

Urrutia Laubreaux v. Chile

ABSTRACT¹

This case is about a judge in Chile who was sanctioned for having written an academic paper criticizing the judiciary for the way it had approached the transition from dictatorship to democracy, and for having brought the paper to the attention of the Supreme Court. The Court found Chile in violation of the American Convention.

I. FACTS

A. Chronology of Events

June 15, 2001: Mr. Daniel Urrutia Laubreaux starts his position as judge of trial and guarantees in Freirina, Third Region of Atacama.²

January 17, 2003: Mr. Urrutia Laubreaux receives a promotion and begins working in Ovalle, Fourth Region of Coquimbo.³

April 8, 2004: The Supreme Court of Chile authorizes Mr. Urrutia Laubreaux to attend the Human Rights and Processes of Democratization Certification Program, a collaboration by the Universidad de Chile Law School and the International Center for Transitional Justice.⁴

March – September 2004: Mr. Urrutia Laubreaux attends the Processes of Democratization Certification Program.⁵

November 30, 2004: After passing the certification program, Mr. Urrutia Laubreaux submits to the Supreme Court his final paper, entitled: “Public Policy Proposal for Introducing a Human Rights Focus to the Work of the Judicial Branch of the Republic of Chile” (the “Final Paper”).⁶ Along with his submission, Mr. Urrutia Laubreaux requests that the Final Paper be made available for use by the plenary.⁷

In the Final Paper, Mr. Urrutia Laubreaux criticizes the Judicial Branch for its treatment of Chile’s military dictatorship and suggests instead taking a human rights-centered approach.⁸ Particularly, the Final Paper emphasized that the Judicial Branch exacerbated human rights violations by allowing them to go unpunished.⁹

Mr. Urrutia Laubreaux’s bases his analysis upon the findings of the Truth and Reconciliation Commission.¹⁰ He calls upon the moral duty of the Supreme Court, the highest

¹ Aria Soeprono, Author; Jenna Won, Editor; Selene Estrada-Villela, Senior IACHR Editor; Aaron Kircher, Chief IACHR Editor; Cesare Romano, Faculty Advisor

² Urrutia Laubreaux v. Chile, Report on Merits Report No. 21/18, Inter-Am. Comm’n H.R., Case No. 12.955, ¶ 30 (Feb. 24, 2018); Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 409, ¶ 57 (Aug. 20, 2020).

³ Urrutia Laubreaux v. Chile, Report on Merits, ¶ 30; Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 57.

⁴ Urrutia Laubreaux v. Chile, Report on Merits, ¶ 34.

⁵ *Id.*

⁶ *Id.* ¶ 35.

⁷ *Id.*

⁸ *Id.* ¶ 36.

⁹ *Id.*

¹⁰ Urrutia Laubreaux v. Chile, Report on Merits, ¶¶ 36-37.

governing body of the Judicial Branch, to instill State responsibility and repair community trust in the judicial system. Lastly, Mr. Urrutia Laubreaux proposes that the Judicial Branch perform a public act of recognition for such conclusions, as well as for those dismissed from the Judicial Branch for expressing political opinions; publicly apologize to the thousands of human rights victims; commit to guarantees of non-repetition; and appoint a Special Secretariat to the Office of Supreme Court Studies to implement a human rights approach in the Judicial Branch.¹¹

December 22, 2004: The Supreme Court sends the Final Paper to the Appellate Court of La Serena.¹²

December 27, 2004: The Secretary of the Supreme Court rejects the Final Paper on the basis that it presents views that are unsuitable for the tribunal and therefore unacceptable.¹³

January 13, 2005: The Appellate Court sends an official letter to Mr. Urrutia Laubreaux, requiring a response, within five days, explaining the reasons for sending a copy of his Final Paper to the Supreme Court.¹⁴

January 18, 2005: Mr. Urrutia Laubreaux timely submits the requested response, which clarified that the report was intended for academic purposes only.¹⁵ He also intended to demonstrate his high grade and research to the court, which culminated in his Final Paper.¹⁶

