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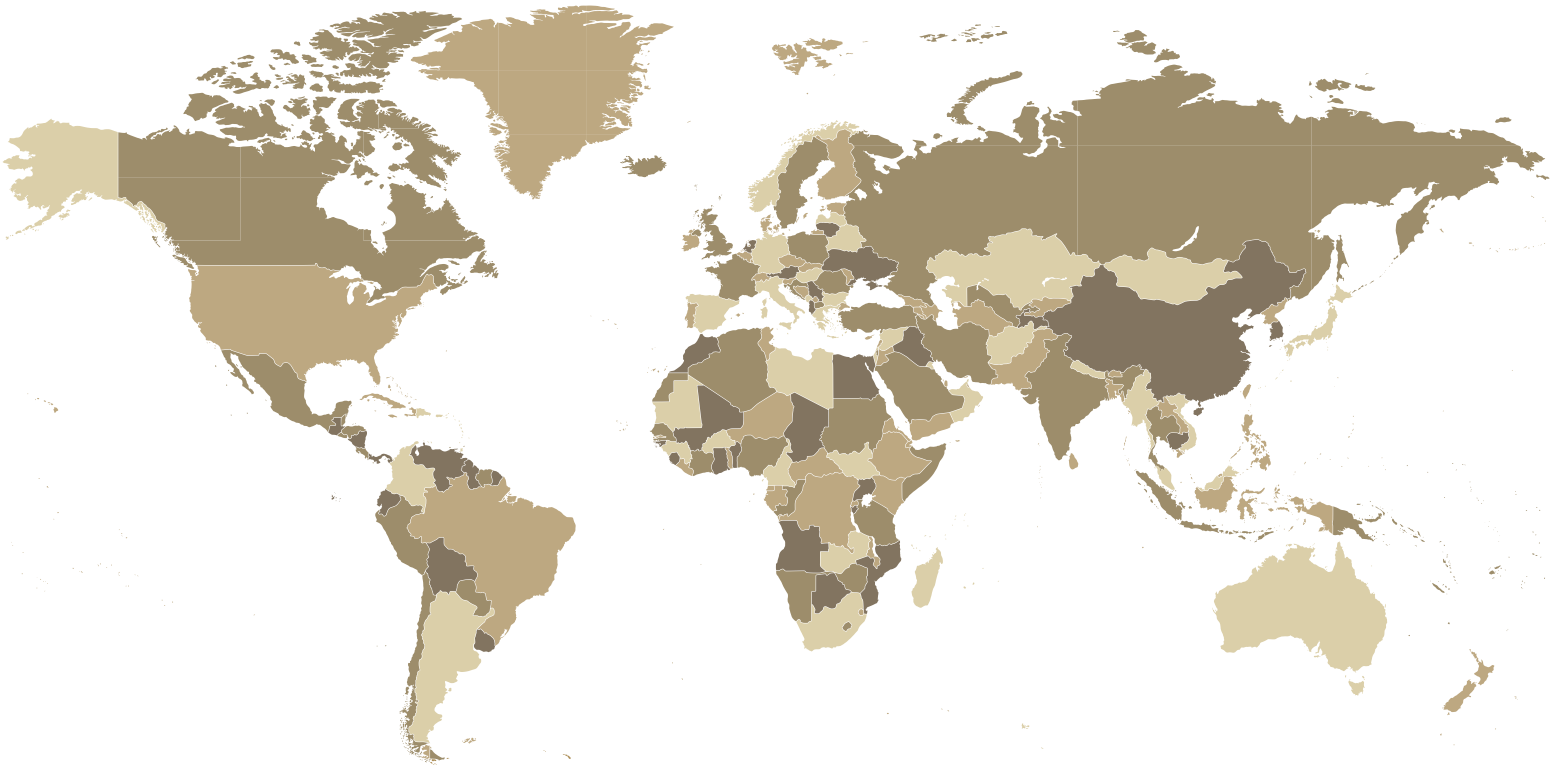


A RENEWED PARTNERSHIP IN SUPPORT OF CONSTITUTIONAL DEMOCRACY

Vlad Perju
Director, Clough Center for the Study of Constitutional Democracy
Professor, Boston College Law School

The Clough Center for the Study of Constitutional Democracy at Boston College is delighted to join, for the second year, I-CONnect in making this unique resource available to scholars and practitioners of constitutional law and policy around the world. The first - 2016 - edition of the Global Review of Constitutional Law, to which the Clough Center was a proud partner, received the outstanding reception it deserved as it quickly established itself as an indispensable resource for the world community. The 2017 edition, with its expanded number of jurisdictions, will undoubtedly solidify the reputation of the Global Review.

