

# Ríos Ávalos et al. v. Paraguay

## ABSTRACT<sup>1</sup>

*This case is about the impeachment and removal from office of two justices of Paraguay's Supreme Court. The Court found Paraguay in violation of the American Convention for the way in which impeachment proceedings, and subsequent legal appeals, were handled.*

### I. FACTS

#### A. Chronology of Events

**April 1995:** Mr. Carlos Fernández Gadea is appointed as a justice of Paraguay's Supreme Court.<sup>2</sup>

**May 6, 1999:** Mr. Bonifacio Ríos Ávalos is appointed as a justice of Paraguay's Supreme Court.<sup>3</sup>

**April 2003:** The Paraguayan president-elect Nicanor Duarte Frutos posits his intention to radically reform the judiciary.<sup>4</sup> Mr. Ríos Ávalos and Mr. Fernández Gadea claim that the president-elect discussed this and subsequently agreed with Senate politicians to ask six justices to resign by threatening to impeach them.<sup>5</sup>

**September 6, 2003:** President Duarte Frutos states that either the justice system would have to adapt to the Paraguayan people, or the corrupt judiciary would be crushed.<sup>6</sup>

**October 25, 2003:** Justice Jerónimo Irala Burgos resigns.<sup>7</sup>

**October 27, 2003:** Justice Raúl Sapena Brugada resigns and states in his resignation letter that, although the justices were given a chance to defend themselves during impeachment proceedings, any defense would be futile.<sup>8</sup>

**November 17, 2003:** Justice Felipe Santiago Paredes also resigns, stating that the impeachment proceedings are arbitrary, and that the Senate had already decided the outcome.<sup>9</sup>

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<sup>2</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 429, ¶ 25 (Aug. 19, 2021).

<sup>3</sup> *Id.* ¶ 26.

<sup>4</sup> Ríos Avalos et al. v. Paraguay, Report on Merits, Report No. 17/19, Inter-Am. Comm'n H.R., Case 12.702, ¶ 3 (Feb. 12, 2019).

<sup>5</sup> *Id.*

<sup>6</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 27. The Court notes that these events do not determine the case but are significant to Mr. Ríos Ávalos and Mr. Fernández Gadea's claims and cases. *Id.*

<sup>7</sup> *Id.* ¶ 29.

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

<sup>9</sup> *Id.* ¶ 30.

**November 18, 2003:** The nation's political party leaders file articles in a newly established office in the Chamber of Deputies to impeach Mr. Ríos Ávalos, Mr. Fernández Gadea, and two other justices.<sup>10</sup> Then, Chamber of Deputies session politicians discusses impeachment and forming a political pact to purge the Supreme Court.<sup>11</sup>

**November 25, 2003:** The Senate passes Resolution No. 122, which establishes impeachment process rules.<sup>12</sup> The new rules do not permit recusals and only allow two business days for Mr. Ríos Ávalos and Mr. Fernández Gadea to gather evidence for their defense.<sup>13</sup> These rules also only allow three hours for Mr. Ríos Ávalos and Mr. Fernández Gadea to present their defenses.<sup>14</sup>

**November 26, 2003:** The Senate hears the indictments, and the impeachment proceedings begin.<sup>15</sup>

**December 1, 2003:** Mr. Ríos Ávalos, Mr. Fernández Gadea, and the other justices indicated above present defenses and evidence to the Senate.<sup>16</sup>

**December 3, 2003:** The Indictment Committee approves articles of indictment 1, 2, and 4 for Mr. Fernández Gadea and articles 1, 2, 7 and 14 for Mr. Ríos Ávalos (collectively, the "Articles").<sup>17</sup>

Article 1 discusses the justices' failure to recuse themselves from two judgments on May 5, 2000.<sup>18</sup> The scope of these judgments was to determine whether Senate Resolution No. 421, a resolution which confirmed some justices and not others, was unconstitutional.<sup>19</sup> Article 2 discusses an amendment to how justices are confirmed.<sup>20</sup> Article 4 discusses the constitutionality of Resolution No. 864/2002, passed by the Chamber of Deputies.<sup>21</sup> Article 7 discusses a change to the balance of powers in general and specifically powers reserved for the legislature.<sup>22</sup> Article 14 discusses the speediness with which Court decided the case of *Mundy Recepciones v. Itaipú Binational* and how it addressed the constitutionality concerns of *Itaipú Binational*.<sup>23</sup>

**December 10, 2003:** The Indictment Committees and the defense counsels for Mr. Ríos Ávalos and Mr. Fernández Gadea present oral arguments before the Senate.<sup>24</sup>

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<sup>10</sup> Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 4.

<sup>11</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 124-125.

<sup>12</sup> Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 5.

