

# **Inter-American Court of Human Rights**

## **Case of the Constitutional Court v. Peru**

### **Judgment of January 31, 2001 (Merits, Reparations and Costs)**

In the Constitutional Court case,

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

Antônio A. Cançado Trindade, President  
Máximo Pacheco Gómez, Vice President  
Hernán Salgado Pesantes, Judge  
Oliver Jackman, Judge  
Alirio Abreu Burelli, Judge  
Sergio García Ramírez, Judge and  
Carlos Vicente de Roux Rengifo, Judge;

also present,

Manuel E. Ventura Robles, Secretary and  
Renzo Pomi, Deputy Secretary

pursuant to Articles 29 and 55 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers the following judgment in the instant case.

#### **I**

#### **INTRODUCTION OF THE CASE**

1. On July 2, 1999, in application of the provisions of Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), the Inter-American Commission on Human Rights (hereinafter "the Commission" or the Inter-American Commission") filed an application before the Court against the Republic of Peru (hereinafter "the State" or "Peru"), arising from petition number 11,760, which the Secretariat of the Commission had received on June 2, 1997.

2. The Commission stated that the purpose of the application was for the Court to decide whether the State had violated Articles 8(1) and 8(2)(b, c, d) and f) (Right to a Fair Trial), 23(1)(c) (Right to Participate in Government) and 25(1) (Right to Judicial Protection) of the American Convention, in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the Convention, with regard to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, justices of the Constitutional Court of Peru. It also requested the Court to require Peru to "make integral and adequate reparation" to the said justices and reinstate them in the exercise of their functions, and arrange for the annulment of

the resolutions that dismissed them: Nos. 002-97-CR, 003-97-CR and 004-97-CR of May 28, 1997. As part of the reparation, the Commission requested that the alleged victims should be compensated for all the salary-related income that they failed to receive from the time of their dismissal until the date of their effective reinstatement, and also receive a payment for moral damages. Lastly, the Commission requested that Peru should be condemned to pay the "reasonable" expenses and costs incurred by the alleged victims and their lawyers when processing the case in the Peruvian jurisdiction and before the Commission and the Inter-American Court.

## II COMPETENCE OF THE COURT

3. The Court is competent to hear this case. Peru has been a State Party to the Convention since July 28, 1978, and recognized the contentious jurisdiction of the Court on January 21, 1981.

## III PROCEEDING BEFORE THE COMMISSION

4. On May 15, 1997, the Inter-American Commission received a petition signed by 27 deputies of the Congress of Peru, concerning the dismissal of the justices of the Constitutional Court referred to above. On July 16, 1997, the Commission began processing this petition and forwarded the pertinent parts to the State requesting it to provide any relevant information within 90 days.

5. On October 16, 1997, Peru submitted a report prepared by the National Human Rights Council (Official letter No. 1858-97-JUS/CNDH-SE), in which it requested that the Commission declare the petition inadmissible "inasmuch as the petitioners ha[d] not exhausted domestic remedies." On October 21, 1997, the Commission forwarded this report to the petitioners, requesting that they present any comments within 30 days.

6. On January 28, 1998, the Commission convened a public audience for February 25, 1998, during its 98th regular session, in order to hear the parties concerning the admissibility of the petition.

7. On April 30, 1998, the petitioners requested that the Commission find the petition admissible. That same day, the Commission informed the State of this request.

8. On May 5, 1998, during the 99th special session, the Commission adopted the Admissibility Report on petition No. 35/98, in which it concluded "that since the exceptions provided for in Article 46(2)(c) of the Convention applied in the instant case, it was not necessary for domestic remedies to be exhausted for the Commission to be competent to take up the petition." In a note of June 29, 1998, the State replied, stating that, as the Admissibility Report had been issued, "it was unnecessary to make any comment on the allegations made prior to the admissibility decision" and announced that it would submit a report concerning the admissibility of the petition in this case at a later date. This information was forwarded to the petitioners.

9. On July 29, 1998, the Commission made itself available to the parties in order to reach a friendly settlement, in accordance with Article 48(1)(f) of the American Convention. On August 14, 1998, the State responded negatively to the possibility of seeking a friendly settlement, because it deemed that this procedure was not applicable in the instant case. Finally, in a note of August 17, 1998, the petitioners indicated that the only possible solutions was the reinstatement of the justices whose dismissal was unconstitutional.

10. On December 9, 1998, during its 101st regular session, the Commission adopted Report No. 58/98, which was forwarded to the State on December 14, 1998. In this report, the Commission concluded that

[...] by dismissing Justices Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano de Mur from the bench of the Constitutional Court, for alleged procedural irregularities in the clarification of the ruling that found that Law No. 26,657 was non-applicable, [...] the State of Peru violated the essential guarantee of the Constitutional Court's independence and autonomy (Article 25 of the American Convention); the right to a fair trial (Article 8(1) of the Convention) and the guarantee of security in a position in public service (Article 23(c) of the Convention).

The Commission also made the following recommendations to the State:

[t]hat [...] it make appropriate reparations to the Constitutional Court [j]ustices, Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano de Mur, by restoring them to their seats on the bench of the Constitutional Court and by compensating them for all income not received since the date of their unlawful removal from the bench.

The Commission granted the State a period of two months to adopt the corresponding measures to comply with these recommendations.

11. In a note of December 15, 1998, the State expressed its concern that the media had published information on the adoption of the report pursuant to Article 50 of the Convention, because the matter should have been maintained "in the strictest confidence."

12. On February 1, 1999, the petitioners requested the Commission to submit the case to the Inter-American Court.

13. On February 12, 1999, Peru requested an extension of the 60-day period so that it might continue studying the recommendations made in the Commission's report. On February 26, 1999, the Commission granted the requested extension and suspended the application of the time periods established in Article 51(1) of the Convention. On April 14, 1999, the State requested a further extension, to which the Commission also agreed. During the time granted by the Commission, the State and the petitioners held meetings designed to reach a friendly settlement, with the Commission's knowledge and in its presence; however, this was not achieved.

14. On June 17, 1999, after formally notifying the parties, the Commission decided to submit the case to the Court under Article 51 of the Convention.

#### **IV PROCEEDING BEFORE THE COURT**

15. The application was lodged with the Court on July 2, 1999 (*supra* 2). The Commission appointed Hélio Bicudo and Carlos Ayala Corao as its delegates; Hernando Valencia Villa and Christina Cerna as advisors, and Lourdes Flores Nano, Carlos Chipoco, Manuel Aguirre Roca, Raúl Ferrero Costa, Juan Monroy Gálvez and Valentín Paniagua Corazao as assistants.

16. A preliminary examination of the application found that some annexes were either incomplete or illegible and the names and domiciles of all the petitioners were not included. Consequently, on July 12 and 14, 1999, pursuant to Article 34 of the Court's Rules of Procedure, the Commission was asked to retransmit them. On July 15, 16 and 23, 1999, the Commission forwarded part of the requested documentation.

17. In a note of July 12, 1999, the Secretariat of the Court (hereinafter "the Secretariat") notified the application to the State, and informed it of the periods for answering it, filing preliminary objections and appointing its agents. It also advised the State that it had the right to appoint an *ad hoc* Judge.

18. On July 16, 1999, the Peruvian Ambassador to Costa Rica visited the seat of the Court to return the application and the annexes in the instant case. This official handed the Secretariat a note dated July 15, 1999, signed by the Minister for Foreign Affairs a.i. of Peru, which stated that

1. By Legislative Resolution dated July 8, 1999, [...] the Congress of the Republic approved the withdrawal of the recognition of the contentious jurisdiction of the Inter-American Court of Human Rights.

2. On July 9, 1999, the Government of the Republic of Peru deposited with the General Secretariat of the Organization of American State (OAS), the instrument wherein it declares that, pursuant to the American Convention on Human Rights, the Republic of Peru is withdrawing the declaration consenting to the optional clause concerning recognition of the contentious jurisdiction of the Inter-American Court of Human Rights[...].

3. [...]the withdrawal of the recognition of the Court's contentious jurisdiction takes immediate effect as of the date on which the said instrument was deposited with the General Secretariat of the OAS, that is, July 9, 1999, and applies to all cases in which Peru has not answered the application filed with the Court.

Finally, the State declared in its letter that

[...] the notification contained in note CDH-11,760/002, of July 12, 1999, concerns a case in which the Honorable Court is no longer competent to hear the applications filed against the Republic of Peru, under the contentious jurisdiction provided for in the American Convention on Human Rights.

On July 19, that year, this letter was forwarded to the Commission and it was asked to submit its comments.

19. On August 27, 1999, the International Human Rights Law Group submitted a brief in the capacity of *amicus curiae*. On September 15, 1999, Curtis Francis Doebbler and Alberto Borea Odría submitted briefs in the same capacity.

20. On September 10, 1999, the Commission submitted its comments on the return of the application and its annexes by the State. In its brief it stated that:

a. The court asserted jurisdiction to consider the instant case as of July 2, 1999, the date on which the Commission filed the application. Peru's purported "withdrawal" of its recognition of the Court's contentious jurisdiction on July 9, 1999, and its return of the application and its attachments on July 16, 1999, have no effect whatsoever on the Court's exercise of jurisdiction in the instant case; and

b. A unilateral action by a State cannot divest an international court of jurisdiction that it has already asserted; the American Convention contains no provision that would make it possible to withdraw recognition of the Court's contentious jurisdiction, as such a provision would be antithetical to the Convention and have no foundation in law. Even supposing a State could withdraw its recognition of the Court's contentious jurisdiction, formal notification would have to be given one year before the withdrawal could take effect, for the sake of legal certainty and continuity.

Finally, the Commission petitioned the Court to find that Peru's return of the application in the Constitutional Court case and its attachments had no legal effects and to continue to exercise jurisdiction over the instant case.

21. On September 24, 1999, the Court delivered judgment on its competence, and resolved, unanimously:

1. To declare that:

a. The Inter-American Court of Human Rights is competent to take up the present case;

b. The State's purported withdrawal of the declaration recognizing the contentious jurisdiction of the Inter-American Court of Human Rights is inadmissible.

2. To continue to examine and adjudicate the instant case.

3. To commission its President, at the appropriate time, to convene the State and the Inter-American Commission on Human Rights to a public hearing on the merits of the case, to be held at the seat of the Inter-American Court of Human Rights.

4. To notify Peru and the Inter-American Commission on Human Rights.

22. On September 27 and 29 and October 4, 1999, the State forwarded notes in which it expressed its position with regard to the judgment on competence delivered by the Court. On September 27, 1999, the First Secretary (*Ministro*) of Peru's Embassy in Costa Rica came to the seat of the Court to return the judgment on competence. He also delivered a note to the Secretariat dated September 29, 1999, which stated:

1. The 'judgments on competence' delivered by the Court and notified on September 27, 1999, are not established procedurally in any of the instruments in force in the inter-American system for the protection of human rights.

2. By Note [... RE (GAB) N° 6/24 of July 15, 1999,] the State of Peru returned the notifications [in the Constitutional Court case] and informed the Court that it had deposited before the General Secretariat of the Organization of American States (OAS), the instrument wherein it communicated the decision of the Government and Congress to withdraw recognition of the contentious jurisdiction of the Inter-American Court of Human Rights.

3. The Court is not competent to make any declaration on the legal validity of the Government of Peru's decision to withdraw from its contentious jurisdiction. The withdrawal of the recognition of the contentious jurisdiction of the Court is a freely taken, unilateral decision of the State of Peru that does not allow any interpretation or qualification.

4. In the light of the previous arguments and, since the State of Peru is not subject to the contentious jurisdiction of the Court in the cases referred to [in] Note CDH/S-1014, we do not consider this to be a notification, since the State of Peru is not a party to the said proceedings.

[...]

23. On August 29 and September 6, 2000, the Secretariat requested the Commission to forward the list of witnesses and experts that it would offer during the public hearing on the merits of the case. On September 11, 2000, the Commission submitted the list.

24. By an Order of September 13, 2000, the President of the Court (hereinafter "the President") convened the Inter-American Commission and the State to a public hearing to be held at the seat of the Court on November 22, 2000, in order to receive the statements of the witnesses and the experts offered by the Commission and also the final oral arguments of the parties on the merits of the case. The same day, the Secretariat sent the Commission the summonses for the witnesses who were convened. On October 19, 2000, the Commission transmitted three notification records and advised that the records concerning the presence of the four other witnesses "w[ould] be sent as soon as [they had been] received." On October 20 and 30 and November 1, 2000, the witnesses Díez Canseco Cisneros, Revoredo Marsano, Bernalles Ballesteros and Díaz Valverde, respectively confirmed that they would attend the public hearing.

25. On November 22, 2000, the Court held the public hearing on merits and received the statements of the witness and the experts proposed by the Commission on the facts that are the subject of the application. The Court also heard the Commission's final oral arguments on merits.

There appeared before the Court:

For the Inter-American Commission on Human Rights:

Hélio Bicudo, delegate  
 Carlos Ayala Corao, delegate  
 Christina Cerna, adviser  
 Lourdes Flores Nano, adviser, and  
 Manuel Aguirre Roca, assistant;

witness proposed by the Commission:

Delia Revoredo Marsano;

experts proposed by the Commission:

Jorge Avendaño Valdéz, and  
 Mario Pasco Cosmópolis.

The following witnesses and experts did not appear:

Ricardo Nugent López Chaves  
Luis Guillermo Díaz Valverde  
Javier Díez Canseco Cisneros  
Fernando Olivera Vega  
Guillermo Rey Terry, and  
Enrique Bernales Ballesteros.

Although the State had been convened it did not appear (*infra* 58-62). At the beginning of the public hearing, the President read Article 27 of the Court's Rules of Procedure, which authorize the Court to proceed with the case, on its own motion, when a party fails to appear (*infra* 59).

26. During the public hearing held on November 22, 2000, the Commission submitted a certified copy of the congressional Legislative Resolution No. 007-2000-CR, date November 17, 2000, signed by Valentín Paniagua Corazao, President of the Congress of the Republic, and several newspaper clippings (*infra* 38).

27. On November 29, 2000, on the instructions of the Court, the Secretariat requested the Commission to present evidence and arguments on the expenses and costs incurred during the domestic proceeding and before the inter-American system. On December 4 and 12, 2000, the Commission requested extensions, which were granted by the President, until January 8, 2001. The Commission submitted the requested document within the agreed period (*infra* 41). It was forwarded to the State, which was granted until January 24, 2001, to submit its comments. At the time this judgment was delivered, the State had not forwarded its arguments in this respect.

28. On December 8, 2000, the President granted until January 5, 2001, for the submission of final arguments. This period was extended until January 10, 2001. On January 10, 2001, the Commission submitted its final arguments. At the time this judgment was delivered, the State has not forwarded its arguments.

29. On December 8, 2000, the Secretariat requested the Commission to forward the original file that it had prepared. On January 2, 2001, the Commission indicated that, according to article 73 of its Regulations, "only certified copies of the items in the file that [are] consider[ed] pertinent" may be sent. On January 12, 2001, on the instructions of the President, the Secretariat requested the Commission to forward some of the document from the said file and indicated that the Court would be informed of its letter of January 2, 2001, for the pertinent effects. On January 19 and 29, 2001, the Commission forwarded some of the requested documentation.

30. On December 12, 2000, the Commission sent a brief containing the technical opinion of Enrique Bernales Ballesteros. The following day, the Secretariat forwarded this document to the State so that it could submit its comments by January 8, 2001, at the latest. At the time this judgment was delivered, the State had not forwarded any document.

31. On January 22, 2001, the Embassy of Peru in Costa Rica forwarded a copy of Legislative Resolution No. 27,401 of January 18, 2001, and the single clause states:

Legislative Resolution No. 27152 is revoked and the Executive is authorized to execute all actions necessary to annul the results that may have arisen from this Legislative Resolution, fully re-establishing the contentious jurisdiction of the Inter-American Court of Human Rights for the State of Peru.

## V

### URGENT AND PROVISIONAL MEASURES

32. On April 3, 2000, pursuant to the provisions of Article 63(2) of the American Convention and Article 25 of the Rules of Procedure, Delia Revoredo Marsano requested the Court to adopt provisional measures in favor of herself and her husband, Jaime Mur Campoverde. To justify her request, she informed the Court that:

a. During the proceeding she heard as a member of her country's Constitutional Court to examine the action on the unconstitutionality of a law interpreting the Constitution of the State that would allow the incumbent President of Peru to be a candidate for a third consecutive presidential mandate, three of the seven acting justices, who maintained that the "interpretation law" was unconstitutional were dismissed and suffered "many kinds of intimidation: bribes, threats, harassment."

b. As she herself could not be prosecuted or convicted owing to her constitutional immunity, the attacks focused on her husband, and a proceeding for the alleged contraband of a vehicle, which had been filed was reopened. During this period, their property was attacked and their telephones intercepted, and there was also interference in her husband's business activities.

c. Following her dismissal as a justice of the Constitutional Court, she was appointed Dean of the Lima Bar Association and President of the Board of Deans of the Peru Bar Associations and was commissioned by civil society organizations to submit a petition to the Inter-American Commission on Human Rights concerning the interference of the Executive in the constitutional functions of other State organs. As a result, she was told that her husband would be convicted "and that he would be arrested" and, she therefore went into exile with him.

d. Following declarations by the President of Peru in which he referred negatively to the honor of the Murs, they decided to give up their exile and return to Peru.

e. As a result of a recent public statement signed by her and other citizens in order to form a Front for the Defense of Democracy, the following events occurred: a criminal proceeding was reopened with the intention of preventing her from leaving the country, she was required to pay a surety of 20,000 soles and the public registry offices were requested to provide a list of her property so that it could be embargoed; moreover, one of her husband's companies lost an arbitration proceeding; both the latter and the appeals that were filed were processed irregularly in order to prejudice them.

f. All these acts against her had a twofold purpose: on the one hand, to deprive her of her freedom and her property, and, on the other, to prevent



her from being reinstated to the Constitutional Court, due to legal impediment.

g. The Government used problems of a family or a business nature to impose arbitrary legal sanctions through judges or prosecutors, which threaten the honor and freedom of the persons involved.

As a result, she requested that:

a. While the proceeding on the reinstatement of the [j]ustices of the Constitutional Court is being heard, the State of Peru abstain from [harassing her] directly or [harassing her] husband, using its control over the judges and courts and manipulating them.

b. Specifically, the judicial proceeding filed against [her] before the Fifteenth Court for Crimes included in Administrative Resolution No. 744-CME-PJ -Exp. No. 1607-2000, for the alleged crimes of misappropriation, fraud and misuse of public documents, be suspended until the proceeding for [her] reinstatement as a Constitutional Justice has been decided.

c. Delia Revoredo de Mur and Jaime Mur Campoverde be guaranteed [the] right to judicial protection of their patrimonial interests, and their company, *Corporación de Productos Alimenticios Nacionales PYC S.A.* be allowed the legal remedy of appeal against an adverse arbitration award.

33. In an order of April 7, 2000, the President of the Court requested the State to adopt any necessary measures to ensure the physical safety and mental and moral integrity of Delia Revoredo Marsano, "so that the provisional measures that the Court m[ight] order for her c[ould] have the pertinent effect".

34. On April 20, 2000, the Commission requested the Court to "[r]atify the [urgent] measures ordered by the President of the Court on April 7, 2000, for Delia Revoredo Marsano de Mur." The State did not submit the reports requested in the President's order.

35. By an order of August 14, 2000, the Court adopted provisional measures, which ratified the President's order of April 7, 2000, and requested the State to maintain the necessary measures to protected the physical safety, and mental and moral integrity of Delia Revoredo Marsano. It also requested the State to report on the protection measures that it had adopted by September 14, 2000, at the latest. Lastly, it requested Peru to investigate the facts and report every two months on the provisional measures taken, and the Inter-American Commission to forward its comments on those reports within six weeks of receiving them.

