INTER-AMERICAN COURT OF HUMAN RIGHTS

Maricruz Hinojoza et al.

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II. Legal books and articles

Ms. Escobar served as Prosecutor General from September 1, 2005 until September 15, 2017.[6] She was forced out of her position after the appointment procedure for a new Prosecutor General had ended.[7] The appointment procedure started on June 14, 2017, two days after Ms. Escobar initiated an investigation into corruption allegations that existed *vis-à-vis* the President's brother.[8] On June 16, 2017, Ms. Escobar filed a motion to vacate the call for candidates issued by Extraordinary Presidential Decree and simultaneously sought injunctive relief.[9] The injunctive relief granted at first instance was overturned on appeal and the motion to vacate was ultimately found inadmissible by the Supreme Court on January 2, 2018.[10] On August 1, 2017, Ms. Escobar filed a petition with the Inter-American Commission on Human Rights (hereinafter: IACHR), which declared her petition admissible on December 30, 2018 and issued its Merits Report on August 1, 2018.[11] The IACHR found violations of Articles 1, 8, 24 and 25 of the American Convention of Human Rights (hereinafter: ACHR or 'the Convention').[12] Since the State has failed to comply with any of the recommendations of the IACHR, the case was submitted to the jurisdiction of the IACtHR on December 15, 2019.[13]

Maricruz Hinojoza and Sandra del Mastro are career prosecutors that were candidates for the position of Prosecutor General.[14] During the proceedings and after the proficiency test, they were ranked as the top two candidates for the position.[15] However, after the subsequent interviews,

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[6] Hypothetical, §14; CQ, §10. on of 02002

three men who had substantially lower proficiency scores were shortlisted.[16]

judgement the Supreme Court ordered Mr. Rex to be investigated for having committed a serious breach of his duty to state the reasoning for his decision.[26] Since the Supreme Court also conducts disciplinary actions against judges, on December 1, 2017 it ordered the removal of Mr. Rex after investigations.[27] On December 15, 2017, former judge Rex filed a petition with the H.Rua(on.d5vHd5vR)-(y

of Mr. Rex on illegitimate grounds (*cfr*. 5.1). Since the Supreme Court is not independent (*cfr*. 4.2), nor impartial (*cfr*. 4.3), the pursuit of these ineffective remedies would be a mere formality.

In sum, no effective domestic review was available to Mr. Rex. Therefore, Fiscalandia's objection must be dismissed based on the exception established in Article 46(2)(a) ACHR.

1.2. Petition 110-17/Magdalena Escobar v. the State of Fiscalandia

At the admissibility stage, the State alleged that Ms. Escobar failed to exhaust domestic remedies because the judgement on the merits of her motion to vacate had not been issued at the time she filed a petition before the Commission.[36] The State's inadmissibility argument however, takes no account of the case law of the IACtHR. It has clarified in the past that a petition before the Commission can be filed in this exact situation, as long as the Commission does not act before a judgement on the merits is issued.[37] Ms. Escobar filed her petition on August 1, 2017 and her motion to vacate was adjudicated on January 2, 2018. The Commission only considered the case for the first time by declaring the petition admissible on December 30, 2018. Consequently, the State's objection of a failure to exhaust domestic remedies must be dismissed.

1.3. Petition 209-18/Maricruz Hinojoza, et al. v. the State of Fiscalandia

At the admissibility stage, Fiscalandia alleged that Ms. Hinojoza and Ms. del Mastro failed to exhaust domestic remedies because they did not file a motion to vacate. The State claims that this - and not the *amparo* remedy that they had sought - would have been the appropriate remedy for challenging the decision of the president and the resolutions passed by the nominating board.[38] However, the IACtHR considers that the mere existence of domestic remedies does not entail that

[36] *Ibid.*, §46.
[37] *Castillo Petruzzi et al. v. Peru*, IACtHR, (1998), §54-55.
[38] Hypothetical, §50.

applicants have failed to exhaust them if their pursuit would amount to a senseless formality (*cfr.* 1.1). In addition, the *amparo* remedy as a procedural institution should be a simple and prompt remedy protecting *all* fundamental rights.[39]

