Limits on the possibility of restricting political rights of elected individuals and their links to the protection of democratic foundations, the rights of voters, and the rights of the elected

di Nicolás Carrillo-Santarelli

Title: I limiti alla possibilità di restringere i diritti politici degli eletti e i legami con la protezione delle fondamenta della democrazia, dei diritti degli elettori e di quelli degli eletti

Keywords: Inter-American Court of Human Rights; Political rights; Impartiality; Rights restrictions; Democracy.

1. – The Inter-American Court of Human Rights (hereinafter, also the Inter-American Court, the Court, or the IACtHR) delivered earlier this year an important decision that addresses aspects related to the protection of political rights, enshrined in article 23 of the American Convention on Human Rights (hereinafter, also the American Convention), among others. Even though an important section of the decision largely reiterates the conclusions of the Court in its prior decision in the case *López Mendoza* vs. Venezuela concerning the requirement that sanctions affecting the enjoyment of the political rights of elected individuals are imposed in the course of criminal proceedings –condition that was not satisfied in either of the cases—, there are several unique insights found in the judgment rendered in the Petro Urrego case that are worth considering –both in terms of properly understanding Inter-American standards and from a comparative legal perspective; especially considering how much more succinctly the Court explored political rights under article 23 of the Convention in the case of *López Mendoza* (only from § 104 through 109 of its decision in that case, as compared to § 90 through 117 in the *Petro Urrego* case, in relation to the same aspects of political rights).

In a nutshell, the facts of the case pertain to the removal from office of former mayor of the capital city of Bogota, Gustavo Petro, a left-wing politician, from office, as a consequence of his being condemned in the course of disciplinary proceedings conducted by the Disciplinary Chamber of the *Procuraduría General* –an entity that operates as some sort of disciplinary supervisor of state agents under the Colombian constitutional framework. This same Chamber formulated the accusation, carried out the disciplinary process, and reached a decision that was contrary to Mr. Petro. In its 9 December 2013 decision, it imposed on him the sanctions of removal from office and general incapacity to hold public office for 15 years (§ 48-50). The period during which he did not hold office, however, only took place between the 20th of March and the 23rd of April of 2014 (§ 143). As a result of domestic litigation, the adverse decision against

him was initially suspended in a decision of 13 May 2014 and later declared void in 2017 in a decision reached in 2017 by the highest Court of the administrative legal branch in Colombia (*Consejo de Estado*), on the basis of the lack of competence of the body that originally imposed the sanctions against Mr. Petro and the breach of due process guarantees and legality (§ 61-62). Furthermore, it ordered the State of Colombia to pay him the salary he stopped from receiving during the time he was removed from office (*ibidem*).

On the other hand, Mr. Petro was fined in 2014 by an entity with an oversight mandate in the field of trade (*Superintendencia de Industria y Comercio*), against which administrative remedies were unsuccessful and against which judicial remedies are still pending (§ 70-71). Another supervisory entity in fiscal matters (*Contraloría*) condemned Mr. Petro for alleged budgetary contraventions –likewise, the final outcome of judicial remedies against the condemnation is still pending before the Colombian judiciary (§ 74, 76).

2. – Before addressing aspects on the merits, it is convenient to briefly explore what the Court said about two preliminary objections that were raised by the defendant state. They were related to the (according to the state in question) non-exhaustion of domestic remedies, on the one hand; and the alleged incapacity of the Court to pronounce on alleged *in abstracto* contraventions of Inter-American obligations –that is to say, without an actual victim being affected—, and the lack of breach of Inter-American duties in circumstances in which they were supposedly not contravened, on the other hand.

3. – Concerning the first of these two issues, the Inter-American Court confirmed its longstanding case law as to the requirement that, for the non-exhaustion of domestic remedies to render a case inadmissible, it must be raised by the defendant state from the earliest (possible) opportunity –even during the procedural stages before the Inter-American Commission on Human Rights. Otherwise, the state will be understood to be prevented from raising it afterwards, considering good faith implications in terms of the applicants having been led to consider that the state waived by means of its inaction the possibility of invoking such requirement afterwards.

The Inter-American Court of Human Rights has argued in prior decisions that a late invocation of the non-exhaustion of domestic remedies would thus amount to a contravention of the *non concedit venire contra factum proprium* principle (§ 29 of its judgment on preliminary objections in the case of *Neira Alegría and others vs. Peru*), while (former) IACtHR judge Antonio Cançado considered that failure to timely raise the non-exhaustion by a defendant state would entail a tacit waiver of the satisfaction of that procedural requirement (§ 5 and 13 of judge Cançado Trindade's vote to the IACtHR judgment on preliminary objections in the case of *Loayza Tamayo vs. Peru*).