March 31, 2005: The Appellate Court sanctions Mr. Urrutia Laubreaux with written censure.¹⁷ The disciplinary ruling reprimands Mr. Urrutia Laubreaux for criticizing his superiors and upsetting the legal structure of the Judicial Branch, which relies on a strict chain of command.¹⁸ The Appellate Court further asserts that by sending his Final Paper to the Supreme Court, Mr. Urrutia Laubreaux violated the Organic Code of Tribunals in Chile, Article 232, subparagraphs 1 and 4, which bans judicial officials from criticizing their superiors.¹⁹

April 5, 2005: Mr. Urrutia Laubreaux appeals the Appellate Court's decision.²⁰ He argues that the Final Paper was not published, refrains from identifying specific actors, and refers instead to the Supreme Court's role generally.²¹ Mr. Urrutia Laubreaux requests acquittal and removal of his sanction, asserting that the judiciary should not be shielded from all intellectual discourse and criticisms on past actions and decisions.²²

May 6, 2005: The Supreme Court changes the sanction from "written censure" to "private admonishment," which remains on Mr. Urrutia Laubreaux's personnel record.²³ The Supreme Court reasons that the Final Paper demonstrated an absence of judgment, moderation, and

¹¹ Urrutia Laubreaux v. Chile, Report on Merits, ¶ 38.

¹² *Id.* ¶ 39.

¹³ *Id.* ¶ 40.

¹⁴ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 61.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Urrutia Laubreaux v. Chile, Report on Merits, ¶ 43.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* ¶ 45.

²¹ *Id.*

²² *Id.* ¶ 46.

²³ Urrutia Laubreaux v. Chile, Report on Merits, ¶ 47.

respect by criticizing and instructing the Supreme Court.²⁴ The Supreme Court holds that Mr. Urrutia Laubreaux violated Article 323, paragraphs 4 of the Organic Code of Tribunals which prohibits judicial officials from criticizing the official conduct of other judicial officials.²⁵ The Court relies on Article 544.8 of the Organic Code of the Courts to impose disciplinary action in this case.²⁶ Six of the magistrates issue their dissenting opinions, several of which emphasize the importance of applying the freedom of opinion which is granted by Political Constitution of the Republic.²⁷

May 2006: Mr. Urrutia Laubreaux is appointed as a judge to the Seventh Guarantee Court in the city of Santiago.²⁸

June 2006-June 2008: Mr. Urrutia Laubreaux is subjected to a series of disciplinary proceedings.²⁹ In June 2006, Mr. Urrutia Laubreaux issues a report on a visit to a detention center and is acquitted from charges that he lacked authority to visit the jail after over a year of disciplinary procedures.³⁰ In May 2008, the Ministry of Internal Affairs investigates Mr. Urrutia Laubreaux's decision to reject criminal suits for public protests.³¹

2007-2009: Mr. Urrutia Laubreaux serves two terms as the coordinator of the Human Rights and Gender Committee in the National Association of Judicial Branch Magistrates in Chile.³²

April 2009-January 2012: Mr. Urrutia Laubreaux takes an unpaid leave and moves to Mexico.³³

February 2012: Mr. Urrutia Laubreaux rejoins the Chilean Judicial Branch.³⁴

May 29, 2018: The Supreme Court decides to rescind its sanction on Mr. Urrutia Laubreaux.³⁵

March 12, 2019: All references to the revoked sanction are removed from Mr. Urrutia Laubreaux's personnel record.³⁶

II. PROCEDURAL HISTORY

A. Before the Commission

December 5, 2005: The Center for Justice and International Law (Centro por la Justicia y el Derecho Internacional; "CEJIL") and Daniel Urrutia Laubreaux (collectively, the "petitioners") file a petition with the Inter-American Commission on Human Rights.³⁷

²⁴ Urrutia Laubreaux v. Chile, Report on Merits, ¶ 48.

²⁵ *Id.* ¶ 49.

²⁶ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 65.

²⁷ Urrutia Laubreaux v. Chile, Report on Merits, ¶¶ 50-51.

²⁸ *Id.* ¶ 31.

²⁹ *Id.* ¶¶ 53-57.

³⁰ *Id.* ¶ 54.

³¹ *Id.* ¶ 55.

³² *Id.* ¶ 31.

³³ Urrutia Laubreaux v. Chile, Report on Merits, ¶ 57.

³⁴ *Id.* ¶ 21.

³⁵ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 87.

³⁶ *Id.* ¶ 88.

