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**REPORT No. 176/20**  
**CASE 13,256**  
REPORT ON ADMISSIBILITY AND MERITS

HUMBERTO CAJAHUANCA VÁSQUEZ  
PERU

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**INDEX**

I. INTRODUCTION ..... 2

II. POSITIONS OF THE PARTIES..... 2

    Petitioner..... 2

    State..... 4

III. ANALYSIS OF ADMISSIBILITY ..... 6

    A. Competence, duplication of proceedings and international res judicata..... 6

    B. Admissibility requirements..... 6

        1. Exhaustion of domestic remedies..... 6

        2. Deadline for submitting the petition ..... 8

        3. Colorable Claim ..... 8

IV. PROVEN FACTS..... 8

    A. Regarding the legal framework applicable to disciplinary proceedings carried out against judges in Peru... 8

        B. Regarding the appointment of Humberto Cajahuanca Vásquez and the designation of Mr. Héctor Fidel Cordero Bernal ..... 10

        Regarding the disciplinary process carried out against the alleged victim..... 10

V. ANALYSIS OF LAW..... 13

    A. Rights to a fair trial, principle of legality, and judicial protection ..... 13

        1. General considerations on the applicable guarantees..... 13

        2. Principles of legality and favorability ..... 14

        3. The principle of judicial independence and the right to well-founded decisions ..... 17

        4. Right to appeal and the right to judicial protection..... 18

    B. The right to participate in government (Article 23 of the Convention)..... 19

VI. CONCLUSIONS AND RECOMMENDATIONS ..... 19

## I. INTRODUCTION

1. On December 24, 1998, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition submitted by Humberto Cajahuanca Vásquez (hereinafter “the petitioner” or “the alleged victim”) alleging that the Republic of Peru (hereinafter “the Peruvian State,” “the State,” or “Peru”) was internationally responsible as a result of a disciplinary process that concluded with his dismissal from his position as a magistrate of the Superior Court of Justice of Huánuco, in addition to a criminal process brought against him that concluded with his acquittal.

2. On July 12, 2017, the Commission informed the parties that, pursuant to the instruments governing its mandate, it would defer addressing the admissibility of the matter until discussion of and decision on the merits. The Commission made itself available to the parties to begin a friendly settlement process, but the conditions for doing so were not met. The parties were given the time provided for in the Rules of Procedure to submit their comments on the case. All the information received was duly transferred between the parties.

## II. POSITIONS OF THE PARTIES

### Petitioner

3. The petitioner states that the alleged victim had been serving as a judge on the Superior Court of Justice of Huánuco since October 13, 1992, and that on April 13, 1993, he took over as the president of that court. He states that in October 1994, the president of the republic at that time, Alberto Fujimori, publicly called both the president of the Superior Court of Justice of Huánuco and the rector of the Universidad de Huánuco “reformed terrorists,” causing damage to his reputation. He states that nevertheless, the president said later that he had been mistaken and was talking about a different judge.

4. He states that on June 18, 1995, the judge of the First Criminal Court of Huánuco requested leave for health reasons, which was handled and approved by the Plenary Chamber on June 21, 1995; it was also decided that the judgeship would be filled by the most remote duty judge. He states that this document was not signed at the time by the members of the Plenary Chamber, but that based on this decision, on June 21, 1995, he appointed Héctor Cordero Bernal—who at the time was the Fourth Specialized Criminal Judge—to take over the First Criminal Court. He states that shortly afterward, this judge granted unconditional release to two individuals who were being processed for drug trafficking crimes. He states that this outraged public opinion, and therefore, the Judiciary Oversight Office of the Judicial Branch conducted a judicial visit.

5. He states that on October 18, 1995, the president of the Supreme Court of Justice and the president of the Executive Council of the Judicial Branch concluded that the appointment of Judge Cordero Bernal was irregular, as the official appointment document had not been signed by all the members of the Plenary Chamber and he was not in line to serve as a substitute, as the most remote shift judge was on the Fifth Criminal Court. Therefore, they asked the National Council of the Judiciary (hereinafter the “CNM”) to dismiss the alleged victim.

6. He said the processes brought against him demonstrated an ongoing attempt to violate his rights to work, to personal liberty, and to movement and residency. He states that the appointment of Judge Cordero Bernal was a decision made by the Plenary Chamber, and that the criteria that the substitute be the most remote judge does not exist in the law. He also alleges that “the failure of all the members of the Plenary Chamber to sign the resolution cannot be considered a serious infraction.”

### *Disciplinary process*

7. He states that the CNM launched a disciplinary process against the alleged victim in which he testified and submitted exculpatory evidence. He indicates that in a resolution issued August 14, 1996, the CNM concluded that the procedural omission by the Plenary Chamber and the irregular appointment of the aforementioned judge meant that Mr. Cajahuanca Vásquez “committed acts that, while not criminal, compromise the dignity of

the office of the president of the Superior Court and, in the eyes of the public, undermining the spirit of article 31 of law 26,397." It therefore ordered his dismissal and canceled his appointment as judge.

8. In response to this decision, he filed a writ of reconsideration, which was denied on December 4, 1996, by the CNM based on the same grounds as his dismissal. He states that on February 11, 1997, the alleged victim filed a writ of *amparo* against the CNM, alleging that the documents accompanying his defense brief were not taken into account and that the alleged serious infractions attributed to him are no such thing, and therefore, his right to freedom of work and to remain in office were violated. This constitutional action was declared groundless by the First Specialized Public Law Court of Lima on June 2, 1997, which concluded that the CNM acted in strict adherence to its functions and with all due respect for its legal authorities.

9. He states that in response to the appeal he filed, the Provisional Corporate Chamber Specialized in Public Law of the Superior Court of Justice of Lima overturned the ruling and declared the suit inadmissible on November 3, 1997, finding that his remaining in office depended on the procedure carried out by the CNM.

10. He states that he submitted an extraordinary appeal before the Constitutional Court, which it declared inadmissible on October 25, 1999, on finding that the administrative procedure brought against the alleged victim had respected his due process guarantees and that no violation of his constitutional rights was demonstrated.

#### *Criminal process*

11. The petitioner states that, based on the facts leading to his dismissal, the Executive Committee of the Public Ministry filed a criminal complaint against him for the crimes of breach of public duty and obstruction of justice on July 31, 1997. It states that the Office of the Public Prosecutor alleged collusion between the alleged victim and Cordero Bernal to grant unconditional release to the individuals who were being processed for drug trafficking crimes. It states that on June 12, 1998, a criminal process was launched and an arrest warrant was issued, subsequently executed on January 30, 2003.

12. It states that the Supreme Investigation Judge issued a judgment on March 25, 2003, finding that the facts surrounding the appointment of Mr. Bernal and the corresponding resolution were essentially administrative in their origin and consequences. Therefore, there was no illegal conduct as defined in the criminal offense of breach of public duty and therefore, acquitted him of the crime. However, it did find him guilty of the crime of obstruction of justice, indicating that because of the subordinate relationship between the office of the alleged victim and Mr. Cordero Bernal, the former had put pressure on the latter to grant conditional release to the citizens being processed for drug trafficking, with the result that they were able to escape justice. It therefore sentenced him to five years in prison and banned him from holding public office during that time, ordering him as well to pay a fine.

13. He states that he finished serving his sentence on January 29, 2008, and that he was deprived of liberty starting on May 12, 2004, and was granted the benefit of semi-release from May 13, 2004, onward. He states that as a result of this unjust process, he was deprived of liberty for 15 months.

14. He states that he appealed his conviction, an appeal that was admitted by the Special Criminal Chamber of the Supreme Court of Justice. The Chamber upheld his conviction on July 24, 2003. He states that in response to this, he then filed a writ of habeas corpus alleging that the process was irregular, as the decision lacked rationale and violated the presumption of innocence and the right to be judged by an impartial judge. He also argued that the actions for which he was prosecuted do not constitute a crime and are strictly administrative in nature. He states that on December 23, 2003, the 35th Criminal Court of Lima found his suit inadmissible, indicating that the resolution in question was properly grounded and had been issued within the framework of a proper process. He states that he appealed the ruling, but that the Second Specialized Criminal Chamber for Processes Involving Imprisoned Inmates ratified the inadmissibility of the writ of habeas corpus on March 5, 2004, finding that there was no indication of a failure to provide justification in the resolution and that a new constitutional review of the evidence was not necessary.

15. Later, he states that on August 12, 2004, the Constitutional Tribunal rejected the extraordinary motion filed by the alleged victim, finding that it was not the proper forum for deciding on the criminal culpability of the accused, nor for ruling with regard to the classification of the criminal offense, authorities that fell exclusively to the ordinary criminal jurisdiction.

