

# Martínez Esquivia v. Colombia

## ABSTRACT<sup>1</sup>

*This case is about the security of appointment of prosecutors in the State judiciary. The victim, a prosecutor, held provisional appointments for more than twelve years, and was transferred between several positions during her career, until she was eventually terminated from employment. The Court found the State in violation the American Convention and the duty the State has to ensure independence of its judiciary.*

## I. FACTS

### A. Chronology of Events

**Before March 1992:** Article 125 of the Colombian Constitution grants the Attorney General the ability to fill judicial positions provisionally.<sup>2</sup> Although no regulations govern the removal of provisional appointees, the State Council rules they can be removed only for good cause.<sup>3</sup>

**March 12, 1992:** The Superior Court of the Judicial District of Cartagena designates Yenina Esther Martínez Esquivia as the 13th judge of Criminal Investigation of Mompóx (Bolívar Department).<sup>4</sup>

**July 1, 1992:** The Office of the Sectional Director of Prosecutors of Cartagena assigns Ms. Martínez Esquivia the position of Sectional Prosecutor Grade 18 in Mompóx.<sup>5</sup>

**September 28, 1992:** Ms. Martínez Esquivia is transferred on several occasions.<sup>6</sup> Following Ms. Martínez Esquivia's request, the Sectional

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<sup>1</sup> Christopher Prieto, Author; Christian Flores, Editor; Ashley Payne, Senior IACHR Editor; Alexandra Reyna, Chief IACHR Editor; Cesare Romano, Faculty Advisor

<sup>2</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, Judgment, Inter-Am Ct. H.R. (ser. C) No. 412, ¶ 54 (Oct. 6, 2020).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* ¶ 56.

<sup>5</sup> *Id.* ¶ 57.

<sup>6</sup> *Id.* ¶ 58.

Director of Prosecutors transfers her to the Public Prosecutors' Office of El Carmen de Bolívar.<sup>7</sup>

**August 14, 1996:** Ms. Martínez Esquivia is transferred to the Special Economic Crimes Unit.<sup>8</sup>

**November 25, 1997:** Ms. Martínez Esquivia is transferred to the Sectional Unit of Crimes against the Public Administration of Cartagena.<sup>9</sup>

**August 31, 1999:** Ms. Martínez Esquivia is transferred to the Public Prosecutors' Office No. 48.<sup>10</sup>

**February 8, 2004:** Ms. Martínez Esquivia is transferred to the Crimes against Public Administration Unit in Cartagena.<sup>11</sup> Ms. Martínez Esquivia is appointed as Sectional Prosecutor No. 16.<sup>12</sup> Ms. Martínez Esquivia holds this career position with temporary status.<sup>13</sup> Ms. Martínez Esquivia takes part in an investigation of the Secretary of Autonomous Regional Corporation of Canal Del Dique (Corporación Autónoma Regional del Canal Dique; "CARDIQUE") for the alleged crime of abuse of authority.<sup>14</sup> The CARDIQUE had failed to meet requirements prior to issue an order in the municipality of Pasacaballo.<sup>15</sup> Ms. Martínez Esquivia vacates the order after receiving a motion from the representative of the communities to allow for a consultation.<sup>16</sup>

**July 2004:** Ms. Martínez Esquivia leaves for vacation.<sup>17</sup> Ms. Martínez Esquivia's substitute prosecutor revokes her decision and closes the investigation.<sup>18</sup> The Judicial Oversight Ministry (Ministerio Público) assists in the revocation during Ms. Martínez Esquivia's absence.<sup>19</sup>

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<sup>7</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, ¶ 58.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Martínez Esquivia v. Colombia, Admissibility Report, Report No. 62/12, Inter-Am. Comm'n H.R., Case No. 12.870, ¶ 5 (Mar. 20, 2020).