Ms. Hinojoza and Ms. del Mastro filed a writ of *amparo* before the Second Constitutional Court of Berena.[40] Their action was found inadmissible. The Court held that one of the actions under review, namely the appointment of the Prosecutor General, is part of the sovereign power of the executive branch of government, and is therefore not subject to review.[41] The Second Appellate Chamber of Berena affirmed this judgement and the Supreme Court denied the extraordinary appeal of Ms. Hinojoza and Ms. del Mastro.[42] The State did not convincingly clarify on what legal grounds it was held that the appointment falls outside the scope of Fiscalandia's domestic definition of *amparo*, which includes "*any act or omission, by any official, authority, or person, that threatens or violates human rights and fundamental freedoms recognized by the Republic of Fiscalandia*".[43] In any case, filing a motion to vacate would be ineffective, as the reason on the basis of which the writ of *amparo* was found inadmissible before these courts related

II. Arguments on the merits

1. Application of the iura novit curia principle

Under the *iura novit curia* principle, the IACtHR has the judicial power to analyze possible violations of the ACHR that were not included in the filed petitions or briefs.[46] In *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago* the IACtHR concluded that it had "*the*

3. The positive obligations under the Convention - Article 2 ACHR

(hereinafter: Venice Commission)[58] as inconceivable without independent judges.[59] Signatory States to the Convention have a duty to ensure both the independence of the judiciary and the independence of individual judges.[60] The independence of a tribunal or judge refers to its autonomy in relation to other branches of government and their members.[61] Independence means that the judiciary is free from external pressure, and is not subject to political influence or manipulation, in particular by the executive branch.[62]

All applicants were involved in proceedings before the Supreme Court, which plays a vital role in Fiscalandia. It renders ultimate decisions in civil, criminal and administrative law matters, its decisions in constitutional matters are binding on all public authorities, it can initiate disciplinary investigations against judges and finally, it adopts any penalty that might follow from these investigations.[63] It is therefore of paramount importance that the independence of the Supreme Court is institutionally guaranteed.

From an institutional viewpoint, there are insufficient guarantees to ensure the separation of powers. First, the Nominating Board Law empowers the President to control the composition of different high-level judicial entities, among which the Supreme Court.[64] By abusing this law, the executive branch has exerted influence during the appointment proceedings for positions in3(a)-1(r) pOd2(nto

emails and audio recordings indicate that staff of the President's office succeeded in having their preferred candidates selected.[65]

Second, the Legislative Assembly both appoints the members of the Supreme Court and evaluates their practices.[66] *Ergo*, if the Supreme Court would adopt decisions against the interest of justice, but in the interest of the Legislative Assembly, there is no mechanism to remedy this situation. The lack of independence of the judiciary is embedded in Fiscalandia's constitutional organization.

There are clear indications that the current Supreme Court is not independent. The Chief Justice of the Court, Justice Ángel Lobo, has on multiple occasions been accused of manipulating the composition of regional courts to benefit oil exploration and exploitation companies, to the detriment of indigenous peoples rights.[67] In the case of *Amazonas Alto*, Ángel Lobo allegedly seated a relative as a judge on the competent regional court.[68] In *Amazonas Bajo*, a case brought by an indigenous community against an oil exploration company, Mr. Lobo purportedly transferred a presiding judge and replaced him with a judge who consistently ruled in favor of extractive industries in the past.[69] When faced with allegations of such a nature, Articles 8 and 25 ACHR oblige a State to conduct an investigation into their merits. *A fortiori*, this is the case when the allegation concerns those with the highest function in the judiciary.[70] However, the Legislative Assembly has dismissed all allegations with no decision on the merits.[71] Additionally, the lack of independence of the Supreme Court has led to an absurd decision on appeal that both overturned

[65] *Ibid*., §17.
[66] Hypothetical, §6.
[67] *Ibid*., §9.
[68] CQ, §27.
[69] *Ibid.*
[70] *Almonacid Arellano et al. v. Chile*, IACtHR, (2006), §112; *Massacres de Ituango v. Colombia.* IACtHR, (2006), §402; *Barrios Altos v. Peru.* IACtHR, (2001), §41.
[71] Hypothetical, §9.

the decision of the Second Constitutional Court of Berena and foresaw in disciplinary proceedings against former judge Rex. In its judgement the Supreme Court found the "human right to re-election", which as such does not exist,[72] to be *lex superior* over the term limitation of Article 50 of the Constitution.[73] All this can only be understood if one assumes that the Supreme Court exclusively has the interests of the President in mind.