16. He states that years after serving his sentence, he discovered new evidence proving his innocence. He indicates that statements made by Mr. Cordero Bernal to the Judiciary Oversight Office in the framework of a criminal process brought against him and concluded on August 22, 2005, evidenced that there was no collusion or concerted action between the judges and that the release of the individuals being prosecuted for drug trafficking was based on judgment alone and without any pressure on Mr. Cordero Bernal. He states that therefore, on August 18, 2009, he appealed for a review of the judgment, which was handled by the Supreme Court of Justice. He states that on July 7, 2010, that court acquitted the alleged victim, concluding that it was problematic to maintain his conviction for having allegedly conspired with former judge Cordero Bernal on issuing a resolution when the latter had been acquitted of all charges.

#### *Compensation process for damages*

17. The petitioner states that with the aim of securing reparation for the damages caused, on November 25, 2011, he filed suit for damages against the public prosecutor and the judges who heard his case. He states he based his lawsuit on Law 24,973, the Damages for Judicial Errors and Arbitrary Detentions Act. He states that the defendants raised a number of objections, including the lack of clarity and ambiguity of the suit as well as its being time-barred, which were rejected by the 37th Civil Court of Lima through Resolution 14 of October 7, 2014, and Resolution 15 of November 21, 2014.

18. He states that the defendants appealed these resolutions, and that on April 12, 2017, the Fifth Civil Chamber of Lima overturned them, finding the objection that the suit was time-barred to be admissible and concluding that the suit was filed after the six-month deadline established in article 27 of Law 24,973. It therefore declared the lawsuit null and void and closed the case. In response to this, and arguing a violation of his rights, he states that he filed a cassation appeal arguing that the deadline established in the aforementioned article 27 is only applicable to situations of arbitrary detention and not to judicial errors.

19. He states that on October 24, 2017, the Provisional Civil Chamber of the Supreme Court of Justice ruled the appeal inadmissible, finding that it failed to establish that the deadline set by article 27 provided any exception applicable to the case. The petitioner alleges that this judgment erroneously interpreted the aforementioned article and that the article should not have been applied to rule the process time barred. He states that with this ruling, the State has prevented him from receiving fair compensation upon having been unjustly convicted as the result of a judicial error.

#### *Request to be reinstated in the judicial career*

20. Lastly, the alleged victim indicates that on September 23, 2010, he filed a request to be reinstated in the judiciary, as he had been acquitted in the criminal trial over the facts for which he was dismissed. He states that on June 20, 2012, the head of the Judiciary Oversight Office of the Judicial Branch found the request inadmissible, arguing, on one hand, that Law 29,277 establishes that officials who have previously been subject to the disciplinary sanction of dismissal may not be reinstated, and on the other, that Law 27,444 establishes that procedures related to criminal or civil responsibility did not affect the authority of the entities to decide on administrative responsibility. He alleges that the authorities' refusal to reinstate him to the judiciary violates his right to work.

#### **State**

21. The State argues first that the Commission lacks *ratione materiae* competence with regard to the alleged violation of the right to work set forth in the Additional Protocol on Economic, Social, and Cultural Rights. It states that under the scope of article 19 of the treaty, the allegations regarding the right to work cannot be heard through the petitions and cases system.

22. It argues that it cannot be claimed that former President Alberto Fujimori's 1994 statements were in reference to the petitioner, because, as indicated, he was arrested in 2003. It states that there is also no information on the measures that Mr. Cajahuanca Vásquez took in response to that statement from the president. Likewise, it argues that any connection between the insinuation of membership in the Shining Path (or other terrorist organization) and the subject of this dispute involving the sanctions and dismissal issued by the CNM and the subsequent criminal conviction has not been proven. Consequently, it states that although violation of Article 11 of the American Convention has not been explicitly alleged, such violation has no factual support and should be declared inadmissible.

23. It states that this case is inadmissible because domestic remedies were not properly exhausted, as the lawsuit for damages was not filed by the deadlines set forth by Peruvian law. This prevented a ruling on the merits, which could have eventually provided the petitioner with reparations. In this regard, it notes that the petitioner filed suit on November 25, 2011, knowing that it was passed the legal deadline for filing it. It states that on April 12, 2017, the Fifth Civil Chamber of the Superior Court of Justice of Lima granted the objections made by the defendants on the grounds that the petitioner was acquitted of the criminal charge in a judgment dated July 7, 2010.

24. It states that the cassation appeal (*recurso de casación*) filed by the alleged victim was ruled on by the Provisional Civil Chamber of the Supreme Court of Justice on August 2, 2017, which found that the deadline established in article 27 of Law 24,973 is applicable to circumstances of arbitrary detention and judicial error. It also argued that the petitioner did not provide support for why the deadline should not be applied in his case, nor did he clearly and precisely describe the alleged legal infraction, as required by subparagraph 2 of article 388 of the Civil Procedural Code.

25. The State also alleges that there was no violation of the application of the deadline established in article 27 of Law 24,973. It explains that this law governs the right to compensation for both judicial error and arbitrary detention. It states that the judicial authorities interpreted and applied this article in a way that was as favorable to the petitioner as possible, as it considered that "from the moment of his acquittal, the actor had the opportunity to qualify to claim damages if the conviction and sentence execution amounted to an alleged arbitrary detention or judicial error."

26. It states that the petitioner filed suit with the full knowledge that the deadline had expired, and that to address this situation, he invoked the prescription deadline set in article 2001 subparagraph four of the Civil Code, a legal provision that addresses the prescription of an action stemming from a final judgment, which is different than the situation surrounding this lawsuit. Therefore, it observed that in reality, the alleged victim disagrees with the rulings of domestic courts and wants the Commission to act as a fourth instance in a matter that has already been resolved by domestic jurisdictional bodies.

27. As regards the procedure before the CNM, the State argues that the petitioner has not been clear in challenging the disciplinary process carried out against him and that he has specified neither the violation he is alleging nor the legal support thereof. It states that without prejudice to this, the alleged victim filed a suit of constitutional *amparo* that, after being fully evaluated, was rejected by the Constitutional Court on the grounds that the sanction procedure was valid and in strict adherence to the law.

28. It underscores that in the framework of the administrative procedure launched by the CNM, a series of steps were taken in adherence to due process. It specifies that his dismissal was ordered after it was proven that the petitioner had acted irregularly by granting leave to the judge of the First Criminal Court of Huánuco for more time than requested and by having appointed Mr. Héctor Cordero Bernal, magistrate of the Fourth Criminal Court, to that judgeship, when according to the order of the Plenary Chamber, he was to appoint the most remote judge, that is, the judge of the Fifth Criminal Court.

29. It underscores that with regard to the alleged coordination between Mr. Cajahuanca Vásquez and Mr. Cordero Bernal to release two suspects, the CNM found this argument was not the basis for the request for dismissal, therefore making it accessory information that was not taken into account. In addition, it states that

in the *amparo* brought to challenge his sanction, the petitioner indicates that the alleged misconduct of which he is accused is no such thing, asking the constitutional court to act in place of the councilmembers of the CNM, assess the facts, compare them against the misconduct established, and assess the evidence, which is not a job for a constitutional court.

30. It states that the administrative disciplinary process and the criminal process brought against the alleged victim do not address to same set of facts. With regard to the crime of breach of public duty, it states that the fact subject to investigation was the petitioner’s irregular appointment of the substitute judge, a charge for which he was acquitted in a judgment issued March 25, 2003. As far as the crime of obstruction of justice, it involves the unconditional release granted by Mr. Cordero Bernal to two Colombian citizens, allegedly in coordination with the petitioner. He was convicted and later acquitted by the Supreme Court of Justice during a process of judicial review.

31. The State holds that based on the first above-described conduct, the petitioner received a severe administrative sanction that was proportional to the gravity of the infraction committed; and based on the second, he was criminally convicted and later acquitted. It additionally asserts a distinction between criminal and administrative sanctions, as both serve different functions, and full independence is therefore justified, as confirmed by the Peruvian Constitutional Court in its settled caselaw. It therefore concludes that the judicial guarantees set forth in articles 8 and 25 of the Convention have not been violated.

