

**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF ÁLVAREZ RAMOS v. VENEZUELA**  
**JUDGMENT OF AUGUST 30, 2019**  
**(Preliminary objection, merits, reparations and costs)**

In the case of Álvarez Ramos,

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  
Humberto Antonio Sierra Porto, Judge  
Elizabeth Odio Benito, Judge  
Eugenio Raúl Zaffaroni, Judge  
L. Patricio Pazmiño Freire, Judge and  
Ricardo Pérez Manrique, Judge;

also present,

Pablo Saavedra Alessandri, Secretary;

in accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 31, 32, 42, 65 and 67 of the Court’s Rules of Procedure (hereinafter “the Rules”), delivers this judgment, which is structured as follows:

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## I INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case before the Court.* On July 5, 2017, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the Court the case of Álvarez Ramos against the Bolivarian Republic of Venezuela (hereinafter the “State”, “the Venezuelan State” or “Venezuela”). According to the Commission, this case concerns the violation of the right to freedom of expression and the political disqualification of Mr. Tulio Álvarez Ramos. In addition, it concerns the State’s alleged international responsibility for the criminal prosecution of Mr. Álvarez for the crime of aggravated defamation. The case was brought against him by a former congressman and President of the National Assembly of Venezuela and resulted in a prison sentence of 2 years and 3 months, and the additional penalty of disqualification from holding public office. During that period, Mr. Álvarez was subject to a precautionary measure barring him from traveling outside the country. The case also concerns the alleged violation of the right to freedom of expression, the right to a fair trial and judicial protection, and the right to freedom of movement and residence, based on the sanctions imposed in the context of the criminal trial, which would have had consequences for the life project of the presumed victim.

2. *Proceedings before the Inter-American Commission.* The proceedings before the Inter-American Commission were as follows:

- a) *Petition.* On April 25, 2006, the Inter-American Commission received a petition submitted by Tulio Alberto Álvarez Ramos<sup>1</sup> (hereinafter “Tulio Álvarez” or the “presumed victim”), and assigned case number 12.663.
- b) *Report on Admissibility.* On July 24, 2008, the Commission approved the Report on Admissibility No. 52/08 (hereinafter “Admissibility Report”).
- c) *Report on Merits.* On January 26, 2017, the Commission approved the Report on Merits No. 4/17 (hereinafter “Merits Report”), in which it reached a number of conclusions<sup>2</sup> and made several recommendations<sup>3</sup> to the State.

3. *Notification to the State.* The Merits Report was notified to the State in a communication dated April 5, 2017, in which the State was granted a period of two months to report on its compliance with the recommendations. The State reiterated the information presented at the merits stage before the Commission and added some elements related to reparations.

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<sup>1</sup> The legal name of the presumed victim is Julio Alberto Álvarez Ramos. However, he is referred to, and is better known in Venezuela as Tulio Alberto Álvarez Ramos; therefore, this name will be used in the judgment.

<sup>2</sup> The Commission concluded that the State was internationally responsible for the violation of Articles 8 (Right to a Fair Trial), 9 (Freedom from Ex Post Facto Laws), 13 (Freedom of Thought and Expression), 22 (Freedom of Movement and Residence), 23 (Political Rights) and 25 (Judicial Protection) of the American Convention, in relation to Articles 1(1) (Obligation to Respect Rights) and (2) (Domestic Legal Effects) thereof. Report on Merits No. 4/17, Case 12.663, issued by the Commission on January 26, 2017 (Merits file, folio 42, paragraph 131).

<sup>3</sup> The Commission made the following recommendations to the State: a. Set aside the criminal conviction of Tulio Alberto Álvarez and all the consequences arising therefrom; b. Guarantee the political rights of Tulio Alberto Álvarez that are still being violated, including the expungement of any records in his criminal history that would disqualify him from continuing to exercise his rights as a citizen; c. Compensate Tulio Alberto Álvarez for the pecuniary and non-pecuniary damages arising from the violations established; d. Bring domestic criminal laws on freedom of expression into line with its obligations under the American Convention on Human Rights and the contents of the Report; and, e. Disseminate the Merits Report throughout the Venezuelan Judiciary. Report on Merits No. 4/17 (Merits file, folio 42, paragraph 132).

4. *Submission of the case to the Court.* On July 5, 2017, the Inter-American Commission submitted to the Court all the facts concerning the human rights violations described in the Merits Report.

5. *Requests from the Inter-American Commission.* The Inter-American Commission asked the Court to declare the State of Venezuela's international responsibility for the violations cited in the Merits Report and, as measures of reparation, to order the State to implement the recommendations included in that report (*supra* para. 2).

## **II PROCEEDINGS BEFORE THE COURT**

6. *Notification to the State and the representatives.* The submission of the case by the Commission was notified to the State and to the representatives of the presumed victim on August 14, 2017.

7. *Brief with pleadings, motions and evidence.* On October 23, 2017, Tulio Álvarez submitted the brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief"), in accordance with Articles 25 and 40 of the Court's Rules of Procedure.<sup>4</sup> This coincided substantially with the arguments of the Commission. The presumed victim also requested access to the Victim's Legal Assistance Fund of the Inter-American Court (hereinafter "the Legal Assistance Fund").

8. *Preliminary objection and answer brief.* On March 14, 2018, the State submitted a brief containing a preliminary objection and the answer to the submission of the case and observations to the brief with pleadings, motions and evidence (hereinafter "answer" or "answer brief"), under the terms of Article 41 of the Court's Rules of Procedure. The State filed a preliminary objection alleging the late submission of the case before the Court. In addition, it rejected the State's responsibility for any violation. It also challenged the admissibility of the new facts and alleged victims included in the pleadings and motions brief.

9. *Observations on the preliminary objection.* On May 10, 2018, the representatives and the Inter-American Commission, respectively, submitted briefs containing their observations on the preliminary objection.

10. *Legal Assistance Fund.* In a Decision issued on February 12, 2018, the President of the Court declared admissible the request filed by the presumed victim to have access to the Victims' Legal Assistance Fund.<sup>5</sup>

11. *Public hearing.* On June 21, 2018, the President of the Court issued an Order<sup>6</sup> in which he summoned the parties and the Commission to a public hearing on the preliminary objection and possible merits, reparations and costs, and to hear the final oral arguments and final

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<sup>4</sup> The representatives asked the Court to declare the State's international responsibility for the following:

1) The violation of the right to the freedom of thought and expression, enshrined in Article 13 of the Convention; 2) the right to a fair trial, specifically the presumption of innocence and the right to defense, enshrined in Article 8 of the Convention, and of the basic guarantees established in subparagraphs 8(2)(b), 8(2) (c), 8(2) (f) and 8(2)(h) of the Convention; 3) the violation of the right to judicial protection enshrined in Article 25 of the Convention; 4) the violation of the right to freedom of movement enshrined in Article 22(1), and 22(3) of the Convention; 5) protection of the principle of equality and freedom from *ex post facto* laws enshrined in Article 9 of the Convention; and 6) the violation of political rights enshrined in Article 23 of the Convention; to the detriment of Tulio Álvarez Ramos and in relation to Articles 1(1) and (2) thereof.

<sup>5</sup> *Case of Álvarez Ramos v. Venezuela. Victims' Legal Assistance Fund.* Decision of the President of the Inter-American Court of Human Rights, February 12, 2018. Available at: [http://www.corteidh.or.cr/docs/asuntos/alvarezramos\\_fv\\_18.pdf](http://www.corteidh.or.cr/docs/asuntos/alvarezramos_fv_18.pdf).

<sup>6</sup> *Case Álvarez Ramos v. Venezuela.* Decision of the President of the Inter-American Court of Human Rights, June 21, 2018. Available at: [http://www.corteidh.or.cr/docs/asuntos/alvarez\\_21\\_06\\_18.pdf](http://www.corteidh.or.cr/docs/asuntos/alvarez_21_06_18.pdf).

observations of the parties and the Commission, respectively. He further ordered that the statements of the presumed victim, one witness and two expert witnesses proposed by the representatives and the State be received at the hearing. In addition, he requested the affidavits rendered by nine witnesses and three expert witnesses proposed by the representatives and the State. The public hearing took place on January 28 and 29, 2019, during the Court's 129<sup>th</sup> Regular Session, held in San José, Costa Rica.<sup>7</sup>

12. *Amici curiae*. The Court received five *amici curiae* briefs, presented by: 1) Red IFEX-ALC<sup>8</sup>; 2) the Center for Legal and Social Studies (CELS) and the World Association of Community Radio Broadcasters (AMARC)<sup>9</sup>; 3) Article 19<sup>10</sup>; 4) the National Commission on Human Rights of Mexico (CNDH)<sup>11</sup>, and 5) the *Espacio Público* Civil Association.<sup>12</sup>

13. *Final written arguments and observations*. On March 3 and 4, 2019, the State and the presumed victim, respectively, submitted their final written arguments. On March 4, 2019, the Commission presented its final written observations.

14. *Expenditures of the Legal Assistance Fund*. On April 24, 2019, following the instructions of the President of the Court, the Secretariat provided the State with information on the expenditures made in the application of the Victims' Legal Assistance Fund in this case and, as established in Article 5 of the Court's Rules on the Operation of the Fund,<sup>13</sup> granted a period to submit any observations deemed pertinent. The State did not present any observations.

15. *Deliberation of this case*. The Court began its deliberations on this judgment on August 29, 2019.

### **III JURISDICTION**

16. Venezuela ratified the American Convention on August 9, 1977, and accepted the Court's compulsory jurisdiction on June 24, 1981. Subsequently, on September 10, 2012, the State gave notice of its denunciation from the American Convention, which entered into force on September 10, 2013. Pursuant to Article 78(2) of the Convention, the Court has jurisdiction to hear this case, bearing in mind that the facts under consideration took place prior to the effective date of the State's denunciation of the Convention.

### **IV PRELIMINARY OBJECTION**

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<sup>7</sup> The hearing was attended by the following: a) for the Inter-American Commission: the Special Rapporteur for Freedom of Expression, Edison Lanza; and the attorney for the Executive Secretariat of the Inter-American Commission, Silvia Serrano Guzmán; b) for the representatives of the presumed victim: Carlos Ayala Corao and María Daniela Rivero; c) for the State: Larry Devoe Márquez and Cristóbal Corneles Perret-Gentil.

<sup>8</sup> The brief was signed by Marianela Balbi and contains considerations on the use of criminal laws and the exercise of freedom of expression in democratic societies.

<sup>9</sup> The brief was signed by Gastón Chillier and Emmanuel Bouterrin and discusses the limits and scope of legitimate restrictions to the freedom of expression, in particular when States impose sanctions of a criminal nature.

<sup>10</sup> The brief was signed by Juliana Novaes and Camila Marques, and contains considerations on grave violations of the right to freedom of expression in its collective dimension.

<sup>11</sup> The brief was signed by Luis Raúl González Pérez and analyzes standards of protection for journalists, with special emphasis on the consequences of imposing disproportionate penalties via criminal law.

<sup>12</sup> The brief was signed by Carlos Correa and discusses the right to freedom of expression, the right to information and social responsibility in social media.

<sup>13</sup> Article 5 of the Rules for the Operation of the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights.

17. In its answer brief, the State submitted a preliminary objection related to the time-barred presentation of the case before the Court, in accordance with Article 42 of the Court's Rules of Procedure and Article 51(1) of the American Convention.

**A. Arguments of the State and observations of the representatives and the Commission**

18. The State indicated that, in order to comply with the time limit established in Article 51 of the Convention, the Commission submitted the case to the Court on July 5, 2017, via email, in an incomplete manner. It argued that subsequently, on July 14, 2017, the Commission forwarded the annex as required by Article 35(1) (d) of the Court's Rules of Procedure.

19. It noted that the Court had confirmed that the Commission did not forward the information on the expert witnesses in its submission brief, but had granted it until July 26, 2017, to forward said information, having regard to the regulatory period of 21 days established in Article 28(1) of the Court's Rules of Procedure.

20. The State noted that, in response to the cited communication, on July 25, 2017, the Commission forwarded the names of the two expert witnesses proposed, together with clarification regarding other evidence offered, without having forwarded the *curriculum vitae* of the expert witnesses. It added that the Commission forwarded the curriculum vitae of the proposed experts to the Court on August 7, 2017, in other words, 33 days after the incomplete presentation of the submission of the case.

21. The State concluded that, given the belated submission of the expert witnesses' *curriculum vitae*, the Commission had not fulfilled all the requirements established in the Court's Rules of Procedure for the submission of the case until 33 days after the regulatory and conventional deadline had expired, and therefore its preliminary objection should be admitted on those grounds.

22. In a note dated August 7, 2017, the Commission argued that it had provided the pertinent explanations regarding the late submission of the expert witnesses' *curriculum vitae*. Furthermore, the delayed presentation of this information occurred before the Court had notified the case to the State, and therefore the right to defense would not be substantially affected. However, it pointed out that the State's argument does not constitute a preliminary objection, since the forwarding of the experts' *curriculum vitae* is related exclusively to the Court's decision on the admissibility of the evidence and has no legal effect whatsoever on the submission of the case within the period established in Article 51 of the American Convention. In this regard, the Commission held that it had complied with the term.

23. The representatives considered that Venezuela's arguments did not constitute a preliminary objection, since a rejection would only have effects on the admissibility of the evidence, but not on the hearing of the case by the Court. They added that the State's interpretation regarding the date of submission of the brief was erroneous, given that the Court's Rules of Procedure do not stipulate that a case is deemed to have been presented on the date on which the submission brief and its annexes are received. On the contrary, the case is deemed to have been submitted on the date on which the brief and the report are forwarded, regardless of its annexes.

**B. Considerations of the Court**

24. The Court recalls that preliminary objections are procedural acts that contest the admissibility of an application, or the Court's jurisdiction to hear a case, or any of its aspects, based on the person, the issue, the time or the place.<sup>14</sup> Accordingly, irrespective of whether an assertion is defined as a preliminary objection, if the arguments presented cannot be analyzed without considering elements that refer to the merits of the case, those aspects cannot be addressed by means of a preliminary objection.<sup>15</sup>

25. In this case, the Commission's alleged failure to comply with the time limit for presenting the *curriculum vitae* of the expert witnesses applies exclusively to the offer of evidence proposed by the Commission, and does not affect the admissibility of the application or prevent the Court from hearing the case. Accordingly, the Court dismisses this argument since it does not properly constitute a preliminary objection.<sup>16</sup>

26. Nevertheless, the Court points out that the President analyzed the admissibility of the expert opinion offered by the Commission in the President's Order calling for a hearing and rejected said offer of evidence.<sup>17</sup>

## V PRIOR CONSIDERATION

27. The State filed an objection to the inclusion of certain family members of Mr. Álvarez as presumed victims in the case. The Court will consider the observations made by the State and the representatives and will rule accordingly.

### **A. Arguments of the State, observations of the representatives**

28. The State argued that the Court does not have jurisdiction to examine the facts related to new victims added by the presumed victim in his brief with pleadings, motions and evidence. In particular, it held that the direct family members of Mr. Tulio Álvarez should be excluded, given that they were not specifically mentioned in the Merits Report of the Inter-American Commission, and are therefore not included in the factual framework of the dispute.

29. The Commission did not submit observations in this regard.

30. The representatives argued that the measure barring Mr. Álvarez from leaving the country and his disqualification from holding public office had the effects of self-censorship, intimidation, persecution for political reasons, judicial harassment and criminalization of Mr. Álvarez, all of which had a psychological impact not only on himself but also on members of his family. This fact was corroborated by the testimonies of his mother and his wife, and by the statement of the expert witness Claudia Carillo. The representatives subsequently requested that the reparations include a sum for his wife and daughters for moral damage.

### **B. Considerations of the Court**

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<sup>14</sup> Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 6, 2008, para. 39; *Case Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019, Series C, No. 375, para. 20.

<sup>15</sup> Cf. *Case of Las Palmeras v. Colombia. Preliminary objections*. Judgment of February 4, 2000, Series C, No. 67, para. 34; and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2018, Series C, No. 374, para. 21.

<sup>16</sup> Cf. *Case of Tristán Donoso v. Panama. Preliminary objection, merits, reparations and costs*. Judgment of January 27, 2009, Series C, No. 193, paras. 16 and 17.

<sup>17</sup> Cf. *Case of Álvarez Ramos v. Venezuela*. Order of the President of the Inter-American Court of Human Rights of June 21, 2018. Available at: [http://www.corteidh.or.cr/docs/asuntos/alvarez\\_21\\_06\\_18.pdf](http://www.corteidh.or.cr/docs/asuntos/alvarez_21_06_18.pdf).

31. In relation to the identification of presumed victims, the Court recalls that Article 35(1) of the Court's Rules of Procedure establishes that a case shall be submitted through presentation of the Report on Merits, which shall identify the presumed victims. Therefore, it is up to the Commission to precisely identify, at the appropriate procedural moment, the presumed victims in a case before the Court,<sup>18</sup> except in the exceptional circumstances contemplated in Article 35(2) of the Court's Rules, which states that when it has not been possible to identify one or more of the alleged victims who figure in the facts of the case because it concerns massive or collective violations, the Court shall decide whether to consider those individuals as victims.<sup>19</sup>

32. The Court finds that in this case it is not appropriate to apply the exception contemplated in Article 35(2) of the Rules of Procedure. Therefore, it admits the objection presented by the State, and will only consider Mr. Tulio Álvarez as the presumed victim.

## **VI EVIDENCE**

33. The Court received several documents presented as evidence by the State, the representatives, and the Commission, attached to their principal briefs (*supra* paras. 1, 7 and 8). The Court admits those documents presented by the parties and the Commission at the appropriate procedural opportunity that were not disputed or challenged.

34. In addition, the Court points out that the State submitted various observations to the annexes provided by the representatives with their final written arguments.<sup>20</sup> These observations refer to the content and probative value of the documents and do not constitute an objection to their admission.