³⁷ Urrutia Laubreaux v. Chile, Report on Merits, ¶ 1.

July 21, 2014: The Commission finds the petition admissible and issues the Report on Admissibility No. 51/14.³⁸ The Commission also notifies the parties of admissibility.³⁹ The petitioners assert that the State of Chile violated Mr. Urrutia Laubreaux's freedom of expression and due process rights by sanctioning him for criticizing the judicial branch in an academic paper.⁴⁰ Although Mr. Urrutia Laubreaux met with the President of the Supreme Court three times,⁴¹ they were unable to reach an agreement.⁴²

February 24, 2018: The Commission approves its Report on the Merits, concluding that the State violated Mr. Urrutia Laubreaux's rights.⁴³ Specifically, the Commission concludes that the State violated Articles 8(1), 8(2)(b), 8(2)(c), 9, 13(2), and 25(1) of the American Convention in relation to Articles 1(1) and (2) of the same instrument.⁴⁴ The Commission recommends that the State adopt measures to undo the sanction on Mr. Urrutia Laubreaux, provide appropriate reparations including compensation and measures of satisfaction, and order non-repetition measures.⁴⁵

April 5, 2018: The Commission notifies the State of the Merits Report, granting two months to report on its compliance with the Commission's recommendations.⁴⁶

May 28, 2018: The Supreme Court annuls the sanction of private admonishment against Mr. Urrutia Laubreaux.⁴⁷ Yet, after four extensions of the original deadline for a compliance report, the Commission considers the State in non-compliance with its recommendations for reparations.⁴⁸

B. Before the Court

February 1, 2019: The Commission submits the case to the Court, after the State failed to adopt its recommendations.⁴⁹

May 6, 2019: The Representatives, Fabián Sánchez Matus, Javier Cruz Angulo Nobara and José Antonio Caballero Juárez, submit a brief with pleadings, motions, and evidence to the Court.⁵⁰

July 8, 2019: The State forwards the requested evidence to the Court.⁵¹ On this same date, the State submits its reply brief and six preliminary objections regarding the admissibility of the

³⁸ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(b).

³⁹ Urrutia Laubreaux v. Chile, Report on Merits, ¶ 2.

⁴⁰ *Id.* ¶ 3.

⁴¹ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 68.

⁴² Urrutia Laubreaux v. Chile, Report on Merits, ¶ 2.

⁴³ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(c).

⁴⁴ Urrutia Laubreaux v. Chile, Report on Merits, ¶ 98.

⁴⁵ *Id.* ¶ 99(1)-(3).

⁴⁶ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 3.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* ¶¶ 4-5.

⁵⁰ *Id.* ¶ 7.

⁵¹ *Id.* ¶ 8.

entire case as well as specific facts.⁵² The State contests the Commission’s allegations and its recommendations for reparations and requests a conciliation hearing.⁵³

January 20, 2020: The representatives request provisional measures to protect Mr. Urrutia Laubreaux’s rights.⁵⁴

January 30, 2020: The Court holds a public hearing where Mr. Urrutia Laubreaux testifies, and the parties provide further explanations.⁵⁵

Before March 2, 2020: The Court receives three amicus curiae briefs from: the Chilean National Association of Judges (Asociación Nacional de Magistrados de Chile; “ANM”); members from the University of Guadalajara; and the Human Rights Clinic of the Human Rights Research and Education Center and Scholars At Risk at the University of Ottawa.⁵⁶

March 2, 2020: The State and the Commission submit its final written arguments and observations.⁵⁷

March 12, 2020: The Court rejects the request for provisional measures.⁵⁸

1. Violations Alleged by Commission⁵⁹

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 13(2) (Prohibition of A Priori Censorship)

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)

2. Violations Alleged by Representatives of Mr. Urrutia Laubreaux⁶⁰

Same Violations Alleged by the Commission, plus:

Article 8(2)(d) (Right to Defense or Legal Assistance and to Communicate Freely with Counsel)

in relation to:

⁵² Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 9.

⁵³ *Id.*

⁵⁴ *Id.* ¶ 14.

⁵⁵ *Id.* ¶ 16.

⁵⁶ *Id.* ¶ 17.

⁵⁷ *Id.* ¶ 18.