### III. ANALYSIS OF ADMISSIBILITY

#### A. Competence, duplication of proceedings and international res judicata

<b>Competence <i>ratione personae</i>:</b>	Yes
<b>Competence <i>ratione loci</i>:</b>	Yes
<b>Competence <i>ratione temporis</i>:</b>	Yes
<b>Competence <i>ratione materiae</i>:</b>	Yes, American Convention (instrument deposited on July 28, 1978)
<b>Duplication of procedures and international res judicata</b>	No

#### B. Admissibility requirements

##### 1. Exhaustion of domestic remedies

32. Article 46(1)(a) of the American Convention holds that in order for a complaint submitted before the Inter-American Commission under Article 44 of the Convention to be admissible, it must have sought and exhausted all domestic remedies, in keeping with generally accepted principles of international law. The purpose of this requirement is to allow domestic authorities to hear cases of alleged violations of protected rights and, where appropriate, to have the opportunity to resolve them before they are brought before an international authority.

33. In this case, the Commission notes that the petitioner’s claims have to do with two processes. The first involves a administrative disciplinary process that ended in his dismissal from his judgeship. In addition, the alleged victim was also prosecuted criminally and later acquitted, after which he filed a lawsuit seeking damages.

34. With regard to the disciplinary process, the Commission observes that in response to the resolution issued on August 14, 1996, by the CNM ordering the alleged victim’s dismissal, he filed a writ of reconsideration, which was denied on December 4, 1996. The case file indicates that in response to this, the petitioner turned to the constitutional jurisdiction and filed a constitutional *amparo*, which was denied on June 2, 1997, by the First Specialized Public Law Court of Lima. Subsequently—although on appeal—the Provisional Corporate Chamber Specialized in Public Law of the Superior Court of Justice of Lima overturned the ruling, finding the suit

inadmissible on November 3, 1997. This decision was upheld by the Constitutional Tribunal on October 25, 1999, in resolving a constitutional appeal filed by the petitioner.

35. In view of this, the Commission concludes that the remedies were duly exhausted with the constitutional judgment issued on October 25, 1999, in compliance with articles 46(1)(a) of the Convention and 31(1) of the Rules of Procedure of the IACHR.

36. Without prejudice to this, the Commission takes into account that, for the purposes of securing reinstatement in his office, the petitioner filed a request that was dismissed by the Head of Oversight of the Judiciary on the grounds that a legal provision made it impossible to reinstate an official who had previously been sanctioned with dismissal.

37. As regards the determination of the alleged victim's criminal responsibility and the lawsuit for damages, the Commission observes that the criminal prosecution of Mr. Cajahuanca Vásquez for the crime of obstruction of justice concluded with the decision handed down by the Special Criminal Chamber of the Supreme Court of Justice on July 24, 2003. It also notes that following the acquittal of Mr. Cordero Bernal on August 22, 2005, the petitioner appealed for a review of the judgment before the Supreme Court of Justice. This appeal was resolved on July 7, 2010, with the alleged victim's acquittal and the annulment of his conviction. The documents found in the case file indicate that the petitioner was notified of this judgment on September 6, 2010.

38. In response, and with the aim of securing reparation for the damages caused by the criminal punishment imposed on him, on November 25, 2011, the alleged victim filed suit for damages. The Commission observes that in points 9 and 10 of his lawsuit, on the legal grounds and procedural route, the petitioner cites Law 24,973, the Damages for Judicial Errors and Arbitrary Detentions Act, as the legal basis for his claim.

39. Later, on April 12, 2017, in response to the objections raised by the defendants, the Fifth Civil Chamber of Lima declared the suit invalid and closed the process on finding that the alleged victim's lawsuit was time-barred on having been filed past the six-month deadline set by article 27 of Law 24,973.<sup>1</sup> In this regard, it found as follows:

The deadline established in the law must be counted from the date on which the plaintiff was notified of the judgment to acquit issued by the Supreme Court of Justice, as that is the moment as of which the actor would be able to claim, under Law 24,973, that an alleged arbitrary detention or judicial error was imposed and executed.

40. In this regard, it is clear that Mr. Cajahuanca Vásquez was notified on September 6, 2010, of the judgment acquitting him that was handed down on July 7, 2010, and that he filed suit on November 25, 2011. This decision was upheld on October 24, 2017, by the Provisional Civil Chamber of the Supreme Court of Justice.

41. In this regard, the Commission has established that domestic remedies must be exhausted pursuant to domestic procedural legislation. The Commission cannot conclude that the requirement to exhaust domestic remedies was properly met if the remedies have been rejected based on reasonable and not arbitrary procedural grounds, such as remedies sought before domestic courts that are time-barred.<sup>2</sup> In this case, the Commission takes into account that domestic law offers an opportunity to seek compensation for arbitrary detentions and judicial errors through procedures set forth in Law 24,973, which also establishes a deadline of six months. However, it notes that the suit was filed by the petitioner 14 months after being notified of the judgment to acquit. This prevented domestic courts from ruling on the merits of the matter.

42. Therefore, the Commission observes that the alleged victim's failure to file the lawsuit seeking compensation for judicial errors based on a law that was in force at the time of the facts means that the Commission cannot find that the admissibility requirement set forth in Article 46(1)(a) of the Convention has been met with regard to this aspect of the petition, as domestic remedies were not properly exhausted.

<sup>1</sup> Article 27. The opportunity to file suit for damages expires six months after the arbitrary detention.

<sup>2</sup> IACHR Report No. 90/03, Petition 0581/1999. Inadmissibility. Gustavo Trujillo González. Peru. October 22, 2003, para. 32.

## 2. Deadline for submitting the petition

43. Article 46(1)(b) of the Convention provides that, for the petition to be declared admissible, it must have been lodged within a period of six months from the date on which the party alleging the rights violation was notified of the final judgment that exhausted remedies under domestic law.

44. The Commission recalls that in this case, with regard to the allegations surrounding the disciplinary proceeding that culminated in the petitioner's dismissal, the domestic remedies were exhausted with the constitutional judgment issued on October 25, 1999.

45. Consequently, given that the petition was submitted on December 24, 1998, the domestic remedies were exhausted while the case was undergoing the admissibility phase. According to the Commission's case law, analysis of the requirements as set forth in Article 46(1)(b) of the Convention must be conducted based on the situation as of the moment the admissibility or inadmissibility of the claim is established.<sup>3</sup> The Commission therefore concludes that the petition meets the requirement set forth in Article 46(1)(b) of the American Convention.

## 3. Colorable Claim

46. For the purposes of admissibility, the Commission must decide if the petition describes facts that could characterize a violation, as stipulated in Article 47(b) of the American Convention, or if it is "manifestly groundless" or "obviously out of order," pursuant to subparagraph (c) of that article. The standard for assessing these circumstances is different from the standard required to rule on the merits of a petition. The Commission must conduct a *prima facie* evaluation to assess whether the petition provides the basis for an apparent or potential violation of the rights guaranteed by the Convention, not for establishing the existence of a violation. Such an evaluation is a summary review that does not prejudice or advance an opinion on the merits.

47. As regards colorable claim, the alleged victim argued that the State violated his rights as set forth in article 8 and 25 of the American Convention when it dismissed him from his position as a magistrate of the Superior Court of Justice of Huánuco and refused to reinstate him to the judiciary. For its part, the State argued that the petitioner was provided with due process guarantees in the disciplinary process resulting in his dismissal, as well as in the framework of the constitutional *amparo* he had filed previously.

48. The IACHR concludes that, should it be proven that Mr. Humberto Cajahuanca Vásquez was dismissed as a result of the alleged application of a disciplinary sanction that was ambiguous and more severe than what was established as of the date of the facts alleged, the alleged impossibility of appealing his dismissal, and the alleged lack of an effective judicial response by the bodies hearing the *amparo* claim could violate the rights enshrined in articles 9, 8, 23(1), and 25 of the American Convention, in conjunction with the violation of the general obligations set forth in articles 1(1) and 2 of the Convention.

## IV. PROVEN FACTS

### A. Regarding the legal framework applicable to disciplinary proceedings carried out against judges in Peru

49. The disciplinary procedure applied to the alleged victim is regulated by the Political Constitution of Peru, by the Organic Law of the Judicial Branch, by Law 26,397, and by Law 26,933.

50. The Political Constitution of Peru establishes as follows:

Article 154. The following are the functions of the National Council of the Judiciary: (...)

<sup>3</sup> IACHR Report No. 15/15, Petition 374-05. Members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia. Colombia. March 24, 2015, para. 41. Also see Inter-American Court, Case of Wong Ho Wing v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment June 30, 2015. Series C No. 297, para. 25-28.