35. As to the evidence submitted during the public hearing, the Court received the statements of the presumed victim, Mr. Tulio Álvarez; of the witness Esther Quiaro, proposed by the State; and the expert opinions of Catalina Botero and Magaly Vázquez, proposed by the representatives. The Court also received the affidavits of Carmen Guadalupe Ramos, Anna Mercedes Martínez, Mirtha Güedez Campero, Ibéyise Pacheco, Víctor Arturo Gil La Rosa, Andrés Raúl Paez Pedauga, Elías Reinaldo Álvarez Leal, Leonel Alfonso Ferrer, Claudia Ernestina Carrillo Ramírez,<sup>21</sup> and Juan Carlos Tabarez Hernández,<sup>22</sup> proposed by the representatives and the State. The Court deems it pertinent to admit the statements made during the public hearing and the affidavits, insofar as these are in keeping with the purpose defined in the order requiring them and the purpose of this case.

## **VII FACTS**

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<sup>18</sup> Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006, Series C, No. 148, para. 98; and *Case of Omeara Carrascal et al. v. Colombia. Merits, reparations and costs*. Judgment of November 21, 2018, Series C, No. 368, para. 55.

<sup>19</sup> Cf. *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012, Series C, No. 250, para. 48; and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2018, Series C, No. 359, para. 27.

<sup>20</sup> The State presented various observations to the annexes, arguing that it was not sufficient to provide the evidentiary documents, but that the parties must present arguments linking the evidence to the facts considered represented, and that, since the matter concerns alleged financial disbursements, the items of expenditure and their justification must be clearly specified.

<sup>21</sup> The representatives of the presumed victim requested the substitution of the expert witness Magdalena López de Ibañez, summoned to render her testimony by affidavit, for Claudia Carrillo Ramírez. Decision of August 23, 2018: [http://www.corteidh.or.cr/docs/asuntos/alvarezramos\\_23\\_08\\_18.pdf](http://www.corteidh.or.cr/docs/asuntos/alvarezramos_23_08_18.pdf).

<sup>22</sup> The State requested that the expert witness Federico Fuenmayor be replaced by Mr. Juan Carlos Tabarez Hernández. Decision of August 23, 2018: [http://www.corteidh.or.cr/docs/asuntos/alvarezramos\\_23\\_08\\_18.pdf](http://www.corteidh.or.cr/docs/asuntos/alvarezramos_23_08_18.pdf).



**A. Article published in the newspaper "Así es la Noticia" and the complaint filed against Tulio Álvarez**

36. On May 23, 2003, Mr. Tulio Alberto Álvarez Ramos published an article entitled "National Savings Bank Looted,"<sup>23</sup> in the "Expedientes Negros" ("Black Files") opinion column of the newspaper "Así es la Noticia", in which he stated that:

During the term of Congressman Willian Lara, as head of the National Assembly, against whom a request for preliminary impeachment proceedings filed by employees and retirees of the institution is pending before the Plenary of the Supreme Court of the institution, two billion bolívares from the employees' savings bank was used to cover other expenses of the National Assembly.

37. This article was based on official letter DS-OAL-1841, signed by Mr. Yvan Rafael Delgado Abreu, Superintendent of Savings Banks of the Ministry of Finance, which was addressed to the President of the National Assembly of Venezuela, and received by his office on April 28, 2003.<sup>24</sup> This official letter stated the following:

[...] requesting your good offices for the purposes of paying the SAVINGS AND SOCIAL BENEFITS BANK OF THE WORKERS, EMPLOYEES, RETIREES, AND PENSIONERS OF THE NATIONAL ASSEMBLY (CAPSEOJPAN) [...] for the debt incurred by this body for contributions and withholdings, which as of the month of February, 2003, totaled approximately ONE BILLION SEVEN HUNDRED ONE MILLION SEVEN HUNDRED TWENTY-THREE THOUSAND THREE HUNDRED SEVENTEEN BOLIVARES AND TWENTY-FIVE CENTIMOS (Bs. 1,701,723,317.25) [...].

38. On December 31, 2003, Mr. Willian Lara filed a complaint against Tulio Álvarez before the Thirty-Sixth Supervisory Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area for criminal defamation pursuant to Article 444 of the Venezuelan Criminal Code.<sup>25</sup> That brief was forwarded to the Thirty-Sixth Supervisory Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area<sup>26</sup> (hereinafter "Thirty-Sixth Court").

39. On January 9, 2004, the Thirty-Sixth Court ruled that it did not have jurisdiction to hear this matter, and sent an official letter<sup>27</sup> to the Unit of Document Registration and Distribution of the District Criminal Judicial Circuit, instructing it to forward the case to the legally competent judge.<sup>28</sup>

40. On January 13, 2004, the Head of the Registration and Distribution Unit indicated that the case file from the Thirty-Sixth Court had been assigned to the Seventh Trial Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area (hereinafter "Seventh Trial Court").<sup>29</sup>

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<sup>23</sup> Cf. Newspaper "Así es la Noticia" of May 23, 2003 (evidence file, folios 1907 and 1908).

<sup>24</sup> Cf. Official letter DS-OAL-1841(evidence file, folios 167 and 168).

<sup>25</sup> Article 444 of the Venezuelan Criminal Code: "Defamation: A person who, in communication with several others, either together or separately, accuses an individual of a given act that could expose him to public scorn or hatred, or that is offensive to his honor or reputation, shall receive a punishment of between three and eighteen months in prison. Should the crime be committed in a public document or in writings or drawings displayed or exposed to the public, or through other public means, the punishment shall be a prison term of between six and thirty months."

<sup>26</sup> Cf. Brief of December 31, 2003 (evidence file, folios 1901, 1903, 1902, 1904, 1906).

<sup>27</sup> Cf. Official letter No. 015/04 of January 9, 2004, issued by the Thirty-Sixth Supervisory Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area (evidence file, folio 1911).

<sup>28</sup> Cf. Decision of January 9, 2004 (evidence file, folios 1917 to 1912).

<sup>29</sup> Cf. Official letter (unnumbered) of January 13, 2004, issued by the Head of the Document Registration and Distribution Unit, Beatriz López (evidence file, folio 1919).

Said court issued a decision<sup>30</sup> acknowledging receipt of the case file from the Registration and Distribution Unit, and, based on Articles 407 and 401 clauses 1, 2 and 5 of Venezuela's Organic Code of Criminal Procedure,<sup>31</sup> ordered the complainant to satisfy the requirements for a private prosecution, within a period of five days, in compliance with those articles of the Code.

41. On January 20, 2004, Mr. Lara complied with the order issued by the Seventh Trial Court.<sup>32</sup>

**B. Conciliation hearing and the precautionary measure barring travel outside the country**

42. Having admitted and ratified the private prosecution brought by Mr. Lara against Mr. Álvarez for the alleged crime of defamation, the Seventh Court issued a decision on November 2, 2004,<sup>33</sup> ordering a conciliation hearing on November 25, 2004, at 11:00 a.m. The hearing was deferred until December 15, 2004.<sup>34</sup>

43. The conciliation hearing<sup>35</sup> took place on December 15, 2004; however, the disputing parties did not reach an agreement.<sup>36</sup> Furthermore, the judge decided, among other things, to grant the plaintiff's request<sup>37</sup> to impose a measure barring Tulio Álvarez from leaving the country (which resulted in the decision of December 16, 2004<sup>38</sup>) and to admit the evidence proposed by Tulio Álvarez. He also ordered a public oral hearing to be held at 12:00 hours on January 13, 2005.<sup>39</sup>

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<sup>30</sup> Cf. Decision of January 13, 2004, 193° and 144°, issued by the Seventh Trial Court (evidence file, folios 1920 and 1921).

<sup>31</sup> Article 407 of the Organic Code of Criminal Procedure: "Rectification. If the error can be remedied, the trial judge shall grant the victim a period of five working days to correct it, counted from the date of the respective court order, which shall expressly state which defects must be corrected. Otherwise, it shall be set aside." Article 401, clauses 1, 2 and 5 of the Organic Code of Criminal Procedure: "Requirements. A private prosecution must be filed in writing directly with the trial court and must contain: 1. The full name, age, marital status, profession, domicile or residence, of the private prosecutor, his or her national ID card number, and his or her family relationship to the accused; [...] 5. Evidence supporting the allegation of the accused's participation in the crime; [...]"

<sup>32</sup> Cf. Decision of January 21, 2004, issued by the Seventh Trial Court (evidence file, folio 1924).

<sup>33</sup> Cf. Decision of November 2, 2004, issued by the Seventh Trial Court (evidence file, folio 1982).

<sup>34</sup> Cf. Decision of December 1, 2004, issued by the Seventh Trial Court (evidence file, folio 2127).

<sup>35</sup> Cf. Conciliation hearing of December 15, 2004, held before the Seventh Trial Court (evidence file, folios 2136 to 2150).

<sup>36</sup> In the conciliation hearing on December 15, 2014, Willian Rafael Lara stated: "[...] I have not come here (sic) for a conciliation but to demand justice [...] There is no intention of reaching a conciliation [...]" For his part Tulio Alberto Álvarez Ramos stated: "[...] the citizen WILLIAN LARA, has indicated that he is not willing to reach any agreement so that I could hardly propose a conciliation [...] as I have already stated, I do not propose to reach a conciliatory agreement [...]". Therefore, the trial judge decided that: "[...] IT IS HEREBY EXPRESSLY ESTABLISHED that the PARTIES STATED THAT THEY DID NOT WISH TO RECONCILE IN ACCORDANCE with ARTICLE 409 OF THE ORGANIC CODE OF CRIMINAL PROCEDURE [...]" (evidence file, folios 2137 to 2139).

<sup>37</sup> In the conciliation hearing, the judge stated: "[...] THIRD: in relation to the precautionary measure barring the citizen JULIO ALBERTO ALVAREZ RAMOS from leaving the country, this Court has granted the petitioner's legal representatives the right to speak, in order to explain the reasons that motivated this petition, and has granted the right to speak to DR. ROBERTO HERNANDEZ, who has stated: we request the measure of prohibition from leaving the country because we have seen, throughout these years, how in Venezuela (people) have evaded responsibility for crimes of a political nature; moreover, the measure barring the (accused) from leaving the country is a measure often applied not only in criminal matters, but also in civil matters, and has no other purpose than to ensure compliance with the judgment." [...] The Court immediately granted the right to speak to the Legal Representative, DR. CARLOS ALFREDO AGUILAR FLORES, who stated: "Basically, this request is made to safeguard the celerity of the proceedings so that these are not delayed by the commitments of the accused" [...] Subsequently, the court found "sufficient evidence to conclude that the defendant was the alleged perpetrator or participant in the commission of said crime, given the evidence presented by the complainant. The court additionally finds a reasonable presumption that the defendant is a flight risk [...] this Seventh Trial Court of this Criminal Judicial Circuit, GRANTS the request filed by the petitioner's legal representatives and, consequently, DECREES THE PROHIBITION TO LEAVE THE COUNTRY against the citizen JULIO ALBERTO ALVAREZ RAMOS, [...]" (evidence file, folios 2146 to 2148).

<sup>38</sup> Cf. Decision of December 16, 2004, issued by the Seventh Trial Court (evidence file, folios 2156 to 2158).

<sup>39</sup> Cf. Act of Conciliation of December 15, 2004, issued by the Seventh Trial Court (evidence file, folio 2150).

### **B.1. Public oral hearing**

44. The public oral hearing took place on January 13, 2005,<sup>40</sup> in which the court decided to admit documents and statements offered by Mr. Lara. The hearing was then suspended under the terms of Article 335(4)<sup>41</sup> of the Organic Code of Criminal Procedure, and its continuation programmed for January 18, 2005.

45. On January 25, 2005, the hearing resumed<sup>42</sup>, and the court decided to admit the statements offered by Mr. Álvarez. The hearing was suspended once again until January 26, 2005.

46. On January 26, 2005, Mr. Álvarez, through his representatives, requested that the proceedings be suspended for a period of seven days in order to undergo tests due to a medical condition.<sup>43</sup> The hearing was postponed until February 2, 2005.<sup>44</sup>

47. On February 2, 2005,<sup>45</sup> the public oral hearing resumed. On that occasion the witnesses offered by the parties provided their statements. Mr. José Rafael García García, President of the Retirees and Pensioners Association of the National Assembly, testified for two consecutive days regarding the facts known to him.<sup>46</sup> On the second day, February 3, 2005, based on Articles 345<sup>47</sup> of the Organic Code of Criminal Procedure and 243<sup>48</sup> of the Criminal Code, Mr. Lara's lawyer requested that an investigation be opened against the witness for the commission of a crime during a hearing. The judge granted this request and ordered Mr. García's immediate arrest.<sup>49</sup>

48. On February 9 and 10, 2005,<sup>50</sup> the hearing continued with the statements provided by the witnesses offered by the parties. Once the admission of evidence stage had concluded, the prosecution and the defense presented their conclusions.<sup>51</sup>

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<sup>40</sup> Cf. Record of the public oral hearing, Case No. 246-04, issued by the Seventh Trial Court (evidence file, folios 2181 to 2192).

<sup>41</sup> Article 335(4) of the Organic Code of Criminal Procedure establishes that: "Concentration and continuity. The court shall conduct the hearing in a single day. If this is not possible, the hearing shall continue on as many consecutive days as are necessary until its conclusion. It may be suspended for a maximum of ten days, counted continuously, only in the following cases: [...] 4. If the Public Ministry requires time to amend the complaint or the defense requests a suspension owing to the amendment of the complaint, provided that, given the characteristics of case, the hearing cannot continue immediately."

<sup>42</sup> Cf. Record of the public oral hearing of January 25, 2005, Case No. 246-04 (evidence file, folios 2210 to 2228).

<sup>43</sup> Cf. Request filed by the representatives of Tulio Álvarez Ramos of January 26, 2005 (evidence file, folios 2293 to 2294).

<sup>44</sup> Cf. Judgment of February 28, 2005 issued by the Seventh Trial Court (evidence file, folios 2333 and 2359).

<sup>45</sup> Cf. Judgment of February 28, 2005 (evidence file, folios 2332 and 2333, 2359, 2409 to 2425).

<sup>46</sup> Cf. Judgment of February 28, 2005 (evidence file, folios 2409 to 2432).

<sup>47</sup> Article 345 of the Organic Code of Criminal Procedure: "Crime during a hearing. If a person commits a crime during a hearing, the Court shall order his detention and shall prepare a report with the pertinent information; he shall be brought before the appropriate official of the Public Ministry, and a copy of the necessary background information shall be forwarded, in order to proceed with the investigation. Any person who, when questioned at a public hearing by the judge or by the parties, lies about the general rules of law, shall be punished with six to eighteen months imprisonment or a fine equivalent in Bolívares of ten to forty tax units".

<sup>48</sup> Article 243 of the Criminal Code: "Any person who testifies as a witness before a judicial authority, who makes false statements, denies the truth or remains silent, entirely or in part, regarding the facts on which is questioned shall be punished with a prison term of fifteen days to fifteen months. If the false testimony has been given against a suspect in a crime or in the course of a criminal trial, the prison term shall be from six to thirty months, and if those two circumstances coincide, it shall be eighteen months to three years. If the false testimony has resulted in a conviction of imprisonment, the prison term shall be three to five years. If the testimony has not been rendered under oath, the penalty shall be reduced by one-sixth to one-third."

<sup>49</sup> Cf. Judgment of February 28, 2005, (evidence file, folio 2433).

<sup>50</sup> Cf. Judgment of February 28, 2005, (evidence file, folios 2433 to 2443, 2445 to 2450).

<sup>51</sup> Cf. Judgment of February 28, 2005, (evidence file, folios 2450 to 2467).

## **B.2. Remedies filed prior to the final judgment**

49. Mr. Álvarez filed a petition for a constitutional remedy (*amparo*) before the Court of Appeals of the Criminal Judicial Circuit of the Caracas Metropolitan Area against the Seventh Trial Court, arguing that its actions were unconstitutional, given the manner in which it had assessed the evidence, substantiated the accusation, and conducted the conciliation hearing and the oral trial. He also claimed that he had been denied access to the evidence, leaving him in a situation of defenselessness that violated due process.<sup>52</sup> On February 11, 2005, the Second Division of the Court of Appeals ruled the *amparo* action inadmissible, on grounds that the petitioner could have recourse to the ordinary courts, as, “according to his brief, [his case] is at the trial phase and a judgment has not been issued by the trial court.”<sup>53</sup> On February 18, 2005, Tulio Álvarez filed an appeal against the inadmissibility of the constitutional *amparo* action, and proceeded to forward his case file to the Constitutional Chamber of the Supreme Court.<sup>54</sup>

50. On April 14, 2005, the Constitutional Chamber of the Supreme Court confirmed the inadmissibility of the constitutional *amparo* action filed by Tulio Álvarez against the alleged unconstitutional actions of the Seventh Trial Court.<sup>55</sup> The reason given was that, in seeking a review of the legality of the hearings, the defendant had not exhausted the ordinary courts and therefore the constitutional *amparo* action was inadmissible under the provisions of Article 6, clause 5, of the Organic Law of Amparo on Constitutional Rights and Guarantees.<sup>56</sup>

## **B.3. Judgment of February 10, 2005**

51. On February 10, 2005, the Seventh Trial Court issued a judgment, in which it sentenced Tulio Álvarez to a prison term of 2 years and 3 months for the crime of ongoing aggravated defamation, an offense defined and sanctioned in Article 444 in relation to Article 99<sup>57</sup> of the Reformed Criminal Code. The judgment was published on February 28, 2005.<sup>58</sup>

## **C. Remedies filed after the final judgment**

### **C.1 Remedy of appeal**

52. Dissatisfied with that decision (*supra* para. 51), Tulio Álvarez appealed the conviction before the Third Division of the Court of Appeals of the Criminal Judicial Circuit of the Caracas Metropolitan Area. On May 5, 2005, the Appeals Court declared admissible the remedy and

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<sup>52</sup> Cf. Judgment of April 14, 2005, delivered by the Constitutional Chamber of the Supreme Court (evidence file, folios 2580 to 2583).