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

<sup>13</sup> *Id.* ¶ 5.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Martínez Esquivia v. Colombia, Admissibility Report, ¶ 6.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

**October 20, 2004:** Ms. Martínez Esquivia revokes each of her substitute's actions.<sup>20</sup> Ms. Martínez Esquivia communicates her decision to the director of the Office of the Prosecuting Attorney and is subsequently denied attending a symposium in Bogotá.<sup>21</sup>

**October 29, 2004:** The Director of the Office of the Prosecuting Attorney transfers Ms. Martínez Esquivia to Providencia Island.<sup>22</sup> The Office of the Attorney General terminates Ms. Martínez Esquivia's appointment with no cause for dismissal.<sup>23</sup>

**November 3, 2004:** Ms. Martínez Esquivia is notified of her transfer to the Sectional Unit of the Public Prosecutors' Offices of Providencia.<sup>24</sup>

**November 4, 2004:** Ms. Martínez Esquivia is notified of her immediate dismissal.<sup>25</sup> The notification does not include any reasons for the dismissal, only that the dismissal does not allow for any appeal.<sup>26</sup>

**December 14, 2004:** Ms. Martínez Esquivia files a request for reinstatement before the Office of the Attorney General of the Nation, which is denied.<sup>27</sup>

**February 24, 2005:** The Labor Chamber of the High Court of the Judicial District of Cartagena denies that there is evidence that the Office of the Attorney General violated Ms. Martínez Esquivia's fundamental constitutional rights.<sup>28</sup> Ms. Martínez Esquivia files a claim union protection and reinstatement.<sup>29</sup>

**February 25, 2005:** Ms. Martínez Esquivia files a writ of protection against the Office of the Attorney General of the Nation, known as a *tutela* suit.<sup>30</sup> A *tutela* suit is a special action for constitutional protection to assert one's right of association, work, and a living minimum wage.<sup>31</sup>

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<sup>20</sup> Martínez Esquivia v. Colombia, Admissibility Report, ¶ 7.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* ¶ 60.

<sup>23</sup> *Id.* ¶ 59.

<sup>24</sup> *Id.* ¶ 60.

<sup>25</sup> *Id.* ¶ 59.

<sup>26</sup> Martínez Esquivia v. Colombia, Admissibility Report, ¶ 59.

<sup>27</sup> *Id.* ¶ 60.

<sup>28</sup> Martínez Esquivia v. Colombia, Report on Merits, Report No. 109/18, Inter-Am. Comm'n H.R., Case No. 12.870, ¶ 40 (Oct. 5, 2018).

<sup>29</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits, and Reparations, ¶ 68.

<sup>30</sup> Martínez Esquivia v. Colombia, Report on Merits, ¶ 39.

<sup>31</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits, and Reparations, ¶ 63.

The suit also includes her request to be reinstated and that she receive backpay for her dismissal.<sup>32</sup> The Superior Court of the Judicial district of Cartagena denies Ms. Martínez Esquivia's *tutela* suit.<sup>33</sup>

**April 13, 2005:** Ms. Martínez Esquivia appeals and the Labor Chamber of the Supreme Court of Justice upholds the denial.<sup>34</sup>

**July 12, 2005:** Ms. Martínez Esquivia files a second *tutela* and an action for nullity and reestablishment.<sup>35</sup>

**July 26, 2005:** The Second Judicial Council of Bolívar grants the second *tutela* suit and orders Ms. Martínez Esquivia's reinstatement.<sup>36</sup>

**September 7, 2005:** The Disciplinary Justice Chamber of the High Council revokes the second *tutela* suit and the orders for reinstatement.<sup>37</sup> The High Council rules there is a threefold of identities of parties, claims, and facts regarding the first writ of protection filed by Ms. Martínez Esquivia.<sup>38</sup> The High Council orders the certification of the resolution to be sent to the Sectional Office of the Public Prosecutors' Offices of Bolívar to investigate Ms. Martínez Esquivia for abusive use of writs.<sup>39</sup> However, the investigations are never started.<sup>40</sup>

**October 4, 2005:** Ms. Martínez Esquivia's action for nullity and reestablishment is rejected by the Administrative Tribunal of Cartagena.<sup>41</sup> There is a four-month deadline to file the action from the day notice is received.<sup>42</sup> In this case, the action is rejected because notice was received on November 4, 2004, and the action was filed on July 12, 2005.<sup>43</sup>

**October 14, 2005:** Ms. Martínez Esquivia brings an action before the Administrative Court of Cartagena to vacate the act and restore rights.<sup>44</sup>

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<sup>32</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits, and Reparations, ¶ 63.

<sup>33</sup> *Id.* ¶ 64.

<sup>34</sup> *Id.* ¶ 65.

<sup>35</sup> *Id.* ¶¶ 66, 47.

<sup>36</sup> *Id.* ¶ 66.

<sup>37</sup> *Id.*

<sup>38</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits, and Reparations, ¶ 66.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Martínez Esquivia v. Colombia, Report on Merits, ¶ 47.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Martínez Esquivia v. Colombia, Admissibility Report, ¶ 11.

The court finds the case groundless because it is brought beyond the four-month deadline.<sup>45</sup> She argues the action is late because her attorney did not file on time.<sup>46</sup>

**December 13, 2006:** Ms. Martínez Esquivia's claim of union protection and reinstatement is found inadmissible.<sup>47</sup>

**December 15, 2006:** Ms. Martínez Esquivia appeals the December 13, 2006 ruling.

**September 22, 2010:** The Supreme Court of Cartagena upholds the December 13, 2006 ruling.<sup>48</sup>

### *B. Other Relevant Facts*

## II. PROCEDURAL HISTORY

### *A. Before the Commission*

**December 22, 2005:** Ms. Martínez Esquivia presents a petition on her own behalf to the Inter-American Commission on Human Rights.<sup>49</sup> The State does not argue inadmissibility, but instead argues that it conformed with due process protections.<sup>50</sup>

**March 20, 2012:** The Commission approves the Admissibility Report No. 62/12, which declares the petition admissible.<sup>51</sup> The State argues that the relief sought by Ms. Martínez Esquivia is consistent with due process protections.<sup>52</sup> The Commission concludes that Ms. Martínez Esquivia was removed from her provisional prosecutor position through a procedure that failed to meet the minimal guarantees.<sup>53</sup>

**October 5, 2018:** The Commission approves Merits Report No. 109/18 concluding that:

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<sup>45</sup> Martínez Esquivia v. Colombia, Admissibility Report, ¶ 11.

<sup>46</sup> *Id.*

<sup>47</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, ¶ 68.

<sup>48</sup> *Id.* ¶ 69.

<sup>49</sup> Martínez Esquivia v. Colombia, Admissibility Report, ¶ 1.

<sup>50</sup> *Id.* ¶ 18.

<sup>51</sup> *Id.* ¶ 3.

<sup>52</sup> *Id.* ¶ 18.

<sup>53</sup> Martínez Esquivia v. Colombia, Report on Merits, ¶ 85.

The State of Colombia is responsible for violating Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 8(2)(b) (Right to Have Prior Notification of Charges), 8(2)(c) (Right to Adequate Time and Means to Prepare Defense), 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 American Convention, in relation to the obligations established in Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights), of the same instrument.<sup>54</sup>

The Commission recommends to the State of Colombia: (1) reinstate Ms. Martínez Esquivia to a similar position she would have been had she not been removed with the benefits and rank and, or to receive paid compensation as an alternative; (2) provide full comprehensive reparations; (3) adopt measures to prevent similar events from happening in the future; (4) adopt measures and clear criteria in conforming the current domestic law and ensuring process guarantees for the appointment, employment, and removal of prosecutors.<sup>55</sup>

**January 21, 2019:** The State responds to the Merits report, requesting a three-month extension to file information regarding the recommendations.<sup>56</sup> The extension is granted until May 21, 2019.<sup>57</sup>

**May 6, 2019:** The State responds refusing compliance with the Merits Report because all actions taken by the State organs comply with international standards.<sup>58</sup>

### B. Before the Court

**May 21, 2019:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>59</sup>

**February 4, 2020:** The State submitted its preliminary objections, alleging the victim failed to exhaust domestic remedies and is using the Court as a “fourth instance” jurisdiction.<sup>60</sup>

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<sup>54</sup> Martínez Esquivia v. Colombia, Report on Merits, ¶ 86.

<sup>55</sup> *Id.* ¶ 87.

