

## 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’s *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 (paragraph 8)?**

There is no Constitutional Court in Fiscalandia (see final version of the hypothetical case). Jurisdiction in constitutional matters is exercised through the Constitutional Division of the Supreme Court, and by the full Court in the case of unconstitutionality actions.

The judicial branch of Fiscalandia is organized hierarchically as follows:

- (i) Supreme Court of Justice (which includes the Civil, Criminal, Administrative, and Constitutional Divisions, as well as the full Court)
- (ii) Appeals chambers
- (iii) Trial courts

The appeals chambers and trial courts also specialize in civil, criminal, administrative, and constitutional matters.

As for the geographical subdivisions of the judicial branch throughout the country, each of the seven regions of Fiscalandia has its own regional court, composed of appeals chambers and trial courts. The Supreme Court of Fiscalandia is in Berena, capital of the Republic.

- 3. Domingo Martínez took office as the Prosecutor General of the Republic on September 15, 2017 (paragraphs 36 and 37) and, therefore, Magdalena Escobar no longer held the position as of that date; [so how was she] able to file a complaint with the 40<sup>th</sup> Criminal Court of Fiscalandia in relation to the META Emails investigation on October 15, 2017, in addition to stating, on the same date, that the members of the Special Unit were being harassed by Domingo Martínez, who was supposedly still serving as head of the internal oversight body the Prosecutor General’s Office (paragraph 22)?**

Domingo Martínez took office as the Prosecutor General on September 16, 2017 (see the answer to question 26), having served as the head of the internal oversight body of the Office of the Prosecutor General of the Republic until September 15, 2017. In that position, he sent daily requests for information to the Special Unit created to investigate the META Emails case, on administrative and management issues (compliance with deadlines, closure and inventory of files, reports on the use of vehicles assigned to prosecutors, etc.). The then Prosecutor, Magdalena Escobar, reported this as an act of harassment at a press conference held on August 13, 2017 (see final version of the hypothetical case, in which the dates have been corrected).

- 4. According to paragraphs 22 and 37 of the case, what is the status of the criminal cases filed on October 15, 2017 with the 40<sup>th</sup> Criminal Court of Fiscalandia, particularly since there is a new Prosecutor General?**

After Prosecutor General Domingo Martínez replaced the 5 prosecutors of the Special Unit for the META Emails case, the complaint filed with the 40<sup>th</sup> Criminal Court of Fiscalandia continued. Some hearings have been held, but no first instance judgment has been issued yet. Despite pressure from the media, Prosecutor Martínez has not publicly reported on new developments in the investigation or on the information provided by the “new witnesses” mentioned by former Prosecutor Escobar at a press conference.

- 5. Paragraph 27 of the hypothetical case states that President Obregón used the hashtag #YoSoyCICIFIS in his Tweets referring to the appointment of the new Prosecutor General. What is the status of the establishment of the International Commission against Impunity in Fiscalandia (CICIFIS)?**

The Obregón administration is in negotiations with the Secretary General of the United Nations (UN) for the signing of an agreement to create the International Commission against Impunity in Fiscalandia. President Obregón has stated on his Twitter account that this is a priority for his government.

- 6. What is the difference between an extraordinary Presidential Decree and an ordinary Presidential Decree, in terms of their legal nature and effects?**

Under the Constitution of Fiscalandia, the President of the Republic has the power to “issue extraordinary decrees, in economic, financial, or national or foreign security matters when they concern topics of national interest and has the obligation to inform the Legislative Assembly.” Ordinary and extraordinary presidential decrees have both the force and status of

law, and take effect from the day of their publication in the Official Gazette. The Extraordinary Presidential Decree of June 14, 2017 was based on national security grounds.

- 7. Are the judgments of the Supreme Court binding on the lower courts and the government’s actions, or are their effects limited to the parties to the proceedings, i.e., of relative effect?**

The judgments of the Supreme Court and the interpretations that they contain are binding on the lower courts in matters in their areas of specialization. In the case of judgments on constitutional matters, they are also binding on all public authorities.

- 8. Paragraph 29 mentions the “Guidelines for the evaluation of candidates for the position of Prosecutor General of Fiscalandia.” Did the Guidelines establish objective scoring criteria for the Nominating Board’s evaluation of candidates for the position of Prosecutor General?**

The content of the Guidelines is unknown, as they were not published.