The Clough Center for the Study of Constitutional Democracy aims to offer a platform that meets, in depth and scope, the urgency of the ongoing challenges to constitutional democracy. Each year, we welcome to Boston College some of the world's leading jurists, historians, political scientists, philosophers and social theorists to participate in our programs and initiatives. The Center also welcomes visiting scholars from around the world, and I use this opportunity to encourage interested scholars to contact us. More information about the Center's activities, including free access to the Clough Archive, is available at http://www.bc.edu/centers/cloughcenter.html.

The Clough Center is deeply grateful to all the contributors to this year's Global Review, and to its editors. Particular thanks go to Professor Richard Albert, a trusted friend and partner of the Clough Center, for his vision and initiative in turning the Global Review into reality.

THE GLOBAL REVIEW TURNS THREE

Richard Albert and David Landau
Founding Co-Editors of I·CONnect and Co-Editors of the Global Review

Pietro Faraguna and Simon Drugda
Co-Editors of the Global Review

This year marks the third edition of the *I·CONnect-Clough Center Global Review of Constitutional Law*. First published in 2017 to review the constitutional law developments in the world in the year 2016, this edition reviews the constitutional law developments in the world in the year 2018.

From 44 jurisdictions in our first year and 61 last year, this year we are pleased to feature 65 jurisdictions. We continue to grow, slowly but steadily. With the help of our current roster of contributors and with new interest from our readers and others, we hope to continue expanding our coverage of the world.

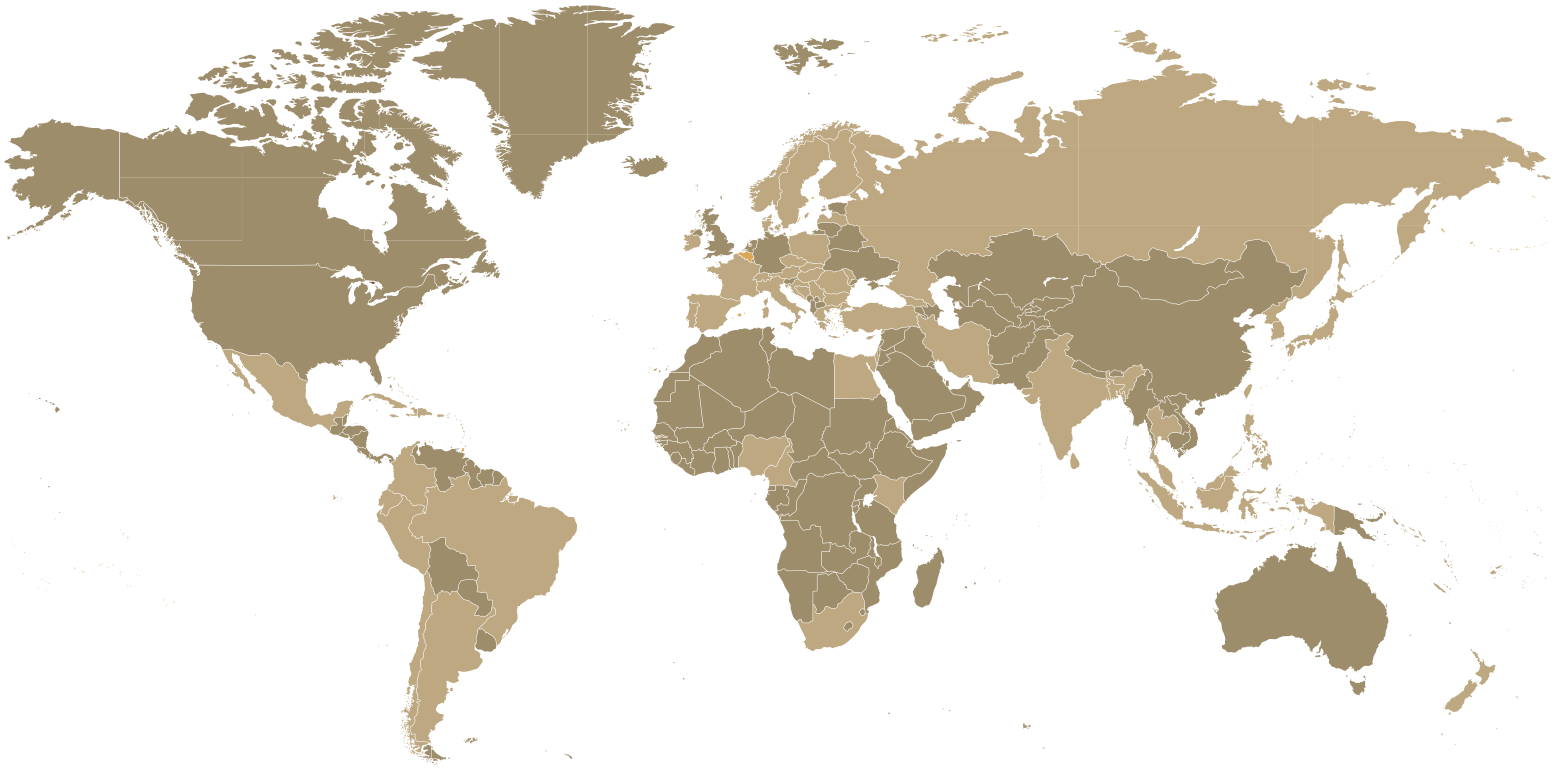
The purpose of the Global Review has remained unchanged since its founding. It is to offer readers systemic knowledge that has previously been limited mainly to local networks rather than a broader readership. By making this information available to the larger field of public law in an easily digestible format, we aim to increase the base of knowledge upon which scholars and judges can draw. Our ambition is to make our vast world smaller, more familiar, and more accessible.