<sup>13</sup> *Id.*

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

<sup>15</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 35.

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

<sup>17</sup> *Id.* ¶¶ 32, 36.

<sup>18</sup> *Id.* ¶ 32.

<sup>19</sup> *Id.*; see also Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 30.

<sup>20</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 32.

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

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*; Ríos Avalos v. Paraguay, Admissibility Report, Report No. 47/09, Inter-Am. Comm'n H.R., Petition No. 969-03, ¶ 21 (Mar. 19, 2009).

<sup>24</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 37.

**December 12, 2003:** The Senate deliberates and votes on the impeachment.<sup>25</sup> Mr. Fernández Gadea is found guilty with forty-four votes and one non-vote.<sup>26</sup> Mr. Ríos Ávalos is also found guilty with forty-three votes, one abstention, and one non-vote.<sup>27</sup> The Senate then passes Resolution No. 134, removing Mr. Fernández Gadea and Mr. Ríos Ávalos from their positions on the Supreme Court.<sup>28</sup>

**November 27, 2003:** Mr. Ríos Ávalos and Mr. Fernández Gadea challenge the constitutionality of Senate Resolution No. 122's established impeachment procedure by separately filing actions of unconstitutionality.<sup>29</sup>

**December 2003:** Mr. Fernández Gadea challenges the constitutionality of Resolution No. 134 by filing an action of unconstitutionality on December 24, 2003.<sup>30</sup> Mr. Ríos Ávalos does the same on December 26, 2003.<sup>31</sup> Both contend that Resolution No. 122 threatens their right to a defense because of the limit of two business days for defense preparation, and three hour limit for their defense presentation.<sup>32</sup> Additionally, both argue that the Indictment Committee that impeached them was neither impartial nor independent.<sup>33</sup>

**December 30, 2009:** Before the hearings of Mr. Ríos Ávalos's and Mr. Fernández Gadea's constitutional challenges, several Supreme Court Justices, Constitutional Chamber Justices, and members of other courts recuse themselves.<sup>34</sup> The Constitutional Chamber (the "Chamber"), consisting of three interim justices who refrain from recusing themselves, rules that the removed justices, including Mr. Ríos Ávalos and Mr. Fernández Gadea, should be reinstated.<sup>35</sup> The Chamber issues two judgments; Judgment 951 addresses the action which Mr. Ríos Ávalos brought, and Judgment 952 addresses the action Mr. Fernández Gadea brought.<sup>36</sup> The Chamber argues that Resolution No. 122 violates the guarantee of impartial judges and views the three hour limitation for the presentation of defenses as a violation of the defense enumerated in Article 16 of the Paraguayan Constitution.<sup>37</sup> Therefore, it reasons that Resolution No. 122 is unconstitutional.<sup>38</sup>

Additionally, the Chamber argues that Resolution No. 134 was an arbitrary judgment because it lacked reasoning for impeachment and was therefore unconstitutional.<sup>39</sup> The Chamber also argues that this Resolution violated judicial immunity and could constitute an attack on judicial independence.<sup>40</sup> Additionally, the Chamber cited to Article 248 to state that actions threatening judicial independence would disqualify the Indictment Committee

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<sup>25</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 38.

<sup>26</sup> *Id.* ¶ 39.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* ¶ 40.

<sup>29</sup> *Id.* ¶ 41.

<sup>30</sup> *Id.* ¶ 42; Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 35.

<sup>31</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 42; Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 35.

<sup>32</sup> Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 35.

<sup>33</sup> *Id.*

<sup>34</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 43.

<sup>35</sup> *Id.* ¶ 44; Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 37.

<sup>36</sup> Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 37.

<sup>37</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 46; Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 38.

<sup>38</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 46; Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 38.

<sup>39</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 47; Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 39.

<sup>40</sup> Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 39.

members from any public exercises for five continuous years with potential of additional penalties.<sup>41</sup>

**January 2, 2010:** The National Congress issues Resolution No. 1, which rejects Judgment Nos. 951 and 952 and states that justices, the Judicial Council, the “Jury for the Prosecution of Judges,” and the Executive branch may be impeached or criminally liable for accepting Judgment Nos. 951 and 952.<sup>42</sup>

**January 4, 2010:** The Prosecutor General files appeals for Judgment Nos. 951 and 952 and inquires which state institution would reinstate Mr. Fernández Gadea and Mr. Ríos Ávalos as justices.<sup>43</sup>

**January 5, 2010:** Justices who had recused themselves from hearing Mr. Fernández Gadea’s and Mr. Ríos Ávalos’s filings hear and participate in these proceedings for the Prosecutor General’s appeals.<sup>44</sup> The Supreme Court of Justices then issues Resolution No. 2382, which invalidates Judgment Nos. 951 and 952.<sup>45</sup> This Resolution states that these judgments lacked legal validity and suspended the judges who wrote and issued Judgments 951 and 952.<sup>46</sup>

