Law No. 26933 of March 12, 1998.

8. He stressed that, although Article 31.2 of Law No. 26397 provided for the possibility of dismissing a judge who had committed a serious mistake that compromised the dignity of the office, Article 210 of the Single Consolidated Text of the Basic Law of the Judiciary, in force during the same period, pointed out that “the serious act which compromises the dignity of the office and is unworthy in eyes of the public is subject to the disciplinary measure of suspension from one to sixty days.” He added that Article 211 of the Basic Law of the Judiciary provides that the dismissal of judges is only warranted when there has been a prior disciplinary action, which had not occurred in his case. He pointed out that, in view of contradictory provisions in force at the time, those of Law 26397 and those of the Basic Law of the Judiciary, the CNM should have applied the more lenient disciplinary measure on him.

9. He contended that the punitive ruling tended to challenge the criteria he applied as a judge, which was based on criminal procedural legislation. He claimed that said challenge violates the principles of judicial independence and impartiality of judges, as well as Article 212 of the Single Consolidated Text of the Basic Law of the Judiciary, which establishes that “differences of opinion and judgment when ruling in proceedings does not give cause for sanction.”

10. He indicated that, on September 6, 1996, he filed an appeal on constitutional grounds (*amparo*) which was ruled inadmissible. He added that, after filing a special appeal, the Constitutional Court issued a judgment on May 8, 1998, declaring that the appeal on constitutional grounds (*amparo*) was inadmissible.

11. The petitioner indicated that, alongside the punitive disciplinary proceeding, a criminal proceeding was filed against him for a crime against the administration of justice for helping offenders in covering up their illegal activities and for breach of legal duty. He pointed out that, on June 21, 2005, he was acquitted by the Second Criminal Chamber of the Superior Court of Justice of Huánuco, and this ruling was upheld in the court of last resort on August 22, 2005.

12. He alleged that the state is responsible for violating the **right to work and to job stability** and contended that Peru has the obligation to redress the damages caused by his arbitrary dismissal.

13. Finally, the petitioner reiterated that he had exhausted all judicial remedies, with the last ruling issued by the Constitutional Court which declared that his appeal was inadmissible.

B. State

14. The State alleged that the disciplinary proceeding complied with all convention-based guarantees and that the dismissal was based on the alleged victim’s misconduct in the discharge of his duties when he issued an order for unconditional release that did not meet the requirements stipulated by law. It also referred to the appeal on constitutional grounds and the criminal proceeding, indicating that all guarantees were observed.

15. Regarding the appeal on constitutional grounds (*amparo*) filed by Mr. Cordero against the CNM, it pointed out that it was aimed at overruling the punitive decision. It asserted that the Constitutional Court had ruled that said appeal on constitutional grounds was inadmissible because the CNM heard the

disciplinary proceeding at the request of the Supreme Court of Justice of the Republic in compliance with the law and in a trial in which the complainant exercised his right to defense.

16. Regarding the criminal proceeding, the state asserted that, by means of the writ of May 4, 1998, the Public Prosecutor's Office formalized the criminal proceeding against Mr. Cordero for the alleged crimes of personal cover-up and breach of legal duty to the detriment of the state. It pointed out that, on June 21, 2005, the Second Criminal Court of Huánuco, in its appeal chamber, acquitted Mr. Cordero and that this judgment was upheld by the higher court on the basis of a ruling issued on August 22, 2005, which proceeded to expunge his police and court records.

17. Regarding the disciplinary and criminal proceedings filed against Mr. Cordero Bernal, the state argued that the CNM is empowered to investigate and punish judges for disciplinary misconducts committed, regardless of the criminal investigation that the Judiciary might carry out. It indicated that the purpose of the complaint filed with the Judiciary was not to prevent Mr. Cordero's dismissal but to file criminal charges against him for alleged offenses. It also indicated that the purpose of the disciplinary proceeding filed in the CNM was to ascertain if he had committed any "misconduct in his duties." It concluded that both final judgments or rulings are independent in terms of contents, because they are separate in nature.

18. In connection with labor rights, it indicated that the **right to work and to job stability** cannot be the subject of the system of individual petitions according to Article 19.6 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights, the San Salvador Protocol, because it argued that the Commission does not have the material competence to rule about this aspect in connection with the petitioner's allegations.

19. Finally, with respect to **the rights to a fair trial and to judicial protection**, the State pointed out that, in both the criminal and administrative proceedings, Mr. Cordero benefited, under domestic law, from the regular time-limits and channels required by law to exercise his right to a defense with full respect for due process of law, judicial protection, and legality. It stated that, in the present case, there was no judicial or administrative arbitrariness, nor was there any impediment for the petitioner to gain access to remedies available to him under domestic law.

III. FACTS PROVEN

A. Regulatory framework applicable to the punitive disciplinary proceeding against judges in Peru

20. The disciplinary proceeding filed against the alleged victim is governed by Peru's Political Constitution, the Basic Law of the Judiciary, Law No. 26397, and Law No. 26933.

21. Peru's Political Constitution provides that:

Article 154. The National Council of the Judiciary has the following duties: (...)

3. To implement the sanction of dismissal to members of the Supreme Court and Chief Prosecutors and at the request of the Supreme Court or the Board of Chief Prosecutors, respectively, to the judges and prosecutors of all instances. The final ruling, substantiated and after a prior hearing with the interested party, is without appeal.¹

22. The Constitution also establishes in its Article 142 that "the rulings of the National Elections Jury in electoral matters or those of the National Elections Council in electoral matters or those of the National Council of the Judiciary in matters regarding the evaluation and confirmation of judges are without appeal under the domestic judicial system."²

¹ Political Constitution of Peru.

² Political Constitution of Peru.

23. The Basic Law of the Judiciary establishes the following:

Article 206. DISCIPLINARY SANCTIONS AND MEASURES. The disciplinary sanctions and measures are: (...) 3. Suspension; (...) 5. Dismissal.

Article 210. SUSPENSION. Suspension is applicable to judges or civil servants against whom a warrant of arrest has been issued or charges have been brought with a request for sentencing to prison in a proceeding for an intentional crime.

It is also applicable to a judge who has committed a serious action which, without being a crime, compromises the dignity of his or her office and is unworthy in the eyes of the public and when he or she commits a serious offense again after having been previously sanctioned three times with a fine.

Suspension is agreed upon by the bodies stipulated by law. The suspension leave is unpaid and cannot be for more than two months.

Article 211. DISMISSAL. Dismissal is imposed by the bodies stipulated by this law and requires the punitive vote of more than half the total number of members of the respective body.

It is admissible to proceed with the dismissal of the judge who commits a serious action against the responsibility of the Judiciary; and the judge who has committed a serious offense which, without being a crime, compromises the dignity of the office and is unworthy in the eyes of the public, as long as he or she has been previously sanctioned with a suspension (...).

24. The Basic Law of the National Council of the Judiciary, Law No. 26397, establishes the following:

Article 21. The National Council of the Judiciary has the following duties:

c) To apply the sanction of dismissal to members of the Supreme Court of Justice or the Board of Chief Prosecutors, respectively and the judges and prosecutors of all instances. The final ruling, substantiated and after a prior hearing with the interested party, is without appeal.

Article 31. Applying the sanction of dismissal referred to in subparagraph (c) of Article 21 of the present law is admissible in the following cases:

(...) 2. Committing a serious action which, without being a crime, compromises the dignity of the office and is unworthy in the eyes of the public.

Article 34. The following standards govern the disciplinary proceedings referred to in Articles 32 and 33 of the present law:

(...) 4. Against the ruling that puts an end to the proceeding, only an appeal for review is admissible, as long as it comes with new material evidence within five business days as of the day following receipt of the notification.³

25. Finally, Law 26933 of March 12, 1998, which repealed Article 31 of the above-mentioned law, establishes that:

The judges of the judiciary and the prosecutors of the Public Prosecutor's Office give cause for dismissal when they commit a serious action which, without being a crime, compromises the dignity

³ Basic Law of the National Council of the Judiciary, Law No. 26397.

of the office and is unworthy in the eyes of the public, as long as they have been previously sanctioned with suspension (...).

