

Colindres Schonenberg v. El Salvador

ABSTRACT¹

This case is about the dismissal of a judge in El Salvador. The judge had ruled in a case involving one of the major political parties of El Salvador. After members of the party questioned his actions, they requested the Legislative Assembly to remove him. The judge fought the dismissal in court for over fifteen years, to no avail. Eventually, the Court found El Salvador in violation of several provisions of the American Convention.

I. FACTS

A. Chronology of Events

August 11, 1994: Mr. Eduardo Benjamín Colindres Schonenberg is a lawyer in El Salvador.² He is appointed to serve a five-year term as magistrate of the Supreme Electoral Tribunal (Magistrado Proprietario del Tribunal Supremo; “TSE”) by the Legislative Assembly of El Salvador.³

1996: Judge Colindres Schonenberg decides a case stemming from a dispute within the Christian Democratic Party (Partido Demócrata Cristiano; “PDC”).⁴ Members of the PDC question how he proceeded and his decision and request that the Legislative Assembly remove him from the bench.⁵

¹ Laura Leonardi Rodi, Author; Katie Grossbard, Senior IACHR Editor; Gabrielle Szlachta-McGinn, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

² Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 373, ¶ 25 (February 4, 2019).

³ Colindres Schonenberg v. El Salvador, Admissibility Report, Report No. 25/06, Inter-Am. Comm’n H.R., Case No. 12.311, ¶ 5 (March 14, 2006); Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, ¶¶ 25-26.

⁴ Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, ¶ 27.

⁵ *Id.* ¶¶ 27-28.

November 22, 1996: The Legislative Assembly issues a decree for the removal of Mr. Colindres Schonenberg from office.⁶ The decree states that an official may be removed before the end of their term if they fail to meet the requirements established in Article 60 of the Electoral Code.⁷ The Legislative Assembly alleges Mr. Colindres Schonenberg's removal is based on his failure to act honestly and impartially in the performance of his duties as magistrate.⁸

December 2, 1996: Mr. Colindres Schonenberg files an *amparo* action against the decree before the Constitutional Chamber of the Supreme Court of Justice.⁹

November 4, 1997: The Constitutional Chamber of the Supreme Court of Justice reinstates Judge Colindres Schonenberg as magistrate after finding that his dismissal did not guarantee him the right to a hearing.¹⁰

March 23, 1998: The PDC files a motion before the Legislative Assembly requesting Judge Colindres Schonenberg's removal.¹¹

March 25, 1998: The Legislative Assembly establishes a Special Legislative Committee of five deputies to guarantee Judge Colindres Schonenberg's right to a hearing.¹²

April 20, 1998: Judge Colindres Schonenberg files a second *amparo* action for constitutional protection with the Constitutional Chamber seeking a preventive ruling that the Legislative Assembly's establishment of a Special Legislative Committee violates his rights to a fair hearing, freedom from double jeopardy, and rights as the a pre-existing judge.¹³ At the same time, Judge Colindres Schonenberg files a brief with the Special

⁶ Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, ¶ 28.

⁷ Colindres Schonenberg v. El Salvador, Admissibility Report, ¶ 5; Colindres Schonenberg v. El Salvador, Report on Merits, Report No. 23/17, Inter-Am. Comm'n H.R., Case No. 12.311, ¶ 6 (March 18, 2017); Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, ¶ 28.

⁸ Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, ¶ 28.

⁹ Colindres Schonenberg v. El Salvador, Admissibility Report, ¶ 5; Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, ¶ 29; Colindres Schonenberg v. El Salvador, Report on Merits, ¶ 22.

¹⁰ Colindres Schonenberg v. El Salvador, Admissibility Report, ¶ 5.

¹¹ Colindres Schonenberg v. El Salvador, Report on Merits, ¶ 7; Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, ¶ 32.

¹² Colindres Schonenberg v. El Salvador, Admissibility Report, ¶ 6.

¹³ *Id.* ¶ 7.