⁵⁸ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 14; Urrutia Laubreaux v. Chile, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. C) 6: “Resolves” ¶ 1 (Mar. 12, 2020).

⁵⁹ Urrutia Laubreaux v. Chile, Preliminary Objections, Report on Merits, ¶ 98.

⁶⁰ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 7, n.3; Fabián Sánchez Matus, Javier Cruz Angulo Nobara and José Antonio Caballero Juárez served as representatives of Mr. Urrutia Laubreaux.

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

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

III. MERITS

A. Composition of the Court⁶¹

Elizabeth Odio Benito, President
L. Patricio Pazmiño Freire, Vice-President
Humberto Antonio Sierra Porto, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge
Eugenio Raúl Zaffaroni, Judge
Ricardo Pérez Manrique, Judge

Romina I. Sijniensky, Deputy Secretary

B. Decision on the Merits

August 27, 2020: The Court issues its Judgment on Merits, Reparations, and Costs.⁶²

The Court found unanimously:

To reject the preliminary objection asserted on July 8, 2019, requesting the case submission be reviewed for legality.⁶³

While the Court had the authority to review the Commission's actions, such review is not required during the procedure before the Court.⁶⁴ The Court determined that such review is only appropriate where a serious error is shown by realistic proof of harm.⁶⁵ Because the Commission complied with Article 35 (1)(c), the State was unable to demonstrate a serious error that violated the right to defense.⁶⁶

To reject the preliminary objection that the Court cannot review factual decisions of the domestic court,⁶⁷ because:

The State asserted that the Court could not reassess the domestic court's ruling, because the State had already annulled the decision responsible for the disciplinary sanctions against Mr. Urrutia Laubreaux.⁶⁸ The Court rejected this argument, noting that although it is not a fourth instance court, it may still analyze domestic proceedings to determine whether a violation of the Convention has occurred.⁶⁹

⁶¹ Pursuant to the Court's Rules of Procedure, provisions 19(1) and 19(2), Judge Eduardo Vio Grossi did not participate in the deliberation nor signature of this judgment because he is a Chilean national. *Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs*, n.*. Secretary of the Court Pablo Saavedra Alessandri did not participate in the deliberation nor signature of this judgment. *Id.* n.*.

⁶² *Id.*

⁶³ *Id.* "Decides" ¶ 1.

⁶⁴ *Id.* ¶ 25.

⁶⁵ *Id.*

⁶⁶ *Id.* ¶ 26.

⁶⁷ *Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs*, "Decides" ¶ 2.

⁶⁸ *Id.* ¶ 28.

⁶⁹ *Id.* ¶¶ 31, 34.

The Court found unanimously that Chile had violated:

Article 13 (Freedom of Thought and Expression) of the American Convention on Human Rights, in relation to Article 1(1) of the American Convention (Obligation of Non-Discrimination), to the detriment of Daniel David Urrutia Laubreaux,⁷⁰ because:

The Court considered the freedom of thought and expression fundamental to democracy, and identified both individual and social components of receiving and imparting communications.⁷¹ The individual component implies an individual right to express oneself, while the social component implies a collective right to receive information and thoughts from others.⁷² Further, the Court determined that the freedom of expression includes the right to use any means appropriate to disseminate thought to the greatest number of people.⁷³ The Court recognized that the right to communicate one's own perspective is as important as everyone's right to know others' opinions.⁷⁴ Yet, the freedom of expression is not absolute, and applies to judges differently than other people and public officials, generally.⁷⁵ In particular, the United Nations Basic Principles on the Independence of the Judiciary specified that judges should preserve the dignity of their position with respect to judicial impartiality.⁷⁶ The Bangalore Principles of Judicial Conduct and the European Court have also expressed the same sentiment of impartiality that may restrict the freedom of expression.⁷⁷

The Court noted that Article 8(1) guarantees an independent and impartial tribunal, which is a legitimate reason to restrict certain rights of judges.⁷⁸ The Court determined whether a restriction is justified under the American Convention on a case-by-case basis.⁷⁹ There are three considerations in the analysis of compliance with Article 13(2): "(i) be previously established by law, both formally and substantially; (ii) respond to a purpose permitted by the American Convention . . . and (iii) be necessary in a democratic society."⁸⁰

Here, Mr. Urrutia Laubreaux wrote about a general topic in an academic paper.⁸¹ As a result, he was reprimanded with written censure, which remained on his personnel record for 13 years.⁸² This unjust sanction prevented Mr. Urrutia Laubreaux's inclusion on the list of judges with "Outstanding Performances," and negatively characterized his professional life.⁸³ The State's ultimate choice to annul the sanction could not remedy this harm.⁸⁴ In its decision, the Supreme Court noted that the tone of Mr. Urrutia Laubreaux's final paper was strictly academic and did not discuss or reference a specific case.⁸⁵

⁷⁰ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 96, "Declares" ¶ 3.