**February 1, 2010:** Mr. Fernández Gadea and Mr. Ríos Ávalos separately file appeals for clarification on procedural costs for Judgment Nos. 951 and 952.<sup>47</sup>

**September 2, 2019:** The Supreme Court’s Constitutional Chamber issues Judgment No. 737, deciding that the Prosecutor General’s appeal for clarification on Judgment No. 951 is inadmissible; as such, it admits Mr. Ríos Ávalos’s appeal.<sup>48</sup> There is no record on whether the Chamber has decided either the Prosecutor General’s appeal or Mr. Fernández Gadea’s appeal.

**October 11, 2019:** The Chamber nullifies Judgment No. 951 because there were no proper notifications for the judgment and because the judgment was invalid once Resolution No. 2382 became final.<sup>49</sup>

**December 17, 2003:** Various Congress members file complaints against Mr. Fernández Gadea and Mr. Ríos Ávalos to the criminal court for malfeasance, attacking the constitutional order and public functions, extortion, damaging public trust, and unlawful enrichment.<sup>50</sup>

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<sup>41</sup> Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 39.

<sup>42</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 48.

<sup>43</sup> *Id.* ¶ 51.

<sup>44</sup> *Id.* ¶ 50.

<sup>45</sup> *Id.* ¶ 49.

<sup>46</sup> *Id.*; Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 41.

<sup>47</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 52.

<sup>48</sup> *Id.* ¶ 53.

<sup>49</sup> *Id.* ¶ 55.

<sup>50</sup> Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 43.

**November 1, 2005:** The criminal court dismisses the complaints.<sup>51</sup> In doing so, the court finds that Mr. Ríos Ávalos, and Mr. Fernández Gadea had the authority to interpret the law and facts of the cases of their impeachments.<sup>52</sup>

**June 20, 2010:** Mr. Fernández Gadea dies.<sup>53</sup>

### B. Other Relevant Facts

Articles 258 and 264(1) of the Constitution of Paraguay establish the composition, duties and responsibilities of the Supreme Court of Justices.<sup>54</sup> These articles hold that the Supreme Court of Justices will have nine justices organized into chambers and establishes an age, citizenship, reputation, and years in law requirement.<sup>55</sup> Articles 255 and 261 create procedures and rules for impeachment that subjects justices to impeachment based on their performance as a justice and offenses committed during or outside their duties.<sup>56</sup>

## II. PROCEDURAL HISTORY

### A. Before the Commission

**November 13, 2003:** Mr. Ríos Ávalos submits his petition to the Commission.<sup>57</sup>

**June 7, 2004:** Mr. Fernández Gadea submits his petition to the Commission.<sup>58</sup>

**March 19, 2009:** The Commission accepts Admissibility Report No. 18/09 for Mr. Fernández Gadea and Admissibility Report No. 47/09 for Mr. Ríos Ávalos.<sup>59</sup>

**April 20, 2009:** The Commission decides to join both petitions of Mr. Ríos Ávalos and Mr. Fernández Gadea because both petitions raise similar issues.<sup>60</sup>

**February 12, 2019:** The Commission adopts Merits Report No. 17/19 for both Mr. Ríos Ávalos's and Mr. Fernández Gadea's cases.<sup>61</sup> The Commission believes that the State had violated Articles 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), and 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), but that it did not violate their right to a hearing nor their right to a

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<sup>51</sup> Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 9. There are two different dates listed for when the Criminal Judge dismissed the complaint. In the Commission's Report on the Merits, the dismissal date is listed as November 1, 2005. *Id.* Later the Report on the Merits lists the date the Criminal Judge dismissed the complaint as November 5, 2005. *Id.* ¶ 44. In the court's judgment, the dismissal date is listed as November 1, 2005. Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 57.

<sup>52</sup> Ríos Avalos et al. v. Paraguay, Report on Merits, ¶ 9.

<sup>53</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 7, n.9.

<sup>54</sup> *Id.* ¶ 22.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* ¶ 23.

<sup>57</sup> *Id.* ¶ 2.

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

<sup>59</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2.