On the basis of these considerations, in the case of Mr. Petro Urrego the IACtHR dismissed the Colombian arguments asking the Court to dismiss the case on the grounds of an alleged non-exhaustion of domestic remedies', insofar as in connection with some of the respective domestic proceedings the defendant state failed to raise their supposed non-exhaustion in its response to the application before the Court, and only did so in its final pleadings; while in relation to other domestic proceedings that became relevant in the process before the Commission after the application before it but before it adopted its merits report, the state of Colombia failed to invoke the non-meeting of the required procedural hurdle by the applicants at the earliest opportunity when its attention was drawn to them. Hence, in both cases the state failed to mention

the alleged non-exhaustion of domestic remedies at the earliest procedural opportunity when it *could* do so.

4. – Regarding the other sort of preliminary objection raised by the state of Colombia in the case, the Inter-American Court of Human Rights –rightly, to my mind— focused on whether the state arguments were truly of such a nature or, rather, actually reflective of disagreements on the content, interpretation, or merits of a substantive nature –which the Court (again, correctly) found was the case. The Court employed an adequate logic in this regard, which looks at what the actual substance of the arguments before it is, instead of at how they are framed or described by the party raising them.

Such logic, attaching primacy to the content over nomenclature attached to a given act, is also found in the Vienna Convention on Human Rights and treaty practice concerning the identification of reservations or treaties *regardless* of whether something is named (or not) as such (see its arts. 2.1.a, saying that a treaty is such "whatever its particular designation"; and 2.1.b, according to which reservations are certain "unilateral statement[s], however phrased or named). With a similar train of thought, the Inter-American Court of Human Rights addressed the Colombian allegations in question by saying that the nature of preliminary objections is the challenging of the admissibility of a case or the competence of the Court (§ 32), <<independientemente de que el Estado defina un planteamiento como "excepción preliminar">> (*ibidem*) – which translates as "regardless of whether the state defines an argument as a 'preliminary objection".

In light of this consideration, the Court did well to conclude that state arguments according to which there was no affectation of the right enshrined in article 5 of the American Convention, and discussions as to whether there was a violation of political rights or a contravention of Inter-American duties as a consequence of the existence and application of certain Colombian domestic provisions, in no way entails a challenge of its competence or the admissibility of the application. Accordingly, the Court dismissed this preliminary objection as well.

5. – Concerning the issues on the merits, a recurring theme underlying the considerations of the Court in the judgment examined in this case note are anchored on the defense of the democratic system and guarantees required in the Inter-American Human Rights System. This is an adequate and by no means creative overreach, for two reasons. Firstly, because the OAS human rights system in fact relies on and refers to aspects tied to democratic guarantees, reason why they are not alien to but actually inseparable from it, as has been found in instruments and prior case law. In this regard, as authors as Antonio Remiro have argued, while non-intervention generally impedes the identification of a general international law obligation for states to have a (certain) democratic regime, it is possible to create and find such type of requirements in international institutional or other frameworks (Antonio Remiro Brotóns et al., *Derecho internacional*, Tirant Lo Blanch, 2007, pp. 209-215).

Furthermore, as the Inter-American Court of Human Rights indicated in its advisory opinion OC-8/87 years ago, in the Inter-American human rights system:

> "The concept of rights and freedoms as well as that of their guarantees *cannot be divorced from the system of values and principles that inspire it.* In a democratic society, the rights and freedoms inherent in the human person, the guarantees applicable to them and the rule of law *form a triad.* Each component thereof defines itself, complements and depends on the others for its meaning" (§ 26 of the aforementioned advisory opinion, emphasis added).

Thus, the Court did have competence to refer to democratic guarantees and was actually *required* to considering that they were applicable to the case. The Inter-American Court did so in a way that draws attention to the reasons why it is important and necessary to safeguard such guarantees: this, on the one hand, is pertinent in terms of the object and purpose interpretation required by the general rule of interpretation of treaties (art. 31 of the Vienna Convention on the Law of Treaties), and most necessary in a current global political context in which populism or authoritarianism (even authoritarian uses of and challenges to international law seem to be increasing, see: Tom Ginsburg, *How Authoritarians Use International Law*, *Journal of Democracy*, Vol. 31, 2020) have been on the rise, and in which the political opposition in some countries has been persecuted or sought to be silenced, as judge Patricio Pazmiño Freire notes in his partially dissenting opinion to the opinion of the Court's majority (pp. 2, 6 of his opinion). Sensitizing as to the importance of the protections explored by the Court is also relevant from an expressive point of view.