- 9. Did the Nominating Boards consider a suitable profile to be mandatory when choosing from the candidates proposed for the shortlists?**

The Nominating Boards Law establishes that “Once in place, the Board will approve the rules and guidelines applicable to the evaluation of candidates.” In this way, in each selection process, and every time, each Board can approve its own evaluation parameters and tools, which may or may not include a mandatory profile.

- 10. What was the nature of the proceeding that resulted in the removal of Magdalena Escobar?**

According to paragraph 23 of the hypothetical case, Prosecutor Escobar was a career prosecutor and was not formally dismissed or removed. She served as Prosecutor General from her appointment on September 1, 2005, up to and including September 15, 2017.

After that date, she asked the Prosecutorial Career Service Department of the Prosecutor General’s Office to reinstate her to the position she held as a specialized organized crime prosecutor prior to her appointment as Prosecutor General. However, her request was rejected in an October 3, 2017 Resolution signed by Prosecutor General Domingo Martínez, and she was assigned to serve as prosecutor in the district of Morena, two hours from Berena, which is known for its high rates of gang violence.

- 11. When did Magdalena Escobar’s removal from the position of Prosecutor General of the Republic of Fiscalandia become final?**

See answer to question 10.

- 12. What became of the efforts made by the Republic of Fiscalandia to establish the “international mechanism against impunity” (International Commission against Impunity in Fiscalandia, “CICIFIS”) mentioned in paragraph 20?**

See answer to question 5.

- 13. When Magdalena Escobar was confirmed by the Presidential Decree issued on March 20, 2008, did it mean that her position as Prosecutor General became an official appointment / re-confirmation under the new constitution, or did her term continue from the time of her original appointment, and therefore remain transitional?**

The Presidential Decree of March 20, 2008 established only the following: “This Order: CONFIRMS the appointments of the heads of the Office of the Prosecutor General of the Republic, National Court of Auditors, Office of the Ombudsman of Fiscalandia, and Judicial Council, who shall remain in office in accordance with the Ninth Transitional Provision of the Constitution of 2007. To be published and filed.”

This decree did not address the duration or nature of the terms of office of the confirmed heads of the above oversight bodies. Nor did it expressly provide for the renewal of their terms.

- 14. According to paragraph 14, the 2007 Constitution established that the heads of oversight bodies in office “shall remain in their positions on a transitional basis,” provided that they comply with the requirements established for the position, and that Magdalena Escobar was confirmed in office by a Presidential Decree issued on March 20, 2008. What is Magdalena’s term of office according to this Presidential Decree? Is it the remainder of the 15-year term originally granted to her, or was it renewed for another 15-year term under the 2008 Presidential Decree?**

See the answer to question 13.

- 15. According to paragraph 14, Magdalena Escobar was appointed Prosecutor General on September 1, 2005 and confirmed in that position on March 20, 2008 by Presidential Decree. Under these circumstances, what are the terms and date of confirmation?**

With regard to the terms of confirmation, see the answer to question 13. The date of confirmation was March 20, 2008.

- 16. Was Judge Mariano Rex already a party to another judicial or administrative proceeding that ordered his removal from office without the possibility of appeal based on the same facts as the disciplinary proceedings that resulted in the December 1, 2017 decision? If not, what was the basis for alleging the violation of Article 8.4 of the American Convention on Human Rights before the IACHR?**

Judge Mariano Rex was not a party to any other judicial or administrative proceeding based on the same facts. In its Merits Report, the IACHR invoked only the violation of Article 8.1

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 the voter rights case when he was given the “necessary time to exercise his right of defense”?**

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 petitioner Mariano Rex and Article 8.4 uses the language “An accused person ...”? 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 (IOB) of the Judiciary.

The head of the internal oversight body is the Chief Justice of Internal Oversight, elected by the other judges of the Supreme Court by agreement of the full Court, for a two-year term. Once elected, he or she serves independently, full time, and is barred from serving on any division of the Court or on the full Court to adjudicate specific cases.

The purpose of the disciplinary investigation is to gather information and evidence relating to the alleged administrative infraction committed by the judge or justice. It is conducted in secret by the Investigative Unit of the IOB, the technical body supporting the Chief Justice of Internal Oversight, which has operational autonomy.

The investigation concludes with a report that (i) supports the existence of the conduct based on the evidence gathered, (ii) classifies the conduct by linking it to the administrative infraction, (iii) supports the possible penalty to be applied, and (iv) if applicable, requests the temporary suspension of the judge or justice for the duration of the disciplinary proceedings.