36. When this judgment was delivered, the State had not submitted the reports requested by the Court's order of August 14, 2000. However, on September 21, 2000, the Commission submitted a report on the situation of Delia Revoredo Marsano.

## VI EVIDENCE

### A) DOCUMENTARY EVIDENCE

37. The Commissioned submitted four files containing copies of 190 documents as attachments to the application brief<sup>1</sup>.

<sup>1</sup> Cf. Relevant articles of the Peruvian Constitution, promulgated on December 29, 1993, Tome I, Annex 1; Statute of the Constitutional Court, Law No. 26,435, promulgated on December 23, 1994, published on January 6, 1995, Tome I, Annex 2; Law No. 26,541 "Substituting an article of the statute of the Constitutional Court", promulgated on October 12, 1995, Tome I, Annex 2; legislative resolution of the Congress of the Republic of Peru, No. 001-96-CR, of June 19, 1996, Tome I, Annex 3; Law No. 26,657, "Interpreting Article 112 of the Constitution concerning presidential re-election", promulgated on August 23, 1996, Tome I, Annex 3; petition challenging the constitutionality of Law No. 26,657, filed by the Lima Bar Association, dated August 29, 1996, Tome I, Annex 4; Notarized letter of members of congress from the majority party dated January 14, 1997, addressed to the President of the Constitutional Court, Tome I, Annex 5; draft judgment of the Constitutional Court of November 20, 1996, Tome I, Annex 6; judgment of the Constitutional Court of January 3, 1997, in file 002-96-I/TC declaring Interpretation Law No. 26,657 non-applicable, Tome I, Annex 7; "judgment" of the Constitutional Court of January 3, 1997, in file 002-96-I/TC declaring unfounded the action challenging the constitutionality of Law No. 26,657, Tome I, Annex 8; brief of the Lima Bar Association dated January 20, 1997, with petition for clarification of judgment, concerning the judgment of January 3, 1997, declaring Interpretation Law No. 26,657 non-applicable, Tome I, Annex 9; resolution of the Constitutional Court of January 21, 1997, in file No. 002-96-I/TC, signed by Justices Aguirre Roca, Rey Terry and Revoredo Marsano, Tome I, Annex 10; relevant articles of Peru's Civil Procedural Code, Tome I, Annex 11; official record of the session of the Administrative Plenary of the Constitutional Court of March 14, 1997, Tome I, Annex 12; official letter No. 351-CR-DL-M signed by the Third Vice-President of the Congress of the Republic, Luz Salgado Rubianes de Paredes, and addressed to Martha Hildebrandt, dated March 4, 1997, Annex 13; agenda motion No. 338 of January 20, 1997, signed by Congressman Javier Díez Canseco Cisneros, Tome I, Annex 13; adoption of agenda motion submitted by Congressman Javier Díez Canseco Cisneros, dated February 27, 1997, Tome I, Annex 13; agenda motion No. 385 of January 15, 1997, signed by six members of Congress, Tome I, Annex 13; agenda motion of January 15, 1997, signed by Congressman Javier Alva Orlandini, Tome I, Annex 13; minutes of the 29<sup>th</sup> session of the Congress of the Republic of Peru held on February 27, 1997, Tome I, Annex 13; questioning of Justice Delia Revoredo Marsano by the Investigation Committee of the Congress of the Republic of Peru, Tome I, Annex 14; fragments of the transcripts of the statements of Justices Manuel Aguirre Roca, Guillermo Rey Terry and Nugent, of March 31, April 4 and 18, 1997, respectively, before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court, Tome I, Annex 15; official letter No. 045-97-97/CITC-CR from the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court to the President of the Congressional Permanent Commission dated May 5, 1997, about the impeachment proceeding against Justices Nugent, Aguirre Roca, Rey Terry and Revoredo Marsano, Tome I, Annex 16; agreement of the Congressional Permanent Commission of May 6, 1997, to appoint the Evaluation Sub-Committee for the impeachment proceeding, Tome I, Annex 16; report of the Investigation Committee of the Congress of the Republic responsible for clarifying the complaints concerning the Constitutional Court of May 5, 1997, Tome I, Annex 17; official letter No. 017-97-SC/DC-CP-CR of May 14, 1997, signed by the President of the Evaluation Sub-Committee and addressed to the President of Congress, Tome I, Annex 17; Document dated May 6, 1997 signed by congressman, Javier Alva Orlandini, member of the Investigation Committee, Tome I, Annex 18; report of the sub-committee responsible for evaluating the articles of impeachment against the Constitutional Court justices (hereinafter "Evaluation Sub-Committee) of May 14, 1997, Tome I, Annex 19; minutes of the Congressional Permanent Commission discussion at which the Impeachment Sub-Committee was appointed, on May 23, 1997, Tome I, Annex 19; minutes of the Congress of the Republic debate of May 28, 1997, during which it was agreed to dismiss Justices Aguirre Roca, Rey Terry and Revoredo Marsano, Tome I, Annex 19; the Congress of the Republic voting list for the session of May 28, 1997, Tome I, Annex 19; list of the members of the Permanent Commission of the Congress of the Republic present at the May 28, 1997, session, with their votes, Tome I, Annex 19; submission of the impeachment to the Congress of the Republic by the Impeachment Sub-Committee, Tome I, Annex 19; legislative resolutions of the Congress of the Republic No. 002-97-CR, 003-97-CR and 004-97-CR, published in the official gazette, *El Peruano*, on May 29, 1997, Tome I, Annex 20; Resolution of the Constitutional and Social Chamber of the Supreme Court of Justice on the application for amparo filed by Martha Gladys Chávez Cossio against the Constitutional Court, Tome I, Annex 21; Newspaper article, "*Corte Suprema declaró fundado amparo a favor de reelección presidencial*" with no reference, Tome I, Annex 21; statements of Justice Manuel Aguirre Roca and other defense counsel before the Congress of the Republic, Tome I, Annex 22; Newspaper article, "*Renovar la Corte Suprema*", *Expreso*, February 19, 1998, Tome I, Annex 22; Newspaper article, "*Poder Judicial: ¿cara o sello?*", *El Comercio*, February 18, 1998, Tome I, Annex 22; Newspaper article, "*Un grave caso de inseguridad jurídica*", *El Comercio*, February 19, 1998, Tome I, Annex 22; report of the Andean Jurists Committee "*Deletreando DEMOCRACIA*" Tome I, Annex 23; official letter No. 007-97/CITC-CR from the President of the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court to Justice Manuel Aguirre Roca, dated March 17, 1997, Tome II, Annex 1; official letter No. 100-97-P/TC from

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the President of the Constitutional Court to the President of the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court dated March 20, 1997, Tome II, Annex 2; official letter No. 074-97-P/TC from the President of the Constitutional Court to the President of the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court dated March 19, 1997, Tome II, Annex 2; letter from Manuel Aguirre Roca to the President of the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court dated March 20, 1997, Tome II, Annex 3; official letter No. 011-97/CITC-CR from the President of the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court to Justice Manuel Aguirre Roca, undated, Tome II, Annex 3; official letter No. 016-97/CITC-CR from the President of the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court to Justice Manuel Aguirre Roca, dated March 25, 1997, Tome II, Annex 4; transcript of the statement of Justice Manuel Aguirre Roca before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on March 31, 1997, Tome II, Annex 5; transcript of the statement of Justice Luis Guillermo Díaz Valverde before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on March 31, 1997, Tome II, Annex 5; transcript of the statement of Justice Guillermo Rey Terry before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 4, 1997, Tome II, Annex 6; transcript of the statement of Justice José García Marcelo before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 4, 1997, Tome II, Annex 6; transcript of the statement of Congressman Torres y Torres Lara before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 14, 1997, Tome II, Annex 7; transcript of the statement of Justice Francisco Javier Acosta Sánchez before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 14, 1997, Tome II, Annex 7; transcript of the statement of Justice Ricardo Nugent before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 18, 1997, Tome II, Annex 8; official letter from the office of the President of the Constitutional Court dated April 10, 1997, Tome III, Annex 1; official letter No. 004-97-SC/DC-CP-CR from the President of the Evaluation Sub-Committee to Justice Manuel Aguirre Roca dated May 6, 1997, Tome III, Annex 3; letter of the justices of the Constitutional Court, Ricardo Nugent, Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, to the President of the Evaluation Sub-Committee dated May 8, 1997, Tome III, Annex 4; letter of Justice Manuel Aguirre Roca to the President of the Evaluation Sub-Committee dated May 8, 1997, Tome III, Annex 5; letter of Justice Manuel Aguirre Roca to the President of the Evaluation Sub-Committee dated May 12, 1997, Tome III, Annex 6; letter of the justices of the Constitutional Court, Ricardo Nugent, Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, to the President of the Evaluation Sub-Committee dated May 12, 1997, Tome III, Annex 7; letter of the justices of the Constitutional Court, Ricardo Nugent, Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, to the President of the Evaluation Sub-Committee dated May 14, 1997, Tome III, Annex 8; letter of the President of the Congress of the Republic to Justice Manuel Aguirre Roca dated May 19, 1997, Tome III, Annex 10; transcript of statements made before the Permanent Commission on May 23, 1997, Tome III, Annex 11; appeal filed by Justice Manuel Aguirre Roca before the Congressional Permanent Commission on May 23, 1997, Tome III, Annex 12; transcript of the articles of impeachment formulated by the congressional Impeachment Sub-Committee against the justices of the Constitutional Court on May 28, 1997, Tome III, Annex 13; transcript of the defense arguments of the lawyer Raúl Ferrero Costa before Congress on May 28, 1997, Tome III, Annex 13; transcript of the statement of Manuel Aguirre Roca before Congress on May 23, 1997, Tome III, Annex 13; document entitled "*Acusación del señor congresista Luis Delgado Aparicio, miembro de la Subcomisión Acusadora contra cuatro señores magistrados del Tribunal Constitucional, realizada en Sesión Plenaria del Congreso efectuada el día 28 de mayo de 1997*" published in the official gazette, *El Peruano*, on June 11, 1997, Tome III, Annex 13; document entitled "*Acusación del señor congresista Enrique Chirinos Soto, Presidente de la Subcomisión Acusadora contra cuatro señores magistrados of the Constitutional Court, realizada en Sesión Plenaria del Congreso efectuada el día 28 de mayo de 1997*" published in the official gazette, *El Peruano*, on June 3, 1997, Tome III, Annex 13; transcript of the defense arguments of the lawyer Raúl Ferrero Costa before Congress on May 28, 1997, Tome III, Annex 13; transcript of the defense arguments of the lawyer Juan Monroy Gálvez before Congress on May 28, 1997, Tome III, Annex 13; brief of Justice Manuel Aguirre Roca to the President of Congress, filed on June 5, 1997, Tome III, Annex 14; official letter No. 254-97-OM/CR, from José F. Cevalco Piedra to Manuel Aguirre Roca, dated June 6, 1997, Tome III, Annex 15; judgment of the Constitutional Court of July 16, 1998, on the special appeal formulated in the application for amparo filed by Justice Manuel Aguirre Roca, published in the official gazette, *El Peruano*, on September 25, 1998, Tome III, Annex 16; judgment of the Constitutional Court of July 10, 1998, on the special appeal formulated in the application for amparo filed by Justices Guillermo Rey Terry and Delia Revoredo Marsano, published in the official gazette, *El Peruano*, on September 25, 1998, Tome III, Annex 16; police certificate No. 387-96-DINPFI-PNP-DIECO, prepared by the Contraband Investigation Division of the National Fiscal Patrimony Directorate dated December 23, 1996, Tome IV, Annex 1; legislative decree No. 809 "General Customs Law" published in the official gazette, *El Peruano*, on April 19, 1996, Tome IV, Annex 2; supreme decree No. 121-96-EF "Regulations to the General Customs Law" published in the

38. During the public hearing on merits held at the seat of the Court on November 22, 2000 (*supra* 26), the Commission handed over three documents on the reinstatement of the justices of the Constitutional Court and a file with 22 newspaper articles<sup>2</sup>.

39. On December 12, 2000, the Commission forwarded a brief accompanied by the technical opinion of Bernales Ballesteros to the Court (*supra* 30).

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40. During the public hearing on merits, the Court requested the expert, Jorge Avendaño Valdéz, to provide a copy of the Regulations of the Congress of Peru, published on May 30, 1998, in the official gazette, *El Peruano* (*supra* 25).

41. The Commission forwarded 41 attachments corresponding to 81 documents with the brief on costs and expenses that the Court had requested<sup>3</sup> (*supra* 27).

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official gazette, *El Peruano*, on December 24, 1996, Tome IV, Annex 2; supreme decree No. 123-96-EF published in the official gazette, *El Peruano*, on December 24, 1996, Tome IV, Annex 2; supreme decree No. 122-96-EF published in the official gazette, *El Peruano*, on December 24, 1996, Tome IV, Annex 2; reply to application for amparo of January 29, 1997, filed before the Lima Public Law Court by Miguel Molleda Cabrera in file No. 47-97, Tome IV, Annex 3; brief of Dr. César Guzmán-Barrón of September 12, 1997, Tome IV, Annex 5; brief with the response of Jaime Mur Campoverde filed before the Chamber for Customs and Tax Crimes on March 30, 1998, File No. 01-97, Tome IV, Annex 6; Report prepared by Eduardo Ferrero Costa, dated April 24, 1997, Tome IV, Annex 7; brief of César San Martín Castro filed before the Superior Chamber for Customs and Tax Crimes on April 1, 1998, Tome IV, Annex 8; short form of manifest of Trinity Shipping Line S.A. of November 22, 1996, Tome IV, Annex 9; short form of manifest of Trinity Shipping Line S.A. of January 22, 1996, Tome IV, Annex 10; resolution issued by the Callao Maritime Customs Authority of December 11, 1996, Tome IV, Annex 11; resolution of the Customs Chamber dated March 24, 1997 in the file No. 1493-96, Tome IV, Annex 12; report No. 105-97-MAHS-Customs Chamber dated March 24, 1997, Tome IV, Annex 12; memorandum No. 237-96-ADUANAS/0121 of the Office of the National Superintendent of Customs of April 29, 1996, Tome IV, Annex 13; letter of the Office of the National Superintendent of Customs of July 23, 1996, Tome IV, Annex 14; brief of José C. Ugaz Sánchez-Moreno filed before the Criminal Court for Tax and Customs Crimes on March 25, 1998, Tome IV, Annex 15; brief of Jaime Mur Campoverde before the Taxes and Customs Crimes Chamber, Tome IV, Annex 16; resolution No. 68-96-MP-1era FPDA-CALLAO of the office of the First Temporary Prosecutor for Customs Crimes of Callao of October 15, 1996, Tome IV, Annex 17; resolution No. 28-96-MP-1era FPDA-CALLAO of the office of the First Temporary Prosecutor Customs Crimes of Callao of September 25, 1996, Tome IV, Annex 18; resolution No. 67-96-MP-1era FPDA-CALLAO of the office of the First Temporary Prosecutor for Customs Crimes of Callao of October 21, 1996, Tome IV, Annex 19; resolution No. 80-96-MP-1era FPDA-CALLAO of the office of the First Temporary Prosecutor for Customs Crimes of Callao of November 12, 1996, Tome IV, Annex 20; legislative decree No. 843 published on August 30, 1996, Tome IV, Annex 21; and various newspaper articles

<sup>2</sup> Cf. Copy of legislative resolution No. 007-2000-CR of the Congress of the Republic, dated November 17, 2000; Newspaper article, "*Paniagua debe asumir la Presidencia*", *La República*, November 21, 2000; Newspaper article, "*Una solución política a la crisis*", *La República*, November 21, 2000; and various newspaper articles against Mrs. Revoredo and her husband.

<sup>3</sup> Cf. Lourdes Flores Nano's brief of January 4, 2001, to the Inter-American Commission on Human Rights; the lawyer, Lourdes Flores Nano's invoice for professional services dated November 16, 2000, in the name of Guillermo Rey Terry; Manuel Aguirre Roca's brief of January 3, 2001, on the expenses and costs arising from the proceedings undertaken as a result of her dismissal as a justice of the Constitutional Court; Delia Revoredo's credit card statement showing payment of American Airlines airline tickets and flight insurance on June 5, 1997, Annex 1; Delia Revoredo's credit card statement showing payment of a car rental on June 5, 1997, from Hertz Car Rental, Miami, United States, Annex 2; Delia Revoredo's credit card statement showing payment of hotel expenses from June 5 to 14, 1997, at the Marriott Hotel, Miami, United States, Annex 3; Delia Revoredo's credit card statement showing payment of hotel expenses on June 9 and 10, 1997, at the Biltmore Hotel, Florida, United States, Annex 4; invoice for professional services dated January 6, 1999, emitted by the lawyer's office BMU S.C.R.L. in the name of *Corporación de Productos Alimenticios Nacionales PYC S.A.*, Annex 5; invoice for professional services dated October 29,

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1997, emitted by the lawyer's office Benites, Mercado and Ugaz in the name of *Corporación de Productos Alimenticios Nacionales PYC S.A.*, Annex 5; invoice for professional services dated February 4, 1997, emitted by the lawyer's office Benites, Mercado and Ugaz in the name of *Corporación de Productos Alimenticios Nacionales PYC S.A.*, Annex 5; Delia Revoredo's credit card statement showing car rental on June 24, 1998, from Mapache Rent a Car, Costa Rica, Annex 6; table entitled "Reno Fees" and documents submitted in relation to the action for slander, Annex 7; Delia Revoredo's credit card statement showing payment of American Airlines tickets on June 23, 1998, Annex 8; Delia Revoredo's credit card statement showing payment of hotel expenses on May 21, 1998 at the Hyatt Hotel, Florida, United States, Annex 9; Delia Revoredo's credit card statement showing payment of hotel expenses on June 25 and 26, 1998, at the Hilton Hotel, Washington, United States, Annex 10; Delia Revoredo's credit card statement showing payment of hotel expenses on June 23, 1998, at the Marriott Hotel, Miami, United States, Annex 11; Delia Revoredo's credit card statement showing payment of hotel expenses from June 26 to July 12, 1998, at the Georgetown Suites Hotel, Washington D.C., United States, Annex 12; Delia Revoredo's credit card statement showing payment of hotel expenses from June 29 to July 1, 1998 at the Georgetown Suites Hotel, Washington D.C., United States, Annex 13; Delia Revoredo's credit card statement showing payment of a car rental from July 3 to 17, 1998, from Enterprise Rent a Car, Washington D.C., United States, Annex 14; Delia Revoredo's credit card statement showing payment of hotel expenses from June 12 to 17, 1998, at the Georgetown Suites Hotel, Washington D.C., United States, Annex 14; Delia Revoredo's credit card statement showing payment of hotel expenses July 17 to 22, 1998, at the Marriott Hotel, Miami, United States, Annex 14; Delia Revoredo's credit card statement showing payment of telephone services on July 24, 1998, Miami, United States, Annex 14; Delia Revoredo's credit card statement showing payment of hotel expenses on August 9, 1998, at the Apartotel Villas del Río, Costa Rica, Annex 15; invoices of the Apartotel Villas del Río, Costa Rica, for miscellaneous expenses, dated August 9, 1998; Annex 15; invoices of the Apartotel Villas del Río, Costa Rica, for miscellaneous expenses dated November 3, 1998; Annex 15; Delia Revoredo's credit card statement showing payment of a car rental on August 9, 1998, from Thrifty Rent-a-car, Costa Rica, Annex 16; invoices for miscellaneous expenses dated August 22, 1998, at the Atlantis Hotel, Nevada, United States, Annex 16; Delia Revoredo's credit card statement showing payment of hotel expenses from August 27 to September 13, 1998, at the Hyatt Hotel, Florida, United States, Annex 18; Delia Revoredo's credit card statement showing payment of American Airlines tickets on September 9, 1998, for Delia Revoredo Marsano, Mr. Cueva, Mr. Vizcarra and Jaime Mur, Annex 19; Delia Revoredo's credit card statement showing payment for sending a file by FEDEX on September 10, 1998, Annex 19; Delia Revoredo's credit card statement showing payment of hotel expenses from September 22 to 28, 1998, at the Hyatt Hotel, Florida, United States, Annex 20; Delia Revoredo's credit card statement showing payment of hotel expenses on September 22, 1998, at the Four Seasons, Washington D.C., United States, Annex 20; Delia Revoredo's credit card statement showing payment of American Airlines tickets and related expenses on September 22 and 26, 1998, Annex 21; Delia Revoredo's credit card statement showing payment of American Airlines tickets and related expenses on September 26, 1998, Annex 22; Delia Revoredo's credit card statement showing payment of hotel expenses on October 7, 1998, at the Hyatt Hotel, Florida, United States, Annex 23; Delia Revoredo's credit card statement showing payment of hotel expenses from October 9 to 13, 1998, at the Georgetown Suites Hotel, Washington D.C., United States, Annex 24; Delia Revoredo's credit card statement showing payment of hotel expenses on October 10, 1998 at the Hilton Hotel, Washington D.C., United States, Annex 24; Delia Revoredo's credit card statement showing payment of American Airlines airline tickets and related expenses on October 13, 1998, Annex 24; Delia Revoredo's credit card statement showing payment of to American Airlines tickets and related expenses on October 12, 1998, Annex 24; Delia Revoredo's credit card statement of October 28, 1998, Annex 25; Delia Revoredo's credit card statement showing payment of LACSA airline tickets and related expenses on November 3, 1998, Annex 25; Delia Revoredo's credit card statement showing payment of LACSA airline tickets on November 3, 1998, Annex 26; Delia Revoredo's credit card statement showing payment of hotel expenses on November 4, 1998, at the Apartotel Villas del Río, Costa Rica, Annex 26; invoice for hotel expenses from January 27 to 29, 1999, at the Hilton Hotel, Nevada, United States, Annex 27; invoice for hotel expenses from October 13 to 19, 1998, at the Hyatt Hotel, Florida, United States, Annex 28; receipt issued by Fanny Briseño Meiggs for fees for professional services, Annex 29; receipt issued by Fanny Briseño Meiggs for fees for professional services, Annex 29; receipt emitted by Greenberg Taurig P.A. for fees for professional services, Annex 30; receipt emitted by Greenberg Taurig P.A. for fees for professional services, Annex 31; certificate dated December 30, 2000, emitted by Tatiana Irene Mendieta Barrera for professional services, Annex 32; certificate dated January 3, 2001, emitted by Laura Nalvarte Moreno for services as an assistant, Annex 32; sworn statement of January 3, 2001, made by Felix José Jurado Hernández, Annex 34; invoice dated December 10, 1998, emitted by Greenberg Taurig P.A. for fees for professional services, Annex 35; invoice dated November 24, 1998, emitted by Greenberg Taurig P.A. for fees for professional services, Annex 36; invoice dated January 3, 2001 emitted by the lawyer's office Rodrigo, Elías and Medrano for fees for professional services, Annex 37; letter of January 2, 2001, prepared by Carlos Boloña Behr for fees for professional services, Annex 38; sworn statement of January 3, 2001, made by Guillermo Freund Vargas Prada, Annex 39; sworn statement of January 3, 2001, made by Jaime Mur Campoverde and Delia Revoredo Marsano, Annex 40; and various newspaper articles on Mrs. Revoredo.

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42. At the public hearing on November 22, 2000, the Court received the reports of the experts and the testimony of the witness offered by the Inter-American Commission. These statements are summarized below.

## B) TESTIMONIAL EVIDENCE

### **Testimony of Delia Revoredo Marsano, Justice of the Constitutional Court**

The Lima Bar Association filed suit challenging the constitutionality of Law 26,657 or the Authentic Interpretation of Article 112 of the Constitution (hereinafter "Interpretation Law"). This action followed the normal procedure; in other words, the President delivered the file to the full Constitutional Court so that it could be examined by one of the justices (the rapporteur), who in this case was Justice Guillermo Rey Terry. After examining the file, the Constitutional Court agreed to hear the suit on unconstitutionality on September 23, 1996, and on December 27 that year, Justice Rey Terry submitted his working paper on the merits of the issue to the full Court.

The working paper stated that the Interpretation Law was not a law for general application, but referred to the specific case of President Fujimori, who had been President before and after the entry into force of the 1993 Constitution. Accordingly, if he ran for a third presidential mandate, he would violate the provisions of Article 112 of the Constitution. In Justice Rey Terry's working paper, the Constitutional Court, using its oversight authority, declared that this norm was not applicable to President Fujimori and, consequently, prohibited him from presenting his candidacy for the 2000 elections. It indicated that five of the justices were "convinced that it was unconstitutional" with *erga omnes* effects; however, they could not state this because, according to the Court's statute, the votes of six of the seven justices who composed the Constitutional Court were needed in order to declare a law unconstitutional. They therefore opted to declare that the law was non-applicable, which only required a decision by a simple majority and had effect in the specific case. Either declaration - that the law was unconstitutional or that it was non-applicable - would have had the same effect in the concrete case; that is, President Fujimori would be unable to run for a third term; thus the essence of the Constitution would be protected.

On December 27, 1996, the Court adopted this working paper by five votes to two. Justices García Marcelo and Acosta Sánchez, who were not in agreement, resolved to deliver their individual opinions, with the respective reasoning, as soon as possible, so that the judgment could be published and notified.

The same evening, television's Channel 4 broadcast the content of the working paper. From then on, the Constitutional Court justices began to be pressured by politicians and the media, among others, and, in a letter to the Court, 40 members of Congress went so far as to demand that they not make that decision.

On December 28, 1996, the two justices who had said they would give individual opinions stated in a press communiqué that the Constitutional Court had not had quorum, "that the full Court had not been present, that the working paper had not

been presented, that it had not been discussed and much less [...] voted on". The same day, after a discussion on the content of the draft judgment between Justices García Marcelo and Rey Terry, the former acknowledged that he had taken the latter's working paper and handed it to the police and that the justices who supported the draft would suffer "the consequences of that document." As a result of Justice García Marcelo's conduct, the full Constitutional Court discussed and adopted a vote of censure against him.

On January 2, 1997, Justices Nugent and Díaz Valverde requested another vote on the case. In response, the other justices declared that there was already a tacit agreement and it only remained for the justices with dissenting opinions to incorporate these to the body of the judgment so that it could be notified and published. However, the majority of the justices, in other words, Nugent, Díaz Valverde, Acosta Sánchez and García Marcelo, voted in favor of conducting another vote, arguing that the case could be reconsidered if it had not been notified or published.

During this "second vote", Justices Nugent and Díaz Valverde withdrew their votes, indicating that they had already expressed their opinions in their university department; Justices Acosta Sánchez and García Marcelo abstained from voting, and the three alleged victims in this case voted as they had before that the Interpretation Law was non-applicable. According to the Constitutional Court's statute, a simple majority of the votes emitted is required to declare non-applicability. Thus, the judgment that declared it impossible for President Fujimori to run for the presidency in 2000 was adopted by the votes in favor of the three victims and with the abstention of the remaining justices.

Based on a request by the parliamentary opposition and on the witness's complaint, the full Congress set up a committee to investigate the removal of the Constitutional Court's electronic files and documents, and also a series of threats and harassments to which the witness was being subjected. This Investigation Committee was expressly barred from examining matters related to the jurisdictional work of the Constitutional Court.

The three alleged victims in this case were summoned by the Investigation Committee, chaired by Deputy Martha Hildebrandt, and their statements before the Committee related to "the removal of documents from hard disks and [the] complaints" of the witness. Subsequently, the Committee heard the statement of Justice García Marcelo, who denounced Justices Aguirre Roca, Rey Terry and the witness for "usurping functions [of the] Court", by emitting the consent of the full Court. The three alleged victims were not summoned again, and it was Justice Nugent, in a later statement, who tried to explain to the Hildebrandt Committee how the interpretation of a judgment functioned, and also that an agreement of the full Court existed, stating that the justices who interpreted judgments were the same as those who delivered them. However, the Hildebrandt Committee decided to denounce Justices Aguirre Roca and Rey Terry and the witness, and they were dismissed.

Finally, she indicated that she and her husband had been subjected to intimidation and harassment by various agents of the State following the delivery of the judgment on the Interpretation Law and its corresponding clarification. She indicated that, among other actions, two of their pick-up trucks had been assaulted, their telephones had been intercepted by the National Intelligence Service and two

lawsuits against them had been reactivated. This situation obliged her to request political asylum in Costa Rica, together with her husband, and this was granted to them.

### C) EXPERT EVIDENCE

#### a. **Expert report of Jorge Avendaño Valdéz, lawyer, former Peruvian Congressman, former Dean of the Faculty of Law of the Catholic University of Peru, former Dean of the Lima Bar Association, on the impeachment proceeding against the justices of the Constitutional Court before the Congress of the Republic**

Peruvian legislation establishes two procedures for investigating different matters of national interest. On the one hand, investigation committees are set up for all matters of public interest and, on the other, the Permanent Committee, through the impeachment procedure, is responsible for investigating any violation of the Constitution or alleged offense by any of the senior officials mentioned in article 99 of the Constitution. The investigation procedure regulated in article 88 of the Rules of Procedure of the Congress was established for cases of public interest and is initiated by an agenda motion submitted by any member or group of members of Congress on any matter of interest to the Nation. The investigation committee is composed of three to five members and must conduct its activities within the time limit and terms of reference established by Congress. The plenum, as the highest organ of Congress, appoints members of the investigation committees and has the powers to delimit their work. Thus, the full Congress indicates the objectives of each specific investigation, the duration and the members, and also establishes the terms of reference. In this particular case, Congress expressly defined not only the terms of reference, which were to investigate the facts denounced by Justice Revoredo, but it also expressly agreed that the investigations conducted by the investigative committee could not examine the judgments of the Constitutional Court, as the latter is an autonomous, independent organ, specifically appointed by the Constitution to supervise the acts of Congress. Therefore, if the investigation committee deviated from or exceeded its terms of reference, as in this case, it would invalidate any decisions it made, with absolute nullity, and also the whole subsequent impeachment procedure.

"[I]f the investigative committee presumes that an offense exists, [...] it formulates a complaint which, if this is against any official [such as the members of the Constitutional Court], gives rise to an impeachment proceeding." However, the justices of the Constitutional Court were not notified that they would be investigated for alleged irregularities when processing the file on presidential re-election, but rather, after they had made their statements before the Investigation Committee on the facts denounced by Justice Revoredo Marsana, they were only notified of the change in the investigation when it was before the Evaluation Sub-Committee; owing to this, they were unable to exercise their right to defense when faced with the impeachment proceeding. Moreover, the Investigation Committee submitted its report to the Permanent Committee rather than to the full Congress, as stipulated in the Rules of Procedure; this constitutes an irregularity that could annul the procedure at that stage. Should the Investigation Committee have concluded that, in addition to the facts denounced by Justice Revoredo Marsana, the members of the Court had committed an alleged error, the Committee could have requested the plenum to consider this and take a decision on expanding its terms of reference.



The impeachment proceeding, regulated by article 89 of the rules of procedure of Congress, is initiated by a complaint by any person who has been wronged or any member of Congress against senior officials of the Republic, and these include members of the Constitutional Court. Then, a Special Evaluation Committee is appointed to evaluate the admissibility of the complaint. If this Committee considers the complaint admissible, it prepares a report for the Congressional Permanent Commission. Once the possibility is admitted that there could be an impeachment proceeding against any senior official, the Permanent Commission appoints an Investigation Sub-Committee to make the corresponding investigation and prepare a final report. Although the Sub-Committee should be composed of three members, in the instant case, one member resigned and was not replaced.

Subsequently, the Permanent Committee considers the matter and takes a decision on the possibility of initiating an impeachment proceeding before the full Congress. According to article 99 of the Constitution, an impeachment proceeding may be initiated for two reasons, violation of the Constitution and a crime in the exercise of official functions. In the instant case, the clarification of the judgment by the three justices "did not constitute either a crime or a violation of the Constitution." If the Permanent Committee decides to proceed with the impeachment, as it did in this case, an Impeachment Sub-Committee is appointed who takes the matter to the full Congress, where a discussion is held, with the participation of the officials who are accused and their respective defense counsel. Finally, a decision is taken, which may consist, as in this case, of removing the impeached justices, pursuant to article 100 of the Constitution.

During his term as a member of Congress, he intervened directly in the discussion of this impeachment and stated that, since the election of members of the Constitutional Court required the favorable vote of two-thirds of the members of Congress and based on the application of the principle that establishes that "in law, matters are undone in the same way as they are done", the same number of votes would be required to remove the justices of the Constitutional Court, a two-thirds majority, which was not obtained in this case. Moreover, in his opinion, the decision of Congress to remove the justices was not revisable.

The application for amparo is not admissible against legal norms or judicial decisions arising from regular proceedings. Should the legislative decision that removed the justices be considered a legal norm, the application for amparo was not in order. However, when it adopted this decision, Congress acted with the rank and characteristics of a jurisdictional organ by conducting a proceeding and applying a punishment. In that case, the application for amparo would have been in order if there had been a violation of due process, which is what certainly happened in this case. Nevertheless, owing to the political situation in Peru at that time, if any of the members of the Constitutional Court who were removed had filed an application for amparo, it would clearly have been rejected.

**b. Expert report of Mario Pasco Cosmópolis, lawyer, professor at the Catholic University of Peru, former Deputy Minister of Justice, member of the Peruvian Law Academy and member of the Ethics Tribunal of the Peruvian Press Council, on the irregularities in the proceeding to remove the justices of the Constitutional Court**

The procedure for removing senior officials is regulated in articles 99 and 100 of the Constitution and in the rules of procedure of Congress. The latter establishes two

possibilities: either absolving the official and filing the corresponding accusation, or transferring the case to the courts to evaluate whether a crime has been committed. The rules of procedure do not go into sufficient detail about an eventual punishment to be applied directly by Congress, and this is established in article 100 of the Constitution.

The impeachment proceeding against the three justices of the Constitutional Court was initiated irregularly for two reasons. First, the proceeding arose from a complaint by one of the justices of the Court with regard to incidents that had occurred within the Court. However, "the proceeding changed direction and the complainant end[ed] up as the defendant." Second, the articles of impeachment did not refer to the judgment delivered by the Court that declared that the re-election law was non-applicable, but to the decision clarifying this judgment, because it was alleged that three justices could not assume to represent the full Court and, therefore, could not deliver a decision, which, in any case, was accessory, since the clarification requested by the Lima Bar Association was not in order, "because there was nothing to clarify." He emphasized that the procedures established in the Constitutional Court's statute form part of and complement the provisions of the Civil Procedural Code.

In any case, the clarification decision delivered by some of the members of the Constitutional Court did not violate provisions of Peru's constitutional legislation, since the decision declaring that the re-election law was non-applicable was signed by only three justices, so that if the content required clarification, the only persons who could be called on to clarify it were the justices who signed it. However, this is merely logical reasoning, since this presumption is not established in Peruvian legislation, although it exists in other legislations, such as that of Germany. Furthermore, it was not taken into consideration that Constitutional Court justices enjoy the same prerogatives as members of Congress and cannot be held responsible before any authority or court for the opinions that they emit in the exercise of their functions.

During the dismissal procedure, several constitutional provisions were violated. The first relates to the failure of Congress to substantiate its decision ordering the dismissal of the three justices, since, by taking this decision, Congress exercised a function of a jurisdictional nature and, thus, in accordance with article 139(5) of the Constitution, the decision should have been substantiated. Even supposing the accusations had been integrated into its decision, Congress should have analyzed the accusations, as part of the substantiation. The reasons for the alleged constitutional violation were not even set out in the articles of impeachment and therefore there were irregularities in the substantiation of the decision.

First, articles 99 and 100 of the Constitution stipulate that a person may only be dismissed for two reasons: due to a crime or a violation of the Constitution. In this case, the articles of impeachment expressly established that it was a constitutional violation and not a crime. Accordingly, the reason for the impeachment was that three justices of the Constitutional Court usurped certain functions by allegedly assuming to represent the full Court; however, although this could be a criminal act, it is not a constitutional violation. Consequently, there was no cause for the dismissal procedure, since no crime had been committed and there had been no constitutional violation, or at least the articles of impeachment never indicated in what it consisted.

Second, irregularities arose from the application of criminal legislation by analogy. The alleged usurpation of functions was classified as a constitutional violation, and a criminal figure was used to convert it into a constitutional violation. However, the Constitution expressly prohibits the analogical application of a criminal norm.

Third, the justices were deprived of the right to defend themselves, because they were not notified of the content of the complaint at the appropriate time, they were not allowed to question the witnesses and they were not allowed to exercise any type of defense during the proceeding, but only before the plenum and by arguments, rather than by evidence.

These acts also violated constitutional provisions, such as article 139(5), 139(9) and 139(10), article 2(24), which establishes the principle of *nullum crimen sine lege*, and article 93, consistent with article 201, which establishes that the Constitutional Court justices may not be held responsible for any declarations that they make in the exercise of their functions.

Furthermore, during the dismissal procedure, international human rights instruments engaging Peru's responsibility were violated. The absence of due process violated the American Convention, particularly Article 8(2) concerning the defendant's minimum guarantees; prior notification of the charge, the right to be heard with the due guarantees and within a reasonable period of time, by a competent judge or court, adequate time and means to prepare the defense and the right to question witnesses. In addition, Article 26 of the 1948 American Declaration on the Rights and Duties of Man was violated.

Moreover, the Civil Procedural Code establishes the remedy of the party (*recurso de parte*) as a recourse; therefore, if a violation had occurred, the party, which was Congress itself, should have acted within the procedure, filing the pertinent remedy. Even if there had been a violation, if no remedy was exercised, the violation is validated, which means that it was not in order to issue articles of impeachment based on the clarification decision.

The justices who had been dismissed could have filed an action for amparo in Peru against the decisions of Congress, because in this case the latter acted just like any other authority. However, this would have been inappropriate because the Constitutional Court itself was the final instance with regard to amparo, so that, in the final analysis, this action would have been decided by the Court from which they had been removed and which, in consequence, was composed of only four justices at the time.

## VII EVIDENCE ASSESSMENT

43. Article 43 of the Court's Rules of Procedure establishes that:

Items of evidence tendered by the parties shall be admissible only if previous notification thereof is contained in the application and in the reply thereto [...]. Should any of the parties allege force majeure, serious impediment or the emergence of supervening events as grounds for producing an item of evidence, the Court may, in that particular instance, admit such evidence at a time other than those indicated above, providing that the opposing party is guaranteed the right of defense.

44. Before examining the evidence it has received, the Court will define the general criteria for evaluation of evidence and will make some observations that are applicable to this specific case, most of which have been developed in the Court's jurisprudence.

45. With regard to the formalities required when tendering evidence, the Court has stated that:

The procedural system is a means of exercising justice and [...] cannot be sacrificed for the sake of mere formalities. Keeping within certain timely and reasonable limits, some omission or delays in complying with procedure may be excused, provided that a suitable balance between justice and legal certainty is preserved<sup>4</sup>.

46. In an international tribunal such as the Court, whose aim is the protection of human rights, the proceeding has its own characteristics that differentiate it from the domestic process. The former is less formal and more flexible than the latter, which does not imply that it fails to ensure legal certainty and procedural balance to the parties<sup>5</sup>. This grants the Court greater latitude to use logic and experience in evaluating the evidence rendered to it on the pertinent facts<sup>6</sup>.

47. It must also be remembered that the international protection of human rights should not be confused with criminal justice. When States appear before the Court, they do so not as defendants in a criminal proceeding, since the Court does not impose punishment on those responsible for violating human rights. Its function is to protect the victims and to determine the reparation of the damages caused by the States responsible for such actions<sup>7</sup>. To this end:

The sole requirement is to demonstrate that the State authorities supported or tolerated infringement of the rights recognized in the Convention. Moreover, the State's international responsibility is also at issue when it does not take the necessary steps under its domestic law<sup>8</sup>.