In sum, given the institutional deficiencies and the particularities of the Supreme Court's composition and behavior, it must be concluded that the Supreme Court is not an independent judicial institution. Therefore, the rights of the applicants under the Articles 8 and 25 *juncto* Articles 1 and 2 ACHR are violated.

while the objective impartiality relates to whether the tribunal itself offers sufficient guarantees to exclude any legitimate doubt in respect of its impartiality.[78]

The double capacity in which the Supreme Court acts in disciplinary matters is inconsistent with the required impartiality. Since the Supreme Court already ruled that a disciplinary investigation is justified, it cannot be considered an impartial tribunal when it subsequently adjudicates on the consequences of the investigations. In *Mitrinovski v. Macedonia* the applicant judge complained that the State Judicial Council (hereinafter: SJC) plenary, which dismissed him for professional misconduct, was not an independent and impartial tribunal since the judge who initiated the proceedings also took part in the SJC's decision to dismiss.[79] The ECtHR considered that the judge's dual role in initiating proceedings and taking part in the decision to dismiss the applicant failed both the subjective and objective tests of impartiality.[80]

Given the double capacity of the Supreme Court as both the instantiator of disciplinary proceedings and the judge of disciplinary measures, Mr. Rex was not judged by an impartial tribunal. Consequently, his rights under Articles 8 and 25 *juncto* Articles 1 and 2 ACHR were violated.

4.4. The right to simple and effective remedies

The judicial proceedings following the writ of *amparo* of Ms. Hinojoza and Ms. del Mastro

Convention".[88] One of the factors contributing to the transformation of corruption into a structural phenomenon is the impunity of those who engage in these practices.[89] The obligation of the States to investigate conduct that affects the human rights protected in the Convention derives from Article 1(1) *juncto* Articles 2 and 25 ACHR.[90] Whenever the State authorities become aware of conduct that has affected the rights protected in the Convention they must promptly initiate a serious, impartial, and effective investigation by all available legal means, aimed at determining the truth.[91] If there is no serious investigation, it would engage the international responsibility of the State for failure to comply with the d Tc 0.0iu wtoalti 5(a)1(i)2(d)2(en)2(v)2(e)6(s)-6tigale fitht Tc ilge dvc1.1(

5.1. The unlawful removal of Mr. Rex

The IACtHR established that a law must conform to the principle of strict legality if it is part of a disciplinary system designed to allow suspension and removal penalties against members of the judiciary.[100] Accordingly, a precise definition of the punishable conduct and its elements must be given. In this regard, the IACtHR has found vague and broad definitions that give an unacceptable margin of discretion to the relevant authorities incompatible with the Convention.[101] In *Apitz Barbera et al. v. Venezuela,* the IACtHR found that in a situation where a higher judicial body can overturn a decision, judges cannot be removed on the grounds that they made an inexcusable judicial error.[102] The IACtHR concluded that such a vague norm is inconsistent with the Convention, as it endangers the independence of the judiciary.[103] In *Camba Campos et al. v. Ecuador* the IACtHR ruled that the legal opinion of a judge written in a decision can never constitute grounds for disciplinary sanctions.[104]

Article 55 of the Judiciary Act of Fiscalandia does not comply with the principle of strict legality, since it states that a failure to motivate can lead to the removal of a judge if the failure is serious and inexcusable.[105] However, the criterion "*serious and inexcusable failure to properly state the reasoning for judgments and judicial decisions*"[106] is vague, subjective and open to abuse as it gives an unacceptable margin of discretion to the Supreme Court.[107] It is therefore impossible

Consequently, any disciplinary measure founded in this Article does not conform with the material requirement of law, and the Article itself violates the strict legality requirement.

The possibility of abuse of power that Article 55 of the Judiciary Act allows is not merely theoretical. The Supreme Court ruled that Mr. Rex had committed a "*serious breach of the obligation to properly state the reasoning of his decisions*". However, former judge Rex did extensively motivate his decision. In the appeal decision of the Supreme Court it argued that judge Rex had failed to give adequate weight to the "right to re-election" of the President when he balanced the different fundamental rights at issue.[108] *Ergo*, the decision of the First Constitutional Court of Berena was appealed because of a difference in legal opinion. The removal of former judge Rex is therefore inconsistent with the Convention.[109] It is therefore clear that Mr. Rex has been removed from the bench for alternative reasons than those officially stated (*cfr.* 7.1.1), meaning that the Supreme Court has abused its power.

For all these reasons, it must be concluded that the decision to remove Mr. Rex was not based in law. The vague and broad definition given in Article 55 of the Judiciary Act of Fiscalandia entails that any act based upon it must be considered illegal in the material sense and therefore incompatible with Article 9 ACHR. Hence, the disciplinary measure of the Supreme Court amounts to abuse of power and violates Article 9 *juncto* Article 1 ACHR. The vague criteria that were used to ground the removal penalty are incompatible with the independence of the judiciary and consequently violate Article 8(1) *juncto* Article 1 ACHR.

[108] CQ, §1.
[109] *Camba Campos et al. v. Ecuador*, IACtHR, (2013), §138.

5.2. Ending the transitional period of Magdalena Escobar on an illegal basis

The Extraordinary Presidential Decree that the President adopted to initiate an appointment procedure to select someone to the position of Prosecutor General ultimately forced Ms. Escobar from the position of Prosecutor General. This decree was based on national security grounds.[110] Nevertheless, it merely stated that the transitional period during which Ms. Escobar had held office, had come to an end.[111] The Ninth Provision to the Fiscalandian Constitution does not establish the duration of the transitional period, nor does it clarify how the duration can be established.[112]

democratic society rests.[125] Moreover, the IACHR identifies this right as one of the most effective forms of combating corruption.[126]

7.1. State censorship

Article 13 ACHR essentially bans all forms of prior censorship.[127] Censorship entails "*the seizing or barring of publications and, gene 0 Td [d(of)-2(pH(c)-23.f)-2, gs2 /StyleSpanppH(c)o3(ons)-2(du*

As stated, Mr. Rex was limited in his freedom of thought and expression, and his dissemination of information was limited by government control since he was removed, resulting in a case of prior censorship by Fiscalandia. The arbitrary dismissal of Mr. Rex violates the principles of judicial autonomy and independence,[138] while the decision to remove Mr. Rex from the bench was not based in law (*cfr.* 5.1). In *López Lone v. Honduras*, a judge was likewise removed after disciplinary proceedings because of his support for the preservation of democracy. The IACtHR found a violation of Article 13(1) ACHR[139] and referenced the UN Basic Principles on the Independence of the Judiciary, while stating that "*a situation may arise that causes a judge to feel he has a moral duty to speak out, for instance, a situation in which democracy is threatened*".[140]

Fiscalandia violated Mr. Rex's freedom of thought and expression, since a State can violate this right by creating conditions that impinge on the right to expression, which is considered to be essential to a functioning democracy as stated in *Manuel Cepada Vargas v. Colombia*.[141]

Mr. Rex was removed from the bench for, according to the Supreme Court, "*a serious breach of the obligation to properly state the reasoning for his decisions*".[142] The removal of judges based on an alleged judicial error has before resulted in violations of the Convention since the removal of judges undermines the right of judges to decide freely in accordance with the law (*cfr.* 5.1).[143] In *Baka v. Hungary* the ECtHR found that the premature termination of a court president's mandate undoubtedly had a "chilling effect" in that it must have discouraged not just

[138] J. PASQUALUCCI, *The Practice and Procedure of the Inter-American Court of Human Rights*, CUP, 2012, p198.
[139] *López Lone et al. v. Honduras*, IACtHR, (2015), §178.
[140] *Ibid*., §173.
[141] *Manuel Cepada Vargas v. Colombia*, IACtHR, (2010), §172.
[142] Hypothetical, §41.
[143] *Apitz Barbera et al. v. Venezuela*, IACtHR, (2006), §84.

him but also other judges from participating in public debate on legislative reforms affecting the judiciary and on issues concerning the independence of the judiciary.[144] As seen in *Uzcategui et al. v. Venezuela,* the initiation of proceedings, in the case of Mr. Rex disciplinary proceedings, can discourage an individual to express himself freely, an effect contrary to the State's obligation to foster freedom of expression.[145]

For these reasons, Mr. Rex was limited in his freedom of expression due to the initiated disciplinary proceedings and his arbitrary removal. Restrictions on the right to freedom of thought and expression can solely be compatible with the Convention if they respect four conditions. Firstly, the restriction must be based on a law, in order to remove the risk of arbitrary exercise of power by the State. Secondly, the restriction must be legitimate in that it must pursue a legitimate aim. Thirdly, the restriction must be necessary in a democratic society, meaning that it must be designed to fulfill "*an overriding public interest*"[146]. Fourthly, the restriction must be proportional.