<sup>56</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, ¶ 4.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* ¶ 1.

<sup>60</sup> *Id.* ¶¶ 9, 16.

### 1. Violations Alleged by Commission<sup>61</sup>

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

Article 8(2)(b) (Right to Have Prior Notification of Charges)

Article 8(2)(c) (Right to Adequate Time and Means to Prepare Defense)

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) and

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

### 2. Violations Alleged by Representative of the Victim<sup>62</sup>

Same violations alleged by the Commission, plus:<sup>63</sup>

Article 1 (Obligation to Respect Rights)

Article 19 (Rights of the Child)

Article 24 (Right to Equal Protection)

Article 25 (Right to Judicial Protection)

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights)

Article 29 (Interpretation of the Convention)

## III. MERITS

### A. *Composition of the Court*<sup>64</sup>

Elizabeth Odio Benito, President

Patricio Pazmiño Freire, Vice President

Eduardo Vio Grossi, Judge

Eduardo Ferrer Mac-Gregor Poisot, Judge

Eugenio Raúl Zaffaroni, Judge and

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<sup>61</sup> Martínez Esquivia v. Colombia, Report on Merits, ¶ 5.

<sup>62</sup> *Id.* ¶ 1. Ms. Martínez Esquivia lodged the petition on her own behalf.

<sup>63</sup> Martínez Esquivia v. Colombia, Admissibility Report, ¶ 1.

<sup>64</sup> In accordance with the Rules of Procedure of the Court, Article 19(1) and 19(2), Judge Humberto Antonio Sierra Porto, being Colombian, did not participate in this in this judgment. Likewise, Secretary Pablo Saavedra Alessandri also did not take part in the judgment. Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, n.\*, n.\*\*.

Ricardo Pérez Manrique, Judge

Romina I. Sijniensky, Deputy Secretary

*B. Decision on the Merits*

**October 6, 2020:** The Court issues its Judgment on Merits, Reparations, and Costs.<sup>65</sup>

The Court found unanimously that the State's preliminary objections be rejected:

To reject the States preliminary objection regarding the failure to exhaust domestic remedies,<sup>66</sup> because:

*To sufficiently make an objection to the Courts jurisdiction based on an alleged failure to exhaust available domestic remedies, the objection must be submitted to the Commission during the admissibility stage.<sup>67</sup> Furthermore, the arguments made to the Commission regarding the preliminary exception during the admissibility stage must align with the arguments made before the Court.<sup>68</sup> Here, the State presented different arguments during the admissibility stage to the Commission and to the Court when addressing the alleged failure to exhaust available domestic remedies.<sup>69</sup> Therefore, the Court concluded Ms. Martínez Esquivia exhausted all available domestic remedies and denied the State's objection.<sup>70</sup>*

*Additionally, the State failed to raise this objection to the Commission in the final brief submitted during the procedural stage.<sup>71</sup> The failure to raise the objection in a timely manner effectively waives the right to raise the preliminary objection at a later date.<sup>72</sup> The Court also raised the principle of estoppel to further explain their decision in denying the State's objection.<sup>73</sup> In this instance, the Court explained a party to a litigation cannot take a contradictory position when it has previously adopted a position that prejudices themselves or*

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<sup>65</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, ¶ 1.

<sup>66</sup> *Id.* ¶ 27.

<sup>67</sup> *Id.* ¶ 21.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* ¶ 23.

<sup>70</sup> *Id.* ¶ 27.

<sup>71</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, ¶ 27.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* ¶ 28.



*benefits the opposing party.*<sup>74</sup> *Therefore, the State cannot file the preliminary objection (i.e. failure to exhaust available domestic remedies) after having consistently stated the presumed victim had exhausted all domestic remedies during the admissibility stage.*<sup>75</sup>

To reject the State's preliminary objection regarding the "fourth instance"<sup>76</sup> because:

*The Commission did not ask the Court to revise the judicial decisions adopted within a framework for appeal of the annulment.*<sup>77</sup> *In addition, the State did not ask the Court to examine the assessment of the evidence from the national judgments.*<sup>78</sup>

The Court found unanimously that Colombia had violated:

