INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF SAN MIGUEL SOSA ET AL. V. VENEZUELA

JUDGMENT OF FEBRUARY 8, 2018
(Merits, reparations and costs)

In the *case San Miguel Sosa et al.,*

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:

Eduardo Ferrer Mac-Gregor Poisot, President;
Eduardo Vio Grossi, Vice President;
Roberto F. Caldas, Judge;
Humberto Antonio Sierra Porto, Judge;
Elizabeth Odio Benito, Judge;
Eugenio Raúl Zaffaroni, Judge, and
L. Patricio Pazmiño Freire, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules") issues this judgment, which is structured as follows:

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court*. On March 8, 2016, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court, pursuant to Articles 51 and 61 of the American Convention and Article 35 of the Rules of Procedure of the Court, the case of *Rocío San Miguel Sosa et al. versus the Bolivarian Republic of Venezuela* (hereinafter "the State" or "Venezuela"). According to the Commission, the case concerns the arbitrary termination, in March 2004, of the contracts for professional services between Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña (hereinafter "the alleged victims") and the National Border Council, an agency attached to the Ministry of Foreign Relations, after they signed a petition calling for a referendum to revoke the mandate of the then President of the Republic, Hugo Chávez Frías. The Commission considered that the termination of their employment contracts constituted a misuse of power, since a discretionary clause contained in their contracts was used as a veil of legality to conceal the true reason for their dismissal: for expressing their political opinion by signing the petition. These events occurred in a context of widespread polarization in which the President and other senior government officials made contemporaneous statements during the time when the signatures were being collected and submitted to the National Electoral Council- allegedly as a form of pressure not to sign – as well as threats of reprisals and the creation and publication of the so-called "Tascón List" (which identified the signatories). The Commission considered that this act constituted an implicit violation of the victims' political rights, discrimination for their political opinions and an indirect restriction of their freedom of expression. It also concluded that neither the *amparo* remedy, nor the criminal investigation, including the complaint filed with the Ombudsman's Office, constituted effective remedies to address the alleged misuse of power.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

a. *Petition*. On March 7, 2006, the Commission received a petition lodged by Ligia Bolívar Osuna and Héctor Faúndez Ledesma, acting on behalf of the alleged victims.

b. *Admissibility Report*. On July 16, 2013, the Commission adopted Admissibility Report 59/13, in which it declared that petition 212-06 was admissible.[1]

c. *Merits Report.* On October 28, 2015, the Commission adopted Merits Report No. 75/15, pursuant to Article 50 of the Convention (hereinafter "Merits Report"), in which it reached a number of conclusions and made several recommendations:

Conclusions. The Commission concluded that the State is responsible for:

> "[…] the violation of political rights, the right to freedom of expression, the right to equality before the law and non-discrimination, a fair trial (judicial guarantees) and judicial protection enshrined in Articles 23, 13, 24, 8 and 25 of the American Convention, in conjunction with Article 1(1) of the same instrument to the detriment of Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña." The Commission also considered that "based on the available information, the possible violation of the right to personal integrity is subsumed in the violations found throughout the report. The Commission has no information enabling it to determine the need for a separate determination on Article 5 of the American Convention."

Recommendations. The Commission recommended that the State of Venezuela:

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[1] Cf. IACHR, Admissibility Report No. 59/13, Petition 212-06, Rocío San Miguel Sosa et al., Venezuela, July 16, 2013. Available at: http://www.oas.org/es/cidh/docs/anual/2013/docs-es/44.VEAD212-06ES.pdf. In this report, the Commission declared the case admissible in relation to the alleged violations of the rights recognized in Articles 5, 8, 13, 23, 24 and 25, in relation to Articles 1(1) and 2, of the American Convention.

1. Reinstate the victims in the civil service in a position similar to the one they would currently hold, had they not been removed from their posts. Should this not be the will of the victims, or if there are other objective reasons that prevent their reinstatement, the State must pay the victims compensation, which is separate from the reparations relating to the material and moral damage mentioned in recommendation number two.
2. Provide adequate reparation for the human rights violations declared in this report, both in the material and moral aspects.
3. Carry out the corresponding criminal, administrative or other proceedings related to the human rights violations declared in this report, in an impartial, effective manner and within a reasonable time, in order to fully clarify the facts and to establish the respective responsibilities.
4. Adopt the necessary measures of non-repetition to prevent the future occurrence of similar events. In particular, adopt legislative, administrative or other measures to prevent discrimination for political reasons. In this context, ensure the existence of clear rules on access and use of data collected in electoral processes, with the necessary safeguards to ensure the free expression of political opinions without fear of reprisals. In addition, implement training programs: i) for public officials at all levels on the prohibition of discrimination based on political opinion; and ii) for legal practitioners called upon to hear any allegations of covert discrimination or misuse of power.

d. *Notification to the State*. On December 8, 2015, the Commission notified the Merits Report to the State, granting it two months to report on its compliance with the recommendations. The Commission indicated that, as of the date of submission of the case before the Court, it had received no response from the State.

3. *Submission to the Court*. On March 8, 2016, the Commission submitted to the Court all the facts and human rights violations described in Merits Report No. 75/15, given the "need to obtain justice for the three [alleged] victims."[2]

4. *Requests by the Inter-American Commission.* Based on the foregoing, the Commission asked the Court to find and declare the State responsible for the violation of the rights indicated in its Merits Report and to order the State, as measures of reparation, to comply with the recommendations contained in the said report.

II
PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representative of the alleged victims*. The submission of the case by the Commission was notified to the State and to the representative of the alleged victims (hereinafter "the representative") on May 9 and 11, 2016, respectively.[3]

6. *Brief with pleadings, motions and evidence.* On July 1, 2016, the representative presented his brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief"), pursuant to Articles 25 and 40 of the Rules. The representative agreed substantially with the arguments and conclusions reached by the Commission, but in addition alleged that the State is responsible for the violation of the right "to have access, under general conditions of equality, to the public service of his country," recognized in Article 23(1)(c) of the Convention, and the right to mental and moral integrity, established in Articles 5(1) and 5(2) of the Convention. He also requested that State be required to implement various measures of reparation.

7. *The State's failure to provide an answer and subsequent actions*. The State did not submit an answering brief in this case.[4] However, on November 9, 2016, Germán Saltrón Negretti, the

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[2] The Commission designated Commissioner Francisco Eguiguren, then Executive Secretary Emilio Álvarez Icaza L. and the Special Rapporteur for Freedom of Expression, Edison Lanza, as their delegates, as well as Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán and Christian González Chacón, lawyers of the Executive Secretariat, as legal advisers.

[3] On April 10, 2016, Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña forwarded a note to the Secretariat of the Court, ratifying the authority of Mr. Héctor Faúndez Ledesma to represent them in this case.

[4] The period expired on October 3, 2016.

State's Agent for human rights at that time,[5] sent a letter to the Court in which he ratified the State's position as set forth in the briefs presented to the Commission and, in addition, offered to provide the statements of two expert witnesses at the hearing. In a note dated November 25, 2016, the Secretariat reported that the Court had considered the State's willingness to take part in an eventual public hearing and that it would decide in due course on the admissibility of the evidence and arguments offered by the State with regard to the merits of this case.

8. *Public hearing and expert and testimonial evidence*. In an Order of December 20, 2016,[6] the President of the Court summoned the parties and the Commission to a public hearing to receive the statements of an alleged victim proposed by the representative, and of three expert witnesses proposed by the representative, the State and the Commission, respectively, as well as their final oral arguments and observations on the merits and possible reparations. In addition, the President of the Court required the affidavits of two alleged victims, 21 witnesses and nine expert witnesses, proposed by the representative, and the affidavit of an expert witness proposed by the State and two expert witnesses proposed by the Commission. On January 9, 2017, the State filed an "appeal or request for revocation" before the Court in relation to the said Order, specifically with regard to the decision to require the statements of five expert witnesses offered by the representative. Once the respective observations were received, and after the representative withdrew the offer of one of the expert opinions,[7] in an Order dated February 6, 2017, the Court declared inadmissible the challenges filed by the State.[8] On February 3 and 8, 2017, the Court received the affidavits and the parties were subsequently given an opportunity to question the deponents as well as two extensions.[9] The public hearing took place on February 14, 2017, in San José, Costa Rica, during the 117th Regular Session of the Court.[10] During the hearing, the parties presented certain documents to the Court and the judges requested additional information.

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[5] When the State was notified of the submission of the case, it was asked to appoint the Agent(s) who would represent it in this case within 30 days, pursuant to Articles 23 and 39(3) of the Court's Rules of Procedure. Given that the State did not designate Agents, when the brief of pleadings and motions was forwarded to it, the State was again asked to provide information on this appointment as soon as possible, which it did not do. According to the brief submitted on November 9, 2016, it was understood that, henceforth, Mr. Saltrón Negretti would continue to represent the State as its Agent for this case. However, on December 19, 2016 the State decided to appoint Larry Devoe Márquez as the new Agent and, on January 9, 2017, it appointed Romer Pacheco Morales as Alternate Agent.

[6] Cf. Case of San Miguel Sosa et al. v. Venezuela. Order of the President of the Court of December 20, 2016. Available at http://www.corteidh.or.cr/docs/asuntos/sanmiguel_sosa_20_12_16.pdf

[7] On January 31, 2017, the Secretariat reported that the President had taken note and accepted the representative's withdrawal of an expert opinion by Ligia Bolívar.

[8] Cf. Case of San Miguel Sosa et al. v. Venezuela. Order of the Court of February 6, 2017. Available at: http://www.corteidh.or.cr/docs/asuntos/sanmiguelsosa_06_02_17.pdf

[9] On January 4, 2017, the Commission requested an extension, which the President of the Court granted to all the parties until February 3, 2017. In briefs dated January 27 and 30, 2017, the representative of the alleged victims reported that State officials, particularly public notaries, had placed obstacles to certifying the signatures of the deponents. On January 31, following instructions from the President of the Court, it was announced that, if it was not possible for the requested statements to be duly authenticated by the respective authorities, they could be authenticated by the Consulate of the Republic of Costa Rica in Venezuela; or, if this was not feasible, they could be presented in whichever State they were in. It was indicated that, in any case, it would be up to the Court to assess this situation in a timely manner and to rule on the admissibility of the statements. Consequently, the representative was granted an extension until February 9, 2017 to forward the statements. On February 1, the State announced that the Eighth Office of the Notary Public of the Municipality of Chacao would be made available to the representatives to certify the signatures. In communications dated February 3 and 8, the representative forwarded 21 statements and withdrew three testimonies.

[10] The following persons appeared at the hearing: a) for the Commission, Commissioner Francisco Eguiguren, Special Rapporteur for Freedom of Expression Edison Lanza and the legal adviser Silvia Serrano Guzmán; b) for the State, Larry Devoe Márquez, Agent; Romer Pacheco Morales, Alternate Agent, and Alexis Crespo Daza, adviser; and c) for the alleged victims: Héctor Faúndez Ledesma, representative; Jesús Ollarves Irazabal and Juan Carlos Gutiérrez and Alejandra Rodriguez, Mariana Alexandra Romero and Ligia Bolívar Osuna, lawyers; and Luisa Torrealba Meza and Alejandro Gonzalez of Canares, assistants. Video available at: https://vimeopro.com/corteidh/case-san-miguel-sosa-y-otros-vs-venezuela

9. *Amici curiae. Amicus curiae* briefs were received from "Human Rights Watch,"[11] the "*Observatorio Iberoamericano de la Democracia*"[12] and from the "Public Interest Litigation Group" of the Law Faculty of the Universidad del Norte (Barranquilla, Colombia).[13]

10. *Final written arguments and observations.* On March 15, 2017, the parties and the Commission forwarded their final written arguments and observations, respectively. The representative raised a matter and requested a "prior and special ruling on the Court's composition in this case," namely, that the then President of the Court should not participate in the deliberation of this judgment because he had not participated in the hearing. In an Order dated May 18, 2017, the Court declared the representative's request inadmissible.[14]

11. *Deliberation of the instant case*. The Court began its deliberation of this judgment on January 31, 2018.

III
JURISDICTION

12. Venezuela has been a State Party to the American Convention since August 9, 1977, and accepted the Court's contentious jurisdiction on June 24, 1981. Subsequently, on September 10, 2012, the State denounced the American Convention; said denunciation became effective on September 10, 2013. According to Article 78(2) of the Convention,[15] the Court has jurisdiction to hear this case because the facts examined occurred prior to the effective date of denunciation.

IV
PRIOR CONSIDERATIONS

A. The State's belated participation in the proceedings

13. As indicated previously (*supra* para. 7), the State did not submit an answering brief in this case and, once the deadline had expired, it indicated -through its previous Agent - that it "ratifi[ed] before the Court each and every brief containing the arguments presented in its defense before the Commission." Subsequently, among other actions, the State appointed another Agent, prepared questions for those who would be testifying by affidavit and participated in the public hearing, during which it questioned the deponents and presented oral arguments. During the

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[11] The brief provides background on the organization and its interest in the case and examines sources of international law considered applicable to this case, on Venezuela's international legal obligations regarding the rights of freedom of expression, political rights, non-discrimination and the right of access to an effective judicial remedy. The document was signed by the director of the organization, José Miguel Vivanco.

[12] The brief presents a short historical account of the Inter-American System, particularly on the topics of democracy and human rights, as well as a series of opinions on the situation in Venezuela. The document was signed by Mr. Asdrúbal Aguiar-Aranguren, the president of the organization, which is registered as a civil association in Argentina.

[13] The brief contains a series of arguments regarding the State's international responsibility for the violation of Articles 23(1), 13(1), 13(3), 24, 8 and 25 of the American Convention. In particular, the brief outlines the general norms related to the right to freedom of expression and political rights, based mainly on inter-American and European case law; it then develops arguments on indirect restriction of freedom of expression and violation of political rights in this specific case and, finally, discusses judicial guarantees and judicial protection, to then allege restrictions on those rights which, in their view, occurred in this case. The document is signed by two researchers and three students of the Law Department of the aforementioned university.

[14] Cf. Case of San Miguel Sosa et al. v. Venezuela. Order of the Court of May 18, 2017. Available at: http://www.corteidh.or.cr/docs/asuntos/sanmiguelsosa_18_05_17.pdf

[15] Article 78(2) of the Convention establishes that "[s]uch a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that State prior to the effective date of denunciation."

hearing it argued that "the alleged victims did not exhaust the remedies that should have been exhausted before turning to the Inter-American System [, because] they never gave the labor courts an opportunity to correct the situation they were denouncing."[16] In its final oral and written arguments, the State challenged the facts along with certain evidentiary elements and the legal positions of the Commission and the representative; it did not refer to its failure to present an answer to the case; it did not expressly indicate that it would file preliminary objections; finally, it asked the Court to declare that the State is not internationally responsible and, therefore, not to order reparations.

14. In response, the representative argued that the State had the right not to answer, but, by joining at a later stage of the proceedings, developing theories and alleging facts that had not been previously raised, it has placed the alleged victims at a procedural disadvantage, since they have had to "respond to extemporaneous arguments which, nevertheless, the Court may consider and evaluate and, therefore, must be answered."

15. For its part, the Commission noted that it was not until the hearing that the State raised the objection of failure to exhaust domestic remedies for the first time, since it chose not to submit a response. Consequently, according to the Rules of Procedure and the Court's own case law, this objection is time-barred, since the State tacitly waived its right to file preliminary objections, which must therefore be dismissed. Notwithstanding this, the Commission presented other substantive observations in this regard.

16. The Court points out that, in general terms, procedural inactivity results in the preclusion of the procedural opportunity to assert the corresponding rights within the period provided for this purpose. This may eventually result in prejudice to the relevant party, when it voluntarily decides not to fully exercise its right of defense or not to carry out procedural actions that are in its best interest, in accordance with the *audi alteram partem* principle.[17] Nevertheless, in accordance with the Court's Rules of Procedure[18] and its case law, the parties have been allowed to participate in subsequent procedural actions, taking into account the stages that would have expired according to the procedural moment.[19] Consequently, the State's failure to answer and its late incorporation into the proceedings raise two procedural questions: a) whether its argument regarding the failure to exhaust domestic remedies is admissible; b) whether the facts set forth in the Merits Report are accepted and the claims of the Commission and the alleged victims are acknowledged.

17. First of all, the alleged failure of the presumed victims to exhaust appropriate domestic judicial remedies was raised by the State before the Commission and was resolved by the latter in its Admissibility Report. However, even if it reiterated this argument in its final oral and written arguments, the State did not raise preliminary objections in the proceedings before the Court. In this regard, it is evident that the argument of failure to exhaust remedies, in the terms of Articles 46(1)(a) of the Convention and 42 of the Rules of Procedure,[20] can only be raised before the Court

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16 Similarly, the State had alleged before the Commission that the petitioners had used a series of remedies that were not suitable and that the appropriate means to claim their rights was in the ordinary labor courts and not through the remedy of constitutional *amparo*. In its Admissibility Report, the Commission resolved those arguments.

17 *Cf., Case of the Constitutional Court v. Peru. Jurisdiction*. Judgment of September 24, 1999. Series C No. 55, para. 60; and *Case of Fleury et al. v. Haiti. Merits and reparations*. Judgment of November 23, 2011. Series C No. 236, para. 14.

18 Article 29(2) of the Rules of Procedure, which regulates the "Default Procedure," indicates that "[w]hen victims, alleged victims, or their representatives; the respondent State; or, if applicable, the petitioning State enter a case at a later stage in the proceedings, they shall participate in the proceedings at that stage."

19 *Cf. Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012. Series C No. 251, para. 19.

20 Article 41(1) of the Rules of Procedure: "The State's Answer.

in the form of a preliminary objection and at the appropriate procedural moment for that purpose, namely, in the State's answering brief. Therefore, without prejudice to considering the State's arguments insofar as they are relevant to the merits of the case, the Court, noting that the State did not present the objection of failure to exhaust domestic remedies, will not consider the arguments that it made to this effect.

18. In second place, according to Article 41(3) of its Rules, "[t]he Court may consider those facts that have not been expressly denied and those claims that have not been expressly controverted as accepted." The State challenged the facts and claims in its final oral and written arguments. However, the Court has considered that the closing arguments are essentially an opportunity to systematize the factual and legal arguments presented in a timely manner and not a stage to present additional facts, evidence and/or legal arguments, since these could not be responded to by the other parties.[21] In other words, such arguments cannot properly replace the failure to file the initial brief. At the same time, the lack of initial participation by a party does not necessarily mean that the Court must automatically accept the facts in all cases where there is no opposition from that party, as it may be necessary to assess the particular circumstances of the case and the existing evidence.[22]

19. In this case, as in others,[23] the Court will only consider the arguments presented by the State regarding the statements made by affidavit and during the public hearing, the legal arguments put forward and the final written arguments related to the arguments made at the said hearing, as well as the answers and evidence strictly related to questions asked by the judges during the hearing. Thus, pursuant to the applicable rules and provisions, when delivering a judgment, the Court will determine the proven facts,[24] in accordance with the factual framework of the case. It will likewise take into account, in addition to the silence of the State, other elements that may assist it in establishing the truth of the facts, especially those not expressly challenged, duly assessing the legal grounds[25] and applying, to that end, the relevant precepts of conventional law and general international law.[26]

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1. The respondent shall, in writing, state its position regarding the presentation of the case submitted to the Court and, if applicable, answer the brief containing pleadings, motions, and evidence within a non-renewable term of two months from the receipt of the latter brief and its annexes, without prejudice to the term that the Presidency may establish in the circumstances mentioned in Article 24(2) of these Rules of Procedure. In its answer, the State shall indicate:

a. whether it accepts the facts and claims or whether it contradicts them;

[…]

d. its legal arguments, observations on the reparations and reimbursement of costs requested, and conclusions. […]

Article 42(1) of the Rules of Procedure: "Preliminary Objections.

1. Preliminary objections may only be filed in the brief indicated in article [41 of the Rules]."

[21] *Cf. Case of Nadege Dorzema et al. v. Dominican Republic, supra*, paras. 19 and 22; and *Case of Pollo Rivera v. Peru. Merits, reparations and costs*. Judgment of October 21, 2016. Series C No. 319, para. 23.

[22] Cf. *Case Nadege Dorzema et al. v. Dominican Republic, supra*, paras. 19 and 22.

[23] *Cf. Case of Nadege Dorzema et al. v. Dominican Republic, supra*, paras. 19 and 22; and *Case of Liakat Ali Alibux v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of January 30, 2014. Series C No. 276, para. 29.

[24] In this sense, Article 65(1) (d) of the Rules provides that "the judgment shall contain […] the determination of the facts."

[25] Article 65(1)(f) of the Rules establishes that "the judgment shall contain […] the legal arguments."

[26] *Cf. Case of Caesar v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of March 11, 2005. Series C No. 123, para. 39.

B. Factual framework of the case and other requests of the representative

20. The factual framework of the proceedings before the Court is constituted by the facts set forth in the Merits Report submitted for its consideration. Consequently, it is not admissible for the parties to allege new facts other than those contained in said report, without prejudice to submitting complementary facts that may explain, clarify or reject those mentioned therein. The exception to this principle are facts classified as supervening, that is, when knowledge of such facts or access to evidence about them is obtained later, provided they are related to the facts of the case.[27] Thus, it is up to the Court to decide in each case whether such claims are related to the factual framework in order to safeguard the procedural balance of the parties.[28]

21. In his pleadings and motions brief, the representative described the context of the case more extensively than the Commission, that is, he referred to factual background that is not fully described in the Commission's report, either to present a broader context in which the facts allegedly occurred, for the purpose of evaluating the evidence on those facts, or to claim an alleged pattern of conduct by the authorities that he considers responsible.[29] Furthermore, in his final oral and written arguments, the representative asked the Court to declare violations of rights[30] and to order reparations[31] that were not included in his pleadings and motions brief.

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[27] Cf. *Case of Five Pensioners v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 153; and *Case of the Dismissed Workers of PetroPerú et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2017. Series C No. 344, para. 65.

[28] Cf. *Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 134, para. 58, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 65.

[29] The representative also referred to: the "background of discrimination;" the fact that Venezuela was in a political crisis prior to the facts of the case, for example with the approval of an "enabling law" that allowed the President to govern by decree; the reactions to this situation expressed through demonstrations and protests, as well as two national strikes to demand the resignation of President Chávez; the *coup d' état* perpetrated on April 11, 2001; and the lack of independence of the Judiciary.

[30] The representative alleged the violation of Article 8 of the Convention owing to the judges' lack of impartiality; the violation of Article 5 of the Convention of Belem do Pará (arguing that, although they were not subjected to discrimination for being women, "the fact that the alleged victims were women meant that the persecution against them and its effects on their work situation had more adverse consequences for them"); and the "right of women to have equal access to public service" in the terms of Article 4(j) of the Convention of Belem do Pará.

[31] In his final written arguments, the representative requested that the Court, in addition to the proposals contained in his pleadings and motions brief, order the State to:

adopt the measures of reparation necessary to fully restore the physical and mental health of the victims in this case;

adopt appropriate legislative and administrative reforms to ensure that the public administration does not resort to the mechanism of contract personnel, whose contracts are renewed without interruption, in order to avoid granting them job security and being able to dismiss them arbitrarily, even without giving a reason;

impart courses on political tolerance and non-discrimination for those who hold management positions in the public administration;

impart courses on political tolerance and non-discrimination, at all levels of education, as an essential basis for respect for individual dignity;

implement, among senior officials of the different public authorities, courses designed to emphasize the importance of the independence of the branches of government as an essential element of democracy and as an essential guarantee of the full enjoyment of human rights;

adopt the measures necessary to eradicate all forms of discrimination and, in particular, all forms of political discrimination in public administration; and

ensure publication of the judgment in the daily newspaper *El Nacional* and in another newspaper with national circulation.

22. In the instant case, the Court will only take into account the context and facts proven by the representative that complement those established in the factual framework of this case.[32]

23. At the same time, in proceedings of a contentious nature before this Court the alleged victims and their representatives may, in full exercise of their right of *locus standi in judicio*, invoke the violation of rights other than those included in the Merits Report and make their own requests for reparations, provided they adhere to the factual framework[33] and do so at the proper procedural moment, namely, in the brief with pleadings, motions and evidence (Article 40(1) of the Rules).[34]

24. Having regard to the scope of the final arguments (*supra* para. 18) and the principles of contradiction and procedural estoppel, it is not appropriate to consider requests or claims made by the representative in his final arguments, since they were submitted extemporaneously. Consequently, the Court will rule only on the pleadings and motions included in the brief, in a timely manner and in accordance with Article 40(1) of the Rules.[35]

V
EVIDENCE

A. Documentary, testimonial and expert evidence

25. The Court received various documents presented as evidence by the Commission and the representative, as well as statements made by the alleged victims, witnesses and expert witnesses, requested opportunely by the President.[36] During the public hearing, statements were received from an alleged victim and from three experts proposed by the representative, the State and the Commission, respectively (*supra* para. 8).

B. Admissibility of the evidence

B.1) Admissibility of the documentary evidence

26. In this case, as in others, the Court admits those documents submitted by the Commission and the representative at the proper procedural opportunity (Article 57 of the Rules of

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32 Cf. *Case of Acosta et al. v. Nicaragua, supra*, para. 31; and *Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340, para. 24.

33 *Cf. Case of Five Pensioners v. Peru, supra*, para. 155, and *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 329, para. 48.

34 *Cf. Case of Yvon Neptune v. Haiti. Merits, reparations and costs*. Judgment of May 6, 2008. Series C No. 180, para. 18. See also *Case of Nadege Dorzema et al. v. Dominican Republic supra*, paras. 19 and 22; and *Case of Pollo Rivera et al. v. Peru, supra*, para. 23.

35 *Cf. Case of Pollo Rivera et al. v. Peru, supra*, paras. 24 and 25; and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 71.

36 The Commission forwarded the opinions of the expert witnesses José Luis Caballero Ochoa and Dirk Voorhoof; the State forwarded the opinion of Néstor Castellano; and the representative forwarded the statements of the alleged victims Thais Coromoto Peña and Magally Chang Girón, of the witnesses Ricardo Ludwig Estévez Mazza, Roberto Abdul-Hadi Casanova, María Gabriela Cuevas García, Marino Alvarado Betancourt, José Ángel Guerra, Froilán Alejandro Barrios Nieves, María Vicenta Verdeal Durán, Roberto Antonio Picón Herrera, Vicente Carmelo Bello Ríos, María Alejandra Marrero of Ugas, Morelba Karina Molina Noguera, Ismael García, as well as of the expert witnesses Luis Salamanca, Alberto Arteaga Sánchez, Oscar Lucien, Colette Capriles Sandner, Manuel Gerardo Réquiz Cordero, Sergio Garroni Calatrava and Elsa Cristina González. In addition, the statements of Alejandro Plaz Catillo, Pedro Enrique Rodríguez, Vicente José Gregorio Díaz Silva, Ibéyise María Pacheco Martini, Eddie Alberto Ramírez Serfaty, Antonio José Rivero González and Horacio Medina Herrera were received directly in the Court on January 30 and 31 and on February 1, 2 and 9, 2017. Ana Julia Jatar directly forwarded her statement on February 15, after the term had expired, for which reason it is not admissible.

Procedure),[37] the admissibility of which was neither contested nor challenged.[38] Without prejudice to the foregoing, the Court includes some specific considerations below and settles disputes regarding the admissibility of certain documents.

27. In relation to the press reports submitted in a timely manner by the Commission and the representative, the Court admits these and, in line with its case law, will evaluate those that contain public and well-known facts or statements by State officials, or that corroborate aspects related to the case, provided it is possible to verify their source and date of publication.[39]

28. The State challenged the admissibility and eventual assessment of the recordings and transcripts of telephone conversations allegedly held on March 24 and 31, 2004, between the alleged victim, Rocío San Miguel Sosa, and two State officials, Feijoo Colomine (then Executive Secretary of the National Border Council) and Ilia Azpurua (legal adviser to the Vice Presidency). The State indicated that it is unware of and denies the content of the recordings; that their inclusion in the body of evidence by the Commission, and their eventual assessment by this Court, implies a violation of Article 11 of the Convention. The State added that the Court should set a solid precedent that prevents such practices from being considered lawful and legitimate.[40]

29. The Court notes that the State's arguments are substantially similar to those it made before the Commission. Such recordings were provided by the representative during the processing of the case before the Commission, which admitted them and assessed them as a "preliminary question on the use of certain evidence" in the chapter on "proven facts" of its Merits Report, as convincing proof that the real reason for the termination of the alleged victims' contracts was as retaliation for having signed the petition for the recall referendum.[41] For his part, the representative argued that although the recordings were made without the knowledge and consent of the other persons involved, they are perfectly legal under Venezuelan law, since they were made by one of the persons involved in those conversations, at a time when she faced the

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[37] Documentary evidence may be presented, in general and pursuant to Article 57(2) of the Rules, together with the briefs submitting the case, of pleadings and motions or answering brief, as appropriate, and evidence submitted outside these procedural opportunities is not admissible, except in the circumstances established in the said Article 57(2) of the Rules (namely, *force majeure* or serious impediment) or if it refers to an event that occurred after the procedural moments indicated. Cf. *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18, and *Case of I.V. v. Bolivia, supra*, para. 55.

[38] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No.4, para. 140, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 74.

[39] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 140; and *Case of Acosta et al. v. Nicaragua, supra*, para. 22.

[40] In particular, the State warned that the admission of such recordings as means of evidence would set a negative precedent and jeopardize the inter-American public order. It argued that telephone conversations are protected by Article 1(1) of the Convention regardless of their content; that based on the right of defense and the principles of procedural equality and legal certainty that govern the processing of petitions before the Commission, the organs of the inter-American System must maintain a special duty of care in the exercise of evidentiary activity; that "the Commission obviated the necessary analysis of the legality of this type of evidence and that several domestic jurisdictional bodies dismissed the evidentiary value of these recordings, because they were made without a court order and by unidentified persons;" that they have not been subjected to any type of expert analysis to determine whether they were modified or edited and to confirm the identity of the persons to whom the conversations are attributed; that there is reasonable doubt as to whether these were really carried out by a third party not involved in the dialogue, bearing in mind that, at the time of the facts, "a family member of one of the alleged victims was the highest authority of a police unit with real operational capacity to intercept telephone communications." The State argued that one of the recordings shows how the conversation between two people is intercepted, which is "a typical scheme of illegal telephone interception," in clear breach of Article 11 of the Convention. Furthermore, it pointed out that there is no certainty as to the origin of the recording, the full content of the conversation (or if it was edited to add or delete information), or if the voices really correspond to the persons to whom they were attributed.

[41] The Commission considered that the content of the conversations is not related to the private life or reputation of the participants and that the use of these conversations does not make public aspects of the private life of the persons involved; rather, it could validly be considered as a matter of public interest, especially considering the alleged existence of a generalized context of reprisals. Therefore, the use of such elements is justified to determine the facts of this case.

threat of having her rights violated. Therefore, they constituted the only means available for her defense, and there is no intention in these recordings to harm third parties, or any reference to their private life, for which reason the representative asked the Court to admit them as direct evidence that the alleged victims were subjected to the arbitrary exercise of public power.

30. The Court finds it pertinent to determine the admissibility of such documents, prior to the chapters on proven facts and merits.

31. First, with respect to the arguments regarding the lack of an expert opinion to determine the authenticity and content of the recordings, as well as the identity of the alleged speakers or the hypothesis of an illegal wiretap, the Court notes that, if the State considered that such recordings had defects that rendered them inadmissible as evidence, it had the opportunity to offer evidence or expert opinions to support its position during the processing of this case before this Court. However, since it did not do so, such arguments are untimely and speculative.

32. Secondly, the State substantially alleges that the telephone recordings are illegal, emphasizing the decisions taken by its domestic courts.[42] In this regard, the relevant point is that the State did not challenge said recordings in a timely manner (*supra* para. 19). At the same time, it is clear that the considerations of the domestic judicial bodies do not determine a decision on the admissibility and eventual assessment of documents by this international Court, whose criteria for assessing evidence are less formal than those required by the domestic legal systems,[43] since the obligor under the Convention is the State and not the individual. The questions regarding the lack of knowledge or consent of one of the interlocutors of a telephone conversation that is to be recorded, and whether this would affect the possibility of that recording being offered as evidence in a criminal or other proceeding and subsequently being judicially evaluated, could be relevant to the merits of the case. Therefore, the Court admits the recordings and transcripts as documentary evidence, and will assess them in due course, in accordance with the principles of sound judgment and within the corresponding regulatory framework, taking into account the body of evidence and the alleged facts in the case.[44]

33. With respect to certain documents indicated by the parties by means of electronic links, the Court has established that if a party provides at least the direct electronic link to the document cited as evidence, and it is possible to access it, neither the legal certainty nor the procedural balance are impaired, because it can immediately be traced by the Court and the other parties.[45] Some documents mentioned by the Commission in its report are not accessible at the time of issuing this judgment.[46] However, since these texts are public knowledge or refer to public statements by government officials, the Court has verified their content through the use of the

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[42] The court that rejected the *amparo* action filed by the alleged victims considered that such recordings or transcripts "cannot be admitted and much less assessed as evidence, given their unlawful nature" (evidence file, folios 518 and 525). This decision was not changed by the appeals court.

[43] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, paras. 127 and 128; and *Case of González Medina and Family v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of February 27, 2012 Series C No. 240, para. 132.

[44] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998, para. 76, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 79.

[45] *Cf. Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of February 16, 2017. Series C No. 333, para. 92.

[46] For example: *Súmate,* Progress Report "The Presidential Recall Referendum" of September 7, 2004; National Electoral Council, Resolution 030925-465 of September 25, 2003; National Electoral Council, Resolution 031015-529 of October 15, 2003; press reports: *El Universal*, "The infamous list: What is upsetting is that millions of people came out of the slums to vote without fear," February 25, 2012" and *El Nacional*, "Summary of cases collected by El Nacional," April 24, 2005."

Internet. Therefore, in application of Article 58(a) of its Rules of Procedure,[47] it includes them *ex officio* in the body of evidence, considering them useful or necessary for the analysis of this case.[48] In this regard, the Court clarifies that it does not accept as proven facts or as true all the contents found in such electronic links, but only insofar as they refer to or contain the specific source or information cited as relevant for the purposes of this case.

B.2) Admissibility of the testimonial and expert evidence

34. The Court decides to admit the statements provided by affidavit and during the public hearing, insofar as they are in keeping with the purpose defined by the President in the order requiring them and the purpose of this case.

35. When submitting the written statements of those residing in Venezuela, the representative explained that he had not been able to authenticate them due to the obstacles put up by the public notaries to certify the deponents' signatures. He added that for this reason their statements are accompanied by a copy of their identity document, and requested that the Court accept them in that way. In his final arguments, the representative also claimed that this arbitrary act compromises the State's international responsibility and constitutes an additional violation of the Convention. The State did not refer to this matter.

36. The Court notes that several Venezuelan notary offices repeatedly refused to take the legal statements of witnesses and expert witnesses, as requested in the order of the President of the Court. Therefore, it considers that by failing in its duty to take the necessary steps to comply with the Court's orders, the State's conduct is incompatible with the obligation of procedural cooperation and with the principle of good faith that governs international proceedings. [49] The Court considers, as it has done in other cases, that the aforementioned statements were submitted within the stipulated period and that their lack of authentication by a notary public is not attributable to the representative or to the deponents. Therefore, the Court admits them, since they were presented the proper procedural moment, and will take them as a simple declaration.[50]

37. In his final written arguments, the representative requested that the statement of Mr. César Tillero, an expert witness offered by the State, be disregarded as evidence.[51] The Court notes that the arguments of the representative involve subjective aspects, specific to the analysis of his defense, which may affect the assessment of its evidentiary weight, but do not affect its admissibility.[52]

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47 Article 58(a) of the Rules of the Court: "The Court may, at any stage of the proceedings: a. Obtain, on its own motion, any evidence it considers helpful and necessary."

48 Similarly, see *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 53; and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 77.

49 *Cf. Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 26, 2012. Series C No. 244, para. 33; and *Case of Uzcátegui et al. v. Venezuela. Merits and reparations*. Judgment of September 3, 2012, Series C No. 249, para. 29

50 *Cf. Case of Ortiz Hernández v. Venezuela. Merits, reparations and costs.* Judgment of August 22, 2017. Series C No. 338, para. 49.

51 He argued that the expert witness lacks academic experience in matters of Labor Law, Administrative Law and Civil Service Law; that he committed perjury because of the grave inconsistencies in his statement, since in addition to his ignorance of essential aspects of the case, he does not have the experience that he claims, given that he could not have provided legal advice for 10 years when it is only 7 years since he graduated from university as a lawyer. For these reasons, as well as his lack of credibility, the representative requested that the Court reject his statement as evidence.

52 *Cf. Case of Velásquez Paiz et al. v. Guatemala Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2015. Series C No. 307, para. 36.

38. With respect to all the expert opinions presented, the Court recalls that it may assess the objectivity of the expert witnesses when analyzing the accuracy, clarity and adequacy of the technical arguments developed in their opinions, rendered either during the public hearing or by affidavit. In assessing any expert evidence, the Court may determine whether possible inaccuracies and deficiencies allow it to reject certain conclusions because they lack objectivity or legal basis.[53] Thus, the receipt of all statements offered in the form of expert opinions –both by the representative and by the State– does not affect or determine, in any way, the assessment of their content, evidentiary weight or relevance, which is for the Court to decide when issuing this judgment, taking into account the valid and pertinent observations presented by the parties.[54]

C. Assessment of the evidence

39. In accordance with the provisions of Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules of Procedure, and based on its constant case law regarding evidence and its assessment, the Court will examine and assess the documentary evidence submitted by the parties and the Commission, together with the statements, testimony and expert opinions rendered by affidavit and at the public hearing, in order to establish the facts of the case and rule on the merits. To this end, it will abide by the principles of sound judgment, within the corresponding legal framework, taking into account the body of evidence and the arguments submitted in this case.[55] As for the statements made by the alleged victims, the Court reiterates that in accordance with its case law, these may be assessed insofar as they provide further information on the alleged violations and their consequences, not in isolation but within the whole body of evidence.[56]

VI
FACTS

40. In this chapter the Court will establish the facts of this case, based on the factual framework submitted to its consideration and taking into account the body of evidence (*supra* paras. 20 to 22). To this end, the facts will be examined in the following order: a) context; b) termination of the contracts; and c) complaints and domestic proceedings.

A. CONTEXT

A.1 The first collection of signatures for the presidential consultative referendum

41. Articles 71, 72, 73 and 74 of the Constitution of the Bolivarian Republic of Venezuela, promulgated in 1999, establish four types of popular referendum for the purposes of: consultation, revocation, approval and abrogation.[57]

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53 *Cf. Case of Cabrera Garcia and Montiel Flores v. Mexico*. Order of the Inter-American Court of July 2, 2010, paras. 19 to 26.

54 *Cf. Case of San Miguel Sosa et al. v. Venezuela.* Order of the Court of February 6, 2017, supra, para. 12.

55 *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 76, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru*, *supra*, para. 79.

56 *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Pacheco León et al. v. Honduras. Merits, reparations and costs*. Judgment of November 15, 2017. Series C No. 342, para. 20.

