

# Cordero Bernal et. al. v. Peru

## ABSTRACT<sup>1</sup>

*This case is about the dismissal and prosecution of a judge in Peru for having rejected charges against two Colombian defendants suspected of being narco-traffickers. Eventually, the Court found no violation of the American Convention.*

### I. FACTS

#### A. Chronology of Events

**November 9, 1993:** Mr. Héctor Fidel Cordero Bernal is admitted into the Peruvian judiciary as an interim judge.<sup>2</sup>

**November 15, 1994:** The Huánuco Superior Court of Justice's President (the "President") appoints Mr. Cordero Bernal as an interim judge in the Fourth Criminal Court of Huánuco.<sup>3</sup>

**June 22, 1995:** The President requests Mr. Cordero Bernal preside over the First Criminal Court of Huánuco on a temporary basis, until the regularly presiding judge returns from a sabbatical.<sup>4</sup> In the First Criminal Court, Mr. Cordero Bernal hears Criminal Case No. 7395, involving two individuals who flew a small, Colombian-registered aircraft, over Peruvian territory.<sup>5</sup> The Peruvian Air Force landed the aircraft, which appeared to be stolen, by gunfire and found two Colombian citizens who had no explanation for their actions and approximately \$400,000

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<sup>2</sup> Cordero Bernal v. Peru, Admissibility Report, Report No. 112/11, Inter-Am. Comm'n H.R., Case No. 12.827, ¶ 6 (July 22, 2011).

<sup>3</sup> Cordero Bernal v. Peru, Report on Merits, Report No. 115/18, Inter-Am. Comm'n H.R., Case No. 12.827, ¶ 26 (Oct. 5, 2018).

<sup>4</sup> *Id.*

<sup>5</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 421, ¶ 36 (Feb. 16, 2021).

onboard.<sup>6</sup> The two Colombian citizens were subsequently detained for illicit drug trafficking (the “Colombian Defendants”).<sup>7</sup>

**June 30, 1995:** The Colombian Defendants request their unconditional release.<sup>8</sup>

**July 11, 1995:** Mr. Cordero Bernal grants the Colombian Defendants’ request for unconditional release, finding no evidence that supported the charged crime of drug trafficking because there were no drugs found on the Colombian Defendants or in the aircraft.<sup>9</sup>

**July 17, 1995:** The President replaces Mr. Cordero Bernal with a new judge in First Criminal Court.<sup>10</sup>

**August 3, 1995:** After a disciplinary proceeding into the events of the release, the Office of the Control of the Judiciary (*La Oficina de Control de la Magistratura*, “OCMA”) finds various irregularities in Mr. Cordero Bernal’s appointment as the temporary judge, including that the unconditional release happened on the same day of his appointment and in a court which he would not normally be geographically assigned to.<sup>11</sup> Further, the OCMA noted there was evidence that linked the Colombian Defendants to the crime of drug trafficking, including a significant amount of illicit drugs found in the vicinity of the aircraft’s landing.<sup>12</sup>

**August 11, 1995:** The OCMA orders Mr. Cordero Bernal to cease his judicial duties and requests the Executive Council of the Judiciary to remove him from office.<sup>13</sup>

**October 18, 1995:** The Executive Council of the Judiciary approves Mr. Cordero Bernal’s proposed dismissal and requests the National Council of the Judiciary (*Consejo Nacional de la Magistratura*, “CNM”) initiate the dismissal proceedings.<sup>14</sup>

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<sup>6</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 88.

<sup>7</sup> *Id.* ¶ 36.

<sup>8</sup> *Id.* ¶ 37.

<sup>9</sup> Cordero Bernal v. Peru, Report on the Merits, ¶ 30.

<sup>10</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 37.

<sup>11</sup> Cordero Bernal v. Peru, Report on the Merits, ¶ 33.

<sup>12</sup> *Id.*

<sup>13</sup> Cordero Bernal v. Peru, Admissibility Report, ¶ 7.