3. Apply the sanction of dismissal to judges of the Supreme Court and Supreme Prosecutors and, at the request of the Supreme Court or the Council of Supreme Prosecutors, to judges and prosecutors, respectively, of all ranks. The final resolution, well-founded and subsequent to a hearing with the individual in question, is not appealable.<sup>4</sup>

51. The Constitution also establishes in article 142 that “resolutions of the National Elections Board are not reviewable by the judiciary, nor are the electoral resolutions of the National Elections Council or the resolutions of the National Council of the Judiciary on the evaluation and ratification of judges.”<sup>5</sup>

52. The Organic Law of the Judicial Branch establishes as follows:

Article 206. SANCTIONS AND DISCIPLINARY MEASURES. Sanctions and disciplinary measures are as follows: (...) 3. Suspension; (...) 5. Dismissal.

Article 210-SUSPENSION. Suspension is applied to the magistrate or official against whom an arrest warrant is issued or who is charged with a request for pretrial detention in a criminal process.

It is also applicable to a magistrate who commits a serious infraction that, while not criminal, compromises the dignity of the office in the eyes of the public or commits new serious misconduct after having been punished three times with fines.

Suspensions are handed down by those bodies indicated by this law. Suspensions are unpaid and cannot be longer than two months.

Article 211. DISMISSAL- Dismissals are handed down by those bodies indicated by this law, and a vote to apply the sanction requires more than half of the total members of the corresponding body.

Those magistrates shall be dismissed who gravely infringe upon the responsibility of the Judicial Branch; who commit a serious infraction that, while not criminal, compromises the dignity of the office in the eyes of the public, as long as they have been suspended previously (...).

53. The Organic Law of the National Council of the Judiciary, Law 26,397, establishes as follows:

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

c) Apply the sanction of dismissal to judges of the Supreme Court or the Council of Supreme Prosecutors, to judges and prosecutors, respectively, of all ranks. The final resolution, well-founded and subsequent to a hearing with the individual in question, is not appealable.

Article 31. The sanction of dismissal as described in subparagraph c) of Article 21 of this law shall be applied for the following grounds:

(...) 2. The commission of a serious infraction that, while not criminal, compromises the dignity of the office and diminishes it in the eyes of the public.

Article 33. At the request of the Supreme Court or the Council of Supreme Prosecutors, the National Council of the Judiciary shall investigate the actions of judges and prosecutors, respectively, of all ranks, to determine the applicability of the sanction of dismissal, without prejudice to the authorities falling to other bodies.

For these purposes, paragraphs 2, 3, and 4 of the preceding article are applicable.

If it is presumed that a crime has been committed by judges or prosecutors, the Council shall notify the Public Ministry in writing for the pertinent steps to be taken.

Article 34. The following provisions apply to the disciplinary processes described in articles 32 and 33 of this law:

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<sup>4</sup> Political Constitution of Peru.

<sup>5</sup> Political Constitution of Peru.

(...) 4. The only admissible appeal of the resolution putting an end to the procedure is a writ of reconsideration, and only if it includes new and important evidence within five working days of the day notification is received.<sup>6</sup>

54. Lastly, Law 26,933 of March 12, 1998, repealing article 31 of the law cited in the preceding paragraph, establishes the following:

The magistrates of the Judicial Branch and the prosecutors of the Public Ministry provide grounds for dismissal when they commit a serious infraction that, while not criminal, compromises the dignity of the office and diminishes it in the eyes of the public, as long as they have been suspended previously (...).

### **B. Regarding the appointment of Humberto Cajahuanca Vásquez and the designation of Mr. Héctor Fidel Cordero Bernal**

55. Pursuant to the casefile, Mr. Cajahuanca Vásquez was appointed trial court judge of the province of Huamalies on February 21, 1985, and then on October 13, 1992, he was appointed provisional judge of the Supreme Court of Justice of Huánuco.<sup>7</sup> Additionally, the petitioner indicated that on April 13, 1993, he took over as the president of that court.<sup>8</sup>

56. On June 21, 1995, in his capacity as president of the Superior Court of Justice of Huánuco, he called a meeting of the Plenary Chamber to weigh the request of the First Criminal Court judge for leave.<sup>9</sup> The petitioner stated that the Plenary Chamber granted the judge leave and moved to appoint the most remote judge as his substitute, which, he said, was Héctor Fidel Cordero Bernal, judge of the Fourth Criminal Court.<sup>10</sup>

57. The parties agree that on July 11, 1995, this judge, in the exercise of his role as substitute judge, granted unconditional release to two individuals who were being processed for drug trafficking crimes, upon which the Judiciary Oversight Office of the Judicial Branch decided to conduct a judicial visit.<sup>11</sup> Thus, on July 17, 1995, the Office appointed a magistrate to conduct this visit.<sup>12</sup>

### **C. Regarding the disciplinary process carried out against the alleged victim**

58. On July 21, 1995, the judge of the Judiciary Oversight Office of the Judicial Branch in charge of the judicial visit issued an investigation report describing irregularities she considered grounds for application of the measure provided for in article 211 of the Organic Law of the Judicial Branch.<sup>13</sup> The report states as follows:

A.10. (...) the appointment of Dr. Héctor Cordero Bernal to lead the First Criminal Court has involved serious irregularities, resulting in the following:

That the resolution appointing Dr. Héctor Cordero Bernal, was signed after my arrival to the offices of the Court of Huánuco—that is, after noon on July 18 of this year, demonstrating that up until then, there was no proper documentary support for the appointment of the aforementioned magistrate.

A.11. That on the other hand, if we examine the Plenary Chamber Meeting Minutes of June 21, 1995, (...) They show that the plenary agreed ‘unanimously to place the most remote duty judge, who in this case would be the judge of the Fifth Criminal Court. However, he had turned it down for having too great a procedural workload, and therefore it is ordered to place the judge of the Fourth Court, Dr. Héctor Fidel Cordero Bernal, as head of the office of the First Criminal Court of Huánuco.’

<sup>6</sup> Organic Law of the National Council of the Judiciary, Law 26,397.

<sup>7</sup> Annex 1. Executive Order 029-85-JUS of February 12, 1985, of the Presidency of the Republic; Administrative Resolution 001-92 of October 13, 1992, of the Supreme Court of Justice of Huánuco, Pasco, and Coronel Portillo. Annex to the initial petition of December 24, 1998.

<sup>8</sup> Initial petition of December 24, 1998.

<sup>9</sup> Annex 2. Citation of June 21, 1995. Annex to the initial petition of December 24, 1998.

<sup>10</sup> Annex 3. Resolution of June 21, 1995. *Idem*.

<sup>11</sup> Annex 4. Initial petition of December 24, 1998, and brief of the State of January 24, 2020.

<sup>12</sup> Annex, Judiciary Oversight Office of the Judicial Branch. Resolution 017-95-J/OCMA of July 17, 1995. Brief of the State of June 25, 2019.

<sup>13</sup> Annex 5. Judiciary Oversight Office of the Judicial Branch. Report 116 of July 21, 1995. Brief of the State of June 25, 2019.

That if we take the previous resolution into account (...) it should provide justification in this sense and also indicate that the appointment was unanimous; however, this decision by the plenary contains none of that, and in addition, it has not been signed by all the judges who form part of the plenary (...)

That in addition, pursuant to statements collected from the magistrates during the visit, the Minutes do not reflect what the plenary had agreed upon, as at no time was the issue involving changing the appointment from the judge of the Fifth Criminal Court—the most remote—to the Fourth, where Dr. Héctor Cordero Bernal was in charge, ever discussed. That these imprecisions subtly deployed by the President of the Court correlate with another argument expressed by Dr. Cajahuanca Vásquez, who holds that one of the elements contributing to the appointment of Dr. Cordero Bernal was his personal characteristics and his focused manner.

A.12. That in addition to all this, the attitude of the President of the Court is also symptomatic, as, with no rationale or justification for his decision, he unilaterally moved on July 17, 1995, to place Dr. Fernanado Amblódegui Amuy in charge of the office of the First Criminal Chamber of Huánuco (...) finding it strange that the official had not called on the Plenary Chamber to remove Dr. Cordero Bernal from that post.<sup>14</sup>

59. On August 3, 1995, the Judiciary Oversight Office of the Judicial Branch issued a resolution proposing that the Supreme Court of Justice request that the CNM dismiss Mr. Cajahuanca Vásquez. It also ordered him suspended until his disciplinary situation was resolved.<sup>15</sup> In this regard, it stated:

(...) That it has been fully demonstrated that the irregular appointment of Dr. Héctor Fidel Cordero Bernal was carried out by the Presidency of the Superior Court of Justice of Huánuco (...) who, on the pretext of a medical leave (...) sought to involve the Plenary of that Superior Court with a view to granting legality to the aforementioned appointment, under an agreement that he himself distorted to himself designate a different Magistrate (...) to then have the Presidency issue an order nullifying the appointment (...) of the judge of the Third Criminal Court to continue with the office of the First Criminal Court, without the approval of the Plenary (...)