48. It is worth emphasizing that the State did not submit any evidence for the defense at the procedural opportunities indicated in Article 43 of the Rules of Procedure. In this respect, the Court considers, as it has in other cases, that when the State does not provide a specific reply to the application, it is presumed that the facts about which it remains silent are true, provided that consistent conclusions about them can be inferred from the evidence presented<sup>9</sup>.

49. Based on the above-mentioned considerations, the Court will proceed to examine and evaluate all the elements that comprise the evidence in this case, applying the rule of sound criticism that enables judges to arrive at a decision as to the truth of the alleged facts<sup>10</sup>.

<sup>4</sup> Cf. *Bámaca Velásquez case*. Judgment of November 25, 2000. Series C No. 70, para. 96.

<sup>5</sup> *Ibid.*

<sup>6</sup> Cf. *Bámaca Velásquez case*, *supra* note 4, para. 97.

<sup>7</sup> Cf. *Bámaca Velásquez case*, *supra* note 4, para. 98.

<sup>8</sup> Cf. *Bámaca Velásquez case*, *supra* note 4, para. 98.

<sup>9</sup> Cf. *Bámaca Velásquez case*, *supra* note 4, para. 100.

<sup>10</sup> Cf. *Bámaca Velásquez case*, *supra* note 4, para. 100.

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50. The technical opinion that Mr. Bernales Ballesteros provided to the Commission was not challenged by the State; therefore, this Court, pursuant to the powers granted it by article 44 of its Rules of Procedure, considers it useful and incorporates it into the probative material as documentary evidence.

51. The documentation that the Commission submitted during the public hearing on merits included documents about supervening events dated after the application<sup>11</sup> and, based on Article 43 of its Rules of Procedure, the Court decides to incorporate them into the probative evidence.

52. All but two of the newspaper clippings submitted by the Commission with its arguments on expenses and costs had already been submitted during the public hearing on merits (*supra* 38); accordingly, it is not necessary to include them in the probative evidence.

53. Furthermore, this Court has considered that, even though they are not really documentary evidence, the newspaper clippings submitted by the Commission (*supra* 37, 38 and 41) can be evaluated when they deal with well-known or public facts or statements made by State officials, or when they corroborate the contents of other documents or testimonies received during the proceeding<sup>12</sup>. Therefore, the Court adds them to the probative material as an appropriate means of verifying the truth of the facts of the case, in conjunction with the other evidence.

54. The documents submitted by the Commission during the merits stage were not contested or challenged, nor were any questions raised about their authenticity; therefore, the Court considers them to be valid.

55. The 1979 and 1993 Constitutions of Peru, the rules of procedure of the Congress of the Republic of Peru, published in the official gazette, *El Peruano*, on May 30, 1998 (*supra* 40), Law No. 26,301 promulgated on April 18, 1994, and published in the official gazette, *El Peruano*, on May 3, 1994, Law No. 26,430 published in the official gazette, *El Peruano*, on January 7, 1995, Law No. 23,506 (Habeas Corpus and Amparo Law), published in the official gazette, *El Peruano*, on December 8, 1982, and the evidence on expenses and costs submitted by the Commission are considered useful for deciding the instant case and are added to the probative evidence, pursuant to the provisions of Article 44(1) of the Rules of Procedure.

## VIII PROVEN FACTS

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<sup>11</sup> Cf. Copy of legislative resolution No. 007-2000-CR of the Congress of the Republic, dated November 17, 2000; Newspaper article, "*Paniagua debe asumir la Presidencia*", *La República*, November 21, 2000; Newspaper article, "*Una solución política a la crisis*", *La República*, November 21, 2000; and Newspaper article, "*El Tribunal Constitucional ya puede funcionar plenamente*", *El Comercio*, November 21, 2000.

<sup>12</sup> Cf. *Bámaca Velásquez case*, *supra* note 4, para. 107.

56. The Court now proceeds to consider and present in chronological order the relevant facts that it considers proven and which result from examining the actions of the State and the Inter-American Commission, and also the documentary, testimonial and expert evidence submitted in this case.

56.1) Alberto Fujimori was elected President of Peru for a five-year mandate on July 28, 1990, in accordance with Peru's 1979 Constitution. Article 205 of this Constitution does not allow immediate presidential re-election. On April 5, 1992, President Fujimori dissolved Congress and the Constitutional Guarantees Court and dismissed many of the judges of the Supreme Court of Justice. On October 31, 1993, the new Constitution of Peru was adopted by a referendum, and it was promulgated on December 29, 1993. Article 112 of the new Constitution establishes: "The presidential mandate is five years. The President may be re-elected immediately for an additional period. Once a minimum of another constitutional period has passed, a former president may run for the presidency, subject to the same conditions;"<sup>13</sup>

56.2) When the 1995 General Elections were announced, President Fujimori registered his candidacy and this was contested; therefore, by Resolution No. 172-94-JNE of October 26, 1994, the National Elections Board, exercising its powers as final, definitive and non-appealable instance in electoral matters, stated that, in the 1995 electoral race, President Fujimori was exercising his right to re-election embodied in article 112 of the 1993 Constitution<sup>14</sup>;

56.3) On June 15 and 16, 1996, the new Constitutional Court was appointed. This Court, described as "autonomous and independent", was composed of the following seven members: Ricardo Nugent (President), Guillermo Rey Terry, Manuel Aguirre Roca, Luis Guillermo Díaz Valverde, Delia Revoredo Marsano, Francisco Javier Acosta Sánchez and José García Marcelo<sup>15</sup>;

56.4) On August 23, 1996, Law No. 26,657 or the Law on the Authentic Interpretation of Article 112 of the Constitution was enacted. This Law interpreted the said article by establishing that presidential re-election "was related to and conditioned by the presidential mandates initiated after the

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<sup>13</sup> Cf. The Peruvian Constitution, promulgated on December 29, 1993, Tome I, Annex 1; action of August 29, 1996, challenging the constitutionality of Law No. 26,657, filed by the Lima Bar Association, Tome I, Annex 4; draft judgment of the Constitutional Court of November 20, 1996, signed on December 27, 1996, Tome I, Annex 6; judgment of the Constitutional Court of January 3, 1997, in file 002-96-I/TC, declaring the act of interpretation No. 26,657 non-applicable, Tome I, Annex 7; and "judgment" of the Constitutional Court of January 3, 1997, in file 002-96-I/TC, declaring unfounded the petition that Law No. 26,657 should be declared unconstitutional, Tome I, Annex 8.

<sup>14</sup> Cf. Article 181 of the Peruvian Constitution, promulgated on December 29, 1993; draft judgment of November 20, 1996, of the Constitutional Court, signed on December 27, 1996, Tome I, Annex 6; judgment of January 3, 1997, of the Constitutional Court in file 002-96-I/TC declaring Interpretation Law No. 26,657 non-applicable, Tome I, Annex 7; "judgment" of January 3, 1997 of the Constitutional Court in file 002-96-I/TC declaring the action challenging the constitutionality of Law No. 26,657 unfounded, Tome I, Annex 8; and Law No. 26,430 of January 5, 1995, published in the official gazette, *El Peruano*, on January 7, 1995.

<sup>15</sup> Cf. Article 201 of the Peruvian Constitution, promulgated on December 29, 1993, Tome I, Annex 1; Articles 1, 7 and 8 of the statute of the Constitutional Court, Law No. 26,435 promulgated on December 23, 1994, Tome I, Annex 2; Law No. 26,541, "Substituting Article 1 of the statute of the Constitutional Court", promulgated on October 12, 1995, Tome I, Annex 2; and legislative resolution of the Congress of the Republic of Peru, No. 001-96-CR, on June 19, 1996, Tome I, Annex 3.

date on which the said constitutional text had been promulgated.” The Law concluded by affirming that “the presidential periods initiated before the Constitution came into force are not taken into account in the calculation;”<sup>16</sup>

56.5) On August 29, 1996, the Lima Bar Association filed suit with the Constitutional Court challenging the constitutionality of Law No. 26,657, arguing that it violated article 112 of the Constitution. The Court admitted this suit on September 23, 1996<sup>17</sup>;

56.6) On November 20, 1996, the case was heard in a public hearing in the presence of the seven justices of the Constitutional Court. On December 27, 1996, the working paper on the issue was discussed, and adopted by five votes in favor and two against; this was noted in the official record. The draft judgment stated that the law was non-applicable rather than unconstitutional, in application of the “oversight authority”. In this respect, article 4 of the Constitutional Court’s statute establishes that six votes in favor are required in order to decide petitions on unconstitutionality. The same evening, the media informed that the Court had discussed the case<sup>18</sup>;

56.7) The draft prepared by Justice Rey Terry, which had been discussed on December 27, 1996, was removed by Justice García Marcelo. The latter

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<sup>16</sup> Cf. Law No. 26,657, “Interpreting Article 112 of the Constitution concerning presidential re-election”, promulgated on August 23, 1996, Tome I, Annex 3; and action of August 29, 1996, challenging the constitutionality of Law No. 26,657, filed by the Lima Bar Association, of August 29, 1996, Tome I, Annex 4.

<sup>17</sup> Cf. Articles 200.4 and 203.7, of the Peruvian Constitution, promulgated on December 29, 1993, Tome I, Annex 1; Articles 25.7 and 31 of the statute of the Constitutional Court, Law No. 26,435 promulgated on December 23, 1994, Tome I, Annex 2; Law No. 26,657, “Interpreting Article 112 of the Constitution concerning presidential re-election”, promulgated on August 23, 1996, Tome I, Annex 3; action of August 29, 1996, challenging the constitutionality of Law No. 26,657, filed by the Lima Bar Association, Tome I, Annex 4; Judgment of January 3, 1997, of the Constitutional Court in file 002-96-I/TC declaring Interpretation Law No. 26,657 non-applicable, Tome I, Annex 7; and testimony of Delia Revoredo Marsano before the Inter-American Court, on November 22, 2000.

<sup>18</sup> Cf. Article 138 of the Peruvian Constitution, promulgated on December 29, 1993, Tome I, Annex 1; Articles 4, 22, 33 and 34 of the statute of the Constitutional Court, Law No. 26,435 promulgated on December 23, 1994, Tome I, Annex 2; draft judgment of the Constitutional Court of November 20, 1996, Tome I, Annex 6; questioning of Justice Delia Revoredo Marsano before the Investigation Committee of the Congress of the Republic of Peru, Tome I, Annex 14; document dated May 6, 1997 signed by congressman, Javier Alva Orlandini, member of the Investigation Committee, Tome I, Annex 18; transcript of the statement of Justice Manuel Aguirre Roca before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on March 31, 1997, Tome II, Annex 5; transcript of the statement of Justice Luis Guillermo Díaz Valverde before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on March 31, 1997, Tome II, Annex 5; transcript of the statement of Justice Guillermo Rey Terry before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 4, 1997, Tome II, Annex 6; transcript of the statement of Justice José García Marcelo before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court of April 4, 1997, Tome II, Annex 6; transcript of the statement of Justice Francisco Javier Acosta Sánchez before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 14, 1997, Tome II, Annex 7; transcript of the statement of Justice Ricardo Nugent before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court of April 18, 1997, Tome II, Annex 8; official letter from the office of the President of the Constitutional Court of April 10, 1997, Tome III, Annex 1; letter from the justices of the Constitutional Court, Ricardo Nugent, Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, to the President of the Evaluation Sub-Committee of May 14, 1997, Tome III, Annex 8; transcript of statements made before the Congressional Permanent Commission on May 23, 1997, Tome III, Annex 11; testimony of Delia Revoredo Marsano before the Inter-American Court, on November 22, 2000; and technical opinion of Enrique Bernales Ballesteros of December 12, 2000.

claimed that he had found it on the meeting table in Justice Rey Terry's folder and "that the document was proof of a scheme designed to thwart the President's re-election"<sup>19</sup>;

56.8) On December 28, 1996, Justices García Marcelo and Acosta Sánchez sent a letter to the President of the Constitutional Court concerning alleged irregularities committed by the other justices when adopting the decision on the non-applicability of Law No. 26,657<sup>20</sup>;

56.9) The following days saw the start of a campaign of harassment against the justices who had signed this judgment<sup>21</sup>;

56.10) On January 2, 1997, Justices Nugent and Díaz Valverde "requested another vote". On January 3, 1997, during the vote, they abstained from voting, alleging that they had already expressed their opinions in their university department, and withdrew their signatures. Two other justices, Mr. Acosta Sánchez and Mr. García Marcelo, reserved their opinions. Justices Aguirre Roca, Rey Terry and Revoredo Marsano voted, as they had previously, that Law No. 26,657 was non-applicable<sup>22</sup>;

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<sup>19</sup> Cf. Questioning of Justice Delia Revoredo Marsano before the Investigation Committee of the Congress of the Republic of Peru, Tome I, Annex 14; transcript of the statement of Justice Manuel Aguirre Roca before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on March 31, 1997, Tome II, Annex 5; transcript of the statement of Justice Guillermo Rey Terry before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 4, 1997, Tome II, Annex 6; transcript of the statement of Justice José García Marcelo before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 4, 1997, Tome II, Annex 6; transcript of the statement of Justice Francisco Javier Acosta Sánchez before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 14, 1997, Tome II, Annex 7; and transcript of the statement of Justice Ricardo Nugent before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 18, 1997, Tome II, Annex 8.

<sup>20</sup> Cf. Questioning of Justice Delia Revoredo Marsano before the Investigation Committee of the Congress of the Republic of Peru, Tome I, Annex 14; transcript of the statement of Justice Guillermo Rey Terry before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 4, 1997, Tome II, Annex 6; transcript of the statement of Justice José García Marcelo before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 4, 1997, Tome II, Annex 6; transcript of the statement of Justice Francisco Javier Acosta Sánchez before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 14, 1997, Tome II, Annex 7; transcript of the statement of Justice Ricardo Nugent before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court of April 18, 1997, Tome II, Annex 8; transcript of statements made before the Permanent Commission on May 23, 1997, Tome III, Annex 11; and testimony of Delia Revoredo Marsano before the Inter-American Court, on November 22, 2000.

<sup>21</sup> Cf. Questioning of Justice Delia Revoredo Marsano before the Investigation Committee of the Congress of the Republic of Peru, Tome I, Annex 14; transcript of the statement of Justice Manuel Aguirre Roca before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on March 31, 1997, Tome II, Annex 5; transcript of the statement of Justice Luis Guillermo Díaz Valverde before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on March 31, 1997, Tome II, Annex 5; and testimony of Delia Revoredo Marsano before the Inter-American Court, on November 22, 2000.

<sup>22</sup> Cf. Transcript of the statement of Justice Manuel Aguirre Roca before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on March 31, 1997, Tome II, Annex 5; transcript of the statement of Justice Luis Guillermo Díaz Valverde before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on March 31, 1997, Tome II, Annex 5; transcript of the statement of Justice Guillermo Rey Terry before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 4, 1997, Tome II, Annex 6; and testimony of Delia Revoredo Marsano before the Inter-American Court, on November 22, 2000.



56.11) By a note of January 14, 1997, 40 members of Congress from the majority party sent a note to the Constitutional Court in which they requested that, in accordance with the provisions of Law No. 26,301 that regulate the Action seeking Compliance (*Acción de Cumplimiento*), it declare “the action brought by the Lima Bar Association challenging the constitutionality of Law No. 26,657 to be either founded or unfounded (*supra* 56.5), and expressly [...] rule] on its constitutionality” without making “any ‘declaration’ on non-applicability as that would seriously imperil fundamental and political rights recognized in the Constitution. It would also constitute an abuse of power, since the Constitutional Court would be assuming powers that its own statute does not confer upon it”. They also said that the Constitutional Court should rule within the period of 30 working days established in article 34 of Law No. 26,435, which, they claimed had expired on January 10, 1997. This letter was rejected by the Constitutional Court, considering that it constituted an “extremely serious attack against the jurisdictional autonomy of [the] Court” and an act of pressure<sup>23</sup>;

56.12) On January 15, 1997, Justice Delia Revoredo Marsano denounced before members of Congress that jurisdictional and administrative documents had been removed from her office on January 12 and 13 that year, and also from the offices of Justices Luis Díaz Valverde, Manuel Aguirre Roca and Guillermo Rey Terry. Regarding the latter, she indicated that the draft judgment on case No. 002-96/I-TC, concerning the unconstitutionality of Law No. 26,657, had been removed. Lastly, she mentioned other actions that constituted acts of intimidation against members of the Constitutional Court<sup>24</sup>;

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<sup>23</sup> Cf. Notarized letter from members of congress of the majority party, dated January 14, 1997 addressed to the President of the Constitutional Court, Tome I, Annex 5; Article 200 paragraph 6) of the Peruvian Constitution, promulgated on December 29, 1993, Tome I, Annex 1; Articles 20 and 34 of the statute of the Constitutional Court, Law No. 26,435, promulgated on December 23, 1994, published on January 6, 1995, Tome I, Annex 2; Law No. 26,301 of April 18, 1994, published on May 3, 1994 in the official gazette, *El Peruano*; Document dated May 6, 1997 signed by congressman, Javier Alva Orlandini, member of the Investigation Committee, Tome I, Annex 18; transcript of the statement of Justice Manuel Aguirre Roca before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on March 31, 1997, Tome II, Annex 5; transcript of the statement of Justice Guillermo Rey Terry before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 4, 1997, Tome II, Annex 6; transcript of the statement of Congressman Torres y Torres Lara before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court of April 14, 1997, Tome II, Annex 7; transcript of statements made before the Permanent Commission on May 23, 1997, Tome III, Annex 11; official communiqué of the Constitutional Court plenary dated January 15, 1997, in the appeal filed by Justice Manuel Aguirre Roca before the Congressional Permanent Commission on May 23, 1997, Tome III, Annex 12; and testimony of Delia Revoredo Marsano before the Inter-American Court, on November 22, 2000.

<sup>24</sup> Cf. Official letter No. 351-CR-DL-M signed by the Third Vice President of the Congress of the Republic, Luz Salgado Rubianes de Paredes, and addressed to Martha Hildebrandt, dated March 4, 1997, Tome I, Annex 13; questioning of Justice Delia Revoredo Marsano before the Investigation Committee of the Congress of the Republic of Peru, Tome I, Annex 14; report of May 5, 1997, of the Investigation Committee of the Congress of the Republic responsible for clarifying the complaints concerning the Constitutional Court, Tome I, Annex 17; Document dated May 6, 1997, signed by congressman, Javier Alva Orlandini, member of the Investigation Committee, Tome I, Annex 18; transcript of the statement of Justice Manuel Aguirre Roca before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on March 31, 1997, Tome II, Annex 5; transcript of the statement of Justice Francisco Javier Acosta Sánchez before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court of April 14, 1997, Tome II, Annex 7; transcript of the statement of Justice Ricardo Nugent before the Investigation Committee responsible for clarifying the

56.13) The working paper was again discussed and voted on January 16, 1997 (*supra* 56.7), and became a final judgment by three votes in favor of non-applicability and four abstentions. This judgment declared “Interpretation Law No. 26,657 NON-APPLICABLE, by unanimity of the votes emitted, with the abstentions indicated, in exercise of its oversight authority, in the specific case of the incumbent President’s candidacy for the office of President in the year 2000.” The judgment was only signed by Justices Aguirre Roca, Rey Terry and Revoredo Marsano. On January 17, 1997, the judgment was published in the official gazette, *El Peruano*. Owing to typographical errors, it was published again the following day. However, the date that appears in the judgment is January 3, 1997<sup>25</sup>;

56.14) On January 16, 1997, a “judgment” declaring the complaint unfounded was delivered, signed by Justices Acosta Sánchez and García Marcelo, “as the special majority of six concurring votes established in article 4 of Law No. 26,435, which are required to declare Law No. 26,657 unconstitutional had not been attained, because four [j]ustices of this Court ha[d] abstained from submitting an opinion on the merits of the disputed issue”. According to a press communiqué issued by the President of the Constitutional Court, this judgment lacked “legal value and effect”<sup>26</sup>;

56.15) On January 20, 1997, the Lima Bar Association requested a clarification of the judgment of January 16, 1997 (*supra* 56.13). The following day, the three justices who had signed this judgment decided that, “[a]s there is nothing in the judgment to clarify, the request is inadmissible.” On March 14, 1997, the Court in plenary agreed that clarifications of judgments should only be provided by those who had signed the judgment and “exclude those who had not signed it” and ratified “expressly the procedure used for the clarification requested by the Lima Bar Association, in File No. 002-96-I/TC”<sup>27</sup>;

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complaints concerning the Constitutional Court of April 18, 1997, Tome II, Annex 8; and official letter from the office of the President of the Constitutional Court of April 10, 1997, Tome III, Annex 1.

