

Constitutional Tribunal (Camba Campos et al.) v. Ecuador

ABSTRACT¹

This case is about the impeachment and subsequent dismissal of eight judges of Ecuador's Constitutional Tribunal by the National Congress. The Court found that the arbitrary termination and the impeachment proceedings caused the violation of the right of the judges to due process and a fair trial.

I. FACTS

A. Chronology of Events

January 9, 2003: The National Congress of Ecuador appoints Mr. Enrique Herrería Bonnet and Mr. Oswaldo Cevallos Bueno to the legislature as judges for the Constitutional Tribunal to serve from 2003-2007.²

March 19, 2003: The National Congress appoints the other Constitutional Tribunal members for the 2003-2007 term.³

March 24, 2003: The President of the National Congress presides over the Constitutional Tribunal members taking office.⁴

April 29, 2003: The Constitutional Tribunal decides a case on the “fourteenth salary,” a labor bonus.⁵ Some Congress members disagree with the Constitutional Tribunal’s decision, and this becomes one of the reasons why the members of the Tribunal are later impeached.⁶ The majori-

1. Shushan Khorozyan, Author; Diane Chang, Editor; Megan Venanzi, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Constitutional Tribunal (Camba Campos et al.) v. Ecuador, Report on Merits, Report No. 99/11, Inter-Am. Comm’n H.R., Case No. 12.597, ¶12 (Jul. 22, 2011).

3. *Id.*

4. *Id.*

5. Constitutional Tribunal (Camba Campos et al.) v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 268, ¶¶ 75-76 (Aug. 28, 2013).

6. *Id.* ¶ 74.

ty, composed of Judges Miguel Camba Campos, René de la Torre, Jaime Nogales, Luis Rojas Bajaña and Oswaldo Cevallos Bueno, rules the bonus unconstitutional.⁷ The minority, made up of Judges Milton Burbano, Enrique Herrería, Mauro Terán and Simón Zavala, abstains.⁸ On appeal, the Constitutional Tribunal finds the National Congress mistakenly triples the labor bonus for workers in the educational sector.⁹ Because the bonus applies to workers in the public sector, it violates the constitutional provision giving power solely to the President of the Republic to increase public sector expenditures.¹⁰

May 6–13, 2003: Congressmen Luis Villacís Maldonado, Antonio Posso Salgado, Marco Proaño Maya, and Segundo Serrano Serrano file accusations against Mr. Cevallos Bueno, Mr. Rojas Bajaña, Mr. Nogales, Mr. Camba Campos and Mr. de la Torre for their decision in the “fourteenth salary” case.”¹¹

June 11–24, 2003: Based on the accusations the Congressmen make against the judges, motions of censure (A) – (D) are presented to vote Mr. Cevallos Bueno, Mr. Rojas Bajaña, Mr. Nogales, Mr. Camba Campos and Mr. de la Torre, respectively, as unfit to hold their positions.¹²

February 17, 2004: The Constitutional Tribunal finds the so-called “D’Hondt method” for assignment of electoral seats (i.e. the “highest averages” method for allocating seats in party-list proportional representation) unconstitutional, because it prevents parties from selecting their preferred candidates.¹³ Judges who vote in favor of this judgment include: Mr. Camba Campos, Mr. Rojas Bajaña, Mr. Zavala, Mr. Jaramillo and Mr. Nogales.¹⁴ Mr. Jaramillo is the alternate standing in for Judge Cevallos.¹⁵ Judges Burbano, de la Torre, Herrería and Terán abstain.¹⁶

April 5 and 15, 2004: As a result of their decision on the D’Hondt

7. *Id.* ¶ 75.

8. *Id.*

9. *Id.* ¶ 76

10. *Id.*

11. Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 80(a)–(d).

12. *Id.* ¶ 80(a)–(d). *See id.* n.92, 94.

13. *Id.* ¶ 78-79.

14. *Id.* ¶ 78.

