REPORT N° 28/94
CASE 10.026
PANAMA
September 30, 1994

BACKGROUND:

1. On June 10, 1987 the President of Panama's National Bar Association, Chiriqui Chapter, presented a complaint to this Commission stating that there had been a violation of rights protected by the American Convention on Human Rights, particularly Articles 8 and 25, in the case of attorneys Guillermo Mosquera Palacios, Nelson Caballero Jiménez, Elzebir Troya de Di Vito, Rosalinda Ross de González, hereinafter termed "the Circuit Judges," and Beatriz Méndez de Rodríguez, hereinafter termed "the Municipal Judge," the dismissal of whom, without due process, had also infringed the independence of the judicial branch and the corresponding rights and guarantees.

2. Panama is divided for judicial purposes into districts, circuits, and municipalities. The district involved in this case has a Superior Court in which the six circuit judges of Chiriqui Province sit--judges who are appointed and dismissed by that superior court at a meeting in the Accord Chamber. The circuit judges in turn meet in that room to appoint and dismiss the municipal judge.

3. The claim states that:

a) On January 6, 1987, the President of the Fourth Superior Court of Justice of the Third Judicial District, attorney Ricardo E. Jurado de la Espriella--hereinafter "the President of the Superior Court"--attempted in a telephone call to pressure the Municipal Judge to rule in favor of one of the parties to a case within her jurisdiction. The Judge refused to do so.

b) In the face of that refusal, the President of the Superior Court joined forces with two other judges from the same court and on January 20 sent a communication (#38) to the Circuit Judges, ordering them to apply the disciplinary measures stipulated by law to the Municipal Judge for a lack of respect vis-à-vis the President of the Court. The circuit judges felt that they should first hear the Municipal Judge, pursuant to Art. 32 of the Constitution, which governs due process.

c) The President of the Superior Court then ordered the judges to carry out the summary dismissal of the Municipal Judge. Four of the six district judges refused to do so and as a result were dismissed by means of Order #266, which was signed by the President and two magistrates of the Superior Court at a meeting in the Accord Room on February 5, 1987. In the same order, the Court appointed new circuit judges, who upon instructions from the Superior

Court judges in turn dismissed and replaced the Municipal Judge.

d) Exhaustion of internal remedies: the plaintiffs state that they appealed the decision of the Superior Court judges, but the plea was rejected by that Court, which granted the corresponding appeal in the General Affairs Division of the Supreme Court on February 27. That appeal had not yet been resolved on the date of the claim, June 9, 1987, despite expiry of the legal deadline.

e) The accusation also notes that at the time they were dismissed, two of the Circuit Judges were protected by the Maternity Leave Privilege since less than a year had elapsed since they had borne children, whereas the statute provides that a working mother who returns to her job after giving birth may not be dismissed for a period of one year.

f) The claim states that based on Art. 50 of the Constitution, a request for the special remedy of amparo of Constitutional Guarantees was presented to the Supreme Court against the aforementioned dismissal orders. It was not granted, on the grounds that an ordinary remedy was in progress in that court--despite the fact that the term allowed by law had expired and it had not yet been resolved.

g) The claim is based on a number of factors:

> the acts described here and the court order in question constitute a direct violation on the part of the Panamanian Government, a signatory to the American Convention on Human Rights, of the provisions contained in Articles 8 and 25 ... by contravening the principle of the independence of magistrates and judges, their irremovability without due cause, the sacred privilege of maternity, and the universal right to due process, as mandated by the Constitution of the Republic of Panama.

4. The Commission transmitted the complaint to the Government of Panama, which submitted its reply on October 16 and 19, 1987.

5. The Government's response is divided into two parts: an introduction, which presents constitutional norms applicable to the judiciary, and transcribes Title VII relative to the administration of justice; and a report addressing the specific case.

6. The report states that:

a) the office of judge embodied in Law 9 of 1963 was suspended by Official Decree 140 of 1963, which says:

> all officers of the court will be placed on temporary duty until such time as

> a new Judicial Code shall hand down new rules governing the appointment of judges, the text of which shall regulate all matters relative to the admission, tenure, prerogatives, sanctions, and dismissal of such personnel. When Official Decree 140 of 1969 took effect, all members admitted to the judiciary were appointed without compulsory rules on competition: accordingly they were directly and freely appointed by the nominating officials ... who in performing this function act independently and autonomously.