B. Appointment of Héctor Fidel Cordero Bernal and the decision to order unconditional release

26. The petitioner pointed out that, on November 9, 1993, he was admitted to the Judiciary at the decision of the Superior Court of Justice of Huánuco-Pasco as a judge in civil matters assigned to the city of Tingo María.⁴ As indicated in the case file, on November 15, 1994, he was appointed as Interim Judge of the Fourth Criminal Court of the province of Huánuco by the President of the Superior Court of Justice of Huánuco.⁵

27. On June 22, 1995, the President of the Superior Court of Justice of Huánuco requested the alleged victim to “take CHARGE of the services provided by the First Criminal Court of this city, as of the date and as long as the sabbatical of Interim Judge Dr. Jacinto Oriol San Martín Arcayo lasts, holding his office, and reporting.”⁶

28. On the same day, the alleged victim started to hear criminal investigation case No. 7395, involving the investigation of two Colombian national who were flying a small aircraft in Peruvian territory, were intercepted by Peru’s Air Force,⁷ and charged in criminal proceedings for the crime of illicit drug trafficking because a bag of narcotics had allegedly been found close to the place where they landed the aircraft.⁸

29. On June 30, 1995, the persons charged requested their unconditional release.⁹

30. On July 11, 1995, Mr. Cordero Bernal issued a ruling in which he stated that the request for the unconditional release of the persons charged for the crime of illegal drug trafficking was warranted, pursuant to the provisions of Article 201 of the Criminal Proceedings Code of Peru. In said ruling, Mr. Cordero Bernal pointed out that:

During the investigation period no evidence has been provided that irrefutably proves their criminal participation (...) there is no incontrovertible proof that warrants charging those being presented in these proceedings for criminal responsibility for illegal drug trafficking (...) no amount of drug whatsoever was found in the hands of the respondents or in the aircraft they were piloting.¹⁰

31. The Commission recalls that Article 201 of the Peruvian Criminal Proceedings Code established that:

If, at any stage of the investigation hearings, it is fully proven that the person charged is blameless, the judge ex officio or at the request of the person charged must order his or her unconditional release and the respective order shall be implemented immediately, while referring to the Correctional Court the respective notebook when there are other persons being charged who must continue to be detained. If the case is only against the person who is the target of the release, the principal case file shall be forwarded. In this case, if the Court

⁴ Initial petition of November 11, 1998.

⁵ Initial petition of November 11, 1998; Annex 1. Administrative resolution No. 025-94-PCSJH of November 15, 1994 of the Superior Court of Justice of Huánuco. Annex to the state’s brief of July 22, 2013.

⁶ Annex 2. Official letter No. 3755-95-PCSJ, June 22, 1995. Annex to the state’s brief of July 22, 2013.

⁷ Annex 3. National Council of the Judiciary, Resolution No. 008-96-PCNM of August 14, 1996. Annex to the initial petition of November 11, 1998.

⁸ Annex 3. National Council of the Judiciary, Resolution No. 008-96-PCNM of August 14, 1996. Annex to the initial petition of November 11, 1998.

⁹ Annex 4. Judicial Oversight Office of the Judiciary, Report of August 3, 1995. Annex to the state’s brief of July 22, 2013.

¹⁰ Annex 5. Superior Court of Justice of Huánuco, Judgment of September 24, 1999. Annex to the state’s brief of July 30, 2008.

approves, the person consulted shall order the archiving of the proceeding. If the person does not approve the order, the order shall provide for apprehending again the person unduly released, with the power to impose sanctions or order the relevant actions if the release has been malicious.¹¹

C. Disciplinary proceeding against the alleged victim

32. By virtue of the ruling ordering unconditional release, the Judicial Oversight Office filed a disciplinary proceeding against the alleged victim, for committing “a serious action that, without being a crime, compromises the dignity of the office,” taking into account the “social repercussions for the city of Huánuco as a result of this incident and which appears in newspaper publications.”¹²

33. On August 3, 1995, the Judicial Oversight Office of the Judiciary issued an investigation report indicating the reasons why it deemed the alleged victim had given cause for being charged with misconduct in his duties when ordering the unconditional release¹³ of two persons charged with the crime of illicit drug trafficking. In particular, this report indicates that:

(...) the following irregularities were detected:

a.d.) The President of the Court, Dr. Humberto Cajahuanca, appoints Dr. Héctor Cordero Bernal, Interim Judge of the Fourth Criminal Court of Huánuco, so that he will take up the duties of the Office of the First Court, when it pertained to the Fifth Criminal Court of Huánuco because it was the most distant rota court;

(...) the decision of the judge is based on the jurisprudence of the Supreme Court of Justice of the Republic, in which the persons charged with illicit drug trafficking are acquitted when the cocaine paste was not found in the possession of the persons charged and the evidence provided by the defense of those charged (...) during the intervention, 13 packages of cocaine paste were impounded amounting to a total of forty-nine kilograms nine-hundred grams, although this drug was not found in the possession of those charged or inside the aircraft that they were piloting, but on the clandestine landing field where they landed; there were enough elements that made it possible to establish a causal connection between those charged and the crime they were being charged with, such as: a) they had entered Peruvian territory illegally, with a stolen aircraft, facts that were admitted by the persons charged themselves in their statements during the investigation, b) they resisted the signals of persuasion from the members of the Air Force who intervened, to then land on a clandestine landing field which seemed to be their destination, because they did not know how to precisely indicate the place of their final destination, leading to inconsistencies in their statement that they had no flight plan; c) they fled from and abandoned the aircraft they were piloting where a polyethylene bag was found in which there was the amount of three hundred ninety thousand U.S. dollars (...) nevertheless, all of these elements were deemed by the judge as “slight clues that deserved a hasty presumption of criminal conduct of the persons charged,” without taking into account that they involve circumstantial evidence which in addition, as it involves the crime of drug trafficking, makes it possible to eliminate the presumption of innocence, a case which in accordance with the rulings of the Inter-American Commission on Human Rights leads to the inversion of the burden of proof because of the abundance and coincidental presence of clues against the persons being charged in the proceeding; furthermore, the judge under investigation has only assessed the

¹¹ Annex 3. National Council of the Judiciary, Resolution No. 008-96-PCNM of August 14, 1996. Annex to the initial petition of November 11, 1998.

¹² Annex 3. National Council of the Judiciary, Resolution No. 008-96-PCNM of August 14, 1996. Annex to the initial petition of November 11, 1998.

¹³ Annex 4. Judicial Oversight Office of the Judiciary, Report of August 3, 1995. Annex to the state’s brief of July 22, 2013.

evidence provided by the persons charged, grounding his decision on these persons themselves, without examining any evidence ex officio.

(...) once he was in office and in his only intervention, he improperly ordered the unconditional release of the two alleged Colombian drug traffickers, as established above, seriously breaching our legal framework (...) a fact that is severely aggravated by the fact that it involves a crime of international illegal drug trafficking (...).

(...) from the considerations set forth, it is possible to find reasonable clues to the commitment of an offense, which must be submitted to the Public Prosecutor's Office for its information and attention.¹⁴

34. In the report referred to above, the Supreme Court of Justice of the Republic was requested to dismiss the alleged victim and Humberto Cajahuanca Vasquez, as a result of which an order was issued as a provisional measure for the suspension of their duties for both until their labor situation was settled.¹⁵

35. On October 18, 1995, the President of the Executive Council of the Judiciary decided to approve the proposal for the dismissal of the alleged victim and requested the CNM to proceed with his dismissal. This decision indicates the following:

THE FOLLOWING IS RESOLVED: First: to approve the proposal for dismissal made by the Chief Member and Head of the Judicial Oversight Office of the Judiciary, by means of the resolution of August three of the present year, and Second: to request the Superior Council of the Judiciary to dismiss (...) Dr. Héctor Fidel Cordero Bernal.¹⁶

36. The Commission notes that it does not have the notification to start a disciplinary proceeding against the alleged victim. The decision of August 3, 1995, refers to statements made by the alleged victim prior to the issuance of said decision.

37. On December 1, 1995, the alleged victim submitted a writ in his defense before the CNM.¹⁷ In the above-mentioned writ, the alleged victim argued, among other matters, that he had the following reasons to substantiate his decision:

Although the drug was impounded, it was not found in the possession of the persons charged nor was it demonstrated that it belonged to them, and the area where it was found, 450 meters away from where the aircraft landed, is an area constantly impacted by drug trafficking. In addition, its transfer would have been difficult because it involved about 50 kg;

38. The alleged victim referred to the clues that are part of the disciplinary proceeding, according to which the persons charged breached Peruvian airspace in a stolen aircraft bearing foreign registration, failed to obey the order to land, then landed on a clandestine landing field, and afterwards fled, indicating that:

These simple clues (...) have not been corroborated by any evidence, therefore they disappeared because in criminal cases one single clue does not provide proof, because of its weakness and although it is true that, on that basis, there is a notion of probability, it does not consist of certainty, and since there are no reasonable clues for the crime being charged, the request for release of the persons charged is admissible because the adjective REASONABLE implies that the existence of the crime is not a mere presumption. (...) the version whereby a polyethylene bag was founding holding three hundred ninety thousand

¹⁴ Annex 4. Judicial Oversight Office of the Judiciary, Report of August 3, 1995. Annex to the state's brief of July 22, 2013.

¹⁵ Annex 4. Judicial Oversight Office of the Judiciary, Report of August 3, 1995. Annex to the state's brief of July 22, 2013.