<sup>53</sup> Cf. Judgment of April 14, 2005, delivered by the Constitutional Chamber of the Supreme Court (evidence file, folios 2580, 2583 and 2584).

<sup>54</sup> Cf. Judgment of April 14, 2005 (evidence file, folio 2580).

<sup>55</sup> Cf. Judgment of April 14, 2005 (evidence file, folio 2588).

<sup>56</sup> Article 6(5) of the Organic Law of Amparo on Constitutional Rights and Guarantees: “An action of *amparo* shall not be admissible: [...] 5) when the aggrieved party has opted to have recourse to the ordinary courts or made use of preexisting judicial mechanisms. In such cases, in alleging the violation or the threat of violation of a constitutional right or guarantee, the judge shall adhere to the procedures and time frames established in Articles 23, 24 and 26 of this Law, so as to order the provisional suspension of the effects of the action called into question [...].”

<sup>57</sup> Article 99 of Venezuela’s Criminal Code: “Several violations of the same legal provision are considered a single punishable act even if they were committed on different dates, provided that they were carried out through acts stemming from a single decision; however, the penalty shall be increased by one-sixth to one-half.”

<sup>58</sup> Cf. Judgment of February 28, 2005 (evidence file, folios 2333 to 2478).

set the date of the oral hearing to take place within ten working days;<sup>59</sup> said hearing took place on May 30<sup>60</sup> and August 4, 2005.<sup>61</sup>

53. On September 29, 2005, the Third Division of the Court of Appeals dismissed the appeal.<sup>62</sup>

### **C.2 Petition for cassation**

54. Dissatisfied with the decision of the Court of Appeals (*supra* para. 53), Tulio Álvarez then filed a petition for cassation before the Court of Cassation of the Supreme Court.<sup>63</sup>

55. On February 7, 2006, the Criminal Chamber of the Supreme Court dismissed the petition for cassation<sup>64</sup> based on Article 465<sup>65</sup> of the Organic Code of Criminal Procedure, considering that the maximum penalty for the crime of aggravated defamation did not exceed 4 years, a requirement stipulated by Article 459<sup>66</sup> of that Code.

### **D. Enforcement of the final judgment**

56. On July 3, 2006, the Ninth Trial Court for the Enforcement of Judgments of the Criminal Judicial Circuit of the Caracas Metropolitan Area (hereinafter, "Ninth Trial Court") ordered the immediate enforcement of the conviction delivered in the judgment of February 28, 2005.<sup>67</sup> In that decision it stated the following:

[...]This judgement having been declared irrevocable and final [...] the court orders the immediate execution of the sentence [...], which is calculated as specified in the following table.

Main Penalty Imposed	02 Years and 03 Months of Prison
Date of detention:	Has not been detained
Time to be Served (Remaining):	02 Years and 03 Months.

The DATE on which the SENTENCE ENDS HAS NOT BEEN DETERMINED, since the DEFENDANT IS FREE.

Furthermore, given that the defendant was sentenced to additional penalties under Article 16 of the Criminal Code,<sup>68</sup> he shall be subject to political disqualification for the duration of the sentence once it commences [...]

<sup>59</sup> Cf. Judgment of September 29, 2005 (evidence file, folios 15 and 16).

<sup>60</sup> Cf. Judgment of September 29, 2005 (evidence file, folio 16).

<sup>61</sup> Cf. Judgment of September 29, 2005 (evidence file, folio 16).

<sup>62</sup> Cf. Judgment of September 29, 2005 (evidence file, folios 15 to 43).

<sup>63</sup> Cf. Petition for Cassation filed by Tulio Álvarez Ramos (evidence file, folios 830 to 871).

<sup>64</sup> Cf. Decision of February 7, 2006, issued by the Court of Cassation of the Supreme Court (evidence file, folios 75 to 83).

<sup>65</sup> Article 465 of the Organic Code of Criminal Procedure: "Dismissal. If the Supreme Court considers that the petition is inadmissible or manifestly unfounded, it shall so declare, by a majority of members of the Court of Cassation, within fifteen days after receiving the case file, and shall return it to the Court of Appeals of origin".

<sup>66</sup> Article 459 of the Organic Code of Criminal Procedure: "Appealable decisions. A petition for cassation may be filed only against judgments of the appeals court that decides the appeal, without ordering a new trial, when the Public Ministry has requested in its indictment, or the victim has requested in his or her private prosecution, the imposition of a prison sentence exceeding four years; or the judgment of conviction imposes a sentence exceeding that limit, when the Public Ministry or private prosecutor has requested the imposition of a lower sentence".

<sup>67</sup> Cf. Enforcement decision of July 3, 2006, issued by the Ninth Trial Court for the Enforcement of Judgments of the Criminal Judicial Circuit of the Caracas Metropolitan Area (evidence file, folios 87 to 89).

<sup>68</sup> Article 16 of the Criminal Code: "Penalties additional to incarceration include: 1. Disqualification from voting and from holding political office for the duration of the sentence. 2. Supervision by the authorities for one-fifth of the term of the sentence, after it has been served."

[...] Likewise, this Court observes that the convicted defendant has been enjoying freedom, and given that the crime for which he was convicted is not among those exempted for granting the benefit of conditional suspension of the execution of the sentence, the Court shall release him from the corresponding summons in order to execute the content of this ruling [...] So ordered [...].

***E. Request for conditional suspension of the execution of the sentence and of the measure barring travel outside the country***

57. On July 10, 2006, Tulio Álvarez requested the conditional suspension of the execution of the sentence.<sup>69</sup> On July 17, 2006,<sup>70</sup> the Ninth Trial Court notified the coordinator of the division of pre-release measures of the Center of Evaluation and Diagnosis of the Ministry of the Interior and Justice, of the order for a psychosocial assessment to be carried out on Tulio Álvarez.<sup>71</sup> The assessment was carried out on July 25, 2006 and the report was forwarded to the Ninth Trial Court on August 14, 2006.<sup>72</sup> On December 20, 2007,<sup>73</sup> the Ninth Trial Court granted the conditional suspension of the execution of the sentence for one year, on probation and subject to compliance with the conditions stipulated in Article 494<sup>74</sup> of the Organic Code of Criminal Procedure. In addition, based on Article 493<sup>75</sup> of said Code, the Ninth Trial Court decided to suspend the measure barring Mr. Álvarez from leaving the country during the probation period.

58. On January 18, 2008, the Fourteenth Assistant Prosecutor of the Public Ministry with National Jurisdiction over the Enforcement of Sentences, appealed the decision to conditionally suspend the execution of the sentence. He argued that in this case it was not appropriate to grant a conditional suspension of the sentence,<sup>76</sup> because the actions in this case did not meet the requirements set forth in the Organic Code of Criminal Procedure.

59. On May 27, 2008, the Ninth Division of the Court of Appeals of the Criminal Judicial Circuit of the Caracas Metropolitan Area dismissed the appeal filed by the Fourteenth Assistant Prosecutor,<sup>77</sup> finding that the petitioner lacked standing to impugn the decision, in accordance

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<sup>69</sup> Cf. Brief of July 10, 2006. Request for conditional suspension of the sentence imposed on Julio Alberto Álvarez Ramos (evidence file, folio 484 to 485).

<sup>70</sup> Cf. Official letter No. 1319-06 of July 17, 2006 (evidence file, folio 501).

<sup>71</sup> Cf. Appointment letter of July 17, 2006, from the Observation and Diagnosis Center (evidence file, folio 502).

<sup>72</sup> Cf. Technical report No. 0285-06 (evidence files, folios 503 to 506).

<sup>73</sup> Cf. Ruling on the Conditional Suspension of the Execution of the Sentence of December 20, 2007, issued by the Ninth Trial Court for the Enforcement of Judgments of the Criminal Judicial Circuit of Caracas Metropolitan Area (evidence file, folios 106 to 109).

<sup>74</sup> Article 494 of the Organic Code of Criminal Procedure establishes: "Conditional suspension of the execution of a sentence. In order for the enforcement court to order the conditional suspension of execution of a sentence, it must request a psycho-social report on the defendant from the Ministry of the Interior and Justice, and will require: 1. That the defendant not commit any other crimes, as certified by the Ministry of the Interior and Justice; 2.- That the sentence imposed not exceed five years; 3.- That the defendant agree to comply with the conditions imposed upon him or her by the court or the probation officer; 4. That the defendant present an offer of employment; and; 5. That the defendant has not been charged with the commission of a new crime, or had any previously granted alternative sentence revoked. If the defendant has been convicted through a plea bargain, and the sentence imposed exceeds three years, he or she may not be granted the conditional suspension of execution of sentence".

<sup>75</sup> Article 493 of the Organic Code of Criminal Procedure: "Limitations. Those sentenced for the crimes of intentional homicide, rape, violent or lewd acts, kidnapping, forced disappearance of persons, all types of robbery, aggravated theft and larceny, drug trafficking and punishable acts against public property, except, in this last case, when the crime does not exceed three years, may only opt for conditional suspension of the execution of the sentence, and any of the alternative sentencing formulas, after serving at least half of the sentence imposed."

<sup>76</sup> Cf. Appeal filed by the Fourteenth Assistant Prosecutor of the Public Ministry with National Jurisdiction over the Enforcement of Sentences against the decision to grant Mr. Alvarez conditional suspension of the execution of the sentence (evidence file, folio 246 to 248).

<sup>77</sup> Cf. Decision of May 27, 2008, issued by the Ninth Division of the Court of Appeals of the Criminal Judicial Circuit of the Caracas Metropolitan Area (evidence file, folios 111 to 124).

with the principle of subjective impugnability established in Article 433<sup>78</sup> of the Organic Code of Criminal Procedure.

**F. Requests to leave the country**

60. According to the case file, on November 24, 2005, in the context of the precautionary measure barring him from leaving the country, Mr. Álvarez submitted a request to the Criminal Chamber of the Supreme Court to leave the country two days later, on November 26, 2005.<sup>79</sup> The case file does not contain the answer to that request.

61. Furthermore, the case file contains reference to a previous request, made in September 2005.<sup>80</sup> However, the case file does not include a copy of that request, nor is there any proof that State authorities received or answered it.

62. On October 13, 2006, Tulio Álvarez asked the Ninth Trial Court for permission to move to Washington, D.C., United States of America, to make arrangements related to the proceedings before the Inter-American Commission of Human Rights. He also requested permission to travel to Bogotá, Colombia, to give a series of lectures at various universities in that city, and to attend academic meetings and activities.<sup>81</sup>

63. On October 20, 2006, the judge considering his request asked Tulio Álvarez to provide copies of the invitations from the universities, his current passport with the respective visa and the airline tickets,<sup>82</sup> for the purpose of granting an authorization to leave the country.

64. In briefs dated October 23 and 30, 2006, Tulio Álvarez presented the documents requested. However, in the second brief he reformulated the request in relation to his visit to Bogotá.<sup>83</sup>

65. On November 6, 2006, the Ninth Trial Court granted him permission to travel to Bogotá, but with the requirement to appear before the court on November 20, 2006.<sup>84</sup>

66. On November 20, 2006, Tulio Álvarez appeared before the Ninth Trial Court and, on that occasion, asked the judge for a new authorization to leave the country in order to visit Bogotá again for the publication of the books he had written.<sup>85</sup> The case file does not contain information on the processing of that specific request.

67. On January 22, 2007, Tulio Álvarez asked the Ninth Trial Court for a new authorization to leave the country in order to travel to Milan and Rome, in Italy, and Lugano, in Switzerland, in fulfillment of academic contracts.<sup>86</sup>

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<sup>78</sup> Article 433 of the Organic Code of Criminal Procedure: "Legitimation. Parties to whom the law expressly grants that right may appeal judicial decisions. The defense counsel may appeal on behalf of the accused, but never against his express will."

<sup>79</sup> Cf. Request to leave the country submitted to the Criminal Chamber of the Supreme Court on November 24, 2005 (evidence file, folios 882 to 883).

<sup>80</sup> Cf. Petition submitted to the ICHR on April 25, 2006 (evidence file, folios 654 and 655); Request to leave the country dated November 24, 2005 (evidence file, folios 882 and 883); Affidavit rendered by Mirtha Guedez Campero (evidence file, folios 2809 and 2811); and affidavit rendered by Víctor Arturo Gill La Rosa (evidence file, folio 2822).

<sup>81</sup> Cf. Brief of October 13, 2006 (evidence file, folio 522).

<sup>82</sup> Cf. Decision of October 20, 2006, issued by the Ninth Trial Court for the Enforcement of Judgments of the Criminal Judicial Circuit of the Caracas Metropolitan Area (evidence file, folio 528).

<sup>83</sup> Cf. Brief of October 31, 2006 (evidence file, folios 539 to 548) and brief of October 23, 2006 (evidence file, folios 533 to 536).

<sup>84</sup> Cf. Decision of November 6, 2006, issued by the Ninth Trial Court (evidence file, folios 549).

<sup>85</sup> Cf. November 20, 2006, appearance before the Ninth Trial Court (evidence file, folio 558).

<sup>86</sup> Cf. Brief of January 22, 2007 (evidence file, folios 565 to 568).

68. On January 25, 2007,<sup>87</sup> the Ninth Trial Court authorized Tulio Álvarez to leave the country and ordered him to appear before the court on February 19, 2007.<sup>88</sup> It also ordered him to appear before the court every 45 days.

69. The case file includes evidence of a visit authorized and undertaken between July 20 and 25, 2007, to the city of Bogotá, for a series of academic meetings and activities.<sup>89</sup>

### **G. The full release of Tulio Álvarez**

70. On March 4, 2009, the Ninth Trial Court decreed that Mr. Álvarez had complied in full with the sentence and with the additional penalties.<sup>90</sup>

### **H. Ongoing effects of the sentence**

#### **H.1 Constitutional Amparo action**

71. On October 7, 2009, Tulio Álvarez filed a petition for a constitutional remedy (writ of *amparo*) against the Electoral Commission of the Professors' Association of the Central University of Venezuela, alleging that said commission had applied an indefinite political disqualification by not including him in the association's electoral register, even though all criminal proceedings against him had ceased.<sup>91</sup>

72. On November 25, 2009, the Electoral Chamber of the Supreme Court granted the constitutional *amparo* action, and ordered the Electoral Commission of the Professors' Association of the Central University of Venezuela to immediately include Tulio Álvarez in the electoral register.<sup>92</sup>

#### **H.2 Constitutional review**

73. On March 16, 2010, the Office of the Comptroller General of the Republic, dissatisfied with the ruling that upheld the constitutional *amparo* action, requested a constitutional review by the Constitutional Chamber of the Supreme Court.<sup>93</sup>

74. On November 3, 2010, the Constitutional Chamber of the Supreme Court granted the request for review and overturned the ruling issued on November 25, 2009, by the Electoral Chamber.<sup>94</sup>

## **VIII MERITS**

75. This case concerns the use of criminal law to restrict freedom of expression through

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<sup>87</sup> Cf. Decision of January 25, 2007, issued by the Ninth Trial Court (evidence file, folios 569 to 570).

<sup>88</sup> Cf. Authorization of January 25, 2007 (evidence file, folio 571).

<sup>89</sup> Cf. Answer of January 29, 2008, presented by the accused regarding the appeal filed by the Fourteenth Assistant Prosecutor of the Public Ministry with National Jurisdiction over the Enforcement of Sentences (evidence file, folio 227).

<sup>90</sup> Cf. Decision of March 4, 2009, issued by the Ninth Trial Court for the Enforcement of Judgments of the Criminal Judicial Circuit for the Caracas Metropolitan Area (evidence file, folios 126 and 127).

<sup>91</sup> Cf. Judgment of November 25, 2009, delivered by the Electoral Chamber of the Supreme Court (evidence file, folio 134).

<sup>92</sup> Cf. Judgment of November 25, 2009 (evidence files, folios 1510 to 1519).

<sup>93</sup> Cf. Judgment of November 3, 2010 (evidence file, folios 144 to 159).

<sup>94</sup> Cf. Judgment of November 3, 2010 (evidence files, folios 156 and 157).



the application of subsequent liability. It also concerns the effects that precautionary measures and a potential criminal conviction may have on rights such as the right to a fair trial and judicial protection, the principle of legality, political rights and the rights to freedom of movement and residence. In this chapter, the Court will examine the State's alleged violation of the following: a) the right to freedom of thought and expression and political rights; b) the right to a fair trial; c) the right to freedom of movement and residence, and d) the right to judicial protection.

### **VIII-1 RIGHT TO FREEDOM OF EXPRESSION<sup>95</sup> AND POLITICAL RIGHTS<sup>96</sup>**

#### **A. *Arguments of the parties and of the Commission***

76. The Commission argued that "the sort of political debate encouraged by the right to free expression will inevitably generate some speech that is critical of, and even offensive to, those who hold public office or are intimately involved in the formation of public policy." It held that the protection of honor or reputation should only be guaranteed through civil penalties in those cases in which the offended person is a public servant, public figure, or private citizen who has voluntarily become involved in matters of public interest, always bearing in mind the principles of democratic pluralism. In other words, the use of criminal mechanisms to punish speech on matters of public interest, and especially about public servants or politicians, violates Article 13 of the American Convention because there is no compelling social interest to justify it, it is unnecessary and disproportionate, and it may also constitute an indirect means of censorship given its intimidating and chilling effect on such speech.

77. The Commission further held that in the criminal conviction of Mr. Álvarez Ramos there was no analysis or reasoning whatsoever that took into account that "the threshold for protecting the honor of public officials should allow for the broadest control by citizens regarding the way in which they discharge their duties," as required by the Inter-American Court.

78. Finally, regarding the proportionality of the sentence imposed, the Commission considered that the consequences of the criminal case - the precautionary measure barring the defendant from leaving the country, the evidentiary system to which he was subjected, the latent risk of a potential loss of liberty and the suspended sentence of two years and three months in prison, his disqualification from exercising all political rights, the consequences of a criminal conviction for his professional life, and the stigmatizing effect of the criminal conviction - all demonstrated that the subsequent liability imposed against Tulio Álvarez for exercising his freedom of expression were extremely severe in view of the fact that all these consequences arose from the dissemination of information of public interest, related to the activity of a State employee.