2022]

Colindres Schonenberg v. El Salvador

103

Legislative Committee requesting a ruling that it has no jurisdiction to continue its investigation.¹⁴

April 21, 1998: The Special Legislative Committee requests information from the Supreme Court to determine whether new evidence exists to support an expansion of the reasons for Judge Colindres Schonenberg's removal.¹⁵

April 28, 1998: The Supreme Court submits the information requested by the Special Legislative Committee.¹⁶

April 30, 1998: While the judges of the Constitutional Chamber initially find Judge Colindres Schonenberg's action for constitutional protection admissible, they reverse the admissibility ruling and dismiss the case due to pressure exerted by the Legislative Assembly.¹⁷

May 21, 1998: The Special Legislative Committee denies having received information from the Supreme Court.¹⁸ Judge Colindres Schonenberg asks the Supreme Court to resubmit the information to the Political Committee of the Legislative Assembly, as well as a copy of the previous submission showing that the Special Legislative Committee had already received the information.¹⁹

May 26, 1998: In a brief to the Political Committee of the Legislative Assembly, Judge Colindres Schonenberg reiterates his position that the Special Legislative Committee has no jurisdiction.²⁰ The brief includes a request for oral hearing before the Legislative Assembly to rebut the case against him.²¹ The brief is not added to the case file against Judge Colindres Schonenberg.²²

¹⁴ Colindres Schonenberg v. El Salvador, Admissibility Report, ¶ 8.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* ¶ 7.

¹⁸ *Id.* ¶ 8.

¹⁹ *Id.*

²⁰ Colindres Schonenberg v. El Salvador, Admissibility Report, ¶ 9.

²¹ *Id.*

²² *Id.*

July 2, 1998: The Legislative Assembly orders Judge Colindres Schonenberg's removal from office.²³

July 15, 1998: Judge Colindres Schonenberg files another *amparo* action with the Supreme Court seeking constitutional protection against the Legislative Assembly's decree removing him from office.²⁴ He specifically states the Legislative Assembly lacks authority to remove him from office through ad hoc proceedings and that the Special Legislative Committee violated his due process rights based on the committee's failure to respond to his petitions, the active concealment of exculpatory evidence, and their failure to give him a hearing in connection to the alleged crime of contempt for which he was charged.²⁵

January 12, 1999: Judge Colindres Schonenberg files a claim for damages arising out of his first removal by the Legislative Assembly.²⁶

May 4, 1999: The Supreme Court rejects Judge Colindres Schonenberg's *amparo* action.²⁷ The court notes that there is a gap in the law regarding the proper procedure for removal of magistrate judges from the Supreme Court and that the Special Legislative Committee filled that gap legitimately.²⁸ The Supreme Court further holds that Judge Colindres Schonenberg was not tried twice for the same event because the basis for his second removal involved continuous conduct with different events and the first removal decision was set aside when he was reinstated to office.²⁹ The Supreme Court does not address any further procedural violations raised by Judge Colindres Schonenberg.³⁰

July 27, 1999: Judge Colindres Schonenberg files a third *amparo* action reiterating prior claims of procedural violations of his due process rights.³¹

²³ Colindres Schonenberg v. El Salvador, Admissibility Report, ¶ 10.

²⁴ *Id.* ¶ 11.

²⁵ *Id.*

²⁶ Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, ¶ 53.

²⁷ Colindres Schonenberg v. El Salvador, Admissibility Report, ¶ 12.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* ¶ 13.