The declaration that the plaintiffs no longer occupied those positions took place during the period in which Official Decree 140 was in effect.

b) As of April 2, 1987 (subsequent to Order #266 for dismissal), Laws 29 of 1984 and 18 of 1986 were in effect: they adopt the Judicial Code and restore the office of judge in accordance with the rules embodied in Articles 198 through 215 of the National Constitution (of 1972, amended in 1978 and 1983), constitutional provisions that establish legal reservations. The plaintiffs were thus "declared no longer present in the performance of their duties by the respective nominating authority."

c) Exhaustion of the remedies of domestic jurisdiction: the report notes that in opposing "the administrative action of the nominating authority," the plaintiffs:

> ...sought annulment proceedings against the Fourth Division of the Supreme Court (General Matters), which were duly ruled on in a declaration of lack of competence....leaving them the appropriate means afforded by our law: the remedy of unconstitutionality vs. the plenary Court (consisting of nine magistrates...) and the administrative remedy vis-à-vis the Third Contentious-Administrative Division (consisting of three justices who deal with contentious-administrative and labor remedies).
>
> Consequently, the means of challenge available in our legal system have not been exhausted...nor has the Supreme Court issued an in-depth opinion on the matter; so that at this stage of the proceedings [the Commission] is constrained from expressing an opinion prior to such pronouncements, should any be appropriate. (Underlining in the original text).

d) The report also indicates the response from the Government, setting forth its action in the case in regard to the due process embodied in Art. 32 of the Constitution and the interpretation of that principle in the Supreme Court's opinion of February 20, 1984, to the effect that the constitutional guarantee of due process includes:

1) the right of jurisdiction, i.e., the right of every person to appear before the state jurisdictional organ to seek justice and the restoration of individual rights when the person deems those rights to have been infringed; and

2) the right of every individual to be apprised of the arguments adduced against his request to be heard, to defend himself, to be provided with legal assistance, produce evidence, and obtain a judgment that will resolve the case in timely fashion.

3) substantiation of the proceedings before the natural judge;

d) Observation of a procedure established by law for the type of process in question, ensuring defence in the trial, the bilateral nature of the hearing, and the equality of the parties to the case. (Underlining from the original text).

7. The Government of Panama attached to its response dated October 19, 1988 several affidavits from the Secretary of the Supreme Court issued on October 2 to the effect that:

a) the plenary of the Court decided on February 26, 1987 to abstain in the matter of the constitutional amparo presented against Order #266 of the Fourth Superior Court of Chiriqui "because the action that is the subject of the accusation cannot be contested by the means selected";

b) no remedy of this type has been presented for such purpose to the Court's Contentious Administrative Division 3;

c) the July 4, 1988 decision of the General Affairs Division concerning the remedy of rescission presented on February 26 of this year by the two circuit judges against the dismissal, which also invokes protection of the Maternity Law, in which it abstains from a ruling, and recommends that this matter be referred to the proper channels;

d) a similar decision by the General Affairs Division to abstain in regard to the remedy of rescission presented by the two circuit judges.

8. In those last two decisions, the Supreme Court maintains that:

a) the decision taken by the district judges on February 5 was made before the new Judicial Code--which restored the office of judges that had

existed under Law 9 of 1963 and that was suspended by Official Decree Nº 140 of May 30, 1969--went into effect.

b) consequently, there was no constitutional violation in this instance because the issue is not a penal trial but an administrative act calling for the dismissal of public servants, so that they would have access to other means to protect the rights that had supposedly been trampled.

c) there has been no violation of Art. 207 of the Constitution, which sets forth the independence of judges in their functions, since the issue is not an order restricting the free exercise of the judicial function, but an administrative act of the nominating agency dismissing them.

d) there has been no violation of Art. 208 of the Constitution, which stipulates that judges may not be dismissed or suspended or transferred except in cases indicated in the law and with the formalities prescribed, because this is a programmatic principle which must be developed by means of a formal law governing its application; and although the constitutional precept existed at the time the dismissal took place, the law regulating the office of judges--which, as noted above, was restored on April 1, 1987--had not yet been enacted.