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

<sup>61</sup> *Id.*

defense.<sup>62</sup> The Commission recommends that Paraguay reinstate Mr. Ríos Ávalos to a similar position if he would like, or alternatively that it compensate him.<sup>63</sup> The Commission also recommends providing Mr. Fernández Gadea alternative compensation due to his death.<sup>64</sup> It further recommends that the State provide full reparations as otherwise detailed in the report and changing domestic laws to comply with judicial independence, due process, and the principle of legality.<sup>65</sup>

**July 3, 2019:** The State receives the Merits Report and rejects the recommendations.<sup>66</sup> Paraguay argues that Mr. Ríos Ávalos and Mr. Fernández Gadea were given due process throughout the impeachment proceedings.<sup>67</sup>

**January 27, 2020:** Mr. Fernández Gadea and Mr. Ríos Ávalos’s appointed representatives present their briefs and identify new injured parties.<sup>68</sup> These injured parties included: Mr. Ríos Ávalos’s wife, Mrs. Sara Concepción Parquet de Ríos; Mr. Ríos Ávalos’ children, Shirley Rossana Ríos Parquet, Edgar Bonifacio Ríos Parquet, and José Carlos Ríos Parquet; Mr. Fernández Gadea’s wife, Mrs. María Concepción Villalba Quevado; Mr. Fernández Gadea’s children, Carlos Aníbal Fernández Villalba, José Luis Fernández Villalba, Julio Cesar Fernández Villalba, Jesús María Fernández Villalba, and Catalina Fernández Ocampos; and the “declared heirs” of Mr. Fernández Gadea.<sup>69</sup>

**July 17, 2020:** The State submits an answering brief contesting the alleged violations.<sup>70</sup>

### *B. Before the Court*

**October 3, 2019:** The Commission submits the case to the Court, after the State failed to adopt its recommendations.<sup>71</sup>

#### 1. Violations Alleged by Commission<sup>72</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 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 Effects to Rights)

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<sup>62</sup> Ríos Avalos et al. v. Paraguay, Report on Merits, ¶¶ 80-81.

<sup>63</sup> *Id.* ¶ 82(1).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 3.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* ¶ 7.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* ¶ 8.

<sup>71</sup> *Id.* ¶ 4.

<sup>72</sup> Ríos Avalos et al. v. Paraguay, Report on Merits, ¶¶ 79-80.

## 2. Violations Alleged by Representatives of the Victims<sup>73</sup>

Same Violations Alleged by Commission, plus:<sup>74</sup>

Article 11 (Right to Privacy)

Article 23(1)(c) (Right to Participate in Government)

Article 24 (Right to Equal Protection) of the American Convention.

### III. MERITS

#### A. Composition of the Court

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

Ricardo Pérez Manrique, Judge

Pablo Saavedra Alessandri, Secretary

Romina I. Sijniensky, Deputy Secretary

#### B. Decision on the Merits

**August 19, 2021:** The Court issues its Judgment on Merits, Reparations and Costs.<sup>75</sup>

The Court found unanimously that Paraguay had violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Ríos Ávalos and Mr. Fernández Gadea,<sup>76</sup> because:

*The Court first established that Mr. Ríos Ávalos and Mr. Fernández Gadea were initially charged with twenty charges, but later impeached on five charges (“the Articles”).<sup>77</sup> When reviewing Mr. Ríos Ávalos’s and Mr. Fernández Gadea’s opinions from the Cases, the Court found that both had appropriately exercised their powers as Supreme Court Justices and that the National Congress lacked authority to review their opinions.<sup>78</sup>*

*The National Congress argued that it was evaluating whether the opinions were consistent with Paraguay’s Constitution and law; however, the Court reasoned that the National Congress, unlike the Supreme Court, was unable to interpret and apply legal authority.<sup>79</sup> The*

<sup>73</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 4, n.5. Joel Hernández and Deputy Executive Secretary Paulo Abrão acted as the alleged victim’s representatives before the Commission.

<sup>74</sup> *Id.* ¶ 2, n.1-2.

<sup>75</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

<sup>76</sup> *Id.* “Declares” ¶ 1.

<sup>77</sup> *Id.* ¶¶ 110-111.

<sup>78</sup> *Id.* ¶¶ 112, 114.

<sup>79</sup> *Id.* ¶¶ 113-114.

*Court stated that other branches of the government could criticize Supreme Court decisions so long as this criticism did not threaten the Supreme Court's independence.<sup>80</sup> Here, the judicial decisions' substantive content compelled the impeachment and removal of both Mr. Ríos Ávalos and Mr. Fernández Gadea and so threatened the Supreme Court's independence.<sup>81</sup> Thus, the Court determined that the legislature infringed on both judicial independence and the balance of powers in Paraguay's government.<sup>82</sup>*