2022]

Colindres Schonenberg v. El Salvador

105

November 5, 1999: The Supreme Court denies Judge Colindres Schonenberg's *amparo* action after finding the allegations lacked a constitutional foundation and declares that the Supreme Court is not the proper venue to review mere grievances with the Legislative Assembly's procedures.³²

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

May 4, 2000: The Human Rights Institute of the "José Simeón Cañas" Central American University (Instituto de Derechos Humanos de la Universidad Centroamericana "José Simeón Cañas"; "IDHUCA") presents a petition on behalf of Judge Colindres Schonenberg to the Commission.³³ The State argues the petition is inadmissible because the national courts examined the allegations on four different occasions and issued decisions for each in accordance with Salvadoran constitutional procedural law and due process.³⁴ The State further affirms that the courts are independent and free of political influence of any kind.³⁵

March 14, 2006: The Commission issues Admissibility Report No. 25/06, which declares the petition admissible.³⁶

March 18, 2017: The Commission issues Merits Report No. 23/17 finding the State responsible for violating rights provided in 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), 8(2)(h) (Right to Appeal), 9 (Freedom from Ex Post Facto Laws), 23(1)(c) (Right to Have Access to Public Service), 25(1) (Right of Recourse Before a Competent Court) and 25(2)(c) (Remedies Must Be Enforced), all in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2

³² Colindres Schonenberg v. El Salvador, Admissibility Report, ¶ 13.

³³ *Id.* ¶¶ 1, 4.

³⁴ *Id.* ¶¶ 15-16.

³⁵ *Id.* ¶ 18.

³⁶ *Id.* ¶¶ 3, "Decides," 1.

(Obligation to Give Domestic Legal Effect to Rights) of the American Convention, to the detriment of Judge Colindres Schonenberg.³⁷

The Commission recommends that El Salvador: (1) reinstate Judge Colindres Schonenberg; (2) provide reparations including both pecuniary and non-pecuniary damages; and (3) implement legislation to ensure proceedings against judges of the Supreme Court comply with guarantees of competency, independence, and impartiality and principles of legality.³⁸

B. Before the Court

September 8, 2017: The Commission submits the case to the Court after the State failed to adopt its recommendations.³⁹

1. Violations Alleged by Commission⁴⁰

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

Article 9 (Freedom from Ex Post Facto Laws)

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

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

Article 25(2)(c) (Remedies Must Be Enforced)

all in relation to:

Article 1.1 (Obligation of Non-Discrimination)

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

2. Violations Alleged by Representatives of the Victims⁴¹

Same Violations Alleged by Commission, plus:

Article 11 (Right to Privacy) of the American Convention.

³⁷ Colindres Schonenberg v. El Salvador, Report on Merits, ¶ 91.

³⁸ *Id.* ¶ 92.

³⁹ Colindres Schonenberg v. El Salvador, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.311 (September 8, 2017).

⁴⁰ Colindres Schonenberg v. El Salvador, Report on Merits, ¶ 91.

⁴¹ Colindres Schonenberg v. El Salvador, Admissibility Report, ¶ 14.

2022]

Colindres Schonenberg v. El Salvador

107

III. MERITS

*A. Composition of the Court*⁴²

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

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

February 4, 2019: The Court issues its Judgment on Merits, Reparations, and Costs.⁴³

The Court found unanimously that El Salvador 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) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, as well as Article 23(1)(c) (Right to Have Access to Public Service) of the same instrument to the detriment of Judge Colindres Schonenberg,⁴⁴ because:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) guarantees that individual rights are decided by a competent court as determined by domestic law.⁴⁵ The Court noted that Article 8(1) implies that the court's jurisdiction must be established

⁴² Judge Humberto Sierra Porto, by reason of *force majeure*, is unable to participate in the deliberation and signing of the Judgment. Judge Ricardo Pérez Manrique is also unable to participate in the deliberation and signing of the Judgment because he joined the Court after the case was in the state of judgment. *Colindres Schonenberg v. El Salvador*, Merits, Reparations, and Costs, n.*.

⁴³ *Id.* ¶ 155.

⁴⁴ *Id.* “Declares” ¶ 1.