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), 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 Ms. Martínez Esquivia,<sup>79</sup> because:

*The Court examined whether provisionally appointed officials held the same responsibilities and judicial guarantees afforded under the Convention as tenured officials.*<sup>80</sup> *The Court found Ms. Martínez Esquivia's appointment lacked specificity.*<sup>81</sup> *Ms. Martínez Esquivia's appointment did not have a set term and she remained in her provisional appointment for twelve years.*<sup>82</sup> *Additionally, provisional appointments must be granted only in exceptional situations and should not become standard practice.*<sup>83</sup> *The Court held that Ms. Martínez Esquivia's position as a provisional prosecutor did not guarantee stability.*<sup>84</sup>

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<sup>74</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, ¶ 28.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* ¶ 34.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* ¶ 33.

<sup>79</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, "Declares" ¶ 3.

<sup>80</sup> *Id.* ¶ 83.

<sup>81</sup> *Id.* ¶ 101.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* ¶ 102.

<sup>84</sup> *Id.* ¶ 103.

*The Court explained there was no sufficient justification for the dismissal of Ms. Martínez Esquivia.<sup>85</sup> The Convention requires an individual be able to defend themselves adequately against a decision made against them.<sup>86</sup> The grounds for administrative actions made by the State must provide sufficient facts, reasons, and norms explaining why the State made its decision.<sup>87</sup> The purpose of this process is to safeguard against any presumption of arbitrariness.<sup>88</sup> In this regard, the Court held Ms. Martínez Esquivia's dismissal could only be executed through a justified administrative act, which did not occur here.<sup>89</sup> Mrs. Martínez Esquivia's appointment was terminated through an administrative act that lacked grounds and did not expressly state the reason.<sup>90</sup> Thus, the unjustified discretionary nature of the termination transformed the administrative act of removal into an arbitrary act, which unjustly affected Ms. Martínez Esquivia's right to job security.<sup>91</sup>*

*Article 23(1)(c) of the Convention established the right of equality to access a public position.<sup>92</sup> The Court reasoned that the Convention requires judicial guarantees of stability or fixed terms within their position and this stability can be applied to public prosecutors.<sup>93</sup> The Court explained that Ms. Martínez Esquivia's dismissal was arbitrary, not justified, and did not have a clearly identified cause.<sup>94</sup>*

*Article 2 of the Convention encompasses the obligation of the State to give domestic legal effect to rights of a particular individual.<sup>95</sup> In this instance, the Court found an omission by the State when it did not take the necessary measures to regulate dismissal of a prosecutor who was appointed provisionally.<sup>96</sup>*

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse

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<sup>85</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, ¶ 104.

<sup>86</sup> *Id.* ¶ 105.

<sup>87</sup> *Id.* ¶ 106.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* ¶ 107.

<sup>90</sup> *Id.* ¶ 111.

<sup>91</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, ¶ 111.

<sup>92</sup> *Id.* ¶ 115.

<sup>93</sup> *Id.* ¶ 116.

<sup>94</sup> *Id.* ¶ 117.

<sup>95</sup> *Id.* ¶ 118.

<sup>96</sup> *Id.* ¶ 119.

Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination to the detriment of Ms. Martínez Esquivia<sup>97</sup> because:

*The Court indicated that Article 25(1) of the Convention establishes the State's obligation to ensure simple, prompt, and effective recourses are available before a competent court when there are acts that violate one's fundamental rights.<sup>98</sup> The Court noted an appeal for restoration and annulment was proper to seek Ms. Martínez Esquivia's reinstatement.<sup>99</sup> However, Ms. Martínez Esquivia's appeal was not filed in a timely manner.<sup>100</sup>*

*Prior to 2007, administrative case law was varied on whether provisional appointments could be subject to discretionary removal.<sup>101</sup> The Constitutional Court indicated that provisional appointment and removal require sufficient justification.<sup>102</sup> However, the Labor Chamber of the High Court of the Judicial District of Cartagena failed to follow the Constitutional Court's precedent.<sup>103</sup> The Court concluded that the writ of protection filed by Ms. Martínez Esquivia was not an effective recourse for the protection of the guarantee of her stability.<sup>104</sup> Thus, the Court concluded that the State is responsible for the violation of Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court).<sup>105</sup>*

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention, in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Ms. Martínez Esquivia,<sup>106</sup> because:

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<sup>97</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, "Decides" ¶ 4.