*The Court then analyzed the right to an impartial judge, which requires the judge to be subjectively unbiased and impartial.<sup>83</sup> Impartiality requires that judges base their decisions on the law without being involved in the dispute, having a clear position in the case before hearing it, an interest in the case's outcome, or preferring one party over another.<sup>84</sup> The Court stated that judges are presumed personally impartial unless there is proof of a personal bias against a case's parties.<sup>85</sup> A judge can be found objectively impartial when he provides evidence that eliminates any reasonable suspicion to the contrary.<sup>86</sup> The Court further stated that due process is required throughout a judge's removal proceedings because judges are guaranteed judicial independence and permanence of their position.<sup>87</sup>*

*The Court then addressed the representatives' and the Commission's allegation that the State formed a prior political pact to impeach Mr. Ríos Ávalos and Mr. Fernández Gadea.<sup>88</sup> The Court noted that a political pact for impeachment involving Congress and the President was mentioned at multiple Senate and Chamber of Deputies sessions in 2003, including a November 18 meeting, a November 25 meeting, and the December 12 impeachment proceedings.<sup>89</sup> Based on these events, the Court determined that it was reasonable to assume that there was a political agreement to impeach several justices.<sup>90</sup> The Court failed to find the Senate's exact reasons for impeaching Mr. Ríos Ávalos and Mr. Fernández Gadea, indicating that the Senate merely wanted open seats on the Supreme Court of Justice.<sup>91</sup> As a result, the Court determined that Mr. Ríos Ávalos and Mr. Fernández Gadea did not receive due process because Senate members were not subjectively impartial when removing them.<sup>92</sup> While recognizing that political agreements may sometimes be valid and helpful in government, the Court nevertheless held that subjective impartiality throughout judicial impeachment proceedings is essential.<sup>93</sup>*

Article 25(2)(c) (Remedies Must be Enforced), in relation to Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Ríos Ávalos and Mr. Fernández Gadea,<sup>94</sup> because:

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<sup>80</sup> Ríos Ávalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 114.

<sup>81</sup> *Id.* ¶ 115.

<sup>82</sup> *Id.* ¶ 116.

<sup>83</sup> *Id.* ¶ 118.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* ¶ 119.

<sup>86</sup> Ríos Ávalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 119.

<sup>87</sup> *Id.* ¶ 120.

<sup>88</sup> *Id.* ¶ 121.

<sup>89</sup> *Id.* ¶¶ 123-126.

<sup>90</sup> *Id.* ¶ 127.

<sup>91</sup> *Id.* ¶¶ 128-129.

<sup>92</sup> Ríos Ávalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 129.

<sup>93</sup> *Id.* ¶ 130.

<sup>94</sup> *Id.* "Declares" ¶ 2.



*The Court organized its analysis by first analyzing (a) the effectiveness of Mr. Ríos Ávalos and Mr. Fernández Gadea's filed actions and then (b) the guarantees of reasonable time for processing and deciding their constitutional challenges and actions.*<sup>95</sup>

*The Court first recognized the two obligations which states have under Article 25, namely: (1) to establish and ensure that people have effective remedies through competent authorities to protect themselves from actions which violate or reshape their fundamental rights; and (2) to enforce the decisions of such competent authorities in order to properly recognize and protect the people's rights.*<sup>96</sup> *Specifically, the Court interpreted Article 25 to establish access to a judicial remedy which must address the specific violations suffered by a victim.*<sup>97</sup>

*The Court highlighted that both Mr. Ríos Ávalos and Mr. Fernández Gadea challenged Senate Resolution Nos. 122 and 134's constitutionality despite these resolutions prohibiting constitutional challenges, and that the Supreme Court declared these resolutions invalid in Judgments Nos. 951 and 952.*<sup>98</sup> *The appeal process meant that Mr. Ríos Ávalos and Mr. Fernández Gadea had access to judicial remedies to protect their rights as required by Article 25.*<sup>99</sup> *However, because Congress later pressured the Supreme Court to invalidate Judgments Nos. 951 and 952 through Resolution No. 2382 and suspended the justices involved, there were no effective judicial remedies or protection for the alleged victims.*<sup>100</sup> *The Court also noted how the Constitutional Chamber nullified and voided the decisions despite previously conveying that it would enforce and notify Mr. Ríos Ávalos of Judgment No. 951.*<sup>101</sup>

*A judgment's effectiveness relies on whether it is enforced.*<sup>102</sup> *Non-enforcement of a judgment would be equivalent to the right being denied.*<sup>103</sup> *The Court affirmed that illusory remedies are not effective remedies, and thus the State's responsibility extends to enforcing judgments.*<sup>104</sup> *Specifically, the legislature's and Supreme Court's dismissal of the Constitutional Chamber's judgments; refusal to enforce Chamber's requested actions; and Congress's Resolution No. 1 left the alleged victims without judicial remedies.*<sup>105</sup> *Additionally, the Court went further and stated that Resolution No. 1 specifically could not be considered to be consistent with separation of powers in a democracy.*<sup>106</sup>

*The Court reasoned that Congress' threats to the Supreme Court were clearly improper and violated the alleged victims' rights to judicial remedies and protection.*<sup>107</sup> *The Court further noted that it was improper for the Supreme Court Justices, who disqualified themselves in prior actions regarding Mr. Ríos Ávalos and Mr. Fernández Gadea, to take part in*

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<sup>95</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 147.