That this type of malicious conduct gravely impinges on the majesty of the Judicial Branch, the reputation of our institution, and the dignity of its members, and therefore, a disciplinary sanction must be imposed that is proportionate to the gravity of the actions;

(...) by virtue of the authority conferred by the part one hundred and six of the consolidated amended text of the Organic Law of the Judicial Branch and application of article two hundred and eleven of the legal text cited, in view of the new laws in place, the Supreme Court of Justice of the Republic is asked to request of the National Council of the Judiciary the dismissal of magistrates Humberto Cajahuanca Vásquez and Héctor Cordero Bernal, pursuant to article twenty-three of law twenty-six thousand three hundred and ninety-seven, the Organic Law of the National Council of the Judiciary (...).<sup>16</sup>

60. On October 18, 1995, the Executive Council the Judicial Branch approved the proposal for dismissal made by the Judiciary Oversight Office of the Judicial Branch and asked the CNM to dismiss Mr. Cajahuanca Vásquez.<sup>17</sup>

61. The Commission notes that it does not have documentation on the disciplinary process carried out against the alleged victim. In the decision of August 14, 1995, reference is made to testimony given by the alleged victim and to briefs and evidence that he submitted prior to the issuing of the decision.

62. The CNM issued Resolution 009-96-PCNM on August 14, 1996, ordering the dismissal of Mr. Cajahuanca Vásquez from his position as a Provisional Judge of the Superior Court of Huánuco and as a Permanent Judge of the Mixed Court of the Province of Huamalés. It also ordered the cancellation of his appointment and his title.<sup>18</sup> The CNM found that:

<sup>14</sup> Annex 6. Judiciary Oversight Office of the Judicial Branch. Report 116 of July 21, 1995. Brief of the State of June 25, 2019.

<sup>15</sup> Annex 7. Judiciary Oversight Office of the Judicial Branch. Judgment of August 3, 1995. Brief of the State of June 25, 2019.

<sup>16</sup> Annex 8. Judiciary Oversight Office of the Judicial Branch. Judgment of August 3, 1995. Brief of the State of June 25, 2019.

<sup>17</sup> Annex 9. Executive Council of the Judicial Branch, resolution of October 18, 1995. Annex to the initial petition of December 24, 1998.

<sup>18</sup> Annex 10. National Council of the Judiciary, Resolution °009-96-PCNM of August 14, 1996. Annex to the initial petition of December 24, 1998.

Second: That the magistrate being processed is charged with conducting an irregular procedure to grant leave for more time than requested by Dr. San Martín and with having appointed a judge from a court that was not the appropriate one for handling an important criminal process (...) that these facts are duly proven in the investigation carried out by the Judiciary Oversight Office and are serious, as they demonstrate a failure to perform the essential duties of an official in charge of managing the human resources of a Judicial District and whose behavior caused a situation of insecurity and risk to society in the context of a serious crime with both individual and societal repercussions; that the circumstances surrounding this conduct corroborate the conviction that the accused has committed actions that, while not criminal, compromise the dignity of the office of President of a Superior Court and diminish it in the eyes of the public; that is, his actions meet the legal standards set forth in law twenty-six thousand three hundred and ninety-seven, the Organic Law of the Council, for the sanction of dismissal (...).<sup>19</sup>

63. It likewise dismissed the possibility of collusion between the alleged victim and Mr. Cordero Bernal:

This collusion was a grounds introduced by the director of the disciplinary investigation, but is not the grounds on which this dismissal is based and is thus considered accessory information and therefore merely provided for reference.<sup>20</sup>

64. In response to this situation, the alleged victim filed a writ of reconsideration before the CNM. The Commission has no information on the content of this remedy. However, on December 4, 1996, the CNM, declared the writ of reconsideration submitted by Mr. Cajahuanca Vásquez without merit, as the irregularities identified in the disciplinary measure had been proven.<sup>21</sup> It argued:

That the copy of the leave request submitted by Judge Dr. Jacinto Oriol San Martín Arcayo (...); the citation signed by the magistrate being processed and eight judges in acknowledgement of having read it; the copy of the resolution dated June 21, 1995, signed by seven magistrates granting the aforementioned leave and appointing Dr. Héctor Cordero Bernal; and the press clipping containing information on the correction of a news item describing a judge as a former terrorist, documents that have been attached to the brief of reconsideration, offer no evidence that would challenge the grounds of the Resolution being appealed; that effectively, the Resolution to dismiss is based on the irregularity committed by having granted Judge Dr. Oriol San Martín leave of more time than required by the doctor's note; having obtained an agreement to grant sixty days of leave, having stated incorrectly that in the agreement, the judges appointed Dr. Cordero Bernal as substitute, something they emphatically deny, and having withdrawn the judgeship from that judge (...) that it should also be underscored that the date and content of the text of the agreement (...) do not correspond to reality (...); that the Plenary of the Council observes that the documentation presented in itself lacks value (...).<sup>22</sup>

65. On February 11, 1997, the alleged victim filed a writ of *amparo* against the CNM, alleging a violation of his right to workplace stability, as in his capacity as the president of the court, he had complied with the decision handed down by the Plenary; in this regard, he argued that there was no legal provision in place requiring that the substitute magistrate must be the most remote judge, and that the sanction of dismissal for lateness in drafting a resolution was an abuse of authority on the part of the CNM.<sup>23</sup> This constitutional action was denied by the First Specialized Public Law Court of Lima on June 2, 1997, which concluded that "the CNM acted in strict adherence to its functions and with all due respect for its legal authorities."<sup>24</sup>

66. On June 20, 1997, Mr. Cajahuanca Vásquez appealed the decision, alleging the violation of his right to freedom to work and remain in his position, arguing that the evidence in the CNM case file—to which he did not have access—had not been taken into consideration.<sup>25</sup>

<sup>19</sup> Annex 11. National Council of the Judiciary, Resolution °009-96-PCNM of August 14, 1996. Annex to the initial petition of December 24, 1998

<sup>20</sup> Annex 12. National Council of the Judiciary, Resolution °009-96-PCNM of August 14, 1996. Annex to the initial petition of December 24, 1998

<sup>21</sup> Annex 5. National Council of the Judiciary, Resolution 029-96-PCNM of December 4, 1996. Annex to the initial petition of December 24, 1998

<sup>22</sup> Annex 14. National Council of the Judiciary, Resolution 029-96-PCNM of December 4, 1996. Annex to the initial petition of December 24, 1998.

<sup>23</sup> Annex 15. Constitutional *amparo* of February 11, 1997. Annex to the initial petition of December 24, 1998.

<sup>24</sup> Annex 16. First Specialized Public Law Court of Lima. Resolution 5 of June 2, 1997. Annex to the initial petition of December 24, 1998.

<sup>25</sup> Annex 17. Appeal dated June 20, 1997. Annex to the initial petition of December 24, 1998.

67. On November 3, 1997, the Provisional Corporate Chamber Specialized in Public Law overturned the judgment being appealed and, amending it, ruled the action inadmissible.<sup>26</sup> It concluded that pursuant to article 142 of the Political Constitution of the State, CNM resolutions on the evaluation and confirmation of judges were not reviewable by the judiciary and indicated that

In this case, in response to the request from the Judiciary Oversight Office of the Judicial Branch, the Executive Council of this (*sic*) branch of government asks the National Council of the Judiciary to dismiss the appellant from the position of provisional judge of the Superior Court of Justice of Huánuco and the position of permanent judge of the Mixed Court of Huamalies, as well as cancel his appointment, leaving his ability to remain in office depending on the ratification of the National Council of the Judiciary, which it did not provide.<sup>27</sup>

68. On November 18, 1997, the alleged victim filed a constitutional appeal, indicating that:

the omission or delay in signing the resolution granting leave to a judge (...) and appointing a substitute (...) cannot be considered a 'serious infraction that, while not criminal, compromises the dignity of the office.' At worst, I deserve a suspension, not dismissal, because article 211 of the O.L.J.B. is clear where it states that 'magistrates are to be dismissed who (...) have committed a serious infractions that, while not criminal, compromises the dignity of the office as long as they have been suspended previously (...). But as indicated in the very resolution itself of the National Council of the Judiciary, the appellant was never previously sanctioned with suspension for other incidents; consequently, my dismissal is illegal and unconstitutional.<sup>28</sup>

69. On October 25, 1999, the Constitutional Tribunal denied the appeal, indicating:

...3. That the case file shows that the resolution under appeal was issued within the corresponding administrative process, in which the National Council of the Judiciary has proceeded in strict observance of the law and in which the appellant has been free to exercise his right to defense, in observance of the essential due process guidelines, with no violation of any of the appellant's constitutional rights having been proven.<sup>29</sup>

## V. ANALYSIS OF LAW

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

#### 1. General considerations on the applicable guarantees

70. The Commission recalls that both bodies of the inter-American system have indicated that the guarantees established in Article 8 of the American Convention are not limited to criminal processes; rather, they also apply to processes of other natures.<sup>30</sup> Specifically, as regards sanctioning processes, both bodies of the inter-American system have indicated that the guarantees for criminal proceedings apply by analogy, as such processes are the exercise of the State's punitive power.<sup>31</sup> Taking into account that this case involves the

<sup>26</sup> Annex 18. Provisional Corporate Chamber Specialized in Public Law. Resolution of November 3, 1997. Annex to the brief of the petitioner, September 17, 2010.