<sup>98</sup> *Id.* ¶ 130.

<sup>99</sup> *Id.* ¶ 134.

<sup>100</sup> *Id.* ¶ 135.

<sup>101</sup> *Id.* ¶¶ 137-138.

<sup>102</sup> *Id.* ¶ 137.

<sup>103</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, ¶ 139.

<sup>104</sup> *Id.* ¶ 140.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* "Decides" ¶ 5.

*The Court noted that a prolonged delay in judicial proceedings may violate judicial guarantees.<sup>107</sup> The Court recalled that the State must provide a sufficient explanation as to why a proceeding exceeded a reasonable amount of time.<sup>108</sup> If the State fails to meet its burden, the Court has broad powers to conduct its own analysis.<sup>109</sup>*

*The State explained that the four-year delay in the trial proceedings were caused by the substantial workload of the High Court of Cartagena.<sup>110</sup> The Court found this argument was not sufficient to justify delaying the ruling on appeal.<sup>111</sup>*

*The Court concluded that the State violated Article 1(1) (Obligation of Non-Discrimination).<sup>112</sup>*

### C. Dissenting and Concurring Opinions

#### 1. Concurring Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot

Judge Eduardo Ferrer Mac-Gregor Poisot opined that this is the first time that the Court issued a ruling applying the standards of judicial independence specifically to prosecutors.<sup>113</sup> It extended the guarantee of judicial independence to prosecutors, even when acting provisionally, thus developing standards of their appointment and dismissal.<sup>114</sup>

Judge Eduardo Ferrer Mac-Gregor Poisot reiterated the importance of these extensions for: (1) the guarantees of judicial independence granted to prosecutors; (2) their protection of fixed terms and stability; and (3) the right to job security for Ms. Martínez Esquivia.<sup>115</sup>

## IV. REPARATIONS

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

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<sup>107</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, ¶ 141.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* ¶ 144.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* ¶ 145.

<sup>113</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, “Concurring Opinion” ¶ 1.

<sup>114</sup> *Id.* ¶ 39.

<sup>115</sup> *Id.* ¶ 7.

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

1. Judgement as a Form of Reparation

The Court indicated that the Judgment itself will act as a form of reparation.<sup>116</sup>

2. Contribution of Pension

The Court ordered the State to pay the contributions to Ms. Martínez Esquivia's pension, starting at the time of her dismissal to March 16, 2017, when she was legally entitled to withdraw.<sup>117</sup> This order must be fulfilled within a period of one year.<sup>118</sup>

3. Publish the Judgement

The State must publish within six months, 1) the official summary of the Judgment in an official, widely circulated newspaper such as the Official Gazette, and 2) the entire judgment on an official State website accessible by the public for a period of at least one year.<sup>119</sup>

4. Guarantees of Non-Repetition

As a guarantee of non-repetition, the Court ordered the State to adjust its domestic legislation to comply with the judgment.<sup>120</sup>

*B. Compensation*

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$42,000 in lost wages since the dismissal for Ms. Martínez Esquivia.<sup>121</sup>

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<sup>116</sup> Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, “Establishes” ¶ 6.

<sup>117</sup> *Id.* ¶ 155.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* ¶ 158.

<sup>120</sup> *Id.* ¶ 163.

<sup>121</sup> *Id.* ¶¶ 166, 168.

