

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS**

NOVEMBER 29, 2012

CASE OF BREWER CARÍAS v. VENEZUELA

HAVING SEEN:

1. The communication of July 11, 2012, addressed to the President of the Inter-American Court by Judge Eduardo Vio Grossi, in which the latter recused himself from participating in the case of Brewer Carías.
2. The letter of September 7, 2012, addressed to Judge Eduardo Vio Grossi by the President of the Inter-American Court, in which, in consultation with the other judges of the Court, he accepted the recusal presented by Judge Vio Grossi from taking part in this case as a judge.
3. The notes of the Secretariat of the Court of September 12, 2012, in which it advised the parties and the Inter-American Commission on Human Rights of the said recusal of Judge Vio Grossi, and that it had been accepted.
4. The brief of the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") received by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on November 12, 2012, in which, *inter alia*, it indicated its "rejection" of the recusal presented by Judge Vio Grossi.
5. The Order issued on November 23, 2012, by the acting President of the Court, Judge Alberto Pérez Pérez, concerning the objection filed by the State against Judges Diego García-Sayán, Manuel E. Ventura Robles, Leonardo A. Franco, Margarete May Macaulay and Rhadys Abreu Blondet.
6. The brief of November 23, 2012, addressed to the President of the Inter-American Court by Judge Eduardo Vio Grossi in which the latter referred to the observations of the State when "rejecti[ng]" his recusal in this case (*supra* having seen paragraph 4).

CONSIDERING THAT:

1. The Inter-American Commission submitted this case to the consideration of the Court on March 7, 2012.

2. Venezuela has been a State Party to the American Convention on Human Rights hereinafter “the American Convention” or “the Convention”) since August 9, 1977, and accepted the contentious jurisdiction of the Court on June 24, 1981. The Court’s competence in this case has not been challenged.

3. In a letter addressed to the President of the Inter-American Court and received by the Court on July 11, 2012, Judge Eduardo Vio Grossi recused himself from hearing this case and asked that his recusal be accepted, “pursuant to the provisions of Article 19(2) of the Court’s Statute and 2 of its Rules of Procedure.” Judge Vio Grossi indicated that the reason for presenting his recusal was that “in the 1980s, [he] was a professor of the Public Law Institute of the Faculty of Legal and Political Sciences of the Universidad Central de Venezuela, and Mr. Brewer Carías was its Director at the time; consequently, [he] had a professional and work-related relationship with [Mr. Brewer Carías] as [his] superior, which was, moreover, excellent.” Judge Vio Grossi added that, “[e]ven though all this was some time ago, [he] would not want this fact to give rise to any doubt, however minimal, with regard to the impartiality of both [him]self, and especially of the Court, if [he] took part in the case in question.”

4. In a communication of September 7, 2012, the President of the Inter-American Court informed Judge Eduardo Vio Grossi that, “having consulted with the other judges of the Court and pursuant to Articles 19 of the Court’s Statute and 21 of its Rules of Procedure, [he] found it reasonable to accept his explanation and, consequently, accept[ed] his recusal.”

5. In the brief presented on November 12, 2012 (*supra* having seen paragraph 4), the State, *inter alia*, indicated that it “rejects the recusal” of Judge Eduardo Vio Grossi. In this regard, Venezuela affirmed that “this recusal [...] is unfounded, because the work-related dependence with regard to Mr. Brewer was more than 30 years ago, and furthermore, he does not assert that, currently, there is conflict of interests owing to his friendship with the lawyer Allan Brewer Carías, merely indicating that his professional and work-related relationship was excellent.” The State also asserted that it “considers that [the said] recusal [...] is due to pressure from other judges of the Court owing to his dissenting opinion in the Raúl Díaz Peña judgment,” in which he included “considerations on the need to exhaust domestic remedies.” Venezuela maintained that, in the case of Brewer Carías, the Inter-American Commission had declared the petition admissible even though “the presumed victim had not exhausted the domestic remedies [...].” In this regard, the State indicated that “[o]wing to the excellent contribution made by Judge Eduardo Vio Grossi [in the said opinion], to respect for the provisions of the Convention, it is very clear that pressure has been brought to bear on him by the Inter-American Court of Human Rights not to hear a case in which the presumed victim has openly declared that he has not been willing to submit to the jurisdiction of the Venezuelan State [...].”

6. Even though the said affirmations of the State concerning its “rejection” of the recusal presented by a judge do not affect the way in which the brief filing a preliminary objection, answering the submission of the case, and with observations on the motions and arguments brief should be processed according to the Rules of Procedure, the Court finds it necessary to rule in this regard before continuing to process the case.

7. The Court advised Judge Eduardo Vio Grossi of that part of Venezuela’s brief in which it “rejects the recusal presented” by this Judge. On November 23, 2012, Judge Vio Grossi addressed a note to the President of the Court and, through him to the Court, in which he stated his “most categorical” rejection of the affirmations made by Venezuela that the

recusal in question “was due to pressure by other judges of the Court” and indicated that such affirmations “are absolutely false.”