<sup>14</sup> Cordero Bernal v. Peru, Report on the Merits, ¶ 35.

**December 11, 1995:** Mr. Cordero Bernal argued before the CNM against a disciplinary proceeding into his actions based on his clean professional record, and that it would violate the fundamental principles of presumption of innocence, legality and impartiality.<sup>15</sup>

**May 14, 1996:** The CNM opens a disciplinary proceeding against Mr. Cordero Bernal.<sup>16</sup>

**May 27, 1996:** Mr. Cordero Bernal argues that it was in his discretion as the judge to release the Colombian Defendants and claims his decision is supported by the fact that the Colombian Defendants were ultimately found not responsible for the crime of drug trafficking.<sup>17</sup>

**August 14, 1996:** The CNM orders Mr. Cordero Bernal's dismissal from the judiciary.<sup>18</sup> The CNM finds Mr. Cordero Bernal's decision to release the Colombian Defendants when there was sufficient evidence of their criminal responsibility was a "serious act" that compromised the "dignity" of the judiciary, which is a ground for dismissal, pursuant to Law 26.397, if the judicial officer had previously been subject to disciplinary action.<sup>19</sup>

**September 9, 1996:** Mr. Cordero Bernal files an *amparo* action against the CNM for infringement of his due process rights and violation of the constitutional tenure of judicial officers, and requests the CNM vacate his dismissal.<sup>20</sup>

**November 27, 1996:** The First Public Law Court of Lima declares the *amparo* action inadmissible because the record demonstrated that the dismissal was issued without infringing on his due process rights and declines to rule on his other arguments.<sup>21</sup> Mr. Cordero Bernal appeals the decision.<sup>22</sup>

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<sup>15</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 44.

<sup>16</sup> Cordero Bernal v. Peru, Report on the Merits, ¶ 40.

<sup>17</sup> *Id.* ¶ 41.

<sup>18</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 47.

<sup>19</sup> Cordero Bernal v. Peru, Admissibility Report, ¶ 7-8.

<sup>20</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 48.

<sup>21</sup> *Id.* ¶ 49.

<sup>22</sup> Cordero Bernal v. Peru, Report on the Merits, ¶ 45.

**July 30, 1997:** The OCMA files a criminal complaint against Mr. Cordero Bernal for professional malfeasance and aiding in a criminal defendant's escape.<sup>23</sup>

**September 24, 1997:** The Transitory Corporative Public Law Chamber confirms the inadmissibility of the *amparo* action.<sup>24</sup> Mr. Cordero Bernal appeals this decision to multiple higher courts.<sup>25</sup>

**March 12, 1998:** Law 26.397, which provided the basis for Mr. Cordero Bernal's dismissal from the judiciary, is repealed and replaced with Law 26.933, which permits dismissal for committing a "serious act" that "compromises the dignity" of the judiciary only if the individual had previously been suspended.<sup>26</sup>

**March 31, 1998:** Mr. Cordero Bernal files an appeal with the Constitutional Court, arguing that Law 23.933 applied to his case as his case was still ongoing when the law changed and, therefore, there were insufficient grounds for his dismissal from the judiciary because he had never been suspended.<sup>27</sup>

**April 30, 1998:** The Superior Criminal Prosecutor of the Judicial District of Huánuco-Pasco formalizes the criminal complaint against Mr. Cordero Bernal for breaching his legal duty by disregarding evidence against the Colombian Defendants when releasing them and for concealment of facts in his decision.<sup>28</sup>

**May 8, 1998:** The Constitutional Court finds Mr. Cordero Bernal's *amparo* action groundless.<sup>29</sup>

**June 18, 1998:** Mr. Cordero Bernal objects to the criminal charges, reiterating that his ruling to release the Colombian Defendants was based on real facts that were ultimately proven at the Colombian Defendants' trial.<sup>30</sup>

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<sup>23</sup> Cordero Bernal v. Peru, Admissibility Report, ¶ 15.