79. The Commission emphasized that, in its application to this case, the ambiguity and breadth of Article 444 of the Venezuelan Criminal Code failed to comply with principle of strict legality in the imposition of restrictions to the right to freedom of expression of Tulio Álvarez, in violation of Article 13(1) and 13(2) of the American Convention, in relation to Article 1(1) thereof.

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<sup>95</sup> Article 13(1) of the American Convention.

<sup>96</sup> Article 23 of the American Convention.

80. Given that this violation occurred as a consequence of the application of a law that fails to meet the requirements of strict legality, the Commission concluded that the State also violated Articles 9 and 2 of the Convention.

81. Furthermore, the Commission considered that the additional penalty of disqualification from holding public office, based on Article 16 of the Venezuelan Criminal Code, was disproportionate, since it was improperly extended beyond the duration of the sentence and also affected Mr. Álvarez's electoral rights. It further considered that the penalty imposed by the State did not comply with the principles of legality, necessity and proportionality in a democratic society because its use as an additional measure was not justified by the nature of the offense for which Tulio Álvarez was convicted. In this case, his political disqualification had an effect that extended beyond the ban preventing him from holding public office, and also affected his professional activities.

82. The representatives argued that the judgment delivered against Mr. Álvarez on February 28, 2005, confirmed the existence of a pattern of judicial persecution against freedom of expression in Venezuela and, in particular, against journalists, business people, lawyers and others who denounced irregularities committed by State employees, in order to silence criticism of the national government and its policies.

83. They argued that the court had simply considered the complainant's status as a public servant (President of the National Assembly) to impose the most severe penalty for the crime of "ongoing aggravated defamation."

84. They further argued that the imposition of subsequent liability on the exercise of freedom of expression was contrary to the standards of International Human Rights Law concerning the restriction of freedom of expression when it involves criticism of public servants or the discussion of matters of public interest.

85. The representatives asked the Court to determine that the imposition of penalties that affect freedom, such as restrictions to freedom of expression, is not appropriate in matters of public interest. Therefore, subsequent liability cannot be applied to the exercise of investigative journalism, when the publication is of public interest or refers to the actions of public servants in the performance of their duties, unless it is done with actual malice. They recalled that during the trial the State made no reference whatsoever to the legality of the restriction, or to its proportionality.

86. Furthermore, they argued that Venezuela's law on political disqualification is contrary to the American Convention. In this context, Venezuelan Criminal Law considers political disqualification as a penalty additional to the sentences of incarceration or imprisonment.

87. The representatives further argued that, in relation to the requirements for holding political office, Venezuelan laws impose restrictions that prevent persons with a criminal conviction from having access to public service. The political disqualification of Mr. Álvarez continued beyond the term of the sentence established in the judgment of the trial Court which, in itself, constituted a violation of Article 23(1) of the Convention.

88. The State indicated that, according to the report of the Office of the Superintendent of Savings Banks, the National Assembly owed a debt to the Savings Bank. It claimed that the alleged victim knew about this report and decided to publish false information about its content; it added that the statements made in the publication concerned allegations that this same citizen had already submitted before the jurisdictional bodies and had been rejected

because they were unfounded and untrue. It added that the presumed victim had insisted on making public allegations against Mr. Willian Lara, former President of the National Assembly.

89. Venezuela pointed out that Mr. Lara had set aside his status as a public official to take legal action as a private citizen, in defense of his honor and reputation. It emphasized that in his legal action he decided not to invoke the criminal laws that protect the dignity of public servants. On the contrary, he brought a case for criminal defamation applicable among private parties.

90. The State also affirmed that the constitutional *amparo* action filed by Tulio Álvarez was admitted on November 25, 2009, by the Electoral Chamber of the Supreme Court of Justice. The State recalled that the alleged victim has participated as a voter in electoral processes, exercising with full freedom his right to vote. This shows that he was free from any legal restriction that would prevent him for standing as a candidate for public office.

## **B. Considerations of the Court**

91. In this section the Court will examine pertinent points of law related to the alleged violation of Mr. Tulio Álvarez Ramos' right to freedom of thought and expression. This analysis considers the consequences of the criminal case brought against him by the former congressman and President of the National Assembly of Venezuela, Willian Lara, for the offense of ongoing aggravated defamation, following the publication of an opinion column in the newspaper "*Así es la Noticia*", in which Mr. Álvarez referred to the alleged diversion of funds from the Savings Bank of the Workers, Employees, Retirees and Pensioners of the National Assembly (*supra* para. 36).

92. The Court will now analyze the matter in the following order: (1) content of the right to freedom of thought and of expression; (2) permitted restrictions to the freedom of expression and the application of subsequent liability, and (3) the case of Mr. Álvarez Ramos.

### **B.1. Content of the right to freedom of thought and expression**

93. The right to freedom of thought and expression is established in Article 13 of the Convention. Likewise, Article 4 of the Inter-American Democratic Charter, the interpretative instrument of the OAS Charter and of the Convention itself, considers it an essential component of democracy.<sup>97</sup>

94. With regard to the right to freedom of thought and expression, the Court has previously indicated that those protected by the Convention not only have the right to seek, receive and impart information and ideas of all kinds, but also to receive and be informed about information and ideas imparted by others.<sup>98</sup> For this reason, freedom of expression has an individual dimension and a social dimension:

[i]t requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to

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<sup>97</sup> Article 4 of the Inter-American Democratic Charter: "Transparency in government activities, probity, and responsible public administration on the part of governments respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy."

<sup>98</sup> Cf. *Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008, Series C, No. 177, para. 53.

receive any information whatsoever and to have access to the thoughts expressed by others.<sup>99</sup>

95. Furthermore, the Court reiterates that:

the different regional systems for the protection of human rights and the universal system agree on the essential role played by freedom of expression in the consolidation and dynamics of a democratic society. Without effective freedom of expression, exercised in all its forms, democracy is enervated, pluralism and tolerance start to deteriorate, the mechanisms for control and complaint by the individual become ineffectual and, above all, a fertile ground is created for authoritarian systems to take root in society.<sup>100</sup>

96. With regard to the first dimension of the right to freedom of expression, the Court has indicated that this "is not exhausted in the theoretical recognition of the right to speak or write, but also includes, inseparably, the right to use any appropriate method to disseminate thought and allow it to reach the greatest number of persons."<sup>101</sup> Thus, the expression and dissemination of thought and information are indivisible, so that a restriction of the possibilities of dissemination represents directly, and to the same extent, a limit to the right to free expression.<sup>102</sup>

97. Regarding the second dimension of the right to freedom of expression that is, the social element, it is necessary to indicate that freedom of expression is a way of exchanging ideas and information between persons; it includes the right to try and communicate one's point of view to others, but it also implies everyone's right to know opinions, reports and news. For the ordinary citizen, the knowledge of other people's opinions and information is as important as the right to impart their own.<sup>103</sup>

98. The American Convention guarantees this right to every individual, irrespective of any other consideration; therefore, such guarantee should not be limited to a given profession or group of individuals. Freedom of expression is an essential element of the freedom of the press, although these are not synonymous and exercise of the first does not condition the exercise of the second.<sup>104</sup>

99. Given the importance of freedom of expression in a democratic society, the State must not only minimize restrictions on the dissemination of information, but must also balance, to the greatest extent possible, the participation in the public debate of different types of information, fostering informative pluralism. Consequently, equity must regulate the flow of information.<sup>105</sup>

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<sup>99</sup> Cf. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29, American Convention on Human Rights). *Advisory Opinion OC-5/85* of November 13, 1985. Series A, No. 5, para. 30; and *Case of Carvajal et al. v. Colombia. Merits, reparations and costs*. Judgment of March 13, 2018, Series C, No. 352, para. 172.

<sup>100</sup> Cf. *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C, No. 107, para. 116.

<sup>101</sup> Cf. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*, Judgment of February 5, 2001, Series C, No. 73, para. 65; *Case of Carvajal et al. v. Colombia*, para. 172.

<sup>102</sup> Cf. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*, para. 65; *Case of Carvajal et al. v. Colombia*, para. 172.

<sup>103</sup> Cf. *Case of "The Last Temptation of Christ"*, para. 66; Cf. *Case of Carvajal et al.*, para. 172.

<sup>104</sup> Cf. *Case of Tristán Donoso v. Panama*, para. 114.

<sup>105</sup> The Court has stated that "it is indispensable to ensure [...] the plurality of means of communication, the barring of all monopolies thereof, in whatever form". *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, para. 34. See also, *mutatis mutandi Case Kimel v. Argentina*, para. 57.

100. The Court has also considered that both dimensions are equally important and should be guaranteed simultaneously in order to give full effect to the right to freedom of thought and expression under the terms of Article 13 of the Convention.<sup>106</sup>

### ***B.2. Permitted restrictions to freedom of expression and the application of subsequent liability***

101. The Court has reiterated that freedom of expression is not an absolute right. Article 13(2) of the American Convention, which prohibits prior censorship, also provides for restrictions for the abuse of this right, through the imposition of subsequent liability, to ensure “respect for the rights or reputation of others” (subparagraph “a” of Article 13(2)). Nevertheless, these limitations are exceptional in nature and should not prevent, beyond what is strictly necessary, the full exercise of freedom of expression or become a direct or indirect mechanism of prior censorship.<sup>107</sup> Thus, the Court has established that liability may be imposed subsequently, if the right to honor and reputation has allegedly been harmed.<sup>108</sup>

102. Indeed, Article 11 of the Convention establishes that everyone has the right to have his honor respected and his dignity recognized. The Court has pointed out that the right to honor “recognizes that everyone has the right to be respected and that no one may be the object of unlawful attacks against his honor or reputation and imposes on the States the duty to afford protection against such attacks. In general terms, this Court has indicated that the right to honor is related to self-esteem and self-worth, whereas reputation refers to the opinion that others have about someone.”<sup>109</sup>

103. In this regard, the Court has recognized that, “both freedom of expression and the right to honor, which are both rights protected by the Convention, are extremely important; hence both rights must be guaranteed in a way that ensures that they coexist harmoniously.”<sup>110</sup> Each fundamental right must be exercised respecting and safeguarding the other fundamental rights.<sup>111</sup> Thus, the Court considers that “the solution to the conflict arising between some rights requires the examination of each case in accordance with its specific characteristics and circumstances, considering the existence of elements and the extent thereof on which the considerations regarding proportionality are to be based.”<sup>112</sup>

104. Accordingly, the Court has reiterated in its jurisprudence that, pursuant to Article 13(2) of the American Convention, the imposition of subsequent liability for the exercise of freedom of expression must meet the following requirements concurrently: (i) be previously established by law, in the formal and material sense<sup>113</sup>; (ii) pursue an objective permitted by the American Convention (“respect for the rights and reputation of others” or “the protection of national security, public order, public health, or public morals”), and (iii) be necessary in a democratic society (and satisfy the requirements of legality, necessity and proportionality).<sup>114</sup>

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<sup>106</sup> Cf. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*, para. 67; *Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2017, Series C, No. 340, para. 89.

<sup>107</sup> Cf. *Case of Herrera Ulloa v. Costa Rica*, para. 120; and *Case of Tristán Donoso v. Panama*, para. 110.

<sup>108</sup> *Case Mémoli v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 22, 2013, Series C, No. 265, para. 123.

<sup>109</sup> Cf. *Case of Tristán Donoso v. Panama*, para. 57; and *Case of the Santo Domingo Massacre v. Colombia*, Series C, No. 259, para. 286.

<sup>110</sup> Cf. *Case of Kimel v. Argentina*, para. 51; and *Case of Mémoli v. Argentina*, para. 127.

<sup>111</sup> Cf. *Case of Kimel v. Argentina*, para. 75; and *Case of Mémoli v. Argentina*, para. 127.

<sup>112</sup> Cf. *Case of Kimel v. Argentina*, para. 51; and *Case of Granier et al. v. Venezuela*, para. 144.

<sup>113</sup> Cf. *The Word “Laws” in Article 30 of the American Convention on Human Rights. Advisory Opinion OC-6/86 of May 9, 1986*. Series A, No. 6, paras. 35 and 37.

<sup>114</sup> Cf. *Case of Tristán Donoso v. Panama*, para. 56; and *Case of Lagos del Campo v. Peru*, para. 102.

105. Regarding the first requirement, strict legality, the Court has established that restrictions must be previously established by law to ensure that these are not left to the discretion of the public authorities. Thus, the criminal definition of a given conduct must be clear and accurate,<sup>115</sup> particularly when it concerns matters of criminal law and not of civil law.<sup>116</sup>

106. On the second aspect, that is, the permitted or legitimate purposes, Article 13(2) of the Convention refers to this point. While the present case concerns the restriction of the right to freedom of expression by means of a complaint filed by a private citizen, the Court will consider only the purpose specified in subparagraph (a) of that Article, namely respect for the rights or reputation of others.

107. The Court has considered that, in pursuit of this legitimate end, it is necessary that the State weigh up the right to freedom of expression of the communicator and the right to honor of the person affected.<sup>117</sup> Furthermore, the State has the obligation to provide a judicial remedy so that any person who considers that his honor has been harmed can demand protection.<sup>118</sup>

108. Finally, as regards the proportionality and necessity of the measure, the Court has understood that any restriction imposed on the right to freedom of expression must be proportionate to the interest that justifies it, and closely tailored to the accomplishment of that legitimate purpose, interfering as little as possible with the effective exercise of that right.<sup>119</sup> In that sense, it is not sufficient to have a legitimate purpose; the measure in question must also respect the principles of proportionality and necessity in restricting freedom of expression. In other words, "this last step of the examination, must consider whether the restriction is strictly proportionate, in a manner such that the sacrifice inherent therein is not exaggerated or disproportionate in relation to the advantages obtained from the adoption of such limitation."<sup>120</sup>

109. For its part, the European Court of Human Rights, in interpreting Article 10 of the European Convention, concluded that the term "necessary", while not synonymous with "indispensable", implies the existence of a "pressing social need" and that for a restriction to be "necessary" it is not enough to show that it is "useful", "reasonable" or "desirable."<sup>121</sup> This concept of "pressing social need" was adopted by the Inter-American Court in its Advisory Opinion OC-5/85.<sup>122</sup>

110. Having considered the content of the right to freedom of thought and expression, and the importance of freedom of expression in a democratic system, and having established the requirements for ensuring that any restrictions to that right are compatible with the American Convention, the Court will now analyze the facts of this case.

### **B.3. The case of Mr. Álvarez**

111. In considering the case of Mr. Álvarez, the Court will first examine the nature of his comments in the article published in the newspaper "Así es la Noticia." It will then consider

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<sup>115</sup> Cf. *Case of Kimel v. Argentina*, para. 77.

<sup>116</sup> *Mutatis Mutandis*, Cf. *Case of Fontevecchia and D'Amico v. Argentina. Merits, reparations and costs*. Judgment of November 29, 2011, Series C, No. 238, para. 89.

<sup>117</sup> Cf. *Case of Kimel v. Argentina*, para. 51; and *Case of Lagos del Campo v. Peru*, para. 100.

<sup>118</sup> Cf. *Case of Mémoli v. Argentina*, para. 125.

<sup>119</sup> Cf. *Case of Herrera Ulloa v. Costa Rica*, para. 123; and *Case of Claude Reyes et al. v. Chile, Merits, reparations and costs*. Judgment of September 19, 2006, Series C, No. 151, para. 91.

<sup>120</sup> Cf. *Case of Kimel v. Argentina*, para. 83.

<sup>121</sup> Cf. ECHR, *Case of The Sunday Times*, para. 59.

<sup>122</sup> Cf. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, para. 46.

whether, in this particular case, the measure met the criteria for the imposition of subsequent liability against the presumed victim, so as to be compatible with the American Convention.

*B.3.a. Assessment of the statements by Mr. Álvarez*

112. Regarding the nature of the article entitled "National Savings Bank of the National Assembly Looted," published in the newspaper "Así es la Noticia", the Court wishes to make the following points: i) the article referred to the administration of public funds allocated for the pensions of officials of the National Assembly, ii) it referred to Mr. Lara in the context of his work as a public servant at the head of the National Assembly and, by default, of the National Assembly's Savings Bank, iii) Mr. Álvarez's comments were based on a document issued by a State institution.

113. In this regard, the expert opinion included in the case file<sup>123</sup> stated that at least three elements must be present for a given article or item of information to be considered part of the public debate, namely: i) the subjective element, in other words, that the person concerned was a public servant at the time when the accusation was made by public means; ii) the functional element, that is, the person was acting in an official capacity in the related facts, and iii) the material element, that is, the matter discussed is of public importance. In this case, the Court finds that these three elements are satisfied because the article i) makes specific reference to Mr. Lara's position as President of the National Assembly; ii) it refers to Mr. Lara's duties as a public official, and iii) the management or administration of public funds or resources of the Savings and Social Benefits Bank of the workers of the National Assembly is a matter of public interest.

114. Furthermore, in the context of debate on matters of public interest, the Court's jurisprudence has established that freedom of expression is not only applicable to information or ideas that are favorably received or regarded as inoffensive, but also to those that shock, irritate or disturb public officials or any sector of the population.<sup>124</sup> Thus, the Court has protected other expressions of a similar nature to this case, for example the statements criticizing the actions of a judge in the case of *Kimel v. Argentina*<sup>125</sup> or the use of strong language in the case of *Lagos del Campo v Peru*.<sup>126</sup>

115. Thus, the Court's assessment in this case cannot be any different. Although Mr. Álvarez expressed criticism, this does not imply that his comments are not protected under the terms of the right to freedom of expression. This type of discourse should also be protected, despite being uncomfortable and employing incisive language, especially in a democratic society where criticism leveled at public officials is not only valid but necessary.