<sup>27</sup> Annex 19. Provisional Corporate Chamber Specialized in Public Law. Resolution of November 3, 1997. Annex to the brief of the petitioner, September 17, 2010.

<sup>28</sup> Annex 20. Constitutional appeal, November 18, 1997. Annex to the initial petition of December 24, 1998.

<sup>29</sup> Annex 21. Constitutional Tribunal, Judgment of October 25, 1999. Annex to the brief of the petitioner, September 17, 2010.

<sup>30</sup> IACHR Report No. 65/11, Case 12,600, Merits, Hugo Quintana Coello et al. (Justices of the Supreme Court), Ecuador, March 31, 2011, para. 102; Inter-American Court. Case of Baena Ricardo et al. v. Panama. Merits, Reparations, and Costs. Judgment dated February 2, 2001. Series C No. 72, paras. 126-127; Case of the Constitutional Court v. Peru. Merits, Reparations, and Costs. Judgment of January 31, 2001. Series C No. 71, paras. 69-70; and Case of López Mendoza v. Venezuela. Merits, Reparations, and Costs. Judgment of September 1, 2011, Series C No. 233, para. 111.

<sup>31</sup> IACHR. Access to Justice as a Guarantee of Economic, Social and Cultural Rights. A review of the standards adopted by the Inter-American system of human rights. OEA/Ser.L/V/II.129. September 7, 2007, paras. 98-123; and Case No. 12,828, Report 112/12, Marcel Granier et al., Venezuela, Merits, November 9, 2012, para. 188; IACHR. Report No. 42/14. Case 12,453. Merits. Olga Yolanda Maldonado Ordoñez. Guatemala. July 17, 2014. Para. 69; Inter-American Court. Case of Baena Ricardo et al. v. Panama. Merits, Reparations, and Costs. Judgment dated February 2, 2001. Series C No. 72, paras. 126-127.

sanction of dismissal of the alleged victim from the positions of provisional judge of the Superior Court of Justice of Huánuco, due process guarantees and the principle of legality are applicable, pursuant to articles 8(2) and 9 of the American Convention.

71. The IACHR also highlights that disciplinary processes conducted against operators of justice should be compatible with the principle of judicial independence. The principle of judicial independence is an inherent requirement for a democratic system and a fundamental prerequisite for the protection of human rights.<sup>32</sup> It is enshrined as one of the due process guarantees protected by Article 8(1) of the American Convention and, in addition, from the principle are derived the “enhanced”<sup>33</sup> guarantees that States should provide to judges in order to ensure their independence.<sup>34</sup> The bodies of the inter-American system have interpreted the principle of judicial independence to include the following guarantees: an adequate appointment process, tenure, and protection from external pressures.<sup>35</sup> Specifically with regard to this case, regarding guarantees to ensure tenure, the Court has found that “the scope of judicial independence results in the subjective right of judges to be dismissed exclusively for the reasons permitted, either by a proceeding that complies with judicial guarantees or because their mandate has terminated.”<sup>36</sup> When the permanence of judges in their offices is affected arbitrarily, “the right to judicial independence recognized in Article 8(1) of the American Convention is violated.”<sup>37</sup>

## 2. Principles of legality and favorability<sup>38</sup>

72. The principle of legality recognized in Article 9 of the Convention governs the actions of State bodies when they move to exercise their power to punish.<sup>39</sup> As indicated above, the principle is applicable to disciplinary processes that are “an expression of the punitive power of the State” because illegal conduct in these processes can harm or affect the rights of individuals.<sup>40</sup>

73. On the subject of discipline, the principle of legality requires that the law clearly specify the infractions that could lead to the imposition of disciplinary measures, including the gravity of the infraction and the type of disciplinary measure to be applied if applicable. The principle of legality not only requires the disciplinary grounds to have a basis in domestic law, but also that the law establishing those grounds be accessible to the

<sup>32</sup> IACHR, Merits Report 12,816, Report No. 103/13, November 5, 2013, para. 112. Citing the United Nations Human Rights Committee, General Comment No. 32, CCPR/C/GC/32, August 23, 2007, para. 19. In this sense, see Cfr. Habeas corpus in Emergency Situations (Arts. 27(2), 25.1, and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 30. Also see IACHR, Democracy and Human Rights in Venezuela, III. Independence and separation of public powers, December 30, 2009, para. 80.

<sup>33</sup> Inter-American Court, Case of Reverón Trujillo v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment June 30, 2009. Series C No. 197, para. 67; IACHR, Democracy and Human Rights in Venezuela, December 30, 2009, para. 185; IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, para. 359.

<sup>34</sup> Thus, for example, the Inter-American Court has found that a State’s obligations regarding those tried before courts also give rise to “rights for judges,” among other rights, and among other things, the Court has found that “the guarantee to not be subjected to at-will dismissal means that disciplinary and sanction processes must necessarily respect due process guarantees and offer an effective remedy to those affected.” Inter-American Court. Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment dated August 5, 2008. Series C No. 182, para. 147.

<sup>35</sup> IACHR, Report on Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas, December 5, 2013, paras. 56, 109 and 184, Inter-American Court. Case of López Lone et al. v. Honduras. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 191.

<sup>36</sup> Inter-American Court. Case of López Lone et al. v. Honduras. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 192.

<sup>37</sup> Inter-American Court. Case of López Lone et al. v. Honduras. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 192.

<sup>38</sup> Article 9 of the Convention establishes that “No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.”

<sup>39</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/Doc.49/15, December 31, 2015, para. 253.

<sup>40</sup> Inter-American Court, Case of López Lone et al. v. Honduras. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 257 and Case of Maldonado Ordoñez v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, para. 89. Inter-American Court. Case of Baena Ricardo et al. v. Panama. Merits, Reparations, and Costs. Judgment dated February 2, 2001. Series C No. 72, paras. 106 and 108.

people to whom it applies. It also must be sufficiently precise so as to make the circumstances and consequences of actions to which disciplinary measures apply foreseeable.<sup>41</sup>

74. Both the Court and the Commission have found that the greater a restriction, the more precise must be the provisions establishing it.<sup>42</sup> With regard to judges, the IACHR has found that suspensions or dismissals should only be for infractions that are objectively extremely serious. Thus, as the Council of Europe has recommended, the disciplinary legal framework must provide for graduated sanctions based on the seriousness of the infraction, which could include removing cases from a judge, assignment to other tasks, financial sanctions, and suspension.<sup>43</sup>

75. In the same regard, the Court has found that a legal structure that provides for broad sanctions affects the predictability of the sanction because it allows for a judge to be dismissed on grounds that are open, giving excessive discretion to the body in charge of applying the sanction.<sup>44</sup> The Court has indicated that a certain degree of indeterminacy does not, per se, generate a violation of the Convention—that is, the fact that a law grants some degree of discretion is not incompatible with the degree of foreseeability that a law must provide, as long as the scope of the discretion and the way in which it must be exercised are made sufficiently clear so as to provide adequate protection in order to avoid arbitrary interference.<sup>45</sup>

76. In addition, the Court has indicated that, pursuant to Article 9 of the Convention, the State is prohibited from exercising its punitive power by retroactively applying criminal laws that increase punishments, establishing aggravating factors, or establishing aggravated forms of an offense.<sup>46</sup> Along these lines, the Court has also established that the same provision underpins the principle of the retroactivity of the most favorable criminal law, on finding that, “If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.”<sup>47</sup> The Court emphasized that this component of Article 9 of the Convention is also applicable to administrative sanctions.<sup>48</sup>

77. Regarding the scope and content of the favorability set forth in that provision, the Inter-American Court has found that:

(...) both the law establishing a lighter punishment for offenses, and the one encompassing norms such as those that decriminalize a behavior which was previously considered an offense, or create a new motive for justification or innocence, or an impediment to the effectiveness of a penalty, should be interpreted as the most favorable penal norm. The foregoing is not a closed list of cases that merit the application of the principle of the retroactivity of the most favorable penal norm. It is worth emphasizing that the principle of retroactivity is applicable to laws enacted before the judgment was delivered and during its execution, because the Convention does not establish a limit in this respect.<sup>49</sup> (...)