⁷¹ *Id.* ¶¶ 75-77.

⁷² *Id.* ¶ 76.

⁷³ *Id.* ¶ 78.

⁷⁴ *Id.* ¶ 79.

⁷⁵ *Id.* ¶¶ 81-82.

⁷⁶ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 83.

⁷⁷ *Id.*

⁷⁸ *Id.* ¶ 84.

⁷⁹ *Id.*

⁸⁰ *Id.* ¶ 85.

⁸¹ *Id.* ¶ 86.

⁸² Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 86, 89.

⁸³ *Id.* ¶ 95.

⁸⁴ *Id.*

⁸⁵ *Id.* ¶¶ 87, 89.

The Court noted the importance of the principle of complementarity, which serves to hold the state accountable for resolving human rights violations, and the international jurisdiction merely complements, rather than substitutes, the protections of the State.⁸⁶ Thus, the Court may only reach issues of human rights which have not been resolved by the State.⁸⁷ The Court recognized that, despite annulling the sanction, Mr. Urrutia Laubreaux's career and reputation were negatively impacted by the sanction being noted on his personnel record for 13 years before it was finally eliminated.⁸⁸ In delaying to remediate the negative impacts of the sanction, the State failed to ensure that Mr. Urrutia's human rights guarantees were respected.⁸⁹

Article 8 (Right to a Fair Trial), 8 (2)(b) (Right to Have Prior Notification of Charges), and 8 (2)(c) (Right to Adequate Time and Means to Prepare Defense) in relation to Article 1(1) of the Convention (Obligation of Non-Discrimination), to the detriment of Daniel David Urrutia Laubreaux,⁹⁰ because:

*The Court noted that Article 8 imposes a set of procedural requirements that guarantee that an individual can adequately defend his rights.⁹¹ In both criminal and domestic proceedings involving sanctions, the State must provide non-arbitrary proceedings that satisfy minimum due process guarantees.⁹² The Court cited the case of *Reverón Trujillo v. Venezuela*, which addressed the due process guarantees specific to protecting the independence of judges and judicial function.⁹³ Likewise, the State was responsible for ensuring judicial function on both an institutional as well as an individual level.⁹⁴ Judicial independence requires the following guarantees: 1) adequate selection process; 2) a guarantee of tenure; and 3) protection against external pressures.⁹⁵ To avoid creating external pressure, the State must not unduly interfere with the members of the judiciary, and take measures against such interference.⁹⁶ Such measures must protect judges against abusive or arbitrary proceedings that violate their independence.⁹⁷ The Court referenced excerpts from the Statute of the Iberoamerican Judge, General Comment No. 32 of the Human Rights Committee, and the Basic Principles, to support its rationale for state responsibility of judicial independence.⁹⁸*

Adequate prior notification must include a detailed description of the conduct with sufficient facts to satisfy the defendant's right to know the charges against him, such that he can appropriately defend himself, and the judge can consider the decision.⁹⁹ The Court found that Chile violated Mr. Urrutia Laubreaux's right to prior notification and adequate opportunity to defense by failing to adequately inform him of the allegations against him.¹⁰⁰ The Appellate Court of La Serena never informed Mr. Urrutia Laubreaux of disciplinary procedures against

⁸⁶ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 90-91.

⁸⁷ *Id.* ¶ 93.

⁸⁸ *Id.* ¶¶ 94-95.

⁸⁹ *Id.* ¶¶ 93, 96.

⁹⁰ *Id.* "Declares," ¶ 4.

⁹¹ *Id.* ¶ 100.

⁹² Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 101-103.

⁹³ *Id.* ¶ 104.

⁹⁴ *Id.* ¶ 105.