<sup>96</sup> *Id.* ¶ 148.

<sup>97</sup> *Id.* ¶ 149.

<sup>98</sup> *Id.* ¶ 150.

<sup>99</sup> *Id.* ¶ 151.

<sup>100</sup> *Id.* ¶¶ 154-155.

<sup>101</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 156.

<sup>102</sup> *Id.* ¶ 157.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* ¶ 158.

<sup>105</sup> *Id.* ¶¶ 159-160.

<sup>106</sup> *Id.* ¶ 160.

<sup>107</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 161-162.

invalidating their judgments.<sup>108</sup> Rather than determining whether Resolution No. 2382 was valid, the Court held that the Constitutional Chamber and Supreme Court's rulings were inconsistent and ineffective and thus non-binding and unenforceable.<sup>109</sup>

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Ríos Ávalos and Mr. Fernández Gadea,<sup>110</sup> because: *The Court established that judicial guarantees may be violated if legal proceedings are delayed for too long.*<sup>111</sup> *The Court analyzed the following four elements to determine whether the judicial proceedings had been excessively delayed: (a) the judicial matter's complexity; (b) whether the plaintiff contributed to the length of the proceedings; (c) the judicial authority's actions; and (d) how the victim was affected by the duration of the proceedings.*<sup>112</sup>

*The Court examined two issues.*<sup>113</sup> *First, it examined the approximate six years between when the alleged victims filed actions of unconstitutionality in 2003 and when Judgments Nos. 951 and 952 passed in 2009.*<sup>114</sup> *Second, it analyzed the approximate nine years between Mr. Ríos Ávalos filing for appeal in 2010, and the appeal's admittance in 2019.*<sup>115</sup> *It noted as well that Mr. Fernández Gadea's appeal for clarification was never admitted despite his heirs' continued attempts.*<sup>116</sup>

*The State argued that this delay was a result of several justices' disqualifications.*<sup>117</sup> *Nonetheless, the Court concluded that the actions for unconstitutionality and appeals for clarification were both unreasonably delayed.*<sup>118</sup> *The Court reasoned that, despite many officials disqualifying themselves from the proceedings, this issue was not complex enough to justify the delay.*<sup>119</sup> *The political and constitutional issues in dispute were no different from the typical, procedural obstacles faced by any competent court.*<sup>120</sup> *The Court also concluded that the interested parties consistently requested the court's decision for both actions of unconstitutionality and for the appeals for clarification.*<sup>121</sup> *The Court found this particularly pressing where Mr. Fernández Gadea's appeal for clarification had no response despite the requirement for a ruling to be issued.*<sup>122</sup> *While the Court did not analyze the delay's harm to the alleged victims due to a lack of evidence, it nevertheless determined that the State failed its duty of handling these proceedings in a reasonable time.*<sup>123</sup>

The Court did not rule on:

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<sup>108</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 163.

<sup>109</sup> *Id.* ¶ 164.

<sup>110</sup> *Id.* "Declares" ¶ 3.

<sup>111</sup> *Id.* ¶ 166.

<sup>112</sup> *Id.* ¶ 167.

<sup>113</sup> *Id.* ¶ 168.

<sup>114</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 168.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* ¶ 175.

<sup>117</sup> *Id.* ¶ 169.

<sup>118</sup> *Id.* ¶ 174.

<sup>119</sup> *Id.* ¶ 170.

<sup>120</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 170.

<sup>121</sup> *Id.* ¶ 171.

<sup>122</sup> *Id.* ¶ 175.

<sup>123</sup> *Id.* ¶¶ 173-174, 176.

Article 8(2)(h) (Right to Appeal) of the Convention to the detriment of Mr. Ríos Ávalos and Mr. Fernández Gadea,<sup>124</sup> because:

*The Court noted that both Mr. Ríos Ávalos and Mr. Fernández Gadea filed actions to challenge the constitutionality of Senate Resolutions and protect their rights by arguing their claims before a competent authority.<sup>125</sup> The Court concluded that it was unnecessary to hear arguments about Article 8(2)(h) (Right to Appeal) because the appropriate analysis should be made under judicial protections as described by Article 25(2)(c) (Remedies Must be Enforced), in relation to Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 1(1) (Obligation of Non-Discrimination) of the Convention.<sup>126</sup>*