¹⁶ Annex 6. Executive Council of the Judiciary, Agreement of October 18, 1995. Annex to the state's brief of September 28, 2012.

¹⁷ Annex 7. Written defense, December 1, 1995. Annex to the state's brief of September 28, 2012.

U.S. dollars and one bill with cocaine additions is contradicted in the report itself “because if the latter is true, how is it possible for cocaine paste to stick to only one single bill out of 400. Or would it not be possible to deduce that the person who handled the money had done so with the impounded cocaine paste or was it one of the so-called “planted” bills that the police used to substantiate this crime.” He added that, in drug trafficking crimes, the presumption of innocence does not disappear as indicated by the author of the report bringing charges against him.¹⁸

39. On December 11, 1995, the alleged victim submitted an extended defense with the CNM, pointing out that his petition, if not subject to a disciplinary proceeding, was justified in terms of the principles of legality, impartiality, and presumption of innocence and that he did not have any previous records in the judiciary.¹⁹

40. On May 14, 1996, the CNM issued resolution No. 051-96-CNM in which it declared that the disciplinary proceeding against the alleged victim was open, asserting that:

Dr. Héctor Cordero Bernal, Special Judge of Huánuco y Pasco, having been charged with serious irregularities in the discharge of his duties, with in addition the suspension of said judge until the National Council of the Judiciary decides about the application of the disciplinary measure requested.²⁰

41. On May 27, 1996, the alleged victim submitted a writ of defense.²¹ He argued that the ruling being investigated was an action of a strictly judicial nature that has to be observed pursuant to Article 139, subparagraph 2 of the Peruvian Political Constitution on the autonomy in the exercise of the judicial function.²² He once again referred to the final decision taken in the criminal proceeding for illicit drug trafficking, where it was ascertained that the persons charged were not held responsible, arguing that this fact proved that his decision was congruent.²³

42. On August 14, 1996, the CNM issued Resolution No. 008-96-PCNM ordering the dismissal of Mr. Cordero Bernal, providing for annulment of the appointment and registration of the latter in the respective ledger and personnel file.²⁴ In that decision, the CNM argued that:

The irregularity detected in the present case is the irrationality of the ruling ordering unconditional release, that is, the impossibility of finding a commonsensical, much less a legally grounded, justification which are the minimum or elemental requirements for the exercise of the judicial function.²⁵ In addition, it indicated that the order granting unconditional release was overturned by the Criminal Court, which ordered re-arresting the persons charged and that the latter court refrained from imposing disciplinary sanctions against Mr. Cordero Bernal, because the investigation launched by the Judicial Oversight Office was under way.²⁶ (...) Finally, the CNM concluded that “abiding by the principle of due process of law, it reaches the conviction that the judge’s conduct is liable to disciplinary sanction because when prematurely ordering the unconditional release that he granted, there is no rational justification, and that conduct is typical and, in additional, serious and

¹⁸ Annex 7. Written defense, December 1, 1995. Annex to the state’s brief of September 28, 2012.

¹⁹ Annex 8. Extension to written defense, December 11, 1995. Annex to the state’s brief of September 28, 2012.

²⁰ Annex 9. National Council of the Judiciary, Resolution No. 051-96-CNM de 14 de mayo de 1996. Annex to the state’s brief of September 28, 2012.

²¹ Annex 10. Written defense, May 27, 1996. Annex to the state’s brief of September 28, 2012.

²² Annex 10. Written defense, May 27, 1996. Annex to the state’s brief of September 28, 2012.

²³ Annex 10. Written defense, May 27, 1996. Annex to the state’s brief of September 28, 2012.

²⁴ Annex 3. National Council of the Judiciary, Resolution No. 008-96-PCNM of August 14, 1996. Annex to the initial petition of November 11, 1998.

²⁵ Annex 3. National Council of the Judiciary, Resolution No. 008-96-PCNM of August 14, 1996. Annex to the initial petition of November 11, 1998.

²⁶ Annex 3. National Council of the Judiciary, Resolution No. 008-96-PCNM of August 14, 1996. Annex to the initial petition of November 11, 1998.

therefore matches the scope of Article thirty-one, second subparagraph, of Law No. twenty-six thousand three hundred ninety-seven, that is, a serious action which, without being a crime, compromises the dignity of the office and is unworthy in the eyes of the public.²⁷

43. On September 6, 1996, Mr. Cordero Bernal filed an appeal on constitutional grounds (*amparo*) against the National Council of the Judiciary requesting annulment of the previous ruling.²⁸ He argued that, although Law 26397 and the Political Constitution provide that the CNM's decisions are without appeal, the appeal on constitutional grounds is admissible when, as in his case, the basic right to due process of law is breached.²⁹ In that respect, he indicated that the ruling infringed Article 154, subparagraph 3, of Peru's Political Constitution because the only grounds alleged by the CNM was the "irrationality of the ruling ordering release."³⁰

44. He also alleged that the guarantees of stability for judges enshrined in Article 146, subparagraph 3, of the Constitution were violated, as well as Articles 211 of the Basic Law of the Judiciary which provides that dismissal is admissible "as long as it has been previously sanctioned with suspension," and Article 212 of the same Law, which points out that "differences of opinion and judgment when ruling in proceedings does not give cause for sanction."³¹ Finally he argued that the evidence highlighted his good conduct and the correct and honest discharge of his office and that the unconditional release that had been ordered was grounded in legal truth and the principles of procedural humaneness.³²

45. On November 27, 1996, the Court of Public Law issued a first-instance judgment, declaring that the appeal on constitutional grounds (*amparo*) was inadmissible, because it believed that the ruling by the CNM was based on a broad review of the action and its decision was sufficiently substantiated, which is the reason for preventing the analysis of the merits of the other arguments because there was no breach whatsoever of the standards of due process of law.³³ In particular, it indicates the following:

The ruling of the National Council of the Judiciary dismissing the appellant is a case not subject to further review because it was issued without affecting in the least the standards of due process of law, as a result of which it is not appropriate for the present Court to rule on the appeal's two other arguments, because it would require a review of the merits that is inadmissible according to what has been described until now (...).³⁴

46. The decision above was appealed by Mr. Cordero Bernal. The Commission does not have any information about this appeal.

47. On September 24, 1997, the Transitory Corporate Chamber Specializing in Public Law issued a second-instance judgment upholding the previous ruling.³⁵ It deemed that Article 142 of Peru's Constitution indicates that, under domestic law, the CNM's rulings regarding the evaluation and confirmation of judges cannot be subject to further review and added that "in the present case, in view of the request made by the Judicial Oversight Office of the Judiciary, the Executive Council of this branch of government requests the

²⁷ Annex 3. National Council of the Judiciary, Resolution No. 008-96-PCNM of August 14, 1996. Annex to the initial petition of November 11, 1998.

²⁸ Annex 11. Appeal on constitutional grounds filed with the Court Specializing in Public Law, September 6, 1996. Annex to the initial petition of November 11, 1998.

²⁹ Annex 11. Appeal on constitutional grounds filed with the Court Specializing in Public Law, September 6, 1996. Annex to the initial petition of November 11, 1998.

³⁰ Annex 11. Appeal on constitutional grounds filed with the Court Specializing in Public Law, September 6, 1996. Annex to the initial petition of November 11, 1998.

³¹ Annex 11. Appeal on constitutional grounds filed with the Court Specializing in Public Law, September 6, 1996. Annex to the initial petition of November 11, 1998.

³² Annex 11. Appeal on constitutional grounds filed with the Court Specializing in Public Law, September 6, 1996. Annex to the initial petition of November 11, 1998.

³³ Annex 12. Court of Public Law, Judgment of November 27, 1996. Annex to the initial petition of November 11, 1998.

³⁴ Annex 12. Court of Public Law, Judgment of November 27, 1996. Annex to the initial petition of November 11, 1998.

³⁵ Annex 13. Transitory Corporate Court Specializing in Public Law, Judgment of September 24, 1997. Annex to the initial petition of November 11, 1998.