<sup>25</sup> Cf. Article 63 of the statute of the Constitutional Court, Law No. 26,435, promulgated on December 23, 1994, Tome I, Annex 2; judgment of January 3, 1997 of the Constitutional Court in file No. 002-96-I/TC, that declared Interpretation Law No. 26,657 non-applicable, Tome I, Annex 7; brief of the Lima Bar Association dated January 20, 1997, with petition for clarification of judgment, concerning judgment of January 3, 1997, that declared Interpretation Law No. 26,657 non-applicable, Tome I, Annex 9; transcript of the statement of Justice Manuel Aguirre Roca before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on March 31, 1997, Tome II, Annex 5; transcript of the statement of Justice Guillermo Rey Terry before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 4, 1997, Tome II, Annex 6; and technical opinion of Enrique Bernales Ballesteros of December 12, 2000.

<sup>26</sup> Cf. Article 4 of the statute of the Constitutional Court, Law No. 26,435, promulgated on December 23, 1994, Tome I, Annex 2; “judgment” of the Constitutional Court of January 3, 1997, in file 002-96-I/TC, declaring that the action challenging the constitutionality of Law No. 26,657 is unfounded, Tome I, Annex 8; transcript of the statement of Justice Manuel Aguirre Roca before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on March 31, 1997, Tome II, Annex 5; transcript of the statement of Justice José García Marcelo before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court of April 4, 1997, Tome II, Annex 6; official letter of the President of the Constitutional Court of January 28, 1997, in the appeal filed by Justice Manuel Aguirre Roca before the Congressional Permanent Commission on May 23, 1997, Tome III, Annex 12; and technical opinion of Enrique Bernales Ballesteros of December 12, 2000.

<sup>27</sup> Cf. Article 59 of the statute of the Constitutional Court, Law No. 26,435, promulgated on December 23, 1994, Tome I, Annex 2; Article 406 of Peru’s Civil Procedural Code, Tome I, Annex 11; brief

56.16) On February 27, 1997, pursuant to article 97 of the Constitution, Congress decided to set up a committee to investigate the alleged acts of harassment and pressure against the Constitutional Court, based on the complaints formulated by Justice Revoredo Marsano (*supra* 56.12). The committee, chaired by Martha Hildebrandt, was composed of seven members of Congress. The congressional decision requiring the creation of the committee indicated that “[t]he investigations conducted by the [I]nvestigation [C]ommittee should not examine the judgments pronounced by the Constitutional Court” and granted it 30 working days to submit the corresponding report. This period was later extended by 30 days<sup>28</sup>;

56.17) In March 1997, the Investigation Committee requested the members of the Constitutional Court to provide a written report on the events. By official letter No. 100-97-P/TC of March 19, 1997, the President of the Court advised that the removal of the draft from Justice Revoredo’s advisor had been investigated and that “it ha[d] not been possible to identify the author or authors of the alleged removal”; that Justice García Marcelo had received a vote of censure for removing the draft and, lastly, that Justice Revoredo had informed the plenum of the threats against her<sup>29</sup>;

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with petition for clarification of judgment of the Lima Bar Association dated January 20, 1997, concerning the judgment of January 3, 1997, which declared Interpretation Law No. 26,657 to be non-applicable, Tome I, Annex 9; resolution of the Constitutional Court of January 21, 1997, in file No. 002-96-I/TC signed by Justices Aguirre Roca, Rey Terry and Revoredo Marsano, Tome I, Annex 10; official record of the session of the Administrative Plenary of the Constitutional Court of March 14, 1997, Tome I, Annex 12; Document dated May 6, 1997, signed by congressman, Javier Alva Orlandini, member of the Investigation Committee, Tome I, Annex 18; transcript of the statement of Justice José García Marcelo before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 4, 1997, Tome II, Annex 6; transcript of the statement of Justice Ricardo Nugent before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 18, 1997, Tome II, Annex 8; official letter from the office of the President of the Constitutional Court of April 10, 1997, Tome III, Annex 1; appeal filed by Justice Manuel Aguirre Roca before the Congressional Permanent Commission on May 23, 1997, Tome III, Annex 12; expert report of Mario Pasco Cosmópolis before the Inter-American Court, on November 22, 2000; and technical opinion of Enrique Bernales Ballesteros of December 12, 2000.

<sup>28</sup> Cf. Articles 94 and 97 of the Peruvian Constitution, promulgated on December 29, 1993, Tome I, Annex 1; Article 88, paragraph a), of the Rules of Procedure of the Congress; official letter No. 351-CR-DL-M signed by the Third Vice President of the Congress of the Republic, Luz Salgado Rubianes de Paredes, to Martha Hildebrandt, dated March 4, 1997, Tome I, Annex 13; agenda motion No. 388 of January 20, 1997, signed by congressman, Javier Díez Canseco Cisneros, Tome I, Annex 13; adoption of the agenda motion submitted by congressman, Javier Díez Canseco Cisneros, on February 27, 1997, Tome I, Annex 13; agenda motion No. 385 of January 15, 1997, signed by six congressmen, agenda motion of January 15, 1997, signed by congressman, Javier Alva Orlandini, on January 15, 1997, Tome I, Annex 13; record of the 29<sup>th</sup> session of the Congress of the Republic of Peru held on February 27, 1997, Tome I, Annex 13; report of the Investigation Committee of the Congress of the Republic responsible for clarifying the complaints concerning the Constitutional Court, dated May 5, 1997, Tome I, Annex 17; Document dated May 6, 1997 signed by congressman, Javier Alva Orlandini, member of the Investigation Committee, Tome I, Annex 18; report of the Investigation Sub-Committee in the impeachment proceeding dated May 14, 1997, Tome I, Annex 19; testimony of Delia Revoredo Marsano before the Inter-American Court on November 22, 2000; expert report of Jorge Avendaño Valdéz before the Inter-American Court on November 22, 2000; and technical opinion of Enrique Bernales Ballesteros of December 12, 2000.

<sup>29</sup> Cf. Official letter No. 007-97/CITC-CR from the President of the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court to Justice Manuel Aguirre Roca, dated March 17, 1997, Tome II, Annex 1; official letter No. 100-97-P/TC from the President of the Constitutional Court to the President of the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court dated March 20, 1997, Tome II, Annex 2; letter of Manuel Aguirre Roca to the President of the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court dated March 20, 1997, Tome II, Annex 3; official letter No. 011-97/CITC-CR from the President of the Investigation Committee responsible for clarifying the complaints

56.18) On March 21 and 31 and April 4 and 18, 1997, the Investigation Committee heard the testimony of Justices Revoredo Marsano, Aguirre Roca, Rey Terry and Nugent, respectively, concerning the complaints made by Justice Revoredo. After Justices García Marcelo and Acosta Sánchez had made the accusations against them, the investigation changed direction and it was decided to investigate the alleged irregularities that had occurred within the Constitutional Court when the clarification ruling on presidential re-election was delivered. Despite this change, Justices Roca, Rey Terry and Revoredo Marsano were not allowed to cross-examine witnesses or submit any defense regarding the allegations<sup>30</sup>;

56.19) On May 5, 1997, the congressional Investigation Committee submitted a constitutional charge against Justices Aguirre Roca, Rey Terry and Revoredo Marsano to the Congressional Permanent Commission, accusing them of violating the Constitution by submitting a working paper as “if it was a judgment that had already been discussed and adopted by the full Constitutional Court” and also for delivering a ruling on the petition for clarification filed by the Lima Bar Association in the name of the Constitutional Court. Lastly, it indicated that Justice Nugent had acted unlawfully by “justifying the constitutional violation” and not convening the full Constitutional Court to resolve the said petition for clarification<sup>31</sup>;

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concerning the Constitutional Court to Justice Manuel Aguirre Roca, undated, Tome II, Annex 3; transcript of the statement of Justice Ricardo Nugent before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 18, 1997, Tome II, Annex 8; transcript of the statement of Justice Manuel Aguirre Roca before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on March 31, 1997, Tome II, Annex 5; transcript of the statement of Justice Luis Guillermo Díaz Valverde before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on March 31, 1997, Tome II, Annex 5; transcript of the statement of Justice Guillermo Rey Terry before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 4, 1997, Tome II, Annex 6; transcript of the statement of Justice José García Marcelo before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 4, 1997, Tome II, Annex 6; and transcript of the statement of Justice Francisco Javier Acosta Sánchez before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court on April 14, 1997, Tome II, Annex 7.

<sup>30</sup> Cf. Document dated May 6, 1997, signed by congressman, Javier Alva Orlandini, member of the Investigation Committee, Tome I, Annex 18; official letter No. 074-97-P/TC from the President of the Constitutional Court to the President of the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court dated March 19, 1997, Tome II, Annex 2; official letter No. 016-97/CITC-CR from the President of the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court to Justice Manuel Aguirre Roca dated March 25, 1997, Tome II, Annex 4; transcript of the statement of Justice Guillermo Rey Terry before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court of April 4, 1997, Tome II, Annex 6; statement of Justice Delia Revoredo Marsano before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court of April 21, 1997, Tome I, Annex 14; transcript of the statement of Justice Manuel Aguirre Roca before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court of March 31, 1997, Tome II, Annex 5; transcript of the statement of Justice Ricardo Nugent before the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court dated April 18, 1997, Tome II, Annex 8; transcript of the statements made before the Permanent Commission on May 23, 1997, Tome III, Annex 11; and expert report of Jorge Avendaño Valdéz before the Inter-American Court, on November 22, 2000.

<sup>31</sup> Cf. Official letter No. 045-97-97/CITC-CR of May 5, 1997, from the Investigation Committee responsible for clarifying the complaints concerning the Constitutional Court to the President of the Permanent Commission of the Congress of the Republic, about the impeachment proceeding against Justices Nugent, Aguirre Roca, Rey Terry and Revoredo Marsano, Tome I, Annex 16; report of the Investigation Committee of the Congress of the Republic responsible for clarifying the complaints

56.20) On May 6, 1997, the Congressional Permanent Commission appointed a Sub-Committee “responsible for reporting on the constitutional charge against the justices of the Constitutional Court” (hereinafter the “Evaluation Sub-Committee”) to examine the request for articles of impeachment. This was composed of three congressmen, one of whom resigned. The same day, this Sub-Committee asked the justices to submit a report on the facts under investigation within 48 hours and advised them that they could appear before the Sub-Committee to submit the pertinent defense. On May 8, the justices sent their reply indicating that “the deadline granted them for these effects was very short”; they also put on record that they did not recognize the competence of the Sub-Committee and, through the media, declared that they would therefore not appear before it. Lastly, they indicated that this was a “reprisal for their ruling on the Presidential Re-election Law” and that they had not been given the right to defend themselves<sup>32</sup>;

56.21) On May 8, 12 and 14, 1997, the periods granted by the Sub-Committee for the justices to submit their reports and statements, and the extensions that had been granted, expired. On May 9, 1997, the justices, Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano forwarded to the Sub-Committee the official record of March 14, 1997, which confirmed that they had express authority to deliver the clarification decision about which they had been charged (*supra* 56.15). On May 14, 1997, the same justices informed the Sub-Committee about irregularities in the impeachment proceeding and appointed Valentín Paniagua Corazao, Raúl Ferrero Costa and Juan Monroy Gálvez as their defense counsel<sup>33</sup>;

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concerning the Constitutional Court dated May 5, 1997, Tome I, Annex 17; expert report of Mario Pasco Cosmópolis before the Inter-American Court on November 22, 2000; and technical opinion of Enrique Bernales Ballesteros of December 12, 2000.

<sup>32</sup> Cf. Agreement of the Permanent Commission of the Congress of the Republic dated May 6, 1997, to appoint the Evaluation Sub-Committee for the impeachment proceeding, Tome I, Annex 16; report of the Evaluation Sub-Committee in the impeachment proceeding of May 14, 1997, Tome I, Annex 19; official letter No. 004-97-SC/DC-CP-CR from the President of the Evaluation Sub-Committee to Justice Manuel Aguirre Roca dated May 6, 1997, Tome III, Annex 3; letter from the justices of the Constitutional Court Ricardo Nugent, Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano to the President of the Evaluation Sub-Committee of May 8, 1997, Tome III, Annex 4; presentation of the impeachment by the Impeachment Sub-Committee to the Congress of the Republic, Tome I, Annex 19; expert report of Jorge Avendaño Valdéz before the Inter-American Court on November 22, 2000; expert report of Mario Pasco Cosmópolis before the Inter-American Court on November 22, 2000; and technical opinion of Enrique Bernales Ballesteros of December 12, 2000.

<sup>33</sup> Cf. Report of the Investigation Sub-Committee in the impeachment proceeding dated May 14, 1997, Tome I, Annex 19; official letter No. 004-97-SC/DC-CP-CR from the President of the Evaluation Sub-Committee to Justice Manuel Aguirre Roca of May 6, 1997, Tome III, Annex 3; letter from the justices of the Constitutional Court, Ricardo Nugent, Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, to the President of the Evaluation Sub-Committee of May 8, 1997, Tome III, Annex 4; letter from Justice Manuel Aguirre Roca to the President of the Evaluation Sub-Committee of May 8, 1997, Tome III, Annex 5; letter from Justice Manuel Aguirre Roca to the President of the Evaluation Sub-Committee of May 12, 1997, Tome III, Annex 6; letter from the justices of the Constitutional Court, Ricardo Nugent, Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, to the President of the Evaluation Sub-Committee of May 12, 1997, Tome III, Annex 7; letter from the justices of the Constitutional Court, Ricardo Nugent, Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, to the President of the Evaluation Sub-Committee of May 14, 1997, Tome III, Annex 8; letter of the President of the Congress of the Republic of Peru to Justice Manuel Aguirre Roca of May 19, 1997, Tome III, Annex 10; transcript of the statements made before the Permanent Commission on May 23, 1997, Tome III, Annex 11; and transcript of the articles of impeachment formulated by the congressional Impeachment Sub-Committee against the justices of the Constitutional Court on May 28, 1997, Tome III, Annex 13.

56.22) On May 14, 1997, the Evaluation Sub-Committee submitted its report to the Congressional Permanent Committee, recommending it to proceed with an impeachment proceeding<sup>34</sup>;

56.23) On May 19, 1997, the President of Congress convened Justices Aguirre Roca, Rey Terry, Revoredo Marsano and Nugent to a private hearing on the following May 23<sup>35</sup>;

56.24) On May 23, 1997, the Congressional Permanent Commission adopted by a majority "the report of the [Evaluation S]ub-committee and [proposed] to the plenum that one of the three sanctions established in article 100 of the Constitution should be applied"; in the presence of the full Congress, it also appointed three congressmen to constitute the Impeachment Sub-Committee; Manuel Aguirre Roca's defense counsel intervened before the plenum; lastly, Justice Aguirre Roca filed a recourse before the Permanent Commission<sup>36</sup>;

56.25) On May 28, 1997, the Impeachment Sub-Committee presented the articles of impeachment to the full Congress, and the defense counsel submitted their arguments. The same day, the plenary decided, by legislative resolutions Nos. 002-97-CR, 003-97-CR and 004-97-CR, to dismiss the Constitutional Court justices, Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, respectively, for delivering the decision on clarification requested by the Lima Bar Association<sup>37</sup>;

56.26) On June 5, 1997 Justice Manuel Aguirre Roca requested the President of Congress to notify him of the dismissal decision against him; the following day, the President forwarded this communication to him<sup>38</sup>;

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<sup>34</sup> Cf. Report of the Evaluation Sub-Committee on the impeachment proceeding, dated May 14, 1997, Tome I, Annex 19.

<sup>35</sup> Cf. Letter of the President of the Congress of the Republic of Peru to Justice Manuel Aguirre Roca of May 19, 1997, Tome III; Annex 10; and presentation of the articles of impeachment by the Impeachment Sub-Committee to the Congress of the Republic, Tome I, Annex 19.

<sup>36</sup> Cf. Articles 99 and 100 of the Peruvian Constitution, promulgated on December 29, 1993, Tome I, Annex 1; record of the discussion of the Congressional Permanent Commission in which the Impeachment Sub-Committee was appointed on May 23, 1997, Tome I, Annex 19; letter from the justices of the Constitutional Court, Ricardo Nugent, Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano to the President of the Evaluation Sub-Committee of May 14, 1997, Tome III, Annex 8; and remedy filed by Justice Manuel Aguirre Roca before the Congressional Permanent Commission on May 23, 1997, Tome III, Annex 12.

<sup>37</sup> Cf. Article 100 of the Peruvian Constitution, promulgated on December 29, 1993, Tome I, Annex 1; record of the discussion of the Congress of the Republic in which it was agreed to dismiss Justices Aguirre Roca, Rey Terry and Revoredo Marsano, of May 28, 1997, Tome I, Annex 19; voting list of the Congress of the Republic for the session of May 28, 1997, Tome I, Annex 19; list of those present with their votes at the session of the Permanent Commission of the Congress of the Republic of May 28, 1997, Tome I, Annex 19; legislative resolutions of the Congress of the Republic Nos. 002-97-CR, 003-97-CR and 004-97-CR, published in the official gazette, *El Peruano*, on May 29, 1997, Tome I, Annex 20; expert report of Jorge Avendaño Valdéz before the Inter-American Court, on November 22, 2000; and technical opinion of Enrique Bernales, dated November 23, 2000.

<sup>38</sup> Cf. Brief of Justice Manuel Aguirre Roca to the President of Congress, submitted on June 5, 1997, Tome III, Annex 14; and official letter from José F. Cevalco Piedra to Manuel Aguirre Roca No. 254-97-OM/CR, dated June 6, 1997, Tome III, Annex 15.

56.27) On July 25, 1997, Justice Manuel Aguirre Roca, and on August 1, 1997, Justices Guillermo Rey Terry and Delia Revoredo Marsano, filed applications for amparo against the dismissal decisions (*supra* 56.25). On February 9, 1998, in second instance, the Temporary Commercial Public Law Chamber of the Lima Superior Court of Justice declared these amparo remedies groundless. Meanwhile, the Constitutional Court confirmed the decisions on July 10 and 16, 1998, in each of the remedies and both decisions were published on September 25, 1998<sup>39</sup>;

56.28) As a result of her participation in the facts of this case, Delia Revoredo Marsano was harassed by the Peruvian authorities<sup>40</sup>;

56.29) On December 30, 1997, the Constitutional and Social Chamber of the Supreme Court of Justice, responded to an application for amparo filed by Congresswoman Martha Gladys Chávez indicating that the Constitutional Court should not have applied the oversight authority and establishing that

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<sup>39</sup> Cf. Article 98 of the Peruvian Constitution, promulgated on December 29, 1993, Tome I, Annex 1; general provision 4 of the statute of the Constitutional Court, Law No. 26,435, promulgated on December 23, 1994, published on January 6, 1995, Tome I, Annex 2; judgment of the Constitutional Court of July 16, 1998, on the appeal after execution of judgment formulated in the application for amparo filed by Justice Manuel Aguirre Roca, published in the official gazette, *El Peruano*, on September 25, 1998, Tome III, Annex 16; and judgment of the Constitutional Court of July 10, 1998, on the appeal after execution of judgment formulated in the petition for amparo filed by Justices Guillermo Rey Terry and Delia Revoredo Marsano, published in the official gazette, *El Peruano*, on September 25, 1998, Tome III; Annex 16.