9. The General Affairs Court decided to abstain from considering the remedy of amparo of constitutional guarantees presented by the judges, leaving intact the plaintiffs' right to have recourse to such action, for the following reasons:

a) although the respective articles would appear to assign competence to that court in this instance, this would be a mistake, for it is not the appeal of a correctional sanction (underlined in the opinion) that is at issue, but "a dismissal, the administrative act of the nominating authority which is not subject to the rules of due process because it does not comprise a penal proceeding, a correctional measure, or a policy matter as cited in Art. 32 of the Constitution."

b) There has been no violation of Art. 207 of the Constitution: that article addresses the "independence of judges in regard to the powers conferred on them by the Constitution and the law in matters of jurisprudence on which they draw as a basis for handing down an opinion, unswayed by the dictates of higher officials, and subject only to the provisions of the Constitution and the law. Such independence does not obtain in administrative matters. The independence of judges ... constitutes a guarantee or minimum requirement for the proper conduct in imparting justice, which places justices and judges in the margin of politics and the dictates of other government bodies."

c) With regard to Article 208 of the Constitution, that which was set forth in its decision as regards the writ presented by the Judges is repeated,

which is summarized above in 7 (d).

10. The plaintiffs' representative, speaking also as President of the Chiriqui Chapter of the National Bar Association, responded to the government's remarks, cited above. After restating the events giving rise to this case, he spoke at length of the exhaustion of domestic remedies.

In so doing, he explained and documented the presentation of:

a) the remedies of repeal based on unconstitutionality presented to the Fourth Superior Court, its rejection thereof, and the appeal that was also rejected by the General Affairs Division of the Supreme Court;

b) the remedy of amparo (Art. 50 of the Constitution), presented to the Supreme Court in plenary, and the rejection thereof based on the existence of an appeal which was pending before the General Affairs Division of that Court; and a discussion of the impossibility and futility of further recourse through contentious administrative channels for the reasons stated in the following point.

11. He considers that the contentious-administrative route would be useless because:

a) The contentious-administrative remedy presumes the existence of unlawful conduct.

b) The Court had issued an opinion that dismissal of the judges was legal, alleging that Decree Nº 140 had suspended Law Nº 9 (which embodies and regulates the rights of judges).

c) Consequently, the Court's position rules out the possibility of any alternative proceedings since, on the one hand, this would require recourse to a remedy which presupposes an illegal act; and, on the other, this court has already pronounced in favor of the legality of that act, i.e., the dismissals.

12. The claimant presents the following summary of his legal arguments:

a. The Constitution and the Pact of San Jose guarantee the right to judicial independence, the right to due process, the right to be heard, the right to be protected from arbitrary dismissal, and other judicial safeguards and guarantees.

b. Decree Nº 140-1969 was rescinded in 1972 upon the adoption of the new Constitution. Articles 192 and 193 thereof take precedence over the suspension of key provisions of Law 9-1963, regulating the office of judges, prescribed in that Decree.

c. Consequently, suspension of the provisions of Law 9 was nullified, and Law Nº 9 again entered into full effect. He bases his argument, inter alia, on Art. 35 of Panama's Civil Code, which states:

> The Constitution is a law that reforms and rescinds pre-existing legislation. All legal provisions issued prior to the Constitution the tenor of which is clearly contrary to the letter and spirit thereof shall be set aside as groundless.

d. The Supreme Court has upheld the action of the Fourth Superior Court, even going to such extremes as to contradict its own previous decisions regarding the independence of judges.

e. Dismissal of the judges was not part of a program to restructure the judicial system but the result of arbitrary action on the part of the Superior Court, upheld by the Supreme Court.