We are grateful to our authors for preparing their rich, insightful, and informative jurisdiction reports. We also thank the leadership team at the *International Journal of Constitutional Law*—Gráinne de Búrca and Joseph Weiler, Co-Editors-in-Chief, as well as Sergio Verdugo, Associate Editor, for publishing a few contributions from this year's Global Review focused on Latin America to coincide with the 2019 Annual Conference of the International Society of Public, held on July 1-3 in Santiago, Chile. We also wish to recognize the leaders of the Central and Eastern European Chapter of the International Society of Public Law for hosting a regional workshop this past year for Global Review contributors. We hope their initiative inspires others to host similar programs in their own part of the world. We give thanks as well to Gaurie Pandey at the Center for Centers at Boston College for her help once again in designing this beautiful volume.

We reserve our biggest thanks for Professor Vlad Perju, Professor of Law and Director of the Clough Center for the Study of Constitutional Democracy at Boston College. Professor Perju continues to inspire us with his vision for the Center, which he has transformed into a leading site in the world for discussion and debate on constitutionalism. A learned scholar of the field, a respected teacher, and a passionate defender of democracy, he has our deepest gratitude.

We invite interested authors from new jurisdictions to contact us via email at contact.iconnect@gmail.com to express their interest in producing a report for next year's Global Review. And, as always, we welcome feedback, recommendations, and questions from our readers.

COUNTRY REPORTS



Chile

Iván Aróstica, Chief Justice of the Chilean Constitutional Court – Universidad del Desarrollo
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I. INTRODUCTION

Our previous 2016 and 2017 reports have shown examples that aim to identify and illustrate two trends that the Chilean Constitutional Court (*Tribunal Constitucional de Chile*—from now on, the 'CC') has developed. First, the CC has become a consequential body that can challenge existing legislative majorities by declaring the unconstitutionality of important legislative bills when the judges believe that those bills, or parts of them, violate the Constitution.[1] Our reports claimed that the critical judicial mechanism that the CC used to assert its review power against legislative majorities is, although not exclusively, the ex-ante judicial review mechanism. It is worth noticing that, in the Chilean constitutional system, the President can influence the Congress's legislative agenda, and the Congress can hardly enact any new piece of legislation without the President's consent. Thus, the CC typically uses the ex-ante judicial review against bills sponsored by the President, a fact that increases the public visibility of the decisions that declare the unconstitutionality of the bills using the ex-ante review procedure. An initial version of that power was introduced first by the 1970 amendment to the 1925 Constitution,[2] but its current version is the one implemented by the 1980 Constitution, which partly followed the French model.[3]

Our previous reports also briefly described a second CC trend: that the *inaplicabilidad* mechanism—an ex-post and concrete judicial review power the CC uses to declare that a specific ordinary court should not use certain legal provisions to solve contingent legal controversies—is triggering relevant litigation aimed at protecting fundamental rights, such as the right to due process and equal protection of the law.[4]

This 2018 report confirms and expands on the two trends stated in our previous 2016 and 2017 reports. As we will illustrate by examining a group of selected rulings, first, the CC has continued to assert its judicial review power in ex-ante procedures during legislative procedures. Second, the CC is consistently growing a significant forum for fundamental rights litigation through its ex-post judicial review power, partly due to the considerable number of *inaplicabilidad* cases that litigants and judges bring to the CC.