<sup>24</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 50.

<sup>25</sup> *Id.* p. 14 n. 55.

<sup>26</sup> Cordero Bernal v. Peru, Admissibility Report, ¶ 7; Cordero Bernal v. Peru, Report on the Merits, ¶ 16.

<sup>27</sup> Cordero Bernal v. Peru, Report on the Merits, ¶ 48.

<sup>28</sup> *Id.* ¶ 53.

<sup>29</sup> Cordero Bernal v. Peru, Admissibility Report, ¶ 10.

<sup>30</sup> Cordero Bernal v. Peru, Report on the Merits, ¶¶ 56-57.

**June 11, 1999:** Mr. Cordero Bernal is sentenced to ten years imprisonment.<sup>31</sup>

**September 24, 1999:** The Huánuco-Pasco Superior Court of Justice acquits Mr. Cordero Bernal of a concealment of facts but confirms his conviction him breach of legal duty, and reduces Mr. Cordero Bernal's sentence to four years.<sup>32</sup> Mr. Cordero Bernal appeals the decision.<sup>33</sup>

**December 15, 1999:** The appeals court overturns Mr. Cordero Bernal's acquittal on the charge of a concealment of facts, and orders a new judgment be made on the merits.<sup>34</sup>

**January 21, 2000:** The Huánuco-Pasco Superior Court of Justice issues a new judgment acquitting Mr. Cordero Bernal of a concealment of facts but convicting him for breach of legal duty.<sup>35</sup> Mr. Cordero Bernal appeals this new judgment.<sup>36</sup>

**March 31, 2000:** The appeals court again orders a new judgment because there has not been a comprehensive review of the proceeding wherein Mr. Cordero Bernal released the Colombian Defendants.<sup>37</sup>

**July 19, 2000:** The Huánuco-Pasco Superior Court of Justice issues a third judgment acquitting Mr. Cordero Bernal of a concealment of facts but convicting him of breach of legal duty, and sentences him to three years imprisonment.<sup>38</sup> Mr. Cordero Bernal appeals this third judgment.<sup>39</sup>

**December 26, 2000:** The appeals court declares the third judgment void and orders a new judgment.<sup>40</sup>

**June 21, 2005:** The Huánuco-Pasco Superior Court of Justice acquits Mr. Cordero Bernal of both charges against him finding he acted in his

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<sup>31</sup> Cordero Bernal v. Peru, Report on the Merits, ¶ 58.

<sup>32</sup> *Id.* ¶ 59.

<sup>33</sup> *Id.* ¶ 60.

<sup>34</sup> *Id.* ¶ 61.

<sup>35</sup> *Id.* ¶ 62.

<sup>36</sup> *Id.* ¶ 63.

<sup>37</sup> Cordero Bernal v. Peru, Report on the Merits, ¶ 63.

<sup>38</sup> *Id.* ¶ 64.

<sup>39</sup> *Id.* ¶ 65.

<sup>40</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 54.

discretionary judicial duty and had a factual basis to release the Colombian Defendants.<sup>41</sup>

**July 12, 2005:** The Superior Prosecutor appeals Mr. Cordero Bernal's acquittal.<sup>42</sup>

**August 22, 2005:** The appeals court upholds Mr. Cordero Bernal's acquittal.<sup>43</sup>

**August 25, 2005:** The Huánuco-Pasco Judicial District's Decentralized Anti-Corruption Public Prosecution Service appeals the decision to uphold Mr. Cordero Bernal's acquittal, which was ruled inadmissible.<sup>44</sup>

**November 17, 2005:** Mr. Cordero Bernal files an appeal to annul his dismissal from the judiciary and requests his reinstatement as a judge.<sup>45</sup>

**December 30, 2005:** The CNM declares Mr. Cordero Bernal's appeal for annulment and his request for reinstatement inadmissible because it is procedurally defective.<sup>46</sup>