The Court addressed issues about democratic guarantees and the protection of democracy in two ways: firstly, by insisting that (a) they are to be considered when interpreting applicable provisions for the sake of resolving discussions on the merits; and secondly by being mindful of the (b) protection of the political rights of both incumbents and those who exercise them by voting for said candidates.

6. – As to the former (a) aspect, it is noteworthy that almost from the outset of its examination of the merits, specifically concerning the first set of rights it explored (the right to participate in Government, found in article 23 of the American Convention on Human Rights), the Court set forth its argument according to which representative democracy constitutes a pillar of the Inter-American system, leading to an interconnection between such a political framework, human rights and political rights specifically. This link among others, makes the protection of access to power and its exercise according to rule of law considerations a "constitutive" element of the system. This requires that stringent conditions are strictly observed in order to legitimately restrict them (which did not happen in the case under examination, reason why the state of Colombia was condemned for the breach of several human rights obligations, as will be explained further on), lest the system and its guarantees are thwarted.

The Inter-American Court presented its ideas in this regard at length in the following fashion, available only in Spanish as of the moment of writing this article:

> "[L]a democracia representativa es uno de los *pilares* de todo el sistema del que la Convención forma parte, y constituye un principio reafirmado por los Estados americanos en la Carta de la Organización de los Estados Americanos [...] En el Sistema Interamericano la *relación* entre derechos humanos, democracia representativa y los derechos políticos en particular, quedó plasmada en la Carta Democrática Interamericana [...] [la cual] hace entonces referencia al derecho de los pueblos a la democracia al igual que destaca la importancia en una democracia representativa de la participación permanente de la ciudadanía en el marco del orden legal y constitucional vigente, y señala *como uno de los elementos constitutivos de la democracia representativa el acceso al poder y su ejercicio con sujeción al Estado de Derecho*" (§ 90-92, emphases added).

7. – In regard to (b) the protection of the political rights of both incumbents and their electors, the Court mentioned early on in its arguments that the rights enshrined in article 23 of the American Convention have both an *individual and a collective dimension*, which respectively protect those who "participate as candidates and those who vote for

them" (my own translation, § 92). Likewise, the Court later on expressed that removal from office and the declaration of an incapacity to run for it not only amount to restrictions of the rights of those directly affected, but also of voters (§ 96), affecting democratic dynamics and the will (§ 100) and rights (§ 108, 116) of electors –which the Court found were breached in the present case as a result of state conduct (§ 135).

Comparing the cases of *Petro Urrego* and *López Mendoza* in regard to this important finding is also most interesting because of how it can shed light on how the evolution and even changes of the Court's reasoning can take place in no small part thanks to the (often lengthy) discussions found in the opinions the judges of the IACtHR attach to its decisions –which can help shaping the understanding of its members in future cases, and bring to light the importance of the exchange of arguments in terms of the practice of judicial bodies, dynamic that has a discursive relevance when publicly ventilated (which is quite appropriate when seen through the prism of the democratic themes of the judgment under examination).

In this regard, while the IACtHR did not mention the two dimensions of political rights in its 2011 judgment in the *López Mendoza* case, judge Diego García Sayán did when, in its concurring opinion, he said that:

> "*In analyzing the strict proportionality of the sanction, we must consider that not only are the rights of those seeking to run affected, but the collective interests of the voters is also harmed.* This requires that the restriction be analyzed in a stricter manner when it comes to elected officials as opposed to appointed officials, in which case there is no involvement of citizens in the selection of these officials. This leads us to conclude therefore that, in regard to persons elected by popular vote or who intend to run, restrictions on passive suffrage can be exercised only to the extent strictly necessary to protect the fundamental legal rights from the most serious attacks that place them in harm or dangers way" (§ 28 of the aforementioned concurring opinion, emphasis added).

In its more recent decision of the matter, the one I examine in this case note, the Court explicitly refers to both individual and collective considerations, labelling them as two complementary dimensions of the right in question –it is interesting to note that another right understood to have both an individual and a collective dimension in the Inter-American human rights system is that of freedom of expression, consideration that has led to interesting conclusions on applicable guarantees (see, e.g. *Case of "The Last Temptation of Christ" (Olmedo-Bustos* et al.) *vs. Chile*, § 64).