⁴⁵ *Id.* ¶ 85.

by law before proceedings may be brought against an individual.⁴⁶ Accordingly, the Court first examined whether the Legislative Assembly was competent to dismiss Judge Colindres Schonenberg under the laws of El Salvador.⁴⁷

The Court found state legislation failed to provide both express reasons for the premature dismissal of judicial officers and the appropriate procedure to remove a judicial officer.⁴⁸ State law did not expressly grant the Legislative Assembly jurisdiction to dismiss Judge Colindres Schonenberg, as is impliedly required by Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).⁴⁹ While the establishment of the Special Legislative Commission guaranteed his the right to a hearing, it did not replace the State's duty to establish a procedure for the dismissal of judges from the Supreme Court through legislation prior to dismissal.⁵⁰ The State's failure to establish a procedure for dismissal through its laws, therefore, violated Judge Colindres Schonenberg's right to be tried by a competent court.⁵¹ The lack of established procedures also prevented Judge Colindres Schonenberg from knowing when and how he could defend himself, further violating Article 8(1)(Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).⁵²

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Judge Colindres Schonenberg,⁵³ because:

Under Article 25(1) (Right of Recourse Before a Competent Court), states must guarantee a simple, prompt, and effective remedy for violations of citizens' fundamental rights.⁵⁴ Where state law provides for an effective

⁴⁶ Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, ¶ 85.

⁴⁷ *Id.* ¶ 82.

⁴⁸ *Id.* ¶¶ 83, 89.

⁴⁹ *Id.* ¶¶ 85, 87.

⁵⁰ *Id.* ¶¶ 89-90.

⁵¹ *Id.* ¶ 87.

⁵² Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, ¶ 90.

⁵³ *Id.* "Declares" ¶ 2.

⁵⁴ *Id.* ¶ 101.

2022]

Colindres Schonenberg v. El Salvador

109

*remedy that is not available in practice, the remedy is illusory and cannot be considered effective.*⁵⁵

*Further, Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) requires states to ensure that a remedy is able to produce the result that it conceived.*⁵⁶ *Here, the remedy available was an amparo action to review compliance with due process during the impeachment proceedings.*⁵⁷ *However, the Supreme Court's Constitutional Chamber failed to fully analyze Judge Colindres Schonenberg's complaints of due process violations when it failed to review the Legislative Assembly's criteria for dismissal.*⁵⁸ *The Court found that it was not sufficient for the Supreme Court to examine whether the Legislative Assembly took steps to guarantee Judge Colindres Schonenberg's right to a hearing; it was required to analyze also whether that right was actually guaranteed.*⁵⁹ *The Court concluded that the failure to adequately review the allegations of due process violations rendered the amparo action an ineffective remedy.*⁶⁰

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. Colindres Schonenberg,⁶¹ because:

*Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) guarantees the right to a hearing within a reasonable time.*⁶² *Prolonged delays constitute a violation of judicial guarantees unless the delay was due to: (1) the complexity of the case, (2) the procedural posture of the case, (3) the conduct of judicial authorities, or (4) any effects created by the legal standing of the parties.*⁶³

⁵⁵ Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, ¶ 101.

⁵⁶ *Id.* ¶ 102.

⁵⁷ *Id.* ¶ 104.

⁵⁸ *Id.* ¶ 109.

⁵⁹ *Id.* ¶ 110.

⁶⁰ *Id.*

⁶¹ Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, “Declares” ¶ 3.

⁶² *Id.* ¶ 115.

⁶³ *Id.* ¶¶ 115, 118.