**January 25, 2006:** Mr. Cordero Bernal appeals the CNM's decision.<sup>47</sup>

**February 20, 2006:** The CNM rules Mr. Cordero Bernal's appeal inadmissible because it is procedurally defective.<sup>48</sup>

## II. PROCEDURAL HISTORY

### A. Before the Commission

**November 11, 1998:** Mr. Cordero Bernal presents a petition on his own behalf to the Inter-American Commission on Human Rights.<sup>49</sup> The State argues the petition inadmissible because Mr. Cordero Bernal did not

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<sup>41</sup> Cordero Bernal v. Peru, Report on the Merits, ¶ 66.

<sup>42</sup> *Id.* ¶ 67.

<sup>43</sup> *Id.* ¶ 68.

<sup>44</sup> *Id.* ¶ 69.

<sup>45</sup> *Id.* ¶ 70.

<sup>46</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 58.

<sup>47</sup> Cordero Bernal v. Peru, Report on the Merits, ¶ 73.

<sup>48</sup> *Id.* ¶ 74.

<sup>49</sup> *Id.* ¶ 1.

exhaust domestic remedies and the alleged facts do not constitute a violation of the rights set forth in the American Convention.<sup>50</sup>

**July 22, 2011:** The Commission issues Admissibility Report No. 112/11, which declares the petition admissible regarding alleged violations of Articles 8 (Right to a Fair Trial), 9 (Freedom from *Ex Post Facto* Laws), and 25 (Right to Judicial Protection) all in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.<sup>51</sup>

**October 5, 2018:** The Commission issues Merits Report No. 115/18.<sup>52</sup> The Commission finds the State violated Articles 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal), 8(2)(h) (Right to Appeal), 9 (Freedom from *Ex Post Facto* Laws), 23(1)(c) (Right to Have Access to Public Service) and 25(1)(Right of Recourse Before a Competent Court) all in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention to the detriment of Mr. Cordero Bernal.<sup>53</sup>

In light of the foregoing violations, the Commission recommends the State: (1) reinstate Mr. Cordero Bernal to a similar position as he held in the judiciary before his dismissal or, if not possible, pay him comparable compensation; (2) redress the violations of Mr. Cordero's rights; and (3) adapt domestic law to ensure judicial disciplinary proceedings comply with due process and legality.<sup>54</sup>

### *B. Before the Court*

**August 16, 2019:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>55</sup>

**February 5, 2020:** The State raises a preliminary objection, arguing that the Court lacks material jurisdiction over the case because it is a mere disagreement between the parties on the outcome of a trial and does not include any international human rights issues.<sup>56</sup>

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<sup>50</sup> Cordero Bernal v. Peru, Admissibility Report, ¶¶ 14; 16.

<sup>51</sup> *Id.* "decides" ¶ 1.

<sup>52</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 2(c).

<sup>53</sup> Cordero Bernal v. Peru, Report on the Merits, ¶ 103.

<sup>54</sup> *Id.* ¶ 104.

<sup>55</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 3.

<sup>56</sup> *Id.* ¶¶ 7; 15.

Violations Alleged by Commission<sup>57</sup>

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 8(2)(h) (Right to Appeal)

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

Article 23(1)(c) (Right to Have Access to Public Service)

Article 25(1) (Right of Recourse Before a Competent Court)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination)

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

Violations Alleged by Representatives of the Victims<sup>58</sup>

Same violations alleged by the Commission.

## III. MERITS

*A. Composition of the Court*<sup>59</sup>

Elizabeth Odio Benito, President

L. Patricio Pazmiño Freire, Vice President

Eduardo Vio Grossi, Judge

Humberto Antonio Sierra Porto, Judge

Eduardo Ferrer Mac-Gregor Poisot, Judge

Eugenio Raúl Zaffaroni, Judge, and

Ricardo Pérez Manrique, Judge

Pablo Saavedra Alessandri, Secretary, and

Romina I. Sijniensky, Deputy Secretary

*B. Decision on the Merits*

**February 16, 2021:** The Court issues its Judgment on Merits, Reparations, and Costs.<sup>60</sup>

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<sup>57</sup> Cordero Bernal v. Peru, Report on the Merits, ¶ 103.