8. – Additionally, the Court remarked, as it had done in its judgment in the *López Mendoza* case (§ 108 of it), and as is expressly indicated in article 23 of the American Convention on Human Rights, that <<citizens, not only enjoy rights, but also "opportunities". The latter term implies the obligation to guarantee with positive measures that anyone who holds formal political rights has a real opportunity to exercise them>> (§ 93 in the *Petro Urrego* decision; § 108 in the *López Mendoza* judgment). Such right thus encompasses not only "passive suffrage" or the "right to be elected" –the issue in the *López Mendoza* case— (*ibidem*), but also the right to properly exercise political office and functions once elected –which is the aspect explored in the *Petro Urrego* case. According to the Court and related to the underlying aspects at stake in terms of democratic guarantees, such exercise of political rights not only strengthens democracy but also –which is key— political pluralism.

This is an issue that was raised in the opinion of judge Patricio Pazmiño Freire, who considered that there was an unacceptable silencing or exclusion of Mr. Petro motivated in connection with his political leanings. In the judge's opinion, this amounted to a covert discrimination and a "misuse of power" (page 4 of his partially

dissenting opinion, which refers to a concept mentioned among others in § 197 of the judgment in the case *Granier et al. (Radio Caracas Televisión) vs. Venezuela*). That said, the majority opined differently, insofar as the Court's decision concluded that no evidence was presented before it proving an intention to discriminate against Mr. Petro by means of the conviction imposed on him (§ 130) –Mr. Pazmiño disagrees with this finding in his opinion, in which he also said the Court could have ordered the gathering of evidence about this on its own initiative considering it has the power to do so (page 2 of his opinion).

9. – In relation to the decision to remove Mr. Petro from office and impose on him an incapacity to hold it for several years adopted by the *Procuraduría*, the Court based its decision –finding that the state of Colombia violated his political rights— largely on the analysis of the (limited) power states have to restrict said rights under the Inter-American framework. The Court began by noting how restrictions may be permissible insofar as political rights are not absolute (§ 94), provided that the requirements for limiting those rights are satisfied, given the fact that right restrictions cannot be discretionally adopted (*ibidem*). The Court pointed readers to the second paragraph of article 23, according to which:

> "The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing *by a competent court in criminal proceedings*" (emphasis added).

Likewise, the Inter-American Court refers to article 29 of the American Convention, to remind about the fact that restrictions of rights cannot exceed the limits found in the Convention (*ibidem*) –or domestic provisions more favorable to or protective of human rights (e.g. permitting less restrictions) if they exist, according to the *pro personae* principle it has referred to in its case law, I might add (see: Zlata Drnas de Clément, *La complejidad del principio pro homine*, *JA*, Issue 12, 2015).

While acknowledging that the parties in the proceedings espoused contradictory interpretations of the scope of article 23.2, the Court well said that its literal interpretation leaves no room for doubt as to *which* authorities can impose restrictions on political rights of elected officials: exclusively (a) judicial authorities making decisions in criminal proceedings, provided that they are (b) respectful of due process and other applicable guarantees –the Court initially refers to the first element, but the second one also flows from the remainder of its decision. According to the Court, the Convention:

> "[n]o permite que órgano administrativo alguno pueda aplicar una sanción que implique una restricción (por ejemplo, imponer una pena de inhabilitación o destitución) a una persona por su inconducta social (en el ejercicio de la función pública o fuera de ella) para el ejercicio de los derechos políticos a elegir y ser elegido: *sólo puede serlo por acto jurisdiccional (sentencia) del juez competente en el correspondiente proceso penal.* El Tribunal considera que la interpretación literal de este precepto permite arribar a esta conclusión, *pues tanto la destitución como la inhabilitación son restricciones a los derechos políticos*, no sólo de aquellos funcionarios públicos elegidos popularmente, sino también de sus electores" (§ 96, emphases added).

In sum, removal from office and the declaration of the incapacity to hold it amount to *restrictions* to political rights –a logical and, if I may, evident conclusion considering how they affect the possibility of *exercising* them, aspect to which the Court referred when discussing rights and opportunities, as presented above—; and their

imposition by disciplinary bodies automatically contravenes the treaty conditions to (legitimately and lawfully) impose them, considering that such actors are not judicial ones adopting criminal judgments, as is required by the Convention.

Moreover, the Court found that such conclusion, based on an undeniable literal interpretation, coincides with what the object and purpose of the pertinent provisions seek, considering how democratic guarantees linked to the possibility of ensuring democratic processes and the enjoyment of political rights could be eroded otherwise (§ 97).