Here, Judge Colindres Schonenberg's case lasted fifteen years.⁶⁴ The Court reviewed the reasons for the prolonged proceedings.⁶⁵ It found the case not to be a complex one.⁶⁶ It further stated that it would not conduct a detailed analysis of the other reasonableness factors because the State had not demonstrated that the delay was due to procedural posture and it was evident that fifteen years was not a reasonable period to resolve the dispute.⁶⁷ This unreasonable delay, therefore, constituted a violation of the judicial guarantees under Article 8(1).⁶⁸

The Court found unanimously that El Salvador had not violated:

Article 8(2) (Right to Be Presumed Innocent) and 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) of the Convention, to the detriment of Mr. Colindres Schonenberg,⁶⁹ because:

Having determined that Judge Colindres Schonenberg's dismissal process was not established by law, the Court found it unnecessary to discuss the other guarantees under Articles 8 (Right to a Fair Trial) and 9 (Freedom from Ex Post Facto Laws).⁷⁰ Further, where the procedure for dismissal was not established, neither was an appellate process.⁷¹ Consequently, the Court found it unnecessary to discuss violations under Article 8(2)(h) (Right to Appeal).⁷²

C. Dissenting and Concurring Opinions

[None]

⁶⁴ Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, ¶ 117.

⁶⁵ *Id.* ¶ 116.

⁶⁶ *Id.* ¶ 118.

⁶⁷ *Id.*

⁶⁸ *Id.* ¶ 119.

⁶⁹ *Id.* "Declares" ¶ 4.

⁷⁰ Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, ¶ 92.

⁷¹ *Id.* ¶ 113.

⁷² *Id.*

2022] *Colindres Schonenberg v. El Salvador* 111

IV. REPARATIONS

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

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

1. Publish the Judgment

The Court indicated that the Judgment itself should be understood as a form of reparation.⁷³

2. Report Compliance

The Court required the State to submit a report on the measures adopted to comply with the Judgment.⁷⁴

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$32,000 for the income Judge Colindres Schonenberg did not receive.⁷⁵

2. Non-Pecuniary Damages

The Court awarded \$10,000 to Judge Colindres Schonenberg for non-pecuniary damages caused by the dismissal process and his termination from office.⁷⁶

3. Costs and Expenses

[None]

⁷³ Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, “Provides” ¶ 5.

⁷⁴ *Id.* “Provides” ¶ 8.

⁷⁵ *Id.* ¶ 142.

⁷⁶ *Id.* ¶ 147.

112 *Loy. L.A. Int'l & Comp. L. Rev.* [Vol. 45:nnn]

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

\$ 42,000

C. Deadlines

Within one year from the Judgment, the State must provide the Court with a report on the measures it took to comply with the Judgment.⁷⁷

The State must publish the Judgment within six months from the date of the Judgment.⁷⁸

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

November 22, 2019: The State fully complied with its obligation to publish the Judgment.⁷⁹ The Court kept open the procedure for monitoring compliance with the Court's order to pay reparations to Judge Conlindres Schonenberg for pecuniary and non-pecuniary damages.⁸⁰

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

⁷⁷ Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, "Provides" ¶ 8.

⁷⁸ *Id.* ¶ 124.

⁷⁹ Colindres Schonenberg v. El Salvador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Resolves" ¶ 1 (November 22, 2019).

⁸⁰ *Id.* "Declares" ¶ 2.

2022] *Colindres Schonenberg v. El Salvador* 113

2. Decisions on Merits, Reparations and Costs

Colindres Schonenberg v. El Salvador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 373 (February 4, 2019).

3. Provisional Measures

Colindres Schonenberg v. El Salvador, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. (ser. E) (August 21, 2018).

4. Compliance Monitoring

Colindres Schonenberg v. El Salvador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (November 22, 2019).

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

Colindres Schonenberg v. El Salvador, Admissibility Report, Report No. 25/06, Inter-Am. Comm'n H.R., Case No. 12.311 (March 14, 2006).

3. Provisional Measures

[None]

4. Report on Merits

Colindres Schonenberg v. El Salvador, Report on Merits, Report No. 23/17, Inter-Am. Comm'n H.R., Case No. 12.311 (March 18, 2017).

114

Loy. L.A. Int'l & Comp. L. Rev.

[Vol. 45:nnn]

5. Application to the Court

Colindres Schonenberg v. El Salvador, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.311 (September 8, 2017).

VIII. BIBLIOGRAPHY

[None]