<sup>58</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 6.

<sup>59</sup> *Id.* p. 1.

<sup>60</sup> *Id.*



The Court found unanimously:

To reject the preliminary objection presented by the State,<sup>61</sup> because:

*The State argued the Court lacked jurisdiction to rule on the domestic court's assessment of evidence and application of domestic law unless it relates to the State's international obligations.<sup>62</sup> The Court rejected this argument because the alleged violations occurred in the context of the domestic courts' decisions and, therefore, those decisions must be examined to ensure they comply with the State's international obligations.<sup>63</sup>*

The Court found by five votes to two that Peru had not violated:

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 9 (Freedom from *Ex Post Facto* Laws), and 23(1)(c) (Right to Have Access to Public Service), all in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Cordero Bernal,<sup>64</sup> because:

*The Court divided its analysis into two parts: (1) the right to judicial independence relating to political rights, the right to duly substantiated decisions, and the principle of legality; and (2) the right to have the most favorable law applied in a criminal case.<sup>65</sup>*

#### *(1) Right to Judicial Independence*

*The Court notes the importance of judicial independence to the exercise of the judiciary's function.<sup>66</sup> Judicial independence gives rise to certain guarantees including tenure, protection from external pressures, and an adequate appointment process.<sup>67</sup> The guaranteed tenure means that judges can only be removed on for serious misconduct or incompetence, the dismissal procedure must comply with due process rights, and the*

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<sup>61</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, "declares" ¶ 1.

<sup>62</sup> *Id.* ¶ 15.

<sup>63</sup> *Id.* ¶ 19.

<sup>64</sup> *Id.* "declares" ¶ 2.

<sup>65</sup> *Id.* ¶ 70.

<sup>66</sup> *Id.* ¶ 71.

<sup>67</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 72.

*dismissal must be based on permitted grounds.<sup>68</sup> When a judge is appointed on a temporary basis, the Court held that the judge may additionally be removed upon the expiration of a predetermined period or the resolution of the condition that caused the appointment.<sup>69</sup>*

*The Court held that the disciplinary proceeding itself was compatible with the principle of judicial independence because it was based on a removal procedure established in domestic law for serious misconduct that compromised the integrity of the judiciary.<sup>70</sup> The Court addressed the imprecise wording of the law, noting that the principle of legality requires less precision in a disciplinary offense than in a criminal offense; the domestic court's reasoning in applying the discipline to a specific case may itself set the parameters of the indeterminate law.<sup>71</sup>*

*To decide whether the State violated the principle of legality then, the Court examined whether the decision to dismiss Mr. Cordero Bernal evaluated the seriousness of his conduct and how it could potentially affect the exercise of judicial function.<sup>72</sup> The Court found that the OCMA and CNM decisions adequately described the factual and legal grounds for the proposed and subsequent decision to dismiss Mr. Cordero Bernal.<sup>73</sup> The Court held that the CNM's decision illustrated demonstrable conduct that set the parameters for the open-ended law, such as Mr. Cordero Bernal's failure to consider substantial evidence and his decision to grant unconditional release before the legal time frame expired.<sup>74</sup> Because Mr. Cordero Bernal's decision lacked rational legal support and had public impact, the CNM concluded that his conduct was serious and compromised the dignity of the office.<sup>75</sup>*

*Accordingly, the Court concluded that the CNM had not arbitrarily removed Mr. Cordero Bernal from office and, therefore, had not violated the right to judicial independence enshrined in Article 8(1) relating to the right to have access to public office in Article 23(1)(c) of the Convention.<sup>76</sup>*

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<sup>68</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 72.