[1] Iván Aróstica, Sergio Verdugo and Nicolás Enteiche, 'Developments in Chilean Constitutional Law' in Richard Albert and others (eds), *2016 Global Review of Constitutional Law* (I·CONnect-Clough Center 2017); Iván Aróstica, Sergio Verdugo and Nicolás Enteiche, 'Chile: The State of Liberal Democracy' in Richard Albert and others (eds), *2017 Global Review of Constitutional Law* (I·CONnect-Clough Center 2018).

[2] On the first ex-ante judicial review power introduced in Chile, see Enrique Silva C., *El Tribunal Constitucional de Chile* (1971-1973), vol 38 (second edition (2008), Cuadernos del Tribunal Constitucional 1977); Sergio Verdugo, 'Birth and Decay of the Chilean Constitutional Tribunal (1970–1973). The Irony of a Wrong Electoral Prediction' (2017) 15 *International Journal of Constitutional Law* 469.

[3] Probably the most influential English-written work discussing the French model is the work by Alec Stone, 'The Birth and Development of Abstract Review: Constitutional Courts and Policymaking in Western Europe' (1990), 19 *Policy Studies Journal* 81; Alec Stone, *The Birth of Judicial Politics in France. The Constitutional Council in Comparative Perspective* (Oxford University Press, 1992).

[4] See Aróstica, Verdugo and Enteiche, 'Developments in Chilean Constitutional Law' (n 1) 49; Aróstica, Verdugo and Enteiche, 'Chile: The State of Liberal Democracy' (n 1) 58.

The year 2018 has been particularly crucial for the *inaplicabilidad* because the number of *inaplicabilidad* legal actions has been drastically elevated. A search using the CC's online research engine shows that in 2018, 1663 new cases arrived, compared to 916 in 2017 and 357 in 2016.[5] *Inaplicabilidad* legal actions triggered 1618 cases in 2018 compared to 883 in 2017 and 299 in 2016. As we will explain later, part of the reason why the number of *inaplicabilidad* cases has escalated is related to the way the doctrinal positions of the CC in critical cases like the ones in *Weapons* and *Emilia*, discussed in our previous reports,[6] have invited more litigation on specific issues.

To be sure, the Chilean *inaplicabilidad* mechanism is probably not as relevant as the prominent Colombian *tutela* mechanism used by the Constitutional Court of that country (nor is it a similar legal action). [7] Compared to the Colombian tutela, the Chilean *inaplicabilidad* has procedural constraints that limit its doctrinal impact on the way the Courts of Appeals and the Supreme Court engage with fundamental rights litigation.[8] Despite that limitation, our examples illustrate the fact that the *inaplicabilidad* can still be a valuable device for rights protections, as it is frequently used to consolidate or reiterate specific fundamental rights interpretations.

We selected six decisions to illustrate the course of the two trends stated above during the year 2018. Those rulings solved high-profile cases that attracted the attention of the media. Three out of the six judgments were pronounced by the CC using its ex-ante judicial review power, and three decisions are *inaplicabilidad* cases. Since this report must be brief, we will not mention separate judicial opinions, ignoring dissents and concurrences.

The next section provides some context by briefly exploring the state of the Chilean political system and by describing some events that are relevant for the CC. Then, this report dedicates two sections to summarize and analyze the most high-profile cases of the year 2018. The first one focuses on the most important decisions released as a result of the ex-ante judicial review procedure, and the second one on the other decisions that we selected.

II. THE STATE OF CHILEAN DEMOCRACY AND THE CONSTITUTIONAL COURT

The Chilean democratic system seems to be in good shape. Elections are competitive; there is uncertainty on which political alliance will win the next elections; conflicts are generally solved by institutionalized means; politicians respect judicial rulings; and elections have been held on a regular and uninterrupted basis since democracy was reestablished in 1990. If we use Jack Balkin's definition of what constitutes a constitutional crisis,[9] drawing from Sanford Levinson's work, Chile is far removed from such a crisis. Although a group of politicians, including former President Michelle Bachelet, have promoted the enactment of a new constitution, Chilean institutions are respected and the debates on whether the Constitution should be reformed have been channelized through the current constitutional amending procedures. Even though Chilean political and judicial institutions seem to be strong, the violent events that have occurred in the southern Araucanía region, in the context of the conflict over indigenous demands, posit one of the key challenges that the country is currently discussing.

In March 2018, President Bachelet ended her presidential term. Sebastián Piñera, the leader of the center-right political alliance, became the new President of Chile and will finish his term in the year 2022. A few days before leaving the presidential office, former President Bachelet submitted a bill to the Congress proposing to replace the Chilean Constitution with an entirely new constitutional text.[10] That project offered many changes to the Constitution, including a proposal to redesign the CC. It is worth mentioning that the 2005 constitutional reform had established the current institutional model of the CC, which was pushed by the former Socialist President Ricardo Lagos and approved by a bipartisan political agreement. The Lagos reform had increased the number of judges, changed the judicial appointment mechanisms and expanded the powers of the CC. The 2005 Court is, indeed, a different court compared to the one established by the 1980 Constitution.