## 2. Non-Pecuniary Damages

The Court awarded \$15,000 for Ms. Martínez Esquivia as compensation for non-pecuniary damages.<sup>122</sup>

## 3. Costs and Expenses

[None]

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

\$57,000

### *C. Deadlines*

The State must submit a report on the measures of compliance within one year of notification.<sup>123</sup> The State must pay pecuniary and non-pecuniary damages within one year of this judgment.<sup>124</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

**March 15, 2021:** The State submitted a request for a revision of the Court's October 6, 2002 judgement.<sup>125</sup> The State requested the Court make an annulment regarding the judgement of finding a violation of due process during the proceedings.<sup>126</sup> The State also requested further interpretation of its obligation to cover the contributions of Ms. Martínez Esquivia's pension.<sup>127</sup> Specifically, the State requested further explanation into whether it is required to cover Ms. Martínez Esquivia's pension contributions for the period after she had been reinstated.<sup>128</sup> The State also requested further interpretation of the Court's order for the

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<sup>122</sup> *Martínez Esquivia v. Colombia*, Preliminary Objections, Merits and Reparations, ¶ 170.

<sup>123</sup> *Id.* "Decides" ¶ 11.

<sup>124</sup> *Id.* ¶ 174.

<sup>125</sup> *Martínez Esquivia v. Colombia*, Interpretation of the Judgement of Merits, Reparations, and Costs, Inter-Am Ct. H.R. (ser. C) No. 428, ¶ 2 (June 21, 2021).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

State to adapt and update its regulations in ordering the guarantee and stability of provisionally appointed prosecutors.<sup>129</sup>

*A. Composition of the Court*<sup>130</sup>

Elizabeth Odio Benito, President  
Patricio Pazmiño Freire, Vice President  
Eduardo Vio Grossi, Judge  
Eduardo Ferrer Mac-Gregor Poisot, Judge  
Eugenio Raúl Zaffaroni, Judge  
Ricardo Pérez Manrique

Romina I. Sijniensky, Deputy Secretary

*B. Merits*

The Court unanimously held:

The States submission for an annulment regarding its violation of due process was not an appropriate request.<sup>131</sup> The Court referenced Article 67 of the American Convention to explain that its judgement is final and unappealable.<sup>132</sup> The State cannot ask the Court to revise aspects of evidence or arguments on which the Court has already explained and rendered decisions.<sup>133</sup>

VI. COMPLIANCE AND FOLLOW-UP

[None]

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<sup>129</sup> *Martínez Esquivia v. Colombia, Interpretation of the Judgement of Merits, Reparations, and Costs*, ¶ 2.

<sup>130</sup> In accordance with the Rules of Procedure of the Court, Article 19(1) and 19(2), Judge Humberto Antonio Sierra Porto, being Colombian, did not participate in this in this judgment. Likewise, Secretary Pablo Saavedra Alessandri also did not take part in the judgment. *Id.* n. \*, n. \*\*.

<sup>131</sup> *Martínez Esquivia v. Colombia, Interpretation of the Judgement of Merits, Reparations, and Costs*, ¶ 12.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* ¶ 13.

## VII. LIST OF DOCUMENTS

*A. Inter-American Court*

## 1. Preliminary Objections

[None]

## 2. Decisions on Merits, Reparations and Costs

Martínez Esquivia v. Colombia, Preliminary Objections, Merits and Reparations, Judgment, Inter-Am Ct. H.R. (ser. C) No. 412 (Oct. 6, 2020).

## 3. Provisional Measures

Martínez Esquivia v. Colombia, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. (ser. E) (July 29, 2020).

Martínez Esquivia v. Colombia, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. (ser. E) (July 23, 2020).

## 4. Compliance Monitoring

[None]

## 5. Review and Interpretation of Judgment

Martínez Esquivia v. Colombia, Interpretation of the Judgement of Merits, Reparations, and Costs, Inter-Am Ct. H.R. (ser. C) No. 428 (June 21, 2021).

*B. Inter-American Commission*

## 1. Petition to the Commission

[None]



## 2. Report on Admissibility

Martínez Esquivia v. Colombia, Admissibility Report, Report No. 62/12, Inter-Am. Comm'n H.R., Case No. 12.870, (Mar. 20, 2020).

## 3. Provisional Measures

[None]

## 4. Report on Merits

Martínez Esquivia v. Colombia, Report on Merits, Report No. 109/18, Inter-Am. Comm'n H.R., Case No. 12.870, (Oct. 5, 2018).

## 5. Application to the Court

Martínez Esquivia v. Colombia, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.870, (May 21, 2019).

## VIII. BIBLIOGRAPHY

[None]