This report is presented to the Chief Justice of Internal Oversight for approval. The disciplinary proceedings begin when the report is approved, and the respondent is notified, giving him or her 5 working days to present procedural challenges to the report, and 10 working days to exercise his or her defense and submit evidence.

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 is a code of judicial conduct that defines a serious violation that includes the obligation to adequately state the reasoning for a decision? What was Judge Rex’s defense?**

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, “After the disciplinary proceedings 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 2017, 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 participate in all of the Court’s final decisions?**

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

inadmissibility that would preclude a challenge to the disciplinary decisions issued by the Supreme Court of Fiscalandia through *amparo*.

- 24. In paragraph 12 on the conditions required to serve as Prosecutor General, the fifth condition states that a candidate must “have practiced the profession for at least 10 years at the time of application.” Would it be possible to specify what kind of work experience the term “profession” includes?**

Article 103 of the Constitution refers to the profession of lawyer.

- 25. In paragraph 13, the Supreme Court established that “when the length of a public official’s term of office is not specified, it is a lifetime appointment.” Can the president himself specify the length of the term when he appoints that public official?**

No. The length of the terms of office of senior government officials is established by the Constitution, and cannot be set at the discretion of the appointing official. In judgment 0067-2003 of August 13, 2003, the Supreme Court held that when the Constitution does not establish the term of office of a public official, it is a lifetime appointment. The term of office of the Prosecutor General was not established in the 2007 Constitution.

- 26. On what date did Domingo Martínez take office as the Prosecutor General?**

Domingo Martínez took office as the Prosecutor General on September 16, 2017.

- 27. What is the basis for the complaints against Judge Ángel Lobo?**

The complaints filed against the Chief Justice of the Supreme Court, Ángel Lobo, allege that, in the case of Amazonas Alto, he had seated a relative of his as a judge on the regional court. In the case of Amazonas Bajo, it was reported that a few days before an important civil case brought by an indigenous community against an oil exploration company over collective land ownership was to be decided, Ángel Lobo, in his capacity as Chief Justice of the Supreme Court, had issued an order transferring the presiding judge of that regional court to another area of the country, and replacing him with a judge brought in from Amazonas Alto who consistently ruled in favor of extractive industries.

- 28. What action has the executive branch of Fiscalandia taken in response to the disclosure of the audio recordings?**

In addition to proposing the creation of a CICIFIS, President Obregón stated at a press conference that he would order the creation of an “Institute for the Restoration of Honesty in Government” (IPRH), which would be responsible for providing anti-corruption training to public officials at the national level.



**29. In reference to the document “Public Announcement for the Selection of the Prosecutor General of Fiscalandia,” 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’s recommendations to the Republic of Fiscalandia in the cases of Petitions 110-17 (Magdalena Escobar) and 209-18 (Maricruz Hinojoza et al.)?**

Recommendations of the IACHR in the Merits Report on Petition 110-17 (Magdalena Escobar v. Republic of Fiscalandia)

1. Reinstate the victim to the position of Prosecutor General, which she would still have if she had not been separated. In the event that this does not reflect the victim’s wishes, or if there are objective reasons that prevent reinstatement, the State should pay compensation for this reason.
2. Conduct criminal, administrative, or any other necessary proceedings in an impartial and effective manner and within a reasonable period of time, in order to determine possible undue interference in the criminal investigations that led to the victim’s removal from office, as well as to establish the respective liability.
3. Adopt measures of non-repetition to prevent similar events from occurring in the future, in particular:
  - Ensure that there are clear rules regarding the nature and duration of the terms of office of all senior government authorities, particularly the heads of the oversight institutions, including the Office of the Prosecutor General of the Republic.
  - To take, within a reasonable period of time, measures to eliminate the transitional status of the senior authorities appointed prior to the 2007 constitutional change, guaranteeing their right to due process, as well as equal access to the permanent position.
  - Ensure that international standards are observed in the selection of senior justice system authorities.

Recommendations of the IACHR in the Merits Report on Petition 209-18 (Maricruz Hinojosa et al. v. Republic of Fiscalandia)

1. Publish all original documentation relating to the Prosecutor General selection process in which the victims participated, including all the resolutions adopted by the Nominating Board, the assessment guidelines, the grades awarded, the evaluation files of all the candidates, the minutes of the deliberations, etc., in a complete and publicly accessible form.

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. Knowing that the Prosecutor General’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.