⁹⁵ *Id.*

⁹⁶ *Id.* ¶ 106.

⁹⁷ *Id.* ¶ 108.

⁹⁸ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 107-110.

⁹⁹ *Id.* ¶ 113.

¹⁰⁰ *Id.* ¶¶ 113, 117.

him until after the sanction was already imposed.¹⁰¹ In a letter dated January 13, 2005, the Appellate Court requested that Mr. Urrutia Laubreaux explain the reasons for sending his final paper to the Supreme Court.¹⁰² However, this was not an adequate opportunity for Mr. Urrutia Laubreaux to defend himself because he was unaware of any disciplinary proceedings against him.¹⁰³ Mr. Urrutia Laubreaux was never otherwise notified of the disciplinary procedure, the rules he violated, or the true reasons behind the Appellate Court's letter.¹⁰⁴ The letter also did not give him an opportunity to defend himself, other than to report on his reasons for presenting his paper to the Supreme Court of Justice.¹⁰⁵ Yet, this report still was not a defense, as he never mentioned the disciplinary proceedings, and only explained that his paper demonstrated his course completion and high mark.¹⁰⁶ Further, Mr. Urrutia Laubreaux was never given a hearing, as required by Article 536 of the Organic Code of the Courts.¹⁰⁷

The obligation of impartiality requires judges to recuse themselves once they become aware that they have previously expressed an opinion of decision on the matter.¹⁰⁸ Here, Chile violated Mr. Urrutia Laubreaux's right to an impartial disciplinary action.¹⁰⁹ To eliminate any doubt of impartiality, Article 8(1) prohibits a judge from having any subjective prejudice when presiding over a dispute.¹¹⁰ The Court considered that the justices who expressed Mr. Urrutia Laubreaux's paper was "inadequate and unacceptable" were the same individuals who ruled on the appeal.¹¹¹ Thus, the justices who heard the appeal did not demonstrate an impartial view on the facts of the case.¹¹²

Article 9 (Freedom from *Ex Post Facto* Laws), in relation to Article 1(1) (Obligation of Non-Discrimination), and Article 2 (Obligation to Give Domestic Legal Effect to Rights), Daniel David Urrutia Laubreaux,¹¹³ because:

The Court recognized that the scope of legality, in regards to disciplinary measures, depends upon the matter regulated in each circumstance.¹¹⁴ For example, disciplinary action in domestic sanctions must receive different legal treatment than those in criminal matters.¹¹⁵ The Court, citing *López Mendoza v. Venezuela*, emphasized that the scope of a court's discretion should be exercised with enough clarity to prevent arbitrary interference.¹¹⁶ The Court applied Article 9 to Mr. Urrutia Laubreaux's proceedings, because the proceedings had a sanctioning nature.¹¹⁷ Further, the principle of legality is crucial to prevent external pressures on judges and their judicial independence.¹¹⁸ Paragraph 4 of Article 323 strictly prohibits attacks on

¹⁰¹ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 115.

¹⁰² *Id.* ¶ 114.

¹⁰³ *Id.* ¶¶ 114, 117.

¹⁰⁴ *Id.* ¶ 115.

¹⁰⁵ *Id.* ¶ 117.

¹⁰⁶ *Id.*

¹⁰⁷ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 116.

¹⁰⁸ *Id.* ¶ 119.

¹⁰⁹ *Id.* ¶ 118.

¹¹⁰ *Id.*

¹¹¹ *Id.* ¶ 122.

¹¹² *Id.* ¶¶ 120-125.

¹¹³ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, "Declares" ¶ 5.

¹¹⁴ *Id.* ¶ 129.

¹¹⁵ *Id.*

¹¹⁶ *Id.* ¶ 130.

¹¹⁷ *Id.* ¶ 131.