Today, some politicians promote reforms to the CC. President Piñera's platform—published in 2017—had suggested to reform the way CC judges are appointed. There seem to be ongoing political negotiations on whether the CC's powers should be modified and on whether the judicial appointment mechanisms should be reviewed, but no consensus has pushed for specific reforms yet (we are writing this report in early February of 2019). Changes to the regulation of the CC are a challenging political task, as they require a bipartisan agreement broad enough to achieve the legislative supermajorities needed to modify the Constitution's Chapter

[5] https://www.tribunalconstitucional.cl/buscador [accessed 2/11/2019].

[6] Aróstica, Verdugo and Enteiche, 'Developments in Chilean Constitutional Law' (n 1) 49; Aróstica, Verdugo and Enteiche, 'Chile: The State of Liberal Democracy' (n 1) 58.

[7] On the way the *tutela* cases have produced important doctrinal trends in Colombia, see generally Manuel José Cepeda Espinosa and David E Landau, *Colombian Constitutional Law: Leading Cases* (First edition, Oxford University Press, 2017).

[8] See some illustrative cases in the book by Gastón Gómez Bernales, *Las Sentencias Del Tribunal Constitucional y Sus Efectos Sobre La Jurisdicción Común* (Ediciones Universidad Diego Portales, 2013).

[9] Jack M Balkin, 'Constitutional Crisis and Constitutional Rot,' in Mark A Graber, Sanford Levinson and Mark Tushnet (eds), *Constitutional Democracy in Crisis?* (Oxford University Press, 2018).

[10] See *Proyecto de reforma constitucional, iniciado en mensaje de S.E. la Presidenta de la República, para modificar la Constitución Política de la República,* Boletín N° 11.617-07.

VIII.[11] Moreover, no partisan coalition presently dominates the legislative agenda, as the current political composition of the Congress considers the existence of three political alliances and some independent legislators.

In the meantime, the CC has continued to use its powers. As we will show in later sections, in 2018 the CC reviewed some legislative bills that were originally sponsored by former President Bachelet, and other bills promoted by the current Piñera administration. Despite the importance of the ex-ante judicial review mechanism in evaluating legislative bills,[12] most of the CC's work focused on the *inaplicabilidad* cases.

The year 2018 was also important for the CC because of changes in its composition. Judge Carlos Carmona, who had been appointed to the CC by former President Bachelet during her first presidential term, ended his judicial term on April 9, and Marisol Peña, who had been nominated to the CC by the Supreme Court, completed her term on June 10. Both Judge Carmona and Judge Peña served their full nine-year judicial terms. Also, they both served as Chief Justices of the Court. In Chile, constitutional judges cannot be reappointed, and the Chief Justice is elected by her peers. Judge Peña was the first female Chief Justice to head the CC in its history. To replace Judge Carmona and Judge Peña, President Piñera appointed Miguel A. Fernández, and the Supreme Court nominated María Pía Silva, respectively. Both Judge Fernández and Judge Silva are constitutional law scholars that have lectured at the P. Universidad Católica de Chile.[13]

III. MAJOR CONSTITUTIONAL DEVELOPMENTS OF THE EX-ANTE JUDICIAL REVIEW POWER

1. The Controversy Over the New Powers of the Government's Tax Agency (STC 5540)

The CC reviewed parts of a legislative bill that aimed to modernize the institutional framework of the Chilean banking system and the Financial Market Commission. Among several amendments to existing associated regulations, the bill included provisions intended to empower the Chilean Tax Agency (in Spanish, the *Servicio de Impuestos Internos*, hereinafter, the 'SII'), which is the Chilean equivalent to the American Internal Revenue Service. The legal issue at stake was associated with the fact that the bill provided for expanding the SII powers over the taxpayers in different ways. The SII's new powers were supposed to be reviewed by the CC because they were considered to be 'organic laws,' as they somehow related to judicial matters. According to Article 77 of the Constitution, legal provisions regarding the organization or the powers of the judiciary are 'organic laws' and, therefore, they are supposed to be reviewed by the CC in the ex-ante judicial review procedure.

One of the rules that the CC declared unconstitutional consisted of a provision that aimed to allow the SII to require banks and other institutions to communicate payments and wire transfers from Chilean accounts to accounts located abroad or of incoming funds to the country from a foreign account that exceed US$10,000. This SII power, as stated by the bill, could be exercised without the need of obtaining previous judicial authorization.