<sup>40</sup> Cf. Questioning of Justice Delia Revoredo Marsano before the Investigation Committee of the Congress of the Republic of Peru, Tome I, Annex 14; transcript of the statements of Justice Delia Revoredo Marsano to the media, before the Investigation Committee, responsible for investigating the complaints concerning the Constitutional Court, Tome I, Annex 15; document of May 6, 1997, signed by congressman, Javier Alva Orlandini, member of the Investigation Committee, Tome I, Annex 18; Police certificate No. 387-96-DINPFI-PNP-DIECO prepared by the Contraband Investigation Division of the Fiscal Patrimony Directorate, dated December 23, 1996, Tome IV, Annex 1; legislative decree No. 809 "General Customs Law" published in the official gazette, *El Peruano*, on April 19, 1996, Tome IV, Annex 2; supreme decree No. 121-96-EF "Regulations to the General Customs Law" published in the official gazette, *El Peruano*, on December 24, 1996, Tome IV, Annex 2; supreme decree No. 123-96-EF published in the official gazette, *El Peruano*, on December 24, 1996, Tome IV, Annex 2; supreme decree No. 122-96-EF published in the official gazette, *El Peruano*, on December 24, 1996, Tome IV, Annex 2; reply to the application for amparo of January 29, 1997 submitted to the Lima Public Law Court by Miguel Molleda Cabrera in file No. 47-97, Tome IV, Annex 3; brief of Dr. César Guzmán-Barrón of September 12, 1997, Tome IV, Annex 5; brief with the response by Jaime Mur Campoverde submitted to the Tax and Customs Crimes Chamber on March 30, 1998, File No. 01-97, Tome IV, Annex 6; report prepared by Eduardo Ferrero Costa of April 24, 1997, Tome IV, Annex 7; brief of César San Martín Castro submitted to the Superior Customs and Tax Crimes Chamber of April 1, 1998, Tome IV, Annex 8; short form of manifest of the Trinity Shipping Line S.A. of November 22, 1996, Tome IV, Annex 9; short form of manifest of the Trinity Shipping Line S.A. of January 22, 1996, Tome IV, Annex 10; resolution issued by the Callao Maritime Customs Authority of December 11, 1996, Tome IV, Annex 11; resolution of the Customs Chamber of March 24, 1997, in file No. 1493-96, Tome IV, Annex 12; report No. 105-97-MAHS-Customs Chamber of March 24, 1997, Tome IV, Annex 12; memorandum No. 237-96-ADUANAS/0121 of the Office of the National Customs Superintendent of April 29, 1996, Tome IV, Annex 13; brief of José C. Ugaz Sánchez-Moreno filed before the Criminal Court for Tax and Customs Crimes on March 25, 1998, Tome IV, Annex 15; brief of Jaime Mur Campoverde before the Tax and Customs Chamber, Tome IV, Annex 16; resolution No. 68-96-MP-1era FPDA-CALLAO of the office of the First Temporary Prosecutor for Customs Crimes of Callao of October 15, 1996, Tome IV, Annex 17; resolution No. 28-96-MP-1era FPDA-CALLAO of the office of the First Temporary Prosecutor for Customs Crimes of Callao of September 25, 1996, Tome IV, Annex 18; resolution No. 67-96-MP-1era FPDA-CALLAO of the office of the First Temporary Prosecutor for Customs Crimes of Callao of October 21, 1996, Tome IV, Annex 19; resolution No. 80-96-MP-1era FPDA-CALLAO of November 12, 1996, Tome IV, Annex 20; legislative decree No. 843 published on August 30, 1996, Tome IV, Annex 21; and testimony of Delia Revoredo Marsano before the Inter-American Court of November 22, 2000.

the Law on the Authentic Interpretation of Article 112 of the Constitution was in force<sup>41</sup>;

56.30) On November 17, 2000, Congress annulled the dismissal decisions (*supra* 56.25) and reinstated Mr. Aguirre Roca, Mr. Rey Terry and Mrs. Revoredo Marsano as justices of the Constitutional Court<sup>42</sup>; and

56.31) As a result of their dismissal, the three justices of the Constitutional Court failed to receive their salaries and incurred expenses and costs in litigating the various internal and international proceedings<sup>43</sup>.

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<sup>41</sup> Cf. Resolution of the Constitutional and Social Chamber of the Supreme Court of Justice on the application for amparo filed by congresswoman, Martha Gladys Chávez Cossio, against the Constitutional Court, Tome I, Annex 21; Newspaper article, "*Corte Suprema declaró fundado amparo a favor de reelección presidencial*", no reference, Tome I, Annex 21; Newspaper article, "Renovar la Corte Suprema", *Expreso*, February 19, 1998, Tome I, Annex 22; Newspaper article, "Poder Judicial: ¿cara o sello?", *El Comercio*, February 18, 1998, Tome I, Annex 22; Newspaper article, "*Un grave caso de inseguridad jurídica*", *El Comercio*, February 19, 1998, Tome I, Annex 22; expert report of Jorge Avendaño Valdéz before the Inter-American Court, on November 22, 2000; and expert report of Mario Pasco Cosmópolis before the Inter-American Court on November 22, 2000.

<sup>42</sup> Cf. Copy of the legislative resolution of the Congress of the Republic, No. 007-2000-CR, dated November 17, 2000; and newspaper article, "*El Tribunal Constitucional ya puede funcionar plenamente*", *El Comercio*, November 21, 2000.

<sup>43</sup> Cf. Brief of Lourdes Flores Nano dated January 4, 2001, addressed to the Inter-American Commission on Human Rights; invoice dated November 16, 2000, of the lawyer, Lourdes Flores Nano, issued in the name of Guillermo Rey Terry for professional services; brief of Manuel Aguirre Roca dated January 3, 2001, on the expenses and costs arising from the proceeding undertaken owing to the removal from the bench of the Constitutional Court; Delia Revoredo's credit card statement showing payment of American Airlines tickets and flight insurance on June 5, 1997, Annex 1; Delia Revoredo's credit card statement showing payment of a car rental on June 5, 1997, from Hertz Car Rental, Miami, United States, Annex 2; Delia Revoredo's credit card statement showing payment of hotel expenses from June 5 to 14, 1997, at the Marriott Hotel, Miami, United States, Annex 3; Delia Revoredo's credit card statement showing payment of hotel expenses on June 9 and 10, 1997, at the Biltmore Hotel, Florida, United States, Annex 4; invoice dated January 6, 1999, of the lawyer's office BMU S.C.R.L. issued in the name of *Corporación de Productos Alimenticios Nacionales PYC S.A.* for professional services Ugaz issued in the name of *Corporación de Productos Alimenticios Nacionales PYC S.A.* for professional services, Annex 5; invoice dated October 29, 1997, of the lawyer's office Benites, Mercado and Ugaz issued in the name of *Corporación de Productos Alimenticios Nacionales PYC S.A.* for professional services, Annex 5; invoice dated February 4, 1997, of the lawyer's office Benites, Mercado and Ugaz issued in the name of *Corporación de Productos Alimenticios Nacionales PYC S.A.* for professional services, Annex 5; Delia Revoredo's credit card statement showing car rental on June 24, 1998, from Mapache Rent a Car, Costa Rica, Annex 6; table entitled "Reno Fees" and documents relating to the judgment for slander, Annex 7; Delia Revoredo's credit card statement showing payment of airline tickets on June 23, 1998, to American Airlines, Annex 8; Delia Revoredo's credit card statement showing payment of hotel expenses on May 21, 1998, at the Hyatt Hotel, Florida, United States, Annex 9; Delia Revoredo's credit card statement showing payment of hotel expenses on June 25 and 26, 1998, at the Hilton Hotel, Washington, United States, Annex 10; Delia Revoredo's credit card statement showing payment of hotel expenses on June 23, 1998, at the Marriott Hotel, Miami, United States, Annex 11; Delia Revoredo's credit card statement showing payment of hotel expenses from June 26 to July 12, 1998 at the Georgetown Suites Hotel, Washington D.C., United States, Annex 12; Delia Revoredo's credit card statement showing payment of hotel expenses from June 29 to July 1, 1998, at the Georgetown Suites Hotel, Washington D.C., United States, Annex 13; Delia Revoredo's credit card statement showing payment of a car rental from July 3 to 17, 1998, from Enterprise Rent a Car, Washington D.C., United States, Annex 14; Delia Revoredo's credit card statement showing payment of hotel expenses from June 12 to 17, 1998, at the Georgetown Suites Hotel, Washington D.C., United States, Annex 14; Delia Revoredo's credit card statement showing payment of hotel expenses from July 17 to 22, 1998, at the Marriott Hotel, Miami, United States, Annex 14; Delia Revoredo's credit card statement showing payment of telephone services on July 24, 1998, Miami, United States, Annex 14; Delia Revoredo's credit card statement showing payment of hotel expenses on August 9, 1998 en el Apartotel Villas del Río, Costa Rica, Annex 15; invoices dated August 9, 1998, of the Apartotel Villas del Río for miscellaneous expenses, Costa Rica, Annex 15; invoices dated November 3, 1998, of the Apartotel Villas del Río for miscellaneous expenses, Costa Rica, Annex 15; Delia Revoredo's credit card statement showing payment of a car rental of August 9, 1998 in Thrifty Rent-a-Car, Costa Rica,



## IX PRIOR CONSIDERATIONS

57. Once the Court has defined the proven facts that it considers relevant, it must examine the arguments of the Inter-American Commission in order to decide whether the proven facts engage the State's international responsibility due to the alleged violation of the American Convention and, if the case has the pertinent merits, determine the legal consequences of the alleged violations. However, prior to this, the Court believes that it is necessary to examine the Commission's arguments on some important issues in the instant case.

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58. As we have mentioned above (*supra* 22, 25, 27, 28 and 30), the State did not file any defense whatsoever, and it did not appear at the hearings for which it was summonsed. In this respect, the Commission states that:

- a) The Inter-American Court has declared inadmissible Peru's purported "withdrawal" from its contentious jurisdiction, by which the State attempted

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Annex 16; invoices dated August 22, 1998, of the Atlantis Hotel, Nevada, United States, for miscellaneous expenses, Annex 16; Delia Revoredo's credit card statement showing payment of hotel expenses from August 27 to September 13, 1998, at the Hyatt Hotel, Florida, United States, Annex 18; Delia Revoredo's credit card statement showing payment of American Airline tickets on September 9, 1998, for Delia Revoredo Marsano, Mr. Cueva, Mr. Vizcarra and Jaime Mur, Annex 19; Delia Revoredo's credit card statement showing payment of sending a file by FEDEX on September 10, 1998, Annex 19; Delia Revoredo's credit card statement showing payment of hotel expenses from September 22 to 28, 1998, at the Hyatt Hotel, Florida, United States, Annex 20; Delia Revoredo's credit card statement showing payment of hotel expenses on September 22, 1998, at the Four Seasons Hotel, Washington D.C., United States, Annex 20; Delia Revoredo's credit card statement showing payment of American Airlines tickets and related expenses on September 22 and 26, 1998, Annex 21; Delia Revoredo's credit card statement showing payment of American Airlines airline tickets and related expenses on September 26, 1998, Annex 22; Delia Revoredo's credit card statement showing payment of hotel expenses on October 7, 1998, at the Hyatt Hotel, Florida, United States, Annex 23; Delia Revoredo's credit card statement showing payment of hotel expenses from October 9 to 13, 1998, at the Georgetown Suites Hotel, Washington D.C., United States, Annex 24; Delia Revoredo's credit card statement showing payment of hotel expenses on October 10, 1998, at the Hilton Hotel, Washington D.C., United States, Annex 24; Delia Revoredo's credit card statement showing payment of American Airlines tickets and related expenses on October 13, 1998, Annex 24; Delia Revoredo's credit card statement showing payment of American Airlines tickets and related expenses on October 12, 1998, Annex 24; Delia Revoredo's credit card statement of October 28, 1998, Annex 25; Delia Revoredo's credit card statement showing payment of LACSA airline tickets and related expenses on November 3, 1998, Annex 25; Delia Revoredo's credit card statement showing payment of LACSA airline tickets on November 3, 1998, Annex 26; Delia Revoredo's credit card statement showing payment of hotel expenses on November 4, 1998, at the Apartotel Villas del Río, Costa Rica, Annex 26; invoice for accommodation from January 27 to 29, 1999, at the Hilton Hotel, Nevada, United States, Annex 27; invoice for accommodation from October 13 to 19, 1998 at the Hyatt Hotel, Florida, United States, Annex 28; receipt issued by Fanny Briseño Meiggs for fees for professional services, Annex 29; receipt issued by Fanny Briseño Meiggs for fees for professional services, Annex 29; receipt issued by Greenberg Taurig P.A. for fees for professional services, Annex 30; receipt issued by Greenberg Taurig P.A. for fees for professional services, Annex 31; certification dated December 30, 2000 issued by Tatiana Irene Mendieta Barrera for providing professional services, Annex 32; certification dated January 3, 2001, made by Laura Nalvarte Moreno for providing assistance services, Annex 32; sworn statement dated January 3, 2001 made by Felix José Jurado Hernández, Annex 34; invoice dated December 10, 1998, issued by Greenberg Taurig P.A. for fees for professional services, Annex 35; invoice dated November 24, 1998 issued by Greenberg Taurig P.A. for fees for professional services, Annex 36; invoice dated January 3, 2001 issued by lawyer's office Rodrigo, Elías and Medrano for fees for professional services, Annex 37; letter of January 2, 2001 written by Carlos Boloña Behr for fees for professional services, Annex 38; sworn statement dated January 3, 2001 written by Guillermo Freund Vargas Prada, Annex 39; sworn statement dated January 3, 2001 made by Jaime Mur Campoverde and Delia Revoredo Marsano, Annex 40; and various newspaper articles concerning Delia Revoredo Marsano.

to prevent the Court from hearing all the cases in which it had not answered the application. Despite that decision, Peru did not respond to the Commission's arguments, nor did it attend the hearing in the instant case. Although the American Convention does not regulate this possibility, article 27 of the Court's Rules of Procedure is clear when it establishes that, should any of the parties fail to appear, the Court shall, on its own motion, take such measures as may be necessary to complete consideration of the case;

b) In view of the absence of a precedent in the inter-American system, the provisions of article 53(1) and 53(2) of the Statute of the International Court of Justice may provide guidance; they stipulate that whenever one of the parties does not appear before the Court or fails to defend its case, the other party may call on the Court to decide in favor of its claim; and,

c) Furthermore, this Court must examine whether the application contains sufficient *de facto* and *de jure* grounds to declare it admissible. The State's failure to appear has less impact on the examination of the allegations of fact, owing to the *iura novit curia* principle and because the Court is not restricted to the legal arguments of the parties, since clarification of the factual aspects often depends on the parties' actions.

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59. Article 27 of the Court's Rules of Procedure stipulate:

1. When a party fails to appear in or continue with a case, the Court shall, on its own motion, take such measures as may be necessary to complete the consideration of the case.

2. When a party enters a case at a later stage of the proceedings, it shall take up the proceedings at that state.

60. This Court observes that procedural inactivity does not give rise to a specific sanction against the parties, nor does it affect the development of the proceeding; but, it may eventually prejudice them, if they take the decision not to exercise fully their right to defense or to execute the appropriate procedural actions that are in their interests, in accordance with the *audi alteram partem* principle.

61. Regarding the Commission's arguments, it is sufficient that the Court has, on its own motion, taken such measures as are necessary to complete consideration of the case and has evaluated the arguments and the evidence tendered during the proceeding, on the basis of which this Court exercises its jurisdictional functions and delivers a judgment.

62. International jurisprudence has recognized that the absence of one of the parties at any stage of the case, does not affect the validity of the judgment<sup>44</sup>;

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<sup>44</sup> Cf. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 23, para. 27. See also, Cf., *inter alia*, *Fisheries Jurisdiction (United Kingdom v. Iceland)*, Jurisdiction of the Court, Judgment, I.C.J. Reports 1973, p. 7, para. 12; *Fisheries Jurisdiction (United Kingdom v. Iceland)*, Merits, Judgment, I.C.J. Reports 1974, p. 9, para.17; *Nuclear Tests (Australia v. France)*, Judgment of 20 December 1974, I.C.J. Reports 1974, p. 257, para. 15; *Aegean Sea Continental Shelf, Judgment*, I.C.J. Reports 1978, p. 7, para. 15; and *United States Diplomatic and Consular Staff in Tehran, Judgment*, I.C.J. Reports 1980, p. 18, para. 33.

therefore, pursuant to Article 68(1) of the Convention, Peru's obligation to comply with this Court's judgment in this case is in force.

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63. This Court also considers that it is appropriate to refer to the figure of the impeachment proceeding, because of its application in this case and the requirements established in the American Convention concerning the fundamental rights of the alleged victims in the case. Under the rule of law, the impeachment proceeding is a means of controlling senior officials of both the Executive and other State organs exercised by the Legislature. However, this control does not mean that the organ being controlled – in this case the Constitutional Court – is subordinate to the controlling organ – in this case the Legislature; but rather that the intention of the latter is that an organ that represents the people may examine and take decisions on the actions of senior officials.