¹¹⁸ *Id.* ¶¶ 131, 136.

judicial conduct “in any way.”¹¹⁹ As analyzed by the Court, this language is highly uncertain and can be construed broadly, such that an “attack” need not be published.¹²⁰ Therefore, the Supreme Court of Chile abused the discretion granted under Article 323 when it deemed Mr. Urrutia Laubreaux’s paper as an attack on judicial officials.¹²¹ Additionally, the State implicitly conceded that these judicial grounds had not been invoked in fourteen years since Mr. Urrutia Laubreaux’s case.¹²² The Court noted that judges should be able to criticize functions of the state, including other judges.¹²³ Additionally, the Court admonished the hierarchal judiciary model, which undermines judges’ internal independence, contributes to a culture of unconditional subordination, and creates a fear of judicial power.¹²⁴ Article 2 creates two obligations that must be fulfilled by the State: 1) remove norms which violate human rights guarantees, and 2) adopt norms and establish practices which promote and protect human rights.¹²⁵ In relation to Article 2, the State failed in its obligation to discontinue any norms which presented a violation of Convention’s guarantees.¹²⁶

C. Concurring and Separate Opinions

1. Concurring Separate Opinion of Judge Eugenio Raúl Zaffaroni

In a separate Opinion, Judge Raúl Zaffaroni pointed out that sanctioning Mr. Urrutia Laubreaux whose criticisms were not publicized, demonstrated a vertical, hierarchized corporate organization of the judiciary similar to the totalitarian regimes of several European countries.¹²⁷ In such a system, Judge Raúl Zaffaroni emphasized that judges are forced to renounce their rights in favor of corporate values.¹²⁸ In doing so, judicial impartiality, an essential component of judicial independence, is lost.¹²⁹ Judge Raúl Zaffaroni conveyed that in pursuit of a more perfect system, judges should be free from both external and internal pressures, and behave as colleagues in an open, democratic dynamic.¹³⁰ To add another layer of error to the sanctions, Raúl Zaffaroni identified that Mr. Urrutia Laubreaux was prohibited from publicly defending himself, leaving him defenseless against “media lynching.”¹³¹

2. Concurring Separate Opinion of Judge L. Patricio Pazmiño Freire

In a separate Opinion, Judge Pazmiño Freire indicated that judges are only compelled to follow the law, and should not feel pressured to agree with the majority opinion.¹³² Judge Pazmiño Freire also noted that protecting judges from external pressures involves avoiding interference from social groups, media, and anyone outside of the judiciary.¹³³ Judge Pazmiño

¹¹⁹ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 134.

¹²⁰ *Id.*

¹²¹ *Id.* ¶ 135.

¹²² *Id.*

¹²³ *Id.* ¶¶ 137-138.

¹²⁴ *Id.* ¶ 138.

¹²⁵ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 139.

¹²⁶ *Id.* ¶¶ 139-140.

¹²⁷ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Eugenio Raúl Zaffaroni, Inter-Am. Ct. H.R. (ser. C) No. 409, ¶¶ 1-3, 7, 21 (Aug. 27, 2020).

¹²⁸ *Id.* ¶ 8.

¹²⁹ *Id.* ¶¶ 9-10.

¹³⁰ *Id.* ¶¶ 11-14.

¹³¹ *Id.* ¶¶ 17-20.

¹³² Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Patricio Pazmiño Freire, Inter-Am. Ct. H.R. (ser. C) No. 409, ¶¶ 4-5 (Aug. 27, 2020).

¹³³ *Id.* ¶ 6.

Freire recognized that the freedom of expression should be balanced with judicial independence.¹³⁴ He further warned the Court to be aware of future cases regarding disciplinary proceedings because the facts should be examined on a case-by-case basis.¹³⁵

III. REPARATIONS

The Court ruled unanimously that the State had the following obligations:¹³⁶

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

1. Judgment as a Form of Reparation

The Court ruled that the Judgment itself should act as a form of reparation.

2. Publish the Judgment

The Court ordered the State to publish an official summary of the judgment within six months in 1) the Official Gazette, 2) a national newspaper with widespread coverage, and 3) an official website that is accessible to the public for one year.¹³⁷

3. Adaptation of Domestic Law

The Court ordered that the State remove paragraph 4 of Article 323 from the Organic Code of the Courts.¹³⁸

4. Report on Compliance Measures

The State must provide the court with a report on compliance measures within one year of notification of the Judgment.¹³⁹

B. *Compensation*

The Court awarded the following amounts:

1. Pecuniary Damages

The Court declined to award any pecuniary damages because it determined that there was no causal nexus to the violations.¹⁴⁰

2. Non-Pecuniary Damages

¹³⁴ Urrutia Laubreaux v. Chile, Separate Opinion of Judge Patricio Pazmiño Freire, ¶ 7.