<sup>41</sup> IACHR, *Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas*, OEA/ser.L/V/II.Doc.44, December 5, 2013, para. 208.

<sup>42</sup> Inter-American Court, *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Series C No. 177, para. 59 and following.

<sup>43</sup> IACHR, *Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas*, OEA/ser.L/V/II.Doc.44, December 5, 2013, para. 211.

<sup>44</sup> Inter-American Court, *Case of López Lone et al. v. Honduras*. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 264.

<sup>45</sup> *Case of López Mendoza v. Venezuela*. Merits, Reparations, and Costs. Judgment of September 1, 2011, Series C No. 233, para. 202.

<sup>46</sup> Inter-American Court. *Case of Ricardo Canese v. Paraguay*. Merits, Reparations, and Costs. Judgment dated August 31, 2004. Series C No. 111. Para. 175.

<sup>47</sup> Inter-American Court. *Case of Ricardo Canese v. Paraguay*. Merits, Reparations, and Costs. Judgment dated August 31, 2004. Series C No. 111. Para. 178.

<sup>48</sup> Inter-American Court. *Case of Ricardo Canese v. Paraguay*. Merits, Reparations, and Costs. Judgment dated August 31, 2004. Series C No. 111. Para. 176.

<sup>49</sup> Inter-American Court. *Case of Ricardo Canese v. Paraguay*. Merits, Reparations, and Costs. Judgment dated August 31, 2004. Series C No. 111. Para. 179.

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As the Court has established, if two different norms are both applicable to a situation, “the norm most favorable to the individual must prevail.”<sup>50</sup>

78. In this case, the National Council of the Judiciary ordered the dismissal of the alleged victim as a judge, pursuant to article 31 of the Organic Law on the Judiciary, which established that the sanction of dismissal was applicable for “commission of a serious infraction that, while not criminal, compromises the dignity of the office and diminishes it in the eyes of the public.”

79. The Commission notes first that the grounds established in the law and applied in Mr. Cajahuanca Vásquez’s case provide for broad discretion and do not specify the conduct that would give cause for disciplinary action. The Commission also notes that, contrary to the standards cited, the legal framework does not define the sanctions applicable to the level of severity of the grounds described such that the disciplinary authority would have the elements needed to ensure that the sanction imposed is proportional to the seriousness of a judge’s misconduct. The Commission concludes that simple reference to a “serious infraction” without any indication as to how to recognize one is extremely problematic in light of the principle of legality as it applies to disciplinary matters.

80. Second, the Commission notes that article 211 of the Organic Law of the Judicial Branch establishes that magistrates shall be dismissed who commit a serious infraction that, while not criminal, compromises the dignity of the office and diminishes it in the eyes of the public, “as long as they have been suspended previously.” Likewise, article 10 of the same law stipulates that suspension is to be applied following a serious infraction after a judge has been sanctioned three times with fines. The Commission notes that, according to the petitioner (and the State did not indicate otherwise), he had not been sanctioned with a fine or suspension prior to his dismissal, yet nevertheless, he was given the most severe form of punishment.

81. The Commission notes that the Organic Law of the National Council of the Judiciary, which was also in force at that time, did not establish in its article 31 that prior suspension was required before dismissal could be applied. However, the IACHR finds that the existence of two different laws stipulating the possibility of applying either the sanction of dismissal or the sanction of suspension for the “commission of a serious infraction” violated the principle of legality set forth in article 9 of the Convention, which requires legal provisions to be specific enough that both conduct meriting sanction and the consequences thereof could be foreseeable. In addition, pursuant to the above cited standards on favorability, the Commission highlights that with both legal provisions in effect, Article 9 of the Convention requires the disciplinary authority to apply the most favorable one, which, in this case, was the Organic Law of the Judicial Branch, that required prior suspension in order to impose the sanction of dismissal. Instead, the disciplinary body opted to apply the least favorable legal provision.

82. Third, the Commission notes that on August 3, 1995, the Judiciary Oversight Office of the Judicial Branch asked the Supreme Court of Justice to request the dismissal of the alleged victim, arguing that “his conduct bordered on malicious, and a disciplinary sanction must be applied that is proportional to the gravity of his actions.” The Commission finds that the legal structure at the time did not allow for clear identification of elements such as the malice or seriousness of the actions against the image of the Judicial Branch or the dignity of its members, an aspect that granted excessive discretion to the judge in the application of the most severe sanction, as was the case here.

83. Fourth, the Commission observes that the grounds applied in Mr. Cajahuanca Vásquez’s case involved a serious infraction that, “while not criminal, compromises the dignity of the office and diminishes it in the eyes of the public.” In this regard, the Commission observes that Mr. Cajahuanca Vásquez was subjected to a criminal process based on the same facts as the disciplinary proceeding, in which he was convicted and later acquitted. Although the subject of this petition is not the criminal process but rather the disciplinary one, the Commission finds that the fact that he would be punished based on a disciplinary grounds that indicated that the action was

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<sup>50</sup> Inter-American Court. Case of Ricardo Canese v. Paraguay. Merits, Reparations, and Costs. Judgment dated August 31, 2004. Series C No. 111. Para. 181. Citing: *Cfr. Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 73, para. 21; and *The compulsory licensing of journalists*. (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 52.

not criminal even as, parallel to this, he was being prosecuted criminally for the same facts, is also not compatible with the principle of legality.

84. Based on these considerations, the IACHR finds that the Peruvian State violated Article 9 of the American Convention, in conjunction with articles 1(1) and 2 of the same instrument, to the detriment of Humberto Cajahuanca Vásquez.

### 3. The principle of judicial independence and the right to well-founded decisions<sup>51</sup>

85. As regards the duty to justify, the jurisprudence of the inter-American system has found that this means a “reasoned justification” that enables the judge to reach a conclusion.<sup>52</sup> The Court has found that this “is a guarantee linked to the proper administration of justice, protecting the right of citizens to be tried for the reasons provided by Law, and giving credibility to the legal decisions adopted in the framework of a democratic society.”<sup>53</sup> According to the Inter-American Court, administrative disciplinary resolutions must include a precise description of what constitutes an infraction and provide reasoning allowing for the conclusion that what happened was enough to justify removing a State official from his or her office.<sup>54</sup> Additionally, the requirement of an adequate justification is extremely relevant, as the purpose of disciplinary oversight is to assess the conduct, suitability, and performance of a public official, and therefore, it is in the justification where the gravity of the alleged conduct—and thus the proportionality of the sanction—is analyzed.<sup>55</sup>

86. In order to evaluate compliance with this guarantee in this case, and taking into account that the disciplinary sanction imposed on Mr. Cajahuanca Vásquez was based on a procedure for granting leave to a judge and appoint his substitute, in his capacity as president of the Superior Court of Justice of Huánuco, the Commission views it as pertinent to point to several standards on the subject of judicial independence.

87. In the case of *Apitz Barbera et al. v. Venezuela*, the Court found that “international law has developed guidelines on the valid grounds for the suspension or removal of a judge, which may include, among others, misconduct or incompetence.”<sup>56</sup> Specifically, it indicated that:

(...) under (...) international law there are, on the one hand, the remedies of appeal, cassation, review, removal of cases to a higher court or the like, which are aimed at verifying that a lower court’s decisions are correct, and, on the other, there is disciplinary oversight, which is intended to assess the conduct, suitability, and performance of the judge as a public official. (...) This sort of review requires an autonomous reason warranting a finding that a disciplinary offense has been committed.<sup>57</sup>

88. In this regard, it is not up to the IACHR to determine whether the leave granted and the subsequent judicial appointment by Mr. Cajahuanca Vásquez were justified or not according to internal law, nor whether the

<sup>51</sup> Article 8(1) of the Convention establishes that: Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>52</sup> IACHR. Report No. 72/17. Case 13,019. Merits Report Eduardo Rico. Argentina. July 5, 2017 Para. 116; and Inter-American Court, Case of Maldonado Ordoñez v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 3, 2016. Series C No. 311, para. 87.