The removal of Mr. Rex failed to respect any of the four conditions. It was demonstrated above that Mr. Rex's removal was not based in law (*cfr*. 5.1). Removing Mr. Rex from the bench was clearly aimed at silencing a dissident judge from a position in which he could defend the democratic state. Therefore, the restriction of his speech cannot be said to have had a legitimate aim as mentioned in Article 13(2) ACHR, since judicial independence is one of the cornerstones of a democratic society (*cfr.*

prosecutor's activities in procedures should be free of external pressures as well as from undue or illegal internal pressures from within the prosecution system.[151]

President Obregón initiated the selection procedure for a new Prosecutor General immediately after Ms. Escobar initiated an investigation into corruption offences. This resulted in undue political influence by the executive and a violation of Ms. Escobar's freedom of thought and expression.

Article 13(3) ACHR establishes that "*the right of expression may not be restricted by indirect methods or means*", according to the IACtHR.[152] This provision targets restrictions by the State, including abusive controls over media "*and any other means tending to impede the communication and circulation of ideas and opinions*".[153] During the corruption investigation the Office of the Prosecutor General already was the subject of harassment initiated by the head of the internal oversight body of the Office of the Prosecutor General, Domingo Martínez. This targeted harassment, aimed at hampering the investigation, can be considered a form of abusive control. The removal from office of Ms. Escobar led her to not being involved anymore in the corruption

ended her previous function as Prosecutor General and led to her transfer does not have a formal legal basis (*cfr*. 4.2), her transfer is arbitrary.

As emphasized by the IACtHR in *López Lone et. al. v. Honduras*, the effective discontinuation of a justice operator in his or her function, supporting the preservation of democracy, can result in a violation of Article 13 ACHR.[156] The undue political influence by President Obregón in the corruption proceedings initiated by Ms. Escobar, resulted in an effective removal of the Prosecutor General. Her transfer and newly assigned function constitute indirect methods of restricting the freedom of thought and expression of Escobar and results in a violation of Article 13 *juncto* Article 1 ACHR.

7.2. The right to access state-held information

The selection process for the appointment of a new Prosecutor General included several opaque criteria, such as the notion “suitable candidate” or the way in which the applicant’s backgrounds were graded.[157] Several of the excluded applicants submitted requests for reconsideration to the nominating board after the publication of their scores, since the criteria used to assess the merits of the applicants were unknown. However, all these requests were denied on the grounds that the nominating board could grade candidates “at its own discretion”.[158] According to the IACtHR in *Claude Reyes v. Chile*, Article 13 ACHR includes the right of all persons to access Statesn9oratot95 -2.3 Td

information is accessible.[159] Additionally, the right to access of information must be considered the rule and secrecy the exception.[160]

The exceptions mentioned in Article 13(2) ACHR are measures necessary to ensure national security, public order or public health or morals and cannot be invoked by Fiscalandia as they do not apply in this case. Additionally, the Venice Commission underlines that the "*method of selection of the general prosecutor should be such as to gain the confidence of the public and the respect of the judiciary and the legal profession*".[161]

According to Ms. Knaul, former UN Special Rapporteur on the independence of judges and lawyers, "*a public competitive selection process is an objective way to ensure the appointment of qualified candidates to the profession of Prosecutor. Both selection and promotion should be transparent in order to avoid undue influence, favouritism and nepotism*".[162] As specified by the IACHR, the rule of law requires the State to implement objective, predictable and transparent mechanisms in the selection and appointment processes for justice operators,[163] in accordance with Article 11 UNCAC. The method of selection applied by Fiscalandia could never gain the confidence of the public, due to its lack of transparency. This lack of transparency gave leeway for the executive to exercise undue influence and favouritism, which resulted in the appointment of Mr. Martínez.

The right to access to public information, including the principle of transparency, is recognized as one of the main tools in the fight against corruption.[164] According to the IACHR,

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[159] *Claude Reyes et al. v. Chile*, IACtHR, (2006), §92.

[160] *The Inter-American legal framework regarding the right to access to information*, IACHR, (2009), p4.

[161] *Report on the Independence of the Prosecution*, Venice Commission, (2010), p8.

[162] *Report of the Special Rapporteur on the independence of judges and lawyers*, UN Special Rapporteur, (2012), §61, p13.

States should establish active transparency obligations on information necessary for effective accountability and the fight against corruption, notably with regard to systems for public sector vacancy announcements.[165]

The non-disclosure of the methods of grading and the broader lack of complete confidentiality of the selection process amount to a lack of transparency. The refusal of Fiscalandia to provide insight in several aspects of the selection procedure for a new Prosecutor General, which is State-held information, constitutes a violation of Article 13 *juncto* Articles 1 and 2 ACHR, since no limitations were applicable in this case.