The motion to vacate can result in a judgment that:

1. Declares the government’s action null and void or ineffective, in whole or in part.

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 being studied by the Constitution Committee. This initiative seeks, among other things, to ensure equal opportunities for women to access civil service and proposes a guaranteed 30% quota in collegial government bodies. The Chief Justice of the Supreme Court, Ángel Lobo, has stated in the media that imposing this legislative measure on the bodies of the justice system could undermine the guarantee of judicial independence.

**34. What is the history of disciplinary proceedings against Mariano Rex?**

See the answer to question 21.

**35. On what grounds did the Supreme Court deny the extraordinary appeal filed by Hinojosa and del Mastro?**

The judgment handed down by the Second Appellate Chamber of Berena dismissed the *amparo* action for the same reasons given by the Second Constitutional Court of Berena: the appointment of the Prosecutor General is a sovereign power of the executive branch that is not subject to review via *amparo* proceedings.

Maricruz Hinojosa and Sandra del Mastro then filed an extraordinary appeal with the Supreme Court, based on two arguments: (i) First, that the previous judgments amounted to a denial of due process that left them with no remedy for the violations of law committed by the executive branch in the appointment process; (ii) Second, the judgments failed to adequately state the reasoning on which they were based, because the argument of sovereign power cannot be applied to acts performed by the Nominating Board, but rather only to those of the President of the Republic.

The Supreme Court denied the extraordinary appeal on the merits, finding that the appointment of the Prosecutor General was a political act of the President of the Republic not regulated by law, and therefore the inability to challenge its validity could not give rise to a “denial of the *amparo* process” for the plaintiff. With respect to the second argument, the Court held that the Nominating Boards were “intermediate entities” that were not part of the government, so their actions could not be challenged in a motion to vacate.

**36. Were the protocol and evaluation for interviews of Prosecutor General candidates approved by a reasoned resolution of the Nominating Board?**

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’s 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 Court to assume jurisdiction over a case and where is this regulated?**

The Supreme Court’s authority to assume jurisdiction over the case is governed by Art. 100 of the Constitution of Fiscalandia. This is a discretionary power that can be exercised “when the controversy is of general interest or major social impact.”

**42. Did the State of Fiscalandia respond to Transparency Fiscalandia’s public condemnation at the hearing before the Inter-American Commission on Human Rights? If so, when was the response given and what did it consist of?**

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.”

**44. Paragraph 37: Who appoints the head of the internal oversight body of the Office of the Prosecutor General?**

The head of the internal oversight body of the Office of the Prosecutor General is appointed by the full National Court of Auditors.

**45. What are the serious grounds and good cause for which the President of Fiscalandia can remove the Prosecutor General from office?**

The serious grounds on which the President may remove the Prosecutor General are governed by the Organic Law of the Office of the Prosecutor General and are as follows:

1. Permanent physical or mental incapacity.
2. Committing or permitting the commission of serious violations of human rights recognized by the Republic of Fiscalandia.
3. Being convicted of an intentional crime.
4. Committing serious violations of the Constitution and the law, affecting the basic principles of the democratic system.
5. Using confidential or classified information, to which he has access by reason of his position or the powers of investigation and prosecution, for his own benefit or that of a third party, in a way that does not protect the public interest.

**46. In what year did Fiscalandia accept the contentious jurisdiction of the Inter-American Court of Human Rights?**

September 20, 1980.

**47. In paragraph 19 of the hypothetical case, President Obregón indicated that the current term of the Prosecutor General was transitional and that a new permanent appointment was required. How many heads of oversight bodies who remained in office**

**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.

**52. Paragraph 38 discusses Maricruz Hinojosa and Sandra del Mastro’s challenge to Domingo Martínez’s nomination procedure. In their challenge, did the candidates for the Office of the Prosecutor General allege a violation of freedom of expression based on any stage of the Nominating Board procedure, or discrimination in connection with their previous professional activities as prosecutors?**

Neither Maricruz Hinojosa nor Sandra del Mastro alleged any violation of their rights before September 15, 2017, since that was when they realized that they had not been on the shortlist of candidates, and learned of Domingo Martínez’s appointment as Prosecutor General.

**53. What is the term of office for the Legislative Assembly of Fiscalandia?**

The term of office for the Legislative Assembly of Fiscalandia is 5 years.

**54. What was the grading method used to determine the score given to applicants already working in the Prosecutor General’s Office for the proficiency test from which they were automatically exempted?**

They were given the maximum possible score for the proficiency test (100 points).

**55. What is the status of the “META Emails” investigation and what progress has the new Special Unit made?**

See the answer to question 4.