According to the CC, the need for judicial authorization in these cases is constitutionally required by the due process clause (Article 19, No. 3, Par. 6 of the Constitution). The CC's doctrine states that the clause includes the fundamental right to access courts of law if an administrative agency is imposing an unfavorable decision against a private party. Once the SII has obtained the information, it is too late to repair the harm made to the taxpayer's rights. The CC established that 'the prior judicial authorization is constructed as a manifestation of due process since it denotes the existence of its elements: access to justice and the bilateral nature of the process. As a result of the absence of any of these elements, the legal provision under examination must be declared unconstitutional.' (our translation of c. 67 of the ruling).

This ruling is relevant at least because of three reasons. First, the CC expanded and deepened its understanding of the scope of the due process clause by confirming that these sorts of procedures need previous judicial authorization and that the legislative bodies must introduce this guarantee if they intend to empower an administrative agency in these cases. This decision connects with a broader doctrine that was previously outlined by the CC in earlier rulings, such as the *Dirección General de Aguas* case (STC 3958) that we examined in our 2017 report.[14] The new decision finds a new application for that doctrine while detailing it further. Second, the CC has consistently defended the powers of ordinary judges to review administrative

[11] According to Article 127 of the Chilean Constitution, the chapter regulating the CC (Chapter VIII) can only be modified if both chambers of Congress achieve a two-thirds majority. Also, the organic statute detailing the content of Chapter VIII and supplementing the Constitution on this matter requires a legislative supermajority vote. According to Article 92 of the Constitution, modifications to the CC's organic statute require the approval of four-sevenths of both chambers of Congress.

[12] We explained the reasons that justify the ex-ante judicial review mechanism, and described the way it operates, in our previous report. See Aróstica, Verdugo and Enteiche, 'Chile: The State of Liberal Democracy' (n 1) 55. Also, see Sergio Verdugo, 'Control Preventivo Obligatorio. Auge y Caída de La Toma de Razón Al Legislador' (2010), Año 8, No 1 Estudios Constitucionales 201; Felipe Meléndez Ávila, *El Control Preventivo En La Constitución Actual: El Temor Al Desborde En La Función Legislativa* (Editorial Jurídica de Chile, 2017).

[13] Another change in the CC's composition was the nomination of two substitute judges. We will refer to these two appointments in our 2019 report, as they were confirmed in January of that year.

[14] Aróstica, Verdugo and Enteiche, 'Chile: The State of Liberal Democracy' (n 1) 56.

actions in the past, while understanding that judicial intervention is many times required should state officers want to impair the activity of private citizens. This new ruling confirms and strengthens that approach.

The final reason why this ruling is important is that cases like this one are typically situated in a relevant and broader debate involving the scope of the executive branch's power to intervene or influence independent administrative agencies that possess regulatory powers and that are able to punish private citizens. The issue usually is not only to preserve judicial authority but to delineate the correct balance between the President's powers and the powers that these sorts of agencies can employ, and how to preserve their independence. As is commonly framed in Chilean legal academia, although the President's powers over these sorts of agencies are generally justified by the constitutional provision stating that the President is the state's chief (Article 24 of the Constitution), these institutions are also supposed to have a relevant degree of independence. Chilean scholars typically debate on what the right scope of the President's powers is, and on how to balance the need to protect the autonomy of these agencies with the President's constitutional obligations.[15]

2. Reviewing the Bill that Aimed to Modify the Consumer Protection Law Agency (STC 4012).[16]

The CC reviewed a legislative bill whose purpose was to strengthen the organizational structure of the administrative agency in charge of enforcing the Consumer Protection Law (in Spanish, the *Servicio Nacional del Consumidor*, hereinafter, the 'SERNAC'). The SERNAC aims to ensure compliance with consumer regulations and to promote and provide information on the rights and duties of the consumer. Among many modifications the bill sought to implement, legislators also aimed at transferring some jurisdictional powers to the SERNAC, which is why the CC understood that the bill included 'organic law' provisions and reviewed these new powers using the ex-ante review procedure—the explanation of the above case is also applicable in this case.

The judicial powers granted by the bill were related to the consumers' right to present and process consumer protection claims, and who could decide whether to file those claims directly to the SERNAC or the courts. The CC understood that the option to submit claims to the SERNAC involved an unconstitutional exercise of judicial powers by an administrative agency. The CC defined judicial power as an activity aimed at the solution of a conflict of legal relevance between interested parties and argued that the Constitution prevents those kinds of disputes from being solved by an agency such as SERNAC. For that reason, the CC further claimed that the related provisions included in the bill harmed the power of the judiciary by violating the judicial power clause included in Article 76 of the Constitution, and Article 19, No. 3 of the Constitution, Subsections 5 and 6. The CC also reasoned that the bill partly violated the separation of powers principle, and prevented the promulgation of the parts of the bill that infringed on the Constitution.