<sup>69</sup> *Id.* ¶ 75.

<sup>70</sup> *Id.* ¶ 77.

<sup>71</sup> *Id.* ¶¶ 77-78.

<sup>72</sup> *Id.* ¶ 82.

<sup>73</sup> *Id.* ¶¶ 83-84.

<sup>74</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶¶ 83-84.

<sup>75</sup> *Id.* ¶ 86.

<sup>76</sup> *Id.* ¶ 90.

(2) *Right to the Application of the Most Favorable Law*

*Pursuant to Article 9 (Freedom from Ex Post Facto Laws), when two laws apply to a defendant's case, the one most favorable to the accused must be applied.<sup>77</sup> Nevertheless, the Court rejected Mr. Cordero Bernal's argument that the law enacted during his case, which provided for suspension instead of dismissal, should have been applied because the changed law only applied to the dismissal of paralegals and not to the dismissal of judges.<sup>78</sup>*

*Therefore, at the time of Mr. Cordero Bernal's case, the only applicable law for the dismissal of judges was the one which permitted dismissal without a first instance of suspension, and the most favorable law principle did not apply.<sup>79</sup> Accordingly, the Court found the State did not violate Article 9 of the Convention.<sup>80</sup>*

Article 25(1) (Right of Recourse Before a Competent Court) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Cordero Bernal,<sup>81</sup> because:

*Article 25(1) (Right of Recourse Before a Competent Court) establishes the right to effective recourse.<sup>82</sup> The Court noted that it is insufficient for the State to establish a remedy in law if that remedy is not effective, and remedies that prove to be illusory cannot be effective.<sup>83</sup> In assessing a remedy's effectiveness, the Court verifies whether: (1) the State's decisions contributed to ending the violation of human rights; (2) the harmful acts will occur again, and; (3) the rights protected by the Convention will be exercised freely and fully.<sup>84</sup> The Court has repeatedly established that a remedy's effectiveness does not depend on a favorable outcome to the accused.<sup>85</sup>*

*The State's law provided that CNM decisions were not subject to review and could only be contested through an amparo action for due process*

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<sup>77</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 93.

<sup>78</sup> *Id.* ¶ 94.

<sup>79</sup> *Id.* ¶ 95.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* "declares" ¶ 3.

<sup>82</sup> *Id.* ¶ 100.

<sup>83</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 100.

<sup>84</sup> *Id.* ¶ 101.

<sup>85</sup> *Id.* ¶ 103.

violations.<sup>86</sup> The Court found that the dismissal of Mr. Cordero Bernal's *amparo* action was based on a thorough examination of the underlying proceedings and a finding that no due process violations had occurred.<sup>87</sup> The Court concluded that the dismissal of the *amparo* action was neither arbitrary nor unreasonable and thus, the State did not violate the judicial protection guarantees enshrined in Article 25(1) of the Convention.<sup>88</sup>

### C. Dissenting and Concurring Opinions

#### 1. Dissenting Opinion of Judge L. Patricio Pazmiño Freire

In a separate opinion, Judge Pazmiño Freire argued that the State law that permits judicial dismissal if the judge commits serious misconduct jeopardizes the integrity of the judiciary, includes indeterminate and ambiguous language and, as such, offers no guarantee against arbitrary application.<sup>89</sup> Judge Pazmiño Freire maintained that the State violated both Articles 8(1) ( Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 23(1)(c)(Right to Have Access to Public Service) of the Convention.<sup>90</sup> Finally, Judge Pazmiño Freire claimed that the State had violated Article 25(1) (Right of Recourse Before a Competent Court) of the Convention because Mr. Cordero Bernal could not effectively challenge the CNM decisions, which the Court should have considered in addition to the *amparo* actions.<sup>91</sup>

#### 2. Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot

In a separate opinion, Judge Mac-Gregor Poisot argued that the majority should have analyzed the alleged violation in the context of the principle of legality.<sup>92</sup> He reasoned that, whether administrative or criminal, sanctionable conduct must be described clearly with objective criteria to prevent arbitrary application of the law.<sup>93</sup> Judge Mac-Gregor

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<sup>86</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, ¶ 102.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* ¶¶ 103-04.