15. *Id.*

16. *Id.*

method, Congressmen Serrano Serrano and Posso Salgado formally file accusations against Judges Cevallos, Jaramillo, Nogales, Camba Campos, Rojas Bajaña and Zavala Guzmán in their motions of censure (E) and (F), calling them unfit to serve.¹⁷

May 31 and July 7, 2004: Motions of censure (E) and (F) are presented based on the D'Hondt accusations, to find Judges Cevallos, Jaramillo, Nogales, Camba Campos, Rojas Bajaña and Zavala Guzmán unfit to serve.¹⁸

November 9, 2004: An impeachment attempt of President of the Republic, Colonel Lucio Gutiérrez, for embezzlement fails, triggering governmental reorganizing and restructuring of State agencies.¹⁹

November 24, 2004: The President of Congress issues summons for six Constitution Tribunal justices for impeachment purposes; the hearing is scheduled for December 1, 2004.²⁰

November 25, 2004: The National Congress majority party in power adopts a resolution terminating Constitutional Tribunal Judges Camba Campos, Cevallos Bueno, Herrería, Nogales, Rojas Bajaña, Terán, Zavala Guzmán, and Jaramillo because they were never legally appointed to their positions.²¹ Congress also appoints justices from lists used in the 2003 electoral process to take their place.²²

November 30 – December 1, 2004: Congressmen Marco Proaño Maya and Villacís Maldonado withdraw their respective censure motions.²³ Also, Congressman Segundo Serrano's censure motion is not approved due to insufficient votes.²⁴ Since the other motions relate to the same issue, none are approved during the impeachment hearing.²⁵

17. Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 80(e)–(f).

18. *Id.*

19. Constitutional Tribunal v. Ecuador, Report on Merits, ¶ 14.

20. Constitutional Tribunal (Camba Campos et al.) v. Ecuador, Admissibility Report, Report No. 5/07, Inter-Am. Comm'n H.R., Case No. 12.597, ¶ 8 (Feb. 27, 2007).

21. *Id.*

22. *Id.*

23. Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 87(a)–(b).

24. *Id.* ¶ 87(c).

25. Constitutional Tribunal v. Ecuador, Admissibility Report, ¶ 9.; Camba Campos et al. v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 87(d), 88.

December 2, 2004: The Constitutional Tribunal decides that only actions of unconstitutionality filed with them will be accepted to suspend a parliamentary resolution, and that as a result, *amparo* filings will be *de facto* rejected when seeking to challenge public legislation or decisions.²⁶

December 5, 2004: President Gutiérrez orders a special Congressional session under Constitution Articles 133 and 171(8), and Article 6 of the Organic Law of the Legislative Function, to vote on impeaching the former justices, examine the judiciary's situation legally and constitutionally, and to vote on a proportional electoral representation amendment.²⁷

December 7, 2004: The Twelfth Civil Court of Pichincha finds the *amparo* remedy filed by former Judge Rojas Bajaña inadmissible because of the Constitutional Tribunal's December 2, 2004 ruling.²⁸

December 8, 2004: The majority of the National Congress, in a special session, agrees to re-vote on the prior censure motions by deciding that joinder of the motions is not appropriate, because the accused individuals are not identically named in the motions.²⁹ After the vote, censure motions (E) and (F) about the D'Hondt Method are approved to the detriment of the named justices.³⁰ However, censure motions (B) and (D) regarding the fourteenth salary are rejected.³¹ Censure motions (A) and (C) were previously withdrawn.³² Additionally, Congress presents Resolution No. R-250181, which terminates all the justices of the Supreme Court of Justice and appoints new justices to assume their positions.³³

December 13, 2004: The First Civil Court of Pichincha finds the *amparo* remedy filed by former Judge Camba Campos inadmissible.³⁴

December 14, 2004: The Eleventh Civil Court of Pichincha finds the

26. Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 99, 100.

27. *Id.* ¶ 89.

28. *Id.* ¶ 102.

29. *Id.* ¶¶ 90, 92.

30. *Id.* ¶¶ 93, 94.

31. *Id.* ¶¶ 95-96.

32. Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 87.

33. *Id.* ¶ 97.

34. *Id.* ¶¶ 103-04.

constitutional *amparo* remedy filed by former Judge Terán Cevallos inadmissible.³⁵

December 15, 2004: The Tenth and Eighth Civil Courts of Pichincha find the constitutional *amparo* remedy filed by former Judges Zavala Guzmán and Mr. Cevallos Bueno inadmissible.³⁶

January 2005: Demonstrations against the national government arise, protesting the government's constitutional and legal violations in removing members of the Supreme Electoral Tribunal, the Constitutional Tribunal, and the Supreme Court of Justice.³⁷

February 23, 2005: A petition is submitted on behalf of Mr. Camba Campos and seven other former Constitutional Tribunal members.³⁸