## X VIOLATION OF ARTICLE 8 (RIGHT TO A FAIR TRIAL)

### *The Commission's arguments*

64. With regard to Article 8 of the Convention, the Commission alleged that:
- a. Constitutional Court justices in Latin American countries must be guaranteed independence, autonomy and impartiality. Peru's legal system establishes that the Constitutional Court justices, as judges who control the constitutionality of the laws and, in final instance, examine the actions to guarantee or protect fundamental rights, must enjoy independence, autonomy and impartiality in the exercise of their functions;
  - b. In the instant case, the independence of the judges must be examined in relation to the Constitutional Court's possibility of delivering judgments contrary to the Executive and the Legislature, and also the role that Congress should play when it acts as judge in a proceeding to dismiss justices. Any act of the State that affects this independence and autonomy is contrary to Article 8 of the Convention;
  - c. Since the irremovability of judges is implicitly guaranteed in Article 8(1) of the Convention, should a judge have to be removed, the decision must be taken following the procedure established in the Constitution. In addition to avoiding arbitrariness, this guarantees the independence of the judges before the other powers of the State and when elections result in political changes. In the instant case, there was "[a] scheme of the three public powers", because the initiative to adopt Law No. 26,657, which establishes the possibility of the Executive remaining in power through the figure of re-election, was supported by the Legislature, when the party in

power was able to adopt the law and the decision to remove the justices; and then the Judiciary endorsed that decision when it rejected the petitions for amparo;

d. The impeachment proceeding contained in Peru's Constitution may not be used to control the exercise of the Constitutional Court's jurisdiction or to put pressure on its justices, because that would constitute unlawful interference in the function of the judges – which is what effectively occurred – and would impair the democratic system of Government. The procedure by which Congress dismisses a justice should be of an exceptional nature, possess the due judicial guarantees and be impartial. In this case, Congress dismissed the Constitutional Court justices, using an impeachment proceeding, but following a procedure that differed from the one established in the constitutional legislation, and violated their right to be judged by a competent, independent, impartial and previously established judge, as required by the Convention;

e. The reason for the dismissal of the justices was the alleged irregularity in processing the requested clarification of the judgment that declared Law No. 26,657 non-applicable, based on the argument that it was an act that should have been heard by the full Constitutional Court. This decision was taken both by the Investigation Committee and by the Impeachment Sub-Committee, despite the existence of an express mandate that prevented control or review of the Constitutional Court's jurisdictional decisions. Consequently, those committees committed abuse and misuse of power, and violated the principle of the independence and autonomy of the Constitutional Court embodied in the Convention and Peru's Constitution;

f. Congress infringed criteria on "subjective impartiality" (such as those maintained in jurisprudence under the European Convention on Human Rights), because various elements reflected the fact that the majority in Congress had already formed an opinion on the case. For example, in the letter of January 14, 1997, 40 members of congress, among them several who later became members of the investigation and impeachment committees, attempted to prevent the adoption of the decision that declared Law No. 26,657 non-applicable; in its decision, the Evaluation Sub-Committee did not take into consideration the official record of March 14, 1997, in which the justices were expressly authorized by the Constitutional Court to deliver the clarification judgment; and Justices Acosta Sánchez and García Marcelo were not charged with violating the Constitution, as a result of the second "judgment" on the constitutionality of Law No. 26,657 that they drew up and published;

g. The procedure followed by the congressional Investigation Committee infringed due process because this Committee was created to examine facts denounced by Justice Revoredo concerning the removal of the Constitutional Court's documents and not to examine the jurisdictional acts of this Court;

h. The Constitution of Peru and the rules of procedure of Congress establish the rules of due process for handling an impeachment proceeding; therefore, in accordance with Article 29 of the American Convention, these rules form part of the series of rights that the victims enjoyed. In this case, the following guarantees of due process were violated: prior notification of

the charge (Article 8(2)(b)); the right to defend oneself personally or to be assisted by legal counsel of one's own choosing, and to communicate freely and privately with one's counsel (Article 8(2)(d)); the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts (Article 8(2)(f)); the right to be presumed innocent (Article 8(2)); and the right to have adequate time and means to prepare the defense (Article 8(2)(c));

i. The exercise of defense is a right and a guarantee to prevent the arbitrariness of the State's organs and includes substantive and procedural aspects. It also includes the following guarantees for the accused: to be heard before the decision is taken, to participate effectively throughout the proceeding, to offer and produce evidence, to obtain well-founded decisions and prompt notifications in accordance with the law and access to the information in the case file, the possibility of contesting probative elements, legal counsel and the opportunity to appeal the decision;

j. The European Court has established that the guarantees contained in Article 6(1) of the European Convention on Human Rights are applicable to proceedings where fundamental human rights and duties or obligations are determined; it has also established that, even when the State is exercising discretionary powers, the right to file arguments subsists, because such powers must always be exercised in accordance with the law. The guarantees of due process specific to judicial proceedings have expanded to the sphere of any proceeding or process that affects human rights;

k. When a State exercises discretionary powers, it must act in accordance with the law, following criteria of simplicity, fairness and proportionality, and must always respect due process. In particular, proceedings to sanction authorities must be entirely regulated by and pursuant to due process. To the contrary, in the impeachment proceeding we are examining, "the facts were examined arbitrarily and the law applied in a discriminatory fashion", which violated the right to defense of the victims; and

l. Due process is a right in itself, but it also has an instrumental nature since it allows the enjoyment of other rights; consequently, violation of due process is more serious, because it guarantees respect for substantive rights and the control of arbitrariness in the exercise of power.

#### *The State's arguments*

65. Peru did not submit any arguments on this matter, since it did not appear before the Court in the case *sub judice* (*supra* 58-62).

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#### *The Court's considerations*

66. Article 8(1) and 8(2) of the American Convention establish that:

1. 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.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
- b. prior notification in detail to the accused of the charges against him;
- c. adequate time and means for the preparation of his defense;
- d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
- e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
- f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
- g. the right not to be compelled to be a witness against himself or to plead guilty; and
- h. the right to appeal the judgment to a higher court.

67. As has been established in this case, the dismissal of the three alleged victims was the result of the application of a sanction by the Legislature, in the context of an impeachment proceeding (*supra* 56(25)).

68. Respect for human rights constitutes a limit to a State's activity, and this is true for any organ or official in a situation of power, due to its official nature, with regard to other persons. Consequently, any form of exercising public power that violates the rights recognized in the Convention is unlawful. This is even more important when the State exercises its power to sanction, because this not only presumes that the authorities act with total respect for the legal system, but it also involves granting the minimum guarantees of due process to all persons who are subject to its jurisdiction, as established in the Convention.

69. Although Article 8 of the American Convention is entitled "Judicial Guarantees" [in the Spanish version - "Right to a Fair Trial" in the English version], its application is not strictly limited to judicial remedies, "but rather the procedural requirements that should be observed in order to be able to speak of effective and appropriate judicial guarantees<sup>45</sup>" so that a person may defend himself adequately in the face of any kind of act of the State that affects his rights.

70. The Court has already established that, although this article does not establish minimum guarantees in matters relating to the determination of rights and obligations of a civil, labor, fiscal or any other nature, the full range of minimum guarantees stipulated in the second paragraph of this article are also applicable in

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<sup>45</sup> Cf. *Judicial Guarantees in States of Emergency* (Articles 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 27.

those areas and, therefore, in this type of matter, the individual also has the overall right to the due process applicable in criminal matters<sup>46</sup>.

71. Although the jurisdictional function belongs, in particular, to the Judiciary under the separation of powers that exists in the rule of law, other public organs or authorities may exercise functions of the same type<sup>47</sup>. In other words, when the Convention refers to the right of everyone to be heard by a competent judge or court to “determine his rights”, this expression refers to any public authority, whether administrative, legislative or judicial, which, through its decisions determines individual rights and obligations. For that reason, this Court considers that any State organ that exercises functions of a materially jurisdictional nature has the obligation to adopt decisions that are in consonance with the guarantees of due legal process in the terms of Article 8 of the American Convention.

72. With regard to the independence that constitutional justices should enjoy, it is enough to emphasize that both Article 201 of Peru’s current Constitution and Article 1 of the statute of the Constitutional Court establish that the latter, as the supervisory organ of the Constitution, shall be autonomous and independent.

73. This Court considers that one of the principal purposes of the separation of public powers is to guarantee the independence of judges and, to this end, the different political systems have conceived strict procedures for both their appointment and removal. The United Nations Basic Principles on the Independence of the Judiciary<sup>48</sup>, establish that:

The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the laws of the country. It is the duty of all governmental or other institutions to respect and observe the independence of the judiciary<sup>49</sup>.

74. As for the possibility of removing judges, these Principles stipulate:

A charge or complaint against a judge in his/her judicial or professional capacity shall be processed expeditiously and fairly, in accordance with the national law. The judge shall have the right to a fair hearing. The examination of the matter at its initial stages shall be kept confidential, unless otherwise requested by the judge<sup>50</sup>.

In other words, the authority in charge of the procedure to remove a judge must behave impartially in the procedure established to this end and allow the latter to exercise the right of defense.

75. This Court considers that, under the rule of law, the independence of all judges must be guaranteed and, in particular, that of constitutional judges, owing to the nature of the matters submitted to their consideration. As the European Court has indicated, the independence of any judge presumes that there is an appropriate

<sup>46</sup> Cf. *Paniagua Morales et al. case*. Judgment of March 8, 1998. Series C No. 37, para. 149.

<sup>47</sup> Cf. Eur. Court H.R., *Campbell and Fell* judgment of 28 June 1984, Series A no. 80, para. 76; and Eur. Court H.R., case of *X v. the United Kingdom* of 5 November 1981, Series A no. 46, para. 53.

<sup>48</sup> Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from August 26 to September 6, 1985, and confirmed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

<sup>49</sup> Principle 1, *Idem*.

<sup>50</sup> Principle 17, *Idem*.

appointment process<sup>51</sup>, a fixed term in the position<sup>52</sup> and a guarantee against external pressures<sup>53</sup>.

76. In this respect, Articles 93 and 201 of Peru's current Constitution (*supra* 42)(C)(b) and, particularly, Article 13 of the Constitutional Court's statute, establish that the members of this Court "are not subject to mandatory injunctions, nor do they receive instructions from any authority. They enjoy inviolability. They do not have to respond for votes or opinions issued in the exercise of their responsibilities. They also enjoy immunity."

77. Regarding the exercise of the authority of Congress to conduct impeachment proceedings, which engages the responsibility of a public official, the Court believes that it should be recalled that any person subject to a proceeding of any nature before an organ of the State must be guaranteed that this organ is competent, independent and impartial and that it acts in accordance with the procedure established by law for hearing and deciding the case submitted to it.

78. In the instant case, it has been proved that during the dismissal procedure conducted by the Congress of Peru the following situations, among others, occurred: a) 40 members of Congress sent a letter to the Constitutional Court requesting it to make a pronouncement on whether Law No. 26,657 on presidential re-election, was unconstitutional; b) some of the members of Congress who sent this letter then took part in the various committees and sub-committees that were appointed in the proceeding we are examining; c) the "second judgment" delivered by Justices García Marcelo and Acosta Sánchez, on January 16, 1997, was not examined, although it was published irregularly as a separate pronouncement issued by the Court; and d) despite the express prohibition established in Article 88 j) of the rules of procedure of Congress, some members of the Permanent Commission participated in the vote on the constitutional dismissal. Consequently, this Court concludes that, during the impeachment proceeding, Congress did not ensure the dismissed justices the guarantee of impartiality required by Article 8(1) of the American Convention.

79. The Peruvian Constitution establishes the general right to defense in its Article 2(23) and, specifically, in the case of the dismissal of a justice, its Article 100(2) indicates that "the accused has the right, during this process, to defend himself with the assistance of a lawyer before the Permanent Commission and before the full Congress."

80. As has been shown, the following actions occurred in the procedure to dismiss the alleged victims: a) the Investigation Committee was appointed by the full Congress to clarify Delia Revoredo Marsano's complaint concerning a possible removal of documents belonging both to her and to the Court, which was taking place within the Court, and about threats that she had experienced. The Committee was given the express mandate that it could not examine any matter related to the

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<sup>51</sup> Cf. *Eur. Court H.R., Langborger case, decision of 27 January 1989, Series A no. 155, para. 32;* and *Eur. Court H.R., Campbell and Fell, supra note 47, para. 78.*

<sup>52</sup> Cf. *Eur. Court H.R., Langborger case, supra note 51, para. 32; Eur. Court H.R., Campbell and Fell, supra note 47, para. 78;* and *Eur. Court H.R., Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, para. 55.*

<sup>53</sup> Cf. *Eur. Court H.R., Langborger case, supra note 51, para. 32; Eur. Court H.R., Campbell and Fell, supra note 47, para. 78;* and *Eur. Court H.R., Piersack judgment of 1 October 1982, Series A no. 53, para. 27.*



exercise of the jurisdictional function of the Constitutional Court; but, in its report, the Committee ignored this mandate and indicated that there were irregularities during the adoption of various jurisdictional acts of that Court, concluding that three of the justices “usurped” functions of the full Constitutional Court, with the consent of the President of that collegiate body; b) following the statements made by Justices Acosta Sánchez and García Marcelo before the Investigation Committee, the three justices who are the alleged victims in this case were not summoned before that Committee again; therefore, the latter drew up its report, assuming that what the first two justices said was true, without offering the alleged victims the possibility of exercising their right to present evidence for the defense; c) on May 7, 1997, once the alleged victims had learned of the articles of impeachment against them, the Evaluation Sub-Committee granted them a period of 48 hours to exercise their defense, a period which, at the request of the justices, was extended until the following May 14, the date on which this Sub-Committee issued its report and forward it to the Permanent Committee recommending the impeachment proceeding (*supra* 56(21) and 56(22)); and d) the decision adopting the dismissal was not substantiated in any way.

81. This Court has recently indicated that the guarantees established in Article 8 of the American Convention presume that the victims should have extensive possibilities of being heard and acting in the respective proceedings<sup>54</sup>. In the case *sub judice*, the above-mentioned irregularities occurred (*supra* 80), and prevented the justices from having a proceeding that met the minimum guarantees of due process established in the Convention. Thus, in this case, the victims’ right to be heard by the organ that delivered the decision was limited and their right to take part in the proceeding was also restricted.

82. As for the modification in the purpose of the inquiry of the Investigation Committee, it not only contravened the express mandate and the prohibition to examine the jurisdictional actions of the Constitutional Court established by Congress, but also its action implied that the rules of internal procedure that guaranteed the alleged victims’ right to defense were infringed. On this point, Article 88(d) of the rules of procedure of Congress establishes that “[t]hose who appear before Investigation Committees have the right to be informed previously about the matter that motivates their attendance. They may attend them with a [l]awyer”. Evidently, when the justices appeared before the Investigation Committee, their intervention related to the complaints made by Justice Revoredo and not to the alleged anomalies that occurred within the Constitutional Court when the decision and clarification on presidential re-election were adopted; thus the justices could not make their position known on that issue.

83. The foregoing resulted in the consequent restriction of the right of the justices to defend themselves by answering the allegations filed against them. On the one hand, the accused did not have a complete and timely knowledge of the charges filed against them and their access to the probative material was limited. The period granted for exercising their defense was extremely short, considering that, as all accused persons, they had the right to examine the case and the evidence<sup>55</sup>. Moreover, the accused justices were not allowed to cross-question the

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<sup>54</sup> Cf. This principle in *Durand and Ugarte case*. Judgment of August 16, 2000. Series C No. 68, para. 129.

<sup>55</sup> Cf. This principle in *Paniagua Morales et al. case*, *supra* note 46, para. 152.

witnesses whose testimonies formed the basis on which the members of Congress initiated the impeachment proceeding that ended with the consequent dismissal<sup>56</sup>.

84. According to the criteria that this Court has established, it is evident that the impeachment proceeding to which the dismissed justices were submitted did not ensure them guarantees of due legal process and did not comply with the requirement of the impartiality of the judge. Moreover, the Court observes that, in the context of this specific case, the Legislature did not have the necessary conditions of independence and impartiality to conduct the impeachment proceeding against the three justices of the Constitutional Court.

85. In view of the foregoing, the Court considers that the State violated the right to a fair trial embodied in Article 8 of the American Convention, with regard to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano.

## XI VIOLATION OF ARTICLE 25 (JUDICIAL PROTECTION)

### *The Commission's arguments*

86. With regard to Article 25 of the Convention, the Commission alleged that:

a) The three justices of the Constitutional Court who were dismissed did not have access to a "simple and prompt recourse" which would have protected them from the decision of the Congress of the Republic ordering their dismissal, since it took three months to process the applications for amparo that they filed; this did not respect the provisions of Peruvian legislation on time limits and placed them in a situation of defenselessness; and

b) The Constitutional Court's decision to classify the dismissal procedure of the three justices as a "non-actionable" act, because it was a political matter, prevented a jurisdictional organ from reviewing the dismissal procedure and its legality, which meant the denial of the right to effective judicial protection established in Article 25 of the Convention. As we can infer from the facts, the dismissed justices filed applications for amparo against Legislative Resolutions Nos. 002-97-CR, 003-97-CR and 004-97-CR, which were rejected by the instances established to that end. They also filed an appeal after execution of judgment before the Constitutional Court, which was also rejected.

### *The State's arguments*

87. Peru did not submit any arguments on this matter, since it did not appear before the Court in the case *sub judice* (*supra* 58-62).

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<sup>56</sup> Cf. This principle in *Castillo Petruzzi et al. case*. Judgment of May 30, 1999. Series C No. 52, para. 154; *Eur. Court H. R., case of Barberà, Messegué and Jabardo, decision of December 6, 1998, Series A no. 146*, para. 78; and *Eur. Court H. R., case of Bönisch judgment of May 6th. 1985, Series A no. 92*, para. 32.

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*The Court's considerations*

88. Article 25 of the American Convention establishes that:

1. 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.
2. The States Parties undertake:
  - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
  - b. to develop the possibilities of judicial remedy; and
  - c. to ensure that the competent authorities shall enforce such remedies when granted.

89. This Court has established that the safeguard of the individual in the face of the arbitrary exercise of the powers of the State is the primary purpose of the international protection of human rights. In this respect, the inexistence of effective domestic remedies places the victim in a situation of defenselessness. Article 25(1) of the Convention has established, in broad terms

the obligation of the States to provide to all persons within their jurisdiction, an effective judicial remedy to violations of their fundamental rights. It provides, moreover, for the application of the guarantee recognized therein not only to the rights contained in the Convention, but also to those recognized by the Constitution or laws<sup>57</sup>.

In view of the foregoing, the absence of an effective remedy to violations of the rights recognized in the Convention is itself a violation of the Convention by the State Party<sup>58</sup>.

90. In this perspective, this Court has indicated that, for the State to comply with the provisions of this article, it is not enough that the recourses exist formally, but that they must be effective<sup>59</sup>; in other words, the persons must be offered the real possibility of filing a simple and prompt recourse in the terms of Article 25 of the Convention. This Court has repeatedly established that the existence of this type of guarantee "constitutes one of the basic pillars, not only of the American Convention,

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<sup>57</sup> Cf. *Judicial Guarantees in States of Emergency* (Articles 27.2, 25 and 8 American Convention on Human Rights), *supra* note 45, para. 23.

<sup>58</sup> Cf., *Judicial Guarantees in States of Emergency* (Articles 27.2, 25 and 8 American Convention on Human Rights), *supra* note 45, para. 24.

<sup>59</sup> Cf. *Bámaca Velásquez case*, *supra* note 4, para. 191; *Cesti Hurtado case*. Judgment of September 29, 1999. Series C No. 56, para. 125; and *Paniagua et al. case*. *supra* note 46, para. 164.

but also of the rule of law itself in a democratic society, in the terms of the Convention.”<sup>60</sup>

91. In the context of the simple, prompt and effective remedies established in the provision we are examining, this Court has maintained that the procedural remedy of amparo has the necessary characteristics for the effective protection of the fundamental rights<sup>61</sup>; in other words, it is simple and brief. According to the procedure established for remedies of amparo in Peru’s Habeas Corpus and Amparo Law No. 23,506, this should be summary and prompt, because it sets peremptory and maximum periods of 20 days for the corresponding courts to deliver their decisions in each of the two instances that hear this matter. In this case, the three alleged victims filed their applications for amparo on July 25 and August 1, 1997, and both were rejected in appeal by the Temporary Commercial Public Law Chamber of the Lima Superior Court of Justice on February 9, 1998 (*supra* 56.27); in other words, more than six months after they were filed. Also, Article 41 of the Constitutional Court’s statute establishes the possibility of filing an appeal after execution of judgment before the Constitutional Court against “the decisions of the Supreme Court or the instance established by law that have denied remedies of habeas corpus, amparo, habeas data and an action seeking compliance (*acción de cumplimiento*)” and this must be resolved within a maximum period of 20 days. Accordingly, the dismissed justices filed the corresponding appeals after execution of judgment, and these were decided confirming the decision of the two previous instances on July 10 and 16, 1998, respectively.

92. It is also worth underlining that, although the decisions of the Constitutional Court that we are discussing were adopted on July 10 and 16, 1998, they were published in the official gazette, *El Peruano*, the following September 25 (*supra* 56.27), even though Article 42 of Law No. 23,506 establishes that “[o]nce they have been agreed and made executable, all final decision awarded in applications for [... a]mparo shall be published within the following 15 days in the official gazette, *El Peruano*.”

93. In the light of the criteria that this Court has established on the issue and considering the concept of reasonable time in judicial proceedings<sup>62</sup>, it may be said that the procedure followed before the various instances that heard the applications for amparo in this case exceeded the principle of a reasonable time limit established in the American Convention. In this Court’s opinion, applications for amparo are illusory and ineffective if, when processing them, there is an unjustifiable delay in the decision<sup>63</sup>. Peru’s domestic legislation itself adopted this criterion when it established brief and peremptory time limits for processing the application for

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<sup>60</sup> Cf. *Bámaca Velásquez case*, *supra* note 4, para. 191; *Cantoral Benavides case*. Judgment of August 18, 2000. Series C No. 69, para. 163; *Durand and Ugarte case*, *supra* note 54, para 101; *Caso Villagrán Morales et al.* (“Street Children” case). Judgment of November 19, 1999. Series C No. 63, para. 234; *Cesti Hurtado case*, *supra* note 59, para. 121; *Castillo Petruzzi et al. case*, *supra* note 56, para. 184; *Paniagua Morales et al. case*, *supra* note 46, para. 164; *Blake case*. Judgment of January 24, 1998. Series C No. 36, para. 102; *Suárez Rosero case*, Judgment of November 12, 1997. Series C No. 35, para. 65; an *Castillo Páez case*, Judgment of November 3, 1997. Series C No. 34, para. 82.