National Council of the Judiciary to dismiss the Interim Judge of the Fourth Special Court for Criminal Matters of Huánuco, Héctor Fidel Cordero Bernal, therefore his tenure in said office depended on ratification by the National Council of the Judiciary, which never happened (...).³⁶

48. On March 31, 1998, Mr. Cordero Bernal filed a special appeal with the Constitutional Court.³⁷ He argued once again that challenging the CNM's decision was based on the absence of a sufficient statement of reasons in connection with the dismissal. He also pointed out that Article 31, subparagraph 2, of Law 26397, which was the basis for the ruling of the CNM which had ordered the dismissal, had been repealed by Law 26933, whose first article indicates that the judges of the Judiciary give cause for dismissal when they commit a serious action which, without being a crime, compromises the dignity of the office and is unworthy in the eyes of the public, as long as they had been previously sanctioned by suspension.³⁸ In that respect, he alleged that "his proceeding is still ongoing, in which situation" the new standard must be applied, and also because he had never been sanctioned with a previous suspension, he is not included in the cause for dismissal.³⁹ Furthermore, he indicated that Article 142 of the Constitution is not applicable because it refers to processes to evaluate and ratify judges, which is not his case, and the same article indicates that "the ratification process is independent from the disciplinary measures adopted by the Judiciary or the sanction of dismissal."⁴⁰

49. On June 16, 1998, Mr. Cordero Bernal extended his special appeal defending the arguments previously put forward.⁴¹

50. On May 8, 1998, the Constitutional Court issued a judgment declaring that the appeal on constitutional grounds (*amparo*) was inadmissible on the basis of the following considerations:

2. On the basis of the records of the proceedings it turns out that the ruling being challenged is a consequence of the respective administrative process, where the National Council of the Judiciary has proceeded in strict observance of the law and where the complainant has exercised his right to defense, which has been corroborated by the subpoena issued at the time.

3. That, having proceeded in accordance with the basic standards of due process of law; dismissing the argument made by the complainant by indicating that the ruling being challenged is groundless on the basis of its very terms, whose certified copy appears in the proceedings, pages 2 to 4; and where on the basis of its reading, the assessment conducted by the National Council of the Judiciary regarding what was described by the parties, including the defense by the complainant himself, is duly considered, the present appeal for protection is clearly inadmissible.⁴²

³⁶ Annex 14. Constitutional Court, Judgment of May 8, 1998. Annex to the initial petition of November 11, 1998.

³⁷ Annex 15. Special appeal, March 31, 1998. Annex to the initial petition of November 11, 1998.

³⁸ Annex 15. Special appeal, March 31, 1998. Annex to the initial petition of November 11, 1998.

³⁹ Annex 15. Special appeal, March 31, 1998. Annex to the initial petition of November 11, 1998.

⁴⁰ Annex 15. Special appeal, March 31, 1998. Annex to the initial petition of November 11, 1998.

⁴¹ Annex 16. Extension of the special appeal, June 16, 1998. Annex to the initial petition of November 11, 1998.

⁴² Annex 14. Constitutional Court, Judgment of May 8, 1998. Annex to the initial petition of November 11, 1998.

D. Criminal proceeding filed against Héctor Fidel Cordero Bernal

51. From the case file, it can be concluded that the Chief Member and Head of the Judicial Oversight Office of the Judiciary filed a criminal proceeding against the alleged victim for the crimes of breach of legal duty and personal cover-up, for the same facts that were the target of the disciplinary proceeding.⁴³

52. On July 30, 1997, the Executive Commission of the Public Prosecutor's Office stated that the complaint that was submitted was admissible and forwarded the case file to the Chief Prosecutor to formalize the criminal complaint.⁴⁴

53. On April 30, 1998, the Superior Criminal Prosecutor of the Judicial District of Huánuco-Pasco formalized the complaint against the alleged victim for the crimes of breach of legal duty and personal cover-up as provided for in Articles 418 and 404 of the Criminal Code, for having ordered:

conditional release unduly without examining or appraising the evidence brought together during the police investigation, even disregarding evidence submitted and using unreasonable arguments in his eagerness to give favor, thus breaching the provisions of Article 201 of the Criminal Procedural Code by not taking into account existing evidence.⁴⁵

54. On May 26, 1998, the First Criminal Court of Huánuco opened a preliminary investigation for summary judgment against the alleged victim, taking into account the same facts described in the preceding paragraph.⁴⁶

55. On June 17, 1998, the alleged victim made his statement in the preliminary investigation, indicating that:

My decision to order unconditional release makes reasonable sense (...) whether mistaken or not, under the judicial principle, it is a *sine qua non* condition in all judicial rulings, this situation is expressed in my decision of a functional nature protected by Article one hundred thirty-nine, second subparagraph, of Peru's Political Constitution and grounded in concrete and real facts, objective evidence that appears in the proceedings and in accordance with the legal standards in force. (...) The person charged points out that his appointment to the First Criminal Court was irregular, because after the visit made by Dr. Ines Villa Bonilla it was observed that the Criminal Chamber of the Superior Court had ordered that the First Court be awarded to the farthest Criminal Judge (sic), which in that case would have meant the Fifth Criminal Court (...) nevertheless, the President of the Superior Court at that time, Dr. Humberto Cajahuanca, breaching the agreement with the Criminal Chamber, designated the declarant so that he could take over the Court, without taking into account that, the day before, the declarant had pointed out to the President that he could not be in charge of two Courts because he still did not have any experience as he had worked in the administrative section of the Credit Union of Lima, but the President told him to buy a book of rulings and the problem was solved (...) so that on the twenty-third of June (...) Dr. Humberto Cajahuanca called upon the declarant and indicated that he was aware of case file seventy-three of nineteen ninety-five that was currently being handled in the First Criminal Court and asked him to order the unconditional release of those charged in this case because it was appropriate, to which the declarant replied that he would examine the case, but it drew his attention that the former was interested in this case and that, after examining the case file

⁴³ Annex 17. Executive Commission of the Public Prosecutor's Office, Resolution No. 702-97-MP-CEMP of July 30, 1997. Annex to the state's brief of July 30, 2008.

⁴⁴ Annex 17. Executive Commission of the Public Prosecutor's Office, Resolution No. 702-97-MP-CEMP of July 30, 1997. Annex to the state's brief of July 30, 2008.

⁴⁵ Annex 18. Criminal proceedings filed against Héctor Fidel Cordero Bernal, April 30, 1998. Annex to the initial petition of November 11, 1998.

⁴⁶ Annex 19. Resolution to initiate preliminary investigation on Héctor Fidel Cordero Bernal, May 26, 1998. Annex to the initial petition of November 11, 1998.

from the standpoint of the merits of the evidence submitted, he proceeded to order this release (...) as for the declarant himself, he would not have ordered the unconditional release because of the underlying nature of the case and also if the responsibility of the persons charged had been proven, but because of the pressure put on him by the President of the Court Humberto Cajahuanca he granted said benefit⁴⁷

56. On June 18, 1998, the alleged victim filed an objection on the nature of the action, arguing that there was no personal cover-up in his judicial ruling, because it involved an action that pertained to his duties as a judge, and no sanction is justified for differences of opinion or judgment in the ruling of proceedings.⁴⁸ In this brief, he argued that:

The National Council of the Judiciary has concluded (...) that I have not committed any criminal offense but rather an administrative offense (...) and anyway it has been investigated by the Supreme Court of Justice, as a result of which said document merits full credibility and legal validity, which cannot be doubted, all the more so since it deals with the same facts.⁴⁹

57. On June 23, 1998, the alleged victim continued his statement in the preliminary investigation. On that occasion, he indicated that, although he was under pressure to order unconditional release, he added that “my ruling to order unconditional release was based on concrete and real facts involving human actions, objective and ascertainable evidence, which have generally been liable to being proven, since the evidence had been appraised.”⁵⁰

58. On June 11, 1999, the Superior Prosecutor charged the alleged victim and ordered that he be sentenced to 10 years of prison.⁵¹

1. First judgment

59. On September 24, 1999, the Superior Court of Justice of Huánuco-Pasco issued a judgment acquitting Mr. Cordero Bernal for the crime of personal cover-up and convicting him for the crime of breach of legal duty, sentencing him to four years of prison.⁵² In particular, regarding the crime of breach of legal duty, the court deemed that:

The conduct of the former judge(...) is included in this criminal category because in the proceeding (...) filed for the crime of illegal drug trafficking, to the detriment of the state, although there were enough clues pointing to the responsibility of those charged, he ordered their unconditional release (...) on the basis of arguments that were completely contemptible (...).⁵³

60. The above decision was appealed by the alleged victim and by the Prosecution Service.⁵⁴ The Attorney General’s Office filed an appeal for annulment.⁵⁵

⁴⁷ Annex 20. Arraignment of Héctor Fidel Cordero Bernal, June 17, 1998. Annex to the state’s brief of July 30, 2008.

⁴⁸ Annex 21. Objection to the nature of the action, June 18, 1998. Annex to the state’s brief of July 30, 2008.

⁴⁹ Annex 21. Objection to the nature of the action, June 18, 1998. Annex to the state’s brief of July 30, 2008.

⁵⁰ Annex 22. Arraignment of Héctor Fidel Cordero Bernal, June 23, 1998. Annex to the state’s brief of July 30, 2008.

⁵¹ Annex 23. Accusation of Héctor Fidel Cordero Bernal, June 11, 1999. Annex to the initial petition of November 11, 1998.