Among other relevant considerations made by the CC, the ruling stated that its decision is not necessarily analogous to other cases in which different agencies are empowered to punish private citizens (c. 39). The resolution also reaffirmed the 'principle of access to justice' of all those affected in matters related to Consumer Protection Law (c. 42). Finally, the CC declared the unconstitutionality of the SERNAC's power to enact regulations. The CC argued that those regulations could only be passed by legislators following the corresponding legislative decision-making process because, under Chilean constitutional law, all the regulations regarding fundamental rights should be made by the corresponding parliamentary procedure (c. 43).

The CC's decision triggered a relevant discussion among Chilean legal scholars, partly aimed at defining the boundaries among the powers of the judicial, executive and legislative branches of government, and it is critical for understanding the way parts of the separation of powers debates have taken place in Chile.

3. Reviewing the Legislative Bill Regulating the Gender Identity Statute (STC 5385)

The CC reviewed a bill intended to recognize and regulate the gender identity right. The bill aimed to adapt existing regulations to accommodate that right. Parts of the bill allowed people to change the registration of their gender in the records of the *Registro Civil*, an agency in charge of registering and providing certificates such as marital status documentation and birth certificates, among many others. That way, the bill tried to accommodate the legal identification officially provided by the state with the gender identity that each person possesses.

During the legislative debates, some legislators argued that parts of the gender identity bill were unconstitutional, using arguments such as the ones considering the types of 'family' that are protected by the Constitution (Article 1 of the Chilean Constitution protects the 'family'), and the scope of the equal protection clause (Article 19, Nº 2 of the Constitution). These legislative debates triggered a larger discussion that attracted the attention of the media, different civil society organizations, and even celebrities.

[15] On this debate, see, for example, the following papers: Nicolás Enteiche Rosales, 'Superintendencias: Una Necesaria Autonomía Constitucional' in Julio Alvear T. and Ignacio Covarrubias C. (eds), *Desafíos Constitucionales. Propiedad, Debido Proceso, Libertad Religiosa, Régimen Político y Administrativo* (Tirant lo Blanch, 2017); José Francisco García G. and Sergio Verdugo R., 'De las superintendencias a las agencias regulatorias independientes en Chile: Aspectos constitucionales y de diseño regulatorio' (2010) 22 *Actualidad Jurídica* 263; José Manuel Díaz de Valdés J., 'Anomalías Constitucionales de Las Superintendencias: Un Diagnóstico' (2010) 8 *Estudios Constitucionales* 249; Luis Cordero Vega and José Francisco García, 'Elementos para la Discusión sobre Agencias Independientes en Chile. El Caso de las Superintendencias' (2012), *Anuario de Derecho Público* 415.

[16] See a useful summary released by the CC of the CC decision in http://www.tribunalconstitucional.cl/wp-content/uploads/Comunicado-de-prensa.pdf [accessed 2/11/2019].

Parts of the bill connected to the powers that previous laws had given to Family Judges, so the CC understood that those parts were 'organic laws' and had a legal reason to review the bill. Nevertheless, the CC did not have the power to review all the parts of the bill, as the legislators that had argued that the bill violated the Constitution did not present a formal claim.

As a result, the CC only reviewed the parts of the bill that were associated with judicial powers. The CC declared that those parts did not violate the Constitution with a relatively brief ruling.

IV. OTHER RELEVANT CONSTITUTIONAL DEVELOPMENTS

This section summarizes three *inaplicabilidad* decisions. It is useful to keep in mind that, even though the *inaplicabilidad* rulings do not produce a binding precedent, as the challenged legal provisions remain legally valid and applicable to other cases, the *inaplicabilidad* decisions can still trigger a persuasive precedent able to push for relevant jurisprudential trends. If the CC's judicial majority can gather eight votes out of a total of ten judges, it can even eliminate the unconstitutional legal provision from the corresponding statute. The importance of the cases that we will briefly summarize in this section is that the first decision solved a first-impression case, and the other two rulings reversed previous judicial doctrines. All the cases involved litigation on fundamental rights issues.