The Court added that a strict respect of treaty guarantees on restrictions is essential to prevent arbitrary decisions that could hurt the political opposition (§ 98). One can intuitively surmise what the Court meant by this, but the argument is somewhat tautological (i.e. these restrictions are to be respected to uphold their object and purpose, which is about abiding by those restrictions). The literal interpretation was sufficient, and perhaps more explanation or discussion on political dynamics and risks that could take place if judicial or non-judicial authorities *without* criminal jurisdiction were allowed to impose restrictions to political rights of the elected (also affecting their voters) in terms of democratic erosion would have strengthened this second teleological argument and the perception of the legitimacy of the normative content espoused in the judgment.

Altogether, considering that none of the aforementioned requirements were satisfied, the removal of Mr. Petro from his mayorship by an authority not allowed to impose such limitations under the treaty framework, effective for about one month, amounted to a wrongful restriction of his political rights. This, the Court added, affected democratic dynamics by virtue of "altering the will of voters" (§ 100, my translation); and also contravened the jurisdiction principle of who can impose limitations to the political rights of the elected (§ 132).

10. – Interestingly, the IACtHR also referred to the complementary of the actions of organs of the Inter-American system with those of domestic authorities. This was considered due to the discussion of whether domestic remedies such as those presented before and decided by the *Consejo de Estado*, described at the beginning of this case note, had or not already brought about the required protection of the rights of Mr. Petro. In that regard, the Court correctly held that even if *certain* aspects of that protection already took place thanks to the aforementioned action, the harm was not *fully or completely* repaired, and the issue was thus not totally resolved –judge Eugenio Raúl Zaffaroni even mentioned in his dissenting opinion that domestic remedies were incapable of fully repairing the victim considering the harm caused to his image by virtue of the domestic sanctions (pp. 1-2 of his opinion).

The Court reached its decision by looking at the nature of the right whose exercise was violated, considering that such exercise was interrupted for over one month and the domestic provisions that made its illegitimate restriction possible were still present in the Colombian legal system (§ 109). The Court would later recall how by virtue of article 2 of the American Convention (and customary law, as discussed in *Case of "The Last Temptation of Christ" (Olmedo-Bustos* et al.) *vs. Chile*, § 87), states are under an obligation to make sure that their practices and norms are consistent with treaty provisions, which requires that states bring to an end incompatible and develop compatible ones (§ 111). The Court would then mention how, for instance, one domestic law (1864 of 2017) not implemented in the present case could have the effect of discouraging someone from running for office in ways not compatible with article 23, which is contrary to the rights enshrined in it (§ 116).

Hence, according to the Court (which I concur with), even if it is true that its competence is meant to complement rather than to substitute that of domestic agents

and organs –which are required to consider applicable international human rights provisions when carrying out their functions so as to ensure that their state abides by its obligations, according to the famous doctrine of the control of conventionality—, complementarity is to be understood as giving states the possibility of *fully* solving problems from a human rights perspective in the first place. Otherwise, the regional bodies can and are empowered to operate (§ 101-108) if this is not fully achieved.

This reminds of an argument of (former IACtHR, current ICJ) judge Cançado Trindade, who spoke of how the regional additional level of (jurisdictional) governance gives victims the hope of protection when they fail to see it realized at the domestic level (§ 35 of his concurring opinion to the IACtHR preliminary objections decision of 1998 in the *Case of Castillo-Petruzzi et al. vs. Peru*).

That said, the Court did mention that even though the claimants expressed that certain interpretations of the Constitutional Court of Colombia on the powers of disciplinary bodies were contrary to treaty law, the Court found that considering how they do not imperil the exercise of the rights of Mr. Petro, they cannot be said to amount to a violation of his rights in the present case (§ 117). Still, just as it said that a given unapplied law (1864 of 2017) contravened article 23, as mentioned in a preceding paragraph in this case note, using the same logic the IACtHR would have been as capable of saying if there is a clash here as well or not. For the sake of coherence, it would have been probably preferable for the Court to refrain from noting breaches in *obiter dicta* in relation to both aspects, or otherwise for it to have used the same logic in both events. One cannot help but wonder if there was an intention to avoid antagonizing the Constitutional Court in a multi-level dialogue.

