



Organization of  
American States



## Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights  
in the case of  
Leopoldo López Mendoza  
(Caso 12.668)  
against Venezuela

### DELEGATES:

Paulo Sergio Pinheiro, Commissioner  
Santiago A. Canton, Executive Secretary

### ADVISORS:

Elizabeth Abi-Mershed, Deputy Executive Secretary  
Karla I. Quintana Osuna



## I. INTRODUCTION

1. The Inter-American Commission (hereinafter "the Commission" or "the IACHR") presents before the Inter-American Court for Human Rights (hereinafter "the Inter-American Court" or "the Court") an application in case 12.668, Leopoldo López Mendoza, against the State of Venezuela (hereinafter the "State of Venezuela", "Venezuela", or "the State") for its international responsibility in disqualifying Mr. López Mendoza (hereinafter "the victim" or "Mr. López Mendoza") from holding public office through an administrative action in breach of the Convention's standards, in prohibiting his participation in the 2008 regional elections, in failing to ensure his right to a fair trial and judicial protection, and in failing to provide appropriate redress.

2. The Commission requests that the Court adjudge the international obligation of Venezuela for failing to comply with its international obligations by its violation of Articles 23, 8.1 and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in conjunction with Articles 1.1 and 2 of that instrument, against Leopoldo López Mendoza.

3. The present case has been processed in accordance with the American Convention and is submitted to the Court pursuant to Article 34 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Court"). Affixed to this application as an appendix is a copy of the Report on the Merits No. 92/09,<sup>1</sup> prepared pursuant to Article 50 of the Convention.

4. The referral of the case to the Court addresses the requirement for justice and redress in connection with Mr. Lopez' administrative disqualification from holding political office in breach of international standards. The Commission believes it is important to note that since restricting electoral and political rights is an extremely serious matter, such restrictions must be subjected to close scrutiny. The Commission also notes the importance of the transparent exercise of public functions in strengthening democracy and the informed participation of individuals in its construction.

## II. PURPOSE OF THE APPLICATION

5. The purpose of the present application is to petition the Court to adjudge and declare that Venezuela is responsible for the violation of the right to participate in government (Article 23) and of the right to judicial guarantees and judicial protection (Articles 8.1 and 25), together with the obligations to respect and ensure and the duty to adopt provisions of domestic law established in the American Convention (Article 1.1 and 2, respectively), by having imposed a disqualification from holding public office on Mr. Leopoldo López Mendoza, by administrative means, in violation of the standards of the Convention.

6. As a consequence, the Commission is asking the Court to order the State:

- to adopt the measures necessary to restore the right to participate in government of Mr. Leopoldo López Mendoza.
- to bring its domestic legal order into line with Article 23 of the American Convention, in particular by amending Article 105 of the Organic Law on the Office of the Comptroller General and the National Fiscal Oversight System so that it not include disqualification from being nominated to run for elective office among its accessory sanctions imposed administratively.

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<sup>1</sup> IACHR, Merits Report No. 92/09, Leopoldo López Mendoza, August 8, 2009, Appendix 2.

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- to strengthen guarantees of due process in the administrative proceedings of the Office of the Comptroller General of the Republic in line with the standards set in Article 8 of the American Convention.
- to reimburse the legal costs and expenses incurred by the victim in pursuing his case before the domestic courts and those arising from its processing by the inter-American system.

### III. REPRESENTATION

7. In accordance with the provisions of Articles 23 and 34 of the amended Rules of Court, the Commission has appointed Commissioner Paolo Sérgio Pinheiro and Executive Secretary Santiago A. Canton to serve as its delegates in this case. Assistant Executive Secretary Elizabeth Abi-Marshed and attorney Karla I. Quintana Osuna have been appointed to serve as legal advisers.

### IV. JURISDICTION OF THE COURT

8. Under Article 62.3 of the American Convention, the Inter-American Court is competent to hear all cases submitted to it regarding interpretation and application of the provisions of this Convention, provided that the states parties to the case recognize or have recognized its jurisdiction.

9. The Court has jurisdiction to take up the present case. The Venezuelan State ratified the American Convention on August 9, 1977, and accepted the Court's binding jurisdiction on June 24, 1981.

### V. PROCESSING BY THE COMMISSION

10. On March 4, 2008, the Commission received the initial petition, which was registered as No. 275-08.

11. On April 15, 2008, the Commission forwarded the relevant parts of the petition to the State and, in accordance with its Rules of Procedure, asked it to submit its response within the following two months.

12. On July 25, 2008, the Commission issued the Report No. 67/08 and found the instant case admissible with respect to Articles 8, 23, and 25, in connection with the obligations established in Articles 1.1 and 2 of the American Convention.<sup>7</sup> On April 16, 2008, the IACHR notified the parties of the adoption of that report, granted two months for them to submit observations on the merits, and made itself available to the parties to explore the possibility of reaching a friendly settlement agreement. On August 6, 2008, the IACHR received a communication from the State by which it requested the dates for submitting the annexes to the original petition. The IACHR forwarded its response on August 19, 2008.

13. On August 18, 2008, the Commission received a brief of observations from the State pursuant to Article 38.1 of its Rules of Procedure, which was transmitted to the petitioner on August 20, 2008. On August 19, 2008, the Commission received the petitioner's observations. On August 20, 2008, the Commission forwarded to the State the pertinent parts of the report submitted by the petitioner, giving it a term of two months to present additional observations, in keeping with Article 38.1 of its Rules of Procedure. On August 21, 2008, the petitioner sent the Commission supplemental information, which was sent to the State on August 26, 2008, which was given one month for

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<sup>7</sup> IACHR, Report No. 67/08 (Admissibility), Case 12.668, Leopoldo López Mendoza, July 25, 2008. Appendix 1.

submitting its observations. On September 24, 2008, the State forwarded a brief containing additional observations on the merits.

14. On February 24, 2009, the IACHR informed the parties that it decided to convene a public hearing on the merits of the case. The hearing took place on March 24, 2009, during its 134<sup>th</sup> period of sessions.

15. On August 8, 2009, the Commission adopted Report on the Merits No. 92/09, in which it concluded that:

Venezuela is responsible for the violation of the right to participate in government (Article 23); the right to judicial guarantees and judicial protection (Articles 8(1) and 25), together with the obligations to respect and ensure and the duty to adopt provisions of domestic law established in the American Convention (Article 1(1) and 2, respectively), on having imposed a disqualification from holding public office on Mr. Leopoldo López Mendoza, by administrative means, in violation of the standards of the Convention.

16. In that report, the Commission recommended that the State:

- adopt the measures necessary to restore the right to participate in government of Mr. Leopoldo López Mendoza,
- bring its domestic legal order into line with Article 23 of the American Convention, in particular by amending Article 105 of the Organic Law on the Office of the Comptroller General and the National Fiscal Oversight System so that it not include disqualification from being nominated to run for elective office among its accessory sanctions imposed administratively,
- strengthen guarantees of due process in the administrative proceedings of the Office of the Comptroller General of the Republic in line with the standards set in Article 8 of the American Convention.

17. On September 14, 2009, the Commission conveyed the Report on the Merits to the State and gave it a period of two months in which to implement the aforesaid recommendations. Similarly, in compliance with the terms of Article 43(3) of its Rules of Procedure, the Commission notified the victim's representatives that a report had been adopted and conveyed to the State. It also asked them to indicate their position regarding the referral of the case to the Inter-American Court.

18. On June 30, 2009, the representatives submitted a note in which, *inter alia*, they stated their wish for the case to be submitted to the Inter-American Court. In addition, they said that in their opinion, there was no other way to secure justice, given the serious violation of political rights and affront to democracy that the political disqualifications imposed on Mr. López Mendoza represented.

19. On November 13, 2009, the State lodged a submission containing comments on the merits report in which it stated that "the Commission erroneously concluded that the Venezuelan State has incurred in international responsibility" and consequently asked the Commission to:

review the premises, conclusions, and recommendations of Report 92/09 [...] since its content deviates from the objective reality of the facts, violates the sovereignty of the Venezuelan State, and harms its domestic legal system.

It also stated that:

This submission does not imply, nor should it be taken as meaning, the Venezuelan State's waiver of its right to refer this case for consideration by the Inter-American Court of Human Rights.

20. On December 11, 2009, the Commission decided to submit this case to the jurisdiction of the Inter-American Court, in accordance with the provisions of Articles 51.1 of the Convention and 44

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of its Rules of Procedure, considering that the State had not complied with the established provisions by failing to report on the measures adopted to implement the recommendations contained in the Report on the Merits.

## VI. CONSIDERATIONS OF FACT

21. The Office of Comptroller General of the Republic is an organ with constitutional rank which, as of the entry into force of the 1999 Constitution of the Bolivarian Republic of Venezuela, became part of the Citizen's Branch (*Poder Ciudadano*). This branch of government, which is vested in the Republican Moral Council, is made up of the Office of the Human Rights Ombudsman, the Public Ministry, and the Office of the Comptroller General of the Republic. Following the provisions of Article 274 of the Constitution,<sup>3</sup> this new branch of government has, among other powers, to prevent, investigate, and sanction acts that represent attacks on public ethics and administrative morality, and to ensure the sound management of and legality in the use of government property.

22. According to Article 287 of the Constitution of the Bolivarian Republic of Venezuela,<sup>4</sup> the Office of the Comptroller General of the Republic is entrusted with "[...] the control, vigilance, and oversight of the revenues, expenditures, public goods and national goods, as well as the operations concerning the same [...]" enjoys functional, administrative, and organizational autonomy; and its action is aimed at performing functions of inspection of the agencies and entities subject to its control. For the purposes of carrying out the attributions assigned by the Constitution to the Office of the Comptroller General, the National Assembly approved the Organic Law,<sup>5</sup> which regulates all matters relating to its organization and functioning<sup>6</sup> and its power to impose sanctions.<sup>7</sup>

<sup>3</sup> Constitution of the Bolivarian Republic of Venezuela. Published in the *Gaceta Oficial* of Thursday, December 30, 1999, No. 36,860. Article 274 establishes: "Article 274. The organs under the Citizen's Branch, in keeping with this Constitution and the law, prevent, investigate, and sanction acts that constitute an attack on public ethics and administrative morality; see to the sound management and legality in the use of government property, compliance with and application of the principle of legality in every administrative activity of the State, and also promote education as a process that creates citizenship, as well as solidarity, liberty, democracy, social responsibility, and work." Annex 1.

<sup>4</sup> Constitution of the Bolivarian Republic of Venezuela. Published in the *Gaceta Oficial*, Thursday, December 30, 1999, No. 36,860. Articles 287 and 289 provide: "Chapter IV On the Citizen's Branch Fourth Section: On the Office of the Comptroller General of the Republic. Article 287. The Office of the Comptroller General of the Republic is the organ that exercises control, surveillance, and oversight of the revenues, expenditures, public goods and national goods, as well as the operations related to them. It enjoys functional, administrative, and organizational autonomy, and orients its action to the functions of inspection of the agencies and entities subject to its control. ... Article 289. The following are powers of the Office of the Comptroller General of the Republic: To exercise control, surveillance, and oversight of the revenues, expenditures, and public goods, as well as the operations related to them, without prejudice to the powers attributed to other organs in the case of the states and municipalities, in keeping with the law. To control the public debt, without prejudice to the powers attributed to other organs in the case of the states and municipalities, in keeping with the law. To inspect and oversee the organs, entities, and juridical persons of the public sector subject to its control; to perform inspections, order the opening of investigations into irregularities against government property; and to issue the measures, impose the objections, and apply the administrative sanctions that are in order by law. To urge the Prosecutor or the Attorney General of the Republic to bring the judicial actions that lie for infractions and offenses committed against public resources and of which he or she comes to learn in the performance of his or her powers. To exercise control over the management and evaluate the implementation and result of the decisions and public policies of the organs, entities, and juridical persons of the public sector subject to its control, related to their revenues, expenditures, and assets. All others that may be established by this Constitution and the law." Annex 1.

<sup>5</sup> The Organic Law on the Office of the Comptroller General of the Republic and the National Fiscal Oversight System, published in the official gazette *Gaceta Oficial de la República Bolivariana de Venezuela* No. 37,347, December 17, 2001. Annex 1.

<sup>6</sup> The Organic Law on the Office of the Comptroller General of the Republic and the National Fiscal Oversight System, published in the official gazette *Gaceta Oficial de la República Bolivariana de Venezuela* No. 37,347, December 17, 2001. See Article 93, *supra* para. 43. Article 94 provides: "Chapter III On Sanction-imposing Powers. Article 94. The following shall be sanctioned, in accordance with the seriousness of the breach and the extent of the damages caused, with a fine of one hundred (100) to one thousand (1,000) tax units, which shall be imposed by the oversight organs provided for in this Law, within the scope of their authority: 1. those who hinder or impede the performance of their functions by the fiscal oversight organs; 2. those who repeatedly make mistakes or omissions in the processing of the matters that they must submit to the consideration of the fiscal oversight organs; 3. those who without justified motive fail to appear when called on to do so by the fiscal oversight

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23. The Commission observes that there is no dispute between the parties as regards the fact that Mr. López Mendoza was disqualified from holding public office by an administrative proceeding. Nor is there any dispute with respect to the remedies pursued in the domestic jurisdiction. The Commission takes note that both the petitioner and the State submitted as annexes to their briefs the judgments, administrative decisions, and other official documents.

24. According to the evidence produced by the parties Mr. Leopoldo López Mendoza was elected by popular vote on August 4, 2000, as mayor of the municipality of Chacao, state of Miranda, and reelected to the same position on October 31, 2004, for a four-year term. López Mendoza remained in that position until November 2008, when he aspired to run for mayor of Caracas in the respective elections.<sup>8</sup>

25. From the evidence it appears that in 2004 two administrative procedures were initiated for the determination of liabilities of López Mendoza, among others, in keeping with Article 96 of the Organic Law.<sup>9</sup> It further appears that as a result of these two investigations, in 2004 the Office of the Comptroller General, an administrative entity entrusted with keeping tabs on fiscal management, imposed two administrative sanctions on Mr. Leopoldo López Mendoza that disqualify him from holding new public positions for three and six years, respectively.

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organs; 4. those who, being obligated to send the fiscal oversight organs reports, books, and documents do not do so on a timely basis; 5. those who, being obligated to do so, do not send or produce, within the established time frame, the reports, books, and documents that the fiscal oversight organs require of them; 6. those who designate the principals of the fiscal oversight organs in the entities and agencies indicated in paragraphs 1 to 11 of Article 9 of this Law without regard for the provisions that regulate this area." Annex 1.

<sup>7</sup> The Organic Law on the Office of the Comptroller General of the Republic and the National Fiscal Oversight System, published in the official gazette *Gaceta Oficial de la República Bolivariana de Venezuela* No. 37,347, December 17, 2001. Article 105 establishes: "The finding of administrative liability, in keeping with the provisions of Articles 91 and 92 of this Law, shall be sanctioned by the fine provided for in Article 94, based on the seriousness of the breach and the amount of damages caused. It will be up to the Comptroller General of the Republic exclusively and to the exclusion of all others, without any other procedure, to agree, in keeping with the extent of the wrongful act committed, the suspension of the exercise of the position without salary for a period not greater than twenty-four (24) months or the removal of the person found liable, the execution of which will be up to the highest-level authority; and impose, attending to the seriousness of the irregularity committed, his or her disqualification from holding public office for a maximum of fifteen (15) years, in which case the relevant information should be forwarded to the office responsible for human resources management of the entity or agency in which the facts occurred so that it might take the pertinent steps. In those cases in which the administrative liability of the highest-level authority is declared, the sanction will be executed by the organ in charge of his or her designation, removal, or dismissal. The highest-level authorities of the agencies and entities provided for in paragraphs 1 to 11 of Article 9 of this Law, before proceeding to the designation of any public servant, are obligated to consult the registry of persons disqualified which for that purpose shall be created and kept by the Office of the Comptroller General of the Republic. Every designation made without abiding by this law shall be null and void." (The Organic Law on the Office of the Comptroller General of the Republic and the National Fiscal Oversight System, published in the official gazette *Gaceta Oficial de la República Bolivariana de Venezuela* No. 37,347, December 17, 2001.) Annex 1.

<sup>8</sup> Municipal Gazette No. 5381, November 2004: Minutes of the Special Session held November 6, 2004, containing the Swearing-In of Citizen Mayor Leopoldo López Mendoza, bearer of national ID card No. 11,227,699. Annex 2.

<sup>9</sup> The Organic Law on the Office of the Comptroller General of the Republic and the National Fiscal Oversight System, published in the official gazette *Gaceta Oficial de la República Bolivariana de Venezuela* No. 37,347, December 17, 2001. Article 96 establishes: "Article 96. If as a consequence of the exercise of control functions or of the investigative powers established in this Law, elements of conviction or proof were to arise that could give way to the formulation of objections, a finding of administrative liability, or the imposition of fines, the respective fiscal oversight organ shall initiate the procedure by reasoned order, notice of which shall be given the interested persons, in keeping with the provision in the Organic Law on Administrative Procedure. The procedure may also be initiated by complaint, at the request of any public agency or employee, so long as it is accompanied by sufficient elements of conviction or proof that make it possible to presume, with a foundation, the liability of certain persons. The complaint may be filed in writing, signed in an original copy, before the competent organ, or electronically, such as electronic mail, directed to said organs. The Comptroller General of the Republic, by resolution that shall be published in the official gazette *Gaceta Oficial de la República Bolivariana de Venezuela*, shall establish the other provisions related to the submission of complaints to the fiscal oversight organs." Annex 1.

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26. With respect to the first administrative proceeding,<sup>10</sup> on October 21, 2004, the Bureau of the Determination of Liabilities of the Office of the Comptroller General of the Republic declared the administrative liability<sup>11</sup> of Mr. López Mendoza and his mother, Mrs. Antonieta Mendoza de López, for alleged irregularities in fiscal year 1998 in his position as National Situation Analyst in the Office of the Chief Economist of PDVSA<sup>12</sup> (hereinafter, "PDVSA facts"), and imposed a fine on him.<sup>13</sup> The grounds for administrative liability to which López Mendoza was subject were provided for at Article 113, sections 5 and 7, of the Organic Law on the Office of the Comptroller General of the Republic, in force at the time of the facts. Article 113, sections 5 and 7 of the Organic Law of the Office of the Comptroller General of the Republic provided:

Article 113. The following acts give rise to administrative liability independent of the civil or criminal liability that may apply, in addition to those provided for in Title IV of the Organic Law for Safeguarding Government Property:

...

5. The execution of contracts by oneself, by an agent or in representation of another, with the Republic, the States, the Municipalities, and all other juridical persons at public law, except as established in the laws.

...

7. Agreeing with the interested persons with a view to bringing about a given result, or the use of maneuvers or artifices with that aim, done by an official on intervening, by reason of his or her

<sup>10</sup> According to the annexes produced by the State to its brief of September 24, 2008, on September 12, 2003 the General Bureau of Control of the Decentralized Administration of the Office of the Comptroller General of the Republic forwarded official note No. 06-02-780 to Mr. Leopoldo López Mendoza by which it reported that "this highest level oversight organ of the state, in the exercise of its powers, is undertaking an investigation into the contributions made by Petróleos de Venezuela, S.A. (PDVSA), as grants and liberties, in the years 1998, 1999, 2000 and 2001." By Official Note No. 08-01-1048 of July 16, 2004, the Office of the Comptroller informed Mr. Mendoza of the initiation of the administrative procedure for determination of liabilities. Annex 3.

<sup>11</sup> See Annex D which accompanies the petitioner's original complaint brief: Order of Decision of the General Directorate for Special Procedures, Bureau for the Determination of Administrative Liabilities of the Office of the Comptroller General, October 29, 2004. It indicated that the investigation initiated "had the objective of evaluating the results contained in Report No. ACT-2000-006 of May 2000, prepared by the Management of Internal Corporate Auditing of PDVSA, for the purposes of verifying the legality, rationality, and compliance with the terms agreed upon in the Memorandum of Understanding signed by the Inter-American Foundation (hereinafter "IAF") and PDVSA, and the provisions set forth in the bylaws of the oil company related to the process of making grants and providing other benefits to nongovernmental organizations (NGOs), foundations, and civic associations, for the period referred to above." Annex 3.

<sup>12</sup> The petitioner informed that said investigation began on July 15, 2004, for the purpose of evaluating the contributions made by PDVSA, for grants and other benefits from 1998 to 2001, two of which were granted to the association *Primero Justicia*. Of the exhibits in the record before the Commission, it is indicated that at the time of the facts investigated, Ms. Antonieta Mendoza de López worked as a Manager for Public Affairs of the Services Division of PDVSA, Petróleo y Gas, S.A., acting as the agent of that company. That in performing such functions she ordered the request to issue the check and to prepare the grant document, in the amount of Bs. 60,060,000.00, related to the project called "Expansion and consolidation of the justice of peace in the states of Monagas, Anzoátegui, Sucre, and Delta Amacuro: An opportunity for equity in a context of regional economic growth," which was granted in the context of a Cooperation Agreement entered into between PDVSA and the Inter-American Foundation (IAF) to benefit the civic association *Primero Justicia*. That said grant was executed, there being a direct family tie between her (mother) and Mr. López Mendoza (son), who as of the date of the grant (December 23, 1998), served as a member of the Board of Directors of said civic association *Primero Justicia* (beneficiary of the grant) and was also an active employee of PDVSA, serving in the position of National Situation Analyst in the Office of the Chief Economist of PDVSA. In addition, a grant was given in the amount of Bs. 25,000,000.00, related to the project called "Educating for Justice 1998-1999" to the civic association *Primero Justicia*, on September 11, 1998, executed in the framework of said Cooperation Agreement (PDVSA-IAF), whose formalization was entrusted to citizen José Manuel Tineo, in his capacity as Corporate Manager for Public Affairs of PDVSA. At the time this second grant was given to the civic association *Primero Justicia*, the petitioner was both an active employee of PDVSA and a member of the Board of Directors of *Primero Justicia*.

<sup>13</sup> See Annex D to the original brief filed by the petitioner: Decision of the Bureau for the Determination of Liabilities of the Office of the Comptroller General of the Republic, October 29, 2004. In this order (*auto decisorio*) said organ decided: "To impose a FINE ... on citizen LEOPOLDO LOPEZ MENDOZA ... in the amount of ONE MILLION TWO HUNDRED FORTY-THREE THOUSAND TWO HUNDRED BOLIVARS AND NO CENTS (Bs 1,243,200.00), in view of the extent of the irregular acts..." Information also contained in Annex 4.

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position, in the execution of a contract, concession, tender, in the sale of assets or effects of government property or in the supply thereof.

27. By official notes of February 10, 2004, and July 16, 2004, the Office of the Comptroller General informed Mr. López Mendoza that another investigation was being initiated,<sup>14</sup> and an administrative procedure,<sup>15</sup> related to verifying alleged budgetary modifications in fiscal year 2002 during his term as mayor of the municipality of Chacao (hereinafter, "facts of the mayor's office").<sup>16</sup> On November 22, 2004, the petitioner filed a motion for reconsideration before the Office of the Comptroller General of the Republic,<sup>17</sup> which was denied on March 28, 2005.<sup>18</sup>

28. On November 2, 2004, the Office of the Comptroller General found López Mendoza administratively liable, and imposed a second fine on him.<sup>19</sup> The operative part of the order containing the decision finds,

1. The administrative liability of ... LEOPOLDO LOPEZ MENDOZA ... in his capacity as mayor of the municipality of Chacao ... 2. In view of the provisions of Articles 94 and 105 of the [Organic Law] ... imposing a fine on citizens LEOPOLDO LOPEZ MENDOZA ... in the amount of EIGHT MILLION EIGHT HUNDRED FORTY THOUSAND BOLIVARS AND NO CENTS (Bs. 8,140,000.00).<sup>20</sup>

29. On analyzing the parties' arguments received at the hearing and arguments alleging violations of Article 49 of the Constitution, that organ held,

... as the arguments presented by citizens LEOPOLDO LOPEZ MENDOZA ... undersigned, ratifies in each and every one of its parts, were dismissed, the imputations presented by the protocol to begin the Procedure for the Determination of Liabilities of 2004, which appears at folios 1 to 35. He so states.

30. On August 10, 2004, López Mendoza filed an amparo action before the Court of Contentious-Administrative Jurisdiction,<sup>21</sup> which was found inadmissible on August 25, 2004.<sup>22</sup> In that

<sup>14</sup> See Annex H attached by the State to the communication of September 24, 2008 (folio 28). Annex 5.

<sup>15</sup> See Annex H attached by the State to the communication of September 24, 2008 (folio 35). Annex 5.

<sup>16</sup> According to the information produced, with respect to this investigation it was determined that the petitioner, in his capacity as mayor of the municipality of Chacao, state of Miranda, acted in a simulated manner on declaring, by Resolution No. 148-02 of October 25, 2002, a partial derogation (annulment of loans for savings in expenditures, or when a program is impossible to execute) called "Capital Transfers to Federal Entities," for the total amount of Bs. 2,743,464,041.57, which he could not legally dispose of as they could correspond to the obligatory contributions to the Office of the Mayor of Caracas for fiscal year 2001.

<sup>17</sup> See Annex E to the petitioner's original. Annex 6.

<sup>18</sup> Decision of the Office of the Comptroller General of the Republic of the motion for reconsideration of March 28, 2005, contained in Annex E to the petitioner's original brief, and Annex G produced by the State, attached to the communication of September 24, 2008. Annex 7 and 4.

<sup>19</sup> Order of the Office of the Comptroller General of the Republic, General Directorate of Special Procedures, Bureau for the Determination of Liabilities. October 26, 2004 Annex 4.

<sup>20</sup> Order of the Office of the Comptroller General of the Republic, General Directorate of Special Procedures, Bureau for the Determination of Liabilities. October 26, 2004 (formally consigned November 2, 2004). Annex 4.

<sup>21</sup> Amparo action filed by Eva Elizabeth Ramos Ramírez, Iribaldo Aular Borhas, Shully Rosenthal Waintrub, Nelson Yanez, and Leopoldo López Mendoza before the Court for Contentious-Administrative Matters. By that action the representatives of Leopoldo López, among others, requested protection for their clients from the violations of the right to defense (Article 49 of the Constitution of the Republic) carried out by the offices of the Office of the Comptroller General in the investigative process and in the procedure for determining liability, "which address facts that had occurred at the time of the budgetary changes made by the mayor of the municipality of Chacao and approved by the members of the Municipal Council of that municipality, in fiscal year 2002." Annex 8.



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decision, the Court observed that the official notes, orders, acts, and notifications that were allegedly a violation of the right to defense of those seeking the *amparo*,

... are acts that are issued in the course of an administrative procedure in non-definitive terms, i.e. acts that are procedural or substantive, not susceptible to challenge, except for the grounds provided for in Article 83 of the Organic Law on Administrative Procedure.

Accordingly, as the administrative acts with respect to which the moving parties allege violations of their constitutional rights are not definitive and are not in the manner of a decision but rather are procedural since it only facilitates for the Administration the prosecution of an open investigation into the moving parties, this Court considers them as acts in preparation of the definitive resolution that puts an end to the investigation.

31. With respect to the act to open an investigation issued by the Bureau for the Determination of Liabilities, the Court indicated:

It does not render him defenseless, for from its content it is easy to deduce clearly the facts attributed to the moving parties, who have been compelled by the investigative body to submit evidence and defend themselves in a public hearing to refute the facts and allegations made. Accordingly, as this Court sees it there is no defenselessness whatsoever, notwithstanding that in the face of the impossibility of producing evidence, having access to the record, not setting a public hearing, lack of notice of any investigative act or the refusal to admit some administrative remedy, the special protection of constitutional *amparo* would be available. And it is so decided.

32. On November 22, 2004, López Mendoza filed his motion for reconsideration before the Office of the Comptroller General of the Republic (facts of the mayor's office), which was denied on March 28, 2005,<sup>23</sup> affirming the decision handed down October 26, 2004.<sup>24</sup>

33. On August 24<sup>25</sup> and September 26, 2005,<sup>26</sup> the Office of the Comptroller General of the Republic issued two resolutions with respect to López Mendoza by which it was determined to impose

<sup>22</sup> Decision by the Seventh Superior Court for Contentious-Administrative Matters of August 25, 2004. Annex 9.

<sup>23</sup> See Annex H produced by the State attached to the communication of September 24, 2008 (folio 117). Annex 5.

<sup>24</sup> Decision by the Office of the Comptroller General of the Republic on the motion for reconsideration brought by the representative of Leopoldo López Mendoza, among others, Annex 10.

<sup>25</sup> Official Note No. 08-01-881 of August 30, 2005, by which is attached Resolution No. 01-00-000206 of August 24, 2005, by which the Office of the Comptroller General considers that given the irregularities committed, which were sanctioned, as appears in the order of October 29, 2004 (PDVSA Grants), resolves: "In keeping with the provision of Article 122 of the Organic Law on the Office of the Comptroller General of the Republic, in place at the time of the irregular acts, and Article 105 of the then-in-force Organic Law on the Office of the Comptroller General of the Republic and the National Fiscal Oversight System, to impose on citizen LEOPOLDO LÓPEZ MENDOZA ... the sanction of disqualification for performing public functions for a period of three years, counted from the execution of this Resolution. Information also contained in Annex G produced by the State, attached to the communication of September 24, 2008 (folio 522). The relevant sections of Article 122 of the Organic Law on the Office of the Comptroller General, published in the *Gaceta Oficial de la República de Venezuela* No. 5,017, Special, of December 13, 1995, established: "Article 122: Once the decision on administrative liability is firm, and without prejudice to the judicial remedy that may be brought against this decision, the Office of the Comptroller shall forward the corresponding order and all other documents to the agency where the irregular acts occurred, or in which the public servant is providing service, for the top-level authority, within thirty (30) calendar days, to impose the sanction of removal, without any further procedure. The Comptroller General of the Republic or the highest level authority of the respective agency, depending in the seriousness of the breach and the amount of the damages caused, may impose, in addition, disqualification from holding public office for a period of no more than three (3) years. If the person found liable has been removed from public office, the Comptroller may apply the sanction of disqualification, for up to the same period as indicated in this article. The decision that imposes disqualification should also be forwarded to the Central Personnel Office of the Presidency of the Republic to have the corresponding effects and to incorporate into the respective file in the registry that said Office shall keep of the officials and public employees to which Article 84 of this Law is limited. The pertinent section of Article 105 of the Organic Law currently in force reads: It is up to the Comptroller General of the Republic exclusively and to the exclusion of all others, without any other procedure, to decide, based on the importance of the offense committed, to suspend the exercise of the position without salary for a period not greater than twenty-four (24) months or the removal of the person declared liable ... and to impose, in view of the gravity of

the "accessory sanction" of disqualification from holding public office for a period of three<sup>27</sup> and six<sup>28</sup> years respectively, based on Article 105 of the Organic Law.

34. López Mendoza filed administrative motions of reconsideration against the acts that found him administratively liable and that determined the sanctions of disqualification from holding public office, on September 22, 2005,<sup>29</sup> and November 15, 2005,<sup>30</sup> which were resolved by the Office of the Comptroller General on January 9 and 11, 2006, which rejected them, and affirmed the sanctions of disqualification from holding public office for a period of three and six years respectively.<sup>31</sup>

35. On declaring the motions for reconsideration pursued unfounded, with respect to the first decision the Comptroller reasoned that Articles 122 of the derogated Organic Law of the Office of the Comptroller General of the Republic and Article 105 of the Organic Law require, for the imposition of accessory sanctions, a finding of administrative liability, and that it be final in this jurisdiction. As for the allegation of the petitioner's representative related to the lack of sufficient motivation for imposing the sanction that disqualified López Mendoza from holding public office for a period of three years, the Comptroller cited some judgments of the Supreme Court by which that it held, among other things, that

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the irregularity committed, his or her disqualification from holding public office for up to a maximum of fifteen (15) years." Annex 11.

<sup>26</sup> Resolution No. 01-00-235 of September 26, 2005, by which the Office of the Comptroller General of the Republic considers that given the irregularity committed [budgetary modifications Office of the Mayor], sanctioned by the finding of administrative liability of November 2, 2004, ... as well as the repetition of irregular conduct that has been sanctioned in the terms alluded to above. Resolves: "In keeping with the provision of Article 105 of the Organic Law on the Office of the Comptroller General of the Republic and the National Fiscal Oversight System, to impose on citizen LEOPOLDO LOPEZ MENDOZA, ... the sanction of disqualification from holding public office for a period of six (6) years, counted from the execution of this Resolution." Annex 12.

<sup>27</sup> Resolution No. 08-01-881 of August 30, 2005, by which the office of the Comptroller General of the Republic (CGR) notifies the petitioner that on August 24, 2005, a sanction was imposed on him of disqualification from holding public office for a period of three years and he was informed that he could file a motion for reconsideration against that decision before the same CGR within 15 working days and a motion to vacate before the Supreme Court within six months counted from the notice. Annex 13.

<sup>28</sup> Resolution No. 01-00-235 of September 26, 2005, by which the Office of the Comptroller General of the Republic resolves: "In keeping with Article 105 of the Organic Law on the Office of the Comptroller General of the Republic and the National Fiscal Oversight System, to impose on citizen LEOPOLDO LOPEZ MENDOZA, ... the sanction of disqualification from holding public office for a period of six (6) years, counted from the execution of this Resolution." Annex 12.

<sup>29</sup> Motion for reconsideration directed to the Comptroller General of the Republic against Resolution No. 01-00-000206 (PDVSA facts). By that remedy the petitioner's representative adduced the existence of violations of the fundamental rights of defense enshrined in Article 49(1) of the Constitution for failure to lay a sufficient foundation to determine, in keeping with Article 122 of the Organic Law on the Office of the Comptroller of 1995, the seriousness of the breach and the amount of the damages caused. Additionally, the petitioner's representative challenged, considering it erroneous, the considerations that determined the sanction of administrative responsibility of the petitioner and that were based on "simulated action" (provided for at Article 91(21) of the Organic Law). Annex 14.

<sup>30</sup> Motion for reconsideration directed to the Comptroller General of the Republic against Resolution No. 08-01-235 (facts of the mayor's office). By that remedy the petitioner's representative adduced that the sanction-imposing provisions are to be interpreted strictly, accordingly "there is no way to understand the provision of Article 105." In this regard, they argued the existence of violations of the fundamental rights to defense enshrined in Article 49(1) of the Constitution for lack of sufficient motivation so as to determine the seriousness of the breach, the amount of the damage caused, and the reason for the duration of the sanction. In addition, he requested reconsideration of the sanction of disqualification for a period of six years imposed by virtue of that lack of motivation. In that decision it argued that the requirement of motivation is enshrined in Article 9 of the Organic Law on Administrative Procedure, which provides, "*Administrative acts particular in nature should be motivated, except for those that involve simple procedure or unless expressly provided by law. To that end, they must make reference to the facts and to the legal foundations of the act.*" Annex 15.

<sup>31</sup> Resolution No. 01-00-000004 of January 9, 2006, of the Comptroller General of the Republic, which denies the motion filed against Resolution No. 01-00-000206, information also contained in Annex G produced by the State attached to the communication of September 24, 2008 (folio 576). Resolution No. 01-00-000005 of January 11, 2006, of the Comptroller General of the Republic, which denied the motion brought against Resolution No. 08-01-235. Annexes 16 and 17.

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every administrative resolution is motivated when it contains the main elements of fact and of law.... The motivation required of any administrative resolution is not necessarily the fact of containing within the text that sets it forth an analytical presentation, or expressing the data or reasoning on which it is based in a discriminatory manner; for a resolution may be considered well-founded when it has been issued based on specific facts, data, or figures, and when these effectively and explicitly appear in the record.<sup>32</sup>

36. In that resolution, the Comptroller also indicated,

Within the sphere of discretion conferred by law on the Comptroller General of the Republic and in light of the documentation submitted by the Bureau for Determination of Liabilities of the Office of the Comptroller, there was, on its part, a weighing of the extent and seriousness of the irregularities.<sup>33</sup>

37. In the second decision to ratify the sanction that disqualified López Mendoza from holding office for a period of six years, the Comptroller also cited (*supra* 58) the case-law of the Supreme Court concluding that the resolution challenged was not affected by defects of lack of motivation; it also underscored that Article 105 of the Organic Law gave it the power to impose the sanction of disqualification "exclusively and to the exclusion of all others, and without any procedure other than that of determination of liability, based on its discretionary power, depending on the seriousness of the breach, i.e. that sanction is a legal consequence which, according to the Law, stems from the finding of liability ...."<sup>34</sup>

38. On October 4, 2005,<sup>35</sup> and August 4, 2005,<sup>36</sup> López Mendoza filed two motions to vacate before the Political-Administrative Chamber of the Supreme Court of Justice (hereinafter also referred to as "the Political-Administrative Chamber") by which he alleged the existence of violations of the right to defense in the investigative phase and in the phase of determining liability, as he was hindered from producing testimonial evidence.<sup>37</sup> On the motion to vacate filed August 4, 2005,<sup>38</sup> together with the request for an injunction<sup>39</sup> (facts of the mayor's office), López Mendoza's representative asked the Political-Administrative Chamber to annul the resolutions of March 28, 2006, issued by the Office of the Comptroller as well as the resolution handed down November 2, 2004, which affirmed the finding of administrative liability of López Mendoza, among others. In addition, that motion sought protection in the face of the threat of a violation of the right to defense

<sup>32</sup> Petitioner's original brief, which cites Judgment No. 354 of February 26, 2002 (Case: *José Omar Lucena Gallardo v. Ministry of Interior and Justice*) of the Political-Administrative Chamber of the Supreme Court. Annex 18.

<sup>33</sup> Resolution No. 01-00-000004 of January 9, 2006. Annex 16.

<sup>34</sup> Resolution No. 01-00-000005 of January 11, 2006. Annex 19.

<sup>35</sup> Copy of the brief setting forth the contentious-administrative motion to vacate filed by the petitioner's representatives before the Political-Administrative Chamber of the Supreme Court with respect to the finding of administrative liability for the alleged irregularities in the form of donations made to *Primero Justicia* in fiscal year 1998 when the petitioner was serving as National Situation Analyst in the Office of the Chief Economist of PDVSA, the facts related to the PDVSA grants. Annex 20.

<sup>36</sup> Copy of the contentious administrative motion to vacate filed by the petitioner's representative before the Political-Administrative Chamber of the Supreme Court with respect to the finding of administrative liability for the alleged irregularities related to budgetary modifications made during fiscal year 2002 in the municipality of Chuacoo, state of Miranda, where the petitioner served as mayor. Annex 20.

<sup>37</sup> See Annex J of the petitioner's original brief.

<sup>38</sup> See Annex L to the petitioner's original brief: Copy of the contentious-administrative motion to vacate filed by the petitioner's representatives with the Political-Administrative Chamber of the Supreme Court with respect to the finding of administrative liability for the alleged irregularities related to budgetary modifications in fiscal year 2002 in the municipality of Chuacoo, state of Miranda, where the petitioner served as mayor. Annex 20.

<sup>39</sup> See Annex L to the petitioner's original brief.

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[...] represented by the imminent attempt of the [Comptroller], as a result of the finding of administrative liability ... to apply to him Article 105 of the [Organic Law] and in that way ... disqualify them from holding public office ... that provision clearly being in violation of the guarantee of due process, with respect to the right to defense (Article 49(1)).

39. On this motion, the Political-Administrative Chamber of the Supreme Court declared as follows on March 8, 2006: (1) JURISDICTION to hear the contentious-administrative motion to vacate brought together with a precautionary amparo action and subsidiarily a measure for the temporary suspension of Article 105 of the Organic Law; (2) IT ADMITTED the contentious-administrative motion; (3) IT FOUND INADMISSIBLE the precautionary constitutional amparo action; and (4) it considered UNFOUNDED the measure for the temporary suspension of Article 105 of the Organic Law.<sup>40</sup> As regards the inadmissibility of the precautionary *amparo* measure and the subsidiary request for the temporary suspension of Article 105 of the Organic Law (facts of the mayor's office), the Court found that

[...] as there was an express administrative act, by which the sanction of disqualification for holding public office was imposed on the petitioners, this Chamber considers that the alleged threat of a violation of the constitutional right to defense of the moving party constitutes a situation that can no longer be repaired by this means of precautionary protection, since said protection was directed precisely at preventing the citizen Comptroller General of the Republic, in the performance of his functions, from applying one of the sanctions provided for in Article 105 of the Organic Law on the Office of the Comptroller General of the Republic and the National Fiscal Oversight System, as a consequence of the finding of administrative liability, in keeping with the provision of Article 6(3) of the Organic Law on Amparo of Constitutional Rights and Guarantees, which provides:

That amparo action shall not be admitted:

[...]

(3) When the violation of the right or constitutional guarantee constitutes an evident irreparable situation, it not being possible to re-establish the legal situation infringed.

[...] As for the subsidiary request, ... it should be noted that in that case as well there is no point making a pronouncement, ... as the request of the moving parties was aimed at preventing the Comptroller General of the Republic, in the use of the powers provided for in said article, from applying the sanction of disqualification on the petitioners which, as already stated, was applied to the petitioners, as appears from the resolutions issued by the Comptroller General of the Republic.<sup>41</sup>

40. On August 5, 2008, the Political-Administrative Chamber of the Supreme Court denied the motion to vacate filed on August 4, 2005,<sup>42</sup> by which López Mendoza's representative had requested that the resolution of March 28, 2005, be set aside,<sup>43</sup> leaving intact the resolution appealed.

41. On denying the motion to vacate, the Political-Administrative Chamber of the Supreme Court referred to the arguments on violations of due process in the investigative phase and on the

<sup>40</sup> Decision of the Political-Administrative Chamber of the Supreme Court, March 8, 2006. Annex 21.

<sup>41</sup> Section: ON THE PRECAUTIONARY MEASURE OF AMPARO contained in the Decision of the Political-Administrative Chamber of the Supreme Court, March 8, 2006. Annex 22.

<sup>42</sup> Copy of the brief of the contentious-administrative motion filed by the petitioner's representatives with the Political-Administrative Chamber of the Supreme Court with respect to the finding of administrative liability for the alleged irregularities related to budget modifications in fiscal year 2002 in the municipality of Chacao, state of Miranda, where the petitioner served as mayor. Annex 20.

<sup>43</sup> Political-Administrative Chamber of the Supreme Court, Decision of August 5, 2008. Annex 23.

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proceeding that resulted in the determination of administrative liability of Mr. López Mendoza, among others, in the following terms:

[...] for the determination of the administrative liability of public employees, the [Organic Law] establishes two phases: (i) the first, corresponding to the performance of the functions of control and investigative power of the Office of the Comptroller; and (ii) the second, having to do with the administrative procedure for the determination of administrative liability.

In the first phase of the proceeding, the Fiscal Oversight Organ is obligated to notify the public employees interested in the investigation of the facts for which they could be found liable [in keeping with Articles 77 and 79 of that law].

The second phase is geared to determining the administrative liability of the public employee and is provided for at Articles 97 ff. of the [Organic Law].

According to this procedure, when there are elements or conviction or proof that could give rise to administrative liabilities, the Office of the Comptroller General of the Republic shall order it be initiated by reasoned order, identifying the persons allegedly liable or ordering they be given notice (Article 98).

[...]

In keeping with what has been set forth, this Chamber appreciates that the procedure established in the [Organic Law] was fully carried out by the Office of the Comptroller, for the interested persons were notified of the facts that triggered the investigative power and of the facts which, within the investigation, led to the beginning of the procedure for determining administrative liability.<sup>44</sup>

42. With respect to the allegation of due process violations related to the right to defense due to the application of Article 105 of the Organic Law, the Chamber held,

[the provision referred to] allows the maximum Comptroller Authority to decide on sanction "without any further procedure" and "with a view to the extent of the wrongdoing committed."

[...]

It is observed that the imposition of the sanctions provided for at Article 105 of the [Organic Law] ... Leopoldo López Mendoza is a consequence of the result of the administrative investigation undertaken by the Office of the Comptroller General of the Republic.

Thus, once the irregularities committed are determined, the participation of the top-level officer of the Office of the Comptroller was limited to weighing those irregularities "... with a view to [their] seriousness..." for the purpose of imposing the corresponding sanction, without the need to initiate any other administrative procedure, as provided by the provision referred to.

...

In view of the foregoing, this High Court concludes that in the instant case, the sanction of disqualification of the moving parties was the consequence of the procedure that culminated in the finding of their administrative liability, which is why there was no violation of the rights to defense and due process alleged by the petitioners, and it is so declared.<sup>45</sup>

43. On June 21, 2006, Leopoldo López Mendoza brought constitutional motion with a motion for a precautionary *amparo*<sup>46</sup> before the Constitutional Chamber of the Supreme Court (hereinafter "Constitutional Chamber") challenging Article 105 of the Organic Law as unconstitutional and asking that the confirmatory acts of the sanctions of disqualification imposed on him be set aside (which is to

<sup>44</sup> Political-Administrative Chamber of the Supreme Court, Decision of August 5, 2008, Annex 23.

<sup>45</sup> Political-Administrative Chamber of the Supreme Court, Decision of August 5, 2008, Annex 23.

<sup>46</sup> See Annex U to the petitioner's original brief in which, among other aspects, an application is made to the Constitutional Chamber of the Supreme Court to issue injunctive relief intended to "suspend the application of Article 105 [of the Organic Law], with respect to the specific legal situation before us for the duration of the proceeding on the motion to vacate initiated with this complaint, such that the application of that article by the Comptroller is also suspended ... with respect to our clients." Annex 24.

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say, Resolution 01-00-000004 and 01-00-000005).<sup>47</sup> In his brief before the Constitutional Chamber, López Mendoza's representative laid the basis for, among other claims, the alleged violation of Article 65 of the Constitution,<sup>48</sup> which establishes that a citizen may be disqualified from seeking elective office if he or she has been convicted of offenses committed in the performance of his or her functions, and others that affect government property. In this regard, he argued before that Chamber:

The system of administrative liability, which supplements that of criminal liability, has as its main sanction, according to the Organic Law, the imposition of fines [... and, therefore] Article 105 of the Organic Law breaks the proper balance that should exist between the administrative sanction-imposing regime that the LCC [Law Against Corruption] is called on to apply based on the very text of the Constitution.

44. In addition, López Mendoza's representative argued the lack of proportionality of the "accessory" sanctions, given that they have effects that are much more cumbersome for the transgressor official, and argued the lack of due process under Article 49.1 of the Venezuelan Constitution, since Article 105 of the Organic Law does away with the possibility of procedure, making it impossible for

those affected from in any way questioning, controlling, or even defending themselves from the Comptroller's appreciation of the extent of the wrongdoing committed or the seriousness of the irregularity committed, to impose one or another of the sanctions mentioned, and, in the case of suspension from the position or disqualification from holding public office, decide the duration of those sanctions.

45. On January 31, 2007, the Constitutional Chamber of the Supreme Court, among other decisions, declared that it had jurisdiction to take cognizance of the motion alleging the nullity of Article 105 of the Organic Law, and declared inadmissible the constitutional precautionary *amparo* to suspend the effects of that article.<sup>49</sup> On July 29, 2008, the Court of Substantiation of the Constitutional Chamber of the Supreme Court called the parties to a public and oral hearing.<sup>50</sup> On July 31, 2008, the Constitutional Chamber of the Supreme Court held a hearing on the motion to vacate in which it was argued that Article 105 of the Organic Law is unconstitutional, to which 14 of those sanctioned by the Comptroller were called.

46. On August 6, 2008, the Constitutional Chamber denied the motion to vacate brought against Article 105 of the Organic Law.<sup>51</sup> On considering the arguments put forth by the representative

<sup>47</sup> See the petitioner's original brief which, among other things, notes that they challenge Article 105 of the Organic Law as they consider it violative of several constitutional provisions and principles, namely: (i) Article 65 of the Constitution, which limits the sanction of disqualification from holding public office to having committed offenses against government property and never with an administrative sanction; (ii) the principle of proportionality between sanctions and infractions, derived from the rule of law and the guarantee that punishments must be legal provided for at Article 2 and Article 49.6 of the Constitution; (iii) the prohibition on being tried twice for the same facts, provided for at Article 49.7 of the Constitution; (iv) the right to defense, provided for at Article 49; and (v) the principle of the presumption of innocence provided for at Article 49.2 of the Constitution. Annex 24.

<sup>48</sup> Article 65 of the Constitution of the Bolivarian Republic of Venezuela provides as follows: "Those persons who have been convicted of offenses committed during the performance of their function and others that have a detrimental effect on government property, within the time set by the law, as of the implementation of the sentence, and in keeping with the seriousness of the offense." Annex 1.

<sup>49</sup> Constitutional Chamber of the Supreme Court of Justice, Decision of January 31, 2007. On referring to the precautionary *amparo* petition, the Chamber indicated: "As indicated by the representation of the moving party, 'it should be noted that as for citizens ... and Leopoldo López Mendoza, they currently hold positions of popular representation ... said sanctions of disqualification should be executed at the conclusion of the respective elective mandates....' With respect to ... Leopoldo López Mendoza ... mayor ..., of the municipality of Chacao of the state of Miranda, the exercise of those duties culminates in the year 2009. This, as was seen, denotes the lack of immediacy of the harm alleged." Annex 25.

<sup>50</sup> Court of Substantiation of the Constitutional Chamber of the Supreme Court of Justice. Annex 26.

<sup>51</sup> Constitutional Chamber of the Supreme Court, Decision of August 6, 2008, Annex 27.

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of López Mendoza, among others, the Constitutional Chamber first set out to describe the legislative history of the development of provisions similar to Article 105 of the Organic Law. This is by virtue of considering that "the provision challenged is part of the country's republican tradition." And in that context it referred to Article 84 of the first Organic Law on the Office of the Comptroller General of the Republic of 1975, in which a finding of administrative liability could entail the sanction of disqualification from holding public office for a period no greater than three years. It continued its presentation noting that said article was amended in 1984 (Article 84) and subsequently in 1995 through Articles 121 and 122. It indicated that it is in that context of evolution of the fiscal oversight sanctions regime, that one must understand the drafting of Article 105 of the Organic Law. In that judgment the Constitutional Chamber of the Supreme Court reasoned that Article 105 of the Organic Law authorizes the Comptroller to impose the sanction stemming from administrative liability,

... without any further procedure, it being the manifestation of two administrative acts of the same sanction-imposing power, in that sense, in the consideration of that Chamber the provision challenged does not violate the constitutional right of due process, which must necessarily be observed in order to establish administrative liability. The sanctions that correspond to the finding of administrative liability do not merit a new procedure because they are the consequence of the act that declares administrative liability.

47. With respect to the arguments related to violation of the principle of proportionality, the Constitutional Chamber noted:

... proportionality is the standard required for examining the scope of discretion of the fiscal oversight organ in the gradation of the sanction, insofar as in imposing it, understood as a whole, one should show or explain the relationship that exists between the illegal act and the quantum of the sanction. Having said this, the Chamber observes that the provision challenged in no way implies contravening the principle of proportionality of sanctions.... In imposing them one considers both the extent of the harm and the degree of liability.

...  
The Chamber observes that in the case of the provision contained in Article 105, the relationship of dependency between the fine and the suspension, removal, or disqualification is not exact, as the moving parties claim; rather, that relationship of dependency exists between the finding of administrative liability and the multiplicity of sanctions; which ... are, properly speaking, all principal consequences of the finding of administrative liability.<sup>62</sup>

48. With respect to the arguments that the principle that only legally defined conduct can be punished had been violated, the Constitutional Chamber indicated:

In the administrative realm the implementation of what scholarly legal writing (*la doctrina*) calls "indeterminate legal concepts" is not proscribed; rather, these are used to verify the gradation of the sanction, but not of the infraction itself. Thus is it a criterion that offers the sanction-imposing organ a margin of appreciation that does not conflict with the principle that only legally defined conduct can be punished, for in it one must meet, through a detailed and concrete examination of the facts, and a characterization from the standpoint of the values involved in the concept, the maxims demanded for justifying the sanction imposed.

...  
In the case of Article 105 ... it is stipulated that the finding of administrative liability will be sanctioned with the fine provided for in Article 94 of the Law, in keeping with the gravity of the breach and the amount of the damages caused, according to the provisions of Article 86 ff. of the Rules of the Law...; and the Comptroller shall impose the sanction of suspension without salary for a period no greater than twenty-four (24) months or removal from the person found liable in view extent of the wrongdoing committed; and the disqualification from exercising public functions up to a maximum of fifteen (15) years, in view of the seriousness of the irregularity.

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<sup>62</sup> Constitutional Chamber of the Supreme Court. Decision of August 8, 2009. Annex 27.

49. The indeterminate legal concepts expressed therein offer a discretionary margin of appreciation to the fiscal oversight organ for the gradation of the sanction, considering the extent of the infraction and its effects.

50. Finally, when the Constitutional Chamber referred to the arguments related to the violation of political rights and the conflict between the provision challenged and Articles 42 and 65 of the Constitution, it made a distinction between the suspension of political rights and the disqualification from holding public office by saying,

... being a citizen gives rise to the right to participate in the establishment, exercise, and control of political power, by recognizing activities aimed at facilitating its intervention in a democratic manner, to wit: suffrage (both active and passive), plebiscites, referenda, popular consultation, ..., etc.

It should be noted that the criminal judgment to which Articles 42 and 65 of the Constitution of the Bolivarian Republic of Venezuela refer suspends the exercise of political rights, whereas that imposed by the Comptroller General of the Republic disqualifies one from holding public office.... In other words, that as a consequence of the disqualification one restricts the aptitude to be a public employee ... and it should be reiterated that it is any public employee, including one holding elective office, such that the person sanctioned cannot be a public employee, and, therefore, cannot be the executive of a government either.

Based on this distinction, and it being understood that they are two different disqualifications that emanate from various constitutional provisions, namely Articles 42, 65, and 289.3, it is up to the organs of the Public Administration not to allow citizens sanctioned to hold public office, that is to say not designate them or allow them to participate in competitive hiring processes; and it is up to the Electoral Branch to see to it that no fraud is committed on the voters by allowing the nomination, candidacy, and election of a citizen who is impeded from performing administrative functions inherent to government functions.

...

Thus understood, the text of the provision challenged is in keeping with the Constitution; and it is also compatible with observance of the Inter-American system for the protection of human rights.

51. On July 21, 2008, the National Electoral Council approved the Rules for Regulating the Nomination of persons for the elections to be held in November 2008, which incorporates, in its Article 9, the impediment to nominating as candidates citizens who are subject to political disqualification.<sup>53</sup>

52. On August 5, 2008, Leopoldo López Mendoza entered the computerized nominations system through the web page of the CNE ([www.cne.gov.ve](http://www.cne.gov.ve)) to register his candidacy. Nonetheless, the system brought up the following on the screen: "López Mendoza Leopoldo Eduardo This person is subject to political disqualification (code 8)."<sup>54</sup> On August 11, 2008, Leopoldo López Mendoza formally presented his nomination for the position of mayor of the Metropolitan District of Caracas to the office of the Electoral Board for the Metropolitan District of Caracas, and was unable to register since he was disqualified from holding public office.<sup>55</sup>

## VII. CONSIDERATIONS OF LAW

<sup>53</sup> Article 9 of that law states: "ARTICLE 9. The following may not run for the elective offices established in these provisions: 1. Those who meet the conditions set out in Article 65 of the Constitution of the Bolivarian Republic of Venezuela and all other laws of the Republic; 2. Those who are subject to civil interdiction or disqualification." [https://ges.cne.gov.ve/regionales2008/documentos/RESOLUCION\\_NORMAS\\_DE\\_POSTULACIONES\\_VERSION\\_FINAL.pdf](https://ges.cne.gov.ve/regionales2008/documentos/RESOLUCION_NORMAS_DE_POSTULACIONES_VERSION_FINAL.pdf)

<sup>54</sup> CNE Automated System of Nominations, Regional Elections 2008. Annex 28.

<sup>55</sup> Certifying document. Annex 29.



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53. After the Admissibility Report, the State alleged that any argument on the possible incompatibility of Article 105 of the Organic Law with the American Convention should be analyzed and resolved in light of Judgment 1309/2001 of the Supreme Court. The State reaffirmed the supremacy of the Constitution, sovereignty, and national self-determination. It highlighted that the option for the primacy of international law is a tribute to the globalizing and hegemonic interpretation of individualist rationalism. The State insisted that the new theory is fight for the supremacy of the valorative social order that is the basis of the Constitution of the Bolivarian Republic of Venezuela.

54. Having noted the foregoing, the Commission considers pertinent to highlight first Article 27 of the Convention of Vienna on the Law of Treaties, and the case-law of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), which has been clear in indicating that the states cannot invoke their domestic law to elude their international obligations.<sup>56</sup> The Court has indicated on many occasions that Article 27 of the 1969 Vienna Convention on the Law of Treaties, whose principles are reflected in the American Convention, codifies a basic principle of customary international law, namely: A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This provision is based on the principle that the states must carry out their obligations in good faith (*pacta sunt servanda*).<sup>57</sup>

55. Also when ruling on the obligations that states parties assume on signing treaties, the Court has stated that: "In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction."<sup>58</sup> In addition, the case-law of the Court is copious with respect to the treaty obligations of the states parties in general.<sup>59</sup> Venezuela ratified the American Convention on August 9, 1977, and undertook, under Article 1 of the American Convention and the case-law of the Inter-American Court, to not only respect the rights and freedoms recognized in that instrument, but also ensure their free and full exercise to all persons under its jurisdiction, which implies the duty of the State to take the measures necessary to remove the obstacles that may exist for individuals to be able to enjoy the rights that the Convention recognizes.

56. In his briefs on the merits, the petitioner first alleged the violation of Article 24 of the American Convention, as he considered he had received discriminatory treatment with respect to other persons who, in the past, could be candidates for public office even though an administrative sanction of disqualification had been imposed on them. After analyzing the information submitted by the parties, the Commission concludes that this argument was not duly justified in this particular case by the petitioner, and that it does not have sufficient elements to consider that the facts alleged fit within the conditions established in Article 24, of the American Convention.

<sup>56</sup> I/A Court H.R., *Case of Hilario*, Preliminary Objections, Judgment of September 1, 2001, Series C No. 80, para. 82.

<sup>57</sup> Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), 1155 U.N.T.S. 331, entered into force January 27, 1980, Vienna, May 23, 1969.

<sup>58</sup> I/A Court H.R., *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights*, Advisory Opinion OC-2/82, September 24, 1982, Series A No. 2.

<sup>59</sup> For example, in the *Castillo Petrucci* case the Court established: "... the Court must recall that Peru signed and ratified the American Convention on Human Rights. Consequently, it accepted the treaty obligations set forth in the Convention with respect to all persons subject to its jurisdiction without any discrimination. It is not necessary to state that Peru, like the other States Parties to the Convention, accepted the obligations precisely in the exercise of its sovereignty. On becoming a State Party to the Convention, Peru accepted the competence of the organs of the Inter-American system for the protection of human rights, and therefore obligated itself, also in the exercise of its sovereignty, to participate in proceedings before the Commission and the Court and to assume the obligations that derive from them and from the general application of the Convention." I/A Court H.R., *Case of Castillo Petrucci et al.*, Preliminary Objections, Judgment of September 4, 1998, Series C No. 41, paras. 101 and 102.

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57. In this case it is important to clarify that the Commission will not get into a debate over the facts, the accretions and/or errors of evaluation that led to the internal Venezuelan courts to the finding of administrative liability against Leopoldo López Mendoza to hold a public function.

58. At the core of this case is the imposition of restrictions on the political right to run for public positions (passive suffrage) that is to opt to run for elective office through popular vote, pursuant to Article 105 of the Organic Law. As it has been established, Leopoldo López Mendoza was sanctioned with disqualification from holding public office in the absence of a firm criminal conviction handed down by a competent judge. Moreover, this case also addresses the existence of alleged procedural delays and effectiveness of the domestic remedies pursued.

**1. The Exercise of Political Rights and its link with due process guarantees (Articles 8 and 23 of the American Convention)**

59. First, the Commission wishes to note the importance of transparency in the performance of public functions to strengthen democracies and the informed participation of individuals in their construction. The Commission recognizes the establishment of oversight mechanisms to see to the sound management and legality of the acts of public employees of the State in the use of government property to safeguard the sound functioning of democracy. In this regard, the creation of mechanisms and entities for oversight and control of acts of corruption or wrongdoing in the performance of the public function become essential for ensuring the struggle against fraud, corruption, and any other illegal activity that is to the detriment of public interests. States have the duty to organize their legal and administrative apparatus to oversee and inspect the operations of the organs, entities, and juridical persons of the public sector and order that investigations be opened into alleged irregularities against government property and sanction them when there is a basis for doing so according to the law and the treaties signed by the states. Such requirements become essential in representative democracies to guarantee that when exercising their political rights, the citizenry can know about the actions of their representatives and elect them based on solid information.

60. It is equally important to guarantee political rights, which are fundamentally important human rights within the inter-American system that are closely related to a set of other rights that make possible democratic dynamics.<sup>60</sup> The relationship between democracy, political rights, and human rights has been recognized by the member states of the OAS on approving the Inter-American Democratic Charter, which resolves, at Article 3:

Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.<sup>61</sup>

61. The impact of Article 23 of the American Convention and its core importance for consolidating representative democracy was expressed clearly by the Inter-American Court: "Representative democracy is determinant in the whole system of which the Convention is a part."<sup>62</sup> The Commission has said that representative democracy – one of whose key elements is the popular

<sup>60</sup> I/A Court H.R., *Case of Castañeda Gutman v. Mexico*, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2005. Series C No. 184.

<sup>61</sup> Inter-American Democratic Charter. Approved in the first plenary session, held September 11, 2001.

<sup>62</sup> IACHR, Report No. 137/99, Case 11.863 (Andrés Aylwin Azócar *et al.*), December 27, 1999, para. 44, referring to Advisory Opinion OC-13, para. 34, Annex 32.

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election of those who hold political power is the form of organization of the state explicitly adopted by the member states of the Organization of American States.<sup>63</sup>

62. The Commission has also noted that it is not unusual that the evolving law of the inter-American system has insisted on the existence of a direct relationship between the exercise of political rights so defined and the concept of democracy as a form of organization of the state, which in turn presupposes the observance of other fundamental human rights. In effect, in the view of the Commission, the concept of representative democracy is based on the principle that political sovereignty vests in the people and in exercising this sovereignty they elect their representatives to hold political power. Moreover, these representatives are elected by the citizens to carry out certain policy measures, which in turn implies that there has been a wide-ranging debate on the nature of the policies to apply (freedom of expression) among organized political groups (freedom of association) who have the opportunity to express themselves and meet publicly (freedom of assembly).<sup>64</sup>

63. Article 23 of the American Convention provides:

1. Every citizen shall enjoy the following rights and opportunities:
  - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
  - b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
  - c. to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

64. As deduced from the text of the treaty and from the case-law of the Court, Article 23 of the American Convention recognizes and protects political participation through the right to active suffrage and passive suffrage, the latter understood as the right to run for elective office, and the establishment of adequate electoral regulation that considers the political process and the conditions in which that process unfolds, in order to ensure the effective exercise of that right without arbitrary or discriminatory exclusions. Such rights, as they are considered fundamental rights inherent to persons, are subject only to those limitations expressly established in Article 23.2.<sup>65</sup>

<sup>63</sup> IACHR, Report No. 137/99, Case 11,863 (Andrés Aylwin Azócar *et al.*), December 27, 1999, para. 31. Professor Michael Reisman has argued that: "Popular government is an internationally prescribed human right. Article 21(3) of the Universal Declaration on Human Rights provides: 'The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.' [Therefore, when the right to democratic government is violated], all the other human rights that depend on the lawful institutions of government become matters for the discretion of the dictators.... Violations of the right to popular government are not secondary or less important. They are very, very serious human rights violations." (W. Michael Reisman, *Humanitarian Intervention and Fledgling Democracies*, 18 *Fordham Int. L.J.* 794, 795, 1995).