1. The Optometrists' Case (STC 3519 and STC 3628)

The Chilean *Código Sanitario*, a statute regulating some issues related to healthcare, prohibits medical consultations or medical eye technicians from providing consultation inside establishments that sell eyeglasses (Article 126, Par. 2 of the *Código Sanitario*). The ban harmed the rights of such establishments and optometrists—healthcare professionals without a medical doctor degree—because of such prohibition. The CC received two petitions that asked the Court to declare the inapplicability of the prohibition and questioned whether there was a reasonable justification for such a ban. The CC decided that the prohibition of practicing a medical profession or medical technology in these cases, within such establishments, had no justification (c. 11), and that it violated Article 19, No. 2 of the Constitution, which prohibits public officials to establish arbitrary differences.

2. The Labor Code and Public Employees Case (STC 3853)

The Chilean Labor Code, which is the primary statute regulating the workers' and unions' labor rights, establishes that public employees are subject and can benefit from the provisions of the Code only when certain matters are 'not regulated by their respective statutes' (Article 1, Par. 3 of the Labor Code). That way, if a specialized norm regulates the specific matter concerning specific public employees, that norm—and not the Labor Code—should be applied. The Code also establishes that workers can file legal actions when their employers have infringed on their fundamental rights. This legal action is the procedural justification for specialized labor judges to decide whether firing an employee or other employer actions violate the workers' fundamental rights (Article 485 of the Labor Code).

San Miguel's local government had removed an employee who was subject to a specific regulation (Law No. 18.833, regulating the *Statute of Municipal Officials*), and that employee had petitioned a labor judge to declare that the removal was unjustified and that it violated her fundamental rights. The labor judge accepted the petition and used the Article 485 procedure to establish that the San Miguel local government should pay compensation to the employee. The San Miguel Court of Appeals had also ruled in favor of the employee. San Miguel's local government asked the CC to declare the inapplicability of Article 485 and argued that the specific regulation—and not the Labor Code—should control the case. In 2017, the CC had rejected a similar petition (STC 2926), but this new case provided an opportunity to revise the previous doctrine. The CC accepted the *inaplicabilidad* petition and argued that the specific law that applied to the San Miguel case was justified under a constitutional clause referring to the regulation of the public sector (Article 38, Par. 1 of the Constitution) and that a general statute for public employees already existed. As a result, the CC claimed that the Labor Code could only be applied if the specific regulation explicitly said so (c. 8) and that in the case in point there was no rule referring to the Labor Code. If a new piece of legislation wanted to extend the Labor Code rights to public employees, it should say so explicitly (c. 10-11).

3. The Public Procurement Cases (STC 3570 and STC 3702)

A rule of the statute regulating the procedure by which the state can purchase goods and services (the Public Procurement Law or, in Chile, the *Ley de Compras Públicas*) establishes that anyone who has been sentenced for anti-union practices or for violating the employees' human rights, or for bankruptcy crimes established by the Criminal Code, are not allowed to pact contracts with the state for a period of two years (Article 4, Par. 1). Two universities that had been sentenced under Article 4, the Pontificia Universidad Católica de Chile and the Universidad de Chile, presented petitions of *inaplicabilidad* to the CC. Among other arguments they made, both universities alleged that Article 4 did not guarantee a fair and rational procedure and violated the Constitution's due process clause.

In the past, the CC had decided that Article 4 did not violate the Constitution (STC 1968, STC 2133, STC 2722-2729), but the CC revised its doctrine and decided in favor of the petitioners. The CC claimed that Article 4 prohibition provides for a penalty that is automatically assigned, preventing a previous procedure that can allow businesses to defend themselves. Moreover, the employers were already punished by the labor law or the bankruptcy law, so Article 4 imposes a new penalty without a trial, violating the due

process clause (Article 19, No. 3, Par. 6 of the Constitution). Likewise, the CC claimed that the Article 4 prohibition does not allow differentiating situations that may, in fact, be different, violating the equal protection clause (Article 19, No. 2, of the Constitution).

V. LOOKING AHEAD

This report showed three key cases that exemplify how the ex-ante judicial review power has been used in high-profile cases. In them, the CC proved to be a consequential actor capable of influencing the legislative decision-making process, although in the last case the CC avoided declaring any rule as unconstitutional. We also briefly examined three *inaplicabilidad* decisions that illustrate how the CC is becoming a relevant forum for concrete judicial review litigation in cases concerning fundamental rights. To be sure, all the cases, even the ones decided through the ex-ante review procedure, involve a fundamental rights reasoning, such as equality and due process. But the ones of the *inaplicabilidad* petitions do not only include abstract reasoning on fundamental rights but also provide the CC the opportunity to decide controversies and impact the way ordinary judges in specific fields, such as Labor Law, solve specific legal conflicts.

Even though there is an ongoing debate on how the CC will be reformed, and when, the observed trends will probably continue to be deepened in 2019.

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