11. – Another important finding of the Court present in its decision has to do with the competence, independence, and impartiality of (domestic) bodies imposing sanctions, considering that so as to protect individuals against arbitrary and illegal decisions (§ 121), whenever they are imposed, regardless of in the course of what process and decided by which authority, due process guarantees are applicable –even outside criminal legal proceedings (§ 118, 120), as the Court has held in the past. In this regard, for instance, in its 2001 judgment in the *Baena Ricardo vs. Panama* case the Court said that:

> "[A]dministrative sanctions, as well as penal sanctions, constitute an expression of the State's punitive power and that, on occasions, the nature of the former is similar to that of the latter. *Both, the former and the latter, imply reduction, deprivation or alteration of the rights of individuals*, as a consequence of unlawful conduct. *Therefore, in a democratic system it is necessary to intensify precautions in order for such measures to be adopted with absolute respect for the basic rights of individuals*, and subject to a careful verification of whether or not there was unlawful conduct" (§ 106, emphasis added).

Additionally, the Court condemned the concentration of functions of accusation, conduction of proceedings, and decision-making in one single actor as being contrary to due process (§ 129). It observed that it may be permissible for the three functions in question to be exercised by one single entity, provided that different agents or dependences within it exercise each of them (*ibidem*), so as to ensure a different composition and identity of the agents in question. Additionally, those agents carrying out each function must not be subordinate to agents carrying out the other one(s) (*ibidem*). Otherwise, there is a lack of *objective* impartiality, considering the influence of preconceived ideas state agents had formed before on the responsibility of an individual whose responsibility they examine, as befell in the present case. The Court distinguished this objective impartiality dimension, dependent on normative design,

from a subjective one, related to an intentional design to discriminate (§ 126) which, as was explained before, the Court did not find to have taken place in the *Petro Urrego* case.

12. – Even though the applicants referred to other rights, such as that enshrined in article 5 of the American Convention on Human Rights on the right to humane treatment in connection with threats that Mr. Petro was said to have suffered and the deprivation of his salary for a time, the IACtHR dismissed the allegations on the basis of its not having found a causal nexus between State action or inaction and the threats in question, or between the imposition of sanctions and the threatening reactions of third parties (§ 142). Likewise, in regard to salaries, the Court stressed how important salaries are for workers and their families in terms of their subsistence and the anguish that can be suffered if it is feared that it is going to be partly or fully lost. The Court also highlighted that, as a result, states must refrain from permitting the embargo of salary in a proportion that is greater than that which allows to have a dignified living considering expenses and subsistence; and insisted that such restrictions are to be contemplated by the law and be proportionate (§ 144). However, the Court said that it had not been proven that the embargo of the salaries of Mr. Petro during the period in which they were affected caused him anguish or deprived him of his means of subsistence (§ 143). Accordingly, the Court did not declare the responsibility of Colombia under Inter-American human rights law in relation to aspects related to threats and salaries in the case.

13. – Finally, concerning reparations, which is an important element of the Inter-American system considering that, from a comparative perspective, it is more proactive and protector than its European counterpart in this regard, apart from mentioning as is usual that its judgment and its content are to be published and disseminated in the state (§ 150), and ordering the payment of compensatory damages for non-pecuniary harm on the basis of equity (§ 162; the use of which the Court has said does not permit it to act discretionally, as explained in: § 291 of its 2012 decision in the *Case of Atala Riffo and Daughters vs. Chile*) and of domestic and regional costs and expenses (§ 164); it is noteworthy, and consistent with its own precedents and what it found in the merits, that the Court ordered as a non-repetition guarantee or measure of reparation that the State brings about in a reasonable period the conformity of its legal system with the jurisdictional requirements enshrined in Inter-American law for imposing restrictions that lead to a removal from office (§ 154). Compliance with this order can doubtlessly have the effect of protecting the rights of both voters and those in office, thus covering both the collective and individual dimensions of political rights the Court referred to in its decision.

Having said this, the Court said also found that it was not necessary to order the reinstatement of Mr. Petro in office, considering that his mandate had already come to an end and that the invalidity of his removal from office and incapacity to hold it had already been decided and declared void by Colombian authorities (§ 158). Likewise, and as the Inter-American Court of Human Rights does in its constant practice, the Court indicated that it would itself monitor the full compliance of Colombia with its judgment –which is also a distinguishing feature when compared to the European Court of Human Rights, in terms of who and how supervises compliance with regional human rights judgments.

Nicolás Carrillo-Santarelli
Human Rights and Business Institute

Note e commenti – *DPCE on line*, 2020/4
ISSN: 2037-6677

Monterrey University (UDEM)
nicolas.carrillos@gmail.com