<sup>61</sup> Cf. *Judicial Guarantees in States of Emergency* (Articles 27.2, 25 and 8 American Convention on Human Rights), *supra* note 45, para. 23.

<sup>62</sup> Cf. *Paniagua Morales et al. case*, *supra* note 46, para. 152.

<sup>63</sup> Cf. *Judicial Guarantees in States of Emergency* (Articles 27.2, 25 and 8, American Convention on Human Rights), *supra* note 45, para. 24.

amparo (*supra* 91) and when it provided, in Article 61 of the Constitutional Court's statute, that the Court should conduct its activities "punctually and without delays."

94. This Court considers that, since the actions conducted before Congress in the procedure for the dismissal of the Constitutional Court justices were subject to legal provisions that should have been precisely observed, they may be the object of a legal action or recourse on due legal process. This control does not imply an evaluation of the acts of a strictly political nature that the Constitution attributes to the Legislature.

95. It is worth underlining that, when deciding on the applications for amparo filed by the dismissed justices, the Constitutional Court of Peru itself indicated that:

The exercise of the power of sanction, specifically that of the dismissal of senior officials, cannot be openly evaluated in a jurisdictional seat, because it constitutes an act that is exclusive to the Congress of the Republic, equivalent to what, in doctrine, is called non-actionable political questions, [but] it is also true that this power is not unlimited or absolutely discretionary, but is subject to certain parameters, one of which, and perhaps the principal one, is that it should be exercised according to the principle of reasonableness, because it would not be logical or fair to decide to impose a measure of sanction following a situation of total uncertainty or lack of substantiation. Accordingly, in cases where an act of a political nature, such as the one questioned in this application for amparo, manifests an evident infringement of this principle and, by extension, others such as that of the democratic rule of law or due material process, it is an unobjectionable fact that this body can evaluate its coherence in the light of the Constitution.

From the foregoing, it may be inferred that the Constitutional Court believed that it was possible to make a judicial review of acts connected to an impeachment proceeding in order to evaluate whether they had complied with the guarantees of due legal process. However, it also considered that, in this case, such guarantees had been respected and, consequently, the application for amparo was declared unfounded.

96. In view of the consequences of the instant case, the Court considers that the failure of the recourses filed against the decision of Congress that dismissed the Constitutional Court justices was due to an evaluation that was not strictly juridical. It has been proved that those who composed the Constitutional Court and heard the application for amparo of the dismissed justices were the same persons who took part or were involved in the impeachment proceeding in Congress. Consequently, according to this Court's criteria and the requirements on the impartiality of the judge (*supra* 84 and 85), it can be said that the decision on the amparos in this case did not meet the requirements of the impartiality of the court that heard them. Therefore, the recourses filed by the alleged victims were not able to produce the result for which they had been envisaged and were condemned to failure.

97. In view of the foregoing, the Court considers that the State violated the right to judicial protection embodied in Article 25 of the American Convention, with regard to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano.

**ARTICLE 23  
(POLITICAL RIGHTS)**

*The Commission's arguments*

98. With regard to Article 23(1)(c), the Commission alleged that:
- a) A person's right to form part of the Judiciary, in conditions of equality and, once selected in accordance with the conditions established in the Constitution and the law, to remain in his functions, is protected in Article 23(1)(c) of the American Convention. So that the dismissal by the Congress of the Republic of Peru of three of the justices of the Constitutional Court, in a procedure in which the formalities established in the Constitution were not respected, constitutes "a violation, by the State of Peru, of the right to have access in general conditions of equality to the public functions in their country"; and
  - b) The procedure for the dismissal of the justices for elaborating the clarification decision and the absence of effective judicial recourses for the protection of their rights "were measures of reprisal of a political nature, adopted by the Government with the support of the [L]egislature and the consent of the [J]udiciary."

*The State's arguments*

99. Peru did not submit any arguments on this matter, since it did not appear before the Court in the case *sub judice* (*supra* 58-62).

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*The Court's considerations*

100. Article 23(1)(c) of the American Convention establishes that:

1. 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.

101. As we have already established in this judgment (*supra* 78 and 80), there were a series of irregularities in the impeachment proceeding against the justices of the Constitutional Court. These irregularities prevented the exercise of defense before an impartial organ and resulted in a consequent violation of due process, as a result of which the three justices were dismissed. These justices were unable to have access to a simple, prompt and effective recourse for the restitution of the rights violated (*supra* 93-97). This situation prevented the justices from remaining in their functions under the conditions established in Article 23(1)(c) of the American Convention.

102. Moreover, in this case, the Congress of Peru annulled its decisions dismissing the three justices of the Constitutional Court on November 17, 2000, which implies an absence of the legal conditions that would have substantiated the dismissal (*supra* 56.30).

103. The Court considers that the facts described in the case *sub judice* should not be considered a violation of Article 23 of the Convention (political rights). The three justices who were dismissed had had access, under general conditions of equality, to the public service of their country; in this case, questions have arisen that imply the violation of other provisions of the Convention: Articles 8 and 25, that establish the right of the victims to obtain judicial protection, in accordance with due legal process.

104. Therefore, it should be considered that this matter was resolved with the facts established in previous sections in relation to the right to a fair trial and judicial protection.

### XIII NON-COMPLIANCE WITH ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS)

#### *The Commission's arguments*

105. Regarding Article 1(1) of the Convention, the Commission argued that:

a) According to the rules of international law and the Court's jurisprudence, the acts or omissions of any public authority engage the responsibility of the State with regard to the articles of the Convention, and the State is obliged to identify those responsible for acts or omissions and impose the pertinent sanctions; and

b) In the case *sub judice*, both the Judiciary and the Constitutional Court, as public authorities, were "obliged to guarantee due process and to adopt the necessary measures to make effective the rights of the three [j]ustices who had been dismissed."

#### *The State's arguments*

106. Peru did not submit any arguments on this matter, since it did not appear before the Court in the case *sub judice* (*supra* 58-62).

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#### *The Court's considerations*

107. Article 1(1) of the Convention establishes that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

108. The Commission abstained from formulating arguments and allegations with regard to Article 2 of the Convention, although it had mentioned this violation in its application; its arguments were limited to Article 1(1) of the Convention. The Court will restrict itself to examining Peru's alleged failure to comply with Article 1(1) of the Convention.

109. Based on Article 1(1) of the American Convention, this Court has already established that the State is obliged to respect the rights and freedoms recognized in it<sup>64</sup> and to organize the public authorities in order to guarantee to everyone subject to its jurisdiction the free and full exercise of human rights<sup>65</sup>. According to the rules of State international responsibility applicable to international human rights law, the act or omission of any public authority, whatsoever its rank, is an act which may be attributed to the State, and engages its responsibility in the terms established in the American Convention itself<sup>66</sup>.

110. The Court observes that, in accordance with the facts established in this judgment, the State violated Articles 8 and 25 of the American Convention with regard to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, so we may conclude that it has failed to comply with its general obligation to respect the rights and freedoms recognized therein and to guarantee their free and full exercise, as established in Article 1(1) of the Convention.

111. In order to establish whether the State's conduct in this case was adapted to the American Convention, this Court considers that it is appropriate to recall that the preamble to the Convention reaffirms the intention of the American States to "consolidate in [the] hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights [and obligations] of man." This requirement is adapted to the norm of interpretation embodied in Article 29(c) of the Convention. The facts of the instant case diverge from these requirements of the Convention.

112. As we have shown, the Constitutional Court was dismantled and disqualified from exercising its jurisdiction appropriately, particularly with regard to controlling constitutionality, since article 4 of that Court's statute requires the vote in favor of six of the seven member justices in order to declare that a law is unconstitutional. The Constitutional Court is one of the democratic institutions that guarantee the rule of law. The dismissal of the justices and the omission by Congress to appoint substitutes, violated *erga omnes* the possibility of exercising the control of constitutionality and the consequent examination of whether the State's conduct was in harmony with the Constitution.

113. Accordingly, the Court concludes that the State has failed to comply with the general obligation in Article 1(1) of the American Convention on Human Rights.

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<sup>64</sup> Cf. *Bámaca Velásquez case*, *supra* note 4, para. 210.

<sup>65</sup> Cf. *Bámaca Velásquez case*, *supra* note 4, para. 210.

<sup>66</sup> Cf. *Bámaca Velásquez case*, *supra* note 4, para. 210.



**XIV**  
**APPLICATION OF ARTICLE 63(1)**

*The Commission's arguments*

114. In its application brief (*supra* 15), the Commission requested the Court to condemn the State to make integral and appropriate reparations to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, and to this end to "reinstate them in the exercise of their functions" and compensate them for salary and related benefits not received since the date they were dismissed and until their effective reinstatement. It also requested the Court to order Peru to pay for the moral damages and prejudice suffered "in relation to the honor and reputation, life and safety of the [j]ustices." Furthermore, it requested that the State be condemned to pay the reasonable costs and expenses in which the victims incurred in the different proceedings, in both the domestic sphere and before the inter-American system.

115. In reply to the Court's request (*supra* 27), on January 8, 2001, the Commission submitted a brief with its arguments on the expenses and costs in this case and attached the evidentiary documents that, in its opinion, substantiated them. These arguments are summarized below.

**a. With regard to Delia Revoredo Marsano:**

i. In order to suppress its "political adversaries", the Government of Peru had the practice of reviving closed judicial proceedings and manipulating them, and this occurred with two matters concerning Mrs. Revoredo Marsano because of her actions as a Constitutional Court justice relating to the facts of the instant case. Accordingly, and to defend themselves from the "political harassment, through judicial channels" that they were experiencing, she and her husband were obliged to employ lawyers and, later, to abandon Peru, seeking political asylum; and

ii. During the asylum, they had expenses that arose from employing people to represent their companies and administer their property in Peru; they employed lawyers in Costa Rica and in the United States to prepare a "political complaint-report", submitted to the Inter-American Commission in order to file a proceeding for slander in the State of Nevada in the United States; and lastly, they paid for accommodation in Costa Rica and the United States and incurred expenses for air travel to Washington D.C., Nevada and Costa Rica, all of which amounted to US\$958,406.62 (nine hundred and fifty-eight thousand four hundred and six United States dollars and sixty-two cents).

**b. With regard to Manuel Aguirre Roca:**

i. From April 1997 to November 2000, the period during which he was separated from his functions as a Constitutional Court justice, he incurred expenses for secretarial services and arising from the use of an office where he worked on various domestic proceedings related to the facts of this case and from covering much of the territory of Peru offering talks and presentations, together with Justices Revoredo

Marsano and Rey Terry. These expenses totaled US\$50,400.00 (fifty thousand four hundred United States dollars); and

ii. In 1999 and 2000, he traveled twice to San José, Costa Rica, in order to collaborate with the Inter-American Commission in the preparation of this case before the Inter-American Court; in this regard, he paid travel, accommodation and alimentation expenses amounting to US\$3,200.00 (three thousand two hundred United States dollars).

**c. With regard to Guillermo Rey Terry:**

He employed the services of a lawyer to provide advisory services in the domestic proceeding to obtain “recognition of his right to collect remuneration for the time that he was separated from his functions”; this generated expenses amounting to US\$31,213.45 (thirty-one thousand two hundred and thirteen United States dollars and forty-five cents).

*The State's arguments*

116. Peru did not submit any arguments on this matter, since it did not appear before the Court in the case *sub judice* (*supra* 58-62).

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*The Court's considerations*

117. Article 63(1) of the American Convention established that:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

118. In its jurisprudence, this Court has reiterated that it is a principle of international law that any violation of an international obligation that produces a damage entails the obligation to repair it appropriately<sup>67</sup>.

119. The reparation of the damage caused by the violation of an international obligation requires full restitution (*restitutio in integrum*), which consists in re-establishing the previous situation, and repairing the consequences of the violation, and also payment of compensation for the damages caused.

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<sup>67</sup> Cf. *Suárez Rosero case. Reparations* (Article 63.1, American Convention on Human Rights). Judgment of January 20, 1999. Series C No. 44, para. 40. In the same way, Cf. *Factory at Chorzów*, Jurisdiction, Judgment No. 8, 1927, *P.C.I.J.*, Series A, No. 9, page 21; and *Factory at Chorzów*, Merits, Judgment No. 13, 1928, *P.C.I.J.*, Series A, No. 17, page 29; *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, *I.C.J. Reports* 1949, page 184.

120. As a result of the indicated violations of the rights embodied in the Convention in this case, the Court must rule that the victims are ensured the enjoyment of their violated rights and freedoms. The Court observes that on November 17, 2000, the Congress of the Republic of Peru ordered that the justices should be reinstated in their respective functions (*supra* 26 and 56.30), and this has already been done. However, this Court considers that the State must also compensate the said justices for the salaries and benefits that they failed to receive (*supra* 56.31). It also considers that they must be compensated for the costs and expenses that they incurred owing to the measures taken to litigate the case before the legal system, in both the internal and the international jurisdiction.

121. Referring to material damages in the case of surviving victims, this Court has stated that, among other factors, the calculation of compensation should take into account the time they did not work<sup>68</sup>. The Court considers that this criterion is applicable in the instant case<sup>69</sup> and, to this end, orders that the State should pay the amounts corresponding to the arrears of salary and other work-related benefits that correspond to the dismissed justices under its legislation. The State must also compensate the officials for any other damage that they may duly justify and which is a consequence of the violations declared in this judgment. Following the pertinent national procedures, the State must proceed to establish the respective compensatory amounts, so that the victims may receive them as soon as possible.

122. In accordance with consistent international jurisprudence, the Court considers that the fact that the victims obtain a favorable judgment, as the culmination of a proceeding that supports their claims, is, in itself, a form of satisfaction<sup>70</sup>. The case *sub judice* involves justices of a high court of constitutional justice who were dismissed. The case file confirms that the justices were reinstated in their functions on November 17, 2000 (*supra* 26 and 56.30), by a resolution of Congress, that is, by the very organ that had removed them from their functions. This resolution was published in the official gazette, *El Peruano*. The Court considers that these facts constitute *per se* a moral reparation; and this judgment entails a similar moral reparation.

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123. As this Court has indicated, the American Convention guarantees everyone access to justice to enforce their rights, and the States Parties have the obligation to prevent, investigate, identify and punish the masterminds and accessories of human rights violations<sup>71</sup>. Based on this obligation, the State has the duty to avoid and

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<sup>68</sup> Cf. *Suárez Rosero case, Reparations, supra* note 67, para. 59.

<sup>69</sup> Cf. *Suárez Rosero case, Reparations, supra* note 67, para. 59.

<sup>70</sup> Cf. *Blake case, Reparations* (Article 63.1 American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 55; *Suárez Rosero case, Reparations, supra* note 67, para. 72; *Castillo Páez case, Reparations* (Article 63.1 American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 84; *Neira Alegria et al. case, Reparations* (Article 63.1 American Convention on Human Rights). Judgment of September 19, 1996. Series C No. 29, para. 56; and *El Amparo case, Reparations* (Article 63.1 American Convention on Human Rights). Judgment of September 14, 1996. Series C No. 28, para. 62.

<sup>71</sup> Cf. *Blake case, Reparations, supra* note 70, para. 65.

combat impunity, which has been defined as “the total lack of investigation, capture, prosecution, trial and conviction of those responsible for violations of the rights protected by the American Convention.”<sup>72</sup>

124. Consequently, the State has the obligation to investigate the facts that gave rise to the violations confirmed in this judgment, and must order a real and effective investigation in order to identify and punish those responsible for the violations.

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125. Concerning the reimbursement of costs and expenses, this Court must evaluate their scope with prudence; they includes the expenses for the steps taken by the victims before the authorities in the domestic jurisdiction and also those that arose in the course of the proceeding before the inter-American system. This evaluation may be made based on the principle of fairness and taking into account the expenses indicated by the parties, provided that the *quantum* is reasonable<sup>73</sup>.

126. To this end, the Court considers that, in reimbursement of the costs and expenses generated in the internal and the international jurisdictions, it is fair to grant the victims the following amounts: Manuel Aguirre Roca, US\$25,000.00 (twenty-five thousand United States dollars) or the equivalent in Peruvian money when the payment is made; Guillermo Rey Terry, US\$25,000.00 (twenty-five thousand United States dollars) or the equivalent in Peruvian money when the payment is made; and Delia Revoredo Marsano, US\$35,000.00 (twenty-five thousand United States dollars) or the equivalent in Peruvian money when the payment is made.

127. With regard to the items established in paragraph 126, these should be agreed on and paid as soon as possible, in accordance with the applicable Peruvian law.

128. In order to comply with this judgment, the State must pay the compensations established in favor of Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, within six months of notification. When it disburses the compensations granted in this judgment, the State must pay the amounts in relation to the actual value of the salaries that they failed to receive over the corresponding period (salaries in arrears). Finally, if, for any reason, it is not possible for the beneficiaries to receive the compensations within the indicated six-month period, the State must deposit the said amounts in an account or deposit certificate in a solvent financial institution under the most favorable conditions. If, after ten years, the compensation has not been claimed, the amount will be returned to the State of Peru, with the interest earned.

129. In accordance with its consistent practice, this Court reserves the authority to supervise complete compliance with this judgment. The proceeding will be closed once the State has fully complied with the provisions of the judgment.

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<sup>72</sup> Cf. *Bámaca Velásquez case*, *supra* note 4, para. 211.

<sup>73</sup> Cf. *Suárez Rosero case, Reparations*, *supra* note 67, paras. 92 and 97.

**XV  
OPERATIVE PARAGRAPHS**

130. Therefore

**THE COURT,**

unanimously,

1. finds that the State violated the right to a fair trial embodied in Article 8 of the American Convention on Human Rights, with regard to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano.

2. finds that the State violated the right to judicial protection embodied in Article 25 of the American Convention on Human Rights, with regard to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano.

3. finds that the State failed to comply with the general obligation of Article 1(1) of the American Convention on Human Rights, with regard to the violation of the substantive rights indicated in the previous operative paragraphs of this judgment.

4. decides that the State must order an investigation to determine the persons responsible for the human rights violations referred to in this judgment and also publish the results of this investigation and punish those responsible.

5. decides that the State must pay the amounts corresponding to the arrears of salary and other benefits that, by law, correspond to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, in the terms of paragraphs 121 and 128 of this judgment.

6. decides that, in fairness, the State must reimburse the victims in the instant case, for costs and expenses, in the way and under the terms set out in paragraphs 126 and 128 of this judgment, the following amounts: Manuel Aguirre Roca, US\$25,000.00 (twenty-five thousand United States dollars) or the equivalent in Peruvian money when the payment is made; Guillermo Rey Terry, US\$25,000.00 (twenty-five thousand United States dollars) or the equivalent in Peruvian money when the payment is made; and Delia Revoredo Marsano, US\$35,000.00 (thirty-five thousand United States dollars) or the equivalent in Peruvian money when the payment is made.

7. decides that it will monitor that this judgment is complied with and only then will it close the case.

Done at San Jose, Costa Rica, on January 31, 2001, in the Spanish and English languages, the Spanish version being authentic.

Antônio A. Cançado Trindade  
President

Máximo Pacheco-Gómez  
Pesantes

Hernán Salgado-

Oliver Jackman

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles  
Secretary

So ordered,

Antônio A. Cançado Trindade  
President

Manuel E. Ventura-Robles  
Secretary