April 2, 2005: Former President Bucaram comes back to Ecuador for criminal prosecution for "illicit enrichment and mismanagement of public funds."³⁹ This exacerbates the civilian protests against the government.⁴⁰

April 15, 2005: After the Constitutional Tribunal judges are dismissed, President Gutiérrez dismisses the Supreme Court of Justice members that took office on December 8, 2004, and declares a state of emergency through Executive Decree No. 2752.⁴¹

April 16, 2005: President Gutiérrez ends the state of emergency through Executive Decree No. 2754, thinking he has resolved the problem causing civil unrest by removing judges who were continuously making decisions that greatly affected the political infrastructure of Ecuador.⁴²

April 17, 2005: The National Congress annuls the December 8, 2004, resolution regarding the Supreme Court of Justice appointments, but

35. *Id.* ¶ 105.

36. *Id.* ¶ 106.

37. *Id.* ¶ 109.

38. Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 2(a); Constitutional Tribunal v. Ecuador, Admissibility Report, ¶ 1.

39. Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 111.

40. *Id.*

41. *Id.* ¶¶ 112–13.

42. *Id.* ¶ 114.

does not reinstate those who were terminated.⁴³

April 20, 2005: After further civil unrest, President Gutiérrez leaves office, and Vice President Alfredo Palacio becomes the new president.⁴⁴

April 26, 2005: The National Congress amends the Law on the Organization of the Judiciary to include a Qualifications Committee for appointing judges to the Supreme Court of Justice, along with new mechanisms.⁴⁵ Also, the resolution appoints the new Constitutional Tribunal without reinstating the judges who had been terminated.⁴⁶

July 11 – July 15, 2005: Political tension in Ecuador's society is aggravated by the decisions to criminally prosecute former President Bucaram.⁴⁷

February 2006: A new Constitutional Tribunal is elected, after almost a year of vacancy; however, it becomes vacant again in 2007.⁴⁸

April 24, 2007: The National Congress removes the Constitutional Tribunal members appointed in February 2006.⁴⁹

November 30, 2007: The National Constituent Assembly is organized to write a new Constitution for the State.⁵⁰

October 20, 2008: The new Constitution is implemented.⁵¹

B. Other Relevant Facts

Starting in the 1980s when the economy started to deteriorate, a number of severe economic and political crises corrode a once stable Ecuador.⁵² As of 2005, Ecuador is considered the second most corrupt

43. *Id.* ¶ 114.

44. *Id.* ¶ 115.

45. Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 116.

46. *Id.* ¶ 118.

47. *Id.* ¶ 111.

48. *Id.* ¶ 119.

49. *Id.*

50. *Id.* ¶ 120.

51. Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 121.

52. Clare Ribando, *Ecuador: Political and Economic Situation and U.S. Relations*, CRS. (2005) at 2. <http://www.au.af.mil/au/awc/awcgate/crs/rs21687.pdf>.

country in Latin America, trailing behind only Paraguay.⁵³ President Gutiérrez is Ecuador's third consecutive president who is voted into office by a majority of the citizens, but leaves office early contributing to the State's instability.⁵⁴ President Gutiérrez is inaugurated in January 2003, but his power as president is limited because the opposing party controls the majority of Congress.⁵⁵ The State undergoes many protests by indigenous peoples, and there are also allegations of corruption.⁵⁶ Against all the odds, President Gutiérrez escapes impeachment in November 2004 by allying with former President Abdalá Bucaram's Roldodista Party and the right-wing politician, Alvaro Noboa's, leader of the National Action Institutional Renewal Party.⁵⁷

Former President Bucaram, the "champion of the oppressed," is known as "*El Loco*" because of his political antics and his instability.⁵⁹ In February 1997, President Bucaram is impeached for "mental disability."⁶⁰ Mr. Noboa, a billionaire whose fortune is due in part to child labor and violent worker stifling,⁶¹ supports President Gutiérrez along with Bucaram's Roldodista Party, leading to reform of Ecuador's highest courts.⁶² Ecuador's corruption and the fragile state of the judicial system is increasingly apparent as the National Congress not only dismisses the judges of the Constitutional Tribunal, but also those of the Supreme Court and the Supreme Electoral Court.⁶³

II. PROCEDURAL HISTORY

A. *Before the Commission*

February 23, 2005: Former judges of the Constitutional Tribunal of Ecuador, Mr. Camba Campos, Mr. Cevallos Bueno, Mr. Herrería, Mr. Nogales, Mr. Rojas Bajaña, Mr. Terán, Mr. Zavala Guzmán, and Mr.