**56. In the disciplinary proceedings described in paragraphs 40 and 41 of the hypothetical, who is responsible for opening an investigation into a judge? In this case, did that authority authorize the investigation of Mr. Mariano Rex?**

See the answers to questions 18 and 19.

**57. What specific rights were granted to Mr. Mariano Rex during the disciplinary proceedings against him?**

See the answers to questions 18 and 19.

**58. In the context of paragraphs 31 and 32 of the case, what scores did Ms. Maricruz Hinojoza and Sandra del Mastro obtain, and on what basis did the list sent to the President of Fiscalandia include the candidates ranked 18, 21, and 25, respectively, but not the three top-ranked candidates?**

At the background grading stage, Maricruz Hinojosa and Sandra del Mastro obtained 89 and 85, respectively, out of a possible 100 points.

The Nominating Board decided on the composition of the shortlist after a private deliberation at the end of the final interview session on September 15, 2017, and announced it at a press conference. The terms of the deliberations, the rationale for the shortlist, and potential changes in the order of precedence after the interviews are not known, as this has not been made public.

**59. Paragraphs 32 and 36 mention the ranking of applicants for the post of Prosecutor General during the selection process. Paragraph 32 states that Maricruz Hinojosa and Sandra del Mastro were ranked first and second before the interview stage and paragraph 36 mentions the ranking of the screened candidates whose names were ultimately forwarded to the President. Did Maricruz and Sandra’s rankings remain in the top 2 even after the interview? If not, for which positions did they qualify?**

See the answer to question 58.

**60. Did the number of justices and the composition of the National Supreme Court change after the coup that overthrew President Ramiro Santa María? Was Justice Ángel Lobo on the Supreme Court before the new Constitution, or was he elected by the Legislative Assembly after 2007?**

All of the Supreme Court justices were removed from office in the 2005 coup d'état. The mandate of the 2006 Constitutional Assembly included the appointment of transitional judges to fill vacancies and enable the Supreme Court to function. The current members of the Supreme Court, including Justice Ángel Lobo, were elected by the Legislative Assembly on August 1, 2010, following the procedure set forth in the Nominating Boards Law.

**61. Does Fiscalandia's Legislative Assembly currently have a government or opposition majority, and did the #MenosEsMás party participate in the 2005 coup?**

The #MenosEsMás party did not take part in the coup d'état, as it was formed in 2014. The government does not currently hold a majority in the Legislative Assembly, the composition of which is:

<b>Political party</b>	<b>Number of legislators</b>
ParenYaLaFarsa Party	35
Anticorruption Party	12
Fiscalandian National Party for Life and Family	10
MenosEsMás Party	8
Social Futurist Party	8
Anti-Patriarchal Party	8
Green Party	8
Todas y Todes Party	8
<b>Total</b>	<b>97</b>

**62. In addition to the Prosecutor General, have other officials in transitional positions also gone through the removal process determined by President Javier Obregón?**

Prosecutor General Magdalena Escobar was not formally dismissed or removed (see the answer to question 10).

The members of the Judicial Council, who were confirmed together with Magdalena Escobar in the March 20, 2008 Presidential Decree, were replaced upon the expiration of their original terms of office (i.e., their terms of office were calculated according to the pre-2007 constitutional rules), in accordance with the procedure set forth in the Nominating Boards Law of 1999. These proceedings were not questioned or legally challenged, either by the former board members or by any other authority or person.



However, the Ombudsperson of Fiscalandia, also confirmed on March 20, 2008, continued to serve beyond the expiration of her original 3-year term, which was renewed for up to 3 additional years, but was replaced after voluntarily resigning from the position in accordance with the procedure established in the Nominating Boards Law.

**63. Did the rule against reelection apply to all public officials (e.g. judges, legislators, and members of oversight bodies) or only to the President of the Republic?**

Only to the President of the Republic.

**64. In the selection process for the position of Prosecutor General of the Republic, how much weight is given to each stage in the final placement and what criteria are evaluated at each stage? What scores did Hinojoza, del Mastro and the successful candidates obtain?**

The relative weight of the various stages of the selection process is as follows: Proficiency Assessment (30%), Background Assessment (30%), Interview (40%).

The candidates obtained the following scores:

Candidate	Proficiency assessment	Background assessment	Interview
Maricruz Hinojosa	100	89	Unknown
Sandra del Mastro	100	85	Unknown
Domingo Martínez	65	60	Unknown
#2 on the shortlist	72	57	Unknown
#3 on the shortlist	70	65	Unknown

With regard to the assessment criteria, see the answers to questions 9, 36, and 58.