8. The right to participate in government -

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9.1. Discrimination based on sex

Fiscalandia has ratified the Convention on the Elimination of All Forms of Discrimination against Women (herinafter: CEDAW).[181] Article 2 CEDAW reaffirms Fiscalandia's obligation not to discriminate on the basis of sex. Under Article 3 and 7(b) CEDAW, Fiscalandia is obliged to take positive measures to ensure women's equal access to political and public life.[182] The IACtHR has found that the obligations of States not to discriminate, formalized in Article 24 ACHR, must take account of the definitions in CEDAW.[183]

While initially there was already a remarkably low number of female candidates for the mandate of Prosecutor General, solely Ms. Hinojoza and Ms. del Mastro were withheld after the first two tests.[184] For the first test, the proficiency assessment, both women received a score of 100. They likewise received top scores for the subsequent background assessment.[185] Consequently, they were ranked first and second before the interviews started. These interviews were expected to last 30 minutes per candidate.[186] However, Ms. Hinojoza and Ms. del Mastro, contrary to the other male candidates, were only asked one question.[187] The shortlist of 3 candidates that was sent to President Obregón afterwards, contained three male candidates that had received much lower scores in the rounds prior to the interviews and the President nominated Mr. Martínez out of these three.[188] The blatant way in which Ms. Hinojoza and Ms. del Mastro were discriminated against can be made explicit on the basis of the known scores of the candidates

[181] Hypothetical, §3.
[182] *General Recommendation No. 23 on political and public life*, CEDAW, (1997), §17.
[183] *Norín Catrimán et al. v. Chile*, IACtHR, (2014), §198,201.
[184] Hypothetical, §32.
[185] CQ, §64.
[186] Hypothetical, §32.
[187] *Ibid.*, §35.
[188] *Ibid., §*36.

during the selection process. Taking account of the relative weight of the proficiency assessment, the background assessment and the interview, and given the respective scores of Ms. Hinojoza and Mr. Martínez after the first two assessments, Mr. Martínez would have to be graded 48 points higher than Ms. Hinojoza during the interviews in order for him to precede her on the candidate list.[189]

The fact that so little women were considered suitable candidates for the position of Prosecutor General and that Ms. Hinojoza and Ms. del Mastro were the only two female candidates left before the interviews is inconsistent with Fiscalandia's positive obligations under Articles 3 and 7(b) CEDAW. The discriminatory treatment of the only female candidates during the interviews is inconsistent with Fiscalandia's negative obligations under Article 2 CEDAW. Fiscalandia has discriminated against Ms. Hinojoza and Ms. del Mastro on the basis of sex and has therefore violated the rights enshrined in Articles 1, 2, 23 and 24 ACHR.

9.2. Discrimination based on political views

A second illegitimate reason for the differential treatment consists of the contrasting political views and ties of the candidates. Article 24 ACHR has been considered before in the case of perceived political opponents by the IACtHR in *Apitz Barbera et al. v. Venezuela*.[190] Ms. Hinojoza and Ms. del Mastro are both career prosecutors who investigated serious human rights violations committed by the State security forces in the 1980s.[191] Mr. Martínez is known to have donated to the party of President Obregón,[192] to have worked for the brother of the President,[193]

[189] CQ, §64.
[190] *Apitz Barbera et al. v. Venezuela*, IACtHR, (2008).
[191] Hypothetical, §32.
[192] *Ibid.*, §37.
[193] *Ibid*.

was called out by Ms. Escobar for harassing the Special Unit conducting an investigation in the

rules.[198] The Ombudsperson of Fiscalandia, continued to serve after the expiration of the original 3-year term for which she was appointed as her tenure was renewed for an additional 3 years. Consequently, if Fiscalandia had respected the right of equality before the law, Ms. Escobar would only be replaced after her original term had ended, *i.e.* in 2020.

Since Fiscalandia treated Ms. Escobar discriminatory against all other heads of oversight bodies with re

k. build in sufficient security in the selection procedure of nominating boards to ensure the principle of separation of powers, including an obligation to disclose the guidelines applicable to the evaluation of candidates;

l. commence an independent investigation into influence peddling into the appointment procedure for the positions in the Court of Auditors and the Supreme Court;

m. create the International Commission against Impunity in Fiscalandia no later than 31 december 2020;

n. publicize the judgement of the IACtHR in the State Gazette, mainstream media and within the different branches of government by email;

o. carry out a capacitation program for public servants on adherence to the rule of law, anti-corruption policy and Inter-American case law.