8. The pertinent part of Article 19 (Disqualification) of the Statute of the Inter-American Court establishes that:

1. Judges may not take part in matters in which, in the opinion of the Court, they or members of their family have a direct interest or in which they have previously taken part as agents, counsel or advocates, or as members of a national or international court or an investigatory committee, or in any other capacity.

2. If a judge is disqualified from hearing a case or for some other appropriate reason considers that he should not take part in a specific matter, he shall advise the President of his disqualification. Should the latter disagree, the Court shall decide. [...]

9. Article 21 (Impediments, recusals and disqualifications) of the Court’s Rules of Procedure stipulates, *inter alia*, that:

1. Impediments, recusals, and the disqualification of judges shall be governed by the provisions of Article 19 of the Statute and Article 19 of these Rules of Procedure.

2. Motions for recusal or allegations of impediment must be filed prior to the first hearing of the case. [...]

10. The Court understands that Judge Vio Grossi presented his recusal based on the fact that a judge is empowered to disqualify himself from hearing a case if he considers that he has a well-founded reason and in order to guarantee certainty of the impartiality of the court that will hear the case. This faculty is established in the second paragraph of Article 19 of the Court’s Statute. The Court agrees with Judge Vio Grossi’s observations in his note of November 23, 2012 (*supra* having seen paragraph 6), to the effect that, pursuant to Article 19(2) of this Court’s Statute, it is for the President of the Court and, eventually, the Court itself, to decide whether to accept or reject a recusal presented by a judge, and that the pertinent norms have not contemplated any manifestation by the parties in this regard.

11. The decision to accept the recusal presented by Judge Eduardo Vio Grossi was adopted by the President of the Court, in consultation with the other judges, pursuant to the statutory provisions. The Court found it reasonable to accept his request, considering that the motive given by Judge Vio Grossi was based on the excellent professional and work-related relationship that he had with the presumed victim in this case (*supra* third considering paragraph). Consequently, the Court confirms that Judge Vio Grossi’s recusal from hearing this case was presented and accepted in strict observance of the statutory and regulatory provisions that govern this matter.

12. The State’s brief of November 12, 2012, also contains affirmations on alleged “pressure” that “other judges of the Court” exercised on Judge Vio Grossi so that he would not hear the case. The Court rejects the offensive and totally unfounded assertions made by the State. Judge Vio Grossi himself, in a communication of November 23, 2012 (*supra* having seen paragraph 6 and seventh considering paragraph), stated that “[s]uch affirmations, made without any grounds and which, evidently are absolutely false, constitute, in [his] opinion, an offense to the Court and to its members,” and “also offend [him] additionally, because they suppose that he would have succumbed to this type of pressure and that, consequently, this could happen again in the future, in other cases.”

13. On other occasions,¹ Venezuela has been advised that the use of offensive expressions is manifestly inappropriate and inadmissible in any judicial proceeding, and especially before an international court. Under ordinary circumstances, the use of offensive expressions would result in the brief containing them being returned to whosoever had presented it, without processing it in any way, ordering them to use appropriate language. The State's unfounded affirmations concerning supposed "pressure" received by Judge Vio Grossi from "other judges of the Court" or from "the Inter-American Court" constitute an unacceptable insult to the judges who are members of this international human rights court.

14. Based on the above, the Court finds inadmissible the State's allegations concerning the supposed failure to provide grounds for the reason stated by Judge Vio Grossi to recuse himself, as well as those concerning its "rejection" of this recusal that seeks to oblige Judge Eduardo Vio Grossi to hear the case of *Brewer Carías v. Venezuela*.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

pursuant to Article 19 of its Statute and Articles 21 and 31 of its Rules of Procedure,

DECIDES:

1. To confirm that the recusal of Judge Eduardo Vio Grossi from hearing the case of *Brewer Carías v. Venezuela* was presented and accepted by the President of the Court, in consultation with the other judges, in accordance with the statutory and regulatory norms that govern this matter.

2. To consider inadmissible the State's arguments on the supposed failure to provide grounds for the reason set out by Judge Vio Grossi to recuse himself, as well as those relating to its "rejection" of the said recusal, which seeks to oblige Judge Eduardo Vio Grossi to hear the case.

3. To require the Secretariat of the Court to notify this Order to the Bolivarian Republic of Venezuela, the representatives of the presumed victim, and the Inter-American Commission on Human Rights.

Diego García-Sayán
President

¹ Cf. *Case of Chocrón Chocrón v. Venezuela*. Order of the acting President of the Inter-American Court of Human Rights of September 3, 2010, seventh considering paragraph; *Case of the Barrios Family v. Venezuela*. Order of the acting President of the Inter-American Court of Human Rights of April 14, 2011, eleventh considering paragraph; *Case of Nestor José and Luis Uzcátegui et al. v. Venezuela*. Order of the acting President of the Inter-American Court of Human Rights of June 24, 2011, eleventh considering paragraph; *Case of Díaz Peña v. Venezuela*. Order of the acting President of the Inter-American Court of Human Rights of June 24, 2011, eleventh considering paragraph, and *Case of Castillo González et al. v. Venezuela*. Order of the acting President of the Inter-American Court of Human Rights of November 25, 2011, eleventh considering paragraph.

Manuel Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary