

Clarification Questions about the Twenty-Fifth Inter-American Human Rights Moot Court Competition of the Academy on Human Rights and Humanitarian Law

- 1. What parameters did the Supreme Court use to determine that Judge Mariano Rex failed to state the reasoning for his decision in the President *amparo* action challenging the constitutional ban on reelection (paragraphs 40 and 41)?**

The judgment handed down by Judge Mariano Rex found that the right to elect and be elected was not absolute and, therefore, could be limited by constitutional principles such as the principle of alternation of power. After applying the “balancing” technique, he concluded that the ban on presidential reelection was (i) appropriate, (ii) necessary and (iii) proportionate.

The Supreme Court, after exercising its authority to assume jurisdiction over the case and review Judge Mariano Rex’s decision, disagreed with point (iii) and found that the judge’s balancing was incorrect, as he had failed to consider that the harm to Obregón’s right to be reelected was “extremely serious,” because the president was only 35 years old and because of the broad acceptance of his political leadership, reflected in the results of the last election (67% of the votes in the first round). The Court therefore held that Judge Rex had incorrectly applied the balancing technique in this specific case, as he had failed to consider the president’s age and popularity, and that, therefore, he had failed to properly state the reasoning for his decision.

- 2. Considering that footnote 1 establishes the existence of a Constitutional Court and a Supreme Court as separate bodies, how is the judiciary of Fiscalandia organized, especially in relation to the jurisdictional powers of this Constitutional Court and the other courts constitutional courts (paragraph 39), chambers of appeals (paragraph 39), administrative courts (paragraph 23), and regional courts (**

Clarification Answers

of the American Convention on Human Rights (see modifications to the latest version of the hypothetical case).

17. Was Judge Mariano Rex given the opportunity to state the reasoning for his decision in

Yes, see the answer to question 18.

18. Paragraph 41 mentions that Mariano Rex was given the necessary time to exercise his right of defense, but does not say whether he did so. Did Mariano Rex really exercise his right to a defense, and what was the exact period/time allowed for him to do so? Are the disciplinary proceedings civil or criminal, given that Article 8.4 was invoked by

What are the usual rules for the removal of a judge on disciplinary grounds in the Republic of Fiscalandia?

The disciplinary proceeding is a punitive administrative process regulated in Chapter V (“Disciplinary Proceedings”) of the Judiciary Act of Fiscalandia. Administrative infractions and penalties are regulated in Chapter IV of the same law.

Under those provisions, the disciplinary investigation may be initiated (1) on a complaint, (2) ex officio, (3) at the direction of the Supreme Court, or (4) as a result of an audit by the Internal Oversight Body (IM F7 12 Tf1rnal Ov50 G6Ttr2 Tf1r4, Administrative infractions10(t22 Tf1 0)4(a)

Once the final deadline has expired, the Chief Justice of Internal Oversight summons the respondent to a “control hearing” at which the procedural challenges to the report are adjudicated, the evidence offered by the respondent is admitted, the necessary actions are ordered, and the respondent’s defense arguments are heard. Once the evidence has been presented, the Chief Justice of Internal Oversight informs the full Supreme Court, which schedules a “final merits hearing” to hear the evidence and the judge or justice’s final defense.

After this hearing, the full Supreme Court issues a decision. A qualified majority of 2/3 of its members is required to impose the penalty of suspension or removal.

Judge Mariano Rex effectively exercised his right to a defense in accordance with the procedure described. He was also given the opportunity to present his case before the full Supreme Court for 20 minutes at the final hearing on the merits.

19. According to paragraph 41 of the hypothetical case, what was the nature of the disciplinary proceedings brought against Judge Mariano Rex? Is there a code of judicial conduct that defines a serious violation that includes the obligation to adequately state the reasoning ?

Regarding the nature and rules of the disciplinary proceedings, see answer to question 18.

There is no Code of Judicial Conduct. The general obligations of judges, as well as administrative infractions and the applicable penalties, are regulated in the Judiciary Act of Fiscalandia. Article 15 of this law states that the general duties of judges and justices include “properly stating the reasoning for their judgments and decisions, in accordance with the law in force.” Article 55 then states: “The following are serious administrative infractions: (...) Serious and inexcusable failure to properly state the reasoning for judgments and judicial decisions.” Finally, Article 62 establishes that serious administrative infractions are punishable by removal.

In his defense, Judge Mariano Rex maintained that the difference of opinion with the Supreme Court could not be considered a failure to properly state the reasoning for his decision, since otherwise any judge or justice whose decision is changed by an appellate court would be guilty of serious administrative misconduct. He maintained that the disciplinary authority had not provided any rationale for the “serious” and “inexcusable” nature of his alleged failure to comply with the law.

20. According to paragraph 41 of the hypothetical case against him, in which he was granted the necessary time to exercise his right of defense, the Supreme Court ruled to remove Judge Mariano Rex from the bench. In this context, did the penalty of dismissal result from the abovementioned disciplinary proceedings, or was it a decision of the Supreme Court in another proceeding (and if so, under what circumstances)?

The penalty of removal was imposed in the disciplinary proceedings that were brought after the investigation ordered by the Supreme Court. See answers to questions 18 and 19.

21. In view of paragraph 41 of the hypothetical case, does Judge Mariano Rex have any investigations and/or disciplinary record other than the penalty under discussion before the IAHRs?

Judge Mariano Rex has been the subject of multiple disciplinary complaints, for decisions issued in *amparo* cases he has heard and decided as a judge of the Second Constitutional Court of Berena. In 2017 alone, Judge Mariano Rex racked up a total of 65 complaints, and in 2018, there were 96. Most of these complaints were filed by extractive companies or by municipal or environmental authorities in connection with *amparo* proceedings asserting the right to prior consultation. Almost all of the complaints were closed at the preliminary stage due to a lack of evidence; however, in 2015 he was reprimanded for a delay in adjudicating an *amparo* case.

22. Do all 26 justices of the Supreme Court sit for every case that comes before them and

No. The Supreme Court exercises jurisdiction in civil, criminal, and administrative matters, through its Civil, Criminal, and Administrative Divisions, to review decisions of the appeals chambers that come before the Court on extraordinary appeal.

The extraordinary appeal is an exceptional remedy, and is only admissible to challenge appeals chamber judgments that seriously violate the right to due process.

In constitutional matters, the Supreme Court rules on extraordinary appeals through its Constitutional Division, except in the case of unconstitutionality actions, over which the full Court has jurisdiction.

The full Court can also be convened by the Chief Justice of the Court, at the request of one of its divisions, when it exercises its authority to assume jurisdiction over a case. With respect to the authority to assume jurisdiction over a case, see the answers to questions 40 and 41.

In disciplinary matters, the full Court has jurisdiction to impose the penalties of suspension and removal of judges and justices.

23. Can Supreme Court disciplinary decisions be challenged by a court order granting *amparo*?

Under Fiscalandia's *Amparo* Law, *amparo* can be used to challenge "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." There are no grounds of

29. In reference

arts. 15-20 of Law 266 of 1999 (Nominating Boards Law): Do these articles (or any other of the aforementioned articles) give the Board discretion to choose the criteria for evaluating candidates, as described in paragraph 31 of the hypothetical case?

Yes. See answer to question 9.

30. What were the IACHR

2. Provide reparations in the form of monetary compensation for the pecuniary and non-pecuniary damages caused to the victims, as there are objective reasons that prevent the reinstatement of the selection process.
3. Conduct criminal, administrative, or any other necessary proceedings impartially, effectively, and within a reasonable time, in order to identify potential irregularities in the composition of the shortlist during the process of selecting the Prosecutor General and to determine the respective liability.
4. Adopt measures of non-repetition to prevent similar acts from occurring in the future, in particular:
 - Implement mechanisms that guarantee the transparency and openness of the actions of the Nominating Boards, as well as effective mechanisms that allow for public scrutiny of the evaluation processes for which they are responsible.
 - Implement an accountability and liability regime for the members of the Nominating Boards.
 - Implement mechanisms to ensure equal opportunities for women to access senior positions in the justice system.
 - Ensure that there is an accessible, effective remedy to timely and effectively challenge the violation of the rules and standards applicable to the processes for the selection of senior authorities, as well as the appointments derived from them.

31. Know the role of the Ombudsman's Office is part of the public oversight branch, are there any procedures or remedies within this branch that Magdalena Escobar or Maricruz Hinojoza and others could have used in their claims against the State of Fiscalandia?

Law 266 of 1999 establishes that the Nominating Boards are temporary entities that operate independently and does not provide any accountability mechanism for their members. Since some of their members are not civil servants, they are also not subject to the general accountability and liability regime.

32. What is the legal nature, procedure, and effects of a ruling on a motion to vacate?

A motion to vacate is a judicial proceeding conducted in an administrative court, that seeks judicial review of governmental acts or omissions subject to administrative law, as well as the effective protection of the rights and interests of the persons under the government's jurisdiction.

The action is brought before the administrative trial courts, which rule in the first instance. The judgment can be appealed to the appeals chambers. Finally, an extraordinary appeal can be filed with the Supreme Court when the appeals chamber's judgment has violated due process guarantees.

2. Acknowledges and/or restores the legally protected right or interest, and orders the government to take the necessary measures to that end.
3. Orders the government to take a certain action or measure established by law.

33. What efforts has the State of Fiscalandia made to promote gender equality, especially with respect to access to education and employment?

There is an initiative in the Legislative Assembly for a Gender Parity Law sponsored by the parliamentary group #MenosEsMás and supported by the Anti-Patriarchal Party, which is

It is not known whether the Guidelines approved at the third session of the Nominating Board included a protocol and evaluation criteria for the interviews, since it was an internal working document that was not published. At the beginning of the interview stage, in each of the sessions, the Board spent a few minutes explaining the duration and methodology of the sessions. See answer to question 9.

37. What does the Nominating Boards Law say about the confidentiality of its meetings, deliberations, or proceedings?

Article 2 of Law 266 of 1999 establishes that: “The Nominating Boards will screen candidates based on the principles of transparency, merit, morality, honesty, efficiency, and citizen participation.” It does not contain *specific* provisions regarding the confidentiality of meetings, deliberations, or provisions adopted by the Boards. The *general* content of the Nominating Boards Law is described in Footnote 1 of the Hypothetical case.

38. Were the questions posed by the Nominating Board to each of the applicants and their respective responses made available to the public?

Since the interview sessions were open to the public (paragraph 34 of the hypothetical case), civil society organizations reported some of the questions and answers through social networks, and the media informed the public about some controversial candidates. The media were allowed to record the sessions, but the sessions were not broadcast live by government media outlets.

39. What penalties or warnings does Fiscaline law provide for judges who fail to comply with their duty to properly state the reasoning behind their judgments?

See the answer to question 19.

40. What was the Supreme Court legal argument, under Fiscaline law, for deciding to assume jurisdiction over the case concerning the possibility of President Obregón s reelection?

See the answer to question 41. The Court assumed jurisdiction over the *amparo* action brought by President Obregón on the grounds of “major social impact.”

41. What are the criteria for the Supreme Courttton

The State of Fiscalandia did not attend the public hearing before the Inter-American Commission on Human Rights.

43. What are the statutory definitions of the criminal offenses of corruption and influence peddling in the Republic of Fiscalandia?

Corruption is defined as a variety of criminal offenses in the Criminal Code of Fiscalandia. One of them is influence peddling. Other statutory offenses include active and passive bribery, embezzlement, misappropriation of funds, and nepotism.

The offense of influence peddling is committed by “any person who, by himself or herself or through a third party, or by acting as an intermediary, influences a competent public official in order to obtain an undue advantage from that official, for himself or for a third party, by using his hierarchical status, office, position, or personal connection

on a transitional basis were replaced and, in such cases, by what procedure and how many were women?

See answer to question 62. Only two women were appointed, and they were appointed to the Judicial Council.

48. During Hinojosa and del Mastro s careers as prosecutors, they investigated cases of serious human rights violations. Did any of these investigations involve the President or his family or friends?

No.

49. After the removal of Judge Mariano Rex on December 1, 2017, were there any other disciplinary proceedings against him for the same acts?

After Judge Rex's removal, the pending disciplinary complaints were closed.

50. Does Fiscalandia have a quota law or a gender equality law that requires the State to guarantee a minimum number of positions for women to serve in the Prosecutor General s office or in other public offices?

See answer to question 33.

51. What remedies are available to challenge the penalties of suspension and removal imposed by the Supreme Court of the State of Fiscalandia and what are their procedures?

The penalties of suspension and removal imposed by the full Supreme Court can only be challenged by filing a motion for reconsideration with the same full Court.