57 Regarding the consultative referendum, Article 71 states: "Matters of special national transcendence may be referred to a consultative referendum, on the initiative of the President of the Republic; taken at a meeting of the Cabinet; by resolution of the National Assembly, passed by a majority vote; or at the request of a number of voters constituting at least 10% of all voters registered on the national, civil and electoral registry. Matters of special state, municipal and parish importance may also be referred to a consultative referendum. The initiative corresponds to the Parish Board, the Municipal

42. During 2001 and 2002, Venezuela faced a serious institutional and political crisis, in which opposition parties and civil society organizations promoted a consultative referendum to request the resignation of President Hugo Chávez Frías. To this end, the organizations collected signatures and, on November 4, 2002, submitted more than two million signatures to the National Electoral Council (CNE) (hereinafter "CNE").[58]

43. In November 2002, during a television program, President Chávez declared that he would not resign his position, stating: "Not even assuming that the National Electoral Council decrees that the question (of the consultative referendum) is valid. Nor in the event that the Supreme Court of Justice says so. Not even in the event that the referendum is held and that they obtain 90% of the votes, I will not resign!"[59]

44. On December 3, 2002, in Resolution No. 021203-457 published in Electoral Gazette Nº 168, of December 5, 2002, the National Electoral Council called on voters to participate in the national consultative referendum on the presidential term, set for February 2, 2003.[60]

45. On December 30, 2002, three members of the *Movimiento Quinta Republica* (Fifth Republic Movement) political party filed an appeal for "annulment with a request for constitutional *amparo*" against this resolution, and also challenged the appointment of an alternate member (rector) to the National Electoral Council.[61]

46. On January 22, 2003, ten days before the date set for holding the consultative referendum, the Acting Chamber for Electoral Matters of the Supreme Court declared the appeal admissible, considering that the incorporation of the alternate rector was illegal, and ordering the National Electoral Council to refrain from initiating electoral or referendum processes and to suspend those already initiated; to suspend the effects of Resolution No. 021203-457 given that in the approval of that decision, a person who had already resigned his position as alternate participated in the Board, thus violating "the right of both the appellants, and of all voters in general, to participate

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Council or the Legislative Council, by agreement of two-thirds of its members; to the Mayor or the Governor of the State; or to a number of not less than ten percent of the total number of voters in the corresponding district, who request it."

As to the referendum for revocation, Article 72 stipulates: "All magistrates and other offices filled by popular vote are subject to revocation. Once half of the term of office to which an official has been elected has elapsed, a number of voters constituting at least 20% of the voters registered in the pertinent district may issue a petition for the calling of a referendum to revoke such official's mandate. When a number of voters equal to or greater than the number of those who elected the official vote in favor of revocation, provided that a number of voters equal to or greater than 25% of the total number of registered voters has voted in the revocation election, the official's mandate shall be deemed revoked, and immediate action shall be taken to fill the permanent vacancy in accordance with the provisions of this Constitution and the law. The revocation of the mandate for collegiate bodies shall be conducted in accordance with the law."

Cf. Constitution of the Bolivarian Republic of Venezuela, Special Official Gazette No. 36.380 of December 30, 1999, available at: http://www.cne.gob.ve/web/normativa_electoral/constitucion/titulo3.php#cap4 .

58 Cf. *Proyecto Súmate*, available at: http://www.sumate.org/proyectos.html.

59 *Cf. Analítica*, Chávez: I will not resign even if they get 90% of the votes in the referendum, November 25, 2002, available at: http://analitica.com/actualidad/actualidad-national/chavez-no-renunciare-aunque-logren-90-de-votos-en-el-referendum/; *El Día*, "Supreme Court of Justice annuls the February 2 referendum", November 29, 2002, available at: http://eldia.es/venezuela/2002-11-29/2-Tribunal-Supremo-Justicia-anula-referendum-February.htm.

60 Cf. National Electoral Council, Resolution No. 021203-457, Electoral Gazette No. 168, available at: http://www.cne.gob.ve/web/gaceta_electoral/gaceta_electoral_detallado.php?tg=1&num_gac=168 The expert witness Luis Salamanca pointed out that the petition to hold a consultative referendum (even though it had no binding effects) instead of a recall referendum, responded to the possibility of holding it immediately, while the recall referendum had to wait until halfway through the [presidential] term (evidence file, folio 3191).]

61 Cf. Acting Chamber of the Supreme Court of Justice, Resolution of January 22, 2003; *Súmate*, Progress Report "The Presidential Recall Referendum", September 7, 2004, available at: https://sumate.org/Elections/2004Revocatorio/200409_report_avance_Annexs_referendo_revocatorio_presidencial.pdf.

in public affairs (…).” In response, the National Electoral Council suspended the call for a consultative referendum and limited its activities to those of an administrative nature.[62]

A.2 The second collection of signatures: “El Firmazo”

47. In view of the decision of the Electoral Chamber of the TSJ, political parties and members of civil society decided to carry out a second collection of signatures on February 2, 2003, known as *El Firmazo*, this time to promote a recall referendum of the presidential mandate.[63] This event was organized by the civil association “SUMATE,” and more than three million signatures were collected on that day.[64]

48. The Organization of American States (OAS) and the Carter Center, acting as observers of the process, said that *El Firmazo* passed off without incident. However, government representatives dismissed the event as fraudulent and denied that they had collected enough signatures to hold the referendum.[65]

49. Subsequently, the Constitutional Court ruled that “the signatures for the recall must be recorded before the CNE, once President Chávez or any popularly elected official completes half of their term of office.”[66] The signatures obtained were submitted to the CNE on August 20, 2003.[67]

50. On September 12, 2003, the CNE issued Resolution No. 030912-461, in which it declared the petition for a recall referendum inadmissible, arguing, among other things, that the signatures were untimely because they had been collected six months and 18 days before the president had completed half of his term in office; therefore, “signatures cannot be collected to support a petition for which the signatories do not yet have a right.” The same resolution noted that the petition was not addressed to the CNE and that “the text refers to an alleged initiative of the signatories to call the referendum, when they only have the right to activate it through the competent Electoral Body.”[68]

A.3 The third collection of signatures: “El Reafirmazo”

51. After the inadmissibility of the petition for the recall referendum (“*El Firmazo*”), the National Electoral Council issued Resolution 030925-465, on September 25, 2003, approving the rules to regulate processes for a recall referendum, establishing various technical conditions for

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62 Cf. *Súmate*, Progress Report “The Presidential Recall Referendum,” *supra*.

63 According to the expert witness Luis Salamanca, “it is interesting to note that the possibility activating the referendum appeared in the “Agreement between the Representatives of the Government of the Bolivarian Republic of Venezuela and the Political and Social Groups supporting it, and the *Coordinadora Democrática* and the Political and Civil Society Organizations supporting it,” endorsed by the OAS. Therefore, the recall process emerged from an agreement between the parties in conflict. After seven months of work (November 2002-May 2003), members of the Working Forum for Dialogue and Negotiation (*Mesa de Negociación y Acuerdos*), comprised of Government representatives and representatives of the opposition, signed the “Agreement” on May 29, 2003, point 12 of which established that: “In pursuit of the objective established in the *Síntesis Operativa* (Terms of Reference), we, the parties, agree that this resolution of the crisis should be achieved through application of Article 72 of the Constitution of the Bolivarian Republic of Venezuela, which provides for the possible holding of recall referenda on the mandates of all those holding positions and serving as magistrates as a result of popular election. (…)” (evidence file, folio 3192).

64 *Cf. Súmate*, Progress Report “The Presidential Recall Referendum,” *supra*.

65 *Cf. El País*, “Opposition claims victory in *el firmazo* against Chávez,” December 3, 2003, available at: http://elpais.com/diario/2003/12/03/international/1070406013_850215.html

66 *Cf. El Universal*, “Order to hand over signatures after the 19A”, August 14, 2003, available at: http://www.eluniversal.com/2003/08/14/pol_art_14104AA.shtml

67 *Cf. Súmate*, Progress Report “The Presidential Recall Referendum,” *supra.*

68 Cf. National Electoral Council, Resolution No. 030912-461, September 12, 2003, available at: http://www.cne.gob.ve/web/sala_prensa/noticia_detallada.php?id=1629.

implementing them.[69] In particular, the CNE indicated as its exclusive attribution, *inter alia*, the verification of compliance with the requirements for referendum petitions, for which it would have a period of thirty continuous days, as of the presentation of the forms, to verify the data of the voters contained in the petition for the referendum.[70] Once the verification process was completed, the CNE would publish, in at least one print media of national circulation, the results of the validation process, including the identity card numbers of the referendum petitioners.[71] On October 15, 2003, the CNE decided to convene a new collection of signatures for a presidential recall referendum, to be held between November 28 and December 1, 2003,[72] which would become known as *El Reafirmazo*.

52. In addition, on October 27, 2003, the National Electoral Council issued Resolution 031027-710 in which it "urge[d] both public sector agencies in any of the political-territorial levels of government (national, state and municipal) and private agencies with personnel in their service, to refrain from implementing any direct or indirect measure that seeks to influence or impede the free exercise and peaceful enjoyment of the constitutional right to political participation involved in each of procedural phases of the recall referendum, governed by rules that regulate the "Processes for Recall Referenda on Terms of Office of Popularly Elected Officials."[73] On November 20, the CNE issued Resolution No. 031120-794 containing the "Guidelines on Criteria for the Validation of Signatures and Forms" for the collection of signatures for the recall referendum for terms of office of popularly elected officials.[74] This modified the rules established in Article 29 of the resolution of September 25, 2003, by adding criteria for determining the validity of the signatures and of the forms.[75]

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[69] Cf. National Electoral Council, Res. 030925-465, September 25, 2003 (Official Gazette of the CNE N° 175 of September 26 2003), available at http://www.cne.gob.ve/web/gaceta_electoral/gaceta_electoral_detallado.php?tg=1&num_gac=175 According to the expert witness Luis Salamanca, the regulatory provisions were full of additional requirements that hindered the exercise of this right. For example, the requirement to collect signatures using a security form with water seals and barcodes, designed by the CNE, at the locations and times stipulated by the oversight body, during four days. (evidence file, folio 3129).

[70] Article 29 of Resolution 030925-465 established that:

"Signatures or petitions shall not be considered authentic and consequently will be deemed invalid, in any of the following situations:

1. If there are inconsistencies between the name, surname, date of birth and identity card of the signatory.

2. If the signatory is not registered in the corresponding electoral district for the referendum in question.

3. If the signature is not handwritten.

4. If the signature is the result of photocopies or any other means of reproduction.

5. If it is determined that more than one signature is provided by the same person."

[71] Cf. National Electoral Council, Resolution 030925-465, September 25, 2003, Articles 7.3, 28 and 31.

[72] Cf. National Electoral Council, Resolution 031015-529, October 15, 2003 (CNE Official Gazette, N° 178 of October 24, 2003).

[73] Cf. National Electoral Council, Resolution No. 031027-710, of October 27, 2003 (evidence file folio 8).

[74] Cf. Decision of the National Electoral Council No. 031120-794 of November 20, 2003 (evidence file folios 12-13).

[75] Articles 2 and 3 of Resolution 031120-794 established that:

"ARTICLE 2: The signature verification procedure will comply with the validation criteria established in Article 29 of the Guidelines to Regulate Procedures for Referenda to Recall the Mandates of Elected Officials, and with Resolution 031030-716, issued by the National Electoral Council on October 30, 2003, and published in the Electoral Gazette of the Bolivarian Republic of Venezuela No. 179, on November 13, 2003."

ARTICLE 3: Notwithstanding the preceding article, a signature or petition will not be considered valid in any of the following circumstances:

1. If it does not contain at least one of the person's names and one of the surnames; if it does not include the ID number and date of birth or if any of the aforementioned data are illegible.

2. If it lacks the voter's signature or fingerprint.

53. In the months and days prior to the dates stipulated by the CNE for the collection of signatures, some public officials suggested that the process might be fraudulent or threatened those intending to participate in the referendum.[76] For example, on October 19, 2003, President Chávez had declared that "those who sign against Chávez are not really signing against Chávez. They will be signing against the nation […] those who sign against Chávez - your name will be recorded for history, because you will have to put your name and surname, your signature and ID number and your fingerprint."[77]

54. On October 21, 2003, the Attorney General of the Republic stated that "active military personnel may express their will in favor of the recall referendum on the mandate of the Head of State during the drives to collect signatures." On previous or subsequent days, the Army Commander stated that the only political right that the Constitution establishes for the military is the right to vote [and that they could not] attend events to collect signatures of any type, or any call by either of the two parties, because that implies engaging in political proselytism."[78]

55. On November 22, 2003 Lina Ron, Coordinator of the so-called Bolivarian Circles and then President of the *Fondo Único Social* or Single Social Fund (a public institution responsible for administering public funds used to finance and regulate social programs), declared that "I will not allow anyone at any collection post to sign against my commander in chief, against the greatest man in this country, against the messiah of this land, against the best man this nation ever had. Whoever does [sign] it, either they kill me, or I kill them."[79]

56. On November 28, 2003, the then Minister of Labor declared publicly that "the right to vote is free, no one can be discriminated against for political reasons. All labor inspectorates will remain open to deal with complaints on this matter."[80]

57. On December 1, 2003, then President Hugo Chávez, referring to the *Reafirmazo*, declared: "Are you sure they are not going to cheat us? As the people say, here in these streets of God 'the trap is out.'"[81]

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3. If there are any deletions or amendments on the line on which the signature and the fingerprint are stamped or if the fingerprint has been stamped incorrectly, according to technical criteria.

4. If the information and the signatures are repeated, in which case all will be invalidated

5. If the fingerprints are completely superimposed, smudged or fragmentary.

SINGLE PARAGRAPH: By decision of the Board of Directors, a mechanism may be established for a sample study [sic] of the fingerprints, according to accepted technical parameters."

[76] In its Annual Report of 2004, the Inter-American Commission indicated that it was informed of "growing tensions and polarization between opposition sectors and the government. This was evident in the events surrounding the process of verifying and validating signatures collected by the National Electoral Council (CNE), as well as in the charges voiced by senior government officials and the President himself about instances of "mega-fraud," and in the wave of peaceful street protests, some of which involved acts of violence with a disproportionate use of force by the security apparatus responsible for public safety." See, IACHR. Follow-up Report on Compliance by the State of Venezuela with the Recommendations made by IACHR in its Report on the Situation of Human Rights in Venezuela, February 23, 2005, available at: http://www.cidh.oas.org/annualrep/2004sp/cap.5d.htm .

[77] Cf. Documentary *"La Lista: un pueblo bajo sospecha."* Available at: https://www.youtube.com/watch?v=2LuOQjhg8BU

[78] Cf. Press reports (evidence file folios 21 and 24).

[79] Cf. *Ciudadanía Activa*, Documentary *"La Lista, un pueblo bajo sospecha. Part 2,"* Available at: https://ciudadaniaactivavzla.wordpress.com/2015/03/26/documentary-la-lista-tascon/.

[80] Cf. Press reports (evidence file, folios 14 and sbsq.).

[81] *Ciudadanía Activa*, Documentary *"La Lista, un pueblo bajo sospecha"*, Part 2, *supra*.

58. Between November 28 and December 1, 2003, there was another drive to collect signatures. The alleged victims, San Miguel, Chang and Peña, attended their respective voting centers to exercise their right. On December 19, 2003, more than three million signatures requesting the presidential recall referendum were submitted to the CNE.[82]

A.4 The "Tascón List"

59. On January 30, 2004, before the National Electoral Council had validated the signatures to request the referendum, the President of the Republic addressed the president of the CNE to "notify him that he fully authorized the citizen [congressman] Luis Tascón Gutiérrez […] to withdraw certified copies of the forms used during the 2A event held on 28/11/03 and 01/12/03, in which a group of citizens requested to activate the referendum to revoke my mandate."[83] Before receiving copies of the forms, on February 1, 2004, during the "*Aló Presidente*" television program hosted by President Chávez, then Congressman Luis Tascón said: "I don't know what fear the squalid ones have […] with these forms, we now have an opportunity to give a face to the fraud […] we already have the boys from the Francisco de Miranda Front who will prepare the database."[84]

60. After the National Electoral Council released copies of the forms to Congressman Tascón, he published the lists on the website www.listascon.com, accusing the signatories of participating in "a mega-fraud." The website allowed users to access the list of signatories of the petition for a presidential recall referendum by entering their identity card number after a text that read "Enter your ID here (numbers only) to see if it appears in the …MEGA FRAUD…!" Referring to the website, Congressman Tascón declared: "This is a service also for people in the opposition who signed; if they signed, congratulations! OK? But unfortunately, you participated, and that's why it says so on the website. You participated in the fraud."[85]

61. On February 15, 2004, during his Sunday television program, President Chávez also referred to the website, declaring: "I've been informed that Congressman Luis Tascón has a website. On his website, well, there's a list, of all these things, especially the ID numbers of those who supposedly signed. I call on the Venezuelan people to check, and let the faces be known! Here it is: www.listascon.com. Check it out!"[86]

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[82] Cf. The Carter Center, Observing the Venezulan Presidential Recall Referendum, February 2005, page 29, available at: https://www.cartercenter.org/documents/2021.pdf.

According to the expert witness Luis Salamanca: "the review of the signatures began in January 2004 […] the data on the signatories was collected by CNE officials, in many cases by a single official, whose handwriting appears repeatedly on the forms since the rules did not prohibit this procedure and only required the handwritten signature of the petitioner. More than 800,000 signatories were in this situation. Chávez referred to the signatures collected in this way as "*firmas planas*," a non-existent concept in the rules, which caused a further delay in convening the referendum. From all this it follows that there was no delay by the CNE in the exercise of the right to revoke the presidential mandate until September 2003, when the new board of the CNE rejected the signatures gathered autonomously by the opposition. From that moment, the recall referendum petition was subject to regulatory and extra-regulatory requirements of the CNE, and political ones, delaying the convocation from August 2003, the date on which it should have been held, until August 15, 2004, date on which it finally took place" (evidence file folios 3192 to 3193).

[83] Cf. *El Universal*, "42 public institutions involved in discrimination", November 11, 2006, available at: http://www.eluniversal.com/2006/11/11/imp_pol_art_65474.shtml.

[84] Cf. *Ciudadanía Activa*, Documentary "*La Lista, un pueblo bajo sospecha*," Part 2, supra.

[85] Cf. *Ciudadanía Activa*, Documentary "*La Lista, un pueblo bajo sospecha," supra*. The representative stated that this website was created in February 2004 and featured a built-in "global signature browser," a function that made it possible to investigate the names of the Venezuelan citizens who had signed by simply entering their national identity card number. The necessary information was then displayed to determine whether or not the citizen in question had signed the petition. The browser function also included a form to print out, or to make any necessary corrections and even a telephone number (0800-372833-1) to report the improper inclusion of a user's name among the signatories of the referendum. The above information was not disputed.

[86] Cf. *Ciudadanía Activa*, Documentary "*La Lista, un pueblo bajo sospecha,*" supra.

A.5 Results of the recall procedure "El Reafirmazo" and implementation of the recall referendum

62. On March 2, 2004 - that is, 61 days after receiving the signatures of *El Reafirmazo* - the National Electoral Council issued Resolution No. 040302-131 with the preliminary results of the recall procedure initiated with respect to President Chávez,[87] granting the interested parties the possibility to exercise, in the applicable cases, their "right to *reparo*" (to "repair" or validate their signatures). It was stipulated that all ID card numbers of the signatories participating in the recall procedure, with an indication of whether the signature was accepted or rejected, would be published in the mass media so that citizens could express their will in the next phase of the procedure. On April 20, 2004, the CNE issued rules for the exercise of the "right of *reparo*" in recall procedures of popularly elected officials[88] and announced that 1,192,914 signatures were to be submitted for *reparo* on the date indicated by the electoral body. The "*reparo*" procedure required the validation of signatures subject to *reparo*, and allowed those who had signed the petition, and who had changed their minds, the opportunity to withdraw their signatures. The "*reparo*" act was carried out on June 27, 2004. Ms. Rocío San Miguel, whose signature had been objected to and was subject to *reparo*, validated her signature before the CNE. According to her statement, at that time it was possible to obtain certifications from the CNE confirming that the interested party had withdrawn his or her signature.[89]

63. On June 25, 2004, the CNE decided to ratify the call to hold the presidential recall referendum on August 15, 2004.[90] The referendum was carried out and resulted in a total of 3,989,008 votes in favor of the recall of the President's mandate and 5,800,629 votes against the recall; accordingly, the CNE ratified the mandate of the President of the Republic.[91] The results were declared legitimate by the OAS and the Carter Center, as observers of this process.[92]

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87 Cf. National Electoral Council Resolution No. 040302-131 of March 2, 2004 (evidence file folios 173 to 175). In this resolution the following results were reported: a) Total forms processed and subjected to physical verification by the agency: three hundred and eighty-eight thousand one hundred and eight (388,108); b) Blank and/or unused forms on the day of signature collection: seven thousand two hundred and ninety-seven (7,297) forms; c) Returned forms invalidated for breaching the "Guidelines on Criteria for the Validation of Signatures and Signature Collection Forms for the Recall Referendum Process for Popularly Elected Posts," in particular subparagraphs 2, 3, 4 and 5: thirty-nine thousand and sixty (39,060) forms; d) Total number of requests processed out of the universe of validated forms according to the records: three million, eighty-six thousand and thirteen (3,086,013); e) Validated requests for the recall referendum: One million eight hundred and thirty-two thousand, four hundred and ninety-three (1,832,493) requests; f) Petitions rejected for various reasons by the Electoral Register (unregistered; minors; foreigners; deceased; electoral disqualification and inconsistency of data in the petition with data held in the registry): One hundred and forty-three thousand nine hundred and thirty (143,930) requests; g) Requests rejected under Article 3, and under paragraphs 1, 6 and 7 of the "Rules on the Criteria for the Validation of Signatures and Signature Collection Forms for the Recall Referendum Processes for Popularly Elected Posts" ratified by unanimous opinion of the five supervisors of the Superior Technical Committee: Two hundred and thirty-three thousand, five hundred and seventy-three (233,573) requests; h) Requests under observation, reviewed on the basis of the unanimous opinion of the five supervisors of the Superior Technical Committee, subject to ratification via the *reparo* procedure, because the petitions or signatures are written in similar handwriting, pursuant to Article 31, Chapter V, of the Rules to Regulate Procedures for the Recall Referenda for Popularly Elected Posts, published in the Electoral Gazette No. 181, of November 20, 2003: eight hundred and seventy-six thousand and seventeen (876,017) requests. There were more than fourteen million voters enrolled in the Electoral Registry.

88 Cf. National Electoral Council, Resolution No. 040420-563, April 20, 2004 (evidence file, folios 178 to 184).

89 Cf. Statement of Rocío San Miguel during the public hearing before the Court.

90 Cf. *Súmate*, Progress Report "The Presidential Recall Referendum- Annexes," September 7, 2004 *supra*, page 45; National Electoral Council, Resolution No. 040615-852 of June 25, 2004, Available at: http://www.cne.gob.ve/web/gaceta_electoral/gaceta_electoral_detallado.php?tg=1&num_gac=202.

91 Cf. National Electoral Council, Resolution No. 040826-1118, August 30, 2004, available at: http://www.cne.gob.ve/web/gaceta_electoral/gaceta_electoral_detallado.php?tg=1&num_gac=210.

92 Cf. OAS, Statement of the OAS Electoral Observation Mission on the Venezuelan Presidential Referendum, August 18, 2004, available at: http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-003/04; "OAS approves resolution on the Venezuelan referendum results," August 26, 2004, available at: http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-138/04.

A.6 Allegations of dismissal and threats of dismissal of public officials who signed the presidential referendum petitions and allegations of political persecution

64. After the publication of the "Tascón List," there were numerous complaints regarding the dismissal of workers or public officials in retaliation for having signed the petition for the presidential recall referendum. These complaints were preceded by various statements by public officials, for example:

- On March 20, 2004, Roger Capella, then Minister of Health and Social Development, declared that "a traitor cannot be in a position of trust; this State has a policy and a correspondence with the government, where there is no room for traitors. Those who have signed are out."[93] This same official warned that "those who signed against President Chávez" would be dismissed "because this is an act of terrorism."[94] According to the State, the Minister subsequently withdrew his comments, saying that "it was a mistake to say that doctors would be dismissed for signing; neither the Ministry nor the agencies attached to the State have taken - or intend to take - political reprisals against those who have a different vision from that of the national government." He added that "the State is absolutely respectful of the positions of each and every one of its workers. Therefore, my personal position cannot be confused with the position of the State."[95]
- On March 24, 2004, the Minister of Communications stated that "no one may be persecuted […] So far, the Ministry of Labor has received no complaints of this nature […] if such complaints are made and are proven, steps will be taken to remedy those cases."[96]
- On March 29, 2004, the Minister of Foreign Relations made the following statement to the media: "I consider it logical that an official in a position of trust who has signed against Hugo Chávez, should resign his or her position; otherwise, he or she will be transferred to other duties within the Ministry of Foreign Relations. These officials will not be dismissed, but will no longer be close collaborators, since they do not believe in the policies defined by the President."[97]
- The then president of *Petróleos de Venezuela* (PDVSA) warned that "it would not be surprising if the workers who signed the petition were dismissed from their jobs."[98]

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93 Cf. *Asociación Civil Súmate*, *Apartheid del Siglo XXI. La informática al servicio de la discriminación política en Venezuela*, Chapter 5. Available at: https://www.sumate.org/documents/ApartheidSigloXXI/Apartheid%20del%20Siglo%20XXI%20Capitulo5.pdf

94 Cf. *El Universal*, "Signing against Chávez is an act of terrorism", March 21, 2004, available at: http://www.eluniversal.com/2004/03/21/pol_art_21108A.shtml

95 Cf. Press report, *El Universal*, March 23, 2004 (evidence file, folio 41).

96 Cf. Press report, *El Universal*, March 24, 2004 (evidence file, folio 38).

97 Cf. IACHR, Admissibility Report No. 59/13, Petition 212-06, Rocío San Miguel Sosa et al., Venezuela, July 16, 2013, para. 16. In his statement, Oscar Lucién indicated that "another important statement to be taken into account is that of the person who at the time was the Minister of Foreign Relations, Ambassador Jesús Arnaldo Pérez, who stated in March 2004, that all those ambassadors and directors general who "had signed against President Chávez would be removed" (*El Universal*, March 30, 2004) (evidence file, folios 3229 to 3230).

98 Cf. Human Rights Watch, "A Decade Under Chávez: Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela," available at: https://www.hrw.org/sites/default/files/reports/venezuela0908spweb_0.pdf.

65. Reports by international non-governmental organizations[99] and Venezuelan NGOs,[100] as well as statements or reports published in the media[101] and testimonies provided to the Court, referred to or documented cases of alleged dismissal of workers or public servants for having participated in the referendum petitions:

- In March 2004, Froilán Barrios, a member of the Executive Committee of the Confederation of Venezuelan Workers, reported that the oil industry "has a list of 1909 active and retired workers who are threatened with removal or transfer from their jobs for having participated in the *reafirmazo*."[102]

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99 Cf. Human Rights Watch, "A Decade Under Chávez: Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela," supra.

100 Cf. *Control Ciudadano* Civil Association, Report on Political Discrimination in Venezuela (2003-2007) Case studies available at: http://www.controlciudadano.org/publicaciones/informe/pdf/Paginas 67-316 Capítulo V.pdf The witness Maria Gabriela Cuevas stated that "in the Human Rights Center of the Universidad Católica Andrés Bello (CDH-UCAB) we found out by different means, mainly through social media, of the reprisals being taken by the public sector against people who had participated in the process to collect signatures […] we decided to offer legal advice to victims of discrimination for political reasons […] among them, Rocío San Miguel, Thais Peña and Magally Chang." Also, in answer to the State's questions as to how many people went to the Center to denounce having been victims of persecution and political discrimination due to the application of the Tascón List, she stated that "we recorded 15 complaints; in some cases, the complaint involved more than one victim. The complaints included dismissals, workers who resigned under pressure, those still active in their positions; some were career civil servants, others were officials subject to free appointment and removal or hired personnel. We also received complaints from individuals who were not employed, but who were discriminated against when they tried to obtain a public service. Initially, we thought that many more people would come to us; however, the fear expressed by those who came confirmed that this was a very difficult step for them to take, since they had already suffered reprisals merely for exercising a constitutional right, which convinced them that there would be even greater negative consequences if they dared to report it." (Evidence file, folios 3123 to 3124). Likewise, the witness Marino Alvarado Betancourt, director of the non-governmental organization "PROVEA", indicated that they "began to receive complaints, both at the PROVEA office and by telephone from persons who claimed that they had been dismissed as a consequence or the so-called Tascón List, […] we received approximately eight complaints involving around thirty people, nearly all from the city of Caracas or the State of Miranda, because the headquarters of PROVEA was located in Caracas. Around 12 complaints were received by telephone from the interior of the country." (Evidence file, folios 3135 to 3136). See also statements of Ibéyise María Pacheco Martini, (evidence file, folio 3314), Thais Peña, (evidence file, folio 3094), and the statement of Oscar Lucién, who reported that "at the time when the [documentary] "*La Lista, un pueblo bajo sospecha*" ("The List: A people under suspicion") was made, literally not a day went by without hearing testimonies […] of complaints in the media, even from a stranger in the street, victims of the Tascón List" (evidence file, folio 3232).

101 Cf. Compilation of press reports on complaints of reprisals for signing the petition for the presidential recall referendum (evidence file folios 15 to 169). See also the statement of Ibéyise María Pacheco Martini (evidence file, folios 3114 to 3115).

102 Cf. Press report, *El Universal*, "*Reafirmazo* fallout: 1909 oil workers under pressure," March 18, 2004, available at: http://www.eluniversal.com/2004/03/18/imp_eco_art_18166A.shtml. According to a report by Human Rights Watch, "some PDVSA employees later reported to the press that they had been fired and, when they asked for the reason, they were told it was because they had signed the referendum petition" (Cf. Human Rights Watch, "A Decade Under Chávez, Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela," supra, page 20). For his part, in a written statement to this Court, the witness Froilán Alejandro Barrios Nieves also reported that "the most notorious incident of political discrimination was the dismissal of more than 22,000 oil industry workers (PDVSA) who had taken part in the national strike of 2002-2003, and who have not received their social benefits, savings or other job benefits to this day. And, in relation to public sector workers, from the moment that the movement began to collect signatures in mid-2003" (evidence file, folios 3149 to 3157). As for the alleged dismissals at the PDVSA, the witness Horacio Medina stated that "the regime made no distinction. They dismissed pregnant women, those on prenatal or postnatal leave, as well as staff who were in the process of retiring, on vacation, on sick leave, hospitalized, personnel with scholarships (taking courses abroad or within the country), those living in the oilfields, all of whom were engaged in activities related to the oil industry, some of them highly dangerous, etc. We were accused of a "lack of probity," which the employer never proved prior to the dismissal, and did not even specify the procedural charges. This tarnished our resume and socially marked us as enemies of the nation […] with the exception of the first eight dismissals that took place on December 13, 2002, in which I am included, the regime dismissed workers through lists in the press. The most accurate estimate that we have at UNAPETROL, […] is 23,000 workers, including those dismissed from Intesa." For his part, the witness Eddie Ramírez stated the following: "On December 13, PDVSA began the dismissals through announcements in the media. Out of a total of 39,354 employees on the company payroll, 67% of the directors and managers were dismissed, 67% of the professional, technical and management staff, 29% of the operators and artisans and 27% of operators and maintenance personnel, for a subtotal of 18,752 dismissed workers. To this [number] must be added around 2,500 workers from the joint venture company Intesa and an indeterminate number who were never fired but were not allowed to enter the facilities, for an estimated total of nearly 23,000 dismissed workers, with an average of 15 years of service and 71% of them from the operational area." (Evidence file, folios 3336 to 3349).

- Eighty public employees of the *Fondo de Garantías de Depósitos y Protección Bancaria* (Deposit Guarantee and Banking Protection Fund) were dismissed, allegedly for being included on "a list, based in part on the Tascón List, which circulated within the institution." Some employees reported that the list distributed within their institution showed the name of each employee with his or her political profile (from "1" for militant *Chavistas* to "6" for radical political opposition) and an initial indicating whether that employee had signed the consultative referendum or recall petitions, based on the Tascón List. According to employees dismissed from their posts, all of them were classified as opponents of the government on that list.[103] Based on information published in the media, the director of that institution argued that the dismissals involved "freely appointed officials who were clinging to a culture that was not in line with the plan envisaged for [the country's] socioeconomic development."[104]
- Complaints of similar reprisals were reported against officials in other State institutions, such as the National Information Technology Center, the Governorship of the State of Miranda, the Ministry of Popular Economy, the Institute of Social Welfare and Assistance for Ministry of Education Personnel, the Miranda State Education Office and the National Electoral Council;[105] also in the Ombudsman's Office,[106] the Ministry of Health, "SENIAT", governors' offices, mayors' offices and the Ministry of Foreign Relations;[107] and also in the National Armed Forces and the Civil Protection and Disaster Management Agency.[108]

66. Civil (non-governmental) and trade union organizations, as well as journalists, were reportedly informed of or received other complaints of persecution against the civil association SUMATE or its members (promoters of the petition);[109] of people who were allegedly coerced to

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103 Cf. Human Rights Watch, "A Decade Under Chávez: Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela," supra, pages 24 to 25.

104 Cf. *El Universal*, "Illegal dismissals impact FOGADE accounts," February 23, 2008. Available at: http://www.eluniversal.com/2008/02/23/eco_art_dismissals-ilegales-im_726634.shtml. According to another report, the following scale of 1 to 6 was established: "hard Chavista," "moderate Chavista", "nini" (neither opposition nor Chavista), "radical political opposition", "radical opposition" and "moderate opposition." See Súmate, and more lists: of "hardline Chavista to "moderate opposition", page 120. Available at: http://www.sumate.org/documents/ApartheidSigloXXI/Apartheid%20del%20Siglo%20XXI%20Capitulo7.pdf.

105 Cf. *El Nacional*, "Summary of cases compiled by *El Nacional*," April 24, 2005, available at: http://studylib.es/doc/8201013/situaci%C3%B3n-ha-sido-complaintda-en-some-medios

106 María Vicenta Verdeal Duran, a former official at the Ombudsman's Office, stated that her "dismissal was because of political reasons. Despite having an impeccable service record within the Public Administration in general, with more than 20 years of service, and in particular for maintaining the same record within the Ombudsman's Office, it was a public fact, well known to the officials at the institution, that I was not allied to the political ranks of the ruling party. I was dismissed for petitioning for the referendum to revoke the mandate of President Hugo Chávez." She added that she "participated in the formation of the "Movement in Defense of Signatories of the Recall" (MODEFIR), which received a large number of complaints of political discrimination from all over the country (exercise of political rights). These complaints were made public through the media." (Evidence file, folio 3158).

107 In his written statement before the Court, the witness Froilán Alejandro Barrios Nieves stated that he "heard of many cases of dismissals through the use of the Tascón List, in a number of autonomous institutions such as FOGADE, Ministry of Health, SENIAT, governorships, mayors' offices and the Ministry of Foreign Relations. (…) A database of complaints was set up by the branch of the CTV, FEDEUNEP, (National Federation of Public Employees), also affiliated to the ISP (International Association of Public Servants), which submitted a formal complaint to the ILO, during its Annual Meeting in 2005, held in Geneva, given that Venezuela has signed numerous agreements that protect workers against all forms of discrimination." (evidence file, folios 3149 to 3150).

108 Cf. Statement of Antonio José Rivero González, (evidence file, folio 3330). In particular, the witness stated that "the lawyer Belén Vielma, Director General of Human Resources of the Ministry of the Interior and Justice, was the person who, on the instructions of the Minister of the Interior and Justice, ordered [her] to fire seven people from [her] office for having signed" (evidence file, folio 3331).

109 The witness Alejandro Plaz stated that, "during the two years that *Súmate* participated in the different referendum processes, its leaders were subjected to all types of pressure and threats." For example, President Hugo Chávez, on numerous occasions during a national radio broadcast, called them traitors to their country and publicly asked the Attorney General's Office to investigate them and accuse them of treason against the nation; the National Assembly investigated the management of *Súmate* for the possible crime of treason against the nation; in his capacity as Chairman of *Súmate* and responsible for its finances, he was questioned by a commission of the National Assembly, which, as result of its investigation, asked the Attorney General's Office to accuse him of treason against the nation. Four Board members of

prevent them from signing or, if they had already done so, to dissuade them from revalidating their signatures. In addition, there were reports of situations in which signatories were rejected when applying for jobs in public sector positions, or were prohibited from benefiting from some of the social assistance programs (e.g. the so-called "missions" or food distribution programs).[110] It was also reported that judges and labor inspectors did not amend the decisions to dismiss or remove employees and that neither the Attorney General's Office nor the Ombudsman's Office intervened in this regard.[111]

A.7 Investigation by the Public Prosecutor's Office regarding reports of discrimination

67. Based on various media reports regarding complaints of political discrimination and dismissals of public officials as retaliation for having signed the petition, in April 2005, the Attorney General of the Republic ordered the 49th Prosecutor of the Metropolitan Area of Caracas to open an investigation.[112] In a communiqué dated April 27, 2005, the Public Prosecutor's Office announced that the said Prosecutor had initiated the "pertinent legal inquiries to investigate whether officials or private individuals may have committed specific crimes by using the aforementioned lists." The communiqué added that no regulation "establishes that lists of signatories cannot be disseminated and, on the contrary, one of the reasons for their dissemination is, precisely, to prevent the improper use of signatures that could undermine the authenticity and transparency of the process."[113] No additional information was provided regarding the results of this investigation.

A.8 The end of the "Tascón List" and the beginning of the "Maisanta List"

68. On April 15, 2005, the President of the Republic, Hugo Chávez, referring to the Tascón List, stated that:

> "This episode is behind us now. If anyone uses this list to make a personal decision about someone, what they are doing is dragging past situations into the present, and helping to recreate them […] the famous list certainly played a useful role at a given point in time, but that time has passed. We're calling on the whole country to build bridges. I say this because I've received some letters- among all the papers I receive- that lead me to believe that in some quarters the Tascón list is still being used to determine whether a person will work or will not work. Let's bury the Tascón list."[114]

Súmate were brought to trial in a criminal court accused of "Treason against the Nation" and "Conspiracy to Overthrow the Venezuelan Democratic System" (evidence file, folio 3283). The witness Ricardo Ludwig E. Maza stated that "the CNE and the TSJ disregarded the administrative and jurisdictional remedies attempted by *SÚMATE* in its electoral monitoring work, which it continued to carry out with respect to other electoral processes. In a judgment, the TSJ threatened to eliminate the due process security if SÚMATE continued with its work (by filing legal appeals before the TSJ denouncing irregularities and violations of the law in the management of the CNE)" (evidence file, folio 3107). See also statements of Roberto Abdul-Hadi Casanova (evidence file, folio 3116) and of Oscar Lucién (evidence file, folio 3228).

[110] Cf. Statements of Ibéyise María Pacheco Martini, (evidence file, folio 3314); Maria Gabriela Cuevas, (evidence file, folio 3124); José Angel Guerra, (evidence file, folio 3145); witness Froilán Alejandro Barrios Nieves, (evidence file, folio 3154; Vicente Carmelo Bello Ríos, (evidence file, folio 3170); Antonio José Rivero González, (evidence file, folio 3332). See also the statement of María Vicenta Verdeal Durán, who stated that "with more than twenty (20) years of service in the public administration [she has not been] able to rejoin any institution since she [was] dismissed in 2004 from the Ombudsman's Office" and that "always, before checking the credentials, they ask the question: did you sign the recall? If so, you don't get in." (evidence file, folio 3159).

[111] Cf. Statement of Horacio Medina (evidence file, folios 3338 and 3342).

[112] Cf. *El Universal*, "Prosecutor opens investigation for discrimination against RR signatories," April 28, 2005 (evidence file, folio 186).