53. *Id.* at 3.

54. *Id.* at 2.

55. *Id.* at 3.

56. *Id.*

57. *Id.*

58. Ribando, *supra* note 52 at 3; *Ecuador: Who is Alvaro Noboa?*, (September 15, 2015), <http://www.telesurtv.net/english/news/Ecuador-Who-is-Alvaro-Noboa-20150915-0033.html>

59. *Abdalá Bucaram, "A Crazy Man Who Loves,"* <http://www.ecuador.com/blog/abdala-bucaram-a-crazy-man-who-loves>.

60. *Id.*

61. *Ecuador: Who is Alvaro Noboa?*, *supra* note 58.

62. Ribando, *supra* note 52, at 3.

63. Press Release, María Isabel Rivero, IACHR Takes Case Involving Ecuador to Inter-American Court, (Dec. 22, 2011) (on file with author) http://www.oas.org/en/iachr/media_center/preleases/2011/133.asp.

Jaramillo Córdova, submit their petition before the Commission.⁶⁴

February 27, 2007: The Commission approves the Admissibility Report No. 5/07.⁶⁵

July 22, 2011: The Commission approves the Merits Report No. 99/11.⁶⁶ It holds the State responsible for violating Articles 8 (Right to a Fair Trial), 9 (Freedom from *Ex Post Facto* Laws), and 25 (Right to Judicial Protection) of the American Convention in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights), and recommends the State: (1) reinstate the victims to similar positions or compensate them if reinstatement is not possible; (2) pay their salaries for the period from termination to the end of their former term; (3) publicly admit responsibility; and (4) adjust domestic law to protect the process of appointing and removing judges.⁶⁷

B. Before the Court

November 28, 2011: The Commission submits the case to the Court after the State fails to adopt its recommendations.⁶⁸

1. Violations Alleged by Commission⁶⁹

Article 8 (Right to a Fair Trial)

Article 9 (Freedom from *Ex Post Facto* Laws)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁷⁰

64. Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(a); Constitutional Tribunal v. Ecuador, Admissibility Report, ¶ 1.

65. Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 2(b).

66. *Id.* ¶ 2(c).

67. *Id.*

68. *Id.* ¶ 2(e).

69. *Id.* ¶ 2(c).

70. *Id.* ¶ 4. David Cordero Heredia and Ramiro Ávila Santamaría served as representatives of petitioners.

Same violations alleged by the Commission, plus:

Article 23 (Right to Participate in Government)

Article 24 (Right to Equal Protection).

June 18, 2012: The State submits its brief with preliminary objections, its observations on the brief with pleadings, motions and evidence to the Court.⁷¹

III. MERITS

*A. Composition of the Court*⁷²

Diego García-Sayán, President
Manuel E. Ventura Robles, Vice-President
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge
Roberto F. Caldas, Judge
Humberto Antonio Sierra Porto, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

August 28, 2013: The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.⁷³

The Court found unanimously to:

Dismiss the State's preliminary objections on the right of defense and impossibility of compliance,⁷⁴ because:

When the State acknowledged responsibility for the violations, it accepted the Court's jurisdiction to hear the case and made their prelimi-

71. *Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs*, ¶ 5.

72. *Id.*

73. *See generally id.*

74. *Id.* "Operative Paragraphs" ¶ 1.

nary objections moot.⁷⁵

The Court found unanimously that the State violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and the applicable portions of Articles 8(2) (Right to Be Presumed Innocent) and 8(4) (Prohibition of Double Jeopardy), in relation to Article 1(1) of the Convention, to the detriment of Mr. Camba Campos et al.,⁷⁶ because:

The arbitrary termination and the impeachment proceedings that occurred against the petitioners violated judicial guarantees.⁷⁷ Article 8(1) of the Convention ensures that individuals receive judicial guarantees before a competent authority when their rights are in jeopardy.⁷⁸ The Court looked to see whether Congress was competent to remove the judges from office.⁷⁹ The State claimed that termination was justified because the judges were illegally appointed through a “single list” voting mechanism.⁸⁰ However, the State could not point to anywhere in domestic law that specifically outlawed this form of vote.⁸¹ Further, the Court determined that the only available avenue for termination or removal of Constitutional Tribunal members was through impeachment, leaving the National Congress without the authority to “terminate” members any other way.⁸² Therefore, Congress was not competent to decide on the removal of the judges and put guarantees of judicial independence at risk.⁸³

Also, individuals were not given notice of the hearing on the appointment procedures on November 25, 2004, and were denied the chance to stand before the National Congress and answer to the charges against them.⁸⁴ In the impeachment proceedings, many significant irregularities

75. *Id.* ¶ 27.