13. The Government responded to the petitioners' observations on June 16, 1988. In its response, the Government:

- repeated that not all of the domestic remedies have been exhausted because the General Affairs Division of the Court refused to consider the remedy, maintaining that it was not a correctional sanction (which would be within its purview), but an administrative act, which is the province of the contentious-administrative division;

- furthermore, the suspension established by Decree 140 did not apply to the entire contents of Law 9 of 1963, but to some of its provisions only;

- accordingly the Government requests a verdict of inadmissibility to be issued, pursuant to Art. 46 of the Convention and Art. 37 of the Regulations.

14. To provide the Commission with an example, and without thereby implying an acknowledgment of admissibility, the Government also adduces that:

- the lack of grounds of a law, as stated in Art. 35 of the Civil Code (see 12.3 above), must be established by the Supreme Court, the organ that exercises centralized control of constitutionality; and the Supreme Court has not abolished Decree Nº 140 by means of a constitutional judgment. Accordingly, it was still in effect at the time the case started.

15. [The Government] maintains that the petitioner is attempting, by means of this case, to pit the Commission against the Panamanian Government for political purposes.

16. On August 22, 1988, the petitioners presented their comments on the Government's reply of June 16, repeating

> - that domestic remedies had been exhausted, given the multiple and related rejections their various recourses to the Supreme Court had elicited;
>
> - and that the Supreme Court's statement that the guarantees of judicial independence and stability and due process established in the Constitution comprise a programmatic principle that is not applicable to this case because the office of judge is not regulated also constitutes a violation of the American Convention on Human Rights requirement that internal legislation be brought into line with the provisions of the Convention.

17. In a hearing before the Commission at its 74th session, the petitioners asked the Commission to issue an opinion, based on Art. 37.2 of its Regulations, to the effect that

> the phrase "shall not be applicable" in Art. 37.2 excludes the requirement in paragraph 1 concerning the exhaustion of remedies under domestic jurisdiction, and the petitioners are not obliged to invoke and exhaust internal resources that are theoretically available to them if the conditions cited in Art. 37.2 obtain.

The position adopted in this respect is that "...petitioners addressing international fora are not under obligation to invoke internal remedies theoretically available to them if attempts to do so would, from a practical standpoint, be futile."

They cite international jurisprudence and previous resolutions of the Commission in this respect. (Rep. 29/86, Case 9102, Nicaragua; Rep. 20/87 Case 9449, Peru; and Rep. 17/87 Case 9426 Peru.)

The claimants' response to those arguments follows.

> ...In rejecting the remedy invoked by the petitioners, the Supreme Court (General Affairs Division) declares itself incompetent and suggests that the matter lies within the purview of contentious-administrative affairs, at the same time stating that "the Division (General Affairs), following principles established by the plenary of the Court, considers that there has been no violation of Article 208 of the National Constitution." The Court's position leaves no room for any alternative proceedings whatsoever since, on the one hand, this would require invocation of a remedy which presupposes an illegal act; and, on the other, the Court has already issued an opinion endorsing the legality of that act, i.e., the dismissals. The Fourth Superior Court predicated its rejection of the annulment and appeal on the premise of its incompetence, stating that the General Affairs Division of the Supreme Court was the competent judicial body to hear the question of arbitrary dismissal. Once again, the petitioners followed the

procedures indicated by the Panamanian tribunals to no avail.

The Government based its statement to the effect that domestic remedies had been exhausted on the failure of the petitioners to invoke the remedies of unconstitutionality and contentious business falling within the competence of the administrative courts. Our response to the latter is included in the statements made in the preceding paragraph. Without prejudice to the intention to invoke the remedy of unconstitutionality as the only channel whereby the petitioners might have elicited a substantive decision regarding the unlawful and arbitrary dismissals, previous cases brought before the Supreme Court demonstrate the contrary. In circumstances almost identical to the case of the petitioners, the Supreme Court ruled on the suit brought by attorney Luis A. Esposito against unlawful dismissal by the Fourth Superior Court in David, Province of Chiriqui (verdict of February 13, 1978), in which a petition for amparo of the same type as the one submitted by the claimants was presented and rejected by the Court.

At the same time when the Court rejected the remedy of amparo sought by the petitioners, alleging that recourse thereto was not appropriate because of the existence of an ordinary appeal which was pending, one of the divisions of that same Court before which the aforementioned recourse was pending allowed the deadline established by law for deciding on the remedy to lapse; and that division took no action until the claimants brought the present case before the Inter-American Commission on Human Rights, at which time it issued an opinion rejecting the action on the grounds that it did not fall within the division's competence.

18. On January 25, 1989 the petitioners proposed as an option that the mechanism envisaged in Art. 45 of the Commission's regulations be activated to reach an amicable solution between the parties. Notice of that petition was sent to the Government with a request that it answer within 30 days. The Government replied on March 2, stating once again that it considered the claim inadmissible because all of the remedies of domestic jurisdiction had not been exhausted.

19. On June 19, 1990 the petitioners repeated their request that: the claim be admitted; the Commission exhaust every means at its disposal to arrive at an amicable solution; and the restitutional and reparational measures requested previously be taken into account. The petition was then transmitted to the Government of Panama, which reiterated its previous position on October 10, 1989.

CONSIDERING:

WITH RESPECT TO ADMISSIBILITY:

20. That the petition was submitted within the period allotted and in accordance with the formal conditions prescribed by Art. 32 of the Commission's

Regulations.

21. That the petitioners presented the remedy of rescission for decision of the Superior Court and, upon its rejection thereof submitted an appeal, as instructed by that body, to the General Affairs Division of the Supreme Court.

22. That given that Division's delay in rendering a judgment, they lodged the remedy of amparo with the plenary of the Court, but it was rejected on the premise that the regular remedy was still being processed.

23. That in considering the special remedy, the Supreme Court considered that the dismissal had been an administrative--not a correctional--act, thus eliminating the possibility of a motivating causal connection between the decision of dismissal and the conversation between the Municipal Judge and the President of the Superior Court, and the order for dismissal due to lack of respect, sent by that court to the circuit judges and their refusal to hear the case. That in its analysis, the Supreme Court had closely examined the substance of the matter and had issued its decision.

24. That in addition, the statement that the Official Order was in force and applicable to the case--and the guarantees of tenure and protection on behalf of the dismissed judges were thus suspended-made it futile to institute the contentious matter falling within the competence of the administrative court.

25. That Art. 212 of Panama's Constitution, pursuant to applicable principles of international law, establishes as a tenet of procedural guidance the principles of:

1. Simplification of paperwork, procedural economy, and the elimination of formalities.

2. The object of the suit is acknowledgment of the rights set forth in substantive law.

WITH RESPECT TO THE SUBSTANCE:

26. That the current suspension of the guarantees of tenure and independence of judges, ordered by Decree Nº 140 of 1969, on which the decision to dismiss the circuit judges and the Municipal Judge was based, and its confirmation--implicit in the Supreme Court's decision to abstain from reviewing the case--leave the dismissed judges in a defenseless situation and deprived of the guarantees set forth in Articles 8, 23, and 25 of the American Convention on Human Rights.

27. That the provisions of Panama's Constitution call for and establish a system of guarantees in respect to due process and judicial independence that was regulated by Law 9 of 1963; and that suspension of the pertinent provisions for

eighteen years (from 1969 to 1987) represents an involution that threatens the rights recognized in the American Convention, to which Panama is a State Party--particularly the obligation to bring domestic legislation in line with the principles and norms established in that Convention.

Article 2. Duty to Adopt Domestic Law Provisions

> Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

28. That this situation likewise prevents the enjoyment of the right recognized in Article 23.1.c of the Convention "to have access, under general conditions of equality, to the public service of his country," because that equality must be backed up by guarantees assuring that it prevails.

29. Both the Municipal Judge and the Circuit Judges were penalized by their dismissal without being heard and as a consequence of acts that have at no time been denied by the Government of Panama.

30. That the importance of these acts is augmented by the need for all states to maintain an independent judiciary that is able to provide guarantees ensuring the enjoyment of the rights established in the Convention.

SUBMISSIONS RECEIVED PURSUANT TO TRANSMISSION OF THE ARTICLE 50 REPORT

31. On January 5, 1991, the Government of Panama filed observations in response to the report prepared and adopted by the Commission pursuant to Article 50 of the American Convention. The Government informed the Commission that measures had been taken to reform the procedures for appointing all judges as a means of restoring confidence in the judicial system. Candidates for judicial office under the new system were evaluated through a merit-based system. The Government reported that the petitioners in this case had been considered under this new system. As a result, petitioners Nelson Caballero and Elzebir Troya de Di Vito had been selected for judicial positions. Two additional petitioners, Guillermo Mosquera and Beatriz Mendez de Rodriguez, were working for other Government offices and were not considered. The fifth petitioner, attorney Rosalinda Ross de Gonzalez, had been considered as a candidate, but had not been appointed.

32. On April 30, 1991, petitioners responded to the above submission, maintaining that the Government's actions did not comply with the Commission's recommendations. Petitioners asserted that the Government of Panama failed to

implement legislative measures to establish the stability and independence of the judiciary. Rather, they alleged, laws had been passed having a contrary effect. They noted the passage of Cabinet Decree #17 of January 24, 1990 and Law #25 of December 1990 which vest complete discretion in the judicial hierarchy to appoint and remove judges, in contravention to the right to due process and irremovability absent just cause set forth in the Constitution. The petitioners' representatives also maintained that although two of the former judges had been reappointed to judicial positions, none had been placed back in the exact positions from which they had been dismissed. Moreover, petitioners assert that attorneys Caballero and Troya were reappointed through the competitive selection process, not as a result of measures taken to replace them in their previously held positions. Petitioners emphasized that none of the professional and economic damage sustained as a result of the summary dismissals had been repaired.

33. On July 8, 1991, the Government submitted a lengthy elaboration of its observations on the case. First, the Government agreed that the firing of these judges by authorities of the previous administration had constituted a violation of internal law. The Government stated that, in taking steps to reform the judiciary, it had taken into account the situation of judicial officers who had been unfairly dismissed or sanctioned by the former regime. Of the twelve members affected (including the petitioners), seven had been reinstated or placed in similar judicial positions. The Government repeated that two of the petitioners in this case had been reintegrated into the judiciary, and two others were serving in different government positions. The fifth petitioner, Rosalinda Ross de Gonzalez, had not been reappointed because of complaints previously filed against her by litigants.

34. The submission included a compilation of laws and regulations elaborated and presented by the Supreme Court as a legislative initiative to strengthen the rule of law, guarantee the independence of the judiciary and improve the judicial process. The Government indicated that it was taking measures to legislatively ensure the independence of the judiciary in conformity with the Constitution, and stated that petitioners' interpretation of Cabinet Decree 17 and Law 25 was incorrect. The Government expressed that, as the violations complained of in this case were caused by actions of the previous regime in the first months of 1987, the Commission's consideration of the violations in 1990, after the return of democracy to Panama, was untimely and unfair. Given the difficult economic situation in Panama, and given that those responsible for the violative acts were part of a prior regime that had acted without legitimacy, the Government argued that it had no ability or obligation to repair the economic damage sustained by the petitioners.

35. Pursuant to a requested extension of time, the petitioners responded to the Government's elaborated observations on December 16, 1991. The response was transmitted to the Government on June 30, 1992 (following a requested translation into Spanish). Petitioners first reported that the Supreme Court of Panama had issued an opinion on June 22, 1991, concerning the allegedly unconstitutional firing of Rosalinda

Ross de Gonzalez. The Court's decision characterized the Constitutional provision at issue as having been suspended and inapplicable at the time of her firing, but set forth that the Superior Court had accused her "without legal foundation," and without indicating a justifiable basis. Ms. Ross had not, however, been reappointed to her previously held position. Petitioners emphasized that the current Government has a continuing obligation to repair the violations concerned, regardless of whether they were committed by the previous regime.

36. A hearing concerning this stage of the case was held during the Commission's February, 1992 period of sessions. Representatives of both parties were present.

37. By a note of September 4, 1992, the Commission requested that the Government present any information deemed pertinent to the petitioners' response within 30 days. The Government's communication, dated September 14, 1992, principally reiterated points raised in previous submissions, and during the hearing held on this matter.

38. Article 51 of the American Convention states that when the Commission sets forth its opinion on a question presented, it may also recommend that the state concerned take certain "measures that are incumbent upon it to remedy the situation examined." After the period prescribed for such measures to be taken has expired, Article 51.3 states that the Commission shall decide "whether the state has taken adequate measures and whether to publish its report."

39. The submissions of the Government indicate, on the one hand, that it has done everything required to repair the violations in this case. The Government asserts that it has taken measures to reform the system for appointing judges, as well as legislative measures to reestablish the independence of the judiciary. Two petitioners were reappointed to judicial positions, two had taken other government positions, and one was not reappointed because litigants had lodged complaints against her. On the other hand, the Government continues to maintain that for the Commission to hold it responsible for the violations committed by a previous regime would be both inappropriate and unfair.

40. As to the issue of compliance, it appears from the submissions of the parties that Panama has implemented a merit-based system for the selection of judges. Two of the petitioners, Nelson Caballero and Elzebir Troya de Di Vito, have been reinstated in judicial positions. Further, the Commission is aware that a number of legislative measures were initiated with the aim of reestablishing the independence of the judiciary.

41. While the Commission has taken note of and commends the various legislative efforts initiated and pursued by the Government, the critical importance of a stable and independent judiciary requires that these measures be fully implemented.

The Commission recognizes that such a process may not be accomplished immediately. However, the measures recommended to reinstate and compensate the petitioners could and should have been undertaken and realized expeditiously. It appears that three of the petitioners have yet to be offered reinstatement, and none have received any compensation for the economic and professional harm they sustained as a result of the violations in this case.

42. The Government of Panama has maintained throughout the processing of this case that, while they have taken the measures required to fulfill the Commission's recommendations, the responsibility for the violations rested with a previous administration. In fact, there was continuity in the administrative apparatus of the state during the time in question. Wholly aside from that, the Commission observes that Article 1 of the American Convention sets forth the undertaking of States Parties first, to respect the rights and freedoms recognized, and second, to ensure the free and full exercise of those rights. The latter obligation refers to the state's duty to prevent, investigate and punish human rights violations. The consequence of this duty is the continuing responsibility of the state to "attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation of human rights." (Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 166.)

43. The Commission hereby reiterates the fundamental point that the responsibility of a state for human rights violations is of a continuing nature. The Commission finds the language adopted by Inter-American Court in the Velásquez Rodríguez case particularly applicable to this case:

> According to the principle of continuity of the State in international law, responsibility exists both independently of changes of government over a period of time and continuously from the time of the act that creates responsibility to the time that the act was declared illegal. The foregoing is also valid in the area of human rights although, from an ethical point of view, the attitude of the new government may be much more respectful of those rights than that of the government in power when the violations occurred.
> (Judgment of July 29, 1988, para 184.)

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

1. That the Government of Panama bears responsibility for the facts denounced in this case: the firing of Circuit Judges Guillermo Mosquera, Nelson Caballero, Elzebir Troya de Di Vito and Rosalinda Ross de Gonzalez on February 5, 1987, and of Municipal Judge Beatriz Mendez de Rodriguez on February 8, 1987. These actions constituted violations of the right to judicial guarantees and the right to have equal access to the public service of one's country, respectively set forth in Articles 8 and 23.1 of the American Convention, for which the Government of Panama

bears responsibility.

2. That the suspension from 1969 to 1987 of the Constitutional provisions establishing a system of guarantees concerning due process and judicial independence constituted a violation of the Article 2 obligation to adopt such domestic legal measures as are required to give effect to the rights and freedoms recognized in the American Convention.

3. To recommend to the Government of Panama that it take the necessary measures:

a. to reinstate those petitioners who are not currently serving in the judiciary to the judicial positions previously held, or to positions substantially similar;

b. to compensate each of the petitioners for economic and professional harm sustained as a consequence of the violation of their human rights under Articles 8 and 23.1 of the American Convention;

c. to continue pursuing the reestablishment and safeguarding of the independence and stability of the judiciary through legislative measures and other action.

4. To publish this report, pursuant to Article 48 of the Commission's Regulations and Article 51.3 of the Convention, because the Government of Panama did not adopt measures to correct the situation denounced within the time period.