[113] Cf. Communiqué issued by the Public Prosecutor's Office: "Public Prosecutor's Office opens inquiry into use of referendum lists in 2004." (evidence file, folios 188-189).

[114] Cf. Declaration by the President of the Republic, Hugo Chávez, during the V Mobile Cabinet Meeting on April 15, 2005, held in the city of Puerto Ordaz, cited in IACHR, Democracy and Human Rights in Venezuela, OAS /Ser.L/V/II.Doc.54,

69. In May 2005, the Board of the National Electoral Council unanimously approved a resolution condemning discrimination against the signatories through the use of the Tascón List. The text urged the Ombudsman's Office and the Attorney General's Office to take action in defense of citizens who were dismissed or segregated for exercising their political rights.[115]

70. However, during the legislative elections of 2005, an even more sophisticated tool was created, known as the "Maisanta List." This included not only the names of those who had signed the petition for the presidential recall referendum, but also detailed information on the registered voters and their political preferences.[116] The Maisanta List was supposedly disseminated by the campaign command of President Chávez' ruling party ("*Comando Maisanta*") on magnetic discs (CD) and could later be acquired from informal traders ("*buhoneros*"). Even today, both lists can be found on the Internet, with software that can be installed on any computer.[117] Several deponents stated that both lists have been used - and continue to be used today - as databases to incorporate information for political purposes or for political control.[118]

B. TERMINATION OF THE CONTRACTS

71. The three alleged victims, Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña, provided their services to the National Border Council (hereinafter "CNF"), an agency of the Ministry of Foreign Relations, under contracts for professional services, for monthly, semi-annual or annual periods.[119]

72. Rocío San Miguel Sosa began working as a legal adviser to the CNF in July 1996 and, after signing successive service contracts,[120] worked for that agency until the end of May 2004. She signed her last contract for a period of one year from January 1 to December 31, 2004.[121]

73. Magally Chang Girón began working for the CNF in May 1997, first as a personnel assistant and subsequently as personnel coordinator, signing monthly, semi-annual and annual contracts

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December 30, 2009, Chapter II.a, para. 99, available at: http://www.cidh.org/countryrep/Venezuela2009sp/VE09CAPIISP.htm#_ftn75.

115 Cf. Press report of May 6, 2005, "*Últimas Noticias,*" in cadenaglobal.com (evidence file, folio 33).

116 Cf. IACHR, Democracy and Human Rights in Venezuela, *supra*, Chapter II. a, para. 101. The witness Roberto Antonio Picón Herrera stated that "the Maisanta List is a computer program designed by the *Comando Electoral Maisanta* (of the party founded by Hugo Chávez) which includes several data tables and can be accessed via a user-friendly interface. The tables consulted include the electoral register, the names of those who signed the presidential recall petition (Tascón List), and other private information (kept by the State, not to be shared with any political party or individual) such as the person's home address, previous participation in electoral events and status as a beneficiary of government welfare programs (Missions)" (evidence file, folio 3162).

117 Cf. Statement of witness Roberto Antonio Picón Herrera, (evidence file, folio 3163).

118 Cf. Statements of Roberto Antonio Picón Herrera, (evidence file, folio 3164); Vicente Carmelo Bello Ríos, (evidence file, folio 3169); Antonio José Rivero González, (evidence file, folio 3330). See also the statement of Froilán Alejandro Barrios Nieves (evidence file, folio 3153).

119 According to a report by the Office of Analysis and Legal Counseling of the Vice Presidency, the reason for using such contracts, which did not provide the guarantees of job security normally granted to permanent officials, was the failure to approve the Organic Law on Borders, a law that would create an agency to manage the State's border affairs and would allow for the stability of its officials. Cf. Report of the Coordinator of Analysis and Legal Counseling of the Vice Presidency addressed to the Vice President of Venezuela, December 8, 2003 (evidence file, folio 192).

120 Cf. Contracts signed by Rocío San Miguel with the National Border Council: From July 1, 1996 to December 31, 1996; from January 1, 1997 to December 31, 1997; from January 1, 1998 to December 31, 1998; from January 1, 2000 to March 31, 2000; from January 1, 2001 to December 31, 2001; from January 1, 2002 to December 31, 2002; from January 1, 2003 to December 31, 2003; and from January 1, 2004 to December 31, 2004.(evidence file, folios 195 to 216).

121 Cf. Employment contract between the head of the National Border Council and Rocío San Miguel Sosa, December 31, 2003 (evidence file, folios 218 to 219).

with that agency to provide professional services.[122] Her last contract was for a period of one year, from January 1 to December 31, 2004.[123]

74. Thais Coromoto Peña worked as a public relations executive or secretary of the CNF from April 1, 2000, to March 12, 2004, signing several annual contracts with that institution.[124] Her last contract was for a period of one year from January 1 to December 31, 2004[125.]

75. During the months of November and December 2003, the three alleged victims decided to participate in *El Reafirmazo* and signed the petition for the presidential recall referendum.[126]

76. In letters dated March 12, 2004,[127] the then President of the National Border Council, José Vicente Rangel Vale (who was also serving as Executive Vice President of the Republic), informed Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña of his decision to terminate their contracts as of April 1, 2004. The text of these letters only states the following: "I am writing to inform you of my decision to terminate your employment contract (…) as of April 1 of this year." The alleged victims provided their services to the National Border Council until April 30, 2004.[128] They then received the corresponding payments and settlements for salaries, vacations (taking into account the date of retirement) and social benefits.[129]

77. In the *amparo* proceeding (*infra* paras. 88 to 95), the alleged victims submitted transcripts of telephone conversations supposedly held on March 24, 2004, between Feijoo Colomine, then Executive Secretary of the National Border Council, and Rocío San Miguel Sosa, as well as between the latter and Ilia Azpurua, then legal consultant to the Vice Presidency of the Republic. During the public hearing, Ms. San Miguel confirmed that she had made the recordings.[130] The relevant parts of the first telephone conversation are transcribed below:

> FC: One has some limitations, because of exercising this, this position of trust.
> RSM: Ahaa
> FC: One has limitations
> RSM: Ahaa. Which one? Exercising a political right?

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122 Cf. Magally Chang Girón signed 12 contracts with the National Border Council: from May 1, 1997 to December 31, 1997; from January 1, 1998 to December 31, 1998; from January 1, 1999 to March 31, 1999; from April 1, 1999 to May 31, 1999; from June 1, 1999 to June 30, 1999; from July 1, 1999 to December 31, 1999; from January 1, 2000 to March 31, 2000; from April 1, 2000 to December 31, 2000; from January 1, 2001 to December 31, 2001; from January 1, 2002 to December 31, 2002; from January 1, 2003 to December 31, 2003; and from January 1, 2004 to December 31, 2004 (evidence file, folios 221 to 255).

123 Cf. Employment contract between the titular of the National Border Council with Magally M. Chang Girón the December 31, 2003 (evidence file, folios 257 to 258).

124 Cf. Contracts between Thais Coromoto Peña and National Border Council of the 1 April 1, 2000 to December 31, 2000, January 1, 2002 to December 31, 2002, January 1, 2003 to December 31, 2003 and January 1, 2004 to December 31, 2004(evidence file, folios 260 to 270).

125 Cf. Contract between the head of the National Border Council and Thais Coromoto Peña, dated December 31, 2003 (evidence file, folios 272 to 273).

126 Cf. Signature collection form, August 19, 2000 (evidence file, folios 275 to 278).

127 The notification letter to Rocío San Miguel contains a signature of receipt dated March 25, 2004. The notification letter sent to Magally Chang Girón contains a signature of receipt dated March 22, 2004. In the case of Thais Coromoto Peña the letter contains a signature of receipt dated March 31, 2004.

128 Cf. Letters dated March 12, 2004, from the President of the National Border Council to Rocío San Miguel, Magally Chang Girón and Thais Coromoto Peña (evidence file, folios 329, 331 and 333). See also Official Letter of July 13, 2004, from the Executive Secretary of the National Border Council to the Thirty-seventh Prosecutor's Office (evidence file, folios 335 to 336).

129 Cf. Checks for severance and vacation payments (evidence file, Annex a. 36 of the pleading and motions brief, folios 2049 to 2065). See also report of the Thirty-seventh Prosecutor's Office, (evidence file, folio 644).

130 Cf. Statement of Rocío San Miguel during the public hearing before the Court.

> FC: You can participate and exercise your political rights, of any kind. But you can't express an element of distrust.
> RSM: But what element of distrust?
> FC: You can't show it, because you're signing a petition to recall the guy who is paying you and hiring you. (…)."[131]

78. With regard to the termination of the contracts, the following conversation was recorded:

> FC: Okay, but the Government has taken a decision…
> RSM: To fire all the employees that sign.
> FC: Well, at least José Vicente decided in our case.[132]

79. In the conversation between Rocío San Miguel Sosa and Ilia Azpurua, then a legal adviser to the Vice Presidency, the former expressed her dismay over the termination of her contract, indicating that, regardless of having signed the referendum petition, she always fulfilled her duties, to which Ms. Azpurua replied that she would inform the Vice President, also stating that "I believe that, I repeat, I consider you to be a highly professional person. But you must understand a little, I mean, you're in the White Palace, aren't you? That is an issue, it is paradoxical, right? Because your work has nothing to do with it. So, it is paradoxical. But you have to be aware of your surroundings, at least in the physical space where you work."[133]

80. On March 29, 2004, Rocío San Miguel Sosa sent a letter to the President of the National Border Council expressing her disagreement with the dismissal and indicating that "the dismissal is being carried out by you directly, in your capacity as president of the institution; but not without first having sent the Executive Secretary of the Council, nineteen days before the formal act of notification, to warn me that the reasons [for dismissal] are none other than my signature requesting the presidential recall referendum."[134]

81. In response to the complaints filed by the alleged victims, as well as their appearance before the Prosecutor's Office, the Executive Secretary of the National Border Council, Feijoo Colomine Rincones, in communications dated July 13 and 14, 2004, addressed to the Prosecutor's Office and the Ombudsman's Office, stated that the president of this Council had decided to "terminate these three contracts in application of the seventh clause." This clause stated that "'THE CONTRACTING PARTY' reserves the right to terminate this contract whenever it deems it appropriate, after giving notice to 'THE CONTRACTED PARTY' at least one month in advance. 'THE CONTRACTED PARTY' will also have the same right to dissolve the contract whenever he/she sees fit to do so […]." Furthermore, he stated the following:

> "[… the 21 officials of the National Border Council] are all contracted under the exceptional terms and conditions established in Article 146 of the Constitution of the Bolivarian Republic of Venezuela. Since they are not administrative career positions, the Civil Service Statute Law is not applicable to them for the purposes of a dismissal sanction, for which a file must be prepared to record any faults or offenses committed in the performance of their duties, as well as the charges and rebuttals, in order to preserve the constitutional rights of the career public servant.
> The decision to terminate the employment contract was based on the respectable criteria of the president of the agency, who invoked a contractual clause to make the decision without having to initiate a dismissal process as contemplated in the Organic Labor Law, since this core instrument of labor legislation establishes the legal classification of the contract as the 'law between parties.'

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131 *Cf.* Telephone conversation between Feijoo Colomine and Rocío San Miguel, March 24, 2004 (evidence file, folios 338 to 358).

132 Cf. Telephone conversation between Feijoo Colomine and Rocío San Miguel, March 24, 2004 (evidence file, folios 338 to 358).

133 Cf. Telephone conversation between Rocío San Miguel and Ilia Azpurua, March 31, 2004 (evidence file, folios 391 to 395).

134 Cf. Letter from Rocío San Miguel to the President of the National Border Council, March 29, 2004 (evidence file, folio 366).

> At no time has the president of this agency stated that the reason for terminating the contracts in question was an alleged 'gesture of distrust' on the part of San Miguel Sosa, Chang Girón and Peña, for 'signing the petition for the presidential recall referendum' and therefore there is no basis for such a reckless interpretation of the decision.[135.]

82. Subsequently, in statements made to the media in August 2004, the Executive Secretary of the National Border Council stated that the president of this agency had explained to him that he no longer required the services of the alleged victims "because of a planned restructuring [of the Council]." He added that, "the agency will somehow be absorbed by the Vice Presidency;" that Rocío San Miguel herself had drafted the contracts; that it was a matter of "a simple reduction of personnel;" and that "yes, definitely" it was a simple coincidence that the three people who signed in favor of the presidential recall were dismissed.[136]

83. According to the list published in a Venezuelan daily newspaper, of the total number of employees of the National Border Council who were on the staff payroll until 2003,[137] four persons identified with ID cards 3.247.646, 4.421.705, 6.974.789 and 11.928.963 (corresponding to Magally Chang Girón, Thais Coromoto Peña, Rocío San Miguel Sosa and another person, respectively) had signed the aforementioned petition for a recall referendum.

C. COMPLAINTS AND DOMESTIC PROCEEDINGS

84. Based on the aforementioned facts, the alleged victims filed the complaints and legal actions that are described below.

C.1 Complaint filed with the Ombudsman's Office

85. On May 27, 2004, the alleged victims filed a complaint with the Ombudsman's Office, alleging unjustified and discriminatory dismissal from the CNF in retaliation for having signed the recall referendum petition.[138] On June 29, 2004, the delegate of the Ombudsman's Office of the Metropolitan Area of Caracas admitted the complaint and ordered that all necessary steps be taken to investigate the matter.[139]

86. On July 16, 2004, the Coordinator of Legal Services of the Ombudsman's Office issued a report indicating that it was not possible to prove the plaintiffs' allegations that they were subjected to an act of discrimination by the National Border Council. The report states that:

> We are faced with the unproven statement of the plaintiffs against the factual demonstration of the discretionary powers of the administration. Such action, clearly, is insufficient to prove that the reason for the dismissal of the petitioners was political and related to citizen participation.[140]

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135 Cf. Official letter dated July 13, 2004, from the Executive Secretary of the National Border Council to the Thirty-seventh Prosecutor (evidence file, folio 335); official letter dated July 14, 2004, from the Executive Secretary of the National Border Council to the Delegate of the Ombudsman's Office of the Metropolitan Area of Caracas (evidence file, folio 369); record of interview with Feijoo Colomine Rincones rendered before the Thirty-Seventh Prosecutor's Office on July 14, 2004 (evidence file, folios 381 to 382).

136 Cf. Press report, *El Nacional* newspaper, August 3, 2004, Annex D.1 of the pleadings and motions brief, (evidence file, folio 2723); and radio interview conducted by Ybellize Pacheco (on "*99.1 frecuencia mágica*") with Feijoo Colomine on August 3, 2004 (evidence file, folios 372 to 379).

137 Cf. Copy of the Contract Staff Payroll of the National Border Council up to December 2003 (evidence file, folios 397 to 398).

138 Cf. Complaint filed before the Ombudsman's Office on May 27, 2004 (evidence file, folios 400 to 405).

139 Cf. Opening of proceedings on June 29, 2004, before the Delegate of the Ombudsman's Office of the Metropolitan Area (evidence file, folios 407 to 408).

140 Cf. Information from the Coordinator of Legal Services of the Ombudsman's Office, July 16, 2004 (evidence file, folios 410 to 413).

87. On August 17, 2004, the delegate of the Ombudsman's Office of the Metropolitan Area of Caracas decided to archive the complaint, considering that it had not been proven that the administration had committed an abuse of power, since it had merely applied contract law to terminate the contracts.[141]

C.2 Action for constitutional amparo

88. On July 22, 2004, the alleged victims filed an appeal for constitutional *amparo* with the Judge of Substantiation, Mediation and Enforcement of the Metropolitan Area of Caracas, against the National Border Council, and specifically against its President, José Vicente Rangel Vale, claiming that they were subjected to employment discrimination when they were dismissed for having signed the referendum petition.[142]

89. On August 4, 2004, the Fourth Trial Court of the Labor Judicial Circuit declined jurisdiction to hear the *amparo* action, considering that the Constitutional Chamber of the Supreme Court was the competent body to hear the case, given that the President of the National Border Council also served as Minister of Foreign Relations at the time, and was therefore considered a high-ranking official pursuant to Article 8 of the Organic Law on Protection of Constitutional Rights and Guarantees (*Ley Orgánica de Amparo sobre Derechos y Garantías Constitucionales*). [143]

90. On November 23, 2004, the alleged victims filed a brief before the Constitutional Chamber of the Supreme Court requesting that it rule on the *amparo* action, as there was still no decision on the declination of jurisdiction after 104 days had passed.[144] This request was repeated on February 3, and May 3 and 11, 2005.[145]

91. On May 26, 2005, the Constitutional Chamber of the Supreme Court issued a ruling in which it stated that it did not accept the declination of jurisdiction by the Fourth Trial Court for Labor Matters because the case under examination concerns a relationship between employer-employee and the official involved was acting in his in capacity as president of the CNF and not

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141 *Cf.* Closing act, Delegate Defender of the Metropolitan Area, August 17, 2004 (evidence file, folios 418 to 420).

142 As for the facts, the plaintiffs stated that they were dismissed without justification, in spite of having performed the tasks assigned to them, not having any reprimand or sanction in their employment records for non-compliance with their work or schedules. They also stated that there was no reorganization process at the agency that warranted a reduction of personnel. They alleged that, prior to their dismissal, frequent informal announcements or jokes were made by politically influential individuals that whoever participated in procedures against the President would be dismissed, and cited a series of contextual facts that they considered relevant. They also alleged the violation of the "constitutional right to equality before the law [, …] the guarantee of non-discrimination and the rights to work and to job security [… through an] act contrary to Article 21, 87, 89 and 93 of the Constitution of the Bolivarian Republic of Venezuela and Articles 24 of the American Convention[, …] 2(2) and 6(1) of the International Covenant on Economic, Social and Cultural Rights and Article 26 of the International Covenant on Civil and Political Rights […], as well as Article 26 of the Organic Labor Law and Article 8 of the Rules of the Organic Labor Law [and that] the act of discrimination likewise led to the violation of the right to political participation established in Article 70 of the Constitution." Cf. Application for constitutional *amparo*, July 22, 2004 (evidence file, folios 422 to 439).

143 Cf. Decision of the Fourth Trial Court for Labor Matters, stating that it lacked jurisdiction to hear the action for constitutional *amparo*, of August 4, 2004 (evidence file, folios 441 to 445).

144 Cf. Brief dated November 23, 2004, submitted to the Constitutional Chamber of the Supreme Court (evidence file, folio 447).

145 Cf. Briefs dated February 3, and May 3 and 11, 2005, submitted to the Constitutional Chamber of the Supreme Court (evidence file, folios 450, 454 and 458).

as Minister.[146] Consequently, on June 17, 2005, the Fourth Trial Court for Labor Matters admitted the *amparo* action.[147]

92. On July 20, 2005, the prosecutor of the Public Prosecutor's Office issued his opinion regarding the *amparo* action, requesting that it be declared inadmissible because he considered that the *amparo* action was not a suitable mechanism to demonstrate whether or not a dismissal is justified and that the alleged political discrimination had not been proven.[148] On July 20, 2005, the President of the CNF, José Vicente Rangel, also requested that the action be declared inadmissible, on the grounds that it should have been filed in the ordinary labor courts and that, in accordance with clause seven of the contracts of the three alleged victims, no reason was required to terminate them, regardless of whether or not the plaintiffs fulfilled the responsibilities assigned to them.[149]

93. On July 20, 2005, the Fourth Trial Court held a constitutional hearing. At that hearing, the alleged victims requested the inclusion in the case file of a tape recording of conversations, the transcript of a radio interview with Feijoo Colomine, as well as the transcript of the conversation between Rocío San Miguel and Ilia Azpúrua.[150] The Court did not admit these elements as evidence.[151]

94. On July 27, 2005, the Fourth Trial Court issued a decision declaring the *amparo* inadmissible, considering, among other reasons, that the evidence provided by the plaintiffs did not allow it "to conclusively establish the causal link between the alleged discriminatory treatment for having signed the petition and the decision to end the employment relationship."[152]

95. On July 29, 2005, the alleged victims filed an appeal against that judgment, arguing that the court did not properly assess some of the evidence.[153] On September 9, 2005, the Third Superior Labor Court of the Labor Circuit of the Judicial District of the Metropolitan Area of Caracas dismissed the appeal, considering that the plaintiffs did not demonstrate that the use of the employer's contractual power constituted a discriminatory practice.[154]

C.3 Complaint filed before the Public Prosecutor's Office

96. On May 27, 2004, the alleged victims filed a criminal complaint with the Public Prosecutor's Office, requesting that it open an investigation against the officials who decided to terminate their

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146 Cf. Judgment of the Constitutional Chamber of the Supreme Court rejecting the declination of competence by the Fourth Trial Court for Labor Matters of the Metropolitan Area of Caracas, May 26, 2005 (evidence file, folios 462 to 475).

147 Cf. Decision of the Fourth Trial Court for Labor Matters of the Metropolitan Area of Caracas, June 17, 2005 (exp., folios 477 to 478).

148 Cf. Brief containing the Public Prosecutor's opinion, dated July 20, 2005 (evidence file, folios 480 to 487).

149 Cf. Brief of the President of the National Border Council addressed to the Fourth Trial Court for Labor Matters of the Metropolitan Area of Caracas, July 20, 2005 (evidence file, folios 489 to 501).

150 Cf. Record of the Constitutional Hearing held on July 20, 2005 (evidence file, folios 503 to 506).

151 *Cf.* Judgment of the Fourth Trial Court for Labor Matters of the Metropolitan Area of Caracas, July 27, 2005 (evidence file, folios 509 to 529).

152 Cf. Judgment of the Fourth Trial Court for Labor Matters of the Metropolitan Area of Caracas, July 27, 2005 (evidence file, folios 509 to 529).

153 Cf. Appeal filed by the alleged victims of July 29, 2005 (evidence file, folios 531 to 532 and 535 to 598).

154 Cf. Judgment of the Third Superior Court for Labor Matters of the Labor Circuit Court of the Judicial District of the Metropolitan Area of Caracas, September 9, 2005 (evidence file, folios 602 to 622).

contracts for having signed the petition, a reference to the then President and Secretary of the CNF.[155]

97. On July 7, 2004, the Thirty-seventh Prosecutor's Office ordered the opening of a criminal investigation.[156] On July 14, 2004, the Prosecutor's Office interviewed the Executive Secretary of the CNF,[157] who submitted a report to the Prosecutor's Office on that same date.[158] On July 15 and 16, the Prosecutor's Office took statements from the alleged victims.[159]

98. On January 21, 2005, the Thirty-seventh Prosecutor's Office requested that a court of first instance dismiss the case, considering that the facts were not of a criminal nature and noting that no violation of a constitutional right was established, since the right to terminate the contracts was provided for in the contracts.[160]

99. On April 4, 2005, the Twenty-first Trial Court with Control Functions ordered the dismissal of the case, considering that:

> It is not evident from any of the clauses that criminal norms have been violated, and although it is evident that the President of the National Border Council decided to terminate the services contracted, the fact remains that this was allowed by the contracts signed by the parties. Therefore, observing that none of the elements reported serve to corroborate the plaintiffs' claim that the reason for the termination of their contracts was the fact that they voted in the recall referendum, and even if that were so, those facts do not constitute criminal offenses, since the rules invoked as violating (sic) constitutional rights, are not punishable acts. In any case, disagreements arising from a contractual relationship are not within the purview of this court, since the plaintiffs could have pursued their claims through other administrative or labor channels to guarantee their right to work, as criminal proceedings are not the appropriate channel for their claim.[161]

100. On April 15, 2005, the alleged victims appealed against the decision to dismiss the case. They argued that the decision erred in law by concluding that, even if it had been confirmed that the reason for terminating their contracts was their participation in the referendum vote, the alleged facts did not constitute crimes and that the Prosecutor's Office did not carry out a proper investigation.[162] On April 27, 2005, the Thirty-Seventh Prosecutor's Office asked the members of the Court of Appeals to dismiss the appeal on grounds that the action carried out by the interested parties was limited to a contractually established relationship and had nothing to do with criminal matters.[163] On May 5, 2005, the Seventh Chamber of the Court of Appeals admitted the appeal

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155 Cf. Criminal complaint filed before the Office of the Public Prosecutor, May 27, 2004 (evidence file, folios 624 to 629).

156 Cf. Official notice of start of criminal investigation, Thirty-Seventh Prosecutor's Office, July 7, 2003 [sic] (evidence file, folio 632).

157 Cf. Annex 29. Record of interview with Feijoo Colomine Rincones, July 14, 2004, Annex II of the complaint filed before the IACHR on March 7, 2006. (evidence file, folios 381 to 382).

158 Cf. Report of the Executive Secretary of the National Border Council, July 14, 2004 (evidence file, folios 634 to 637).

159 Cf. Statements of the alleged victims, July 15 and 16, 2004 (evidence file, folios 360 to 364, 384 to 385, and 387 to 389).

160 Cf. Request for dismissal of the case submitted to the Twenty-first Judge of First Instance acting as Control Court of the Criminal Judicial Circuit of the Metropolitan Area of Caracas, January 21, 2005 (evidence file, folios 639 to 651).

161 Cf. Order of dismissal by the Twenty-first Judge of First Instance acting as Control Court, April 4, 2004 (evidence file, folios 653 to 656).

162 Cf. Appeal against the decision of dismissal, April 15, 2005 (evidence file, folios 658 to 673).

163 Cf. Response of the Thirty-seventh Prosecutor's Office to the appeal against the decision to dismiss the case, April 27, 2005 (evidence file, folios 675 to 682).

filed[164] and subsequently, on May 12, that same Chamber declared it inadmissible, stating that "it is impossible to require the Public Prosecutor (as holder of the criminal action *par excellence*) to present a different final action other than the one already carried out (dismissal of this case) […]."[165]

101. On July 7, 2005, the alleged victims filed an appeal remedy (cassation) seeking to overturn the decision which dismissed the appeal, alleging a series of violations of the right to due process and infringement and misinterpretation of the law.[166] On September 27, 2005, the Criminal Cassation Chamber of the Supreme Court dismissed the cassation appeal filed by the victims on grounds that the appellants "failed to demonstrate the usefulness of the cassation remedy and did not express their arguments clearly."[167]

VII
MERITS

102. The dispute in this case concerns a series of alleged violations of the rights of three persons who worked for several years at the National Border Council, an agency attached to the Venezuelan Ministry of Foreign Relations, as a consequence of an alleged act of misuse of power. The petitioners allege that the decision to terminate their last temporary service contract, in March 2004, was based on a contractual clause that was used as a "veil of legality" to conceal the true reason for their dismissal. According to the judicial authorities and the State, this clause granted the employer discretionary powers to terminate the contractual relationship, even without a reason. However, it is alleged that the dismissal was in fact motivated by a desire to retaliate against the alleged victims for having signed a petition for a recall referendum on the mandate of then President of the Republic in December 2003, in a context of allegations of reprisals and political persecution, particularly after their names appeared on the so-called "Tascón List." The alleged victims filed an appeal for constitutional relief through an *amparo* proceeding, as well as complaints with the Public Prosecutor's Office and the Ombudsman's Office, which were not effective to determine the violation of their rights and obtain reparations.

103. The Commission considered that the case should be analyzed jointly under Articles 13, 23, 24, 1(1) and 2 of the Convention, on the one hand, and under Articles 8(1) and 25 of the Convention, on the other. Similarly, the representative alleged a violation of the "right of every citizen to have access, under conditions of equality, to the public service of his country," as established in Article 23(1)(c) of the Convention, as well as violations of the right to personal integrity, pursuant to Articles 5(1) and 5(2) thereof. The State argued that it bears no responsibility whatsoever in relation to the facts.

104. The Court considers it pertinent to analyze the alleged violations of the Convention in the following order: 1) political rights and the principle of non-discrimination, freedom of expression, the right to equality before the law and the right to personal integrity; 2) the right to judicial guarantees and judicial protection; and, furthermore, by virtue of the *iura novit curia* principle 3) the right to work.

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[164] Cf. Admission of appeal by the Seventh Chamber of the Court of Appeals, Judicial Circuit of the Metropolitan Area of Caracas, May 5, 2005 (evidence file, folios 684 to 686).

[165] Cf. Decision of the Seventh Chamber of the Court of Appeals of the Criminal Judicial Circuit of the Metropolitan Area of Caracas, in which it upheld the dismissal of the case, May 12, 2005 (evidence file, folios 688 to 707).

[166] Cf. Remedy of cassation filed by Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña before the Chamber of Criminal Cassation of the Supreme Court of Justice, July 6, 2005 (evidence file, folios 280 to 327).

[167] Cf. Judgment of the Chamber of Criminal Cassation of the Supreme Court of Justice that dismissed the remedy of cassation, on September 27, 2005 (evidence file, folios 709-717).

VII.1
POLITICAL RIGHTS, PRINCIPLE OF NON-DISCRIMINATION, FREEDOM OF EXPRESSION AND THE RIGHTS TO EQUALITY BEFORE THE LAW AND TO PERSONAL INTEGRITY (Articles 1(1), [168]2,[169] 23,[170] 13,[171] 24[172] and 5[173] of the American Convention)

Arguments of the parties and of the Commission

105. The ***Commission*** considered that the signature of the alleged victims in favor of a mechanism of political participation, such as the presidential recall referendum, constituted both an exercise of their political rights under Article 23 of the Convention, and an expression of their political opinions, protected in turn by Article 13 of the Convention and by Articles 1(1) and 24 of the same instrument as a prohibited category of discrimination. Accordingly, it argued that the State should have ensured that they could express such political opinion in conditions that protect the free exercise of political rights, without fear of reprisals, and that it should have refrained from adopting measures against them without justification, merely because of their political opinion, and from indirectly punishing such expression. The Commission considered that the reason given by the State for terminating the contracts did not reflect the true motive for that action, which it understood to be the expression of a political opinion through the signature. Based on a number of circumstantial or "presumptive" elements or evidence,[174] the Commission considered that the

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168 Article 1(1) of the Convention establishes: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

169 Article 2. "Domestic Legal Effects. Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

170 Article 23 of the Convention establishes: "Right to participate in Government

1. Every citizen shall enjoy the following rights and opportunities:
   a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
   b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
   c) to have access, under general conditions of equality, to the public service of his country.
2. 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."

171 Article 13 of the Convention establishes: "Freedom of Thought and Expression.

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
   a) respect for the rights or reputations of others; or
   b) the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. […]

172 Article 24 of the Convention states: "Right to Equal Protection. All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."

173 Article 5 of the Convention establishes the "Right to humane treatment. 1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment […]"

174 The Commission considered that the process of creation and publication of the Tascón List constituted, *per se*, a reflection of the lack of safeguards during the presidential recall referendum, in order to ensure "the free expression of the will of the voters," in the terms of Article 23(1)(b) of the Convention, because the release of information on the identity of the signatories to a congressman in this context created an environment conducive to retaliation; that the use

termination of the contracts constituted a misuse of power, in which a discretionary clause established in the contracts was used as a veil of legality to conceal the true motivation. This constituted a violation of their political rights and an indirect restriction on freedom of expression, under Articles 23(1) and 13(3) of the Convention, in relation to Article 1(1) thereof and, because it took place in the absence of safeguards in the domestic system to prevent possible retaliation for the expression of political opinion, also in relation to Article 2 of the Convention.

106. The ***representative*** argued that the alleged victims were discriminated against for political reasons, having "expressed their opinion on the government's performance and having signed" the petition. He alleged that the reason for their dismissal was the exercise of their political rights, including the "right of every citizen to have access, under general conditions of equality, to the public service of his country," enshrined in Article 23(1)(c) of the Convention, which he claimed is "absolute, with no limitations other than those inherent to the existence of vacancies and the suitability of the candidate." He added that this right "is not subject to political loyalty or ideological commitment to the State authorities" and "includes the guarantee to remain in his or her position as long as the circumstances that justified the citizen's entry into the public administration do not change." He pointed out that there were no complaints against the alleged victims by their direct bosses and that there was no file or record of any administrative sanctions related to the exercise of their positions.[175] He emphasized that they were "censured by means of an administrative sanction for having expressed their opinion in a political document (by signing the petition)," an act that may have been unfair or wrong, but was protected under Article 13 of the Convention. He alleged that they did not receive equal protection before the law, something that "is enjoyed by militants of the governing party or by Chavez' sympathizers," since the exercise of their rights resulted in "the loss of their jobs, their livelihoods, which gave meaning to their lives, stigmatization by society and twelve years of fruitless struggle." The representative also argued that the sanction imposed on the victims caused them anguish and suffering, stigmatization in the eyes of public opinion and closed the door to any other employment. Thus, they "were subjected to cruel, inhuman or degrading treatment or punishment," which affected their physical and mental health, in violation of Articles 5(1) and 5(2) of the Convention. He emphasized that the State failed to adopt legislative, administrative, judicial or other measures necessary to prevent discrimination on political grounds and did not punish those responsible, in the terms of Article 2 of the Convention, since the Ombudsman's Office and the Prosecutor's Office did not investigate the facts, none of the perpetrators of the discriminatory practices have been punished, there is no draft legislation on political discrimination, nor has there been any act of reparation for these actions. In his closing arguments, the representative stated that the facts occurred in a context of persecution and discrimination (as a generalized and/or systematic policy) against citizens, political opponents and public officials who signed the petition, within a framework of coordination between the branches of government and/or the subordination of the other branches of government and institutions to the Executive Branch.

107. In its final arguments, the ***State*** pointed out that the alleged victims had not entered the administration through a public competition and only had a contractual relationship with the CNF,

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of this list as an instrument for retaliation was later acknowledged by the President himself; that there was a well-known context of generalized political polarization, in which the President of the Republic and other senior government officials made statements that were forms of pressure for people not to sign with threats of reprisals for those who did sign; that this case was not an isolated incident, since there were multiple complaints about the materialization of these threats; that in the *reparo* process to validate signatures, organized by the CNE in June 2004, those who validly signed the referendum petition were given the option of withdrawing their signatures; that telephone conversations between Rocío San Miguel and the Executive Secretary of the CNF and the Vice Presidency's legal adviser was allegedly confirmed that the reason for her dismissal was for signing the petition; and that of the total of 23 CNF employees in 2003, the only four people who signed the petition were notified of their dismissal, but that the fourth person was able to keep his job because he withdrew his signature.

[175] In his final arguments, the representative cited the Organic Labor Law, the Civil Service Statute Law, the Constitution and court decisions to argue that, under Venezuelan law, contract employees who work full time, are subordinate to a superior and receive a monthly salary, are considered civil servants; and that contract employees whose contracts are renewed without interruption are considered to be public servants (folio 1064).

under which the parties were not required to provide grounds or reasons for terminating it. This was known by the alleged victims, especially by Rocío San Miguel in her role as the Council's "legal adviser." Moreover, none of them had expressed disagreement, in the notification letter, with the termination of the contract. The State also claimed that the publication of the signatures was a legitimate act compatible with the Convention, since the request for the activation of a recall referendum is not an electoral act protected by the secrecy provided for in Article 23(1) (b) of the Convention, and necessary in those circumstances. The State denied that there was a context of pressure and intimidation against those who signed the referendum petition[176] or a context of multiple allegations of political discrimination.[177] It also denied that the alleged victims were treated differently, given that in March 2004 the contracts of four people were terminated, one of whom did not sign the petition and that this citizen – mentioned by the Commission – continued to provide his services despite having signed. Finally, the State pointed out that access to positions in the Public Administration is subject to provisions contained in the Constitution and to the special law governing the matter (Civil Service Statute Law), and that those wishing to enter career positions and enjoy the stability inherent to these positions must win a public contest, since a contract may never be used as a means to gain entry to the civil service. Consequently, the alleged victims could not claim the job security of career civil servants, as they did not have such status, not having entered the administration after having won a public contest. Therefore, they cannot allege the violation of a "right to have equal access to public service."

Considerations of the Court

108. The Court notes that the Commission and the representative have based the alleged violations of rights on the same triggering event: the termination of the victims' contracts for having signed the petition for the referendum recall. In other words, they considered that the act of signing the petition was both an exercise of a political right and "an act motivated by political opinion and expressed through the signature." At the same time, they considered that such an act would be protected by the principle of non-discrimination (as a prohibited or "suspect" category) and by the right to equality before the law, since the dismissal would have constituted an act of discrimination based on political opinion.

109. In view of the foregoing, and to better understand the matter, the Court considers it pertinent to first analyze the case in light of this triggering event, to determine whether some form of discriminatory treatment occurred based on a prohibited category of discrimination, established in Article 1(1) of the Convention, in relation to the exercise of the right to political participation, recognized in Article 23 thereof. The Court will then determine whether there were also violations of freedom of expression and of the rights to equality before the law and personal integrity, pursuant to Articles 13, 24 and 5 in relation to Articles 1(1) and 2 of said instrument.

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176 The State argued that President Chávez' statement, cited by the Commission to prove the supposed climate of pressure, only referred to a well-known public fact (the requirements to sign the petition), so that it is untenable to assert that his remarks were threats. Furthermore, the State considered that most of the statements cited by the Commission and the representative were taken out of context, since the different institutions of the State –including the President himself- sent out a clear message regarding the people's right to sign or not the petition. It pointed out that the process of *reparo* and the possibility of withdrawing the signatures was a necessary and justified mechanism to restore the violated rights of those persons whose signature and identity data were unlawfully included in the petition. In any case, 87% of those summoned to "repair" their signatures actually ratified them, which leaves unsubstantiated the idea of the supposed climate of pressure and widespread fear resulting from the signature validation process. (folios 805-809)].

177 The State argued that the witnesses and the expert witness proposed by the representative acknowledged that few complaints of political discrimination were actually made to non-governmental organizations or State institutions which, compared with the number of signatories, is an insignificant figure. Thus, beyond the speculations reported in the media, there were few cases in which discrimination for political reasons was actually reported. For example, other than the complaint filed by the alleged victims, the Ombudsman's Office only received two complaints of discrimination for political reasons during the period 2003-2005 (folio, 809 to 811).

A) RIGHT TO POLITICAL PARTICIPATION AND PRINCIPLE OF NON-DISCRIMINATION

110. Article 1(1) of the Convention is a general rule that applies to all provisions of the treaty, since it establishes the obligation of the States Parties to respect and ensure the full and free exercise of the rights and freedoms recognized therein, "without any discrimination." In other words, whatever its origin or form, any treatment that may be considered discriminatory with respect to the exercise of any of the rights guaranteed by the Convention is, *per se,* incompatible with the Convention.[178]

111. Article 23 of the American Convention contains various provisions that refer to the rights of the individual to participate in the decision-making process in public affairs, in his capacity as a voter by means of his vote, or as a public servant; in other words, to be elected by the people or by appointment or designation to occupy a public office. Under this provision, citizens also have "the right to play an active role in the conduct of public affairs directly through referenda, plebiscites or consultations or through freely elected representatives."[179]Unlike almost all the other rights established in the Convention which are granted to every person, Article 23 of the Convention not only establishes that its titleholders enjoy rights, but adds the word "opportunities." The latter implies the obligation of the State to guarantee with positive measures and to create optimum conditions and mechanisms to ensure that every person formally entitled to these rights has the real opportunity to exercise them effectively, respecting the principle of equality and non-discrimination.[180] In this regard, the State must establish the institutional framework and procedural mechanisms necessary to allow and ensure the effective exercise of that right, preventing or counteracting situations or legal or *de facto* practices that imply forms of stigmatization, discrimination or reprisals for those who exercise it.

112. The Court understands that, under the provisions of Article 23(1) (a) and (b), the right to request and participate in a recall procedure, such as the one referred to in the instant case, is a political right protected by the Convention. On the other hand, it is also clear that under Article 29 of the Convention, its provisions cannot be interpreted as excluding rights and guarantees "which derive from representative democracy as a form of government" (subparagraph c) or as "restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party" (subparagraph b).

113. In this sense, it is important to bear in mind that in this case, the exercise of the right to request a recall referendum was expressly provided for in Article 72 of the Constitution of the Bolivarian Republic of Venezuela and that the alleged victims, as citizens, were entitled to request it individually or, as in fact occurred, within the framework of a citizens' organization that collected the signatures and submitted them to the National Electoral Council. In these terms, such a mechanism of participatory democracy was envisaged as a right of a political nature for citizens.

114. It is also worth noting that the democratic principle permeates the Convention and, in general, the Inter-American System, in which the relationship between human rights,

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[178] *Cf. Proposed Amendment to the Naturalization Provision of the Constitution of Costa Rica. Advisory Opinion OC-4/84* of January 19, 1984. Series A No. 4, para. 53, and *Case of Duque v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of February 26, 2016. Series C No. 310, para. 93.

[179] *Cf. Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No 184, para. 147; and *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 25, 2010. Series C No. 212, para. 107. Also, the United Nations Committee on Human Rights, in interpreting Article 25 of the International Covenant on Civil and Political Rights, which is similar to Article 23 of the American Convention, has understood that political rights must also be guaranteed for elections or constitutional amendments, referenda and other electoral processes. See General Comment No. 25, adopted by the Human Rights Committee, Article 25 – Participation in public affairs and the right to vote, 57th Session, U.N. Doc. HRI/GEN/1/Rev.7 at 194 (1996), available at: http://www1.umn.edu/humanrts/hrcommittee/Sgencom25.html.

[180] *Cf. Case of Yatama v. Nicaragua, Preliminary objections, merits, reparations and costs.* Judgment of June 23, 2005. Series C No.127, para. 195; *Case of Castañeda Gutman v. Mexico, supra*, para. 145.

representative democracy and political rights in particular, is embodied in the Inter-American Democratic Charter.[181] This legal instrument is a rule of authentic interpretation of the treaties to which it refers, since it reflects the interpretation that the OAS Member States themselves, including the States Parties to the Convention, make of the provisions pertaining to democracy in both the OAS Charter and the Convention.[182] In the terms of the Democratic Charter, "the effective exercise of representative democracy is the basis of the rule of law and the constitutional regimes of the Member States of the [OAS]" and this is "strengthened and deepened with the permanent, ethical, and responsible participation of the citizens within a framework of legality in accordance with the respective constitutional order."[183] The effective exercise of democracy in the American States is, therefore, an international legal obligation and they have sovereignly agreed that such exercise is no longer a matter solely for their domestic, internal or exclusive jurisdiction.

115. According to the aforementioned Charter, the "essential elements of representative democracy" are, *inter alia*, "respect for human rights and fundamental freedoms; access to power and the exercise thereof, subject to the rule of law; […] the separation of powers and the independence of the branches of government."[184] Finally, "the participation of citizens in decisions relating to their own development is a right and a responsibility" and "is also a necessary condition for the full and effective exercise of democracy."[185] Therefore, "the elimination of all forms of discrimination […] and of different forms of intolerance […] contributes to the strengthening of democracy and citizen participation."[186]

116. In this case it is alleged that Ms. San Miguel, Ms. Chang and Ms. Coromoto were discriminated against through the termination of their service contracts with a State entity, precisely for having signed the referendum petition. This Court has considered that, when analyzing a case, the existence of discriminatory treatment is presumed when it is based on a prohibited category of differential treatment established in Article 1(1) of the Convention.[187]

117. In the terms of the aforementioned international and constitutional provisions, the act of signing the referendum petition to revoke the mandate of a high-ranking public official - in this case, the President of the Republic – implied participation in a procedure to activate a mechanism of direct democracy recognized in the domestic legal system. In other words, such an act intrinsically entailed the exercise of a right to political participation, specifically provided for in the Venezuelan Constitution and protected by Article 23 of the Convention. In fact, in resolving the *amparo* action, the court took as an undisputed fact "that the plaintiffs signed in support of the referendum […] and therefore validly exercised their right to political participation." The Court reaffirms that, in the terms of Article 1(1) of the Convention, in a democratic society a person may never be discriminated against for his or her political opinions or for legitimately exercising political rights.

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181 *Cf.* Organization of American States. Inter-American Democratic Charter. Adopted at the first plenary session of the OAS General Assembly, held on September 11, 2001, during the Twenty-eighth Session, Articles 3 and 4.

182 Paragraphs 2 and 4 of the Preamble to the Convention: "Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man; […] Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights […]." In that sense, the Charter could also be described as an agreement between the States Parties to both treaties regarding the application and interpretation of those instruments (Art. 31(3) (a) of the Vienna Convention on the Law of Treaties: "There shall be taken into account, together with the context: a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions."

183 Cf. Article 2 of the Inter-American Democratic Charter, *supra*.

184 *Cf.* Article 3 of the Inter-American Democratic Charter, *supra*.

185 *Cf.* Article 6 of the Inter-American Democratic Charter, *supra.*

186 *Cf.* Article 9 of the Inter-American Democratic Charter, *supra*.

187 *Cf. Case of Granier et al. (Radio Caracas Television) v. Venezuela, supra*, paras. 227 and 228. See also, *mutatis mutandi*, *Case of Atala Riffo and Daughters v. Chile. Merits, reparations and costs*. Judgment of February 24, 2012. Series C No. 239, para. 124.

118. In this case, it has been alleged that the presumed victims were subjected to reprisals and discrimination because the CNF authorities who decided or justified the termination of their contracts considered the aforementioned signatures as an act of disloyalty towards the government or as a "gesture of distrust," when they learned of it after the publication of the Tascón List. In other words, regardless of any political opinion unfavorable to the government actually expressed, what is alleged is that the authorities assumed or perceived it as such by the mere fact of having signed. In a democratic society, political opposition is consubstantial and functional to its very existence; thus, being perceived as political opponents because of having signed the petition should not be considered, in itself, a problem under the Convention. What *would* be incompatible with the Convention is to use such perception to discriminate against them, and it is this point that the Court must examine.

119. The Court notes that in the letter signed by the then President of the National Border Council, dated March 12, 2004, in which he notified the alleged victims of the termination of their contracts, no reason or legal justification was provided for this action. It was later, in communications addressed to the Public Prosecutor's Office and the Ombudsman's Office, as well in a radio interview, that the Secretary of that agency stated that the decision was taken in application of a discretionary power established in the seventh clause of the contracts, owing to a restructuring of the agency and/or as "a simple reduction of personnel" (*supra* paras. 76, 81 and 82). It also appears that the first reason cited by the Secretary was sufficient for the judicial authorities, as well as the Prosecutor's Office and Ombudsman's Office, to consider as valid a justification given *ex post facto* (*supra* paras. 86, 92, 94, 95 and 98 to 100). There is no record that the alleged restructuring actually occurred, nor is there any reasonable explanation regarding the need to specifically terminate these contracts on that basis.

120. Consequently, the Court must determine whether, beyond the formality or power invoked by the State authority to act, there is evidence to suggest that the real motivation or purpose behind the termination of their contracts was to exercise some form of covert retaliation, persecution or discrimination against them.

121. In this regard, the Court considers that, given the circumstances in which the facts occurred, it is not appropriate to analyze this matter as a case of alleged direct restriction of rights –in which the justification of the restriction would be analyzed in the terms of the Convention– or as a direct case of difference of treatment – in which the objectivity and reasonableness of the justification provided by the State would be assessed. To the extent that a covert act of persecution, discrimination or retaliation, or an arbitrary or indirect interference in the exercise of a right is alleged, it is pertinent to take into account that the motive or purpose of a given act by the State authorities is significant for the legal analysis of a case,[188] inasmuch as a motivation or purpose other than that of the provision that grants powers to the State authorities to act, may demonstrate whether the action can be considered arbitrary[189] or a misuse of power.[190]

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188 *Cf. Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2013. Series C No. 266, para. 173, and *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2013. Series C No. 268, para. 210.

189 *Cf. Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, supra*, para. 173. In this regard, the European Court has taken into account the purpose or reason that State authorities have given when fulfilling their duties, to determine whether or not there was a violation of the European Convention on Human Rights. See ECHR, *Case of Gusinskiy v. Russia, (No. 70276/01)*, Judgment of May 19, 2004, paras. 71 to 78; *Case of Cebotari v. Moldavia,* (No. 35615/06), Judgment of November 13, 2007, paras. 46 to 53, and *Case of Lutsenko v. Ukraine*, (No. 6492/11), Judgment of July 3, 2012, paras. 100 to 110.

190 *Cf. Case of Granier et al. (Radio Caracas Television) v. Venezuela, supra*, para. 189.

122. Accordingly, the Court begins from the premise that the actions of the State authorities are presumed to be conducted according to law.[191] For this reason, an irregular action by such authorities must be proven, in order to rebut that presumption of good faith.[192] To this end, the Court has proceeded to review the evidence in the case file on the alleged undeclared purpose and to examine such evidence.[193]

123. The Court will now analyze the elements indicated in this case regarding the alleged misuse of power, in the chronological order in which the contextual and specific facts occurred:

i. Publication of the Tascón List, statements of senior public officials and the context of political polarization

124. After the presentation of more than three million signatures to the National Electoral Council, collected in December 2003 during the so-called "*Reafirmazo*" to petition for a presidential recall referendum, in January 2004, said institution delivered copies of the forms containing the signatures requesting the referendum to Congressman Luis Tascón, who had been authorized for this task by the official whose mandate was to be revoked.

125. However, after receiving the forms, in February 2004, the congressman prepared and published the so-called "Tascón List," which showed that the alleged victims had indeed signed in favor of the petition for a referendum.

126. According to the Commission, the Tascón List reflects an absence of minimal guarantees of confidentiality in the collection of signatures and the lack of safeguards in the presidential recall referendum, considering that protection against possible pressure and reprisals in the context of electoral processes is one of the purposes of Article 23(1) (b) of the Convention. At the same time, recognizing that the collection of signatures for such purposes cannot guarantee the anonymity of the voters, the Commission considered that "this does not imply that the identity of the persons who signed is automatically public information." It also considered, without indicating a clear rule in this regard, that "mechanisms should be explored so that the independent electoral body may offer an effective response to complaints of fraud, without leaving voters unprotected against possible reprisals."

127. For its part, the State argued that the publication of the signatures was a legitimate act compatible with the Convention, since the petition for the activation of a recall referendum is not an electoral act protected by the secrecy provided for in Article 23(1)(b) of the Convention.[194] The State argued that such publication responded to a legitimate objective, since the electoral body had to safeguard the political rights of the official whose recall was being requested, as well as of those who signed the petition and those who did not, particularly in cases of irregular signatures, in order to ascertain whether the signatory's will was indeed respected. Finally, the State pointed out that the publication of the signatures was contemplated prior to the start of the process to

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191 *Cf. Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, supra*, para. 173, and *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador, supra*, para. 210.

192 *Cf. Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, supra*, para. 173, and *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador*, supra, para. 210. The Inter-American Court has stated that "direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts." (*Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 130).

193 *Cf. Case of Granier et al. (Radio Caracas Television) v. Venezuela, supra*, para. 189.

194 In this regard, the State pointed out that any person who signs simply requests the electoral authority, in exercise of his right to petition, to initiate an administrative procedure to convene a referendum, and that in this case it was not done directly through the competent electoral body, but through a third party (the civil organization SÚMATE) which collected the signatures and then submitted them to the National Electoral Council.

collect them, in resolutions of September and October 2003, issued by the National Electoral Council, which was authorized to regulate the referendum process.[195]

128. In light of the foregoing, the Court notes that the parties and the Commission have raised a debate on the need for, and scope of guarantees of confidentiality of the information and identity of the petitioners in signature collection procedures in referendum mechanisms. This could lead to an analysis as to whether the publication of the signatures - as a possible restriction of the rights of the petitioners for the recall referendum - was a legal measure that pursued a legitimate objective and, as such, was necessary and proportional in a democratic society, in order to verify the validity of the signatures and thereby safeguard the rights of the revocable official, of the signatories and of those who did not sign.

129. In September 2003, the National Electoral Council had issued certain regulations establishing its own prerogative to publish the results of any signature verification process, including the complete list of signatories accompanied by their acceptance or rejection as legitimate signatures.[196] (*supra* para. 51). That is to say, as regulated at that time, participation in the process to call for a referendum did not guarantee the petitioners absolute confidentiality or anonymity. Furthermore, if the allegations of electoral fraud were true, the authority had the duty to respond and independently investigate those possibilities, safeguarding the rights at stake. However, without this being provided for in the regulations, the National Electoral Council handed over copies of the forms containing the signatures to a congressman who had been authorized for this task before said Council by the official whose mandate was to be revoked, namely, the then President of the Republic. Subsequently, the congressman published the information with the known scope and magnitude.

130. It should be noted that, in principle, the National Electoral Council, as the governing body in this matter, had the authority and obligation to provide access to the information in its possession on the signatories of the referendum petition, if the person requesting such information was the very official whose mandate was to be revoked, to provide a minimal guarantee of due process in that regard, since he would have a legitimate interest in verifying them. However, in assessing the relevance and necessity of providing such information to the person concerned, it was also incumbent upon the competent authority to weigh the potential consequences of its possible dissemination in that particular context, ruling out the real and reasonable possibilities that such dissemination could result in threats, harassment or reprisals by the government, or even by third parties or private citizens, against the petitioners or signatories. In this case, the competent electoral body should have considered whether the information should be of a restricted, confidential or privileged nature, under the responsibility of whoever received it; in other words, whether in this particular context, it should have implemented safeguard measures to ensure minimally reasonable protection for the signatories, so that such information would not be used or exploited for purposes of intimidation, persecution or retaliation.

131. It was a well-known fact that the particular context in which the signatures were collected was characterized by high levels of political instability and polarization and by a climate of

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[195] The State referred to the statements of Luis Salamanca and Vicente Díaz. The latter stated: "The CNE is the head of the Electoral Branch, which legally enjoys full constitutional autonomy to act within its sphere of competence without any limitations other than those derived from the law. And, in the absence of a law regulating referendum processes, the CNE is empowered to regulate such processes, according to the eighth transitory provision of the Constitution. […] The official subject to a recall has the right to be assured that the petitioners have met the constitutional quorum required to activate the referendum and that the signatures have indeed been properly collected from among the citizens entitled to participate." (evidence file folio, 3306).

[196] *Cf.* National Electoral Council (CNE) Resolution No. 30925-03, of September 25, 2003, Art. 31. Regarding the confidentiality of the signatures and the possible identification of the petitioners, it is pertinent to emphasize that Article 31 of said Resolution 30925-03 established that the CNE "publish in at least one print media of national circulation the results of the validation process [of the signatures…] by mentioning the ID numbers of the referendum petitioners."

intolerance towards dissidents. In particular, the public statements made by then President Chávez, other high-ranking public officials and a coordinator of the so-called "Bolivarian circles" in 2003 and 2004 - during the drives to collect signatures known as *El Firmazo* and *El Reafirmazo* and before the National Electoral Council released the forms to Congressman Tascón (*supra* paras. 53 to 60) - suggested that the signature collection could be fraudulent, and made threats against those who signed the petition for the referendum, describing them as "traitors" or "anti-patriots." Furthermore, the National Electoral Council delivered the forms to the congressman despite the fact that in a television program he had referred to those who sought to activate the referendum as "squalid,"[197] and stated that his intention in using that information was to "give a face to the fraud" (*supra* para. 59). In addition, other factors, such as the difficulties faced by the "SÚMATE" organization in submitting the signatures required to activate the referendum, clearly show the risks involved for those who promoted the petition and for those who eventually signed it, and extended beyond the natural political resistance that may occur in the course of a recall procedure at this level.

132. However, there is no evidence of a reasoned or substantiated decision by the National Electoral Council that, in order to safeguard the free and effective implementation of the signature verification procedure and eventual call for a referendum, it should properly assess the need to release or publish such information- given the evident risks in the social and political context of the moment- and require, if appropriate, some type of restriction on the publication of the information when these forms were released to the congressman or subsequently when the Tascón List was published.

133. Thus, the National Electoral Council's decision to release the forms containing information on the identity of the signatories to a congressman authorized by the President to request them, could have been perceived, in this context, as a lack of guarantees against possible or future acts of retaliation or threats of retaliation. Given the scale and scope of the Tascón List, published on a web page entitled "mega-fraud," it is evident that its creation and publication had ulterior motives other than to guarantee the rights of the official who was to be recalled or of the petitioners, since the publication of the signatories' identities was exploited for the purpose of intimidation in order to discourage political participation and dissidence. This encouraged or favored an environment that fostered retaliation, political persecution and discrimination against those who were perceived as political opponents of the government, which was incompatible with the State's duty, under Article 23(1) of the Convention, to establish measures to safeguard or protect them from undue pressures and reprisals in the context of electoral processes or political participation.

134. In the case of the alleged victims, their names could be found on this list and they were informed of the termination of their contracts less than one month after its publication. That is to say, their inclusion in that list allowed the authorities of the National Border Council to know that they had participated in the petition to activate the referendum. Therefore, it is possible to consider that, in addition to the evidence under analysis, this factor is clearly related to the decision of those authorities to terminate their contracts.

ii. Termination of the alleged victims' contracts and their versions of events

135. In their statements before the Prosecutor's Office, the Ombudsman's Office and before this Court, the alleged victims have been consistent in alleging that the termination of their contracts, after the publication of the Tascón List, was a form of retaliation for having signed the petition and for not having "repaired" or withdrawn their signature during the signature verification procedure known as "*reparo*."

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[197] In that context, "escuálido" ("squalid") was a pejorative term for a political opponent of the government, or for anyone perceived as such.

136. Over a period of several years, the alleged victims entered into various monthly, semi-annual or annual contracts with the National Border Council, none of which was terminated before the agreed period, except for the last one which was terminated three months after its commencement and a few months after they signed the petition (*supra* paras. 71 to 76).

137. In her statement before the Prosecutor's Office, in July 2004, Rocío San Miguel Sosa stated that on March 11, 2004, Feijoo Colomine Rincones, then Executive Secretary of the CNF, verbally informed her of the possible termination of her contract, explaining to her that in a conversation with José Vicente Rangel Vale, President of the CNF, he had been ordered to "proceed with the dismissal of Rocío San Miguel and Thais Peña because they had petitioned for the presidential recall." She added that on March 31, 2004, she had spoken to Ilia Azpurúa, legal adviser to the Vice Presidency and Secretary of the Cabinet, who told her that "it [was] not possible that working at the White Palace I should have signed [the petition] that I [was] a trusted member of staff and that by signing I [had] shown a gesture of distrust."[198]

138. In her testimony before the prosecutor, Thais Coromoto Peña stated that the Executive Secretary verbally notified her of her dismissal and that his secretary told her that he was "upset because [they] were against the President and against the process." She added that Feijoo Colomine then told her "to withdraw the signature, that he could send [her] to Jesse Chacón to do so, to which [she] replied that [she] was a woman of free conviction and conscience, that this was [her] decision and that it would remain the same, as [she] had no reason to retract it; then he said [we] should not discuss the matter anymore."[199] For her part, Magally Chang Girón told the Prosecutor's Office that after being notified of her dismissal on March 22 of that year by the Secretary, on the instructions of the President of the Council, she was told that "the reason was for having signed the petition."[200]

139. In her statement before the Court, Ms. San Miguel Sosa indicated that when she was recruited to work at the CNF it was not for political reasons and emphasized that the legal adviser of the Vice Presidency warned her that her signature "would have consequences" for her teaching job at the Advanced Naval War School, since both she and her partner at that time (an officer of the National Armed Forces) would be dismissed, as indeed happened. She also referred to the threats she allegedly suffered and the stigmatization prompted by her search for justice, since "it is not advisable to be with someone who is publicly claiming a right, especially in a country as polarized as Venezuela." Ms. Coromoto Peña reiterated in her statement that, as she was told by her superior when her letter (of dismissal) was delivered and by her co-workers, "everyone at the Miraflores Palace knew that whoever appeared on the Tascón List would be fired." A similar comment was made by Ms. Chang Girón: "In fact Gabriel Ugas, who was Feijoo Colomine's right-hand man, had told me a few days before I received the letter that Thais Peña and Rocío San Miguel were fired for signing. By mid-March, all of us at the White Palace of Miraflores knew that if we had signed against the President, we were fired."[201] In addition, two witnesses testified that the Tascón List had been used at the National Border Council and that the contracts of the alleged victims were terminated for having signed.[202]

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198 *Cf.* Record of interview with Rocío del Carmen San Miguel Sosa, rendered before the Thirty-Seventh Prosecutor's Office on July 15, 2004 (evidence file, folios 360-364).

199 *Cf.* Record of interview with Thais Coromoto Peña, rendered before the Thirty-Seventh Prosecutor's Office on July 15, 2004 (evidence file, folios 387-389).

200 *Cf.* Record of interview with Magally Margarita Chang Girón, rendered before the Thirty-Seventh Prosecutor's Office on July 16, 2004 (evidence file, folios 384-385).

201 Cf. Statement of Ms. San Miguel Sosa in public hearing before the Court and written statements of Chang Girón and Peña Coromoto (evidence file folios 3093 and 3099).

202 The witness María Alejandra Marrero de Ugas stated that, at that time, her husband remarked that "unfortunately the Tascón List was being applied at the National Border Council. That José Vicente Rangel had ordered the dismissal of all those who had signed against Chávez […] that they had been dismissed for signing against the government for which they worked." The witness Morelba Karina Molina Noguera stated: "I can confirm that the managers at that time, Feijoo

140. As noted previously (*supra* para. 119), the justifications subsequently given by the Secretary of the CNF regarding the reasons for terminating the contracts are not consistent with an alleged restructuring of that agency, or with "a simple reduction of personnel," which was not proven. Therefore, there is no support for the argument that the termination of the contracts was "a simple coincidence" with the fact of having signed the petition, according to that official.

141. In addition, transcripts and recordings were provided of telephone conversations held in March 2004 between Ms. San Miguel and the Executive Secretary of the CNF and legal adviser of the Vice Presidency, recorded by the former, which clearly suggest that her participation in the referendum petition was the reason for the termination of her contract (*supra* paras. 77 to 79). In the terms in which these documentary elements have been admitted as evidence in this international proceeding (*supra* paras. 28 to 32), the Court considers that they provide strong indications of the real reason for the termination of the contracts, namely, the "materialization of an element of mistrust" due to the fact that they were "signing a petition for the revocation of the mandate of the guy who [was] paying [them], [was] hiring them." It is noteworthy that the alleged victims were told by these officials that this decision could change if they withdrew their signatures. It is also irrelevant that, at that time, the National Electoral Council had not yet announced that it would convene a "*reparos*" procedure for the "retraction" of signatures.

iii. Statements by the President and other senior officials after the Tascón List and allegations of arbitrary dismissals in the public sector

142. During the period between the publication of the Tascón List, the termination of the alleged victims' contracts and the holding of the referendum, the National Electoral Council established an *ad hoc* procedure for the "repair" *(reparo*) of signatures, which was not initially contemplated, and was carried out on June 27, 2004. This process was not limited to allowing people to object to possible fraudulent uses of their signatures and identities, but also gave those who had validly signed in favor of the recall referendum an opportunity or option to validly retract and withdraw their signature. Also, in the face of possible allegations of fraud, it was not considered unreasonable that the competent authority should establish verification mechanisms or procedures. However, such a possibility of retraction, in the context described, could have been perceived as a veiled threat or intimidation to discourage participation in the referendum and, therefore, as an unlawful or improper interference in the democratic deliberative process.

143. In addition, there are six statements made by the President of the Republic himself and by other high-ranking public officials during that period, calling on citizens to review the Tascón List so that "the faces are revealed," accusing the signatories of treason and even of terrorism and threatening to "fire" (dismiss) or transfer any officials who signed the petition (*supra* paras. 59 to 64). The content of such statements reflect forms of pressure not to sign and threats of reprisals for those who did so.

144. In this regard, the Court has reiterated in other cases concerning Venezuela, that in a democratic society it is not only legitimate, but sometimes it is the duty of the State authorities to make pronouncements on matters of public interest. However, in doing so they are subject to certain limitations in that they must reasonably - though not necessarily exhaustively – ascertain the facts on which they base their opinions, and should do so with even greater diligence than that employed by private citizens, given their high office, the broad scope and possible effects that their expressions may have on certain sectors of the population, and to prevent citizens and other interested parties from receiving a manipulated version of certain facts. Furthermore, they should bear in mind that, as public officials, they have a role as guarantors of the fundamental

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Colomine (Executive Secretary) and Raúl Martínez (Director of Administration), discussed the matter and I accidentally heard them. They were dismissed for having signed the petition for the recall." Cf. Statements of María Alejandra Marrero de Ugas and Morelba Karina Molina Noguera (evidence file, folios 3174 to 3175 and 3179 to 3180).

rights of individuals and, therefore, their statements may not disregard such rights or constitute forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute to public debate through the expression and dissemination of their thought. This special duty of care is particularly accentuated in situations of increased social conflict, alterations in public order or social or political polarization, precisely because of the set of risks implied for certain persons or groups at a given time.[203]

145. The Court considers that in this context, and given the high investiture of those who made the statements and their reiteration, such pronouncements by senior public officials aimed at discouraging political participation did not contribute to preventing - and may even have encouraged or exacerbated - situations of hostility and intolerance towards political dissidence, which is incompatible with the State's obligation to ensure the right to political participation.[204] In this sense, other statements made by officials indicating that "no one may be persecuted" or a retraction by the Minister of Health (*supra* para. 64), did not contribute to prevent the effects of intimidation, uncertainty and polarization that could generate other manifestations in that context.

146. In addition, information was provided indicating that the facts of this case were not isolated, since the materialization of such threats was mentioned in reports by international and Venezuelan non-governmental organizations, as well as in statements or reports published in the mass media and in testimonies rendered before the Court, which referred to or documented cases of dismissals of workers or officials of various public institutions, which were allegedly motivated by their participation in the recall referendum petition. Information was also provided on reports by people who had been coerced to prevent them from signing or, if they had already done so, not to revalidate their signatures, as well as testimonies referring to situations in which signatories' job applications for public positions were rejected or they were prohibited from benefiting from certain social assistance programs. It was also reported that judges and labor inspectors did not alter the decisions to dismiss workers or terminate their contracts and that neither the Public Prosecutor's Office nor the Ombudsman's Office had intervened in that regard. In fact, the Attorney General of the Republic himself later acknowledged the possible existence of multiple complaints when, in April 2005, he ordered an investigation into cases of political discrimination (*supra* paras. 65 to 67).

147. Following the recall referendum, held in April 2005, the then President of the Republic made a statement from which it may be inferred that he recognized that the Tascón List was used to block job applications, in other words, as an instrument to carry out reprisals against the those who signed the petition; he subsequently issued a call to "build bridges" and to "bury the Tascón List" (*supra* para. 68). Similarly, in May 2005, the Board of the National Electoral Council unanimously approved a resolution condemning discrimination against the signatories through the use of the Tascón List (*supra* para. 69). In fact, in its 2009 report on Democracy and Human Rights in Venezuela, the Commission noted that in his statement, the President of the Republic acknowledged that the list was used for political discrimination purposes. It also noted that the list continued to be used publicly and privately as an instrument of political discrimination and that during the 2005 legislative elections, an even more sophisticated tool was created, known as the "Maisanta List," which contained, in addition to the names of those who signed the referendum petition, detailed information on registered voters and their political preferences.[205] Several deponents stated that both lists were used, and continue to be used, as databases to include information for political purposes or for political control (*supra* para. 70).

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[203] *Cf. Case of Ríos et al. v. Venezuela, supra*, para. 139. See also *Case of Granier et al. (Radio Caracas Television) v. Venezuela, supra*, para. 195.

[204] Cf., *Mutatis mutandi, Case of Perozo et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of January 28, 2009. Series C No. 195, paras. 160 and 161.

[205] Cf. IACHR, Democracy and Human Rights in Venezuela, supra, para. 101.

iv) Conclusion

148. The foregoing elements allow the Court to consider that the termination of the alleged victims' contracts took place in a context of high volatility, political polarization and intolerance of dissidence, which could have led to forms of persecution or discrimination against political opponents of the government or those who were perceived as such, as well as against citizens and public officials who signed the referendum petition. Also, the fact that this was made possible through the actions and statements of members of the Executive and Legislative Branches, as well as members of the competent electoral authority who had a duty to oversee the proper conduct of the recall referendum, suggests forms of coordination between members of the different branches of government or subordination of their members or of certain institutions to the Executive Branch at that time.

149. Beyond the nature of the alleged victims' relationship with the public administration, or the need to determine whether– by virtue of a clause in their contract– the respective authority had the discretionary power to terminate it at any time, even without justification, the State has not provided a detailed and precise explanation of the reasons for its decision. In cases such as this, merely citing considerations of convenience or reorganization, without providing further explanations, is not enough, since the lack of details as to the motivations reinforces the plausibility of indications to the contrary.

150. Therefore, the Court concludes that the termination of the contracts constituted a misuse of power, and that said clause was used as a veil of legality to conceal the true reason or real purpose, namely: a reprisal against the alleged victims for having legitimately exercised a political right established in the Constitution, by signing in favor of the presidential recall referendum. This was perceived by senior officials as an act of political disloyalty and as the expression of an opposing or dissident political opinion or position, which provoked a differentiated treatment towards them, namely, the arbitrary termination of the employment relationship.

151. In conclusion, the Court declares that the State is responsible for the violation of the right to political participation, recognized in Article 23(1) (b) and (c) of the American Convention, in relation to the principle of non-discrimination contained in Article 1(1) thereof, to the detriment of Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña.

B) FREEDOM OF THOUGHT AND EXPRESSION

152. It is pertinent to recall that freedom of expression, protected under Article 13 of the Convention, has both an individual dimension and a social dimension, which includes the freedom to seek, receive, and impart ideas, opinions and information of all kinds, as well as the right to receive and examine information, ideas and opinions disseminated by others.[206] The individual dimension includes the right to use any appropriate means of dissemination. Therefore, in this sense, the expression and dissemination of ideas and information are indivisible, so that a restriction of the possibilities of dissemination represents directly, and in equal measure, a limitation of the right to express oneself freely. The social dimension of freedom of expression also implies the right of everyone to know the opinions and news of others, the right to participate in public debate and the right to exchange ideas.[207]

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[206] *Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 of the American Convention on Human Rights).* Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 30 to 32; and *Case of Lagos del Campo v. Peru, supra*, para. 89.

[207] *Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs*. Judgment of February 5, 2001. Series C No. 73, paras. 65 and 66; and *Case of Lagos del Campo v. Peru, supra*, para. 89.

153. According to the Inter-American Democratic Charter, a fundamental component of the exercise of democracy is, *inter alia*, "freedom of expression and of the press." [208]

154. Consequently, as established in the Court's case law, it is an indisputable fact that the lack of an effective guarantee of freedom of expression weakens the democratic system and undermines pluralism and tolerance; that the mechanisms of citizen control and denunciation may become inoperative and, ultimately, this creates fertile ground for authoritarian systems to take root;[209] that in a context of vulnerability faced by certain persons, statements by the authorities may be perceived as threats and may create an environment of intimidation;[210] and that, in assessing an alleged restriction or limitation of freedom of expression, the Court must not confine itself to examining the act in question, but must also examine that act in the light of the facts of the case as a whole, including the circumstances and the context in which they occurred.[211]

155. Furthermore, this Court has recently affirmed that the sphere of protection of the right of freedom of thought and expression is especially applicable to employment contexts, in which the State must respect and guarantee this right to its workers or their representatives. Thus, in cases where a general or public interest is involved, a higher level of protection is required.[212] The Court has also held that "[i]n discussions on issues of great public interest, [this right] protects not only statements that are inoffensive or well-received by public opinion, but also those that shock, offend or disturb public officials or any sector of the population."[213]

156. Having regard to the conclusions of the preceding section, the act of signing the referendum petition was, in a broad sense, a form of political opinion, because it implied the expression of the view that it was necessary to hold a referendum on an issue of public interest that is subject to debate in a democratic society, even if this does not properly amount to the expression of a specific opinion.

157. In this case, when filing the *amparo* action, the alleged victims did not claim violations of their freedom of expression (*supra* para. 88). However, in the prevailing context of intense political polarization, the mere act of signing the recall petition was regarded as an expression of a willingness to have the President's mandate revoked, if so decided by the majority, and those who did so took a risk by confronting the person who wielded power. The dissemination of this position, at least among others who did likewise, was an incentive for others to do the same. In this regard, it should be borne in mind that under Article 13(1) of the Convention, freedom of expression may be exercised "through any other medium of one's choice" and, given the context, the act of signing could be considered one such other means. In other words, it was not only a matter of exercising an individual, secret right, but of expressing an opinion from the very moment of the signature, which was that a recall referendum should be held, something that would have no meaning unless it was supported by the number of petitioners required and which, therefore, should be known, at least through personalized means or not so massive media. It should also be noted that subsequent events show that the authorities used these signatures to intimidate citizens so that they would not express themselves in like manner (*supra* paras. 142 to 147). In that regard, this manifestation clearly constituted an exercise of freedom of expression.

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208 Article 4 of the Inter-American Democratic Charter, *supra*.

209 *Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of July 2, 2004. Series C No. 107, para. 116; and *Case of Granier et al. (Radio Caracas Television) v. Venezuela, supra*, para. 140.

210 *Cf. Case of Ríos et al. v. Venezuela, supra*, para. 381; and *Case of Perozo et al. v. Venezuela, supra*, para. 134.

211 *Cf. Case of Ivcher Bronstein v. Peru. Merits, reparations and costs*. Judgment of February 6, 2001. Series C No. 74, para. 154.

212 *Cf. Case of Lagos del Campo v. Peru, supra*, paras. 95 and 96.

213 *Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.), supra*, para. 69; and *Case Lagos del Campo v. Peru, supra*, para. 117.

158. Consequently, the fact that the alleged victims suffered political discrimination, precisely as a reprisal for having exercised their freedom of expression by signing the petition for a referendum, necessarily implies a direct restriction of the exercise of that right. The arbitrary dismissal to which they were subjected, after the publication of the Tascón List and in a context of complaints of arbitrary dismissals and other forms of retaliation against those who had signed in favor of the referendum, was a covert attempt to silence and discourage political dissidence, since it was used as an exemplary measure to deter others from exercising the same freedom of political participation, and ultimately to unlawfully persuade them to withdraw or "repair" their signatures through the procedure established by the National Electoral Council for that purpose.

159. As noted previously, the situations under analysis could have created impediments to free public debate on issues of interest to society, which is essential for the healthy functioning of a democratic society and, therefore, has a deterrent, chilling and inhibiting effect on the collective aspect of freedom of expression.[214]

160. For the foregoing reasons, the Court declares that the State is responsible for the violation of freedom of thought and expression, recognized in Article 13(1) of the American Convention, in relation to the principle of non-discrimination established in Article 1(1) thereof, to the detriment of Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña.

C) ALLEGED VIOLATION OF THE RIGHT TO EQUAL PROTECTION BEFORE THE LAW

161. The Commission considered that the aforementioned discriminatory treatment received by the alleged victims was confirmed by the fact that those who did not sign (because they shared the government's political ideology or out of fear) or those who withdrew their signatures from the petition, were not subjected to similar acts. Accordingly, the Commission concluded that the State violated the principle of equality before the law and non-discrimination, pursuant to Article 24 of the Convention, in addition to Article 1(1) thereof.

162. With regard to Articles 1(1) and 24 of the Convention, the difference between the two lies in the fact that "if a State discriminates in the respect or guarantee of a conventional right, it would violate Article 1(1) and the substantive right in question," whereas if, on the contrary, "the discrimination refers to unequal protection under domestic law or its application, then the matter must be analyzed in light of Article 24."[215]

163. It was alleged that out of the total of 23 employees on the payroll of the National Border Council in 2003, the three persons who signed the petition for a recall referendum and did not withdraw their signatures- namely, the three alleged victims- were notified of the termination of their contracts. The Commission and the representative referred to a fourth person who also signed but was not dismissed because he "repaired" or retracted his signature. For its part, the State mentioned a fifth person who was dismissed despite not having signed the petition, an argument for which no evidence was provided and which is not taken into account because it is time-barred.

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[214] *Cf. Mutatis mutandi, Case of Herrera Ulloa v. Costa Rica, supra*, para. 133*; Case of Norín Catrimán et al. v. Chile, supra*, para. 376; and *Case of Granier et al. (Radio Caracas Television) v. Venezuela, supra*, paras. 164 and 234.

[215] *Cf. Case of Apitz Barbera et al. v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of August 5, 2008. Series C No. 182, para. 209, and *Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 24, 2017. Series C No. 339, para. 150.

164. However, the Court notes that from the arguments of the Commission or the representative, it does not follow that the political discrimination suffered by the alleged victims resulted from a lack of protection owing to the unequal application of a domestic law or regulation, which would be of a contractual nature. In fact, this case is even more serious and wide-ranging because they were discriminated against due to a misuse of power, concealed by a veil of legality, whereby a contractual clause that was justified as discretionary was applied. This means that a judgment based on equality is not properly applicable in this case.

165. In view of the foregoing, the Court considers that the discrimination suffered by the alleged victims has already been analyzed under Articles 23(1) and 13(1) of the Convention, in relation to Article 1(1) thereof, and therefore it is not necessary to rule on the alleged violation of the right to equality before the law, contained in Article 24 of the Convention.

D) ALLEGED FAILURE TO ADOPT DOMESTIC LEGAL PROVISIONS

166. With respect to the alleged failure to comply with Article 2 of the Convention,[216] the Court notes that the Commission and the representative did not specifically indicate what types of norms or practices should have been issued, developed or modified by the State to discharge its responsibility in this case, in accordance with the general obligation contained in Article 2 of the Convention.

167. Thus, the Court considers that insufficient elements have been provided to analyze the facts under this provision,[217] and therefore it is not appropriate to rule in this regard.

E) ALLEGED VIOLATION OF THE RIGHT TO PERSONAL INTEGRITY

168. Finally, citing the Inter-American Convention to Prevent and Punish Torture, the representative alleged that the termination of the contracts "without any form of trial, without the possibility of knowing the reasons for that sanction, and without the opportunity to defend themselves," deprived the alleged victims of their livelihoods, which caused them anguish and suffering regarding their future, stigmatization in the eyes of public opinion and closed the door to any other job in the public administration and even made it difficult to obtain employment in the private sector. Consequently, he alleged that "there is no doubt that the [presumed] victims in this case were subjected to cruel, inhuman or degrading treatment or punishment," which affected their physical and mental health, and that "the arbitrary deprivation of their livelihoods seriously affected their mental and moral integrity." In its Merits Report, the Commission stated that it did not have sufficient information to make a separate determination regarding the possible violation of Article 5 of the Convention, which it considered "subsumed in the [other] violations."

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[216] Article 2 of the Convention does not specify the type of measures required to adapt domestic law to the Convention, obviously because this depends on the nature of the provision requiring such adaptation, and the circumstances of the specific situation. Thus, the Court has interpreted that such adaptation implies the adoption of two types of measures, namely: i) the suppression of rules and practices of any nature that entail a violation of the guarantees enshrined in the Convention or that disregard the rights recognized therein or impede their exercise, and ii) the issue of rules and the development of practices conducive to the effective observance of those guarantees. *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 52, para. 207; *Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 172, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 186.

[217] *Cf., Mutatis mutandi, Case Chinchilla Sandoval v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of February 29, 2016. Series C No. 312, para. 254; and *Case of Lagos del Campo v. Peru, supra*, para. 165.

In its final arguments, the State asked the Court to declare inadmissible the alleged violation of this right, since it exceeds the factual framework of this case.

169. Article 5(1) of the Convention embodies, in general terms, the right to personal integrity of a physical, mental and moral nature, while Article 5(2) specifically establishes the absolute prohibition against subjecting a person to torture or to cruel, inhuman or degrading punishment or treatment, as well as the right of all persons deprived of their liberty to be treated with respect for the inherent dignity of the human person.[218] The violation of this right has several gradations and encompasses treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects caused by endogenous and exogenous factors (duration of the treatment, age, sex, health, context, vulnerability, etc.) that must be analyzed in each specific situation.[219]

170. The Court considers that it is not appropriate to analyze the facts of this particular case in relation to the definitions of torture or of cruel, inhuman or degrading treatment or punishment, in the terms argued by the representative, since they are not of the same order or magnitude as those types of cases. Consequently, it declares that the State is not responsible for the alleged violation of Article 5(2) of the Convention.

171. Furthermore, the Court has indicated that, in cases that do not entail a serious human rights violation, such as the instant case, the violation of personal integrity of the alleged victims or their families, in relation to the consequences of the facts and the suffering caused, must be proven[220] and analyzed in light of Article 5(1) of the Convention, based on the allegations and the relevant evidence.[221]

172. In the case file, there is no clear distinction between the alleged harm caused to their physical and mental health after the termination of their contracts, and the alleged material or moral damage; therefore, it is not appropriate to issue a ruling on the alleged violation of Article 5 of the Convention in that regard.[222] However, in the circumstances of the present case, the Court will take into consideration the effects that the facts have had on the alleged victims when determining the appropriate reparations in the corresponding chapter.

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218 *Cf. Case of Yvon Neptune v. Haiti. Merits, reparations and costs*. Judgment of May 6, 2008. Series C No. 180, para. 129; and *Case of Pollo Rivera et al. v. Peru, supra*, para. 136.

219 *Cf. Case of Loayza Tamayo v. Peru. Merits, supra*, paras. 57, and *Case of Ortiz Hernández et al. v. Venezuela. Merits, reparations and costs*. Judgment of August 22, 2017. Series C No. 338, para. 102.

220 *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 232, and *Case of Valencia Hinojosa et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 29, 2016. Series C No. 327, para. 143.

221 *Cf. Case of García Ibarra et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 17, 2015. Series C No. 306, para. 169; *Case of Valencia Hinojosa et al. v. Ecuador, supra*, para. 143.

222 Cf., Mutandis mutandi*, Case of García Ibarra et al. v. Ecuador, supra*, para. 170; and *Case of Acosta et al. v. Nicaragua*, para. 201.

VII.2
RIGHT TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION (Articles 1(1), 8(1)[223] and 25[224] of the American Convention)

Arguments of the parties and of the Commission

173. The ***Commission*** indicated that, "since it is an implicit sanction imposed by an unjustified decision, the [alleged] victims in this case were prevented from criticizing the real reason for [the sanction] or from seeking further review by a higher court" to analyze the seriousness of the conduct in question and the proportionality of the sanction. It noted that this lack of reasoning leads to non-punitive formal acts being turned into real sanctions as form of retaliation. Therefore it considered that the State's misuse of power, using the excuse of applying a discretionary power, constituted "a general violation of the guarantees of due process enshrined in Article 8 of the Convention," to the detriment of the alleged victims.

174. Furthermore, the Commission noted that the remedies pursued by the alleged victims - namely, the constitutional *amparo* and the criminal complaint - were not effective remedies to examine a misuse of power. It pointed out that, in both proceedings, the judicial authorities accepted as true the explanation of the use of discretionary powers, and merely confined themselves to deciding whether the contracts conferred such authority. It added that such corroboration was inadequate to determine whether discrimination existed in a case in which it is precisely alleged that such discrimination operated in a covert manner.[225] The Commission also concluded that the *amparo* proceeding did not comply with the guarantee of reasonable time "contained in Articles 8(1) and 25(1) of the Convention," since the delay could not be attributable to the complexity of the matter and the alleged victims participated actively in the process. Thus, despite the fact that the Venezuelan Constitution establishes the right to obtain a prompt decision, and considering the "brief, summary and effective" nature of the *amparo* action, the judicial authorities spent most of the time arguing over questions of competence, since the Constitutional Chamber took ten months to resolve the declination of jurisdiction, with the result that the judgment on the merits was issued more than a year after the *amparo* was filed, without the State having provided any justification whatsoever. Finally, with respect to the criminal investigation, the Commission considered that the judicial authorities did not provide adequate grounds for not accepting the alleged victims' arguments on the configuration of crimes and that the Prosecutor's Office did not carry out an adequate investigation, so that the appeal against the dismissal was not an effective remedy.

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[223] Article 8 of the Convention states: "1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

[224] Article 25 of the Convention states: "1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties. 2. The States Parties undertake: a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; b) to develop the possibilities of judicial remedy; and c) to ensure that the competent authorities shall enforce such remedies when granted."

[225] The Commission argued that "when a judicial authority is faced with an allegation of covert discrimination, the obligation of due diligence requires it to investigate beyond the formally stated motivation for the act, and to take into consideration all indicia, circumstantial evidence and other elements." In this case, although in the *amparo* action the judicial authorities referred to the allegation of discrimination, they only examined it formally and without due diligence, and set too high a standard by requiring the alleged victim to demonstrate "convincingly" the causal link between the discriminatory treatment and the decision taken. This implied placing the burden of proof "absolutely" on the alleged victims, without using all the legal means at their disposal to obtain the truth of what happened and not analyzing the complexity of the facts and the context.

175. With respect to due process, the ***representative*** argued that, owing to a misuse of power, the victims were subjected to an unfair punishment, not contemplated by law; that the punitive decision was expressed in the letter of dismissal, which did not state the reasons for it; and that the State violated the victims' right to an effective remedy owing to "the absolute ineffectiveness of the Ombudsman's Office and the lack of independence of the Judiciary and the Attorney General's Office of the Republic." Therefore, the available remedies, "although adequate, were ineffective." In his final arguments, the representative pointed out that the victims could not be required to exhaust a remedy that would be ineffective to reestablish the infringed legal situation, such as the ordinary labor jurisdiction, because they were not challenging an unjustified dismissal, but rather the political persecution and discrimination, which had consequences for their employment, *inter alia*. That is to say, in response to such an act, the only suitable remedy was the constitutional *amparo* before the labor courts, which was decided with excessive and unjustified delay. However, both the President of the Republic and the President of the Supreme Court had argued that the independence of public powers was an obsolete principle and that what was required was "cooperation" and "coordination" among the different public authorities. Therefore, given the lack of independence of the public authorities, it could not be expected that any remedy attempted in this case would have been effective and the facts of this case were part of a State policy, which made it impossible for any judicial remedy to prosper. As for the criminal investigation, the representative pointed out that the crimes denounced carried maximum prison terms of more than four years, for which reason it was mandatory to admit the cassation appeal, something that did not occur. Furthermore, the dismissal of the case granted the injured party the right to be heard by a supervisory (control) court before issuing it, which also did not happen, and therefore the dismissal became null and void.

176. In its final arguments, the ***State*** pointed out that Venezuela has separate systems for employment relations and that the legal system governing the legal relationship between the alleged victims and the CNF was established in the labor laws. The State stressed that this was not a relationship of a civil service type that would offer them the job security granted by law to career civil servants, nor was its disciplinary regime of administrative faults and sanctions applicable to them. Therefore, it was not necessary to open an administrative proceeding to terminate the existing contractual relationship and it was not an administrative sanction. Furthermore, it considered that the constitutional *amparo*, the criminal complaint and the petition before the Ombudsman's Office were not the appropriate remedies to obtain protection of their rights; rather, the ordinary labor jurisdiction was the appropriate channel to claim the rights of someone who considered himself to be a victim of unlawful dismissal, in order to request reinstatement and payment of lost wages. Since the alleged victims did not avail themselves of that remedy within the legally established period, the *amparo* action was in reality a remedy to try to overcome the expiration of the term. The State further argued that the *amparo* action as a procedural remedy to address cases of discrimination was only applicable when the alleged discrimination occurs within an existing employment relationship. Therefore, there is no violation of the right to judicial protection. It also alleged that during 2004, the Constitutional Chamber issued 3,257 judgments, which makes the time taken to resolve the procedural action of jurisdiction reasonable. Moreover, in both instances the courts resolved the merits of the case within two months in each instance, once jurisdiction had been determined, which is a reasonable time. Finally, it argued that the facts denounced by the alleged victims before the Public Prosecutor's Office were not of a criminal nature.

Considerations of the Court

177. Under the American Convention, States Parties are obliged to provide effective judicial remedies to victims of human rights violations (Article 25), which must be substantiated in accordance with the rules of due process of law (Article 8(1)). Likewise, the right of access to justice must guarantee, within a reasonable time, the right of the alleged victims or their families

to ensure that everything necessary is done to learn the truth of what happened and, as appropriate, to investigate, prosecute and, where applicable, punish those responsible.[226]

178. The Court will analyze the arguments in the following order: a) action of constitutional *amparo*; and b) complaint before the Public Prosecutor's Office.

A) Action of constitutional amparo

179. First of all, the parties have discussed whether the constitutional remedy of *amparo* was an appropriate or effective remedy to allow the alleged victims to question their situation or request a declaration of violation of their rights. The State, on the one hand, argued that the appropriate remedy was the ordinary labor jurisdiction, since the alleged victims were recruited to provide services to the public administration and were thus governed by the Organic Labor Law. The representative, on the other hand, argued that this remedy was useless to reestablish the infringed legal situation, since the plaintiffs were not challenging an unjustified dismissal, but rather the alleged persecution and political discrimination to which they were subjected, which in practical terms affected their employment. Therefore the only suitable remedy was the *amparo*. Secondly, it was argued that the *amparo* was not effective and was decided with excessive or unjustified delay, in violation of the guarantee of reasonable time.

180. Article 25(1) of the Convention establishes, in broad terms, the obligation of States to provide to all persons subject to their jurisdiction an effective judicial remedy against acts that violate their basic rights.[227] In addition, States have the responsibility to establish rules and ensure the proper application of effective remedies and guarantees of due process of law by the competent authorities to protect the persons under their jurisdiction against acts that violate their fundamental rights or that lead to the determination of their rights and obligations.[228] The Court considers it pertinent to analyze the *amparo* action attempted in this case under Article 25 of the Convention.[229]

181. In reiterating that this case does not address the issue of exhaustion of domestic remedies (*supra* para. 17), the Court has held that the obligation under Article 25 of the Convention presupposes that the remedy is "adequate," which means that its function within the domestic legal system must be "suitable" to protect the legal situation infringed,[230] that its application by the competent authority[231] must be effective, and that it must provide the necessary elements to

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[226] *Cf. Case of Fairén Garbi and Solís Corrales v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 2, para. 90; and *Case of Ortiz Hernández et al. v. Venezuela, supra,* para. 143.

[227] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of Lagos del Campo v. Peru, supra*, para. 174.

[228] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 237, and *Case of Lagos del Campo v. Peru, supra*, para. 176.

[229] Although the content or scope of the right protected by Article 25 of the Convention is not fully defined, as this may also depend on the system or regulation of the specific remedies of the obligated State, or even on the absence of remedies to protect certain legal situations, the Court has considered that it "is a general provision that includes the procedural institution of *amparo*, understood as a simple and brief judicial remedy for the protection of all the rights recognized by the constitutions and laws of the States Parties and by the Convention." *Cf. Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights*). Advisory Opinion OC-8/87 of January 30, 1987, para. 32; and *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights*). Advisory Opinion OC-9/87 of October 6, 1987, para. 23.

[230] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 64, and *Case of Maldonado Ordóñez v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of May 3, 2016. Series C No. 311, para. 109.

[231] *Cf. Case of Maritza Urrutia v. Guatemala. Merits, reparations and costs.* Judgment of November 27, 2003. Series C No. 103, para. 117; *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 123; and *Case of Lagos del Campo v. Peru, supra*, para. 184.

remedy it.[232] The relevant substantive issue in this case is whether the *amparo* remedy could and should effectively respond to alleged forms of covert discrimination, political persecution or misuse of power in the exercise of public office.

182. In fact, when filing the *amparo* action in July 2004, the presumed victims alleged "acts of discrimination in the workplace that are expressly prohibited;" that the termination of the contracts "occurred for political reasons, for having signed against the President of the Republic;" that the "facts as a whole constituted acts of political discrimination against [them];" and that what was being denounced was "not an unjustified dismissal, but an unconstitutional action by an organ of the public administration […] that culminated in violating [their] constitutional rights." They then requested the restitution of the rights they considered to have been violated by the National Border Council and, consequently, and asked to be allowed to "return to their jobs under the same conditions." They also requested that the said agency be ordered to "refrain from adopting any measure that implies discriminating against the aggrieved parties […] for going before the organs for administration of justice."

183. In this regard, the State argued that, from a reading of Article 14 of the Regulations of the Organic Labor Law, it is clear that the *amparo* action –as a procedural mechanism to address cases of discrimination– was only applicable when the alleged discrimination occurs within an existing employment relationship. The State's interpretation of said provision was not, in any sense, relevant during the processing of the *amparo* and the ruling and, in any case, would imply a totally restrictive interpretation of the procedural scope of the remedy for the remedial effects that were invoked.

184. In fact, the relevant point is that the court that heard the *amparo*, prior to expressing its doubts about its competence to rule on it owing to the position of the official against whom it was filed, noted that "since the right infringed or threatened with infringement is a constitutional right, any judge, in his capacity as guarantor of constitutional supremacy […], could, in principle examine violations of such constitutional rights or guarantees." Then, in resolving the issue of jurisdiction, the Constitutional Chamber of the Supreme Court indicated that "to elucidate the affinity of the nature of the right violated or threatened with violation, […] the judge must review the particular sphere in which the violation or threat occurred or could occur; he must therefore review the legal situation of the alleged victim *vis à vis* the injuring agent." Thus, upon observing that the plaintiffs filed the *amparo* action "owing to alleged constitutional violations," among other reasons, the Chamber declared that the court was competent to resolve the action, which, in effect, was admitted for processing. Subsequently, the same court noted that "the main claim is not that the dismissal be evaluated, in order to obtain the reinstatement and payment of lost wages, [which] in any case, is the accessory claim, [but] that it be determined that the plaintiffs indeed suffered or were victims of discriminatory treatment by the State." In other words, it noted that the action had been brought "to determine the causal relationship or nexus between conduct that is not only unlawful or unconstitutional, but that also violates basic human rights such as equality before the law and the prohibition of discrimination based on political reasons, as the event that led to the termination of the employment relationship between the plaintiffs with the agency that is the subject of the *amparo* action. If this is so, there can be no question regarding the inadmissibility of the present action […] but rather it is necessary to examine the merits of the dispute in order to decide whether or not the action is admissible."

185. In other words, the court considered that there was "no reason that would prevent it from hearing the merits, since it is not sufficient to attempt a criminal action […], without prejudging whether or not it is the appropriate procedural mechanism to establish the violation of the constitutional rights denounced, in order to be in the presence of another pre-existing and suitable

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[232] *Cf. Advisory Opinion OC-9/87, supra*, para. 24, *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 302, para. 247, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 161.

judicial mechanism to reestablish the infringed legal situation." Furthermore, in declaring the action inadmissible, the court left open the possibility that, within one year and "in case of disagreement, the complainants may go before the labor courts via the ordinary procedural mechanisms to claim the rights to which they are entitled due to the termination of their employment relationship, and to determine whether or not the termination of their work contracts was justified, in order to establish whether or not the compensation established by law is applicable."

186. Thus, the *amparo* action filed by the alleged victims was admitted for processing and, even if it was declared inadmissible on the merits, it was not for lack of standing. Therefore, the State has not only failed to demonstrate that the *amparo* action was not suitable for the purposes for which it was attempted by the alleged victims, but in addition, its arguments contradict the decisions of its own judicial authorities. It is clear that, within the framework of such action, these authorities were empowered and in a position to resolve the legal situation that was allegedly infringed, and therefore the *amparo* action was an appropriate remedy to consider this case.

187. Consequently, the Court will now analyze whether the State ensured the alleged victims adequate access to justice and to a prompt and effective remedy, pursuant to Articles 8(1) and 25(1) of the Convention.

188. The principle of effective judicial protection requires that judicial proceedings be accessible to the parties, without obstacles or undue delays, so that they can attain their objective in a prompt, simple and comprehensive manner.[233] For a State to comply with the provisions of Article 25 of the Convention, it is not sufficient that the remedies exist formally, but it is also necessary that they are effective in the terms of this article;[234] in other words, that they provide results or answers to the violations of rights recognized either in the Convention, the Constitution or in law.[235] Moreover, an effective remedy means that the analysis of a judicial remedy by the competent authority cannot be limited to a mere formality; rather, that authority must examine the reasons cited by the plaintiff and issue an express pronouncement on them.[236]

189. In relation to the foregoing, this Court has considered that a clear presentation of a decision is an essential part of a judicial ruling, understood as "reasoned justification that allows a conclusion to be reached."[237] In this regard, the obligation to provide grounds for such decisions is a guarantee associated with the proper administration of justice, which gives credibility to legal decisions adopted within the context of a democratic society.[238] Thus, the decisions adopted by the domestic bodies that could affect human rights must be duly justified, because, if not, they

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233 *Cf., Mutatis mutandi, Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of July 5, 2011. Series C No. 228, para. 106, and *Case of Furlan and Family v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2012. Series C No. 246, para. 211.

234 *Cf. Advisory Opinion OC-9/87, supra*, para. 24, and *Case of Lagos del Campo v. Peru, supra*, para. 188.

235 *Cf. Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 123, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 155.

236 *Cf. Case of López Álvarez v. Honduras. Merits, reparations and costs*. Judgment of February 1, 2006. Series C No. 141, para. 96, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile*, para. 123.

237 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 107; *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 168.

238 *Cf. Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela, supra*, para. 77; and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 168. This has also been established by the European Court in the Case of Suominen: "The Court then reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based." *Cf. ECHR, Suominen v. Finland,* (No. 37801/97), Judgment of July 1, 2003, para. 34.

would be arbitrary decisions. [239] In this regard, the reasons given for a judgment and for certain administrative acts must demonstrate the facts, reasons and provisions upon which the competent authority based its decision.[240] Moreover, the decision must show that the arguments by the parties have been duly weighed and that the body of evidence has been analyzed. Therefore, the duty to state grounds is one of the "due guarantees" included in Article 8(1) to safeguard the rights to due process, access to justice and to know the truth, in relation to Article 25 of the Convention.[241]

190. The alleged victims had access to the *amparo* action, which was decided on the merits after examining certain evidence during the hearing. However, the authorities that decided the action on the merits, or on appeal, failed to assess the recordings of the telephone conversations provided, considering them to be unlawful evidence. Instead they focused their analysis on the fact that the evidence provided by the complainant did not "reliably establish the causal link between the alleged discriminatory treatment for having signed the petition and the decision to terminate the employment relationship." Moreover, they accepted as true the explanation of the administrative authority, namely, the application of the seventh clause of the contract as a discretionary power of the employer.

191. Although the actions of the State authorities are covered by a presumption of lawful conduct, in cases in which an arbitrary action or abuse of power is alleged, the authority called upon to control such acts must verify, using all means at its disposal, if there is a reason or purpose different to that of the provision that grants such powers to the State authority that formally justify its actions (*supra* paras. 121 and 122). Undoubtedly, part of the obligation of the judges and organs involved in the administration of justice at all levels is to exercise *ex officio* "control of conventionality" between the domestic provisions or the State's actions and the American Convention, obviously within the framework of their respective jurisdictions and the corresponding procedural rules.[242]

192. In this case, in the face of allegations of political persecution or discrimination, covert reprisals or indirect arbitrary restrictions on the exercise of a series of rights, the judges were in a position and had the obligation, through conventionality control, to ensure judicial protection with due guarantees to the alleged victims,[243] by analyzing the real reason or purpose of the impugned act beyond the formal reasons invoked by the challenged authority, as well as the relevant contextual and circumstantial elements mentioned in the previous chapter. This is because although "the employer cannot be required to provide the *probatio diabolica* of the negative act of discrimination" (according to the court that decided the appeal), in this type of case it is practically impossible for the appellant to "conclusively" demonstrate a causal link, with direct evidence, between discriminatory treatment and the formal decision to terminate the contracts, as required by the court that decided the *amparo*.

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239 *Cf. Case of Yatama v. Nicaragua, supra*, para. 152; and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 168.

240 *Cf. Case of Claude Reyes et al. v. Chile. Merits, reparations and costs*. Judgment of September 19, 2006. Series C No. 151, para. 122; and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 168.

241 *Cf., Mutatis mutandi, Case García Ibarra et al. v. Ecuador*, supra, para. 133; and *Case of the Dismissed Workers of PetroPerú et al. v. Peru*, supra, para. 168.

242 *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, para. 124; and *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2006. Series C No. 158, para. 128. See also *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011. Series C No. 221, para. 193; and *Case of Vereda La Esperanza v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 341, para. 261.

243 *Cf., Mutatis mutandi, Case of Chinchilla Sandoval v. Guatemala, supra*, para. 243.

193. The court properly stated that the purpose of the dispute was to establish whether there was a "causal link between the alleged discriminatory treatment for political reasons and the termination of the plaintiffs' contracts." However, it limited its action to gathering the statements of the three alleged victims and of the then Executive Secretary of the CNF; it restricted its analysis to determining that the plaintiffs did not demonstrate that, being in an identical *de facto* situation in relation to other workers at the agency, they received a different or unequal treatment to the detriment of their rights; and it omitted to carry out other procedures that could be relevant to prove the alleged discrimination.[244] There is also insufficient reasoning in the judicial decisions with respect to all the arguments presented, particularly the possible commission of a discriminatory act or political retaliation, given the context and circumstantial elements presented.

194. The domestic courts also rejected as evidence the recordings and transcripts of telephone conversations between Ms. San Miguel and two officials connected with the matter (*supra* para. 32), because they considered them "unlawful and illegitimate" evidence that could not be admitted at trial, since they had been "obtained without the consent of the presumed interlocutors" and there was no certainty as to their voices. With regard to the concept of prohibited evidence, in its decision the court did not mention or explain which specific legal rule or principle the recording made by Ms. San Miguel would have contravened, nor did it indicate which prohibition of a material and procedural nature such evidence had allegedly infringed. The court's ruling does not specify the legal provision or principle on which it considered that the consent of one of the interlocutors of a conversation would be based. In the circumstances of this case, the consent of one of the interlocutors to a conversation was an essential element for considering that the recording or taping of a communication made by the other interlocutor, who alleged an infringement of his rights, was unlawful and therefore affected its evidentiary character. The court that heard the appeal provided no additional arguments in that respect.

195. Thus, the courts that heard the *amparo* considered such evidence unlawful, without taking into account the public interest of the matter and also the fact that in this case it was the only direct means of proof. Nor did they admit certain journalistic reports and, in short, did not investigate the reasons for the dismissal, settling for generalities without specific support.

196. Consequently, the Court concludes that the reasons or grounds provided by the domestic courts were insufficient to decide on the legal situation that was allegedly infringed, thereby affecting the alleged victims' right of access to justice and to an effective judicial remedy.

197. On the question of whether the *amparo* action was processed expeditiously, and regarding the alleged violation of the principle of reasonable time established in Article 8 of the Convention, the Court recalls that in the case of *Apitz Barbera et al. v. Venezuela* it considered that, in accordance with Venezuelan domestic law, it was necessary to analyze this matter by drawing a distinction between the duration of an *amparo* ruling and the duration of an appeal for annulment which, although exercised together, pursue different objectives.[245] Although this situation is not analogous to the facts of the instant case, in which no appeal for annulment was filed, it is relevant that in the case of *Granier et al. v. Venezuela* this Court considered that the alleged unwarranted delay of an *amparo* remedy should be analyzed in light of Article 25 of the Convention,[246] which *is* applicable to the instant case.

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[244] For example: i) taking the statement of the then President of the National Border Council, José Vicente Rangel Vale, who signed the order to terminate the contracts and who was accused of having exercised this power in an arbitrary manner, ii) conducting interviews with other employees or officials of the National Border Council, whose contracts were supposedly terminated for similar or dissimilar reasons; iii) summoning the personnel attached to the National Border Council to testify on the facts of the case and the context; and iv) requesting the staff payroll of the National Border Council for 2003, as well as the list of signatories of the petition for the presidential recall referendum.

[245] *Cf. Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela, supra*, para. 170.

[246] *Cf. Case of Granier et al. (Radio Caracas Television) v. Venezuela, supra*, para. 284.

198. In this regard, the Court considers that, in order to assess the promptness with which an *amparo* action or remedy should be processed, in the terms of Article 25 of the Convention, it is necessary to determine whether the competent judicial authority has acted in accordance with the needs for protection of the right allegedly violated, based on the nature of the legal situation allegedly infringed, as well as the plaintiff's particular situation of vulnerability in relation to the possible or imminent impact or harm that he or she would suffer if the remedy were not resolved with the diligence that the situation requires.

199. In this case, in each instance the courts resolved the matter on the merits, once jurisdiction had been determined, within two months respectively, which clearly meets the criterion of expeditiousness of the remedy under Article 25 of the Convention. Certainly, the Constitutional Chamber of the Supreme Court took almost 10 months to resolve an initial declination of jurisdiction of the court, despite the determination that the authority appealed against was not acting as Minister of Foreign Relations, but as President of the National Border Council, a finding of no complexity whatsoever. However, it has not been demonstrated that this decision and its processing involved obstructive action. In short, the Court notes that insufficient elements have been provided to consider that the State is responsible for not having ensured a prompt remedy to the alleged victims, in the terms of Article 25 of the Convention.

200. In conclusion, the Court declares that the State is responsible for failing in its obligation to ensure the rights of access to justice and to an effective remedy, recognized in Articles 8(1) and 25 (1) of the American Convention, in relation to Article 1(1) thereof, to safeguard or protect the right to political participation of Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña.

B) Complaint before the Public Prosecutor's Office

201. In relation to the complaint filed in May 2004 by the alleged victims against the then President and Secretary of the CNF (*supra* paras. 96 to 101), the State indicated that, as was established by the Prosecutor's Office, the alleged conduct was not of a criminal nature. For his part, the representative referred to various provisions of the Criminal Code, the Law of Suffrage and Political Participation and the Anticorruption Law, to allege that, in relation to these facts, there had been threats as well as other unlawful conduct with abuse of authority; impediments to the exercise of voters' political rights; actions to restrict citizens' freedom to vote; and electoral favoring of a candidate or political movement. The Commission considered that the judicial authorities did not adequately examine the alleged covert discrimination; that the Prosecutor's Office did not adequately investigate the real reason for the termination of the contracts; and that the appeal against the decision to dismiss the case - without providing adequate grounds for dismissing the arguments of the alleged victims and the reasons for considering the appeal inadmissible - did not constitute an effective remedy.

202. Certainly, the obligation to investigate is one of means or conduct, so it is not necessarily breached by the mere fact that the investigation does not produce a satisfactory result. Therefore, the steps taken to investigate the facts must be assessed as a whole and, in principle, it is not for this Court to decide the appropriateness of the investigative measures or to determine the hypotheses of authorship used during the investigation.[247] In this case, although it is not clear from the decisions of the Prosecutor's Office and the court that they analyzed all relevant aspects of the complaint regarding the criminal nature of certain behaviors, the Court notes that

[247] *Cf. Case of Castillo González et al. v. Venezuela. Merits*. Judgment of November 27, 2012. Series C No. 256, para. 153; and *Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 128.

insufficient elements have been provided to determine whether the actions of various bodies involved in the criminal investigation were in breach of the duty to investigate.[248]

203. In relation to the foregoing, this Court recalls that it is not a criminal court in which the criminal responsibility of individuals can be determined; rather it is up to the domestic courts to examine the facts and the evidence presented in the individual cases. The responsibility of States under the Convention should not be confused with the criminal responsibility of private individuals.[249] Moreover, the international jurisdiction, which is of a reinforcing or complementary nature,[250] does not act as a higher court or a court of appeal to decide on disputes between the parties on the scope of the evaluation of evidence or the application of domestic law in aspects that are not directly related to the observance of international human rights obligations.[251]

204. Thus, it is not for this Court to determine the application or interpretation of criminal provisions of the legal system then in force in the State, in a specific case, for example on the appropriateness of a dismissal, without prejudice to the fact that it is clear that the decision must justify the need to issue such dismissal.[252]

205. Consequently, the Court considers that there are insufficient elements to analyze the facts in relation to the right of the alleged victims to be heard, in the terms of Article 8(1) of the Convention, with respect to the complaint filed in the criminal jurisdiction.

C) Alleged lack of independence of the Judiciary

206. Lastly, the representative alleged that the facts of this case reflect a lack of independence of the Judiciary, which was subject to directives from the Executive Branch and even to coordination between the latter and public institutions, namely: between the then President of the Republic and the National Electoral Council for the handover of the forms; in the Council's decision to allow voters an opportunity to withdraw their signatures; and in the indifference of the Attorney General's Office and the Ombudsman's Office. He argued that, in the absence of the independence of the public authorities, it was impossible for any legal remedy to prosper.

207. The guarantee of the independence of judges is intended to prevent the judicial system and its members from being subjected to undue restrictions in the exercise of their functions, by bodies outside the Judiciary, or even by those judges with review or appellate functions.[253] In addition, the guarantee of judicial independence includes a guarantee against external pressures,[254] and therefore the State must refrain from undue interference with the Judicial Branch

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248 *Cf., See also Case of Granier et al. (Radio Caracas Television) v. Venezuela, supra*, para. 294.

249 *Cf. Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 37, and *Case of Vereda La Esperanza v. Colombia, supra*, para. 259.

250 The Preamble to the American Convention states that this international protection is "in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States." See also, *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights* (arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 31, and *Case of Vereda La Esperanza v. Colombia, supra*, paras. 259 and 260.

251 *Cf. Case of Nogueira de Carvalho et al, v. Brazil. Preliminary objections and merits.* Judgment of November 20, 2006. Series C No. 161, para. 80, and *Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia, supra*, para. 225.

252 *Cf., Mutatis mutandi, Case of Acosta et al. v. Nicaragua, supra*, para. 159.

253 *Cf. Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela, supra*, para. 55, and *Case of Acosta et al. v. Nicaragua, supra*, para. 171.

254 *Cf. Case of the Constitutional Court v. Peru. Merits, reparations and costs*. Judgment of January 31, 2001. Series C No. 71, para. 75, and *Case of Acosta et al. v. Nicaragua*, supra, para. 171. See also: ECHR*, Campbell and Fell v. United Kingdom*, (No. 7819/77; 7878/77), Judgment of June 28, 1984, para. 78, and ECHR*, Langborger v. Sweden*, (No.

or its members - that is, in relation to a specific judge - and must prevent such intrusions and investigate and punish those who commit them.[255]

208. Furthermore, a remedy which proves illusory due to the general conditions of the country, or even the particular circumstances of a given case, cannot be considered effective. This may occur, for example, when its ineffectiveness has been demonstrated in practice; when the Judiciary lacks the necessary independence to rule impartially; or because of any other situation that results in a denial of justice.[256] Nevertheless, it is not sufficient to refer in general terms to an alleged context to reach the conclusion that there was a violation of independence and impartiality in a given process, so it is necessary to present specific arguments to consider such as hypothesis.[257]

209. It is possible to consider that there are sufficient elements to suggest that officials of the administration of justice were subjected to undue restrictions in the exercise of their duties by individuals or organs outside of the Judicial Branch. Also, as has been confirmed in several cases before this Court, it is no less true that during the periods relevant to the facts of this case, various situations were identified in Venezuela that hindered or affected judicial independence, related to rules and practices associated with the process of restructuring the Judiciary, initiated in 1999 (which lasted for more than 10 years); the provisional status of judges; the lack of guarantees in disciplinary procedures against judges; intimidating behavior by senior officials of the Executive Branch towards certain judges for making decisions in the exercise of their duties; and the lack of a judicial code of ethics to ensure the impartiality and independence of the disciplinary body.[258]

210. However, the Court notes that no specific elements have been provided in this case that would lead to an analysis of whether, in the facts related to the *amparo* action or the criminal complaint filed by the alleged victims, the judicial authorities failed in their obligation to act and decide independently, in the terms of Article 8 of the Convention. Therefore the State's alleged responsibility in this regard has not been demonstrated.

VII.3
THE RIGHT TO WORK
(Article 26 of the American Convention[259])

11179/84), Judgment of June 22, 1989, para. 32. Also, see: United Nations Basic Principles on the Independence of the Judiciary, adopted at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from August 26 to September 6, 1985, and adopted by the General Assembly in Resolutions 40/32 of November 29, 1985 and 40/146 of December 13, 1985, principles 2, and 4, available at: http://www.ohchr.org/SP/ProfessionalInterest/Pages/IndependenceJudiciary.aspx.

255 *Cf. Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 30, 2009. Series C No. 197, para. 146, and *Case of Atala Riffo and Daughters v. Chile, supra*, para. 186.

256 *Cf.* Advisory Opinion OC–9/87*, supra,* para. 24*;* and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 154.

257 *Cf. Case of Granier et al. (Radio Caracas Television) v. Venezuela, supra*, para. 278.

258 *Cf. Case of Chocrón Chocrón v. Venezuela, supra*, paras. 108-172; *Case of Reverón Trujillo v. Venezuela, supra*, paras. 99-127; *Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela, supra*, paras. 55 to 67, 132 to 148 and 253.

259 Article 26: "Progressive Development. The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires."

211. In the instant case, as in the case of *Lagos del Campo v. Peru,*[260] in the litigation before this Court the Commission did not expressly refer to the violation of labor rights in light of the American Convention. However, this Court found that the alleged victims in all instances, both in the domestic courts and before the Inter-American Commission, repeatedly alleged the violation of their labor rights, in particular the rights to work and to job security, as well as the consequences of their dismissal. Thus:

> a. In the *amparo* action they alleged the violation of the rights to work and to job security (*supra* para. 88, footnote)
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> b. In the initial petition submitted to the Commission on March 7, 2006, the representatives of the petitioners explicitly denounced the infringement of the right to work, "an economic and social right" referred to in Article 26 of the Convention, as a consequence of "the decision by the Venezuelan authorities to dismiss the victims from their jobs." They argued that the right to work is protected under Article 26 of the Convention, which refers to the OAS Charter that recognizes said right in Article 45(a) and (b). They further argued that the violation of the petitioners' right to work also implies a violation of Article 29(b) of the Convention, since Venezuela is a party to the International Covenant on Economic, Social and Cultural Rights and to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Article 6(1) of which protects the right to work. Therefore, Article 26 of the Convention should be interpreted in harmony with these other international instruments which, in any case, must be complied with in good faith by the State party. Likewise, Article 29(d) prohibits an interpretation of the Convention as excluding or limiting the effect of the American Declaration of Rights and Duties of Man, Article XIV of which explicitly recognizes the right to work and to fair remuneration. In other cases, the Commission has learned of situations in which the State persists in using different forms of discrimination for ideological or other related reasons, in relation to granting employment, since the individuals who have expressed political differences with the regime are the ones who, in greater proportion, are unemployed. These facts also constitute violations of international treaties signed by the State within the framework of the International Labor Organization (ILO). In the instant case, the petitioners were dismissed from their jobs precisely for expressing opinions that differed from those of the government.[261]

212. The Court notes that from the first brief submitted to the Commission, the petitioners have requested that a violation of Article 26 of the Convention be declared. Thus, from the initial proceedings, the State was aware of the petitioners' claim and, in fact, argued before the Commission that it had not breached Article 26 of the Convention, since Venezuelan law establishes norms that provide monetary compensation to workers in the event of dismissal, as well as the payment of social benefits in accordance with the provisions of the Organic Labor Law. The State argued before the Commission that the employment relationship was terminated through a contractual clause that allowed it, and therefore there was no violation of workers' rights or any reduction of the guarantees that protect them, since it is not the employer's obligation to maintain a lifelong employment relationship. The State also emphasized that it has not ratified the Protocol of San Salvador, contrary to the petitioner's claim and, therefore, that this agreement was not in force in the terms required by the National Constitution. In spite of this, the State argued that it has complied with all the obligations contained in the Protocol, stressing that Venezuela's legal system was developed precisely to support workers' rights.[262]

213. In this regard, the Commission stated the following in Admissibility Report No. 152/10:

> 63. The Commission is also competent *ratione materiae,* being that the petition charges potential violations of human rights protected under the American Convention. Furthermore, the Commission notes that in pleading potential violations of Article 26 of the Convention, the petitioners made reference to other international instruments, in connection with this article. Accordingly, and regarding the alleged violation of Article 45 of the OAS Charter, the Commission notes that Article 26 of the

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260 *Cf. Case of Lagos del Campo v. Peru, supra*, para.133.

261 *Cf.* Initial petition submitted to the Commission on March 7, 2006 (evidence file, folios 1198 to 1203).

262 *Cf.* Brief of the State of January 14, 2008, presented to the Commission (evidence file, folios 1642 to 1646).

> American Convention itself refers to the OAS Charter in order to give content to the rights protected therein. Consequently, examination of a potential violation of this right would have to take into consideration the principles enshrined in the OAS Charter.
>
> 64. With respect to Article XIV (Right to work and to fair remuneration) of the American Declaration of the Rights and Duties of Man, the Commission recalls that the State undertook to preserve as a party to said Charter of the OAS, the rights set forth in the American Declaration, which is a source of international obligations. The Commission notes that the State ratified the American Convention on August 9, 1977, and that at the time of the facts of the instant petition said instrument was its main source of legal obligations. In light of the foregoing, the Commission deems that the analysis on the merits of the instant case ought to focus on the provisions of the American Convention, though this does not preclude the use of the provisions of the Declaration as a source of interpretation thereof.
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> 65. Regarding the alleged violation of Article 6 of the "Protocol of San Salvador" or Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, signed by the State on January 27, 1989, and currently pending ratification, in connection with Article 26 of the American Convention, the Commission notes that it is not competent *ratione materiae* to rule on instruments that have not been ratified by the State. Nevertheless, the Commission reiterates that under Article 29 of the American Convention, these provisions may be taken into account to determine the scope and content of the American Convention.
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> 66. Lastly, with regard to potential violations of Article 6 of the International Covenant on Economic, Social and Cultural Rights, ratified by the State on May 10, 1978, the Commission notes that it is not an approved instrument within the regional sphere of the Inter-American system; nevertheless, that does not preclude its use as a source of interpretation in examining the instant case, pursuant to Article 29 of the American Convention.[263]

214. Accordingly, when analyzing "other requirements for the admissibility of the petition" in its Admissibility Report, specifically the "characterization of the alleged facts," the Commission indicated that it "understands that the facts alleged by the complainants do not reflect *prima facie* a violation of the progressive development of the right to work enshrined in Article 26 of the Convention." Therefore, it concluded that "based on the alleged facts, there are insufficient elements to indicate that, should they be proven, it would constitute a violation of Articles 16 and 26 of the American Convention and, therefore, the petition is inadmissible with regard to the alleged violation of these rights."[264] In fact, in its Merits Report the Commission did not refer to this matter.