Article 24 (Right to Equal Protection) of the Convention, to the detriment of Mr. Ríos Ávalos and Mr. Fernández Gadea,<sup>127</sup> because:

*The Court noted that Mr. Ríos Ávalos's and Mr. Fernández Gadea's representatives could cite different rights than the Commission cited because they are entitled to all rights that the American Convention creates.<sup>128</sup> However, the Court also stated that the claims supporting allegation of violation of right to protection of honor and dignity did not include facts from the Merits Report.<sup>129</sup> The Court determined that deciding these issues would violate due process of the parties to this decision and so declined to analyze these claims.<sup>130</sup> The Court also determined that arguments about the level of harm to victims from impeachment, investigation and criminal case were necessary for reparations and not to the violation of the right to protection of honor and dignity.<sup>131</sup>*

*Additionally, the Court determined that the representatives' arguments that Mr. Ríos Ávalos and Mr. Fernández Gadea had been discriminated against on a political basis did not include specific arguments about how they were discriminated.<sup>132</sup> The Court also noted that it was not provided specific information about the Supreme Court's judges in determining impeachment, what position the judges were in when the rulings were issued separately or the position of Congress on the impeachment or rulings.<sup>133</sup> The Court could not address the representatives' argument that Senate Resolution No. 122, which prevented Mr. Ríos Ávalos and Mr. Fernández Gadea from appealing the impeachment decision, was also discriminatory because this argument discussed the due process guarantees.<sup>134</sup> Instead, the Court determined that the best analysis would be to again analyze the right to judicial protection.<sup>135</sup>*

### C. Dissenting and Concurring Opinions

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<sup>124</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 134.

<sup>125</sup> *Id.*

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

<sup>127</sup> *Id.* ¶ 140.

<sup>128</sup> *Id.* ¶ 135.

<sup>129</sup> *Id.* ¶ 136.

<sup>130</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 136.

<sup>131</sup> *Id.* ¶ 137.

<sup>132</sup> *Id.* ¶¶ 138-139.

<sup>133</sup> *Id.* ¶ 139.

<sup>134</sup> *Id.* ¶ 140.

<sup>135</sup> *Id.*

[None]

#### IV. REPARATIONS

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

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

###### 1. Judgment as a Form of Reparation

The Court stated that the Judgment itself serves as a form of reparation.<sup>136</sup>

###### 2. Restitution

The Court noted there were no current Supreme Court vacancies, and so it was impossible to reinstate Mr. Ríos Ávalos.<sup>137</sup> Instead, the Court ordered the State to pay Mr. Ríos Ávalos \$80,000 as restitution.<sup>138</sup> The Court noted that Mr. Fernández Gadea could not receive this reparation because he had already died.<sup>139</sup>

###### 3. Publish the Judgment

The Court ordered the State to publish the official summary of the Judgment in the Official Gazette with legible font.<sup>140</sup> The State must also legibly publish this Judgment for one year on official websites for the Legislature and the Judiciary in Paraguay's official languages.<sup>141</sup>

###### 4. Incorporate the Convention

The Court recognized that the Senate enacted a new impeachment procedure in 2015, which the Court did not analyze and which the Court could not amend.<sup>142</sup> Instead of amending the 2015 enacted impeachment procedure, the Court repeated that the State is obligated to incorporate the American Convention and the Inter-American Court's interpretation of the Convention in their domestic laws and procedures.<sup>143</sup>

##### B. *Compensation*

The Court awarded the following amounts:

###### 1. Pecuniary Damages

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<sup>136</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, "And Establishes" ¶ 4.

<sup>137</sup> *Id.* ¶ 186.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* ¶ 187.

<sup>140</sup> *Id.* ¶ 190.

<sup>141</sup> *Id.*

<sup>142</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 198.

<sup>143</sup> *Id.*

The Court awarded Mr. Ríos Ávalos \$400,000 for the loss of his earnings.<sup>144</sup> The Court then awarded Mr. Fernández Gadea \$250,000 for the loss of his earnings.<sup>145</sup> The Court divided Mr. Fernández Gadea's amount accordingly: (1) where 50% would be rewarded to Mr. Fernández Gadea's wife, Mrs. María Concepción Villalba Quevedo, or otherwise distributed according to her will if she is dead; and (2) the other 50% to be distributed between Mr. Fernández Gadea's children, being Carlos Aníbal Fernández Villalba, José Luis Fernández Villalba, Julio Cesar Fernández Villalba, Jesús María Fernández Villalba, and Catalina Fernández Ocampos. The Court ordered that if any children are deceased, the other surviving children's amounts would be increased by the deceased's amount.<sup>146</sup>