⁵² Annex 5. Superior Court of Justice of Huánuco, Judgment of September 24, 1999. Annex to the state’s brief of July 30, 2008.

⁵³ Annex 5. Superior Court of Justice of Huánuco, Judgment of September 24, 1999. Annex to the state’s brief of July 30, 2008.

⁵⁴ The alleged victim filed an appeal in connection with the conviction for the crime of breach of legal duty and the Chief Prosecutor regarding acquittal for the crime of cover-up and in connection with the sentence given for the crime of breach of legal duty. Annex 24. Filing an appeal subsequent to the reading of the judgment, September 24, 1999. Annex to the state’s brief of July 30, 2008; Annex 25. Prosecution Service, appealing the judgment, October 27, 1999. Annex to the state’s brief of July 30, 2008.

⁵⁵ Annex 26. Attorney General’s Office of the Judiciary, appeal for annulment, September 27, 1999. Annex to the state’s brief of July 30, 2008.

61. On December 15, 1999, in the second-instance court, the above-mentioned judgment was overturned, and instructions were made to issue a new judgment on the merits of the matter, because it was deemed that a review of the entire set of evidence appearing in the case had not been conducted, as a result of which the judgment was declared null and void “in terms of the ruling acquitting Héctor Fidel Cordero Bernal of the prosecution’s charge for the crime of personal cover-up to the detriment of the state.”⁵⁶

2. Second judgment

62. On January 21, 2000, the Superior Court of Justice of Huánuco-Pasco issued a new judgment acquitting the alleged victim of the crime of personal cover-up and convicting him for the crime of breach of legal duty, after having gathered and reviewed the evidence.⁵⁷

63. Once again the decision was appealed.⁵⁸ On March 31, 2000, in the court of second instance, the above-mentioned judgment was overturned and instructions were made to issue a new judgment because it was deemed that “an exhaustive review of the steps taken in the proceedings has not been carried out, all the more so when considering that the charges brought stem from a trial for illegal drug trafficking which merits further examination of the briefs because of its gravity.”⁵⁹

3. Third judgment

64. On July 19, 2000, the Superior Court of Justice of Huánuco-Pasco issued a new judgment acquitting the alleged victim for the crime of personal cover-up and convicting him for the crime of breach of legal duty sentencing him to three years of prison on the basis of the same grounds indicated in the paragraphs above.⁶⁰

65. The above-mentioned decision was appealed.⁶¹ On September 26 of that same year, in a court of second instance, the above-mentioned judgment was overturned and instructions were made to issue a new judgment on the merits of the case taking into account that “on the basis of the judgment’s text, it can be observed from its considering clauses that the judge mentions that the last part of Article four hundred four of the Criminal Code is not applicable to the judge, who was performing a role that was clearly judicial, which in any case he must have substantiated with legal reasons or on the basis of the law on which he was relying (...).”⁶² He also indicated that “the proportionality of the sentence must be taken into account with respect to the magnitude or gravity of the punishable action committed.”⁶³

4. Fourth judgment

66. On June 21, 2005, the Superior Court of Justice of Huánuco-Pasco issued a judgment acquitting the alleged victim and ordered that his criminal and police records be expunged.⁶⁴ It deemed that Mr. Cordero Bernal acted in accordance with his conscience, appraising the facts of the court’s case file, and that a judge enjoys full independence when discharging his judicial duties.⁶⁵ It also indicated that the requirements stipulated for these criminal offenses to ascertain the responsibility of the alleged victim had not been met.⁶⁶

⁵⁶ Annex 27. Decision of December 15, 1999. Annex to the state’s brief of July 30, 2008.

⁵⁷ Annex 28. Superior Court of Justice of Huánuco, Judgment of January 21, 2000. Annex to the state’s brief of July 30, 2008.

⁵⁸ Annex 29. Filing an appeal after reading of the judgment, January 21, 2000. Annex to the state’s brief of July 30, 2008.

⁵⁹ Annex 30. Decision of March 30, 2000. Annex to the state’s brief of July 30, 2008.

⁶⁰ Annex 31. Superior Court of Justice of Huánuco, Judgment of July 19, 2000. Annex to the state’s brief of July 30, 2008.

⁶¹ Annex 32. Filing an appeal after reading of the judgment, July 19, 2000. Annex to the state’s brief of July 30, 2008.

⁶² Annex 33. Decision of September 26, 2000. Annex to the state’s brief of July 30, 2008.

⁶³ Annex 33. Decision of September 26, 2000. Annex to the state’s brief of July 30, 2008.

⁶⁴ Annex 34. Superior Court of Justice of Huánuco, Investigation Section, Judgment of June 21, 2005. Annex to the initial petition of November 11, 1998.

⁶⁵ Annex 34 Superior Court of Justice of Huánuco, Investigation Section, Judgment of June 21, 2005. Annex to the initial petition of November 11, 1998.

⁶⁶ Annex 34. Superior Court of Justice of Huánuco, Investigation Section, Judgment of June 21, 2005. Annex to the initial petition of November 11, 1998.

67. The decision above was appealed by the Superior Prosecutor on July 12, 2005. He argued that the decision should be overturned because the responsibility of the accused had been proven.⁶⁷ Regarding this, he indicated that unconditional release was admissible only “when the innocence of the person charged is proven beyond a doubt” although, in the case, there were many clues pointing to the responsibility of the “Colombian nationals charged, who were never even cross-examined in the course of the preliminary investigation until the ruling being challenged had been ordered by the person being charged.”⁶⁸

68. On August 22, 2005, in the court of second instance, the decision of June 21 of that year was upheld.⁶⁹ It was deemed that the order to grant unconditional release was clearly a judicial action liable to be reviewed by a higher authority, which was what actually happened in the proceeding, as it is a regular practice of law and the duty that the judge was supposed to fulfill with respect to the alleged victim.⁷⁰ That ruling indicated, among other issues, that:

(...) the active subject of the crime of cover-up cannot be a judge because he administers justice on behalf of the state, a duty in which he was included when issuing the ruling of July eleventh nineteen hundred ninety-five, as he is in possession of his powers (...) that guilt for the offense of breach of legal duty cannot be attributed, that is, it is not sufficient to have been careless or negligent to be blamed this offense, because the criminal offense requires willful intent as a *sine qua non* condition; all the more so if we take into account that, in the action of said judge, it has not been proven that he acted with premeditated malice (...)⁷¹.

69. On August 25, 2005, the Decentralized Anti-Corruption Public Prosecution Service of the Judicial District of Huánuco-Pasco filed an appeal for overturning the above-mentioned judgment, which was ruled inadmissible.⁷²

E. Appeal for annulment filed with the CNM

70. On November 17, 2005, the alleged victim filed an appeal for annulment against the CNM’s ruling of August 14, 1996 and requested his reinstatement to his office as judge.⁷³ He argued that a judgment of acquittal had been issued in the criminal proceeding filed against him for the crimes of personal cover-up and breach of legal duty, which must be examined to annul the administrative ruling which, in any case, cannot be contrary to any judicial decision.⁷⁴ He also alleged that, because Law 26933 and Article 210 of the Basic Law of the Judiciary were in force at the same time, the principle of applying the most favorable decision for the worker should have been observed.⁷⁵

71. On December 30, 2005, the CNM issued Resolution No. 1198-2005-CNM in which it ruled that the annulment requested by the alleged victim was unwarranted and that his request for reinstatement to his office was inadmissible.⁷⁶ It indicated that the alleged victim did not file any appeal for review against

⁶⁷ Annex 35. Chief Prosecution Service, Appealing the Judgment, July 12, 2005. Annex to the initial petition of November 11, 1998.

⁶⁸ Annex 35. Chief Prosecution Service, Appealing the Judgment, July 12, 2005. Annex to the initial petition of November 11, 1998.

⁶⁹ Annex 36. Ruling upholding the judgment, August 22, 2005. Annex to the initial petition of November 11, 1998.

⁷⁰ Annex 36. Ruling upholding the judgment, August 22, 2005. Annex to the initial petition of November 11, 1998.

⁷¹ Annex 36. Ruling upholding the judgment, August 22, 2005. Annex to the initial petition of November 11, 1998.

⁷² Annex 37. Decentralized Anti-Corruption Attorney General’s Office of the Judicial District of Huánuco, appeal for annulment, August 25, 2005. Annex to the state’s brief of July 30, 2008; Annex 38. First Superior Criminal Court of Huánuco, Ruling of September 1, 2005. Annex to the state’s brief of July 30, 2008.

⁷³ Annex 39. Appeal for annulment of Resolution No. 008-96-PCNM of the National Council of the Judiciary, November 17, 2005. Annex to the state’s brief of September 28, 2012.

⁷⁴ Annex 39. Appeal for annulment of Resolution No. 008-96-PCNM of the National Council of the Judiciary, November 17, 2005. Annex to the state’s brief of September 28, 2012.