<sup>89</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, Dissenting Opinion of Judge Patricio Pazmiño Freire, ¶ 4.

<sup>90</sup> *Id.* ¶ 6.

<sup>91</sup> *Id.* ¶ 8.

<sup>92</sup> Cordero Bernal v. Peru, Preliminary Objections and Merits, Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C) No. 421, ¶ 2 (Feb. 16, 2021).

<sup>93</sup> *Id.* ¶ 21.

Poisot found the law permitting dismissal of judges for “serious” misconduct that negatively impacted the “dignity of the office” failed to meet the principle of legality, which risked judicial independence.<sup>94</sup> He claimed this problem was further exacerbated by the CNM’s failure to explain how Mr. Cordero’s conduct violated the law and why such an extreme measure was necessary.<sup>95</sup>

Finally, Judge Mac-Gregor Poisot argued that the judicial remedies were ineffective because the review did not analyze every issue raised by Mr. Cordero Bernal.<sup>96</sup> For these reasons, Judge Mac-Gregor Poisot maintains the State should have been found in violation of Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 9 (Freedom from *Ex Post Facto* Laws), 23(1)(c) (Right to Have Access to Public Service), and 25(1) (Right of Recourse Before a Competent Court) of the Convention.<sup>97</sup>

#### IV. REPARATIONS

The Court ruled by five votes to two that, as the State incurred no international responsibility, the State had no obligations with respect to reparations, costs and expenses.<sup>98</sup>

#### V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

#### VI. COMPLIANCE AND FOLLOW-UP

[None]

#### VII. LIST OF DOCUMENTS

##### *A. Inter-American Court*

##### 1. Preliminary Objections

[None]

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<sup>94</sup> *Cordero Bernal v. Peru*, Preliminary Objections and Merits, Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, ¶¶ 25; 27.

<sup>95</sup> *Id.* ¶¶ 32; 43.

<sup>96</sup> *Id.* ¶ 46.

<sup>97</sup> *Id.* ¶ 54.

<sup>98</sup> *Cordero Bernal v. Peru*, Preliminary Objections and Merits, “declares” ¶ 4.

## 2. Decisions on Merits, Reparations and Costs

Cordero Bernal v. Peru, Preliminary Objections and Merits, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 421, ¶ 1 (Feb. 16, 2021).

Cordero Bernal v. Peru, Preliminary Objections and Merits, Dissenting Opinion of Judge Patricio Pazmiño Friere, Inter-Am. Ct. H.R. (ser. C) No. 421, ¶ 1 (Feb. 16, 2021).

Cordero Bernal v. Peru, Preliminary Objections and Merits, Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C) No. 421, ¶ 1 (Feb. 16, 2021).

## 3. Provisional Measures

Cordero Bernal v. Peru, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. (ser. E) ¶ 1 (Sept. 15, 2020).

## 4. Compliance Monitoring

[None]

## 5. Review and Interpretation of Judgment

[None]

### *B. Inter-American Commission*

#### 1. Petition to the Commission

[None]

#### 2. Report on Admissibility

Cordero Bernal v. Peru, Admissibility Report, Report No. 112/11, Inter-Am. Comm'n H.R., Case No. 12.827, ¶ 1 (July 22, 2011).

#### 3. Provisional Measures

[None]

#### 4. Report on Merits

Cordero Bernal v. Peru, Report on Merits, Report No. 115/18, Inter-Am. Comm'n H.R., Case No. 12.827, ¶ 1 (Oct. 5, 2018).

#### 5. Application to the Court

Cordero Bernal v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.827, ¶ 1 (Aug. 16, 2019).

### VIII. BIBLIOGRAPHY

[None]