¹³⁵ *Id.* ¶¶ 8-9.

¹³⁶ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, “Establishes” ¶ 6.

¹³⁷ *Id.* ¶ 147.

¹³⁸ *Id.* ¶ 150.

¹³⁹ *Id.* ¶ 167.

¹⁴⁰ *Id.* ¶ 160.

The Court awarded \$20,000 to Mr. Urrutia Laubreaux for non-pecuniary damages in recognition of the sanctions that remained on his personnel record for 13 years.¹⁴¹

3. Costs and Expenses

The Court awarded \$7,000 to Mr. Urrutia Laubreaux's representatives for reasonable costs and expenses of litigation.¹⁴²

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

\$27,000

C. Deadlines

The State must pay the costs and expenses as well as non-pecuniary compensation within one year of the notification of the Judgment.¹⁴³ The State must also provide the court with a report of compliance measures within one year of notification of the Judgment.¹⁴⁴

IV. INTERPRETATION AND REVISION OF JUDGMENT

[NONE]

V. COMPLIANCE AND FOLLOW-UP

September 1, 2021: The Court released the first Monitoring Compliance with Sentence.¹⁴⁵ The Court noted that on February 1, 2021, the Supreme Court of Justice of Chile issued a decision which commanded the Directorate of Communications to include the Judgment in the informative bulletin and ensure digital access for a full year.¹⁴⁶ Accordingly, it was published in the highlights section of the Court's website.¹⁴⁷ The Court found that the State was in full compliance with the publication and dissemination measures.¹⁴⁸ Lastly, the Court reminded the State of its remaining obligations under the Judgment.¹⁴⁹

June 24, 2022: The Court released the second Monitoring Compliance with Sentence.¹⁵⁰ The Court resolved that the State had fully complied with payments of non-pecuniary damage as well as costs and expenses.¹⁵¹ The State had not yet adopted necessary measures to repeal article 323, paragraph 4 of the Organic Code of Courts, and therefore the Court ordered that the State do so and submit a report on compliance by September 30, 2022.¹⁵²

¹⁴¹ Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 164.

¹⁴² *Id.* ¶ 166.

¹⁴³ *Id.* ¶ 167.

¹⁴⁴ *Id.*

¹⁴⁵ See Urrutia Laubreaux v. Chile, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Sep. 1, 2021).

¹⁴⁶ Urrutia Laubreaux v. Chile, Monitoring Compliance with Judgment, "Court Considerations" ¶ 6.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* ¶ 7, "Resolves" ¶ 1.

¹⁴⁹ *Id.* ¶ 7, "Resolves" ¶¶ 2-6.

¹⁵⁰ See Urrutia Laubreaux v. Chile, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Jun. 24, 2022).

¹⁵¹ *Id.* "Resolves" ¶ 1. (Jun. 24, 2022).

¹⁵² *Id.* "Resolves" ¶¶ 3-4.

VI. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[NONE]

2. Decisions on Merits, Reparations and Costs

Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 409 (Aug. 20, 2020).

Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Patricio Pazmiño Freire, Inter-Am. Ct. H.R. (ser. C) No. 409 (Aug. 27, 2020).

Urrutia Laubreaux v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Eugenio Raúl Zaffaroni, Inter-Am. Ct. H.R. (ser. C) No. 409 (Aug. 27, 2020).

3. Provisional Measures

Urrutia Laubreaux v. Chile, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. C) (Mar. 12, 2020).

4. Compliance Monitoring

Urrutia Laubreaux v. Chile, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Sep. 1, 2021).

Urrutia Laubreaux v. Chile, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Jun. 24, 2022).

5. Review and Interpretation of Judgment

[NONE]

B. Inter-American Commission

1. Petition to the Commission

[NONE]

2. Report on Admissibility

Urrutia Laubreaux v. Chile, Admissibility Report, Report No. 51/14, Inter-Am. Comm'n H.R., Petition No. 1398-05 (July 21, 2014).

3. Provisional Measures

[NONE]

4. Report on Merits

Urrutia Laubreaux v. Chile, Report on Merits, Report No. 21/18, Inter-Am. Comm'n H.R., Case No. 12.955 (Feb. 24, 2018).

5. Application to the Court

[NONE]