<sup>53</sup> Inter-American Court. Case of Chocrón Chocrón v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, párr.118.

<sup>54</sup> Inter-American Court. Case of Chocrón Chocrón v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, para. 120.

<sup>55</sup> Inter-American Court. Case of Chocrón Chocrón v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, para. 120.

<sup>56</sup> Inter-American Court. Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment dated August 5, 2008. Series C No. 182. Para. 84. Citing. *Cfr.* United Nations, Human Rights Committee, General Comment 32, *supra* footnote 58, para. 20. Also see Principle 18 of the Basic Principles of the United Nations, *supra* footnote 59.

<sup>57</sup> Inter-American Court. Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment dated August 5, 2008. Series C No. 182. Para. 86.

alleged victim committed a serious infraction. However, pursuant to the aforementioned standards on judicial independence, as well as domestic law itself, in a case such as this one, the disciplinary authority was required to provide justification that clearly established the reasons for which Mr. Cajahuanca Bernal's actions could be considered serious and, while not criminal, compromising to the dignity of the office in the eyes of the public, to the point of meriting such a severe sanction.

89. In this regard, the Commission observes that the ruling to sanction offers no justification in this regard and is limited to indicating that Mr. Cajahuanca Vásquez's misconduct was serious and represented a failure to comply with essential duties. The Commission also notes that, in the framework of the criminal process, the Supreme Court of Justice's ruling to acquit argued that it was problematic to maintain his conviction in for having allegedly conspired with former judge Cordero Bernal on issuing a resolution when the latter had been acquitted of all charges. The Commission also observes that the problems like the ones indicated were a result of the very lack of precision and foreseeability of the disciplinary laws applied in this case, as described above.

90. Based on these considerations, the Commission finds that the Peruvian State violated, to the detriment of Humberto Cajahuanca Vásquez, the right to well-founded decisions in conjunction with the principle of judicial independence, both enshrined in Article 8(1) of the American Convention, in conjunction with Article 1(1) of the same instrument.

#### 4. Right to appeal<sup>58</sup> and the right to judicial protection<sup>59</sup>

91. The right to appeal a ruling is part of the legal due process of a disciplinary sanction proceeding<sup>60</sup> and is a basic guarantee whose purpose is to prevent consolidation of an injustice.<sup>61</sup> As regards the scope of the right to appeal, both the IACHR and the Court have found it requires examination of the case by a judge or tribunal that is both different and higher in rank, weighing aspects of both fact and law of the decision being appealed.<sup>62</sup> It must move forward before the judgment attains status of *Res Judicata*, and must be resolved within a reasonable period of time, and it must be timely and effective—that is, it must provide the result or resolution for which it was established. It also must be accessible, without requiring excessive formalities that make the right illusory.<sup>63</sup>

92. The IACHR recalls that States have a general obligation to provide effective judicial remedies to people who allege having been victims of human rights violations (Article 25), which should be in accordance with the rules of legal due process (Article 8(1)). For a remedy to exist, it is not enough for it to be provided for by law; rather, it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.<sup>64</sup>

93. In this case, the Commission notes that both law 26,397 and the Political Constitution hold that the decisions of the National Council of the Judiciary are not appealable, and that writs of *amparo* are only admissible when the process violates due process guarantees. The Commission notes that the alleged victim tried to challenge the decision to dismiss, filing a writ of reconsideration, which was resolved on December 4, 1996, by the National Council of the Judiciary with the same composition as ordered his sanction—that is, it was not reviewed by a higher court.

<sup>58</sup> Article 8(2) establishes the “right to appeal the judgment to a higher court.”

<sup>59</sup> Article 25(1) of the American Convention stipulates that: Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

<sup>60</sup> IACHR, Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas, OEA/ser.L/V/II.Doc.44, December 5, 2013, para. 235; Inter-American Court, Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010. Series C No. 218. Para. 179.

<sup>61</sup> IACHR, Report No. 33/14, Case 12,820, Manfred Amrhein et al., Costa Rica. April 4, 2014, para. 186.

<sup>62</sup> IACHR, Report No. 33/14, Case 12,820, Manfred Amrhein et al., Costa Rica. April 4, 2014, para. 186.

<sup>63</sup> IACHR, Report No. 33/14, Case 12,820, Manfred Amrhein et al., Costa Rica. April 4, 2014, para. 186 and following.

<sup>64</sup> Inter-American Court, Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.). Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C No. 158. Para. 125; Inter-American Court, Case of the Yakye Axa Indigenous Community. Judgment of June 17, 2005. Series C No. 125. Para. 61; Inter-American Court, Case of the “Five Pensioners.” Judgment of February 28, 2003. Series C No. 98. Para. 136.

94. It also recalls that the *amparo* was declared without merit by the First Specialized Public Law Court of Lima on June 2, 1997, which concluded that the CNM acted in strict adherence to its functions and with all due respect for its legal authorities.

95. In the same regard, the appeal filed by Mr. Cajahuanca Vásquez was denied on November 3, 1997, by the Provisional Corporate Chamber Specialized in Public Law, which argued that pursuant to article 142 of the Political Constitution of the State, resolutions of the CNM are not reviewable by the judiciary, and that whether or not he continued to hold the office of judge depended on ratification by the National Council of the Judiciary.

96. Lastly, the special remedy filed before the Constitutional Tribunal was denied with the finding that the process complied with all “essential due process guidelines.”

97. In view of this, the IACHR finds that both the legal framework and the content of the decisions show there was no remedy—neither administrative nor judicial—for securing comprehensive review by a higher authority of the ruling to sanction. Likewise, the content of the *amparo* decisions indicate that the competent bodies did not carry out a comprehensive examination of the aspects of fact and law surrounding the decision to dismiss the alleged victim, limiting the scope of competency to questions of process.

98. Based on this, the Commission concludes that the Peruvian State is responsible for the violation of the rights established in articles 8(2)(h) and 25(1) of the American Convention, in conjunction with articles 1(1) and 2 of the same instrument, to the detriment of Humberto Cajahuanca Vásquez.

### **B. The right to participate in government (Article 23<sup>65</sup> of the Convention)**

100. Article 23(1)(c) establishes the right of judges to access public offices “on the basis of equal opportunity.” The Court has interpreted this article by finding that “when a judge’s tenure is arbitrarily impaired, the right to judicial independence recognized in Article 8(1) of the American Convention is violated, as is the right of access to public service and tenure, under general conditions of equality, established in Article 23(1)(c).”<sup>66</sup>

101. In this case, it has been established that Mr. Cajahuanca Vásquez was removed from his position in a process in which violations of both due process and the principle of legality were committed, as described throughout this report on the merits. It was likewise established that the disciplinary process carried out was not compatible with the principle of judicial independence. Under the circumstances, and pursuant to the criteria described in the foregoing paragraph, the Commission finds that the State also violated Article 23(1)(c) of the American Convention, in conjunction with Article 1(1) of the Convention, to the detriment of Mr. Humberto Cajahuanca Vásquez.

## **VI. CONCLUSIONS AND RECOMMENDATIONS**

102. The Commission concludes that the Peruvian State is responsible for the violation of the right to a fair trial, the principle of legality, the right to participate in government, and the right to judicial protection, established in articles 8(1), 8(2)(h), 9, 23(1)(c), and 25(1) of the American Convention, in conjunction with the obligations established in articles 1(1) and 2 of the Convention, to the detriment of Humberto Cajahuanca Vásquez.

103. Based on the above conclusions,

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

<sup>65</sup> Article 23 of the American Convention establishes the following in its relevant parts: 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. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

<sup>66</sup>IACHR, Report No. 72/17, Case 13,019. Merits. Eduardo Rico. Argentina. July 5, 2017, para. 124; Inter-American Court. Case of López Lone et al. v. Honduras. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 192.

1. Reinstatement Humberto Cajahuanca Vásquez—should he so wish—to a position similar to the one he held in the Judicial Branch, with the same compensation, benefits, and rank that he would have today if he had not been dismissed. If, for well-justified reasons, reinstatement is not possible, he should be paid an alternative compensation.

2. Provide full pecuniary and nonpecuniary reparations for the rights violations declared in this report, including the payment of compensation for pecuniary and nonpecuniary damages.

3. Amend domestic legislation to ensure that disciplinary proceedings brought against justice officials are compatible with the standards on judicial independence set forth in this report and comply with all guarantees of due process and the principle of legality. Specifically, the necessary measures must be taken to ensure that the processes ensure judicial protection and guarantee the right to appeal a ruling to sanction. Measures also must be taken to ensure that the disciplinary grounds invoked and their corresponding sanctions comply with the principle of legality.