## 2. Non-Pecuniary Damages

The Court awarded both Mr. Ríos Ávalos and Mr. Fernández Gadea \$25,000 each as compensation for non-pecuniary damages.<sup>147</sup> The Court repeated the same payment arrangement for Mr. Fernández Gadea's family as previously described in the Pecuniary Damages section above.<sup>148</sup>

## 3. Costs and Expenses

The Court awarded both Mr. Ríos Ávalos and Mr. Fernández Gadea \$20,000 each for the times that both had to appear and for the actions they had to file.<sup>149</sup> The Court again repeated the same payment arrangement for Mr. Fernández Gadea's family as previously described.<sup>150</sup> The Court also ordered that the State pay the Victims' Legal Assistance Fund \$685.32 no later than six months following notification of the judgment.<sup>151</sup>

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

\$ 740, 685.32

## C. Deadlines

The State must publish the official summary of the Judgment and Judgment as specified within six months of being notified of the judgment and must inform the Court immediately following publication.<sup>152</sup>

The State must pay restitution and other damages for both Mr. Ríos Ávalos and Mr. Fernández Gadea within one year of the notification of the Judgment.<sup>153</sup> The State must pay the Victims' Legal Assistance Fund within six months of the notification of the Judgment.<sup>154</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

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<sup>144</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 214.

<sup>145</sup> *Id.* ¶ 215.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* ¶ 228.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* ¶ 243.

<sup>150</sup> Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, ¶ 243.

<sup>151</sup> *Id.* ¶ 249.

<sup>152</sup> *Id.* ¶ 190.

<sup>153</sup> *Id.* ¶¶ 250-251.

<sup>154</sup> *Id.* ¶ 249.

[None]

## VI. COMPLIANCE AND FOLLOW-UP

**December 6, 2021:** Paraguay published the entire decision on the Supreme Court’s official website.<sup>155</sup>

**December 16, 2021:** Paraguay published a summary of the IACHR decision in volume No. 250 of the Official Gazette, starting on page 196.<sup>156</sup> Additionally, Paraguay published the entire decision on their legislature’s website.<sup>157</sup>

## VII. LIST OF DOCUMENTS

### A. Inter-American Court

#### 1. Preliminary Objections

[None]

#### 2. Decisions on Merits, Reparations and Costs

*Ríos Avalos et al. v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 429, (Aug. 19, 2021).*

#### 3. Provisional Measures

[None]

#### 4. Compliance Monitoring

*Ríos Avalos et al. v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Aug. 19, 2021).*

#### 5. Review and Interpretation of Judgment

[None]

### B. Inter-American Commission

<sup>155</sup>*Sentencia de la Corte Interamericana de Derechos Humanos (CIDH) [Judgment of the Inter-American Court of Human Rights (IACHR)], CORTE SUPREMA DE JUSTICIA [SUP. CT.] (Dec. 6, 2021), <https://www.pj.gov.py/notas/21325-sentencia-de-la-corte-interamericana-de-derechos-humanos-cidh>.*

<sup>156</sup>*Corte Interamericana de Derechos Humanos Caso Río Avalos y Otros vs. Paraguay Sentencia de 19 de Agosto de 2021 Resumen Oficial Emitido por La Corte Interamericana [Inter-American Court of Human Rights Case Río Avalos et al. Paraguay Sentence of August 19, 2021 Official Summary Issued by the Inter-American Court], 250 GACETA OFICIAL [OFF. GAZETTE] 196 (2021) (Para.), <http://www.gacetaoficial.gov.py/index/getDocumento/72512>.*

<sup>157</sup> *Sentencia del 19 de Agosto de 2021 Corte Interamericana de Derechos Humanos Caso Río Avalos y Otros vs. Paraguay [Judgment of August 19, 2021 Inter-American Court of Human Rights Case Río Avalos et al. Paraguay], DIGESTO LEGISLATIVO [LEGIS. DIG.], <http://digesto.senado.gov.py/detalles&id=11855>.*

## 1. Petition to the Commission

[None]

## 2. Report on Admissibility

Ríos Avalos v. Paraguay, Admissibility Report, Report No. 47/09, Inter-Am. Comm'n H.R., Petition No. 969-03, (Mar. 19, 2009).

Fernández Gadea v. Paraguay, Admissibility Report, Report No. 18/09, Inter-Am. Comm'n H.R., Petition No. 525-04, (Mar. 19, 2009).

## 3. Provisional Measures

[None]

## 4. Report on Merits

Ríos Avalos et al. v. Paraguay, Report on Merits, Report No. 17/19, Inter-Am. Comm'n H.R., Case 12.702, (Feb. 12, 2019).

## 5. Application to the Court

[None]

## VIII. BIBLIOGRAPHY

[None]