215. For his part, after the case was submitted to the Court, the representative did not allege the violation of Article 26 of the Convention or of the right to work in his pleadings and motions brief. However, he argued that the reason for the dismissals was the victims' exercise of their political rights, including the "right of every citizen to have access, under general conditions of equality, to the public service of his country," as recognized in Article 23(1)(c) of the Convention. He suggested that this would include a worker's guarantee of remaining in his post until there is a change in the circumstances that justified his entry into the public administration. Therefore, the representative argued that if one accepts the State's argument that it had discretionary power to terminate the employment contract when it deemed it appropriate, and without having to give any reason, this would imply the annulment of that right (*supra* para. 106).

216. In this regard, the State pointed out in its final arguments that in Venezuela there are separate regimes for labor relations: that the system governing the legal relationship between the alleged victims and the CNF was established in the labor law, not being a relationship of a civil service type that would offer them the job security granted by law to career civil servants, nor was its disciplinary regime of administrative faults and sanctions applicable to them, which made

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263 *Cf.* Admissibility Report No. 59/13, supra, paras. 63 to 66.

264 *Cf.* Admissibility Report No. 59/13, supra, paras. 91 and 93.

it unnecessary to initiate an administrative procedure to terminate an existing contractual relationship (*supra* para. 107).

217. Thus, the parties have had ample opportunity to refer to the scope of the rights involved in the facts analyzed[265] and the claim of the alleged victims also derives from the factual framework presented by the Commission, [266] since it is indeed an uncontested fact that the alleged victims had an employment relationship with the National Border Council.

218. The Court also notes that the domestic legal system, both in Article 87 of the Constitution of the Bolivarian Republic of Venezuela and in the Organic Labor Law in force at the time, explicitly recognized the right to work.

219. In view of the foregoing, this Court has jurisdiction—in light of the American Convention and based on the *iura novit curia* principle - to examine the possible violation of articles of the Convention that have not been alleged in the briefs submitted to it, on the understanding that the parties have had the opportunity to express their respective positions in relation to the facts that substantiate them.[267] Accordingly, for the purposes of this case, in light of Article 29 of the American Convention,[268] the Court will proceed to examine the scope of the right to work pursuant to Article 26 of the American Convention.

220. Consequently, the Court reiterates the considerations set forth in the aforementioned case of *Lagos del Campo v. Peru* and in the case of the *Dismissed Workers of PetroPerú et al. v. Peru*, in which it stated the following.[269]

> 141. The Court has repeatedly maintained the interdependence and indivisibility of civil and political rights and the economic, social and cultural rights, because they should all be understood integrally as human rights, without any specific hierarchy, and be enforceable in all cases by the competent authorities.
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> 142. As indicated in the *Case of Acevedo Buendía et al. v. Peru*, the Court has the authority to decide any dispute concerning its jurisdiction. Thus, the Court has previously asserted that the broad terms in which the Convention was drafted signify that the Court exercises full jurisdiction over all its articles and provisions. It should also be noted that although Article 26 appears in Chapter III of the Convention, entitled "Economic, Social and Cultural Rights," it is also found in Part I of this instrument, entitled "State Obligations and Rights Protected" and, consequently, is subject to the general obligations contained in Articles 1(1) and 2 in Chapter I (entitled "General Obligations"), as also are Articles 3 to 25 that appear in Chapter II (entitled "Civil and Political Rights").
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> 143. Regarding the specific labor rights protected by Article 26 of the American Convention, the Court observes that the wording indicates that these are rights derived from the economic, social, educational, scientific and cultural standards set forth in the OAS Charter. In this regard, Articles 45(b) and (c), 46 and 34(g) of the Charter establish that "[w]ork is a right and a social duty" and that this should be performed with "fair wages, employment opportunities and acceptable working conditions for all." These articles also establish the right of workers to "associate themselves freely for the defense and promotion of their interests." In addition, they indicate that the

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265 *Cf. Case of Godínez Cruz v. Honduras. Merits.* Judgment of January 20, 1989. Series C No. 5, para. 172; and *Case of Lagos del Campo v. Peru, supra*, para. 137

266 *Cf. Case of Lagos del Campo v. Peru, supra,* para. 135.

267 *Cf. Case of Lagos del Campo v. Peru, supra*, para. 139.

268 Article 29 (b) and (d) of the Convention establishes that: "[n]o provision of this Convention shall be interpreted as: […] (b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party; […] (d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have."

According to Article 29, labor rights such as the right to job security recognized in the Constitution of Peru of 1979 and 1993, should include, for the purposes of this case, the interpretation and scope of the right protected in Article 26 of the American Convention. *Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism.* Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5, para. 44.

269 *Cf. Case of Lagos del Campo v. Peru, supra*, paras. 141 to 154; and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 192.

State must "harmonize the social legislation" for the protection of such rights. In its Advisory Opinion OC-10/89, the Court stated that: […] the Member States of the Organization have signaled that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus, the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the OAS, to the corresponding provisions of the Declaration.

144. In this regard, Article XIV of the American Declaration stipulates that "[e]very person has the right to work, under proper conditions, and to follow his vocation freely." This provision is relevant to define the scope of Article 26, because "the American Declaration constitutes, as applicable and in relation to the OAS Charter, a source of international obligations." Furthermore, Article 29(d) of the American Convention expressly establishes that "[n]o provision of this Convention shall be interpreted as: […] d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have."

145. In addition to the derivation of the right to work based on an interpretation of Article 26 in relation to the OAS Charter, together with the American Declaration, the right to work is explicitly recognized in different domestic laws of the States in the region, as well as in a vast international *corpus iuris*; *inter alia*: Article 6 of the International Covenant on Economic, Social and Cultural Rights; Article 23 of the Universal Declaration of Human Rights; Articles 7 and 8 of the Social Charter of the Americas; Articles 6 and 7 of the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights; Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women; Article 32(1) of the Convention on the Rights of the Child; Article 1 of the European Social Charter and Article 15 of the African Charter on Human and Peoples' Rights.

146. Consequently, when analyzing the meaning and scope of Article 26 of the Convention in this case, the Court will take into account, in light of the general rules of interpretation established in Article 29 (b), (c) and (d) of this instrument, the aforementioned protection of job security as applicable to the specific case.

147. In this regard, the Committee on Economic, Social and Cultural Rights, in its General Comment No. 18 on the right to work, indicated that this included "the right to not be deprived of work unfairly." It has also indicated that "violations of the obligation to protect follow from the failure of States Parties to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to work by third parties," which include "failure to protect workers against unlawful dismissal."

148. For example, Convention 158 of the International Labor Organization (ILO), on termination of employment (1982), establishes that the right to work includes the lawfulness of termination in its Article 4 but stipulates, in particular, the need to provide "a valid reason for such termination" as well as the right to effective legal remedies in case of an unjustifiable termination. Likewise, ILO Recommendation No. 143 on workers' representatives requires that appropriate measures be taken and resources made available for the protection of workers' representatives […].

149. In correlation to the above, in can be understood that, in the private sphere, the State's obligation to protect the right to job security results, in principle, in the following duties: a) to adopt the appropriate measures for the due regulation and monitoring of this right; b) to protect workers against unjustified dismissal through its competent organs; c) in case of unjustified dismissal, to rectify the situation (either by reinstatement or, if appropriate, by compensation and other social benefits established in domestic law). Consequently, d) the State should provide effective grievance mechanisms in cases of unjustified dismissal, to ensure access to justice and the effective judicial protection of such rights […].

150. It should be noted that job security does not consist of an unrestricted permanence in the post; but rather, to respect this right, among other measures, by granting due guarantees of protection to the worker so that, if he or she is dismissed this is with justification, which means that the employer should provide sufficient reasons to impose this sanction with the due guarantees, and that the worker may appeal the decision before the domestic authorities, who must verify that the justification given is not arbitrary or unlawful. […]

154. Lastly, it should be pointed out that the Court has established previously that it has jurisdiction to examine and decide disputes relating to Article 26 of the American Convention, as an integral part of the rights named in it, and regarding which Article 1(1) establishes the general obligations of the States to respect and to ensure rights […]. The Court has also developed important case law on this matter, in light of different articles of the Convention. On this basis, the present judgment develops and substantiates a specific condemnation for the violation of Article 26 of the American Convention on Human Rights, established in Chapter III of this treaty, entitled Economic, Social and Cultural Rights.

221. In the instant case, the Court concluded that the arbitrary termination of the alleged victims' employment relationship with the National Border Council constituted a form of misuse of power, since a clause established in their contract was used as a veil of legality to conceal the true purpose of such a measure, namely: a reprisal against them for having legitimately exercised their rights of political participation and freedom of expression. In other words, they were subjected to political discrimination through arbitrary dismissal, which occurred in a context of complaints of similar dismissals and other forms of retaliation against those who had decided to exercise their freedoms by signing the referendum petition. Thus, their dismissal had the hidden intention of silencing and discouraging political dissidence, since it was used to intimidate others to prevent them from participating politically and expressing their ideas and opinions. In addition, this Court has considered that the right to work includes the obligation of the State to ensure the rights of access to justice and effective judicial protection, both in the public and the private spheres of labor relations.[270] As has been confirmed, in this case the State did not ensure those rights to the alleged victims given their arbitrary dismissal.

222. Consequently, the Court declares that the State is responsible for the violation of the right to work, recognized in Article 26 of the Convention, in relation to the rights to political participation, freedom of expression and access to justice, as well as the principle of non-discrimination, established in Articles 23(1), 13(1), 8(1), 25(1) and 1(1) of the same instrument, to the detriment of Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña.

VIII
REPARATIONS
(APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION[271])

223. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has produced harm entails the obligation to make adequate reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[272]

224. The Court has established that reparations should have a causal link with the facts of the case, the violations that have been declared, the damage proven, and the measures requested to redress the respective harm. Therefore, the Court will observe such concurrence in order to rule appropriately and according to the law.[273]

225. Reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), consisting of the re-establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the

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270 *Cf. Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 193.

271 Article 63(1) of the American Convention establishes that: "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

272 Regarding the obligation to make reparation and its scope, see *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, paras. 25 to 27; and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 194.

273 *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 196.

Court will determine measures to guarantee the rights that have been violated and to redress the consequences of those violations.[274]

226. Except in some particular aspects, the State did not present specific arguments on the claims for reparation. However, it argued in general terms that it is not appropriate to order reparations in favor of the alleged victims, because the violations of rights alleged by the Commission and the representative were not duly proven.

227. In consideration of the violations declared in the preceding chapter, the Court will proceed to analyze the claims presented by the Commission and the victims' representative, as well as the arguments of the State, in light of the criteria established in the Court's case law regarding the nature and scope of the obligation to make adequate reparation, with the aim of ordering measures to redress the harm caused to the victims.[275]

A. Injured party

228. Under the terms of Article 63(1) of the Convention, the Court considers Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña as the "injured party."

B. Obligation to investigate

229. The ***Commission*** asked the Court to order the State to carry out the relevant criminal, administrative or other proceedings related to the human rights violations declared, in an impartial and effective manner and within a reasonable time, in order to clarify the facts completely and determine the respective responsibilities. The ***representative*** made a similar request as a guarantee of non-repetition.[276]

230. The ***Court*** has considered that every human rights violation supposes a certain gravity by its very nature, because it implies the State's failure to comply with its obligations to respect and guarantee rights and freedoms to the detriment of individuals.[277] However, this should not be confused with what the Court, throughout its case law, has considered as "serious human rights violations," which have their own connotation and consequences.[278] It is also inappropriate to expect that in every case submitted to it, because it concerns human rights violations, the Court should automatically order the State to investigate and, if applicable, prosecute and punish those responsible for certain facts. In each case, it is necessary to assess the specific circumstances and facts, the scope of the State's responsibility and the effects that such an order by the Court would have at the domestic level, particularly if it implies reopening domestic proceedings in which a

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274 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, para. 26, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 195.

275 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 to 27, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 197.

276 The representative asked the Court to order the State to conduct, within a reasonable time, the relevant administrative and criminal proceedings, in order to identify those responsible for these facts and to apply the corresponding administrative, criminal or other types of sanctions, which should be proportional to the extremely serious nature of the acts committed and to the damage caused to society in general and to the victims of this case in particular.

277 *Cf. Case of Chinchilla Sandoval et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of February 29, 2016. Series C No. 312, para. 278; and *Case of Acosta et al. v. Nicaragua. Preliminary objections, merits, reparations and costs.* Judgment of March 25, 2017. Series C No. 334, para. 214.

278 *Cf. Case of Albán Cornejo et al. v. Ecuador. Merits, reparations and costs.* Judgment of November 22, 2007. Series C No. 171, para. 111; and *Case of Acosta et al. v. Nicaragua, supra*, para. 214.

final or *res judicata* decision has been reached, and there is no evidence or indication that these are the result of appearance, fraud or of a desire to perpetuate a situation of impunity.[279]

231. With regard to the present case, the Court observes that although the alleged victims characterized the facts of this case as a "misuse of power" and a violation of their constitutional rights, the Public Prosecutor's Office and the domestic courts considered that the matter in dispute was within the sphere of labor relations and also that the facts denounced were not of a criminal nature. Consequently, they decreed the corresponding dismissal of the case. The Court also notes that, in this way, the State's domestic jurisdiction avoided referring to the claim in the case, opting instead to endorse, under the cover of apparent legality, the use of an employment relationship to ultimately punish persons who provided their services to the State for expressing their political opinion through their participation in the petition for a recall referendum.

232. In reiterating that it is not for the Court to determine the criminal nature of the actions of the officials involved in the facts of this case, the Court notes that the misuse of power proven in this case not only caused the human rights violations declared therein, which could have criminal, disciplinary or other implications,[280] but also was not the subject of the judicial proceedings carried out by the State in relation to those facts, despite having been denounced as such. Consequently, it is appropriate to order the State to undertake investigations, through the appropriate channels, to identify and, if applicable, prosecute and punish those responsible for acts involving the misuse of power indicated in the case file.

C. Measure of satisfaction

233. The Court decides, as it has done in other cases,[281] that the State must publish, within six months of notification of this judgment: a) the official summary of this judgment prepared by the Court, once, in the Official Gazette in an appropriate and legible font; b) the official summary of this judgment prepared by the Court, once, in a newspaper with widespread national circulation, in an appropriate and legible font; and c) this judgment in full, available for at least one year, on an official web site accessible to the public from the site's home page.

234. The State must advise the Court immediately when it has made each of the publications ordered, irrespective of the one-year time frame for presenting its first report, as established in fourteenth operative paragraph of this judgment.

D. Compensation

235. The ***Commission*** asked the Court to order the State to provide adequate material and moral compensation to the victims. It also requested that, should the victims not wish to be reinstated in public office or if there should be objective reasons that prevent this, the State be required to pay compensation for this aspect, separately from the reparations related to the material and moral damages. The ***representative*** requested compensation for: "pecuniary"

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[279] *Cf. Case of García Ibarra et al. v. Ecuador, supra*, para. 204; and *Case of Acosta et al. v. Nicaragua, supra*, para. 214.

[280] In this regard, the eventual determination of criminal responsibility does not exclude the investigation of other types of responsibilities, such as administrative ones, if appropriate and based on the circumstances of each case. *Cf., mutatis mutandi, Case of Mendoza et al. v. Argentina, supra*, para. 224; and *Case of Chinchilla Sandoval et al. v. Guatemala, supra*, para. 280.

[281] *Cf. Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 25, 2010. Series C No. 212, para. 244; and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 211.

damage, which he defined as loss of income[282] and "damage to family property"[283] b) non-pecuniary damage;[284] and c) damage to the life project.[285]

236. The ***Court*** has developed the concept of pecuniary damage[286] and the situations in which it must be compensated.

237. With respect to the alleged pecuniary damage, the Court notes that, although the representative referred to salaries, bonuses and other financial benefits lost by the alleged victims, as well as to the salary currently earned by an official of the Venezuelan public administration that the victims would earn today, or to the salary of officials of the National Border Council, he did not provide any information or evidence in this regard. Furthermore, he did not provide specific calculations or amounts related to consequential damages or alleged family patrimonial damages, and did not refer to any methodology to calculate the compensation corresponding to the alleged loss of income. The most specific information in the file refers only to the amounts of the temporary contracts that the victims had with the CNF, respectively, from 1996, 1997 and 2000, until 2004. In this sense, it is clear that the victims had a reasonable and legitimate expectation to continue providing their services in the public administration. Given the lack of more specific information in this regard, in this case the compensation for pecuniary damage can only be determined based on criteria of reasonableness. Moreover, since in this case it is not feasible to order the reinstatement of the victims in positions in the public administration (*infra* para. 242), the Court finds it pertinent to include this aspect in the compensation for pecuniary damage, so that they may promptly receive some reparation in this regard.

238. Consequently, the Court decides to set the amounts of US$ 65,000.00 (sixty-five thousand United States dollars) in favor of Rocío San Miguel Sosa; US$ 40,000.00 (forty thousand United States dollars) in favor of Magally Chang Girón and US$ 30,000.00 (thirty thousand United States dollars) in favor of Thais Coromoto Peña, for pecuniary damage, which shall be paid directly to each one within the timeframe established for that purpose (*infra* para. 251).

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282 The representative requested compensation for loss of income "equivalent to the value of the salaries and other employment benefits that they stopped receiving." In particular, he requested that the alleged victims be paid in full the salaries, bonuses and other financial benefits lost from the time they were dismissed until the date of the Court's judgment, taking into account for this settlement the salary currently earned by an official of the Venezuelan public administration with the same rank and level which, based on their length of service and professional qualifications, the victims in this case would have today. Alternatively, the representative asked the Court to order the State to pay the victims the aforementioned lost wages earned by officials of the National Border Council, whose positions are comparable to those that the victims held previously, or would hold today.

283 The representative referred to the damage caused to the family assets as a result of the change in their living conditions and the expenses they incurred during the judicial proceedings in the domestic courts and in the actions pursued, both at the national and the international levels, to claim the restoration of their rights.

284 The representative argued that, "having been exposed to an unjust situation, which discriminated against them and stigmatized them before society, leaving them unemployed and without a means of earning a living, the victims in this case suffered the anguish of having to go out and look for a new job, a task that proved unsuccessful. The suffering caused by the sudden loss of their income altered their way of life, damaged their family relationships and isolated them from what had, until then, been their social circle; their colleagues and friends no longer called or invited them to their homes. This intense anguish and suffering, caused by the discriminatory and arbitrary act of the State, caused them physical and psychological harm that the Court will have to evaluate and assess."

285 The representative alleged that "the arbitrary exercise of public power also derailed the plans and projects that the victims had realistically made for their future. For them, their work at the National Border Council was not only a way to earn a living but also a way of giving meaning to their lives. Based on their qualifications and credentials, they all aspired to move up in their jobs - an aspiration that was not a pipe dream but a realistic prospect. In the case of Rocío San Miguel, she had long aspired to become a legal adviser to the National Border Council, because she had the required qualifications. All these plans and projects [of the victims] were cut short by the arbitrary and groundless decision to terminate their work contracts."

286 This Court has established that pecuniary damage supposes "the loss of or detriment to the victims' incomes, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal nexus with the facts of the case." *Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 198.

239. As for the alleged non-pecuniary damage, the judgment itself may constitute a form of reparation.[287] However, in its case law, the Court has developed the concept of non-pecuniary damage and has established that this may include both the suffering and distress caused to the direct victim and his family, the impairment of values that are of great significance for the individual, and also any changes of a non-pecuniary nature in the living conditions of the victim or his family.[288] Since it is not possible to assign a precise monetary value to non-pecuniary damage, full restitution to the victims in such cases may only be made through payment of a sum of money or delivery of goods and services of appreciable cash value, which the Court determines in reasonable exercise of its judicial authority and on the basis of equity.[289]

240. Based on their statements, the Court finds that the victims in this case were affected in various ways by the events, which caused them feelings of anguish, situations of stigmatization and rejection, as well as changes in their family relationships.[290] The psychological assessments carried out also mentioned certain aspects and magnitudes of emotional harm, particularly the fact that they found themselves in a sudden state of anguish and uncertainty, which could have affected their emotional and physical health, together with economic, social, family and interpersonal difficulties because of not being able to reactivate their professional life.[291] In view of the nature of the violations committed and the harm caused to the victims, the Court deems it appropriate to set, in equity, the sum of USD $ 10,000.00 (ten thousand United States dollars) as compensation for non-pecuniary damage, in favor of each of the victims, to be delivered directly to them within the time limit established for this purpose (*infra* para. 251).

E. Other measures requested

241. The ***Commission*** asked the Court to order the State "to reinstate the victims in the public administration in a position similar to the one they would currently hold, had they not been removed from their posts." The ***representative*** also requested their immediate reinstatement to the positions they held previously at the CNF, or to another equivalent position, taking into account their length of service and professional credentials. The ***State*** alleged that such reinstatement would imply a measure contrary to express constitutional provisions, since it is established that entry into the administrative career in the Venezuelan civil service is obtained through a public competition and that only through this mechanism can one aspire to obtain the status of career civil servant and the job security that it provides.

242. The ***Court*** considers that, owing to the specific circumstances of this case, it is not appropriate to order the reinstatement or reinsertion of the victims to positions in the public administration, for which reason the harm caused by their arbitrary dismissal has already been taken into account in setting the compensation (*supra* paras. 237 and 238).

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287 *Cf. Case of Suárez Rosero v. Ecuador. Reparations and costs*. Judgment of January 20, 1999. Series C No. 44, para. 72, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 227.

288 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 227.

289 *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, para. 53, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 227.

290 *Cf.* Statements of Thais Peña and Magally Chang (evidence file, folios 3095 and 3101) and statement of Rocío San Miguel during the public hearing held in this case.

291 *Cf.* Written opinions submitted by Manuel Gerardo Réquiz Cordero (evidence file, folios 3257 to 3260); Sergio Garroni Calatrava (evidence file, folios 3263 to 3266); and Elsa Cristina González Pérez (evidence file, folios 3270 to 3273).

243. The ***Commission*** asked the Court to order the State to adopt "legislative, administrative or other measures to prevent discrimination for political reasons" and to "ensure the existence of clear rules on access to and use of data collected in electoral processes, with the necessary safeguards to ensure the free expression of political opinions without fear of reprisals."

244. The ***Commission*** and the ***representative*** asked the Court to order the State to implement training programs for public officials at all levels.[292]

245. The ***representative*** requested that the Court order the State to: reform the Regulations of the National Electoral Council to guarantee the exercise of political rights without fear of retaliation; amend the Venezuelan Criminal Code to "incorporate the crime of political discrimination and impose severe penalties on those who practice it;" adopt "laws that effectively ensure the full exercise of freedom of expression and political rights without fear of reprisals, including criminal and administrative sanctions;" and hold a public act of reparation for the victims, condemning political discrimination, presided by a Minister of State and with the participation of judges of the Supreme Court, the Attorney General of the Republic, authorities of the National Electoral Council and the Ombudsman.

246. In this case, the ***Court*** has noted the absence of safeguards to guarantee the free exercise of the right to political participation of those who requested the referendum, as well as to protect them from pressure and possible reprisals. However, given the broad terms in which the Commission's recommendations and the representative's requests are formulated, it is not clear what type of provisions or which practices should be specifically regulated or developed by the State for those purposes, or how the Rules of the National Electoral Council should be reformed. Furthermore, in this case, insufficient elements were provided to analyze the facts under Article 2 of the Convention (*supra* paras. 166 and 167). In particular, with respect to the request to regulate the "crime of political discrimination," no arguments have been provided to determine what characteristics such a criminal offense could or should have and, more importantly, about the possible effectiveness of criminal law to regulate this type of situation. In short, the Commission and the representative failed to clearly indicate the procedural or substantive means or measures that the State would have to adopt in such cases to eventually comply with an order in that regard.[293] Therefore it is not appropriate to order the measures requested, without prejudice to the measures that the State must implement within the framework of its general obligations to respect and guarantee human rights, pursuant to Article 1(1) of the Convention. As for the other measures of reparation requested, the Court considers that the present Judgment constitutes, *per se*, a form of reparation, and therefore it is not pertinent to order them.

F. Costs and expenses

247. The ***representative*** asked the Court to order the State to reimburse the "duly accredited" costs and expenses incurred by the victims before the national and international courts. In addition, he requested that, "for the lawyers who have acted on behalf of the alleged victims in this case, the State be ordered to pay the fees that the Court considers appropriate, taking into account the time it has taken and the complexity of the case, as well as the serious nature of the rights violations committed, [indicating that such fees will be donated to the Victims' Legal Assistance Fund." The ***State*** argued that it was not responsible for paying the costs of legal

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[292] The Commission requested the implementation of training programs for: i) public officials of all levels on the prohibition of discrimination based on political opinion; and ii) judicial operators who are required to examine possible complaints of covert forms of discrimination or abuse of power. The representative requested the implementation of training courses and programs for officials of the National Electoral Council, the Attorney General's Office, the Judiciary and the Ombudsman's Office, at all levels, on the prohibition of discrimination for political reasons.

[293] *Cf. Case of García Ibarra et al. v. Ecuador, supra*, para. 205; and *Case of Acosta et al. v. Nicaragua, supra*, para. 226.

counseling and travel to the seat of the Court for the hearing, since the accreditation of five lawyers and three assistants was clearly excessive and an unusual practice.

248. The ***Court*** reiterates that, in accordance with its case law,[294] costs and expenses form part of the concept of reparation established in Article 63(1) of the Convention, because the efforts made by the victims to obtain justice, both at national and international level, entail expenses that must be compensated when the State's international responsibility is declared in a judgment. As for their reimbursement, it is for the Court to prudently assess their scope, which includes expenses generated before the authorities of the domestic jurisdiction, as well as those incurred in the course of the proceedings before this Court, taking into account the circumstances of the specific case and the nature of the international jurisdiction of protection of human rights. This assessment may be made based the principle of equity and taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.[295]

249. The Court notes that the representative requested that the State be ordered to pay the expenses incurred by the victims in their search for justice, both for costs and expenses as well as damage to family assets (*supra* para. 235), that is, as items that were already considered when determining the compensation for pecuniary damage. Also, as regards fees or expenses for representation, the representative did not provide any evidentiary support to prove the expenses incurred for his representation in the case.

250. Nevertheless, it is reasonable to presume that the representative incurred expenses since March 2006, the year in which the petition was filed before the Commission, for which reason the Court deems it appropriate to reimburse him for reasonable litigation costs and expenses, establishing, in equity, the amount of USD $20,000.00 (twenty thousand United States dollars). The State must deliver this compensation directly to the representative within the time limit set for this purpose (*infra* para. 251).

G. Method of compliance with the payments ordered

251. The State shall make the payments of compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses ordered in this judgment directly to the three beneficiaries and to the representative, respectively, within one year from notification of this judgment.

252. If the beneficiaries should die before they receive the respective compensation, this shall be paid directly to their heirs in accordance with the applicable domestic law.

253. With regard to the payment of compensation and reimbursement of costs and expenses, the State shall comply with its monetary obligations by paying in United States dollars or, if this is not feasible, in the equivalent amount in Venezuelan currency, using for the respective calculation the highest and most beneficial rate for the victims allowed by its domestic law, in force at the time of payment. At the stage of monitoring compliance with this judgment, the Court may

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294 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations*, supra, para. 42, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru*, supra, para. 242.

295 The Court has also indicated that the claims of the victims or their representatives for costs and expenses, and the supporting evidence, must be presented to the Court at the first procedural opportunity granted to them, that is, in the pleadings and motions brief, without prejudice to those claims being updated subsequently with the new costs and expenses arising from the proceedings before this Court. It is not sufficient to merely forward the probative documents; rather, the parties are required to include arguments that relate the evidence to the fact that it represents and, in the case of alleged financial disbursements, to establish clearly the items and their justification. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*, Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of the Dismissed Workers of PetroPerú et al. v. Peru, supra*, para. 243.

prudently readjust the equivalent of these amounts in Venezuelan currency, in order to prevent exchange rate variations from substantially affecting the purchasing power of these amounts.[296]

254. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the compensation established within the time frame indicated, the State shall deposit these amounts in an account or certificate of deposit in their favor, in a solvent Venezuelan financial institution, in United States dollars, and on the most favorable financial terms permitted by banking law and practice. If the corresponding compensation is not claimed within ten years, the amounts shall be returned to the State with the accrued interest.

255. The amounts allocated in this judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses shall be delivered in full to the persons indicated, as established in this judgment, without any deductions arising from possible charges or taxes.

256. If the State should fall into arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in Venezuela.

IX
OPERATIVE PARAGRAPHS

257. Therefore,

THE COURT

DECLARES,

Unanimously, that:

1. The State is responsible for the violation of the right to political participation, recognized in Article 23(1)(b) and (c) of the American Convention on Human Rights, in relation to the principle of non-discrimination, established in Article 1(1) thereof, to the detriment of Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña, pursuant to paragraphs 110 to 151 of this Judgment.

By six votes in favor and one against, that:

2. The State is responsible for the violation of freedom of thought and expression, recognized in Article 13(1) of the American Convention on Human Rights, in relation to the principle of non-discrimination established in Article 1(1) thereof, to the detriment of Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña, in the terms of paragraphs 152 to 160 of this Judgment.

Dissenting, Judge Humberto Antonio Sierra Porto.

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[296] *Cf. Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 262.

Unanimously, that:

3. The State is responsible for the violation of the rights of access to justice and to an effective remedy, established in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña, pursuant to paragraphs 177 to 196 and 200 of this Judgment.

By five votes in favor and two against, that:

4. The State is responsible for the violation of the right to work, recognized in Article 26 of the American Convention on Human Rights, in relation to the rights to political participation, freedom of expression and access to justice, as well as the principle of non-discrimination, recognized in Articles 23(1), 13(1), 8(1), 25(1) and 1(1) of this instrument, to the detriment of Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña, pursuant to paragraphs 211 to 222 of this Judgment.

Dissenting, Judges Eduardo Vio Grossi and Humberto Antonio Sierra Porto.

Unanimously, that:

5. The State is not responsible for the alleged violation of the right to equality before the law, recognized in Article 24 of the American Convention on Human Rights, for the reasons indicated in paragraphs 161 to 165 of this judgment.

Unanimously, that:

6. The State is not responsible for the alleged failure to comply with the obligation to adopt domestic legal provisions, established in Article 2 of the American Convention on Human Rights, for the reasons indicated in paragraphs 166 and 167 of this Judgment.

By five votes in favor and two against, that:

7. The State is not responsible for the alleged violation of the right to judicial guarantees, specifically the right to be heard by an independent judge and within a reasonable time, recognized in Article 8(1) of the American Convention on Human Rights, for the reasons indicated in paragraphs 197 and 201 to 210 of this Judgment.

Dissenting, Judges Eduardo Ferrer, Mac-Gregor Poisot and Eduardo Vio Grossi.

Unanimously, that:

8. The State is not responsible for the alleged violation of the right to personal integrity, recognized in Articles 5(1) and 5(2) of the American Convention on Human Rights, for the reasons indicated in paragraphs 168 to 172 of this Judgment.

AND ESTABLISHES,

Unanimously, that:

9. This Judgment constitutes, *per se*, a form of reparation.

10. The State shall adopt the measures necessary to ensure that the relevant facts of misuse of power do not go unpunished, in the terms of paragraphs 230 to 232 of this Judgment.

11. The State shall issue the publications indicated in paragraph 233 of this Judgment, within six months of its notification and in the terms of paragraphs 233 and 234 thereof.

12. The State shall pay the amounts established in paragraphs 238, 240 and 250 of this Judgment as compensation for pecuniary and non-pecuniary damage and for costs and expenses, pursuant to paragraphs 251 to 256.

13. The State shall, within one year of notification of this Judgment, submit to the Court a report on the measures taken to comply with it. In addition, the State shall submit a report, within six months of notification of this Judgment, indicating –for each of the reparation measures ordered– the State institutions, organs or authorities responsible for their implementation, including a work schedule for their full compliance.

14. The Court will monitor full compliance with this Judgment, in exercise of its authority and in compliance with its duties under the American Convention on Human Rights, and will consider this case closed once the State has fully complied with all its provisions.

Judges Eduardo Ferrer Mac-Gregor Poisot, Eduardo Vio Grossi and Humberto Antonio Sierra Porto advised the Court of their partially dissenting opinions, which accompany this Judgment.

DONE, at San José, Costa Rica, on February 8, 2018, in the Spanish language.

IA/Court HR *Case of San Miguel Sosa et al. v. Venezuela*, Merits, Reparations and Costs. Judgment of February 8, 2018.

Eduardo Ferrer Mac-Gregor Poisot
President

Eduardo Vio Grossi

Roberto F. Caldas

Humberto A. Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri
Secretary

So ordered,

Eduardo Ferrer Mac-Gregor Poisot
President

Pablo Saavedra Alessandri
Secretary

PARTIALLY DISSENTING OPINION OF
JUDGE EDUARDO FERRER MAC-GREGOR POISOT

CASE OF SAN MIGUEL SOSA ET AL. V. VENEZUELA

JUDGMENT OF FEBRUARY 8, 2018
(Merits, reparations and costs)

INTRODUCTION

1. The case of *San Miguel Sosa et al. v. Venezuela* (hereinafter "the Judgment") is an essential contribution to Inter-American case law in relation to the economic, social, cultural and environmental rights (hereinafter "social rights" or "ESCER"). In fact, this case serves to consolidate a jurisprudential line on the protection of individuals in employment settings. Together with the judgments in the cases of *Lagos del Campo*[1] and the *Dismissed Workers of Petroperú et al.,*[2] a triad of rulings has emerged that allows the Court to explore the scope of Article 26 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Pact of San José").

2. In the instant case, the Inter-American Court of Human rights (hereinafter "the Inter-American Court" or " the Court") determined that "the arbitrary termination of the employment contracts of the alleged victims with the National Border Council constituted a form of misuse of power, since a clause established in their contract was used as veil of legality to conceal the real purpose of such a measure, namely: a reprisal against them for having legitimately exercised their rights to political participation and freedom of expression. In other words, they were subjected to political discrimination through arbitrary dismissal, which occurred in a context of complaints of similar dismissals and other forms of retaliation against those who decided to exercise their freedom by signing the referendum petition. Thus, their dismissal had the hidden intention of silencing and discouraging political dissidence, since it was used to intimidate others to prevent them from participating politically and expressing their ideas and opinions. In addition, this Court has considered that the right to work includes the obligation of the State to ensure the rights of access to justice and to effective judicial protection, both in the public and the private spheres of labor relations."[3] (Underlining added).

3. Bearing in mind the foregoing, I issue this separate opinion for two reasons. In the first place, to explain the reasons why I consider the violation of the right to work to be obvious in this case, bearing in mind that all the violations declared in the judgment are derived from the same triggering act: "the arbitrary termination of the employment relationship" of the victims. And also, to make explicit some specific aspects of this case, which have made the protection of the right to work an expanding right in different scenarios and contexts of the labor relationship.

4. In second place, I issue this opinion to express, respectfully, my disagreement with the majority view regarding the non-violation of the right to judicial guarantees, specifically the

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1 *Case of Lagos del Campo v. Peru. Preliminary objections, Merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340.

2 *Case of Dismissed Workers of PetroPerú et al. v. Peru. Preliminary objections, Merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344.

3 *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 221.

right to be heard by an independent judge, recognized in Article 8(1) of the American Convention – operative paragraph 7 of the judgment.[4] This, taking into consideration the "misuse of power" declared in the judgment, in light of the context and proven facts of this case as well as the arguments presented by the representative of the victims.[5]

5. For the sake of greater clarity, I will address both aspects separately: I. The right to work as a right protected by the American Convention through Article 26 and its particularities in the instant case (*para. 6 to 42*); and II. Judicial independence as part of judicial guarantees and access to justice, in light of the context of the present case and the "misuse of power" declared in the judgment (*paras. 43 to 58*).

I. THE RIGHT TO WORK AS A RIGHT PROTECTED BY THE AMERICAN CONVENTION THROUGH ARTICLE 26 AND ITS PARTICULARITIES IN THE INSTANT CASE

A. The right to work as an autonomous right

6. The Committee on Economic, Social and Cultural Rights (hereinafter the "ESCR Committee") in General Comment No. 18, has considered that "[t]he right to work is a fundamental right, recognized in several international legal instruments;"[6] therefore, "[t]he right to work is an individual right that belongs to each person and is at the same time a collective right. […]The right to work should not be understood as an absolute and unconditional right to obtain employment."[7]

7. In this regard, General Comment No. 18 also stipulates —in relation to obligations— that although "[t]he principal obligation of States parties is to ensure the progressive realization of the exercise of the right to work [,] the States Parties have immediate obligations in relation to the right to work, such as the obligation to "guarantee" that it will be exercised "without discrimination of any kind" (Article 2(2)) [of the International Covenant on Economic, Social and Cultural Rights])."[8]

8. It should be emphasized that, as stated by the ESCR Committee in General Comment No. 20, "Non-discrimination [….] is a fundamental component of international human rights law and essential to the exercise and enjoyment of economic, social and cultural rights. Article 2(2) of the International Covenant on Economic, Social and Cultural Rights […] obliges each State Party "to guarantee that the rights enunciated in the present Covenant will be exercised

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[4] In this regard, the seventh operative paragraph establishes: "The State is not responsible for the alleged violation of the right to judicial guarantees, specifically to be heard by an independent judge and within a reasonable time, recognized in Article 8(1) of the American Convention on Human Rights, for the reasons stated in paragraphs 197 and 201 to 210 of this Judgment".

[5] *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 210.

[6] U.N., ESCR Committee, General Comment No. 18, *The Right to Work, Article 6 of the International Covenant on Economic, Social and Cultural Rights,* E/C.12/GC/18, February 6, 2006, para. 1.

[7] U.N., ESCR Committee, General Comment No. 18, *The Right to Work, Article 6 of the International Covenant on Economic, Social and Cultural Rights,* E/C.12/GC/18, February 6, 2006, para. 6.

[8] U.N., ESCR Committee, General Comment No. 18, *The Right to Work, Article 6 of the International Covenant on Economic, Social and Cultural Rights,* E/C.12/GC/18, February 6, 2006, para. 19.

without discrimination of any kind as to […] political or other opinion […]."[9] Thus, in relation to this prohibited category, the ESCR Committee has stated that "discrimination on grounds of political and other opinions "[…] includes both the holding and not-holding of opinion […] as well as expression of views […]."[10]

9. As a complement to the above, in General Comment No. 18, the ESCR Committee considered that "[t] he principle of non-discrimination mentioned in Article 2, paragraph 2, of the Covenant is immediately applicable and is neither subject to progressive implementation nor dependent on available resources. *It is directly applicable to all aspects of the right to work.*"[11] (Underlining added).

10. Furthermore, the ESCR Committee also considered that "[a]ny person […] who is a victim of a violation of the right to work should have access to effective judicial or other appropriate remedies at the national level [.] All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or a guarantee of non-repetition."[12] Likewise, the ESCR Committee has urged "judges and other law enforcement authorities […] to pay greater attention to violations of the right to work in the exercise of their functions."[13]

11. The considerations developed by the ESCR Committee in its General Comments, are now also reflected, to some extent, in Inter-American case law concerning the right to work (and its aspects) as an autonomous right; thus, specific obligations in relation to economic, social, cultural or environmental rights permeate the Inter-American System.

12. Unlike the traditional jurisprudence of the Inter-American Court, where social rights were subsumed in the civil and political rights, the recent decisions incorporated into the case law of the Inter-American Court show a new approach to the manner in which all rights are understood[14] —without any specific hierarchy, indivisible and interdependent. Under this perspective, the right to work has emerged as an autonomous right that may now be

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[9] U.N., ESCR Committee, General Comment No. 18, *The Right to Work, Article 6 of the International Covenant on Economic, Social and Cultural Rights,* E/C.12/GC/18, February 6, 2006, para. 2.

[10] *Cf.* U.N., ESCR Committee, General Comment No. 20, *Non-discrimination and Economic, Social and Cultural Rights (Article 2, paragraph 2 International Covenant on Economic, Social and Cultural Rights)*, July 2, 2009, E/C.12/GC/20, para. 23.

[11] U.N., ESCR Committee, General Comment No. 18, *The Right to Work, Article 6 of the International Covenant on Economic, Social and Cultural Rights,* E/C.12/GC/18, February 6, 2006, para. 33.

[12] U.N., ESCR Committee, General Comment No. 18, *The Right to Work, Article 6 of the International Covenant on Economic, Social and Cultural Rights,* E/C.12/GC/18, February 6, 2006, para. 48.

[13] U.N., ESCR Committee, General Comment No. 18, *The Right to Work, Article 6 of the International Covenant on Economic, Social and Cultural Rights,* E/C.12/GC/18, February 6, 2006, para. 50.

[14] I refer to the decisions in the cases of *Lagos del Campo v. Peru* and *Dismissed Workers of Petroperú* in relation to the right to work; in addition, it is necessary to consider the Court's position expressed in Advisory Opinion No. 23 on the justiciability of the right to a healthy environment protected by Article 26 of the American Convention. *Cf. Environment and human rights (State Obligations in relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and Personal Integrity- Interpretation and Scope of Articles 4(1) and 5(1), in relation to Articles 1(1) and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23.

justiciable or enforceable (like other Inter-American social rights)[15] directly before the organs of the Inter-American System.

13. Since the case of *Lagos del Campo v. Peru* (and reiterated in the case of the *Dismissed Workers of Petroperú*[16]) the Inter-American Court has considered that the right to work — and the different manifestations of this right—[17] are justiciable through Article 26 of the Pact of San José. Thus, as is evident in this case,[18] the right to work is derived from the provisions contained in the Charter of the Organization of American States (hereinafter "OAS Charter"[19]) and may be defined through the American Declaration on the Rights and Duties of Man (hereinafter "the American Declaration").[20] To this must be added a vast *national and international corpus iuris that* recognizes this right as an autonomous right.[21]

B. The right to work in the instant case and the iura novit curia principle

14. In this case, neither the Commission in its Merits Report, nor the victims' representative in his pleadings and motions brief, expressly alluded to the violation of Article 26 of the American Convention. Nevertheless, the Inter-American Court has repeatedly applied the *iura novit curia* principle,[22] which may be validly invoked in situations such as the present,

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[15] For example, the rights to health, food, culture, housing, environment, education, social security and to join trade unions.

[16] See: *Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340, para. 166 and *Case of Dismissed Workers of PetroPerú et al. v. Peru. Preliminary objections, Merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344, para. 193.

[17] The Court has had the opportunity to examine unjustified or arbitrary dismissal, job security and the right join a union for the defense and promotion of workers' interests.

[18] *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 220.

[19] "143. Regarding the specific labor rights protected by Article 26 of the American Convention, the Court observed that the wording indicates that these are rights derived from the economic, social, educational, scientific, and cultural standards set forth in the OAS. In this regard, Articles 45(b) and (c), 46 and 34(g) of the Charter establish that "[w]ork is a right and a social duty," and that this should be performed with "fair wages, employment opportunities, and acceptable working conditions for all." These articles also establish the right of workers to "associate themselves freely for the defense and promotion of their interests" In addition, they indicate that State must "harmonize the social legislation" for the protection of such rights. In its Advisory Opinion OC-10/89, the Court indicated that: […] The member States of the Organization have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus, the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration." *Cf. Case of Lagos del Campo v. Peru. Preliminary objections, Merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340.

[20] "144. In this regard, Article XIV of the American Declaration stipulates that: "[e]very person has the right to work, under proper conditions, and to follow his vocation freely." This provision is relevant to define the scope of Article 26, because "the American Declaration constitutes, as applicable and in relation to the OAS Charter, a source of international obligations". Furthermore, Article 29(d) of the American Convention expressly establishes that "no provision of this Convention shall be interpreted as: […] (d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature have." *Cf. Case of Lagos del Campo v. Peru. Preliminary objections, Merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340.

[21] "145. In addition to the derivation of the right to work based on an interpretation of Article 26 in relation to the OAS Charter, together with the American Declaration, the right to work is explicitly recognized in different domestic laws of the States of the region, as well as in a vast international *corpus iuris; inter alia*: Article 6 of the International Covenant on Economic, Social and Cultural Rights; Article 23 of the Universal Declaration of Human Rights; Articles 7 and 8 of the Social Charter of the Americas; Articles 6 and 7 of the Additional Protocol to the American Convention on Economic, Social and Cultural Rights, Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women, Article 32(1) of the Convention on the Rights of the Child, as well as Article 1 of the European Social Charter and Article 15 of the African Charter on Human and People's Rights." *Cf. Case of Lagos del Campo v. Peru. Preliminary objections, Merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340.

[22] *Cf., inter alia, Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No.4, para. 163; *Case of Acosta et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of

especially if we consider that there *were* allegations of the violation of the right to work and that there is a clear and sufficient factual basis to analyze the violation of that right.

15. In the case, the Inter-American Court "found that the alleged victims in all instances, both in the domestic courts and before the Commission, repeatedly alleged the violation of their labor rights;"[23] and that the pleadings and motions brief submitted to the Inter-American Court explicitly alleged a violation of labor rights despite not directly invoking Article 26 of the Pact of San José,[24] as is evident from the factual framework of the Merits Report presented by the Commission to the Inter-American Court.[25]

16. As noted in the judgment, it is especially significant that the petitioners, in their first brief to the Inter-American Commission on March 7, 2006, expressly requested that it declare the infringement of the "right to work of the victims, which is protected under the Convention, in the terms set forth in Article 26 thereof, in relation to Article 45 of the OAS Charter, as well as in the terms of Article 29 (b) and (d) of the Convention." In this regard, the brief comprehensively develops the argument of the violation of the right to work, in the following terms:

> […]
>
> 5. Violation of economic and social rights (Article 26 of the American Convention, in relation to Article 45 of the OAS Charter and Article 29 (b) and (d) of the Convention)
>
> Referring to the explicit statement made by the Court that "economic, social and cultural rights have both an individual and collective dimension," Judge Sergio García Ramírez understood that this individual dimension also translates into an individual

March 25, 2017. Series C No. 334*,* para. 189; and *Case of Lagos del Campo v. Peru, supra,* para. 139. See also PCIJ, Case *of the Vapor "Lotus" (France v. Turkey).* Judgment No. 9, September 7, 1927. Series A; PCIJ, *Case relating to the Territorial Jurisdiction of the International Commission of the River Oder (*United Kingdom, Czechoslovakia, Denmark, France, Germany, Sweden v. Poland*)*. Judgment No. 23, 10 September 1929. Series A; PCIJ, *Case of the Free Zones of Upper Savoy and the District of Gex (France v. Switzerland).* Judgment No. 46, June 7, 1932. Series A/B; ECHR, Case of *Guerra et al. v. Italy*. No. 14967/89. Judgment of February 19, 1998, para. 45; Case of *Handyside v. United Kingdom*. No. 5493/72. Judgment of December 7, 1976, para. 41, and *Case of Philis v. Greece*, Nos. 12750/87, 13780/88 and 14003/88. Judgment of August 27, 1991, para. 56.

[23] *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, paras. 211 to 215.

[24] It should be emphasized that the representative did not allege the violation of Article 26 of the Convention on the right to work in his pleadings and motions brief. However, he alleged that "the reason for the dismissals" was the exercise of the victims' political rights, including the right of every citizen "to have access, under general conditions of equality, to the public service of his country," as recognized in Article 23 (1)(c) of the Convention, which would include the guarantee of remaining in their post until there is a change in the circumstances that justified that citizen's entry into the public administration. Therefore, he argued that if one accepts the State's argument that it had the discretionary power to terminate the employment contract when it deemed it appropriate, and without having to provide any reason, this would imply the annulment of that right. *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 215.

[25] Indeed, from the factual framework contained in Merits Report No. 75/15 of the Inter-American Commission states the following: [a]ccording to publicly available information, after the publication of the Tascón list, various media reported the dismissal of public workers in retaliation for signing the presidential recall referendum; some of the dismissals were preceded by statements by public officials accusing the signatories of treason. International and Venezuelan non-governmental organizations also documented a number of cases of dismissals allegedly motivated by the officials' participation in the petition for the recall referendum. In April 2005, the Attorney General of the Republic ordered an investigation to be opened, based on reports published in various media outlets regarding political discrimination and dismissals of public officials as alleged retaliation for their appearance on the lists of signatories; the victims worked at the National Border Council, through the mechanism of successive temporary service contracts signed between 1996, 1997 or 2000 and April 2004, when their employment was terminated by means of a communication dated March 12, 2004 signed by the President of the National Border Council. *Cf.* IACHR, Report No. 75/15, Case 12.923. Merits. Rocío San Miguel Sosa et al. Venezuela. October 28, 2015, paras. 77, 81 and 86.

ownership: of juridical interest and of a corresponding right that may be shared, of course, with other members of a population or one sector thereof; according to Judge García Ramírez, this issue is not reduced to the mere existence of a State duty that should guide its tasks as established by this obligation, considering individuals as mere witnesses waiting for the State to comply with its obligation under the Convention. Judge García Ramírez recalls that the Convention constitutes, precisely, a body of rules on human rights, and not and not merely a catalogue on general State obligations; consequently, the existence of an individual dimension to human rights supports the so-called "justiciable nature" of the latter, which has advanced at the national level and has a broad horizon at the international level. It is based on that understanding that we denounce the violation of Article 26 of the Convention.

The right to work is an economic and social right, referred to in Article 26 of the Convention. In this case, the decision of the Venezuelan authorities to dismiss the victims from their jobs, constituted a violation of their right to work, and the violation of Article 26 of the Convention. Although the Convention does not explicitly develop the catalog of economic and social rights protected, it refers to the economic and social provisions set forth in the Charter of the Organization of American States, Art. 45(a) of which provides that "all human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security." In addition, Article 45(b) of the OAS Charter states that "work is a right and a social duty, it gives dignity to the one who performs it." That right and that dignity, recognized by the OAS Charter and reiterated in Article 26 of the Convention, has been [violated] by the Venezuelan State […].

The violation of the right to work [in this case] also implies a violation of Article 29 (b) of the Convention, which prohibits interpreting the Convention as restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said States is a party. Venezuela, in particular, is a party to the International Covenant on Economic, Social and Cultural Rights, Article 6 (1) of which protects the right to work, and is also party to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Article 6(1) of which establishes that everyone has right to work. Therefore, Article 26 of the Convention should be interpreted in harmony with these other international instruments which, in any case, must be complied with in good faith by the State party. The illustrious Inter-American Commission has held that, although it may not rule on the violation of other treaties, such as the Protocol of San Salvador, it can use this Protocol for the interpretation of other applicable provisions, in light of Articles 26 and 29 of the American Convention. Likewise, in the case of a complaint denouncing the violation the right to work, to fair remuneration, established in Article XIV of the Declaration but not expressly in the Convention, the Commission considered that this circumstance does not remove its competence *ratione materia* given that Article 29(d) of the Convention states that "no provision of the Convention may be interpreted as excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have."

This articulation of the provisions of the American Convention with the provisions of other human rights treaties has been widely used in the case law of the Court. In this regard, in the *Case of the Juvenile Reeducation Institute v. Paraguay*, the Court indicated that a correct interpretation of Articles 4 and 19 of the Convention should be made in light of the relevant provisions of the Convention on the Rights of the Child and of the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights, since these instruments and the American Convention form part of a very comprehensive international *corpus juris* of protection of the rights of the child that the Court should respect. Also, in the *Case of Five Pensioners v. Peru*, the Court indicated that although States may place limitations on the enjoyment of the right to property for reasons of public utility or social interest, in relation to the amount of the pensions, the States may reduce these only through the appropriate legal channels and for the reasons

already indicated. Nevertheless, the Court observed that Article 5 of the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights only allows limitations and restrictions to the enjoyment and exercise of economic, social and cultural rights "by means of laws promulgated for the purpose of preserving the general welfare in a democratic society only to the extent that they are not incompatible with the purpose and reason underlying those rights. With specific reference to the Protocol [of San Salvador], this was invoked in the case of *Baena Ricardo et al. v. Panama*, even though at the time of the facts it had not yet entered into force, arguing that upon signing the Protocol the State had undertaken to refrain from acts that are contrary to the object and purpose of the treaty; the Court recalled that under the general principles of international law, and that in this case Panama was responsible for the violation committed by its agents after the signing of the Protocol of San Salvador, since the State's actions contravened the object and purpose of that instrument, with respect to the trade union rights of the dismissed workers. The Court reaffirmed the principle of general international law according to which the States have an obligation to comply in good faith (*pacta sunt servanda*) with the international instruments they have ratified, pursuant to Article 26 of the Vienna Convention on the Law of Treaties (1969), as well as to refrain from performing acts contrary to the object and purpose of those instruments, even from the moment of signing the treaty. In this case, it is not a matter of treaties signed and not ratified, but of treaties that are in force with respect to Venezuela, and provisions of the Convention that must be interpreted in harmony with those other international commitments.

In addition, Article 29(d) of the Convention prohibits an interpretation of the Convention as excluding or limiting the effect of the American Declaration of Rights and Duties of Man, Article XIV of which explicitly recognizes the right to work and to fair remuneration. In this sense, it is important to emphasize that, with the ratification of the American Convention on Human Rights, the States [P]arties acquire new obligations in matters of human rights, but are not released from the commitments already assumed as members of the Organization of American States, of which this illustrious Commission is a principal organ, with the mandate to promote the observance and the defense of human rights, understanding these as the rights enshrined in the Convention and in the American Declaration. It would be absurd to assume that the Commission has jurisdiction to examine the right to work only with respect to the States that have not ratified the Convention, or to suggest that, with the ratification of the latter, the Member States of the OAS (and now parties to the Convention) would have fewer obligations than before, and that, with that act, the jurisdiction of the Commission would be reduced.

The Inter-American Court has held that the States must safeguard the strict compliance with labor laws that best protect workers, regardless of their nationality, social, ethnic or racial origin, and their migratory status and, therefore, have the obligation to take the necessary measures of an administrative, legislative or judicial nature to address discriminatory situations *de jure* and to eradicate discriminatory practices by certain employers or groups of employers at the local, regional, national or international level, to the detriment of migrant workers. These considerations are equally valid with regard to national workers, regardless of whether the employer is a private individual or the State itself.

This illustrious Commission has referred to the right to work in its special report on Cuba, observing that the State persists in using different forms of discrimination in granting employment for ideological motives or other related reasons; according to the Commission, those who express political discrepancies with the regime constitute the greatest proportion of the unemployed, and job discrimination for ideological reasons is an easy mechanism to apply in an economy in which the State is only employer.[…] In this case, Rocío San Miguel, Magally Chang, and Thais Peña have been dismissed from their jobs precisely for expressing opinions discrepant from those of the government, with the additional ingredient that Venezuela is a State Party to the American Convention […].

> […] In this case, the State's actions have resulted in a violation of the victims' right to work, which is protected by the Convention, in the terms established in Article 26 thereof, in relation to Article 45 of the OAS Charter, as well as in the terms set forth in Article 29 (b) and (d) of the Convention in relation to Article 6(1) of the International Covenant of Economic, Social and Cultural Rights, Article 6(1) of the Protocol of San Salvador, and Article XIV of the American Declaration […] and thus [we] request that this be declared..[26] [Emphasis added].

17. In addition, during the public hearing before the Inter-American Court, the victims' representative stated that:

> […] Faced with an act of discrimination and a violation of fundamental rights which, among other things, resulted in the dismissal of the victims from their positions in the public administration, we filed a remedy for constitutional *amparo* before the labor courts, […] because the rights affected were basic rights and because the only way we had to challenge the right impaired, political discrimination, was precisely by that means.
> […]
>
> […] human rights are the rights of everyone, without distinction of any kind, neither freedom of expression, nor political rights, nor the right of access to public service, nor the right to work in the terms [in] which it is enshrined in the Protocol of San Salvador or in the terms that can be deduced from Article 26 of the American Convention, exclude their application to those who hold certain ideas […]
>
> […]
>
> […] We have heard the victims' evidence of a removal, a dismissal, the termination of an employment contract, as a consequence of a sanction, of a penalty imposed without prior due process, without being heard beforehand, without hearing the evidence of the charges, without having the opportunity to present evidence in their defense. […].[27]

18. In the brief of final arguments, the representative also stated that:

> […] we conclude that the State committed a misuse of power by utilizing the formality of a contract to remove the victims for participating as signatories of the request for the presidential recall process […], the employees being contracted public officials, who could not be removed discretionally without any reason and, in any case, without due process […]. [28]

19. Thus, it is clear that from the outset—in the brief containing the initial petition submitted to the Inter-American Commission— and on various subsequent occasions before the Commission and before this Court, the victims sought the protection of this right. This is also consistent with their claims at the domestic level.[29] For this reason, invoking the *iura*

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[26] *Cf.* Petition filed for the violation of human rights on behalf of Rocío San Miguel Sosa and others. Venezuela. March 7, 2006. Case file before the Inter-American Commission, Folios 1198 to 1203.

[27] See Public Hearing, final oral arguments of the victims' representative. Video available at: https://vimeopro.com/corteidh/caso-san-miguel-sosa-y-otros-vs-venezuela

[28] *Cf.* Brief of final arguments of the victims' representative, Case of San Miguel Sosa et al. v. Venezuela. Case file, Folio 1065.

[29] In the *amparo* action, the victims alleged the violation of the rights to work and to job security. As for the facts, the plaintiffs stated that they were dismissed without justification, in spite of having fulfilled the tasks assigned to them, not having any reprimand or sanction in their employment records for non-compliance with their work or schedules, and also that there was no reorganization process at the agency that warranted a reduction of personnel. They alleged that, prior to their dismissal, frequent informal announcements or jokes were made by politically

novit curia principle in relation to the right to work was crucial to be able to better understand the specific situation in which the victims of this case found their rights transgressed. This, bearing in mind that "the parties have had the opportunity to express their respective positions in relation to the facts that substantiate them." [30] Therefore, the Court decided, "in light of Article 29 of the American Convention," to proceed to examine the right to work in accordance with Article 26 of the Pact of San José.

20. In the case of Ms. San Miguel Sosa, Ms. Chang Girón and Ms. Coromoto Peña, the Court concluded that there was a violation of the right to work *associated with all the rights* that had been previously analyzed and declared violated.[31] Accordingly, the Inter-American Court established that:

> 222. Consequently, the Court declares that the State is responsible for the violation of the right to work, recognized in Article 26 of the Convention, in relation to the rights to political participation, freedom of expression and access to justice, as well as the principle of non-discrimination, established in Articles 23(1), 13(1), 8(1), 25(1) and 1(1) of the same instrument, to the detriment of Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña.[32] [Emphasis added]

21. The judgment established that each and every one of the violations that occurred in the case of the three victims had the *same triggering event* in common:[33] the *termination of the victims' contracts.* Based on this triggering event, the Inter-American Court, in the development of the judgment, proceeded to analyze the impact of civil and political rights within employment contexts and to assess how these affected the respect and guarantee of the right to work under Articles 1(1), 23, 13, 8 and 25 of the Pact of San José.

22. In the first place, regarding the violation of the right to political participation contemplated in Article 23 of the Pact of San José, the Inter-American Court considered that "[b]eyond the nature of the alleged victims' relationship with the public administration, or the

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influential individuals that whoever participated in procedures against the President would be fired. They pointed out a series of contextual facts that they considered relevant. They alleged the violation of the "constitutional right to equality before the law [, …] the guarantee of non-discrimination and the rights to work and to job security [… for an] action contrary to Articles 21, 87, 89 and 93 of the Constitution of the Bolivarian Republic of Venezuela and Articles 24 of the American Convention[, …] 2(2) and 6(1) of the International Covenant on Economic, Social and Cultural Rights and Article 26 International Covenant on Civil and Political Rights […], as well as Article 26 of the Organic Labor Law and Article 8 (E) of the Rules of the Organic Labor Law [and that the] act of discrimination likewise led to the violation of the right to political participation established in Article 70 of the Constitution". *Cf.* Petition for constitutional *amparo*, July 22, 2004. *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, footnote 142.

[30] *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 219.

[31] *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, paras. 151, 160 and 200.

[32] *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 222.

[33] In this regard, the judgment states the following: "108. The Court notes that the Commission and the representative base the alleged violations of rights on the same triggering event: the termination of the alleged victims' contracts for having signed the petition for the recalls referendum. In other words, they considered that their act of signing constituted both the exercise of a political right and "an act motivated by the political opinion expressed through the signature" and, at the same time, that such act would be protected by the principle of non-discrimination (as a prohibited or "suspect" category) and by the right to equality before the law, since the dismissal would have constituted an act of discrimination based on political opinion." *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 108.

need to determine whether– by virtue of a clause in their contract– the respective authority had the discretionary power to terminate it at any time, even without justification, the State *has not provided a detailed and precise explanation of the reasons for its decision […].*"

23. For this reason the Court concluded that "*the termination of the contracts constituted a misuse of power, and that said clause was used as a veil of legality to conceal the true reason or real purpose, namely: a reprisal against the alleged victims for having legitimately exercised a political right established in the Constitution, by signing in favor of the presidential recall referendum, […].This was perceived by senior officials as an act of political disloyalty and as the expression of an opposing or dissident political opinion or position, which provoked a differentiated treatment towards them, namely, the arbitrary termination of the employment relationship."*[34] (Emphasis added).

24. As for freedom of expression, the Inter-American Court considered that "[…] the act of signing the referendum petition was, in a broad sense, a form of political opinion, because it implied the expression of the view that it was necessary to hold a referendum on an issue of public interest that is subject to debate in a democratic society, even if this does not properly amount to the expression of a specific opinion."[35] Furthermore, it stated that "[the] arbitrary dismissal to which they were subjected, after the publication of the Tascón List and in a context of complaints of arbitrary dismissals and other forms of retaliation against those who had signed in favor of the referendum, was a covert attempt to silence and discourage political dissidence, since it was used as an exemplary measure to deter others from exercising the same freedom of political participation […]."[36]

25. With regard to the violations of Articles 8 and 25, the Inter-American Court stated that "the *amparo* action was a suitable remedy to consider their case,"[37] although it was essential

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[34] *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, paras. 149 and 150.

[35] *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 156.

[36] *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 158.

[37] *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 186. In this regard, the Judgment also considered that: "184. In fact, the relevant point is that the court that heard the *amparo*, prior to expressing its doubts about its competence to rule on it owing to the position of the official against whom it was filed, noted that "since the right infringed or threatened with infringement is a constitutional right, any judge, in his capacity as guarantor of constitutional supremacy […], could, in principle examine violations of such constitutional rights or guarantees." Then, in resolving the issue of jurisdiction, the Constitutional Chamber of the Supreme Court indicated that "to elucidate the affinity of the nature of the right violated or threatened with violation, […] the judge must review the particular sphere in which the violation or threat occurred or could occur; he must therefore review the legal situation of the alleged victim *vis à vis* the injuring agent." Thus, upon observing that the plaintiffs filed the *amparo* action "owing to alleged constitutional violations," among other reasons, the Chamber declared that the court was competent to resolve the action, which, in effect, was admitted for processing. Subsequently, the aforementioned court noted that "the main claim is not that the dismissal be evaluated, in order to obtain the reinstatement and payment of lost wages, [which] in any case, is the accessory claim, [but] that it be determined that the plaintiffs indeed suffered or were victims of discriminatory treatment by the State." In other words, it noted that the action had been brought "to determine the causal relationship or nexus between conduct that is not only unlawful or unconstitutional, but also violates basic human rights such as equality before the law and the prohibition of discrimination based on political reasons, as the event that led to the termination of the employment relationship between the plaintiffs with the agency that is the subject of the *amparo* action. If this is so, there can be no question at any time regarding the inadmissibility of the present action […] but rather it is necessary to examine the merits of the dispute in order to decide whether or not the action is admissible." *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 184.

that the authorities consider the recordings as evidence in the *amparo* action.[38] However, far from it, "[…] the courts that heard the *amparo* considered such evidence unlawful, without taking into account the public interest of the matter and also the fact that in this case it was the only direct means of proof. Nor did they admit certain journalistic reports and, in short, did not investigate the reasons for the dismissal […]."[39] Thus, "the reasons or grounds provided by the domestic courts were insufficient to decide on the legal situation that was allegedly infringed, thereby affecting the alleged victims' right of access to justice […] and to an effective judicial remedy."[40]

26. As we can see, each and every one of the rights analyzed in this case has in common— as stated in the judgment— the same event that caused the human rights violations to the detriment of the three victims in this case. For this reason, the linkage should be assessed in an *integral or comprehensive manner* to understand the scope of this ruling, that is, the *exercise of political rights and freedom of expression, with the guarantee of access to justice before an independent judge when discrimination is alleged in employment settings.*

C. Line of jurisprudence on labor matters as an autonomous right

27. The case of San Miguel *Sosa et al. v. Venezuela* complements the vision that the Inter-American Court has rapidly developed regarding social rights and their direct justiciability before this judicial body. In this regard, the triad of labor-related cases, namely, *Lagos del Campo, Dismissed Workers of Petroperú et al.* and now the case of *San Miguel Sosa et al.,* allow us to align a series of standards that should be taken into consideration in the exercise of conventionality control by the domestic courts[41] and to expand the current jurisprudential

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[38] In the judgment the Inter-American Court found that: "190. The alleged victims had access to the *amparo* action, which was decided on the merits after examining certain evidence during the hearing. However, the authorities that decided the action on the merits, or on appeal, failed to assess the recordings of the telephone conversations provided, considering them to be unlawful evidence, and focused their analysis on the fact that the evidence provided by the complainant did not "reliably establish the causal link between the alleged discriminatory treatment for having signed the petition and the decision to terminate the employment relationship." Moreover, they accepted as true the explanation of the administrative authority, namely, the application of the seventh clause of the contract as a discretionary power of the employer" and "194. The domestic courts rejected as evidence the recordings and transcripts of recordings telephone conversations between Ms. San Miguel and two officials connected with the matter (*supra* para. 32), because they considered them "unlawful and illegitimate" evidence that could not be admitted at trial, since they had been "obtained without the consent of the presumed interlocutors" and there was no certainty as to their voices. As regards this decision regarding the concept of prohibited evidence, the court did not mention or explain the specific legal rule or principle that the recording made by Ms. San Miguel would have contravened, nor did it indicate which prohibition of a material and procedural nature such evidence had allegedly infringed. The court's ruling does not specify the legal provision or principle it considered that the consent of one of the interlocutors of a conversation would be based. In the circumstances of this case, the consent of one of the interlocutors to a conversation was an essential element for considering that the recording or taping of a communication made by the other interlocutor, who alleged an infringement of his rights, was unlawful and therefore affected its evidentiary character. The court that heard the appeal provided no additional arguments in that respect." *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, paras. 190 and 194.

[39] *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 195.

[40] *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 196.

[41] In this regard, in Advisory Opinion No. 23 concerning the environment, the Inter-American Court stated that it is also pertinent to perform conventionality control on matters related to social rights. On this point it stated that "[…] that the different organs of the State *must carry out the corresponding control of conformity with the Convention to ensure the protection of* <u>*all human rights*</u> […]" (emphasis added). *Cf.* Environment *and Human Rights (State obligations in relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and*

dialogue between the international or inter-American sphere and the domestic courts of the States Parties to the American Convention.

28. It should be emphasized that a fundamental aspect of these three cases is that they serve to demystify one of the issues surrounding social rights, which is that they were considered to be *progressive* rights. In this sense, these three cases have enabled us to discern that the justiciability of ESCER may be accomplished based on obligations that have been present since the beginning of the Inter-American Court's contentious role, that is, the obligations to respect and guarantee,[42] without requiring, necessarily, the assessment of measures of a progressive or regressive nature.[43] In other words, depending on the case, we could analyze one of the two hypotheses or even both (obligations of respect and guarantee and/or progressive or regressive measures).

29. Another of the Inter-American Court's contributions was developed in the cases of *Lagos del Campo*[44] *and Dismissed Workers of Petroperú,*[45] when it considered that the remedies or actions pursued at the domestic level —for example, the *amparo* remedy or appeal— should not disassociate substantive law from procedural law, thus preventing the analysis of the main object of the dispute,[46] in these cases, the right to work.

30. Thus, even though the *amparo* remedy was designed to protect constitutional rights, in this case, the failure to consider labor rights or, in general, social rights, prevented the *amparo* from producing the result for which it was conceived, namely, the effective protection of human rights. In this regard, the Court has indicated that the analysis that the competent authority makes of a judicial appeal—which contests constitutional rights such as labor rights—cannot be reduced to a mere formality and omit arguments submitted by the parties, because

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Personal Integrity- Interpretation and Scope of Articles 4(1) and 5(1), in relation to Articles 1(1) and 2 of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 28.

[42] On this point, it is pertinent recall the criterion established in the case of *Acevedo Buendía et al.:* "100. Furthermore, it is pertinent to note that even though Article 26 is embodied in chapter III of the Convention, entitled "Economic, Social and Cultural Rights", it is also positioned in Part I of said instrument, entitled "State Obligations and Rights Protected" and, therefore, is subject to the general obligations contained in Articles 1(1) and 2 mentioned in chapter I (entitled "General Obligations"), as well as Articles 3 to 25 mentioned in chapter II (entitled "Civil and Political Rights)." Case of *Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2009. Series C No. 198, para. 100.

[43] Similarly, the Court noted that: "102. […]Hence, the progressive implementation of said measures may be subjected to accountability and, if applicable, compliance with the respective commitment assumed by the State may be demanded before instances called to decide on possible human rights violations. Case of *Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2009. Series C No. 198, para. 102.

[44] In this case the Court stated that: "184. Thus, the Court considers that, even though the *amparo* remedy was designed to protect constitutional rights, in this case the failure to consider the *rights to job security and due process* prevented the application for amparo from producing the result for which it was conceived […]". *Cf. Case of Lagos del Campo v. Peru. Preliminary objections, Merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340, para. 184.

[45] The Judgment stated that: "178. The Court considers that the Constitutional Court was obliged to carry out an adequate judicial review of the act claimed as a violation by the alleged victims, which implied examining the allegations and arguments submitted to its consideration regarding the MEF's decision to dismiss the workers without declining its competence to hear the reasons or to determine the facts […]." *Cf. Case of Dismissed Workers of PetroPerú et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344, para. 178.

[46] *Cf. Case of Dismissed Workers of PetroPerú et al. v. Peru. Preliminary objections, Merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344, para. 178.

it must examine their reasons and rule on them in accordance with the standards established by the American Convention.[47]

31. The precedent set in this case is that domestic remedies, which traditionally have been devised to protect human rights of a civil or political nature [48] (and in some instances have even considered individual rights), may also protect economic, social, cultural or environmental rights, either in cases of individual or collective violations.[49]

32. It is also worth noting the differences and contexts in which the Inter-American Court has protected these rights in the three cases. First, in the case of *Lagos del Campo v. Peru*, related to the unjustified dismissal of Mr. Lagos del Campo from his job in the private sector, the Inter-American Court considered the State's obligations to guarantee labor rights in a contractual relationship in which State agents were not directly involved. With regard to these basic obligations the Inter-American Court stated that:

> 149. In correlation to the above, it can be understood that, in the private sphere, the State's obligation to protect the right to job security results, in principle, in the following duties: (a) to adopt the appropriate measures for the due regulation and monitoring [of the right to work]; b) to protect the workers against unjustified dismissal through its competent organs; (c) in case of unjustified dismissal, to rectify the situation (either by reinstatement or, if appropriate, by compensation and other social benefits established in domestic law). Consequently, (d) the State should provide effective grievance mechanisms in cases of unjustified dismissal, to ensure access to justice and the effective judicial protection of such rights.[50]

33. In the case of the *Dismissed Workers of Petroperú et al.*, the Inter-American Court protected workers who had a direct employment relationship with the Peruvian State (i.e. workers who exercised their profession within government institutions) from unjustified dismissal. In the instant case, the Court ruled that the protection of the rights to work and job security extend not only to relationships between private parties, as occurred in the case of *Lagos del Campo*, but that the obligations to respect and guarantee the right to work also apply to situations in which there is a direct relationship between workers and the State.[51]

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[47] *Case of Lagos del Campo v. Peru. Preliminary objections, Merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340, para. 184.

[48] However there are certain rights of this nature that also have a collective impact and have their maximum expression when they are exercised by a group, such as the rights of association or meeting.

[49] For example in Advisory Opinion No. 23 the Inter-American Court considered environmental rights have individual and collective connotations. On this point it stated that: "59. The human right to a healthy environment has been understood as a right that has both individual and also collective connotations. In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations. That said, the right to a healthy environment also has an individual dimension insofar as its violation may have a direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life. Environmental degradation may cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind. *Cf.* Environment *and Human Rights (State obligations in relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and Personal Integrity- Interpretation and Scope of Articles 4(1) and 5(1), in relation to Articles 1(1) and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 59.

[50] *Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340, para. 149.

[51] "193. In this case, in relation to the arguments related to the violation the right to work, this Court considers that, as was established in the precedent of *Lagos del Campo v. Peru*, the right to work includes the right to ensure access to justice and the effective judicial protection of such rights, both in the public and the private sphere of labor relations […]." *Cf. Case of Dismissed Workers of PetroPerú et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344, para. 193.

34. Finally, the *Case of San Miguel Sosa et al.* includes three fundamental steps to continue developing the concept of respect for and guarantee of the right to work as a right protected under the Convention. In the first place, it protects the contractual relationship of a system that differs from that of the *cases Lagos del Campo* and *Dismissed Workers of Petroperú* (namely, contracts renewed for varying periods of time, i.e. for three, six or twelve months, without referring specifically to the possibility of job security); b) discrimination in employment settings; and c) the violations are framed within the general right to work, and not within the issue of job security.

35. As to the first point, unlike the two previous cases related to labor issues addressed by the Court, San Miguel, Chang and Coromoto had an employment relationship based on temporary contracts that were renewed periodically. Thus, although the victims had a direct employment relationship with the State, the contractual system differed from the two previous cases (which allowed for job security). Nevertheless, the Court considers that regardless of the nature of the employment relationship, the State had an obligation to justify the non-renewal of the contracts, and not simply to argue the existence of a discretionary power contained in a contractual clause or reorganization; otherwise, that action would be considered arbitrary.[52] In other words, the Court protects the right to work regardless of whether or not there is a possibility of having job security; therefore, even in hypothetical cases of dismissal of workers with temporary or renewable contracts, there must be minimal obligations, such as adequate justification or the possibility of providing judicial remedies that protect access to justice in relation to constitutional and conventional rights.

36. Secondly, the *Case of San Miguel Sosa et al.*, highlights the fact that a State cannot discriminate against its workers for voicing or expressing their political opinions. This is of fundamental importance, since traditionally the Inter-American Court has addressed discrimination in light of conventional civil and political rights; however, this case underscores the fact that discrimination also affects ESCER, in terms of the enjoyment and exercise of those rights.

37. Thirdly, in the judgment the Court examines the violations within the context of the right to work and not the right to job security, as it had done in the two previous cases. This point is of particular importance because the Court extends protection to this right without this necessarily entailing the "condition of [job] security." Thus, in general, the Inter-American Court protects the superior-subordinate relationships that exist between employer and employee, regardless of the nature of the contract. In this case, the victims did not have the "condition of stability" or job security owing to the employment regime to which they were subject; however, from the perspective of the right to work, even in these circumstances, the basic conditions of respect and guarantee must be ensured.

38. Thus, any arbitrary dismissal or termination of a contract — without justification or reason— is a sanction of the utmost seriousness and in some cases it has particular characteristics of greater or special severity, which require full judicial protection. For example, when a person is deprived of a fundamental right that, at times, is essential for survival and the realization of other rights, the arbitrary impairment of the right to work may affect a person's subjective identity and even extend beyond him, affecting third parties concerned.[53]

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[52] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 149.

[53] *Cf. Case of Lagos del Campo v. Peru. Preliminary objections, Merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340, paras. 188 and 189.

39. As to the reparations, it is also essential to bear in mind that, in each of these cases, the right to work/job security has been considered as the cornerstone, especially in relation to pecuniary damage.[54] Thus, in the case *Lagos del Campo,* the Court considered that owing to his dismissal and lack of judicial protection, the victim faced difficulties in his employment situation, which affected his living conditions, and therefore decided to award him an amount for pecuniary damage. In the same case, in relation to the retirement pension that Mr. Lagos del Campo would have received had he not been dismissed, the Court considered that the victim had also lost the possibility of having access to a pension and social benefits, and awarded him an amount as compensation for this item.[55]

40. In the case of the *Dismissed Workers of Petroperú*, when considering the claim for the workers' reinstatement in similar jobs, the Court decided that "after approximately 25 years since the termination of their employment […], the reinstatement or reincorporation of the workers in their former positions or in other similar posts involves various degrees of operational complexity, particularly because of the structural modifications that have taken place in Petroperú, Enapu, MEF and Minedu." Consequently, the Inter-American Court considered that it would not order the reinstatement of the victims and, for that reason, took this aspect into account when calculating the amount of the compensation (pecuniary damage).[56]

41. Finally, in relation to the three victims in the present case, the Court considered that it was not feasible to order their reinstatement in positions in the public administration, and decided to include this aspect in the compensation (for pecuniary damage).[57]

42. It should be noted that job security does not imply unrestricted permanence in the post; but rather, to respect this right, among other measures, by granting due guarantees of protection to the worker so that, if he or she is dismissed this is done with proper justification. This means that the employer must provide sufficient grounds to impose this sanction with the guarantees of due process, and that the worker may appeal this decision before the domestic authorities, who must verify that the justification given is not arbitrary or unlawful.[58]

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[54] The Court has established that pecuniary damage supposes "the loss of or detriment to the victims' income, the expenses incurred as a result of the facts, and the monetary consequences that have a causal nexus with the facts of the case." *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Dismissed Workers of PetroPerú et al. v. Peru. Preliminary objections, Merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344.para. 198.

[55] *Cf. Case of Lagos del Campo v. Peru. Preliminary objections, Merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340, paras. 215 and 216.

[56] "222. Notwithstanding the foregoing, bearing in mind that the State is responsible for the violation of Articles 8, 25 and 26 of the American Convention in relation to Article 1(1) of the same instrument, and that the 164 victims of this case stopped receiving their salaries as a result of their dismissal, a situation that remains in effect as of the date of issue of this Judgment, the Court finds it pertinent to set, in equity, the sum of US$ 43,792 (forty-three thousand, seven hundred and ninety-two United States dollars), for loss of earnings, for each of the victims of this case, which shall be delivered directly to them. Likewise, the Court considers that any financial compensation received by the victims as part of the benefits established under Decree Law 27803, shall be deducted from the amount established by this Court for loss of earnings in this case." *Case of Dismissed Workers of PetroPerú et al. v. Peru. Preliminary objections, Merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344, para. 222.

[57] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, paras. 237.

[58] *Cf. Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340, para. 150.

II. JUDICIAL INDEPENDENCE AS PART OF JUDICIAL GUARANTEES AND ACCESS TO JUSTICE, IN LIGHT OF THE CONTEXT OF THIS CASE AND THE "MISUSE OF POWER" DECLARED IN THE JUDGMENT

43. The Inter-American Court is of the opinion that effective judicial protection requires that the judicial proceedings be accessible to the parties, without hindrance or undue delay, in order to quickly, simply, and comprehensively satisfy their purpose.[59] For the State to comply with the provisions of Article 25 of the Convention, it is not enough that remedies exist formally; they must also be effective in the terms of that article;[60] in other words, they must provide results or answers to the violations of rights established in either the Convention or the Constitution or by law.[61] Moreover, the competent authority's analysis of a judicial remedy cannot be reduced to a mere formality, but must examine the reasons invoked by the claimant and make express statements regarding these.[62]

44. At the same time, in relation to Article 8(1) of the American Convention, the Court has repeatedly ruled that the right to be tried by an impartial judge or court is a fundamental guarantee of due process. In other words, the person on trial must have assurances that the judge or court presiding over his case brings to it the utmost objectivity.[63] The Inter-American Court has established that impartiality requires that the judge presiding over a particular dispute examine the facts of the case with no subjective prejudice and, at the same time, offer sufficient guarantees of objectivity so as to inspire the necessary trust in the parties in the case, as well as in the citizens of a democratic society.[64] The impartiality of a court implies that its members have no direct interest in, a pre-established viewpoint on, or a preference for one of the parties, and that they are not involved in the dispute.[65]

45. The Inter-American Court has also considered that the purpose of the guarantee of the independence of judges is to prevent the judicial system in general and its members in particular, from finding themselves subjected to possible undue limitations in the exercise of their functions, by bodies outside of the Judiciary or even by those judges with review or

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[59] *Cf., Mutatis mutandi,* case *Mejía Idrovo v. Ecuador*. *Preliminary objections, merits, reparations and costs*. Judgment of July 5, 2011. Series C No. 228, para. 106, and *Case of Furlan and Family v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012. Series C No. 246, para. 211.

[60] *Cf. Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24, and *Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340, para. 188.

[61] *Cf. Case of Maldonado Vargas et al. v. Chile. Merits, reparations and costs*. Judgment of September 2, 2015. Series C No. 300, para. 123, and *Case of Dismissed Workers of PetroPerú et al. v. Peru. Preliminary objections, Merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344, para. 155.

[62] *Cf. Case of López Álvarez v. Honduras. Merits, reparations and costs*. Judgment of February 1, 2006. Series C No. 141, para. 96, *and Case of Maldonado Vargas et al. v. Chile. Merits, reparations and costs*. Judgment of September 2, 2015. Series C No. 300 para. 123.

[63] *Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of July 2, 2004. Series C No. 107, para. 171 and *Case of Palamara Iribarne v. Chile. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 135, para. 145.

[64] *Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of July 2, 2004. Series C No. 107, para. 171.

[65] *Cf. Case of Palamara Iribarne v. Chile. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 135, para. 146; *Case of Usón Ramírez v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of November 20, 2009. Series C No. 207, para. 117.

appellate functions.[66] Furthermore, judicial independence encompasses the guarantee against external pressures,[67] so that the State must refrain from undue interference with the Judicial Branch or its members, that is, in relation to the person of the specific judge, and must prevent such interference and investigate and punish those who commit such acts.[68]

46. The Court has also indicated that a remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective. This could be the case, for example, when practice has shown its ineffectiveness; when the Judicial Power lacks the necessary independence to render impartial decisions or the means to carry out its judgments; or in any other situation that constitutes a denial of justice.[69]

47. In this case, the plaintiffs expressly alleged the violation of the guarantees of independence of the Judiciary, established in Article 8(1) of the American Convention. However, the majority considered that there were insufficient elements to declare the violation of that conventional provision in the following terms:

> 210. However, the Court notes that no specific elements have been provided in this case that would allow for an analysis of whether, in the facts related to the *amparo* action or the criminal complaint filed by the alleged victims, the judicial authorities failed in their obligation to act and decide independently, in the terms of Article 8 of the Convention. Therefore the State's alleged responsibility in this regard has not been demonstrated.[70]

48. Contrary to the decision taken by the majority in the judgment, I consider that since a misuse of power has been fully demonstrated in this case (as decided unanimously in the judgment)[71] - through the use of a discretionary power in a contractual clause to terminate an employment relationship as an exemplary measure to deter others from expressing their

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[66] *Cf. Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of August 5, 2008. Series C No. 182, para. 55, and *Case of Acosta et al. v. Nicaragua*. *Preliminary objections, merits, reparations and costs*. Judgment of March 25, 2017. Series C No. 334, para. 171.

[67] *Cf. Case of the Constitutional Court v. Peru. Merits, reparations and costs.* Judgment of January 31, 2001. Series C No. 71, para. 75, and *Case of Acosta et al. v. Nicaragua*. *Preliminary objections, merits, reparations and costs*. Judgment of March 25, 2017. Series C No. 334, para. 171. See also: ECHR, *Campbell and Fell v. United Kingdom*, (No. 7819/77; 7878/77), Judgment of June 28, 1984, para. 78, and ECHR, *Langborger v. Sweden*, (No. 11179/84), Judgment of June 22, 1989, para. 32. See also: United Nations Basic Principles on the Independence of the Judiciary, adopted by the United Nations Seventh Congress on Prevention of Crime and Treatment of Offenders, held in Milan on August 26-September 6, 1985, and confirmed by General Assembly in Resolutions 40/32 of November 29, 1985 and 40/146 of December 13, 1985, principles 2, and 4, available at: http://www.ohchr.org/SP/ProfessionalInterest/Pages/IndependenceJudiciary.aspx.

[68] *Cf. Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2009. Series C No. 197, para. 146, and case *Atala Riffo and Daughters v. Chile*. *Merits, reparations and costs.* Judgment of February 24, 2012. Series C No. 239, para. 186.

[69] *Cf. Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 of the American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24; *Case of Dismissed Workers of PetroPerú et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344, para. 154.

[70] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 210.

[71] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 150 and operative paragraph 1 of the Judgment.

political dissidence by signing the petition to revoke the presidential mandate-[72] the logical consequence, given the context of the case, should have been to declare also the violation of Article 8(1) of the Pact of San José, specifically in relation to the victims' right to be heard by independent judges. This, given the undue pressure or interference exerted on judges by senior public servants and the lack of independence of the Venezuelan Judiciary at that time, which was explicitly stated in the Judgment.

49. Indeed, in light of the aforementioned misuse of power, the Court should have considered that there were sufficient elements to show that officials of the administration of justice who were involved were subjected to undue restrictions in the exercise of their duties by individuals or organs outside of the Judiciary. This was noted by the Inter-American Court in paragraph 209 of the judgment, when it described the following context:

> 209. […]during the periods relevant to the facts of this case, various situations were detected in Venezuela that hindered or affected judicial independence, related to rules and practices associated with the process of restructuring the Judiciary, initiated in 1999 (which lasted for more than 10 years); the provisional status of judges; the lack of guarantees in disciplinary procedures against judges; intimidating behavior by senior officials of the Executive Branch towards certain judges for making decisions in the exercise of their functions; and the lack of a judicial code of ethics to ensure the impartiality and independence of the disciplinary body.[73] (Emphasis added)

50. In this sense, it is worth noting the comments made by the victims' representative during the public hearing:

> […] certainly, no judicial remedy could prosper with biased judges […]
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> […] What we object to is that a judge who is committed to a political project, cannot rule impartially on a dispute in which he has already formed an opinion and made a decision, "Chávez is not leaving" […] we challenge the fact that this type of judge is a suitable judge, an independent and impartial judge, who is capable of deciding the petition of citizens who, in exercise of their constitutional rights, have had recourse to State bodies precisely for the purpose of requesting the departure or the revocation of the presidential mandate of Hugo Chávez[…]
>
> […] the then president of the Supreme Court of Justice held that the independence of the public authorities was an obsolete principle […] that should be replaced by cooperation and coordination among the different public authorities […].[74]

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[72] In this regard, the judgment states the following: "145. The Court considers that, in this context and given the high investiture of those who made the statements and their reiteration, such pronouncements by senior public officials aimed at discouraging political participation did not contribute to preventing, and may even have encouraged or exacerbated, situations of hostility and intolerance toward political dissidence, which is incompatible with the State's obligation to ensure the right to political participation. In this sense, other statements made by officials indicating that "no one may be persecuted" or a retraction by the Minister of Health […], did not contribute to prevent the effects of intimidation, uncertainty and polarization that could generate other manifestations in that context". [Emphasis added] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 145 and 64.

[73] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 209.

[74] Public Hearing, final oral arguments of the victims' representative. Video available at: https://vimeopro.com/corteidh/caso-san-miguel-sosa-y-otros-vs-venezuela

51. This context, to which the judgment explicitly refers, should be interpreted along with several facts that resulted in the arbitrary termination of the victims' contracts. In other words, greater attention should have been paid to the proven facts and to the specific context of the case. In this regard, the Court stated the following:

> 143. In addition, there are six statements made by the President of the Republic himself and by other senior public officials during that period [between the publication of the Tascón list, the termination of the victims' contracts and the holding of the referendum], calling on citizens to check the Tascón list so that "the faces are revealed," accusing the signatories of treason and even of terrorism and threatening to "fire" (dismiss) or transfer any officials who signed the petition (*supra* paras. 59 to 64). The content of such statements reflect forms of pressure not to sign and threats of reprisals for those who did so.
>
> […]
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> 146 […] It was also reported that judges and labor inspectors did not alter the decisions to dismiss workers or terminate their contracts and that neither the Public Prosecutor's Office nor the Ombudsman's Office had intervened in that regard. In fact, the Attorney General of the Republic himself later acknowledged the possible existence of multiple complaints when, in April 2005, he ordered the opening of an investigation into cases of political discrimination […].[75] [Emphasis added]

52. As is evident, the Judiciary was subjected to improper pressures and interference, so that "judges and labor inspectors did not alter the decisions to dismiss workers or terminate their contracts." Furthermore, in this case it was noted that:

> 64. After the publication of the "Tascón List," there were numerous complaints regarding the dismissal of workers or public officials in retaliation for having signed the petition for the presidential recall referendum. These complaints were preceded by various statements by public officials, for example:
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> - On March 20, 2004, Roger Capella, then Minister of Health and Social Development, declared that "a traitor cannot be in a position of trust; this State has a policy and a correspondence with the government, where there is no room for traitors. Those who have signed are out." This same official added that "those who signed against President Chávez" would be dismissed "because this is an act of terrorism." According to the State, the said Minister subsequently withdrew his comments, saying that "it was a mistake to say that doctors would be dismissed for signing; neither the Ministry nor the agencies attached to the State have taken- or intend to take - political reprisals against those who have a different vision from that of the national government," and that "the State is absolutely respectful of the positions of each and every one of its workers. Therefore, my personal position cannot be confused with the position of the State."
> - […]
> - On March 29, 2004, the Minister of Foreign Relations made the following statement to the media: "I consider it logical that an official in a position of trust who has signed against Hugo Chávez, should resign his or her position; otherwise, he or she will be transferred to other duties within the Ministry of Foreign Relations. Such officials will not be dismissed, but will no longer be close collaborators, since they do not believe in the policies defined by the President."
> - The then president of *Petróleos de Venezuela* (PDVSA) warned that "it would not be surprising if the workers who signed the petition were dismissed from their jobs."
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> 65. Reports by international and Venezuelan non-governmental organizations, as well as statements or reports published in the media and testimonies provided to the Court, referred to or documented cases of alleged dismissal of workers or public officials owing to their participation in the referendum petition:

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[75] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, paras. 143 and 146.

> - In March 2004, Froilán Barrios, a member of the Executive Committee of the Confederation of Venezuelan Workers, reported that the oil industry "has a list of 1909 active and retired workers who are threatened with possible removal or transfer from their jobs for having participated in the *reafirmazo*."
> - Eighty public employees of the *Fondo de Garantías de Depósitos y Protección Bancaria* (Deposit Guarantee and Banking Protection Fund) were dismissed, allegedly for being included on "a list, based in part on the Tascón List, which circulated within the institution." Some employees reported that the list distributed within their institution showed the name of each employee with his or her political profile (from "1" for militant *Chavistas* to "6" for radical political opposition) and an initial indicating whether that employee had signed the consultative referendum or recall petitions, based on the Tascón List. According to employees dismissed from their posts, all of them were classified as opponents of the government on that list. Based on information published in the media, the director of that institution argued that the dismissals involved "freely appointed officials who were clinging to a culture that was not in line with the plan envisaged for [the country's] socioeconomic development."
> - Complaints of similar reprisals were reported against officials in other State institutions, including the National Center for Information Technology, the Governorship of the State of Miranda, the Ministry of Popular Economy, the Institute of Welfare and Social Assistance for Ministry of Education Personnel, the Miranda State Education Office and the National Electoral Council; also in the Ombudsman's Office, the Ministry of Health, "SENIAT," governors' offices, mayors' offices and the Ministry of Foreign Relations; and also in the National Armed Forces and the Civil Protection and Disaster Management Agency.[76] [Emphasis added]

53. All the aforementioned facts should be considered to declare the violation of the right to be heard by an independent court. In this case, it was proven that the judicial authorities "were in a position and had the obligation, through conventionality control, to ensure judicial protection with due guarantees for the […] victims, […] *analyzing the real reason or purpose of the impugned act beyond the formal reasons invoked by the challenged authority, as well as the contextual and circumstantial elements […]."*[77] Indeed, the Court found that the authorities that decided the *amparo* remedy did not investigate the reasons for the dismissal, settling for generalities without specific support.[78]

54. It is worth noting that one of the aspects with the greatest impact on the effective exercise of democracy is the separation of powers and, more specifically, the independence of the Judiciary which, as noted by the Court in its judgment, is also established in the Inter-American Democratic Charter. Since such qualities, as essential elements of democracy, must be real and effective, and not merely formal, their absence in a particular State means that this is not fully democratic, in violation of the Inter-American Democratic Charter and the treaties that it interprets.

55. In this regard, the Court stated:

> 115. According to the aforementioned Charter, the "*essential elements of representative democracy*" are, *inter alia*, "respect for human rights and fundamental freedoms; access to power and the exercise thereof, subject to the rule of law; […] the separation of powers and the independence of the branches of government." Finally, "the participation of citizens in decisions relating to their own development is a right and a responsibility" and "is also a necessary condition for the full and effective exercise of democracy." Therefore, "the elimination of all forms of discrimination […] and of

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[76] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, paras. 64 and 65.

[77] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 192.

[78] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 193.

> different forms of intolerance […] contributes to the strengthening of democracy and citizen participation."[79] [Emphasis added]

56. The lack of independence of the Judiciary was a well-known and public fact at the time of the events,[80] as the Court makes clear in its judgment[81] (*supra*, para. 49 of this Opinion). It should also be emphasized that, although the judicial authorities admitted the action of constitutional *amparo*, by requiring the plaintiffs to provide *probatio diabolica* (i.e. to prove that the real reason for terminating the employment contracts was the signing of the petition to revoke the presidential mandate), by excluding the only direct evidence to prove this (the recordings of telephone conversations)[82]and by failing in their duty to provide adequate reasons, the judicial authorities failed to act independently and ensure effective access to justice. This meant that, from the outset, the *amparo* action was an illusory remedy which did not protect the rights allegedly violated, contributing to the misuse of power declared in the judgment.

57. In this context, it was hardly surprising that any domestic remedy filed by the victims was destined to fail. It is important to point out that the Tascón List was of a public nature and that high-ranking authorities of the Executive Branch —including the President himself— issued intimidating statements with the aim of discouraging political participation. This had a negative influence on the decisions taken by the Judiciary. The judgment found and declared a "misuse of power" with a declared objective (concealed with a veil of legality), which was very different from the true objective pursued by the authorities' actions. It is in this context that the Judiciary was not fully independent to rule on violations of constitutional and conventional rights, especially when those who sought such rulings were perceived as dissidents or opponents of the political regime of the day.

58. In conclusion, the victims were subjected to political discrimination through an arbitrary dismissal and the Judiciary was not independent in the face of acts by the regime of the day. Therefore, in this case a "misuse of power" was proven, owing to the fact that the dismissal of the victims "had the hidden intention of silencing and discouraging political dissidence, since this was used to intimidate others and prevent them from participating politically and expressing their ideas and opinions."[83] The judicial authorities did not investigate the reasons for the dismissal in the face of the alleged misuse of power and political discrimination, contributing to the real intention and undeclared objective, given that a discretionary power in a contractual clause was used to terminate an employment relationship as an exemplary and intimidating measure to deter others from expressing their political

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[79] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 115.

[80] This has been comprehensively documented by the Inter-American Commission on Human Rights in three reports (2003, 2009 and 2017) on the human rights situation in Venezuela. *Cf.* Situation of Human Rights in Venezuela, OEA/Ser.L/V/II.118, Doc. 4 Rev. 1, October 24, 2003, paras. 153 to 220; Democracy and Human Rights in Venezuela, OEA/Ser.L/V/IIDoc.54, December 30, 2009, paras. 180 to 339; and Democratic Institutions, the Rule of Law and Human Rights in Venezuela," OEA/Ser.L/V/II. Doc. 209, December 31, 2017, pp. 45 to 84.

[81] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 209.

[82] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 192.

[83] *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 221.

dissidence by signing the petition to revoke the presidential mandate.[84] In the context described an proven in the judgment, I consider that the logical consequence would have been for the Inter-American Court, in addition to declaring the violation of Article 25 of the Pact of San José (judicial protection), to also declare the violation of the victims' right to be heard by independent judges, pursuant to Article 8(1) of the American Convention.

Eduardo Ferrer Mac-Gregor Poisot
Judge

Pablo Saavedra Alessandri
Secretary

[84] In this regard, the judgment stated the following: "145. The Court considers that, in this context and given the high investiture of those who made the statements and their reiteration, such pronouncements by senior public officials aimed at discouraging political participation did not contribute to preventing, and may even have encouraged or exacerbated, situations of hostility and intolerance toward political dissidence, which is incompatible with the State's obligation to ensure the right to political participation. In this sense, other statements made by officials indicating that "no one may be persecuted" or a retraction by the Minister of Health […], did not contribute to prevent the effects of intimidation, uncertainty and polarization that could generate other manifestations in that context." [Emphasis added] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 145 and 64.

PARTIALLY DISSENTING OPINION OF JUDGE EDUARDO VIO GROSSI,
INTER-AMERICAN COURT OF HUMAN RIGHTS,
CASE OF SAN MIGUEL SOSA ET AL. V. VENEZUELA
JUDGMENT OF FEBRUARY 8, 2018,
(Merits, reparations and costs)

1. I issue this partially dissenting opinion on the judgment in the above case[1], because I disagree with two of its operative paragraphs, namely: the fourth operative paragraph[2] concerning Article 26 of the American Convention on Human Rights[3] in relation to the right to work; and the seventh operative paragraph[4] concerning the non-violation of judicial guarantees with reference to judicial independence.

I. Article 26

2. As I have stated on two previous occasions,[5] in this opinion I consider that the reference to Article 26 of the Convention is not appropriate to justify the justiciability, by the Inter-American Court of Human Rights,[6] of possible violations of the right to work on the part of the Bolivarian Republic of Venezuela.[7] The reasons for this were expressly set out in my dissenting opinions issued in the case of *Lagos del Campo v. Peru,* which are reproduced below.

3. Without prejudice to this, I reiterate that "*the only rights subject to the system of protection established in the Convention, are those "recognized" therein; that Article 26[8] of this instrument does not refer to such rights, but to those "derived from the economic, social, educational, scientific and cultural standards contained in the Charter of the Organization of the American States;" that Article 26 establishes the obligation of States to adopt measures with a*

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1 Hereinafter, the Judgment.

2 "*The State is responsible for the violation of the right to work, recognized in Article 26 of the American Convention on Human Rights, in relation to the rights to political participation, freedom of expression and access to justice, as well as the principle of non-discrimination, recognized in Articles 23(1), 13(1), 8(1), 25(1) and 1(1) of that instrument, to the detriment of Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña, in the terms of paragraphs 211 to 222 of this Judgment.*"

3 Hereinafter, the Convention.

4 "*The State is not responsible for the alleged violation of the right to judicial guarantees, specifically to be heard by an independent judge and within a reasonable time, recognized in Article 8.1 of the American Convention on Human Rights, for the reasons indicated in paragraphs 197 and 201 to 210 of this Judgment.*"

5 *Individual Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Dismissed Workers of PetroPerú et al. v. Peru. Preliminary objections, Merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344*; and Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2017. Series C No. 340.

6 Hereinafter, the Court.

7 Hereinafter, the State.

8 Art. 26. "*The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.*"

view to achieving progressively the full realization of the rights to which it refers, and subject to available resources; and, finally, and consequently, that although these rights exist, they are not subject to being brought before the Court, unless a treaty so provides, as is the case, for example, with the Protocol of San Salvador, but only with respect to the right to organize and join trade unions and the right to education." I also reiterate that "*care must be taken not to leave any room for the perception that the principle that no State may be brought before an international Court without its consent could be altered.*"[9]

4. Consequently, since the Court is only competent to hear cases "*concerning the interpretation and application of the provisions of the Convention that are submitted to it*,"[10] it is obvious that it is not competent to judge those cases that do not involve the interpretation and application thereof, as occurs in the instant case.

II. No violation of judicial guarantees

5. In relation to the seventh operative paragraph, the Judgment indicates that "*a remedy which proves illusory due to the general conditions of the country, or even the particular circumstances of a given case, cannot be considered effective. This may occur, for example, when its ineffectiveness has been demonstrated in practice; when the Judiciary lacks the necessary independence to rule impartially; or because of any other situation that results in a denial of justice.*" And it adds, "*nevertheless, it is not sufficient to refer in general terms to an alleged context to reach the conclusion that there was a violation of independence and impartiality in a given process, so it is necessary to present specific arguments to consider such a hypothesis.*"[11]

6. Consequently, the judgment concludes that "*no specific elements have been provided in this case that would allow for an analysis of whether, in the facts related to the amparo action or the criminal complaint filed by the alleged victims, the judicial authorities failed in their obligation to act and decide independently, in the terms of Article 8 of the Convention. Therefore the State's alleged responsibility in this regard has not been demonstrated.*"[12]

7. However, this categorical assertion is not consistent with what is previously stated in the same judgment, namely, that "*there are six statements made by the President of the Republic himself and by other high-ranking public officials during that period, calling on citizens to review the Tascón List so that "the faces are revealed," accusing the signatories of treason and even terrorism and threatening to "fire" (dismiss) or transfer any officials who signed the petition," and adding that "the content of such statements reflect forms of pressure to not sign and threats of reprisals for those who did so.*"[13]

8. Moreover, the decision in the judgment is not consistent with the assertion that "*(i)n addition, information was provided indicating that the facts of this case were not isolated, since*

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[9] *Separate Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Dismissed Workers of PetroPerú et al. v. Peru, cit.*

[10] Art.62(3) of the Convention: "*The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.*"

[11] Para. 208. of the Judgment. Whenever reference is made to "para." it shall be understood to mean the corresponding paragraph of the Judgment.

[12] Para. 210.

[13] Para.143.

the materialization of such threats was mentioned in reports by international and Venezuelan non-governmental organizations, as well as in statements or reports published in the mass media and in testimonies rendered before the Court, which referred to or documented cases of dismissals of workers or officials of various public institutions, which were allegedly motivated by their participation in the recall referendum petition." Likewise, the ruling states that *"information was also provided on reports by people who had been coerced to prevent them from signing or, if they had already done so, not to revalidate their signatures, as well as testimonies referring to situations in which signatories' job applications for public positions were rejected or they were prohibited from benefiting from certain social assistance programs."* The judgment adds that *"(i) t was also reported that judges and labor inspectors did not alter the decisions to dismiss workers or terminate their contracts and that neither the Public Prosecutor's Office nor the Ombudsman's Office had intervened in that regard,"* concluding that "(*i) n fact, the Attorney General of the Republic himself later acknowledged the possible existence of multiple complaints when, in April 2005, he ordered an investigation into cases of political discrimination."*[14]

9. Furthermore, there is no correspondence between the decision in the judgment and the affirmation *"that the authorities used these signatures to intimidate citizens so that they would not express themselves in like manner"* and that *"(t)he arbitrary dismissal to which [the victims] were subjected, after the publication of the Tascón List and in a context of complaints of arbitrary dismissals and other forms of retaliation against those who had signed in favor of the referendum, was a covert attempt to silence and discourage political dissidence, since it was used as an exemplary measure to deter others from exercising the same freedom of political participation, and ultimately to unlawfully persuade them to withdraw or "repair" their signatures through the procedure established by the National Electoral Council for that purpose."*[15]

10. And the decision in the judgment bears even less relation to affirmation that *"(it) would be possible to consider that there are elements to suggest that officials of the administration of justice who were involved were subjected to undue restrictions in the exercise of their duties by individuals or organs outside of the Judicial Branch,"* on the one hand and, on the other, that *"it is no less true that, as has been confirmed in several cases before this Court, during the periods relevant to the facts of this case, various situations were detected in Venezuela that hindered or affected judicial independence, related to rules and practices associated with the process of restructuring the Judiciary, initiated in 1999 (which lasted for more than 10 years); the provisional status of judges; the lack of guarantees in disciplinary procedures against judges; intimidating behavior by senior officials of the Executive Branch towards certain judges for making decisions in the exercise of their functions; and the lack of a judicial code of ethics to ensure the impartiality and independence of the disciplinary body."*[16]

11. Consequently, from the foregoing paragraphs it is evident that the intimidation carried out by the government authorities, and referred to in the judgment, was also carried out so that all organs of the State would proceed in accordance with the policies issued or applied by them, in order to guarantee their success. Thus, it is logical and easily deduced that the Judiciary, being so dependent on the Executive Branch - as the judgment itself acknowledges - was undoubtedly the preferred target of such intimidation considering that, as the body responsible for enforcing the rights of citizens, it not proceed in such a way as to render ineffective the government's attempt "*to silence and discourage political dissidence."*

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14 Para.146.

15 Paras. 157 and 158.

16 Para. 209.

12. In synthesis, I consider that, in the instant case, judicial independence in the State was seriously affected. This is evident not only from the general context, but is also clearly reflected in the evidence in the case file, particularly the intimidating effect of the government's action, which was not only directed at the probable proponents of the recall referendum, but also at the State entities with jurisdiction to act in this regard, and therefore, most especially at the courts of justice.

III. Conclusion.

13. It is, therefore, in view of the respective considerations formulated above, that I cannot agree with the fourth and seventh operative paragraphs of the Judgment.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

PARTIALLY DISSENTING OPINION OF
JUDGE HUMBERTO ANTONIO SIERRA PORTO

JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
IN THE CASE OF SAN MIGUEL SOSA ET AL. V. VENEZUELA
FEBRUARY 8, 2018

I. Introduction

1. With my customary respect for the decisions of the Court, I offer the present partially dissenting opinion emphasizing that I share most of the considerations set forth in the judgment. This opinion has two parts: the first refers to the conclusion of the majority of the Court regarding the violation of freedom of thought and expression, a decision which, in my view, was unnecessary. The second part considers the declaration of the State's international responsibility for the violation of the right to work in relation to the rights to political participation, freedom of expression and access to justice, and in relation to the principle of non-discrimination. With respect to the second issue, I consider that my thoughts complement what I have already stated in this regard in my dissenting opinions in the cases of the *Dismissed Workers of Petroperú et al. v. Peru*[1] and *Lagos del Campo v. Peru*[2] and in my concurring opinion in the case of *Gonzales Lluy et al. v. Ecuador.*[3]

II. Regarding the Court's conclusion on the violation of freedom of thought and expression in this case

2. The judgment considers that the act of signing the referendum petition by Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña was a form of political opinion, which implied an exercise of their political rights and their freedom of expression (*supra* paras. 156 to 158). For the majority, the fact that the victims had suffered retaliation for having signed the referendum petition constituted not only an act of discrimination and a violation of their political rights, but also a violation of their right to freedom of expression. Consequently, the majority concluded that the State is responsible for the violation of Articles 23(1)(b) and 13(1) in relation to Article 1(1) of the same instrument.

3. There is no doubt that freedom of expression and thought is an essential component of the exercise of democracy and that the lack of an effective guarantee of such freedom of expression weakens the democratic system and undermines pluralism and tolerance. The mechanisms for control and complaint by the individual may become ineffectual and,

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[1] *Case of the Dismissed Workers of PetroPerú et al. v. Peru. Preliminary objections, Merits, reparations and costs. Judgment of November 23, 2017. Series C No. 344, Partially Dissenting Opinion of Judge Antonio Humberto Sierra Porto.*

[2] *Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs. Judgment of August 31, 2017. Series C No. 340. Partially Dissenting Opinion of Judge Antonio Humberto Sierra Porto.*

[3] *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, Merits, reparations and costs. Judgment of September 1, 2015. Series C No. 298. Concurring Opinion of Judge Humberto Antonio Sierra Porto.*

ultimately, this creates fertile ground for authoritarian systems to take root. Furthermore, it is clear that in the debate on matters of great public interest, the Convention protects not only statements that are inoffensive or well-received by public opinion, but also those that shock, offend or disturb public officials or any sector of the population (*supra* paras. 152 to 155). In that regard, I fully share the substantive criteria on the issue of freedom established by the Court throughout the judgment.

4. However, I disagree with the conclusion reached by the majority regarding the international responsibility of the State for the violation of freedom of expression in the instant case. The reason is that, in my opinion, the majority falls into a contradiction by declaring the State's international responsibility for the violation of the political rights of the victims, derived from the reprisals for having signed in favor of the recall referendum, and at the same time considering that the signing the referendum petition constituted an exercise of freedom of expression by the victims. It so happens that, if we accept that the victims were exercising a form of political opinion by signing the referendum petition, and were therefore exercising their political rights, this does not imply that this expression of their will was aimed at making their opinion public.

5. It is important to remember that freedom of expression is aimed at protecting people so that they can express their ideas. The Court has established that freedom of expression includes not only a person's right and freedom to express his own thoughts, but also the right and freedom to seek, receive and disseminate information and ideas of all kinds. Consequently, freedom of expression has both an individual dimension and a social dimension, namely: "it requires that, on the one hand, no one may be arbitrarily harmed or impeded from expressing his own thought and therefore it represents a right of each individual; but it also implies, on the other hand, a collective right to receive any information and to know the expression of the thought of others."[4]

6. In this regard, the Court has indicated that the first dimension of the freedom of expression "is not limited to the theoretical recognition of the right to speak or write, but also includes, inseparably, the right to use any appropriate means to disseminate thought and to make it reach the greatest number of recipients."[5] In this sense, the expression and dissemination of thoughts and ideas are indivisible, so that a restriction of the possibilities of dissemination represents directly, and to the same extent, a limit to the right to freely express oneself.[6]

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[4] *Case of Ivcher Bronstein, v. Peru. Merits, reparations and costs. Judgment of February 6, 2001. Series C No. 74, para. 146; Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs. Judgment of February 5, 2001. Series C No. 73, para. 64; and the Compulsory Association of Journalists (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30.*

[5] *Case of Ivcher Bronstein, v. Peru. Merits, reparations and costs. Judgment of February 6, 2001. Series C No. 74*, para. 147; Case of "The Last Temptation of Christ" *(Olmedo Bustos et al.) v. Chile. Merits, reparations and costs. Judgment of February 5, 2001. Series C No. 73*, para. 65; and the *Compulsory Association of Journalists (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5,* para. 31.

[6] *Case of Ivcher Bronstein, v. Peru. Merits, reparations and costs. Judgment of February 6, 2001. Series C No. 74, para. 147; Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs. Judgment of February 5, 2001. Series C No. 73, para. 65; and the Compulsory Association of Journalists (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 36.*

7. With respect to the second dimension of the right to freedom of expression, that is, the social dimension, it is essential to bear in mind that the protection of this right is a means to enable the exchange of ideas and information among people. It includes their right to communicate their points of view to others and, correlatively, it also implies the right of everyone to know opinions, stories and news. For the ordinary citizen, knowledge of the opinions of others or of the information available to others is as important as the right to disseminate their own views.[7]

8. This Court has affirmed that both dimensions are equally important and must be fully guaranteed simultaneously, in order to give full effect to the right to the freedom of expression in the terms established in Article 13 of the Convention.[8]

9. This double dimension or aspect of the protection of freedom of expression should have been seriously considered in the instant case. If the majority had done so, it would have been possible to point out that the fact that Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña expressed a political opinion after signing in favor of the recall referendum did not mean that they were exercising their right to freedom of expression. The victims' expression of their opinion in this case was not aimed at "seeking, receiving and imparting information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice" as provided for in Article 13 of the Convention; rather, the aim was to participate in a petition for a recall referendum, which is a clear manifestation of their right to participate and exercise their political will in a democratic process. In these circumstances, it was necessary for such participation not to be made public, as this was not the intention of the victims, who found themselves in a context of major instability, political polarization and intolerance toward dissidence.

10. In this regard, we should recall that the Court has said that, "in the context of an electoral campaign, the two dimensions of freedom of thought and expression are the cornerstone for the debate during the electoral process, since they become an essential instrument for the formation of public opinion among the electorate, strengthen the political contest between the different candidates and parties taking part in the elections, and are an authentic mechanism for analyzing the political platforms proposed by the different candidates. This leads to greater transparency, and better control over the future authorities and their administration."[9] In this sense, discussions concerning the protection of the right to freedom of expression in an electoral context, tend to focus on the conditions under which a certain discourse may be subject to some limitation or censorship, not on whether it should be public or not.

11. The opposite is true for some facets of political rights, specifically the right to a "secret ballot that guarantees the free expression of the will of the citizens," as established in Article 23(1)(b) of the Convention. The meaning of this protection is precisely to allow the voter to

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[7] *Case of Ivcher Bronstein, v. Peru. Merits, reparations and costs. Judgment of February 6, 2001. Series C No. 74, para. 148; Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs. Judgment of February 5, 2001. Series C No. 73, para. 66; and the Compulsory Association of Journalists (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 32.*

[8] *Case of Ivcher Bronstein, v. Peru. Merits, reparations and costs. Judgment of February 6, 2001. Series C No. 74, para. 149; Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs. Judgment of February 5, 2001. Series C No. 73, para. 67; and Compulsory Association of Journalists (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 32.*

[9] *Case of Ricardo Canese v. Paraguay. Merits, reparations and costs. Judgment of August 31, 2004. Series C No. 111, para. 88.*

freely express his or her will in an election, without interference or pressures. The voter's freedom to "express his/her will" is guaranteed precisely by the fact that it is known only to the person who expresses it, and therefore its protection has a different meaning than that of participating in public opinion, which is protected by the right to freedom of expression.

12. Although it has been doctrinally established that the right to freedom of expression does not necessarily imply the dissemination of the opinion expressed, in the context of recall referendums involving, on the one hand, the exercise of political rights and, on the other hand, the guarantee of due process for the official whose recall is at stake, if the signing of said recall petition is characterized as a manifestation of freedom of expression, there is a risk of understanding that the electoral authorities may provide information on the will of the citizens in favor of calling the referendum without any restriction, which in contexts of extreme polarization and political repression, as in the instant case, always implies a certain risk of retaliation.

13. To confuse the meaning of the protection offered by the right to freedom of expression and the right to political participation is, in my view, conceptually wrong and seriously questionable. It may lead to the conclusion that there is no violation of a political right when a political expression is made public which, as in this case, had to be – and be kept - secret in order to be free. This becomes even more important if we take into consideration the context of lack of guarantees for the victims in the face of possible and eventual acts of retaliation against those who signed the referendum mechanism. In my view, it was sufficient for the Court to analyze the facts of this case solely under Article 23 of the Convention; therefore, it was not appropriate for the Court to rule on the alleged violation of Article 13 of the Convention.

II. Regarding the violation of the right to work in relation to the rights to political participation, freedom of expression and access to justice, as well as the principle of non-discrimination

14. The judgment also concluded that the termination of the victims' employment relationship was arbitrary, since the State did not guarantee their rights of access to justice and effective judicial protection in response to their dismissal (*supra* para. 221). Consequently, the majority decided that the State is responsible for the violation of the right to work, recognized in Article 26 of the Convention, in relation to the rights to political participation, freedom of expression and access to justice, as well as the principle of non-discrimination, recognized in Articles 23(1), 13(1), 8(1), 25(1) and 1(1) of the same instrument (*supra* para. 222).

15. This conclusion was based on the precedents of the cases of *Lagos del Campo v. Peru* and *Dismissed Workers of Petroperú et al. v. Peru*, in which the Court reaffirmed its "jurisdiction to examine and decide disputes relating to Article 26 of the American Convention […] regarding which Article 1(1) establishes the general obligations of the States to respect and to ensure rights."[10] Indeed, in those cases, the Court concluded that the specific labor rights protected by Article 26 are those "derived from the economic, social, educational, scientific and cultural standards set forth in the OAS Charter," and interpreted in light of the American Declaration and Article 29 of the American Convention.

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[10] *Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs. Judgment of August 31, 2017. Series C No. 340, para. 154; and Case of Dismissed Workers of PetroPerú et al. v. Peru. Preliminary objections, merits, reparations and costs. Judgment of November 23, 2017. Series C No. 344, para. 192.*

16. In this regard, I reiterate the considerations set forth in my dissenting opinions in the aforementioned cases regarding Peru, which contain my position that the justiciability of economic, social and cultural rights (ESCR) should not be achieved through the direct application of Article 26 of the Convention. As I have stated previously, the legitimacy and effectiveness of the Court's judgments could be seriously affected in the measure that the relevant normative aspects that define the Court's jurisdiction and the limits to the interpretation of human rights standards established under international law are not respected.

17. This case, however, allows us to reflect on some particular reasons why I consider that it is not sustainable to enter into the debate on the violation of Article 26 of the Convention, and much less to arrive at the conclusion reached by the majority.

18. First, in the instant case, as in the case of *Lagos del Campo,* the violation of Article 26 of the Convention was not alleged by the Commission or the representative before the Court. The allegation was made by the petitioners during the processing of the case before the Commission, in which the latter expressly concluded that, although it had *ratione materiae* jurisdiction in this regard, "based on the alleged facts, there are insufficient elements to indicate that, should they be proven, this would constitute a violation of Article 26 of the Convention." Therefore, in in its Admissibility Report, the Commission declared the petition inadmissible with regard to the alleged violation of that provision. Thus, condemning the State for facts that the Commission had already considered insufficient to establish a violation and that were not alleged before the Court, implies a violation of the State's right to defense and the principle of legal certainty.

19. Second, the fact that the retaliation against Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña took the form of the termination of their temporary service contracts does not mean that the case is automatically a violation of the right to work. The international wrongful act consisted of the repressive actions undertaken by the State in response to the victims' exercise of a political right, which resulted in the violation of Article 23 of the Convention, and the consequent international responsibility of the State. However, in order to reach a decision on the violation of the right to work, it would be necessary to conduct a specific analysis on the scope of this right, and the reasons why it was violated in the instant case. Thus, by not analyzing specifically how the right to work was violated, the judgment assumes a consequentialist position that fuses –or confuses- the violation of Article 23 of the Convention with the violation of Article 26.

20. Finally, as I have done on other occasions, I reiterate that the legitimacy of the Inter-American Court derives from the soundness of its arguments and legal constructions, as well as from the justice achieved through its decisions. Therefore, decisions such as this one ultimately propose a vision, a project of integration and transformations guided autonomously by the organs of the inter-American System of Human Rights, moving away from the main function of the Inter-American Court, which is to administer justice, ensuring the protection of human rights under the strict observance of its jurisdiction. In fact, it cannot make transformative law contrary to the current law.

Humberto A. Sierra Porto

Judge

Pablo Saavedra Alessandri

Secretary