

Press Release

Inter-American Court of Human Rights

I/A Court H.R._PR-17/2021 English

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I/A Court H.R. Protecting Rights

PERU IS NOT RESPONSIBLE FOR THE REMOVAL OF A JUDGE THROUGH A DISCIPLINARY PROCESS

San José, Costa Rica, March 26, 2021. In the Judgment in the Case of *Cordero Bernal v. Peru*, notified today, the Inter-American Court of Human Rights declared that the State of Peru was not responsible for violating the judicial guarantees (Article 8), the principle of legality (Article 9), the political rights (Article 23) and the right to judicial protection (Article 25), recognized in the American Convention on Human Rights, of Héctor Fidel Cordero Bernal.

The official summary of the Judgment can be consulted [here](#) and the complete text of the Judgment [here](#).

Mr. Cordero Bernal was appointed a Provisional Judge of the Fourth Criminal Court of the province of Huánuco (Peru) on November 15, 1994, and, on June 22, 1995, he was asked to take charge of the First Criminal Court on a temporary basis owing to a request for leave by the permanent judge. While in that post, Mr. Cordero Bernal heard the case of two individuals who were flying a small plane registered to Colombia that had been intercepted by the Air Force. The said individuals were criminally prosecuted for the crime of illegal drug trafficking and a warrant was issued for their arrest. On July 11, 1995, Mr. Cordero Bernal granted them unconditional release, a mechanism established in the Criminal Procedure Code for cases in which the innocence of the defendants had been fully proved. On July 17 that year, his temporary assignment to the First Criminal Court ended.

Following the issue of the Decision of unconditional release, the office of the Judiciary's Supervisory Body (OCMA) opened disciplinary proceedings against Mr. Cordero Bernal based on several irregularities and this resulted in his dismissal by the National Council of the Judiciary (CNM). Mr. Cordero Bernal filed an application for amparo against this decision, which was rejected by the Constitutional Court finding that due process had not been violated.

Criminal proceedings for the offenses of concealment and malfeasance in office were also instituted against Mr. Cordero Bernal. These concluded in 2005 with an acquittal. Following that decision, he asked the CNM to annul his dismissal and to reinstate him, requests that were denied by that body.

The Court found that the decisions taken during the proceedings that ended in Mr. Cordero Bernal's dismissal had described in detail the irregularities that had occurred by granting unconditional release to the two defendants. Consequently, it concluded that the CNM's decision was duly reasoned and not arbitrary; accordingly, neither the guarantee of due process nor the principle of legality established in the Convention had been violated. Since the tenure of a judge had not been arbitrarily affected, the Court concluded that there had been no violation of the right to judicial independence in relation to the right of access to and permanence in public office under general conditions of equality.

Regarding the principle of the application of the most favorable law, the Court found that it was

not appropriate to analyze its application in this specific case because the Organic Law of the National Council of the Judiciary – under which Mr. Cordero Bernal was dismissed – was the law in force as regards the dismissal of judges at the time of the facts.

Lastly, the Court found that, when processing the application for amparo, the judges examined the CNM's decision and concluded that it was duly reasoned and that the right to due process had not been violated. In the Court's opinion, the conclusions reached by the judges of the amparo proceeding were not manifestly arbitrary or unreasonable. Consequently, the Court concluded that the State of Peru had not violated the right to judicial protection.

Judges Patricio Pazmiño Freire and Eduardo Ferrer Mac-Gregor Poisot advised the Court of their dissenting opinions.

The composition of the Court for the issue of this Judgment was as follows: Judge Elizabeth Odio Benito, President (Costa Rica); Judge Patricio Pazmiño Freire, Vice President (Ecuador); Judge Eduardo Vio Grossi (Chile); Judge Humberto Antonio Sierra Porto (Colombia); Judge Eduardo Ferrer Mac-Gregor (Mexico); Judge Eugenio Raúl Zaffaroni (Argentina) and Judge Ricardo Pérez Manrique (Uruguay).

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