116. Finally, in other cases the Court has understood that similar statements are part of the public debate in a democratic society, and require protection in a manner consistent with the principles of democratic pluralism.<sup>127</sup> The Court has reaffirmed the protection of freedom of expression in respect of opinions or information on matters in which society has a legitimate interest to keep itself informed, and to know about a matter that has an impact on the functioning of the State, or affects its general rights or interests or has significant consequences.<sup>128</sup>

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<sup>123</sup> Cf. *Expert opinion* of the expert witness Catalina Botero during the public hearing in this case.

<sup>124</sup> Cf. *Case of Herrera Ulloa v. Costa Rica*, para. 126; *Case of Lagos del Campo v. Peru*, para. 117; see also ECHR, *Case of Castells v. Spain*, Judgment of April 23, 1992, No. 11798/85, para. 42.

<sup>125</sup> Cf. *Case of Kimel v. Argentina*, paras. 42 and 89 to 90.

<sup>126</sup> Cf. *Case of Lagos del Campo v. Peru*, paras. 51, 106 and 112.

<sup>127</sup> Cf. *Case of Herrera Ulloa v. Costa Rica*, para. 128.

<sup>128</sup> Cf. *Case of Tristán Donoso v. Panama*, para. 121; and *Case of Mémoli v. Argentina*, para. 146.

117. Based on the foregoing considerations, the Court concludes that Mr. Álvarez's statements made reference to matters of public debate that warrant protection under the right to freedom of expression. Therefore, in this case the Court must consider whether the imposition of subsequent liability to which Mr. Álvarez was subjected complied with the requirements of Article 13(2) of the Convention.

*B.3.b. Subsequent criminal liability to which Mr. Álvarez was subjected*

118. In this case, the purpose of the criminal proceedings instituted against Mr. Álvarez was to protect the honor and reputation of a public servant who resorted to legal action to defend himself. The Court has previously indicated that statements concerning public officials and other individuals who perform duties of a public nature should be accorded a certain latitude in the broad debate on matters of public interest. However, this does not, by any means, signify that the honor of public officials or public figures should not be legally protected.<sup>129</sup>

119. Article 13(2) of the American Convention states that the exercise of the right to freedom of expression shall not be subject to prior censorship, but shall be subject to subsequent imposition of liability. Although, this provision does not establish the nature of the liability to be imposed, in its jurisprudence this Court has indicated that criminal prosecution is the most restrictive measure to freedom of expression; therefore in a democratic society, its use should be exceptional and be reserved for those eventualities in which it is strictly necessary to protect fundamental legal interests from attacks that may harm or endanger them. To do otherwise, would result in the abusive exercise of the punitive power of the State.<sup>130</sup>

120. In other words, from the array of possible measures available to impose subsequent liability for the potential abusive exercise of the right to freedom of expression, criminal prosecution will only be appropriate in exceptional cases where it is strictly necessary to protect a pressing social need.

121. It is understood that in the case of speech that is protected because it concerns matters of public interest, such as the conduct of public officials in the performance of their duties, the State's punitive response through criminal law is not conventionally appropriate to protect the honor of an official.

122. Indeed, the use of criminal law against those who disseminate information of this nature would directly or indirectly constitute intimidation which, in the end, would limit freedom of expression and would impede public scrutiny of unlawful conduct, such as acts of corruption, abuse of authority, etc. Ultimately, this would weaken public controls over the State's powers, causing grave damage to democratic pluralism. In other words, in the hypothesis outlined previously, the protection of honor through the criminal law, which may be legitimate in other cases, is not consistent with the Convention.

123. In this order of ideas, the Court understands that the legal definition of offenses against honor in cases of investigative reports by journalists requires careful interpretation. In this sense, it is important to emphasize that from each definition of a crime or offense, a prohibitory norm is inferred, as a logical exercise that makes it possible to determine a proscribed social sphere. However, it is not sufficient, based merely on the norm adduced from that legal definition, to establish this sphere, because prohibitory legal norms form part

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<sup>129</sup> Cf. *Case of Herrera Ulloa v. Costa Rica*, para. 128; and *Case of Palamara Iribarne v. Chile. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 135, para. 82.

<sup>130</sup> Cf. *Case of Kimel v. Argentina*, para. 76; *Case of Mémoli v. Argentina*, para. 139.



of a regulatory system or, at least, are understood in this way by the judges. A basic principle of interpretive rationality requires that one law cannot prohibit what another law orders, since in such a case the citizen would lack guidance according to law. But it cannot be ignored that there are many norms that encourage certain types of conduct, for example in the practice of sport or the exercise of medicine, which could enter into conflict with other norms that prohibit activities injurious to safety or health. Under this hypothesis, it would be irrational to understand that certain definitions prohibit what other laws promote. Among these promoted activities is the exercise of freedom of expression, because, in a pluralistic society, this is essential for exerting public control over the actions of government and administration. Therefore, in cases such as this, when confronted with reports denouncing the conduct of public officials whose control is in the public interest, it constitutes an activity expressly protected by the American Convention and, consequently, cannot be considered in the context of conduct characterized as criminal by law.

124. This does not mean that journalistic conduct cannot produce liability in another legal sphere, such as in civil law, or require correction or public apologies, for example, in cases of possible abuses or excesses of bad faith. However, this case involves the exercise of an activity protected by the Convention, which precludes its criminal characterization and, therefore, the possibility of being considered a crime and being subject to penalties. In this regard, it must be made clear that this is not a question of excluding a prohibition through justification or special permission, but rather of the free exercise of an activity that the Convention protects because it is indispensable for the preservation of democracy.

125. As to the statements made by Mr. Álvarez, it should be noted that these called into question the administration of public funds of the National Assembly based on public documents issued by State bodies; in other words, they referred to matters of public interest (*supra* para. 36). Furthermore, it is not disputed that the facts were public knowledge, and had already been the subject of a request for a preliminary impeachment hearing that was awaiting a decision by the Plenary of the Supreme Court.

126. In the second place, it is important to note that Mr. Álvarez published an opinion column in a national newspaper. The Court has indicated that it is essential that journalists who work in the media enjoy the necessary protection and independence to fully perform their functions, since they are the ones who keep society informed, and this is an indispensable requirement that enables society to enjoy full freedom and to strengthen public debate.<sup>131</sup>

127. It is also important to point out that the supposed purpose of the criminal proceedings against Mr. Álvarez was to protect Mr. Lara's right to honor, and that in this case there is no social imperative that makes it necessary to restrict freedom of expression given that: i) the article refers to the actions of a public official; ii) the article refers to Mr. Lara's exercise of his duties as a public official, and that this was also mentioned in statements by other State bodies; and iii) the management or administration of public funds or resources is a matter of public interest (*supra* para. 113). In other words, in this case the greater public interest is associated with the dissemination of information or news and not with the subjective protection of Mr. Lara's right to honor and reputation.

128. Furthermore, the Court considers that it is not sufficient for a public official whose honor was supposedly injured by a journalist exercising his freedom of expression, to take private legal action in order to avoid having his official status taken into consideration and thereby elude the provisions established in the Convention and in the Court's jurisprudence.

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<sup>131</sup> Cf. *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C, No. 74, para. 150; and *Case of Granier et al. v. Venezuela*, para. 152.

In this case, the issue in question is not the application of Article 11 of the Convention in relation to the protection of honor and dignity, but of Article 13, in relation to freedom of thought and expression.

129. Given that, under the terms of the Convention, the publication of an article of public interest concerning a public official cannot be considered a criminal offense or a crime against honor, the Court concludes that the fact that such conduct was sanctioned in this case constituted a violation of Article 13(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Tulio Álvarez Ramos.

130. The parties also argued that Mr. Álvarez's political rights were violated by virtue of the additional penalty of political disqualification ordered by the judgment of the Seventh Trial Court. In this regard, given that the criminal prosecution and the sanction imposed on Mr. Álvarez was considered to violate Article 13 of the Convention, the Court concludes that the additional penalty of restricting his political rights violated Article 23 of the American Convention, in relation to Article 1(1) thereof.

131. As to the argument that the penalty of political disqualification was imposed for a period longer than the duration of the sentence, given the decision by the Professors' Association of the Central University of Venezuela to not allow Mr. Álvarez to register in its electoral register, the Court notes that this measure was revoked through the *amparo* granted by the Electoral Chamber of the Supreme Court, and that professor Álvarez was included in the electoral process in which he hoped to participate. Therefore, the application of political disqualification does not appear to have continued beyond the term of the sentence, as alleged by the Commission and the representatives, nor were Mr. Álvarez's political rights impaired on that occasion.

#### **B.4 Conclusions**

132. Consequently, the Court concludes that Venezuela violated the right to freedom of expression and political rights, pursuant to Articles 13(1), 13(2) and 23 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Mr. Tulio Álvarez Ramos. Having regard to the foregoing conclusions, the Court does not consider it necessary to rule on the alleged violation of the principle of legality (Article 9) and the duty to adopt provisions of domestic law (Article 2).

### **VIII-2 RIGHT TO A FAIR TRIAL<sup>132</sup>**

#### **A. Arguments of the parties and of the Commission**

133. The Commission alleged that the State violated Article 8(2)(f) of the American Convention, because it did not provide elements to justify the arrest of one of Mr. Álvarez's witnesses while he testified during the trial hearing. It argued that this measure had no legal basis, was not necessary or proportionate to achieve the aims of a democratic society and was not justified by the need to safeguard the administration of justice.

134. The Commission recalled that there was no record in the case file to explain, nor did the Venezuelan State explain, the legal basis and well-founded reasons for which Mr. Álvarez was denied access to copies of the videos and interviews used as evidence prior to the start of the oral trial. These declarations formed the basis of the amendment of the criminal

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<sup>132</sup> Article 8 of the American Convention.

complaint against him and subsequently his conviction. The Commission concluded that the Venezuelan State violated the right established in Article 8(2)(c) of the Convention.

135. The representatives argued that the case was filed before a court that did not have jurisdiction to hear a private prosecution, and that the action did not meet the standards necessary for a criminal "accusation" according to the requirements inherent in any formal accusation. They pointed out that on eight occasions the judge hearing the case classified the action brought by the other party as a complaint. Subsequently, the Seventh Court ordered it to be corrected and presented as a private prosecution action.

136. They further argued that the amendment of the complaint created a procedural imbalance, since at the time when it was admitted by the court, the defendant was not advised of his right to request the suspension of the trial to prepare the defense, pursuant to Article 351 of the Organic Code of Criminal Procedure<sup>133</sup> in force at that time. In addition, they alleged that Mr. Álvarez did not have access to videos and evidence prior to the trial, which were available to the complainant when he amended the complaint. They further argued that the judge rejected evidence from the defense that would have established the *exceptio veritatis* (defense of truth) that Mr. Álvarez had expressed in his article for the newspaper *Así es la Noticia*.

137. They also alleged the violation of Mr. Álvarez's right to question a key witness, Mr. José Rafael García, President of the Association of Retirees and Pensioners of the National Assembly. Said witness was accused and arrested for allegedly giving false testimony during the hearing. Likewise, the representatives argued that the decision to disqualify and arrest the witness constituted prejudice against Mr. Álvarez. Furthermore, the detention of the witness had the effect of inhibiting any other person from testifying in favor of Mr. Álvarez. Consequently, the representatives claimed a violation of Article 8(2)(f) of the Convention.

138. The representatives pointed out that provisional judges were assigned to the proceedings of first and second instance, which would have affected the trial against Mr. Álvarez. The representatives considered that these supposed irregularities would account for the fact that the judges who heard the case against Mr. Álvarez did not act with independence or impartiality.

139. Finally, they argued that changes in the procedural acts and the restrictions to which they were exposed, prevented them from having a clear idea of the charges and the proceedings in order to prepare an adequate defense. Therefore, they asked the Court to declare the violation of Article 8(2) of the American Convention.

140. As to the confusion between the complaint and the private prosecution alleged by the representatives, the State affirmed that both terms are considered synonymous given that the first version of the Code of Criminal Procedure referred to the characterization of the complaint as a means for initiating criminal proceedings for privately actionable offenses. Based on the regulation of 2001, a private prosecution was brought as a means to initiate said

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<sup>133</sup> Article 351 of the Organic Code of Criminal Procedure: "Amendment of the complaint. During oral argument, and prior to the closing arguments of the parties, the Public Ministry or the complainant may amend the complaint through the inclusion of a new fact or circumstance that has not been mentioned and that changes the legal classification of or penalty for the act at issue in the oral argument. The complainant may join the Prosecutor's amendment to the complaint, and the Prosecutor may include the new evidence in the amendment of his or her complaint. In such case, a new statement will be taken from the defendant in relation to the new facts or circumstances alleged in the amended complaint, and all the parties will be informed. The parties will have the right to request a stay of the trial proceedings in order to offer new evidence or prepare their defense. When this right is asserted, the court will suspend oral argument for a reasonable period of time, according to the nature of the facts and the needs of the defense. The new facts or circumstances addressed in the amendment will be included in the order to open the trial."

proceedings. In this regard, the State recalled that these problems were known, addressed and remedied by the competent Court, in compliance with the procedural principles established in the Constitution and in the Organic Code of Criminal Procedure. Furthermore, it affirmed that the aforementioned procedural problem did not affect the alleged victim's participation and defense in the domestic judicial proceedings.

141. Regarding the alleged violation of the right to adequate means to prepare the defense, the State argued that during the criminal trial all the videos and interviews mentioned by the Commission were included in the file and were provided during the hearing, and therefore could be accessed by Mr. Álvarez. It added that all these actions were carried out in accordance with Article 358<sup>134</sup> of Venezuela's Organic Code of Criminal Procedure in force at that time.

142. As to the testimony of Mr. José Rafael García and his arrest during the public hearing, the State argued that Mr. García had given false testimony during the hearing. Therefore, pursuant to Article 243<sup>135</sup> of Venezuela's Criminal Code, he was arrested and brought before the judicial authorities. Furthermore, at the time of his *in flagrante* arrest he had already answered 43 questions of the defense.

### **B. Considerations of the Court**

143. Although Article 8 of the American Convention is entitled "Right to a fair Trial" (judicial guarantees) its application is not limited to judicial remedies in the strict sense, "but rather the procedural requirements that should be observed<sup>136</sup>" in the courts so that a person may defend himself adequately in the face of any action by the State that affects his rights.<sup>137</sup>

144. The Court has established that to ensure the full observance of judicial guarantees in a trial, in accordance with the provisions of Article 8 of the Convention, it is essential to observe all the requirements that "serve to protect, to ensure or to assert the entitlement to a right or the exercise thereof."<sup>138</sup> In other words, the "conditions that must be observed to ensure the adequate defense of those whose rights or obligations are under judicial consideration."<sup>139</sup>

145. According to their position, the parties in this case have offered different arguments concerning the violations of due process committed during the criminal trial against Mr. Álvarez: i) procedural defects in the presentation of the accusation; ii) questions about the impartiality of the judges of first and second instance (Article 8); iii) hindering the defendant's

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<sup>134</sup> Article 358 of the Organic Code of Criminal Procedure: "Recordings and audiovisual evidence shall be presented during the hearing, by the usual means of reproduction."

<sup>135</sup> Article 243 of the Criminal Code: "Article 243 of the Criminal Code: "Any person who testifies as a witness before the judicial authority, who makes false statements, denies the truth or remains silent, entirely or in part, regarding the facts on which he is questioned shall be punished with a prison term of fifteen days to fifteen months. If the false testimony has been given against a suspect in a crime or in the course of a criminal trial, the prison term shall be from six to thirty months, and if those two circumstances coincide, it shall be eighteen months to three years. If the false testimony has been given against a suspect in a crime or in the course of a criminal trial, the prison term shall be from six to thirty months, and if those two circumstances coincide, it shall be eighteen months to three years. If the false testimony has resulted in a conviction of imprisonment, the prison term shall be three to five years. If the testimony has not been rendered under oath, the penalty shall be reduced by one-sixth to one-third."

<sup>136</sup> 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. 27; and *Case of Pollo Rivera et al. v. Peru. Merits, reparations and costs*. Judgment of October 21, 2016, Series C, No. 319, para. 209.

<sup>137</sup> Cf. *Case of the Constitutional Court v. Peru. Merits, reparations and costs*. Judgment of January 31, 2001, Series C No. 71, para. 69; and *Case Colindres Schonenberg v. El Salvador. Merits, reparations and costs*. Judgment of February 4, 2019, Series C, No. 373, para. 63.

<sup>138</sup> Cf. *Habeas Corpus in emergency situations* (Articles 27.2, 25.1 and 7.6 American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987, Series A, No. 8, para. 25; and *Case J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013, Series C, No. 275, para. 258.

<sup>139</sup> Cf. Advisory Opinion OC-9/87, para. 28; and *Case of J. v. Peru*, para. 258.

right to defense by limiting his access to certain evidence and limiting the time to prepare the defense (Article (8)(2)(c); and, iv) undue restrictions on the testimony of a witness (Article 8(2).(f)).

### ***B.1. Procedural defects in the presentation of the accusation***

146. With regard to procedural defects in the presentation of the accusation (complaint or criminal accusation), the Court notes that Mr. Willian Lara did indeed file a “complaint” before the Thirty-Sixth Trial Court of Caracas (*supra* para. 38), which declined its jurisdiction. The petition was subsequently reassigned to the Seventh Trial Court, which asked the plaintiff to remedy the procedural errors in the private prosecution in accordance with current law (*supra* para. 40). The foregoing description of the facts does not suggest that a formal violation of due process occurred, since the Venezuelan Judiciary acted in accordance with procedural law, by transferring the initial petition to the competent court and requiring the plaintiff to correct the accusation. Therefore, the Court concludes that the representatives have not proven a violation of due process in this respect.

### ***B.2. Impartiality of the judges***

147. With respect to the impartiality of the judicial authorities, the representatives presented two types of arguments. First, they claimed that the provisional status of the judges and their replacement prior to the trial hearings demonstrated a lack of judicial independence. They also argued that several actions by the Seventh Trial Court during the criminal proceedings that resulted in the conviction of Mr. Álvarez, particularly the rejection of the evidence offered, would suggest the partiality of the judge, in violation of Article 8 of the American Convention.

148. The Court recalls that States are required to guarantee the independence of provisional judges and, therefore, should grant them a certain degree of stability and permanence in office, given that to be provisional is not equivalent to being discretionally removable from office. Indeed, the Court considers that the provisional nature of the appointments should not modify in any manner the safeguards instituted to guarantee the good performance of the judges and to ultimately benefit the parties to a case. Furthermore, provisional appointments should not be extended indefinitely in time and should be subject to a condition subsequent, such as a predetermined deadline or the holding and completion of a public competitive selection process, whereby a permanent replacement for the provisional judge is appointed. Provisional appointments should be the exception, rather than the rule. Thus, when provisional judges are in office for a long time, or the majority of judges are provisional, this situation creates major obstacles for the independence of the judiciary. This situation of vulnerability of the judiciary is compounded when there are no processes for removal from office that are respectful of the international obligations of States.<sup>140</sup> Likewise, the United Nations Human Rights Committee has stated that the dismissal of judges by the executive, before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective judicial protection being available to contest the dismissal, is incompatible with the independence of the judiciary.

149. However, the Court notes that in this case there are no allegations concerning the transfer or removal of judges, only of temporary substitutions of the judges in charge of the criminal proceedings.

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<sup>140</sup> 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. 43; and *Case of Chocrón v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2011. Series C, No. 227, para. 116-117.

150. Furthermore, impartiality demands that the judge acting in a specific dispute examine the facts of the case subjectively free of all prejudice, offering sufficient objective guarantees to exclude any doubt the parties or the community might entertain as to his or her lack of impartiality.<sup>141</sup> The assurance of impartiality implies that members of the court do not have a direct interest, a given position, a preference for any of the parties, are not involved in the dispute, and that they inspire the necessary confidence in the parties to the case, and in the citizens of a democratic society.<sup>142</sup> Personal or subjective impartiality is to be presumed unless there is evidence to the contrary, consisting, for example, of a demonstration that a member of a court or a judge harbors personal prejudices or partialities against the litigants. In turn, the so-called objective impartiality test consists of determining whether the judge in question offered sufficient elements of conviction to allay any legitimate misgivings or well-founded suspicions of partiality regarding his person.<sup>143</sup>

151. The Court reiterates that a judge's personal impartiality should be presumed, unless there is evidence to the contrary. For the analysis of subjective impartiality, the Court should attempt to ascertain the personal interests or motivations of the judge in a given case. As to the type of evidence required to prove subjective impartiality, the European Court has indicated that it should try to determine whether the judge has expressed hostility or has endeavored to have the case assigned to him for personal reasons.<sup>144</sup>

152. The Court emphasizes that a violation of Article 8(1) of the Convention owing to an alleged lack of judicial impartiality must be established based on specific and concrete evidentiary elements that indicate that the judges have clearly been influenced by aspects or criteria unrelated to legal rules.<sup>145</sup> In this case, the Court finds no reliable evidence to suggest that the judicial authorities acted with a lack of impartiality or independence that would have decisively influenced their decision.

### ***B.3. Right to adequate time and means for the preparation of a defense***

153. The right to adequate time and means to prepare a defense, enshrined in Article 8(2)(c) of the Convention, requires the State to guarantee the defendant's access to the case file against him.<sup>146</sup> Similarly, it should respect the adversarial principle, which guarantees the defendant's involvement in the analysis of the evidence.<sup>147</sup>

154. Regarding the adequate means required for the preparation of the defense, this includes all the material and evidence that the prosecution wishes to use against the accused, together with exculpatory documents. Moreover, if a State finds it necessary to restrict the right to defense, it must do so in keeping with the principle of legality, present the legitimate objective that it seeks to achieve, and prove that the means used to this end is suitable,

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<sup>141</sup> Cf. *Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela*, para. 56; and *Case V.R.P., V.P.C. et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 8, 2018, Series C, No. 350, para. 239.

<sup>142</sup> Cf. *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C, No. 288, para. 168; and *Case of V.R.P., V.P.C. et al. v. Nicaragua*, para. 239.

<sup>143</sup> Cf. *Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela*, para. 56, and *Case of V.R.P., V.P.C. et al. v. Nicaragua*, para. 239.

<sup>144</sup> Cf. *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*. Judgment of February 24, 2012. Series C, No. 239, para. 234; and *Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of April 25, 2018. Series C, No. 354, para. 386.

<sup>145</sup> Cf. *Case of Atala Riffo and daughters v. Chile*, para. 190; and *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs*. Judgment of March 8, 2018. Series C, No. 349, para. 197.

<sup>146</sup> Cf. *Case of Palamara Iribarne v. Chile*, para. 170; and *Case of J. v. Peru*, para. 205.

<sup>147</sup> Cf. *Case of Palamara Iribarne v. Chile*, para. 178; and *Case of Barreto Leiva v. Venezuela. Merits, reparations and costs*. Judgment of November 17, 2009. Series C, No. 206, para. 54.

necessary and strictly proportionate. Otherwise, the restriction will be contrary to the Convention.<sup>148</sup> Furthermore, such limitation should be counterbalanced by the judge, so that it does not negate the adversarial principle or the “equality of arms” principle. Therefore, the guarantees of adequate time and means must always be observed.

155. In this case it is not disputed that Mr. Álvarez and his lawyers did not have access to the videos that formed the basis of the amendment of the accusation until the moment of the hearing.<sup>149</sup> However, it is important to note that after the request for amendments to the complaint against Mr. Álvarez, the judge suspended the hearing on two occasions and granted Mr. Álvarez and his lawyers periods of three and five working days, respectively, to prepare and gather more evidence for his defense.<sup>150</sup> Also, the evidence that justified the amendment of the complaint was linked to the crime that was the subject of the initial accusation and concerned interviews given by Mr. Álvarez himself to the Venezuelan media. Therefore, this fact was not unknown to Mr. Alvarez.

156. Notwithstanding the foregoing subtleties, even though the accused was able to review that evidence and present his legal arguments during the public hearing, it is no less true that his lack of access to evidence that was so fundamental for the amendment of the accusation resulted in an imbalance between the prosecution and the defense. This is most important because Mr. Álvarez alleged from the outset that his interest in accessing the videos was justified by the need to ensure that these had not been manipulated in some way. The Court considers that Mr. Álvarez’s inability to gain access to the entire case file and the evidence upon which the amendment of the complaint was based, prevented him from adequately defending himself, in violation of Article (8)(2)(c) of the American Convention.

#### **B.4. Right to examine witnesses**

157. Among the prerogatives that must be granted to someone who has been accused is the opportunity to examine witnesses against and in his favor, under the same conditions, for the purpose of exercising his defense.<sup>151</sup> Article 8(2)(f) of the Convention establishes the “minimum guarantee” of “the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts,” thereby protecting the principles of adversarial and procedural equality.

158. In this case, the witness José Rafael García gave evidence during the hearing on February 2 and 3, 2005, answering 43 questions (*supra* para. 47). During his intervention on February 3, the prosecution lawyers accused him of giving false testimony. The Seventh Trial Court accepted this accusation and ordered the immediate arrest of Mr. García, who left the courtroom in handcuffs. Furthermore, the judge rejected all of his testimony. Both the Commission and the representatives argued that those events inhibited other defense witnesses who were to testify after Mr. García. In this regard, based on the judgment delivered by the Seventh Trial Court, it is clear that four witnesses testified after Mr. García (Mr. Cruz Chicott Velásquez<sup>152</sup>, Mrs. María Piñero<sup>153</sup>, Mr. Iván Delgado Abreu<sup>154</sup> and Mrs. Ibeyise

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<sup>148</sup> Cf. *Case of Barreto Leiva v. Venezuela*, para. 55; and *Case of J. v. Peru*, para. 206.

<sup>149</sup> Cf. Judgment of February 28, 2005, folios 2765 and 2766.

<sup>150</sup> Cf. Judgment of February 28, 2005, folio 2633, 2638, 2639 and 2659.

<sup>151</sup> Cf. *Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs*. Judgment of 30 May 1999. Series C, No. 52, para. 154; and *Case of Norín Catrimán et al. (Leaders, Members and Activists of the Mapuche Indigenous People) v. Chile. Merits, reparations and costs*. Judgment of May 29, 2014. Series C, No. 279, para. 242.

<sup>152</sup> Cf. Judgment of February 28, 2005, folios 2433 to 2435.

<sup>153</sup> Cf. Judgment of February 28, 2005, folios 2435 to 2437.

<sup>154</sup> Cf. Judgment of February 28, 2005, folios 2437 to 2442.

Pacheco<sup>155</sup>). Specifically, the witness Cruz Chicott stated that he felt no pressure to testify.<sup>156</sup> In addition, the affidavit rendered by Mrs. Ibéyise Pacheco, a witness for Mr. Álvarez and for the State in the oral trial, were included in the case file. In her statement before the Court, Mrs. Pacheco stated that she had learned of the “humiliation” to which Mr. García was subjected, along with other witnesses brought by the defense of Mr. Álvarez.<sup>157</sup>

159. Based on the foregoing, the Court considers that the accusation and subsequent arrest of Mr. García during the public hearing had, at least, the effect of causing concern or fear among the subsequent witnesses in the oral hearing. This effect is corroborated in the judgment delivered by the Seventh Trial Court, and in Mrs. Pacheco’s affidavit. Moreover, the Seventh Trial Court’s handling of the evidence (Mr. García’s statement) lacked the minimum guarantees of due process established in Article 8(2) of the Convention, given that, the simple accusation by Mr. Lara’s lawyer, claiming that the witness had lied, prompted the judge to order his arrest under Venezuelan law,<sup>158</sup> without any justification or argument. Furthermore, he completely rejected Mr. García’s testimony, considering that he had lied and that “whoever lies in relation to such an important matter, is more likely to do so regarding any other fact.”<sup>159</sup> This constituted a violation of the right of the defense to examine witnesses present in the court and to have that evidence assessed during the proceedings, in violation of Article 8(2)(f) of the American Convention.

160. For all the above reasons, the Court concludes that the inability to gain access to the entire case file and the evidence on which the amendment of the accusation was based prevented Mr. Álvarez from adequately defending himself, in violation of Article 8(2)(c) of the American Convention. The Court further concludes that the accusation against a witness and his subsequent arrest during the public hearing had at least the effect of causing concern or fear among the witnesses who followed in the oral trial, and constituted a violation of the right of the defense to question witnesses present in the court and to have that evidence assessed in the legal proceedings, in violation of Article 8(2)(f) of the American Convention, to the detriment of Mr. Tulio Álvarez Ramos.

### **VIII-3 RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE<sup>160</sup>**

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<sup>155</sup> Cf. Judgment of February 28, 2005, folios 2445 to 2450.

<sup>156</sup> Cf. Judgment of February 28, 2005, folio 2433: “QUESTION: do you feel free to testify in this Trial. ANSWER: Yes, but if you guarantee that what I say in this trial is important and I do so without any pressure.”

<sup>157</sup> Cf. Affidavit rendered by Mrs. Ibéyise Pacheco (evidence file, folio 2816).

<sup>158</sup> Article 345 of the Organic Code of Criminal Procedure of Venezuela (2001): “Crime in a hearing. If a person commits a crime during a hearing, the court shall order his detention and shall prepare a report with the pertinent information; he shall be brought before the appropriate official of the Public Ministry, and a copy of the necessary background to the matter shall be forwarded, in order to proceed to the investigation. Any person who, when questioned at a public hearing by the Judge or by the parties, lies on the general rules of law, shall be punished with six to eighteen months imprisonment or a fine equivalent in Bolívares of ten to forty tax units”. Article 243 of the Criminal Code of Venezuela: “Any person who testifies as a witness before the judicial authority, who makes false statements, denies the truth or remains silent, entirely or in part, regarding the facts on which he is questioned, shall be punished with a prison term of fifteen days to fifteen months. If the false testimony has been given against a suspect in a crime or in the course of a criminal trial, the prison term shall be from six to thirty months, and if those two circumstances coincide, it shall be eighteen months to three years. If the false testimony has resulted in a sentence of imprisonment, the prison term shall be three to five years. If the testimony has not been rendered under oath, the penalty shall be reduced by one-sixth to one-third.”

<sup>159</sup> Cf. Judgment of February 28, 2005, folios 2475 and 2476: “Finally, it is hereby established that the testimony of the citizen JOSÉ RAFAEL is rejected, having been proven during the oral and public debate that he lied when he categorically affirmed that the citizen WILLIAN LARA, as President of the National Assembly, had not presented the accounts of his administration, and alleged the appropriation of an account approved by the National Assembly, a circumstance that permits the judge, in accordance with the rules of sound judgment, to reject his testimony, in consideration that a person who lies in relation to such an important matter, is more likely to do so regarding any other fact.”

<sup>160</sup> Article 22 of the Convention.



161. In this section, the Court will examine the alleged prohibition to leave the country imposed on Mr. Álvarez on December 15, 2004, pursuant to subparagraphs 2 and 3 of Article 22 of the American Convention.

**A. *Arguments of the parties and of the Commission***

162. The Commission alleged the lack of motive, necessity and proportionality in the measures adopted by the State to restrict Mr. Tulio Álvarez's travel outside the country, which were in force for approximately eighteen months during the criminal trial.

163. It also recalled that Tulio Álvarez was granted permission to leave the country on three occasions, on condition that he appear in court on the Monday following his return. The alleged victim also had to undertake lengthy procedures to obtain authorization each time he needed to travel outside the country, a measure that was extended beyond the period of execution of the sentence.

164. The Commission considered that the precautionary measure barring Mr. Álvarez from leaving the country was an arbitrary restriction of his right to freedom of movement and residence established in Article 22 of the Convention. Furthermore, its purpose was punitive, and therefore incompatible with the principle of presumption of innocence.

165. The representatives recalled that, from December 16, 2004, until December 20, 2007, Tulio Álvarez was subject to a precautionary measure barring him from leaving the country imposed by the court conducting the criminal trial, at the request of William Lara's legal representatives. Subsequently, in December 2007, that measure was replaced by a restriction on his freedom of movement, which required him to notify the judge before leaving the country.

166. The representatives pointed out that the reason given by the judge for imposing the precautionary measure barring travel outside the country was insufficient, because he did not explain how or why this measure was essential to safeguard the criminal proceedings against Tulio Álvarez. Nor did the judge justify the objective reasons for which he considered it proportionate to limit his freedom of movement. The representatives emphasized that restricting freedom of movement and barring travel outside the country bears no relation to the gravity of the crime of defamation.

167. The representatives asked the Court to rule that the State violated its obligations under Articles 8(2) and 22 of the Convention, for infringement of the presumption of innocence and the arbitrary restriction of freedom of movement, stemming from the measure of prohibition from leaving the country to the detriment of the victim.

168. The State pointed out that the precautionary measure barring Mr. Alvarez from leaving the country was imposed by the Seventh Trial Court, in consideration that he was a flight risk which, in a democratic society, was a necessary reason for restricting movement under the terms of the Convention. Furthermore, the court that heard the case considered that there was a real possibility that Mr. Tulio Álvarez might leave the country and evade the proceedings, bearing in mind his particular characteristics.

169. It further argued that the domestic judge considered that a punishable act had been committed that warranted a prison term, and that the crime in question was defined and

sanctioned in Article 444 of the Criminal Code, with the aggravating factors established in clauses 5, 7 and 14 of Article 77. For those reasons, the State argued that given the particular circumstances of this case, Tulio Álvarez was considered a flight risk.

170. The State further argued that the measure barring the defendant from leaving the country was not absolute. It merely required that the exercise of the right to free movement be subject to prior authorization by the court. Thus, on several occasions, the court permitted the presumed victim to travel outside of Venezuela during the criminal proceedings. It also mentioned that the ban on leaving the country was a legitimate restriction of the right to movement, pursuant to Article 256<sup>161</sup> of Venezuela's Organic Code of Criminal Procedure.

### **B. Considerations of the Court**

171. Article 22(2) of the American Convention establishes that "[e]very person has the right to leave any country freely, including their own," and Article 22(3) states: "The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others."

172. In this regard, the Court has established that the right to movement and residence, including the right to leave the country, may be subject to restrictions, pursuant to Articles 22(3) and 30 of the Convention.<sup>162</sup> However, in establishing such restrictions States must observe the requirements of legality, necessity and proportionality.<sup>163</sup>

173. In particular, the Court has indicated that the State must define precisely and clearly by law, the exceptional circumstances under which a measure such as the restriction to leave the country is admissible. In this regard, "the lack of legal regulation prevents such restrictions from being applied, because neither their purpose nor the specific circumstances under which it is necessary to apply the restriction to comply with some of the objectives indicated in Article 22(3) of the Convention have been defined. It also prevents the defendant from submitting any arguments he deems pertinent concerning the imposition of this measure. Yet, when the restriction is established by law, its regulation should lack any ambiguity so that it does not create doubts in those charged with applying the restriction, or the opportunity for them to act arbitrarily and discretionally, interpreting the restriction broadly."<sup>164</sup>

174. Regarding the requirement of legality in restrictions to the rights to freedom of movement, of residence and to leave the country, the Court finds that this was established in Venezuelan legislation. Therefore, the legal provision applied by the Seventh Trial Court on December 15, 2004 existed in law (*supra* para. 43).

175. Secondly, the Court recalls that precautionary measures that affect the defendant's personal freedom and right to movement are of an exceptional nature, since they are limited by the right to presumption of innocence and the principles of necessity and proportionality, imperative in a democratic society. Similarly, precautionary measures cannot be a substitute

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<sup>161</sup> Article 256(4) of the Organic Code of Criminal Procedure: "Modalities. Provided that the grounds for pretrial detention can be reasonably satisfied through the use of another measure less burdensome to the defendant, the competent court, on its own motion or at the request of the Public Ministry or of the defendant, shall instead impose, through a well-reasoned decision, one of the following measures: [...] 4. The prohibition against unauthorized travel outside the country, the local district in which the defendant resides, or the geographical area identified by the court."

<sup>162</sup> Cf. *Case of Ricardo Canese v. Paraguay. Merits, reparations and costs.* Judgment of August 31, 2004. Series C, No. 111, para. 117; and *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs.* Judgment of December 1, 2016. Series C, No. 330, para. 141.

<sup>163</sup> Cf. *Case of Ricardo Canese v. Paraguay*, para. 123; and *Case of Andrade Salmón v. Bolivia*, para. 141.

<sup>164</sup> Cf. *Case of Ricardo Canese v. Paraguay*, para. 125; and *Case of Liakat Ali Alibux v. Suriname*, para. 134.

for imprisonment or fulfill the same purposes thereof, which can occur if these continue to be applied when the procedural risks that they seek to prevent have ceased to exist. Otherwise, the application of a precautionary measure that affects a defendant's personal freedom and right to movement would be equivalent to anticipating a sanction prior to delivering the judgment, which contradicts the universally recognized general principles of law.<sup>165</sup>

176. Moreover, any restriction of the right to leave the country imposed as a precautionary measure in a criminal trial should be necessary and proportionate to the legitimate objective pursued, so that it is applied only if no other less restrictive mechanism exists and during the time strictly necessary to fulfill its purpose, in this case to prevent Mr. Álvarez's alleged flight.

177. In order to determine the necessity and proportionality of the restriction of freedom of movement, it is necessary to establish whether the decision ordering that measure was based on a reasonable argument that would justify its adoption. When analyzing the application of this type of measure, the judicial authorities must base their decisions on objective elements that indicate that the procedural dangers that they seek to prevent can effectively materialize.<sup>166</sup>

178. In this case, the measure restricting the defendant's movement outside country was ordered by the Seventh Trial Court at the request of the plaintiff, using as justification one of the grounds for pre-trial detention, namely, that the defendant was a flight risk (*supra* para. 43). However, the decision of the Seventh Trial Court shows no objective analysis or evidence to prove that the defendant was a flight risk, other than being a writer and lawyer with work commitments abroad, or the necessity for that restrictive measure.<sup>167</sup>

179. Considering that the decision to restrict Mr. Álvarez right to leave the country lacked reasonable grounds to justify the necessity and proportionality of that measure, the Court concludes that Venezuela violated Article 22 of the American Convention, in relation to Articles 1(1) and 8 thereof, to the detriment of Tulio Álvarez. In light of this conclusion, the Court does not consider it necessary to analyze the period during which said restrictive measure was in force, or the requests for permission to leave the country and their authorization by the Venezuelan courts.

#### **VIII-4 RIGHT TO JUDICIAL PROTECTION<sup>168</sup>**

##### **A. Arguments of the parties and the Commission**

180. The Commission recalled that the State clearly violated Mr. Tulio Álvarez's right to effective judicial protection by rejecting the action of *amparo* he filed to be allowed to participate in the elections of the Professors' Association of the Central University of Venezuela, despite the judgment granting him full freedom for compliance with his sentence,

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<sup>165</sup> Cf. *Case of Ricardo Canese v. Paraguay*, para. 129; and *Case of Andrade Salmón v. Bolivia*, para. 141.

<sup>166</sup> Cf. *Case of Andrade Salmón v. Bolivia*, para. 147.

<sup>167</sup> In the *Case of Andrade Salmón v. Bolivia* (paragraph 115), the Court established some criteria based on comparative law to guide the judge's decision in situations such as this case. "In relation to the foregoing, the Court finds that there are no precise criteria for setting the amount of the collateral bail bond or personal bail. However, comparative law offers guidance which, without completely eliminating the margin of discretion of the competent judicial authority, establishes certain parameters for the purposes of objectivity. These criteria include the following: a) the personal, professional, family and social circumstances of the defendant; b) the nature of the facts, and the quantum of the expected penalty (the greater it is, the higher the bail since the defendant would have a greater interest in evading Justice); c) the background of the defendant; d) whether the defendant has a known domicile or place of residence; e) whether the defendant has pending or parallel legal cases, and f) whether the defendant has been a fugitive or has a record of defaults, among other considerations."

<sup>168</sup> Article 25 of the Convention.

given that he had previously been granted the conditional suspension of the sentence.

181. Regarding the *amparo* action filed for the violation of his political rights, the representatives recalled that this was granted by the Electoral Chamber of the Supreme Court, on November 25, 2009. As a result of this judgment, the National Electoral Council was ordered to enroll Mr. Tulio Álvarez Ramos in the electoral register. However, in Judgment 1063, of November 3, 2010, the Constitutional Chamber of the Supreme Court granted the petition for review filed by the Office of the Comptroller General of the Republic, and revoked the restitution of his political rights. That decision violated his right to effective judicial protection, contemplated in Article 25 of the Convention.

182. The State argued that the action of *amparo* filed by Mr. Álvarez was upheld on November 25, 2009 by the Electoral Chamber of the Supreme Court. On that occasion, this Chamber concluded that the Professors' Association of the Central University of Venezuela was not an organ or entity that formed part of the structure of the Venezuelan State, and therefore it should not deprive Mr. Tulio Álvarez of his rights to political participation and suffrage in the association's electoral processes. Accordingly, the State argued that the Professors' Association of the Central University of Venezuela included Mr. Álvarez in its electoral register, thereby allowing him to vote and be elected in the association's electoral processes. As evidence of this, the Venezuelan State forwarded the 2017 Electoral Register of the Professors' Association of the Central University of Venezuela, in which the name of the presumed victim appears. Thus, the State argued that Mr. Álvarez is fully eligible to vote and be elected in any elections organized by the aforementioned professional body.

## **B. Considerations of the Court**

183. The Inter-American Court has indicated that Article 25(1) of the Convention establishes the obligation of the States Parties to guarantee, to all persons under their jurisdiction, an effective judicial remedy against acts that violate their fundamental rights.<sup>169</sup> Said effectiveness supposes that, in addition to the formal existence of remedies, such remedies must produce results or responses to the violations of rights embodied in the Convention, in the Constitution or in the laws.<sup>170</sup>

184. The Court has established that for a remedy to be effective, it is not enough for it to be established in the Constitution or by law, or that it should be formally admissible; it must also be truly appropriate to determine whether there has been a violation of human rights and to provide everything necessary to remedy it. Those remedies that are illusory, owing to the general conditions in the country or to the particular circumstances of a specific case, cannot be considered effective.<sup>171</sup> Consequently, the State has a responsibility not only to design and embody in legislation an effective remedy, but also to ensure the proper application of said remedy by the judicial authorities.<sup>172</sup>

185. In this case, on March 4, 2009, the Ninth Trial Court ordered the full release of Mr. Tulio Álvarez. This decision was based on his compliance with the probation period imposed by that court when it decided to substitute the penalty of imprisonment. Consequently, there

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<sup>169</sup> Cf. *Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2007, Series C, No. 172, para. 177; and *Case of Colindres Schonenberg v. El Salvador*, para. 101.

<sup>170</sup> Cf. *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller's Office") v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2009. Series C, No. 198, para. 69; and *Case of Granier et al. (Radio Caracas Television) v. Venezuela*, para. 314.

<sup>171</sup> Cf. *Case of Ivcher Bronstein v. Peru*, para. 137; and *Case of Colindres Schonenberg v. El Salvador*, para. 101.

<sup>172</sup> 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 Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of February 16, 2017. Series C, No. 333, para. 234.

was full compliance with the sentence, as well as with the additional penalties.

186. However, on October 7, 2009, Mr. Álvarez filed an action of *amparo* against the Electoral Commission of the Professors' Association of the Central University of Venezuela,<sup>173</sup> alleging that he had not been allowed to participate in internal elections.<sup>174</sup> The *amparo* was upheld by the Electoral Chamber of the Supreme Court, which ordered the Professors' Association to reinstate Mr. Tulio Álvarez Ramos in its electoral register, thereby allowing him to vote and be elected in the elections held by that professional association.<sup>175</sup> The Commission and the representatives recalled that that this ruling was appealed by the Office of the Comptroller General.<sup>176</sup> The Constitutional Chamber of the Supreme Court admitted the remedy of review filed by the Comptroller's Office and revoked the *amparo* granted by the Electoral Chamber.<sup>177</sup>

187. The Court will now consider whether the aforementioned ruling by the Constitutional Chamber constituted a violation of Mr. Álvarez's right to judicial protection, given that he had already been reinstated in the electoral register. It was also demonstrated that Mr. Álvarez participated in different electoral processes, exercising his political rights by standing as a candidate for Mayor of the Autonomous Municipality of El Hatillo in the State Miranda, during the elections held on November 23, 2008.<sup>178</sup> In addition, he was nominated as a candidate by three political groups.<sup>179</sup> Mr. Álvarez is also included in the electoral register of the Professors' Association of the Central University of Venezuela.<sup>180</sup>

188. In the context of assessing the simple, prompt and effective remedies contemplated in Article 25 of the Convention, this Court has held that the procedural institution of *amparo* must have the necessary elements for the effective protection of fundamental rights, that is, it must be simple and brief.<sup>181</sup> In that sense, the Court considers that the remedy filed by Mr. Álvarez by reason of his political disqualification, was effective and resulted in confirmation that his political disqualification was not applicable to the Professors' Association of the Central University of Venezuela. Consequently, Mr. Álvarez participated in the electoral processes for which he had applied.

189. However, the petition for review filed by the Comptroller's Office and accepted by the Constitutional Chamber overturned the decision of the Electoral Chamber because of a difference of interpretation concerning the modalities of political disqualification existing in the Venezuelan judicial system. The ruling of review did not refer to Mr. Álvarez's right, but only to the fact that the Electoral Chamber had limited the extent of the political disqualification to those hypotheses resulting from the final criminal conviction, and for not having stated that "Article 65 of the Constitution of the Bolivarian Republic of Venezuela does not preclude the possibility that such disqualification may be established by an administrative body *stricto sensu* or by a functionally autonomous body."

190. The Court considers that a judicial remedy was available to Mr. Álvarez (action of

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<sup>173</sup> Cf. Judgment of November 25, 2009, issued by the Electoral Chamber of the Supreme Court (evidence file, folio 129).

<sup>174</sup> Cf. Judgment of November 25, 2009, folios 130 to 133.

<sup>175</sup> Cf. Judgment of November 25, 2009, folios 134 to 139.

<sup>176</sup> Cf. Judgment of November 3, 2010, folios 144 to 159.

<sup>177</sup> Cf. Judgment of November 3, 2010, folios 149 to 159.

<sup>178</sup> Cf. Gacetilla Electoral, 2008 regional elections in the State of Miranda, published by the National Electoral Council. November 2008 (evidence file, folios 1209 and 1210).

<sup>179</sup> Cf. Gacetilla Electoral, 2008 regional elections in the State of Miranda.

<sup>180</sup> Cf. Final electoral register. Consultative Referendum of April 27, 2017. Professors' Association of the Central University of Venezuela (evidence file, folio 1316).

<sup>181</sup> Cf. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations.* Judgment of July 27, 2012, Series C, No. 245, para. 272.

*amparo*) against the decision of the university's Professors' Association. Said remedy was addressed on time and by law and Mr. Álvarez was able to participate in the professional association's elections. The Court considers that by that time the sentence imposed for his criminal conviction on February 28, 2005, had already concluded, and therefore the penalty of political disqualification was no longer applicable. Moreover, the ruling by the Constitutional Chamber that revoked the *amparo* granted by the Electoral Chamber does not contain considerations concerning Mr. Álvarez's eligibility, so that it had no effect on his substantive right.

191. Having regard to the previous considerations, the Court considers that in this case there was no violation of the right to judicial protection, pursuant to Article 25(1) of the American Convention on Human Rights.

## **IX REPARATIONS (Application of Article 63(1) of the American Convention)**

192. 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<sup>182</sup> that constitutes one of the fundamental principles of contemporary law on State responsibility.<sup>183</sup>

193. Reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of the re-establishment of the previous situation.<sup>184</sup> If this is not feasible, as in most cases of human rights violations, the Court will determine measures to guarantee the rights that have been violated and to redress the consequences of the violations.<sup>185</sup> The Court has considered the need to grant different measures of reparation to fully redress the damages. Therefore, in addition to pecuniary compensation, the measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition are of special importance.<sup>186</sup>

194. This Court has established that reparations must have a causal nexus with the facts of the case, the violations declared, the damages proven, and the measures requested to repair the resulting harm. Therefore, the Court will observe such coincidence in order to rule appropriately and according to law.<sup>187</sup>

195. Taking into account the violations declared in the preceding chapter, this Court will now examine the claims presented by the Commission and the representatives, together with the arguments of the State, in light of the criteria established in the Court's case law in relation to the nature and scope of the obligation to make reparation, in order to establish measures

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<sup>182</sup> Cf. Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the United Nations International Law Commission during its 53rd Session (A/56/10) and annexed by the United Nations General Assembly in Resolution N° 56/83, of December 12, 2001.

<sup>183</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989, Series C, No. 7, para. 25; and *Case of the Dismissed Workers of PetroPeru et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2017, Series C, No. 344, para. 194.

<sup>184</sup> Cf. *Case of Velásquez Rodríguez v. Honduras*, para. 26; and *Case of Muelle Flores v. Peru*, para. 221.

<sup>185</sup> Cf. *Case of Fontevecchia and D'Amico v. Argentina*, para. 98; and *Case of the Dismissed Workers of PetroPeru et al. v. Peru*, para. 195.

<sup>186</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001, Series C, No. 88, paras. 79 to 81; and *Case of Muelle Flores v. Peru*, para. 221.

<sup>187</sup> 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 Lagos del Campo v. Peru*, para. 193.

aimed at repairing the harm caused to the victims.<sup>188</sup>

**A. Injured party**

196. The Court reiterates that, under the terms of Article 63(1) of the American Convention, injured parties are those who have been declared victims of the violation of a right recognized therein.<sup>189</sup> Therefore, this Court considers that Tulio Alberto Álvarez Ramos is the “Injured Party” and, as the victim of the violations declared in Chapter VII of this judgment, he will be considered as the beneficiary of the reparations that the Court will now order.

**B. Measures of satisfaction and restitution**

197. The Commission asked the Court to set aside the conviction against Mr. Tulio Álvarez and all the consequences arising therefrom, including the expungement of any records in his criminal history that would disqualify him from continuing to exercise his rights as a citizen. It further requested that the decisions of both organs of the Inter-American System in this case be disseminated throughout the Venezuelan Judiciary.

198. As measures of satisfaction, the representatives requested that the State restore the full enjoyment of the human rights violated by the criminal proceedings instituted against Mr. Tulio Álvarez and adopt the measures necessary to annul the judgment delivered by the Seventh Trial Court.

199. In addition, they requested the removal of all references to Mr. Tulio Álvarez in the Automated System of Registration and Control of Criminal Records and other records of the State’s security forces.

200. The representatives also asked the Court to require the publication of this judgment in the Official Gazette of Venezuela, as well as in the newspaper “*La Nación*” of Buenos Aires, in the Republic of Argentina

201. The State did not refer specifically to the measures of satisfaction.

202. In this judgment, the Court has declared the State responsible for the violation of the rights to freedom of expression, a fair trial, freedom of movement and residence and political rights, all recognized in the American Convention. The Court advises that in this case, at the time of delivering this judgment, Mr. Álvarez has fully complied with his sentence.

203. Therefore, by virtue of the violations proven, the specificities of the case, the time elapsed and the procedural effects, the Court decides that the State must adopt all necessary measures to set aside the conviction against Mr. Álvarez and the consequences arising therefrom, and to expunge all judicial, administrative, criminal, electoral or police records that exist against him as a result of said conviction. The State must implement these measures within one year from the notification of this judgment.

204. Regarding the publication of this judgment, as it has in other cases, the Court establishes that the State shall 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 of Venezuela, in a legible and appropriate font size; b) the official summary of this judgment

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<sup>188</sup> Cf. *Case of Velásquez Rodríguez v. Honduras*, paras. 25 to 27; and *Case of the Dismissed Workers of PetroPeru et al. v. Peru*, para. 197.

<sup>189</sup> Cf. *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007, Series C, No. 163, para. 233; and *Case of Andrade Salmón v. Bolivia*, para. 190.

prepared by the Court, once, in a newspaper with widespread national circulation, in a legible and appropriate font size; and c) make this judgment, in its entirety, available for one year on an official website accessible to the public.

205. The State shall immediately notify this Court when it proceeds to carry out each of the publications and measures ordered.

**C. Guarantees of non-repetition**

206. The Commission asked the Court to require the State to bring its domestic criminal laws on freedom of expression into line with the American Convention, given that some of its provisions are incompatible with Articles 2 and 13 thereof. It also emphasized the need to review the legal framework that regulates the crimes of honor and contempt (*desacato*) still in force in the country.

207. The representatives asked the Court to order the State to adopt the measures necessary to eliminate legal definitions that criminalize the exercise of freedom to report information and express an opinion on matters of public interest. They also requested that the State modify the laws on the right to freedom of expression.

208. The State affirmed that, in accordance with Article 13(2) of the American Convention, the right to freedom of expression is not an absolute right, given that this article allows for restrictions through the application of subsequent liability for the abusive exercise of that right, which must be established by law, have a legitimate purpose, and be necessary and proportional.

209. The Court notes that the matter under consideration in this case was the violation of Mr. Álvarez's human rights stemming from the criminal case against him, together with the effectiveness of the remedies established in domestic law for such purposes. The Court does not consider it necessary to assess the impact of the criminal law applied in this case, given that the use of criminal law in such cases violates Article 13(2) of the Convention (*supra* paras. 112 to 132).

**D. Compensation**

*i) Pecuniary damage*

210. The Commission requested compensation for Mr. Álvarez for pecuniary and non-pecuniary damage resulting from the violations established.

211. The representatives pointed out that for a period of seven years Mr. Tulio Álvarez was forced to support his family only with his earnings as a teacher at the university where he worked, which significantly affected the family's income.

212. They added that the measure barring him from traveling outside the country forced him to curtail his professional activities and prevented him from continuing to carry out his commitments abroad. They emphasized that the international discredit affected his work as a consultant abroad.

213. They argued that in order to quantify the amount due for professional damage suffered from loss of fees as an international consultant, consideration should be given to the amounts earned in 1998 and 2003, compared with 2005 (a reduction of 60%) to 2006 (a reduction of 80%), which resulted in a total loss of earnings of US\$ 79,157.35 from the cessation of



professional activities. In addition, he no longer received the monthly sum of US\$ 774.95 for his work as a columnist.

214. In relation to Mr. Álvarez's work as an author of books, his publications were also affected because he was unable to travel abroad to meet with his editors, and was unable to travel to Mexico, Germany, Colombia and Argentina. The representatives argued that, considering the journeys that he was unable to make due to the ban on leaving the country, the respective damages are calculated in the amount of US \$ 40,000.00 for loss of earnings, plus the cost of the airline ticket issued on November 22, 2005, for the sum of US \$ 849.00.

215. Subsequently, *Criteria Editorial*, the Venezuelan publishers of Mr. Tulio Álvarez's books, having waited for a long period for the lifting of the measure, proposed the cancellation of the contract they had signed and the imposition of 50% of Bs. 58,800,000 corresponding to copyright for sales in Venezuela which, according to the official rate of exchange at that time, was equivalent to approximately US \$27,348.00.

216. The State rejected these reparations and argued that the amounts requested for pecuniary damage are far removed from the jurisprudence established for such purposes by the Court.

217. In its jurisprudence, the Court has developed the concept of pecuniary damage<sup>190</sup> and established criteria for appropriate compensation. In particular, it has established that pecuniary damage "involves the loss of or detriment to the victim's 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. Accordingly, the Court will determine whether it is appropriate to grant pecuniary compensation and the respective amounts due in this case."

218. In this regard, the Court does not find a sufficient connection between Mr. Álvarez's supposed trips abroad and the damages stemming from the violations established in this judgment. Although in Chapter VIII it was determined that the measure barring him from leaving the country was not justified, based on the evidence provided in the case file there are no facts to suggest that Mr. Álvarez was prevented from traveling abroad by a court ruling. On the contrary, it was proven that his requests to leave the country were approved, with the exception of a request to travel to Mexico, submitted less than 48 hours before the flight (*supra* para. 60). Furthermore, from the case file it is not clear how the foreign travel ban could have affected the publication abroad of his books entitled "*Cómo Hacer Infinitamente Feliz a la Mujer*" and "*Mujeres Pérfidas*", or how his non-attendance at a book fair could cause the special damages alleged by the victim. The same applies to the request for compensation for loss of professional fees for consultancies abroad. A propos, the Court considers that the measure restricting his travel abroad did not prevent him from leaving the country, but rather conditioned it to prior authorization by a judge. Mr. Álvarez traveled abroad on three occasions, duly authorized by the Venezuelan courts.

219. However, it is evident that the criminal trial and the limitations inherent to the exercise of the State's punitive power did have an impact on Mr. Álvarez' possibilities of continuing to publish columns and exercise his freedom of expression. Therefore, the Court decides to establish in equity, the sum of US \$10,000.00 (ten thousand United States dollars) as compensation for pecuniary damages in favor of Mr. Tulio Álvarez Ramos.

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<sup>190</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002, Series C No. 91, para. 43; and *Case Zegarra Marín v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of February 15, 2017, Series C, No. 331, para. 212.

ii) *Non-pecuniary damage*

220. The Commission requested that Mr. Álvarez be compensated for pecuniary and non-pecuniary damages caused by the violations established.

221. The representatives argued that Mr. Álvarez suffered moral damage as a result of being barred from leaving the country, and that the conviction interrupted his life project. They alleged that these two elements triggered the non-pecuniary damages suffered, such as psychological harm, fear, suffering, anxiety, humiliation, degradation, inferiority, insecurity, frustration and impotence, and also had an impact on his social and professional relations, altering the dynamics of his family. The representatives requested compensation based on the principle of equity.

222. Furthermore, they requested financial compensation for the non-pecuniary damage suffered as a result of the violation of his human rights. They asked the Court to assess the damage taking into consideration the intentional nature of the damages, their effects over time, and the irreversibility and gravity of most of the damages.

223. The State rejected these arguments, arguing that they are not consistent with the jurisprudence established by the Court for such purposes.

224. In its jurisprudence the Court has developed the concept of non-pecuniary damage and has established that this “may include both the suffering and the afflictions caused to the direct victim and his next of kin, the damage to values that are very important to the persons, as well as the alterations, of a non-pecuniary nature, in the conditions of existence of the victim or his next of kin.”<sup>191</sup> Said damage must be proven in such cases.

225. Bearing in mind the argument of damage to the life project, the Court recalls that its jurisprudence has specified that damage to the life project is a notion that differs from loss of earnings and special damages.<sup>192</sup> Damage to the life project considers the full self-realization of the person affected, taking into account his vocation, aptitudes, circumstances, potential and aspirations, that would reasonably allow him to have certain expectations of achieving these.<sup>193</sup> Thus, the life project is expressed in the expectations of personal, professional and familiar development, possible under normal conditions.<sup>194</sup> This Court has indicated that “damage to the life project” implies loss or severe diminution of prospects for personal development, in a manner that is irreparable or reparable only with great difficulty.<sup>195</sup> Among other measures, the Court has also ordered compensation for this type of damage in specific cases.<sup>196</sup> In the instant case, the claim of damage to Mr. Álvarez’s life project specifies an interruption of his professional development, but does not demonstrate that his life project was affected in a manner that is irreparable or reparable only with great difficulty. Therefore, the Court considers that there is not sufficient evidence to order such compensation in this case.

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<sup>191</sup> 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 Zegarra Marín v Peru*, para. 220.

<sup>192</sup> Cf. *Case of Loayza Tamayo v. Peru. Reparations and costs.* Judgment of November 27, 1998, Series C, No. 42, para. 147; and *Case of Cantoral Benavides v. Peru*, paras. 60 and 80.

<sup>193</sup> Cf. *Case of Loayza Tamayo v. Peru*, para. 147; *Case of Furlan and Family v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012, Series C, No. 246, para. 285.

<sup>194</sup> Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 7, 2004, Series C, No. 114, para. 245.

<sup>195</sup> Cf. *Case of Loayza Tamayo v. Peru*, para. 150.

<sup>196</sup> Cf. *Case of Las Dos Erres Massacre v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2009, Series C, No. 211, para. 293; and *Case of Mejía Idrovo v. Ecuador*, para. 134.

226. Nevertheless, the Court accepts that the anguish and concern caused to Mr. Álvarez was sufficiently proven in his statement during the public hearing, in the expert opinion provided by Mrs. Claudia Carrillo in her affidavit<sup>197</sup> and in the statements made by members of his family.<sup>198</sup> Mrs. Carrillo stated that the psychological pressure and stress caused by the criminal trial resulted in significant weight gain and adverse effects on the physical health of Mr. Álvarez,<sup>199</sup> who also expressed anguish over the attacks and public statements made by State officials against him.<sup>200</sup> According to the expert witness, Mr. Álvarez “fears for his personal safety and continues to use many of the strategies he employed to protect himself and his family. He does not travel to the interior of the country and avoids using airport terminals in Venezuela. He uses security in his electronic and telephone communications. He continues to keep a moderate public profile, focusing his interventions in the media on his work as a writer and not on legal issues.”<sup>201</sup> Consequently, the Court deems it pertinent to establish, in equity, compensation for non-pecuniary damages for the sum of US\$25,000.00 (twenty five thousand United States dollars).

#### ***E. Other measures of reparation***

227. The representatives requested that the State carry out an independent, public and exhaustive investigation into the irregularities committed in the National Assembly during the period 2002-2006; and to determine whether financial damage was caused to the pensioners and retirees of the institution or Savings Bank that benefited them. They also requested that a disciplinary process be opened against Judge Elías Álvarez to investigate the grave irregularities committed in the trial of Tulio Álvarez.

228. The representatives further requested the annulment of Judgment N° 1063 of November 3, 2010, delivered by the Constitutional Chamber of the Supreme Court.

229. In addition, they asked that the State and its public officials take immediate steps to cease all acts of persecution, discrimination and discredit against Mr. Álvarez.

230. Finally, they called for an act of apology and acknowledgement of international responsibility by the State through the publication of this judgment.

231. The Court considers that the content of the accusations made by Mr. Álvarez in the opinion column that gave rise to this case are not the subject of the litigation before the Inter-American System; therefore, the Court does not consider it necessary to order an investigation in this regard. Nor is it appropriate to order a disciplinary process against Judge Elías Álvarez.

232. Furthermore, the Court considers that the measures of reparation ordered in this judgment are sufficient and appropriate for the violations declared, and therefore does not consider it pertinent to order additional measures.

#### ***F. Costs and expenses***

233. The representatives asked the Court to order the State to pay the legal costs and expenses arising from processing this case, both in the domestic courts and before the Inter-

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<sup>197</sup> Cf. Expert opinion of Mrs. Claudia Carrillo, rendered by affidavit on August 31, 2018 (evidence file, folios 2885 to 2909).

<sup>198</sup> Affidavits rendered by Carmen Guadalupe Ramos (evidence file, folios 2801 to 2805) and Anna Mercedes Martínez (evidence file, folios 2806 to 2807).

<sup>199</sup> Cf. Expert opinion of Mrs. Claudia Carrillo (evidence file, folio 2894).

<sup>200</sup> Cf. Expert opinion of Mrs. Claudia Carrillo (evidence file, folio 2898).

<sup>201</sup> Cf. Expert opinion of Mrs. Claudia Carrillo (Merits file, folio 2898).

American System. They recalled that the Court ordered the publication of this judgement, in full, in two national daily newspapers, which represents an expenditure of Bs.132,810, 000, approximately US\$ 45,790.00.

234. They indicated that the expenses for legal representation of the victim in the domestic judicial proceedings totaled Bs. 27,950,000 and 27,750 strong bolívares (*bolívares Fuertes*), equivalent to approximately US\$ 25,900.00. They asked that the payments agreed with other legal professionals, for the sum of US\$ 10,000.00, also be included as expenses. The total legal expenses in the domestic proceedings totaled, approximately, US\$ 35,900.00.

235. As to the costs and expenses for representation before the Inter-American System of Human Rights, the representatives requested the total sum of US\$ 30,175.52, which includes air travel, transport and lodging expenses, mail costs, and the fees of the professionals and expert witnesses who testified in the proceedings.

236. The State argued that there are no clear and objective elements for establishing the amount of the costs and expenses, given that these are subject to random factors.

237. The Court reiterates that, in accordance with its jurisprudence, costs and expenses form part of the concept of reparation, given that the victims' efforts to obtain justice, both at national and international level, involved disbursements that should be compensated when the State's international responsibility is declared through a conviction.<sup>202</sup> As to the reimbursement of costs and expenses, it is up to the Court to prudently assess their scope, including the expenses incurred before the domestic courts, and those arising in the course of the proceedings before the Inter-American System, bearing in mind the circumstances of the specific case and the nature of the international jurisdiction of protection of human rights. This assessment may be based on the principle of equity, bearing in mind the expenses indicated by the parties, provided that their quantum is reasonable.<sup>203</sup>

238. In this case, the Court has confirmed that the expenses arising from the publication of the judgment of February 28, 2005, amount to approximately USD 45,800.00 (forty-five thousand, eight hundred United States dollars). Likewise, Mr. Álvarez's legal fees in the domestic criminal proceedings amounted to US \$30,900.00 (thirty thousand, nine hundred United States dollars), excluding the payment promised to the lawyer Sebastián Álvarez, which has not been proven. The Court also considers justified and proven the legal costs and expenses arising from the proceedings before the Commission and the Inter-American Court, which totaled US \$ 30,400.00 (thirty thousand, four hundred United States dollars). Therefore, the Court orders payment of the total sum of USD 107,100.00 (one hundred and seven thousand, one hundred United States dollars) for costs and expenses. Said amount shall be paid directly to Mr. Álvarez, who in turn will pay his representatives the appropriate amount, according to the assistance provided to him.

239. As it has done in other cases,<sup>204</sup> during the stage of monitoring compliance with this judgment, the Court may order the State to reimburse the victim or his representatives for reasonable and properly proven expenditures.

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<sup>202</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of August 27, 1998, Series C, No. 39, para. 79; and *Case of Ordenes Guerra et al. v. Chile. Merits, reparations and costs.* Judgment of November 29, 2018, Series C, No. 372, para. 139.

<sup>203</sup> Cf. *Case of Garrido and Baigorria v. Argentina*, para. 82; and *Case of Ordenes de Guerra et al. v. Chile*, para. 139.

<sup>204</sup> Cf. *Case of Isben Cárdenas and Isben Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010, Series C No. 217, para. 291; and *Case of Gorioitía v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of September 2, 2019, Series C, No. 384, para. 86.

**G. Reimbursement of expenses to the Victims' Legal Assistance Fund**

240. In an Order issued on February 12, 2018, and on June 21, 2018, the President granted the necessary financial assistance in this case to cover the expenses incurred for submitting the statements of the presumed victim and two expert witnesses, during the public hearing or by affidavit.

241. The State had the opportunity to submit its observations on the disbursements made in this case; however, it did not present any observations.

242. Therefore, in light of the violations declared in this judgment, and given that the requirements to have access to this Fund were met, the Court orders the State to reimburse said Fund for the sum of US\$ 4,805.40 (four thousand, eight hundred and five United States dollars and forty cents). Said amount shall be reimbursed within six months from notification of this judgment.

**H. Method of compliance with the payments ordered**

243. The State shall pay the compensation ordered in this judgment directly to Mr. Tulio Álvarez Ramos. The reimbursement of costs and expenses established in this judgment shall also be made directly to Mr. Álvarez (who shall pay his representatives the amount due, according to the assistance provided to him) within one year from the date of notification of this judgment, under the terms of the following paragraphs.

244. If the beneficiary should die before he receives the respective compensation, it shall be paid directly to his rightful heirs, in accordance with the applicable domestic laws.

245. With respect to the currency for payment of the compensation ordered and the reimbursement of costs and expenses, the State shall fulfill its monetary obligations through payment in United States dollars or, if this is not possible, in its equivalent in Venezuelan currency, using for the respective calculation the highest and most beneficial rate for the victims permitted by the State's current laws at the time of payment. During the stage of monitoring compliance with the judgment, the Court may prudently readjust these amounts in Venezuelan currency, so as to avoid exchange rate variations that would substantially affect their purchasing power.

246. If, for reasons that can be attributed to the beneficiary of the compensation or to his heirs, it is not possible for them to receive the amounts established within the indicated term, the State shall deposit said amounts in their favor in an account or a certificate of deposit in a solvent Venezuelan financial institution, in United States dollars, and on the most favorable financial terms permitted by law and banking practice. If, after ten years, said sums have not been claimed, they shall revert to the State with the accrued interest.

247. The amounts allocated in this judgment as compensation and as reimbursement of costs and expenses shall be paid in full to the persons mentioned, as established in this judgment, without any deductions arising from possible taxes or charges. If the State should fall into arrears, including in the reimbursement of expenses to the Victims' Legal Assistance Fund, it shall pay interest on the amount owed, corresponding to the banking interest on arrears in the Bolivarian Republic of Venezuela.

**X**  
**OPERATIVE PARAGRAPHS**

248. Therefore,

**THE COURT**

**DECIDES,**

Unanimously,

1. To reject the State's preliminary objection regarding the inadmissibility of this case before the Court, under the terms of paragraphs 24 to 26 of this judgment.

**DECLARES:**

Unanimously, that:

2. The State is responsible for the violation of the right to freedom of expression and political rights, established in Articles 13(1), 13(2) and 23 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Tulio Álvarez Ramos, under the terms of paragraphs 93 to 132 of this judgment.

Unanimously, that:

3. The State is responsible for the violation of the right to a fair trial, established in Article 8(2), subparagraphs c and f, of the American Convention on Human Rights, under the terms of paragraphs 143 to 160 of this judgment.

Unanimously, that:

4. The State is responsible for the violation of the right to freedom of movement and residence, recognized in Article 22 of the American Convention on Human Rights, in relation to Articles 1(1) and 8 thereof, to the detriment of Tulio Álvarez Ramos, under the terms of paragraphs 171 to 179 of this judgment.

Unanimously, that:

5. The State is not responsible for the violation of the right to judicial protection, established in Article 25(1) of the American Convention on Human Rights, under the terms of the paragraphs 183 to 191 of this judgment.

**AND ORDERS:**

Unanimously, that:

6. This judgment is *per se* a form of reparation.

7. The State shall adopt all the necessary measures to set aside the conviction against Mr. Álvarez and the consequences derived therefrom, and to expunge any judicial or

administrative, criminal, electoral or police records that exist against him as a result of said conviction, under the terms of paragraphs 202 to 203 of this judgment.

8. The State shall comply with the publications indicated in paragraph 204 of this Judgment, within a period six months.

9. The State shall pay the amounts established in paragraphs 219, 226 and 238 of this judgment, for pecuniary and non-pecuniary damages and for the reimbursement of costs and expenses, under the terms of paragraphs 243 to 247 of this judgment.

10. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights for the expenditures made during the processing of this case, under the terms of paragraph 242 of this judgment.

11. Within one year of notification of this judgment, the State shall provide the Court with a report on the measures adopted in compliance therewith.

12. The Court will monitor full compliance with this judgment, in exercise of its authority and in compliance with its obligations under the American Convention, and will consider this case closed when the State has fully complied with all the measures ordered herein.

Done in Spanish, at Barranquilla, Colombia, on August 30, 2019.

I/A Court HR. Case of *Álvarez Ramos v. Venezuela*. Preliminary Objection, Merits,  
Reparations and Costs. Judgment of August 30, 2019

Eduardo Ferrer Mac-Gregor Poisot  
President

Eduardo Vio Grossi

Humberto A. Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri  
Secretary

So ordered,

Eduardo Ferrer Mac-Gregor Poisot  
President

Pablo Saavedra Alessandri  
Secretary