⁷⁵ Annex 39. Appeal for annulment of Resolution No. 008-96-PCNM of the National Council of the Judiciary, November 17, 2005. Annex to the state’s brief of September 28, 2012.

⁷⁶ Annex 40. National Council of the Judiciary, Resolution No. 1198-2005-CNM, December 30, 2005. Annex to the state’s brief of September 28, 2012.

the ruling being challenged as a result of which it had become *res judicata* and that criminal responsibility cannot be confused with disciplinary responsibility.⁷⁷

72. Finally it argued that Article 154 of Peru's Political Constitution enshrines CNM's duties, among which there is nothing about reinstating dismissed judges back into their duties.⁷⁸ In the words of the Council:

Dr. Cordero Bernal confuses, in his brief, criminal responsibility with administrative responsibility; in effect, although in the criminal proceeding filed against him he was acquitted, in the disciplinary proceeding he was dismissed from office because the accusations against him were proven; as a result, the fact that he was released from any criminal responsibility does not mean that he should be released from administrative responsibility.⁷⁹

73. On January 25, 2006, the alleged victim filed an appeal against Resolution No. 1198-2005-CNM of the CNM, ratifying the arguments already set forth in his brief of November 17, 2005.⁸⁰ He added that he did not file an appeal for review at that time, because he was subjected to a criminal proceeding "unfairly and illegally."⁸¹ He pointed out that said appeal was filed to be settled by the CNM itself, because there was no higher authority that would conduct the review.⁸²

74. On February 20, 2006, by means of Resolution No. 078-2006-CNM, the CNM ruled that the appeal was inadmissible because it was filed outside the time-limits stipulated for an appeal for review.⁸³ He pointed out that the appeal filed by the alleged victim was considered as an appeal for review because the CNM is a single-instance body and, in that regard, the appeal had not been filed within the corresponding time-limits of ten days after notification.⁸⁴

IV. ANALYSIS OF LAW

A. Right to a fair trial, principle of legality, and judicial protection

1. General considerations on applicable guarantees

75. The Commission recalls that both bodies of the Inter-American System have indicated that the guarantees set forth in Article 8 of the American Convention are not confined to criminal proceedings, but that they also apply to proceedings of another kind.⁸⁵ Specifically, when involving sanction proceedings, both bodies of the system have indicated that, similarly, the guarantees of criminal proceedings apply, because it involves exercising the state's punitive power.⁸⁶ Taking into account that, in the present case, the sanction of

⁷⁷ Annex 40. National Council of the Judiciary, Resolution No. 1198-2005-CNM, December 30, 2005. Annex to the state's brief of September 28, 2012.

⁷⁸ Annex 40. National Council of the Judiciary, Resolution No. 1198-2005-CNM, December 30, 2005. Annex to the state's brief of September 28, 2012.

⁷⁹ Annex 40. National Council of the Judiciary, Resolution No. 1198-2005-CNM, December 30, 2005. Annex to the state's brief of September 28, 2012.

⁸⁰ Annex 41. Appeal filed on January 25, 2006. Annex to the state's brief of September 28, 2012.

⁸¹ Annex 41. Appeal filed on January 25, 2006. Annex to the state's brief of September 28, 2012.

⁸² Annex 41. Appeal filed on January 25, 2006. Annex to the state's brief of September 28, 2012.

⁸³ Annex 42. National Council of the Judiciary, Resolution No. 078-2006-CNM, February 20, 2006. Annex to the state's brief of September 28, 2012.

⁸⁴ Annex 42. National Council of the Judiciary, Resolution No. 078-2006-CNM, February 20, 2006. Annex to the state's brief of September 28, 2012.

⁸⁵ IACHR, Report No. 65/11, Case 12.600, Merits, Hugo Quintana Coello et al. "Judges of the Supreme Court of Justice," Ecuador, March 31, 2011, para. 102; I/A Court H.R. Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 126-127; Case of the Constitutional Court v. Peru. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, paras. 69-70; and Case of López Mendoza v. Venezuela. Merits, Reparations and Costs. Judgment of September 1, 2011 Series C No. 233, para. 111.

⁸⁶ IACHR. Access to justice as a guarantee of economic, social, and cultural rights: A review of the standards adopted by the Inter-American System of Human Rights. OEA/Ser.L/V/II.129. 7 September 7, 2007, paras. 98-123; and Case No. 12.828, Report 112/12,

[continues ...]

dismissal was imposed upon the alleged victim as the Interim Judge of the Fourth Criminal Court of the Province of Huánuco, the guarantees of due process of law and the principle of legality are applicable, pursuant to Articles 8.2 and 9 of the American Convention.

76. Furthermore, the IACHR stresses that disciplinary proceedings against justice operators must be conducted in a manner compatible with the principle of judicial independence. The principle of judicial independence is a requirement inherent to a democratic system and a key prerequisite for the protection of human rights.⁸⁷ It is enshrined as one of the guarantees of due process of law protected by Article 8.1 of the American Convention and, in addition, from this principle, “reinforced” guarantees⁸⁸ can be drawn, that is, guarantees that the states must provide to judges in order to ensure their independence.⁸⁹ The agencies of the inter-American system have interpreted the principle of judicial independence in the sense of incorporating the following guarantees: an appropriate selection process, guaranteed tenure, and the guarantee against external pressures.⁹⁰ Specifically, regarding the instant case, that is, respect for the guarantees to ensure security of tenure, the court has indicated that “the scope of judicial independence results in the subjective right of judges to be dismissed exclusively for the reasons permitted, either by a proceeding that complies with judicial guarantees or because their mandate has terminated.”⁹¹ When the tenure of judges in office is arbitrarily impaired, “the right to judicial independence recognized in Article 8(1) of the American Convention is violated.”⁹²

2. The principles of legality and most favored legislation⁹³

77. The principle of legality recognized in Article 9 of the Convention governs the actions of the agencies of the state when it exercises its punitive power.⁹⁴ As indicated earlier, this principle is applicable to disciplinary proceedings that are “an expression of the punitive power of the State” because they entail an impairment or alteration of the rights of persons as a result of wrongful conduct.⁹⁵

[... continuation]

Marcel Granier et al., Venezuela, Merits, November 9, 2012, para. 188; IACHR. Report No. 42/14. Case 12.453. Merits. Olga Yolanda Maldonado Ordoñez. Guatemala. July 17, 2014, para. 69; I/A Court H.R. Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 126-127.

⁸⁷ IACHR, Merits Report 12.816, Report No. 103/13, November 5, 2013, para. 112. Quoting: United Nations. Human Rights Committee. General Comment No. 32, CCPR/C/GC/32, August 23, 2007, para.19. In that regard, see: Cfr. Habeas Corpus in Emergency Situations (Articles 27.2, 25.1, and 7.6 of the American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 30. See also: IACHR, Democracy and Human Rights in Venezuela, III. Independence and separation of public powers, December 30, 2009. para. 80.

⁸⁸ I/A Court H.R. Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 67; IACHR, Democracy and human rights, December 30, 2009, para. 185; IACHR, Second Report on the Situation of Human Rights Defenders, December 31, 2011, para. 359.

⁸⁹ Thus, for example, the Inter-American Court has pointed out that, from the state’s obligations to persons awaiting trial subject to proceedings with the courts, there are also appear “rights for judges,” among which the Court has indicated that “the guarantee of not being liable to removal at will requires that the disciplinary and sanction proceedings for judges necessarily observe the guarantees of due process of law and must provide effective remedies to those affected.” I/A Court H.R. Case of Apitz Barbera et al. (“**First Court of Administrative Disputes**”) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 147.

⁹⁰ IACHR. Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas, December 5, 2013, paras. 56, 109, and 184; I/A Court H.R. Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 191.

⁹¹ I/A Court H.R. Case of López Lone et al. Vs. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 192.

⁹² I/A Court H.R. Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 192.

⁹³ Article 9 of the Convention establishes that: “No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.”

⁹⁴ IACHR, The criminalization of human rights defenders for the causes they promote, OEA/Ser.L/V/Doc.49/15, December 31, 2015, para. 253.

⁹⁵ I/A Court H.R. Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 257 y Case of Maldonado Ordoñez v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, para. 89. I/A Court H.R. Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 106 y 108.

78. In disciplinary matters, the principal of legality requires that the law must set forth in detail the infringements that can lead to the imposition of disciplinary measures, including the severity of the breach and the type of disciplinary measures that would be applied in the case concerned. The principle of legality requires not only that the disciplinary measure should have some basis in domestic law, but also that the law should be accessible to the persons concerned and formulated with sufficient precision to enable them to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.⁹⁶

79. Both the Court and the Commission have indicated that the greater the restriction, the more precise must be the provisions that enshrine it.⁹⁷ In terms of judges, the IACHR has indicated that the sanctions of suspension or dismissal must pertain only to offenses that are objectively very serious. That is why, as the Council of Europe recommended, the legal disciplinary framework “should become stricter as the seriousness of the offence increases, and can include removal of cases from a judge, assigning the judge other tasks, economic sanctions and suspension.”⁹⁸

80. Furthermore, the Court has pointed out that, pursuant to Article 9 of the Convention, the state is prevented from exercising its punitive power in the sense of applying retroactively criminal laws that increase penalties, establish aggravating circumstances, or create aggravated types of offenses.⁹⁹ As a correlation of the above, the Court also established that the same standard also envisages the principle of retroactivity of the most favorable penal norm “when it indicates that, if subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.”¹⁰⁰ The Court stressed that this component of Article 9 of the Convention is also applicable to matters relating to administrative sanctions.¹⁰¹

81. Regarding the scope and contents of the most favorable legislation envisaged in this norm, the Inter-American Court indicated that:

(...) both the law establishing a lighter punishment for offenses, and the one encompassing norms such as those that decriminalize a behavior which was previously considered an offense, or create a new motive for justification or innocence, or an impediment to the effectiveness of a penalty, should be interpreted as the most favorable penal norm. The foregoing is not a closed list of cases that merit the application of the principle of the retroactivity of the most favorable penal norm. It is worth emphasizing that the principle of retroactivity is applicable to laws enacted before the judgment was delivered and during its execution, because the Convention does not establish a limit in this respect.¹⁰²

(...)

As this Court has established, if two different norms are applicable to a situation, “the norm most favorable to the individual must prevail.”¹⁰³

⁹⁶IACHR, Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas, OEA/Ser.L/V/II.Doc.44, December 5, 2013, para. 208.

⁹⁷I/A Court H.R. Case of Kimel v. Argentina. Judgment of May 2, 2008. Series C No. 177, para. 59 and ss.

⁹⁸IACHR, Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas, OEA/Ser.L/V/II.Doc.44, December 5, 2013, para. 217.

⁹⁹I/A Court H.R. Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 175.

¹⁰⁰I/A Court H.R. Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 178.

¹⁰¹I/A Court H.R. Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 176.

¹⁰²I/A Court H.R. Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 179.

¹⁰³I/A Court H.R. Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para.

181. Quoting: *Cf. Juridical Status and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.

[continues ...]

82. In the present case, the National Council of the Judiciary ordered the dismissal of the alleged victim as judge, by virtue of Article 31 of the Basic Law of the Judiciary, which established that applying the sanction of dismissal is warranted when “committing a serious action which, without being a crime, compromises the dignity of the office and is unworthy in the eyes of the public.”

83. First of all, the Commission observes that this standard set forth in the law and applied to Mr. Cordero Bernal becomes broadly significant and does not refer to concrete conducts that are objectionable in disciplinary terms. The Commission also notes that, contrary to the norms quoted, the regulatory framework does not differentiate the sanctions applicable in accordance with the level of severity of the causes previously defined, so that the disciplinary authority has elements to ensure that the sanction imposed is proportional to the gravity of the judge’s objectionable conduct. The Commission considers that reference only to a “serious action,” without any indication of what should be understood as such, does not meet the requirements of the principle of legality in disciplinary terms.

84. Second, the Commission notes that Article 211 of the Basic Law of the Judiciary provides that dismissing a judge is warranted if he or she has committed a serious action which, without being a crime, compromises the dignity of the office and is unworthy in the eyes of the public “as long as he or she has been previously sanctioned with suspension.” Likewise, Article 10 of the same legal norm stipulated that the suspension is warranted when it involves a serious incident, after it has been sanctioned three times with a fine. The Commission takes note that, as reported by the petitioner, and the State did not challenge this, that he had not been penalized by a fine or suspended prior to his dismissal; nevertheless, the severest of sanctions was imposed upon him.

85. The Commission notes that the Basic Law of the National Council of the Judiciary, also in force at that time, did not provide in its Article 31 for the condition of prior suspension to warrant application of the measure of dismissal. Nevertheless, the IACHR deems that the coexistence of two different norms stipulating the possibility of applying either the sanction of dismissal or that of suspension for “committing a serious offense,” undermines the principle of legality stipulated in Article 9 of the Convention, which requires enough normative precision so that both punishable conducts and the consequences they entail can be predictable. In addition, according to the standards quoted on the issue of most favorable legislation, the Commission stresses that, in view of the validity of two norms, Article 9 of the Convention requires the disciplinary authority to apply the more lenient one, which in this case was the Basic Law of the Judiciary, which required the existence of a prior suspension as a condition for dismissal. On the contrary, however, the disciplinary body opted to apply the most unfavorable norm.

86. Third, the Commission observes that the reasoning applied to Mr. Cordero Bernal referred to a serious offense which “without being a crime” compromises the dignity of the office and is unworthy in the eyes of the public. Regarding this, the Commission observes that Mr. Cordero Bernal was subjected to a criminal proceeding for about eight years on the basis of the same factual platform that substantiated the disciplinary proceeding. Although the purpose of this petition is not related to the criminal proceeding, but rather to the disciplinary proceeding, the Commission deems that the fact he had been sanctioned on the basis of a disciplinary case indicating that the offense did not constitute a crime, although, alongside this, a criminal proceeding was being processed for the same offense, also turns out to be incompatible with the principle of legality.

87. By virtue of the considerations above, the IACHR concludes that the Peruvian state violated Article 9 of the American Convention in connection with Articles 1.1 and 2 of the same instrument to the detriment of Héctor Fidel Cordero Bernal.

[... continuation]

18, para. 21; and *Compulsory Membership in an Association prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 52.

3. Principle of judicial independence and the right to duly substantiated decisions¹⁰⁴

88. As for the duty of substantiation, the case law of the inter-American system has indicated that it is to be construed as the “reasons justification” making it possible for the judge to reach a conclusion.¹⁰⁵ The Court has indicated that it “is a guarantee related to the correct administration of justice, which protects the right of the people to be tried for the reasons established by law and grants credibility to judicial decisions in a democratic society.”¹⁰⁶ According to the Inter-American Court, disciplinary administrative rulings must indicate with precision what constitutes an offense and submit arguments that make it possible to conclude that what occurred provides sufficient grounds to justify removing a [civil servant] from a post.¹⁰⁷ Likewise, the requirement of an adequate level of substantiation is of the utmost importance because the purpose of the disciplinary oversight is to assess the conduct, suitability, and performance of a civil servant and, therefore, it is in the substantiation itself that the seriousness of the conduct charged and the proportionality of the sanction must be examined.¹⁰⁸

89. In order to assess compliance with this guarantee in the present case and taking into account that the disciplinary sanction applied to Mr. Cordero Bernal was grounded in his decision to order unconditional release as a criminal judge of Huánuco, the Commission deems it relevant to bring into play certain standards about judicial independence.

90. In the case of *Apitz Barbera et al. v. Venezuela*, the Court indicated that “international law has developed guidelines on the valid grounds for the suspension or removal of a judge, which may include, among others, misconduct or incompetence.”¹⁰⁹ Specifically, it indicated that:

(...) judges cannot be removed on the sole ground that one of their decisions has been overturned on appeal or review by a higher judicial body. This safeguards the independence of judges internally, since they should not feel compelled to avoid dissenting with the reviewing body which, basically, only plays a distinct judicial role that is limited to dealing with the issues raised on appeal by a party who is dissatisfied with the original decision.¹¹⁰

(...) under both domestic and international law there are, on the one hand, the remedies of appeal, cassation, review, removal of cases to a higher court or the like, which are aimed at verifying that a lower court’s decisions are correct, and, on the other, there is disciplinary oversight, which is intended to assess the conduct, suitability, and performance of the judge as a public official. (...) This sort of review requires an autonomous reason warranting a finding that a disciplinary offense has been committed.¹¹¹

¹⁰⁴ Article 8.1 of the Convention provides that: “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

¹⁰⁵ IACHR. Report No. 72/17. Case 13.019. *Case of Eduardo Rico*. Argentina. July 5, 2017, para. 116; and I/A Court H.R. *Case of Maldonado Ordoñez v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, para. 87.

¹⁰⁶ I/A Court H.R. *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, para.118.

¹⁰⁷ I/A Court H.R. *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, para.120.

¹⁰⁸ I/A Court H.R. *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, para.120.

¹⁰⁹ I/A Court H.R. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 84. United Nations, Human Rights Committee, General Comment No. 32, supra note 58, para. 20. See also Principle 18 of the Basic Principles of the United Nations, supra note 59.

¹¹⁰ I/A Court H.R. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 84. Quoting Principle A, para. 4 (n) 2 of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted as part of the African Commission’s activity report at 2nd Summit and Meeting of Heads of State of the African Union, held in Maputo, Mozambique, from July 4 to 12, 2003.

¹¹¹ I/A Court H.R. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 86.

91. In the present case, the Commission stresses that this safeguard upon judicial independence is provided for in domestic law itself, specifically the Basic Law of the Judiciary, which points out that “differences of opinion when ruling in proceedings does not give cause for sanction.” This is a basic guarantee of judicial independence which strives precisely to prevent judges from being sanctioned for the content of the decisions they adopt, and this does not mean that it is impossible to dismiss a judicial operator from his position for lack of suitability or competence.

92. In that respect, it does not pertain to the IACHR to ascertain whether or not the order of unconditional release issued by Mr. Cordero Bernal was warranted under domestic law, nor whether or not the alleged victim was competent and suitable to exercise judicial duties. Nevertheless, in line with the standards cited regarding judicial independence and the domestic regulatory framework itself, in a case such as the present one, it was the disciplinary authority’s obligation to provide clear grounds that would establish the reasons why the decision made by Mr. Cordero Bernal, in addition to being corrected on the basis of remedies available under the law, required disciplinary control to highlight his lack of competence and suitability as a judge, to the extent of meriting the severest of sanctions.

93. Regarding this, the Commission observes that the ruling of a punitive sanction does not provide any substantiation in that direction and confines itself to indicating that the ruling issued by Mr. Cordero Bernal was devoid of rationality or common sense. The Commission also observes that, in the context of the criminal proceeding, the final decision indicated that the ruling issued by Mr. Cordero Bernal was a clearly judicial action and constituted a regular exercise of the law.

94. By virtue of the considerations above, the Commission concludes that, to the detriment of Héctor Fidel Cordero Bernal, the Peruvian state breached the right to benefit from duly substantiated rulings, in connection with the principle of judicial independence, both of which are provided for in Article 8.1 of the American Convention in connection with Article 1.1 of the same instrument.

4. The right to appeal the judgment¹¹² and the right to judicial protection¹¹³

95. The right to appeal the judgment is part of the due process of law of a disciplinary sanction proceeding,¹¹⁴ and it is a primary guarantee aimed at preventing the consolidation of a situation of injustice.¹¹⁵ As for the scope of the right to appeal, both the IACHR and the Court have indicated that this requires examination of both the facts and law involved in the judgment under appeal by a different judge or court that supersedes the previous ones.¹¹⁶ It must proceed before the judgment becomes *res judicata*; it must be settled within a reasonable period of time; and it must be timely and effective, in other words, it must lead to an outcome or response to the ends it was intended to serve. In addition, it must be accessible, without requiring further formalities that would render the right illusory.¹¹⁷

96. The IACHR recalls that the state has the general obligation of providing effective judicial remedies to persons who allege they are victims of human rights violations (Article 25), which must be substantiated in conformity with the rules of due process of law (Article 8.1). For an effective remedy to exist, it is not enough for legal provisions to be in place, rather it needs to be truly appropriate for establishing

¹¹² Article 8.2(h) provides “the right to appeal the judgment to a higher court.”

¹¹³ Article 25.1 of the Convention stipulates that: “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”

¹¹⁴ IACHR, Guarantees for the independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas, OEA/Ser.L/V/II.Doc.44, December 5, 2013, para. 235; I/A Court H.R. *Case of Vélez Loor v. Panama*. Preliminary Objections Merits, Reparations and Costs. Judgment of November 23, 2010. Series C No. 218, para. 179.

¹¹⁵ IACHR, Report No. 33/14, Case 12.820, Manfred Amrhein et al., Costa Rica. April 4, 2014, para.186.

¹¹⁶ IACHR, Report No. 33/14, Case 12.820, Manfred Amrhein et al., Costa Rica. April 4, 2014, para.186.

¹¹⁷ IACHR, Report No. 33/14, Case 12.820, Manfred Amrhein et al., Costa Rica. April 4, 2014, para. 186 and ss.

whether or not there has been a human rights violation and for providing whatever is necessary to redress this.¹¹⁸

97. In the present case, the Commission notes that both Law 26397 and the Political Constitution provided that the decisions of the National Council of the Judiciary are without appeal, and that only appeals on constitutional grounds (*amparo*) can be admissible when the context of the proceeding violated due process of law. The Commission recalls that the appeal on constitutional grounds (*amparo*) filed by the alleged victim was ruled unwarranted by the Court of Public Law on November 27, 1996, considering that the ruling of the Council undertook a broad review of the actions and its decision was sufficiently substantiated, which prevents the analysis of the other arguments on the merits because there was no breach of the norms of due process of law.

98. In addition, the appeal filed was turned down on September 24, 1997 by the Transitory Corporate Court Specializing in Public Law, when it deemed that the rulings of the National Council of the Judiciary were not liable to review in the judiciary with respect to the issue of evaluating and ratifying judges. Finally, the special appeal filed with the Constitutional Court was ruled inadmissible because it deemed that, in the proceeding, the “basic standards of due process of law” had been fulfilled.”

99. In view of this scenario, the IACHR deems that, on the basis of both the regulatory framework and the contents of the decisions, it was concluded that there was no remedy, either in the administrative or in the judicial channels, to secure a review of the ruling to impose a sanction by the higher authority. Likewise, on the basis of the content of the decisions regarding the appeal on constitutional grounds (*amparo*), it has been concluded that the competent bodies did not conduct a comprehensive examination of the aspects of both fact and law regarding the decision to dismiss the alleged victim, and they confined the sphere of their competence to matters of due process of law.

100. By virtue of the above, the Commission concludes that the Peruvian state is responsible for violating the rights set forth in Articles 8.2(h) and 25.1 of the American Convention in connection with Articles 1.1 and 2 of the same instrument, to the detriment of Héctor Fidel Cordero Bernal.

B. Political rights (Article 23¹¹⁹ of the Convention)

101. Article 23(1)(c) recognizes the right of judges to have access to public service “under general conditions of equality.” The Court has interpreted that article to mean that the arbitrary impairment of the tenure of judges violates the right to judicial independence enshrined in Article 8(1) of the Convention in conjunction with the right to have tenured access under general conditions of equality, to the public service of one’s country, as established in Article 23(1)(c).¹²⁰

102. In the present case, it has been established that Mr. Héctor Fidel Cordero Bernal was dismissed from his office in an arbitrary proceeding in which both due process of law and the principle of legality were breached on the basis of the terms described throughout this report on the merits. It was also established that the disciplinary proceeding that was undertaken was incompatible with the principle of judicial independence. Under these circumstances and in keeping with the criterion mentioned in the

¹¹⁸ I/A Court H.R. Case of Dismissed Congressional Employees (Aguado-Alfaro et al.). Judgment on Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 125; I/A Court H.R. Case of the Yakye Axa Indigenous Community. Judgment of June 17, 2005. Series C No. 125, para. 61; I/A Court H.R. “Five Pensioners” Case. Judgment of February 28, 2003. Series C No. 98, para. 136.

¹¹⁹ Article 23 of the American Convention establishes, in what is relevant, that: “Every citizen shall enjoy the following rights and opportunities: (...) c. to have access, under general conditions of equality, to the public service of his country. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

¹²⁰ IACHR, Report No. 72/17, Case 13.019. Merits. Eduardo Rico. Argentina. July 5, 2017, para. 124; I/A Court H.R. Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 192.

preceding paragraph, the Commission deems that the state also violated Article 23.1(c) of the American Convention in connection with Article 1.1 of the same instrument, to the detriment of Mr. Héctor Fidel Cordero Bernal.

V. CONCLUSIONS

103. The Commission concludes that the Peruvian state is responsible for violating the right to a fair trial, the principle of legality, political rights, and the right to judicial protection as set forth in Articles 8.1, 8.2(h), 9, 23.1(c), and 25.1 of the American Convention in connection with the obligations set forth in Articles 1.1 and 2 of the same instrument, to the detriment of Héctor Fidel Cordero Bernal.

VI. RECOMMENDATIONS

104. On the basis of the preceding conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THE PERUVIAN STATE,

1. To reinstate Héctor Fidel Cordero Bernal, in the event this is what he wishes, to a position similar to the one he held in the Judiciary, with the same pay, social benefits, and rank comparable to what he would have had today had he not been dismissed. If for substantiated reasons the reinstatement is not possible, to pay him an alternative compensation.

2. To comprehensively redress the violations of rights stated in the present report, including both tangible and intangible aspects.

3. To adjust domestic law to ensure that disciplinary proceedings against justice operators are compatible with the standards of judicial independence set forth in the present report and comply with all the guarantees of due process of law and the principle of legality. Specifically, the measures needed for the proceedings to guarantee the right to appeal a judgment of sanction and the right to judicial protection must be taken. Also to ensure that causes for disciplinary actions and their sanctions comply with the principle of legality.