76. Victims include: Mr. Camba Campos, Mr. Cevallos Bueno, Mr. Herrería Bonnet, Mr. Nogales, Mr. Rojas Bajaña, Mr. Terán Cevallos, and Mr. Zabala Guzmán, and one alternate member, Mr. Jaramillo Córdoba.

77. Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, “Operative Paragraphs” ¶ 2.

78. *Id.* ¶ 171.

79. *Id.*

80. *Id.* ¶ 172.

81. *Id.*

82. *Id.* ¶ 176.

83. Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 176.

84. *Id.* ¶ 183.

took place, with the judges unable to defend themselves or have the opportunity to state a claim.⁸⁵ Since the body that removed the judges also appointed the new judges, it should have been considered prejudiced.⁸⁶ This eliminated the victims' guarantee to impartiality.⁸⁷ For the impeachment proceedings, the Court determined that while they were conducted in a more proper way, they still required further clarity to comply with the Convention.⁸⁸ When the vote was held on the judges' motions of censure, it had to be done through new special proceedings, which violated the guarantee of "ne bis in idem."⁸⁹ As a result, the Court determined that the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and parts of Articles 8(2) (Right to be Presumed Innocent) and 8(4) (Prohibition of Double Jeopardy) of the Convention.⁹⁰

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 23(1)(c) and Article 1(1) of the Convention, to the detriment of Mr. Camba Campos et al.,⁹¹ because:

The victims suffered great harm as result of the judicial proceedings and the resulting impact on judicial independence and guarantees of impartiality.⁹² The above-analyzed mechanisms surrounding the removal of the Constitutional Tribunal judges ultimately affected judicial independence because it eliminated the judges' guarantee to stability in their positions.⁹³ This not only affected the victims, but also society at large, as the judiciary plays an essential part in ensuring democracy.⁹⁴ When judges are appointed, the process must be administered with guarantees of equality and non-discrimination.⁹⁵ Since the Court determined that the judges were arbitrarily dismissed, the judges were denied access to permanence in public service and thus, their Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Inde-

85. *Id.* ¶ 219.

86. *Id.* ¶ 220.

87. *Id.* ¶ 220.

88. *Id.* ¶ 185.

89. *Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs*, ¶ 186.

90. *Id.* ¶ 222.

91. *Id.* "Operative Paragraphs" ¶ 3.

92. *Id.*

93. *Id.* ¶ 198.

94. *Id.*

95. *Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs*, ¶ 194.

pendent Tribunal) right in relation to Article 23(1)(c) was violated.⁹⁶

Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) of the Convention, to the detriment of Mr. Camba Campos et al.,⁹⁷ because:

There was a lack of judicial efficiency when evaluating the case for a proper solution or remedy.⁹⁸ Article 25(1) of the Convention ensures that individuals have access to a competent tribunal for an effective and timely judicial remedy.⁹⁹ The State acknowledged during proceedings that it did not provide the members of the Constitutional Tribunal with an effective remedy to contest their termination.¹⁰⁰ All of the judges who tried to contest their termination through amparo were immediately rejected and thus could not defend their rights or argue that Congress's decision was unconstitutional or illegal.¹⁰¹ Further, the action on unconstitutionality, while available to the judges, was not a proper remedy for protecting their rights.¹⁰² As such, the State violated the judges' rights under Article 25(1) Right of Recourse Before a Competent Court) of the Convention.¹⁰³

The Court found unanimously that the State did not violate:

Article 24 (Right to Equal Protection), in relation to Article 1(1) of the Convention,¹⁰⁴ because:

There was insufficient evidence to assess whether there was politically motivated discrimination or favoritism in the re-election of some judges who were previously terminated as opposed to others.¹⁰⁵ As such, the Court determined that the State did not violate Article 24 (Right to Equal Protection) of the Convention.¹⁰⁶

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of

96. *Id.* ¶ 199.

97. *Id.* "Operative Paragraphs" ¶ 4.

98. *Id.*

99. *Id.* ¶ 228.

100. *Id.* ¶ 230-31.

101. Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 233.

102. *Id.* ¶¶ 234, 238.

103. *Id.* ¶ 238.

104. *Id.* "Operative Paragraphs" ¶ 5.

105. *Id.* ¶ 241.

106. *Id.* ¶ 242.

the Convention,¹⁰⁷ because:

First, the impeachment process was an issue because the National Congress arbitrarily applied impeachment proceedings against domestic law; the construction of domestic law on impeachment proceedings was not the issue.¹⁰⁸ Second, the Court had already analyzed a lack of remedy through its evaluation of how the amparo process was treated under Article 25(1) (Right of Recourse Before a Competent Court).¹⁰⁹ Finally, there was insufficient evidence to allow the Court to link the insufficiencies in the current laws to the violations in this case.¹¹⁰ Thus, the Court determined that the State did not violate Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention.¹¹¹

By six votes in favor and one vote against, the Court did not rule on:

Article 9 (Freedom from *Ex Post Facto* Laws) of the Convention,¹¹² because:

The Court already determined that a competent tribunal did not execute the process of termination, which already indicated that the decision adopted by Congress was unacceptable.¹¹³ In regards to the impeachment proceedings, the motions of censure provided the reasons why members of Congress decided to terminate the judges, even though it allegedly did not comply with this obligation.¹¹⁴ Also, the previous violations address the harmful results endured by the victims as a result of removing them from the Constitutional Tribunal based on the legal content in their opinions, which is expressly prohibited by Ecuadorian law.¹¹⁵

C. Dissenting and Concurring Opinions

1. Partially Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor

107. *Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, “Operative Paragraphs” ¶ 6.*

108. *Id.* ¶ 227.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* “Operative Paragraphs” ¶ 7.

113. *Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 223.*

114. *Id.* ¶ 224.

115. *Id.*

Poisot¹¹⁶

Judge Eduardo Ferrer Mac-Gregor Poisot partially dissented with the Court's ruling, arguing that the State did violate Article 9 (Freedom from *Ex Post Facto* Laws) of the Convention and therefore the State should be held responsible.¹¹⁷ His reasoning was that the State failed to respect the process and legalities tied to the impeachment proceedings that were conducted against the victims.¹¹⁸ He argued that the Court protects against the retroactive enforcement of law and this non-retroactivity extends to administrative sanctions and punishments.¹¹⁹ This mandates a right to due process for removal; in order for due process to be satisfied, the grounds for removal must be clearly established.¹²⁰ In addition, he argued that for Congress to have such broad powers to impeach judges, specific grounds for impeachment are needed to preserve constitutional checks and balances.¹²¹

He dissented because the Court did not analyze these issues to the depth he believed necessary.¹²² He explained that the context of this case, where multiple judges were removed from high courts in just two weeks, highlighted that the impeachment processes were too broad to satisfy due process and thus, were a violation of Article 9.¹²³

Although the substantive portion of his partial dissent focused on Article 9, Judge Mac-Gregor Poisot also critiqued the Judgment's analysis of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).¹²⁴ He believed that while the court acknowledged the violation in regards to the specific victims, the Judgment should have highlighted that the removal of judges had an effect on democracy, as the judiciary operates to check and balance the other branches of government.¹²⁵ In addition, he believed the Court missed an opportunity to analyze if Congress had competency in the impeachment proceedings in relation to specific violations because the Court has authority to exercise its interpretive function and rarely can

116. Constitutional Tribunal (Camba Campos et al.) v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C) No. 268, (Aug. 28, 2013).

117. *Id.* ¶ 4.

118. *Id.* ¶ 140.

119. *Id.* ¶¶ 114-15.

120. *Id.*

121. *Id.* ¶ 115.

122. Constitutional Tribunal v. Ecuador, Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, ¶ 137.

123. *Id.* ¶ 138.

124. *Id.* ¶ 67.

125. *Id.*

rule on these issues.¹²⁶

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Publish the Judgment

Within six months, the State must publish the official summary of the Judgment once in the State's official gazette.¹²⁷ The State must also publish the official summary once in a national newspaper that circulates nationally.¹²⁸ Finally, the State must publish the entire Judgment on an official judicial website for a year.¹²⁹

B. Compensation

1. Pecuniary Damages

The Court awarded the following amounts in pecuniary damages for remuneration and benefits the victims no longer received from December 1, 2004 until March 23, 2007:¹³⁰

To Judge Cevallos Bueno the amount of \$265,071.86.¹³¹

To Judge Nogales the amount of \$254,996.84.¹³²

To Judge Terán and Judge Zavala Guzmán the amount of \$244,921.86.¹³³

To Judge Camba Campos the amount of \$226,948.05.¹³⁴

To Judge Rojas Bajaña the amount of \$218,206.80.¹³⁵

126. *Id.* ¶¶ 98-99.

127. *Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs*, ¶ 254.

128. *Id.*

129. *Id.*

130. *Id.* ¶ 288.

131. *Id.* ¶ 288(a).

132. *Id.* ¶ 288(b).

133. *Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs*, ¶ 288(c)-(d).

134. *Id.* ¶ 288(e).

135. *Id.* ¶ 288(f).

To Judge Herrería the amount of \$230,755.02.¹³⁶

The Court also awarded Mr. Jaramillo Córdova, the alternate member for Mr. Cevallos Bueno, the sum of \$10,000 for pecuniary damages.¹³⁷ This amount was established by calculating the amount Mr. Jaramillo failed to receive during the five-month duration from the date of termination in November 2004 to March 2005.¹³⁸

2. Non-Pecuniary Damages

The Court considered the pain and suffering the judges faced due to their dismissal through impeachment proceedings, and the way these events took place.¹³⁹ The Court also recognized the victims were unable to work as judges or be compensated for their work to provide for themselves and their families.¹⁴⁰ Therefore, the Court awarded the sum of \$5,000 in non-pecuniary damages to each victim.¹⁴¹

3. Costs and Expenses

The Court awarded \$7,000 to the victims for costs and expenses incurred during the proceedings.¹⁴²

4. Total Compensation (including Costs and Expenses ordered):

\$1,742,822.29

C. Deadlines

The Judgment must be published in an official gazette, national newspaper, and judicial website for a year within six months.¹⁴³

The pecuniary, non-pecuniary damages, and costs and expenses must be paid within six months.¹⁴⁴

The State must give the Court a report on compliance within one

136. *Id.* ¶ 288(g).

137. *Id.* ¶ 296.

138. *Id.*

139. Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 305.

140. *Id.*

141. *Id.*

142. *Id.* ¶ 319.

143. *Id.* ¶ 254.

144. *Id.* "Operative Paragraphs" ¶ 10.

year from the Judgment.¹⁴⁵

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[Constitutional Tribunal \(Camba Campos et al.\) v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 268 \(Aug. 28, 2013\).](#)

2. Decision on Merits, Reparations and Costs

[Constitutional Tribunal \(Camba Campos et al.\) v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 268 \(Aug. 28, 2013\).](#)

[Constitutional Tribunal \(Camba Campos et al.\) v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. \(ser. C\) No. 268 \(Aug. 28, 2013\).](#)

3. Provisional Measures

[Constitutional Tribunal \(Camba Campos et al.\) v. Ecuador, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Feb. 15, 2013\).](#)

4. Compliance Monitoring

145. *Constitutional Tribunal v. Ecuador, Preliminary Objections, Merits, Reparations and Costs*, “Operative Paragraphs” ¶ 12.

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Constitutional Tribunal \(Camba Campos et al.\) v. Ecuador, Admissibility Report, Report No. 5/07, Inter-Am. Comm'n H.R., Case No. 12.597 \(Feb. 27, 2007\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Constitutional Tribunal \(Camba Campos et al.\) v. Ecuador, Report on Merits, Report No. 99/11, Inter-Am. Comm'n H.R., Case No. 12.597 \(July 22, 2011\).](#)

5. Application to the Court

[Not Available]

VIII. BIBLIOGRAPHY

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[Clare Ribando, Ecuador: Political and Economic Situation and U.S. Relations, CRS Rep. for Cong. \(2005\). <http://www.au.af.mil/au/awc/awcgate/crs/rs21687.pdf>](#)

[Ecuador: Who is Alvaro Noboa?, \(Sep. 15, 2015\), <http://www.telesurtv.net/english/news/Ecuador-Who-is-Alvaro-Noboa-20150915-0033.html>](#)