<sup>64</sup> IACHR, Report No. 137/99, Case 11,863 (Andrés Aylwin Azócar *et al.*), December 27, 1999, para. 35, referring to Resolutions 510 (X-O/80); 543 (XI-O/81); 618 (XII-O/82); 666 (XIII-O/83); and 742 (XIV-O/84), Annex 32. The Court has also found that "The right to vote is one of the essential elements for the existence of democracy and one of the ways in which citizens freely express their will and exercise the right to political participation. This right implies that citizens can decide directly and freely choose, in conditions of equality, those who will represent them in making decisions on public matters. [It also indicated that] political participation by the exercise of the right to be elected presupposes that citizens can be nominated as candidates in equal conditions, and that they can hold public offices subject to election if they obtain the votes needed to that end." *I/A Court H.R., Case of Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184, para. 148.*

<sup>65</sup> In its Advisory Opinion No. 6, the Inter American Court established that: "In reading Article 30 in conjunction with other articles in which the Convention authorizes the application of limitations or restrictions to specific rights or freedoms, it is evident that the following conditions must be concurrently met if such limitations or restrictions are to be implemented: a) that the restriction in question be expressly authorized by the Convention and meet the special conditions for such authorization;" [...]

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65. Indeed, according to Article 23.2 of the American Convention, the exercise of political rights may be regulated by law "only on the basis of [...] sentencing by a competent court in criminal proceedings." Hence, Article 23.2 means not only that a court of law in criminal proceedings is the only body that may restrict that right, but also that any restriction arising from such proceedings must strictly observe the guarantees of criminal justice. The Commission notes that imposing a disqualification from competing for popularly elected office for a period of time is, by nature, a criminal penalty and so the authority imposing it must be required to uphold certain procedural guarantees inherent to criminal proceedings, which are more strict than the guarantees of due process required in administrative procedures.

66. The Commission sees that the Venezuelan Constitution establishes the Office of the Comptroller General of the Republic as a body with functional, administrative, and organizational autonomy, which focuses its actions on supervising the organs and entities subject to its oversight. It also notes that under the LOGRSNCF, the Comptroller General's office has the power to impose sanctions and to rule on administrative responsibility. The Commission points out that the Comptroller General's office and its subsidiary agencies are not criminal judges or courts in the strict sense and that its decisions are limited to the administrative arena.<sup>66</sup>

67. The Commission notes that the provisions of Article 23.2 of the American Convention on sentencing that restricts the exercise of political rights must be interpreted in light of both the nature of the court that imposes the sentence and the existence in the corresponding proceedings of the basic guarantees of due process also contemplated in the Convention. Therefore, the Commission considers that in this case the provisions of Article 23.2 should be interpreted in conjunction with Article 8.1 of the American Convention.

68. The fundamental right to due process of law established in Article 8 of the Convention is a guarantee that must be observed in both judicial and administrative proceedings.<sup>67</sup> As has been shown, the Comptroller General of the Republic punished Leopoldo López Mendoza on an accessory basis with disqualification from applying for elective office. The Commission observes that Leopoldo López Mendoza's political rights were restricted through administrative channels, without prior proceedings. Indeed, the rules in question establish that "it shall be solely and exclusively incumbent upon the Comptroller General of the Republic, without further procedure [...] to decide on suspension from the exercise of a position [...] and to impose [...] disqualification from holding public office."<sup>68</sup> The

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<sup>66</sup> I/A Court H.R., *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, paragraph 18.

The Commission also notes that the Comptroller may refer, to the Attorney General of the Republic or to the competent courts, evidence of any action or omission that harms public assets or could trigger the civil or criminal responsibility of individuals subject to anticorruption legislation. Law Against Corruption, published in Official Gazette No. 5.637 (special edition) of April 7, 2003, Articles 41 and 42 of which provide as follows: "TITLE III. Powers and Duties of the Office of the Comptroller General of the Republic and of the Public Prosecution Service in Cases of Corruption. Article 41. Regardless of the terms contained in the law governing its functions, the office of the Comptroller General of the Republic shall have the following duties and powers in matters involving corruption: [...] 3. To submit to the Attorney General of the Republic or to the competent courts all documents or evidence that they may request, together with the results of the investigations it carries out, with respect to all actions or omissions that harm public assets or could trigger the civil or criminal responsibility of individuals subject to this law. Article 42. The Office of the Comptroller General of the Republic may clarify questions arising from the interpretation of the obligation of providing sworn statements of net worth, from investigations for determining administrative responsibilities, and from the substantiation of those cases that could give rise to criminal or civil responsibility."

<sup>67</sup> I/A Court H.R., *Case of Baena Ricardo et al. (270 Workers) vs. Panama*, para. 106.

<sup>68</sup> Organic Law of the Office of the Comptroller General of the Republic and of the National Fiscal Oversight System, published in the Official Gazette of the Bolivarian Republic of Venezuela, No. 37.347, of December 17, 2001. Article 105 establishes that "a finding of administrative liability, pursuant to the provisions of Articles 91 and 92 of this Law, shall be punished with the fine established in Article 94, in accordance with the gravity of the offense and the amount of damage caused. It shall be solely and exclusively incumbent upon the Comptroller General of the Republic, without further procedure, to

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Commission notes that the decision by the Comptroller is, in substance, jurisdictional, its purpose being to exercise the State's punitive power, a characteristic proper to the penal sphere. As the Inter-American Court has established, administrative sanctions that prove to be similar to penal sanctions "imply reduction, deprivation or alteration of the rights of individuals, as a consequence of unlawful conduct. Therefore, in a democratic system it is necessary to intensify precautions in order for such measures to be adopted with absolute respect for the basic rights of individuals [...]."<sup>69</sup>

69. According to Article 105 of the Organic Law of the Office of the Comptroller General of the Republic and of the National Fiscal Oversight System (LOCGRSNCF), the additional punishment of disqualification from public service meted out by the Comptroller of the Republic requires no further proceeding or different substantiation from that already issued by the Comptroller when he declared administrative liability. Moreover, the lack of such a procedure prevented Mr. López Mendoza from exercising his right to be heard with respect to the applicability and proportionality of the punishment of disqualification from public office in light of the facts of the case. In addition to the broad terms of the legal framework, the accessory sanction of disqualification from public office is decided on a discretionary basis by the Comptroller in accordance with his determination of the seriousness of the offense, without defining criteria for varying the punishment in line with the gravity of the illicit action, which undermines the principle of proportionality and legality with respect to the penalty. The Commission notes that the grounds for imposing the penalty and the applicable tariffs are not previously defined in the law in formal, detailed, and precise terms, which violates the principle whereby offenses must be typified. That in turn has an impact on the possibility of presenting arguments regarding the applicability and proportionality of the penalty in confrontational proceedings. To summarize, that failure to typify the offense allows the Comptroller General to act with discretion in imposing the penalty and affects the possibility of referring that decision for review by independent judicial agencies.

70. The Court has stated that "The duty to state grounds is a guarantee linked to the proper administration of justice,"<sup>70</sup> protecting the right of citizens to be tried for the reasons provided by Law, and giving credibility to the legal decisions adopted in the framework of a democratic society.<sup>71</sup> Furthermore, the Court has underscored that the decisions adopted by national bodies that could affect human rights must be duly justified, because, if not, they would be arbitrary decisions.<sup>72</sup> In such sense, the reasons given for a judgment must show that the arguments by the parties have been duly weighed

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decide, with respect to the entity in which the illicit act was committed, on suspension from the exercise of a position without pay for a period no longer than twenty-four (24) months or the dismissal of the person found guilty, to be enacted by the most senior authority; and to impose, in light of the gravity of the irregularity committed, disqualification to hold public office for a period of up to fifteen (15) years, in which case he shall remit the pertinent information to the human resources department of the entity or agency in which the offence occurred for that department to make the corresponding arrangements. In cases in which administrative liability is found to lie with the most senior authority, the punishment shall be carried out by the body responsible for appointing, removing, or dismissing that authority. The most senior authorities of the agencies and entities referred to in numbered paragraphs 1 through 11 of Article 9 of this Law shall be obliged - prior to appointing any government official - to consult the register of disqualified persons to be created and kept by the Office of the Comptroller General of the Republic. Any appointment made without observing this requirement shall be null and void." (Organic Law of the Office of the Comptroller General of the Republic and of the National Fiscal Oversight System, Chapter IV: On the Administrative Procedure for Determining Liabilities. Official Gazette No. 37,347 of December 17, 2001).

<sup>69</sup> I/A Court H.R., *Case of Baena Ricardo et al (270 Workers) vs. Panama*, para. 106.

<sup>70</sup> The European Court has so ruled in the *Case of Suominen*: "The Court then reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based." *Cf. Suominen v. Finland*, no. 37801/97, § 34, 1 July 2003.

<sup>71</sup> I/A Court H.R., *Case of Apitz-Barbero et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008, Series C No. 182, para. 77.

<sup>72</sup> *Cf. Case of Yatama*, *supra* note 63, paras. 152 and 153, and *Case of Chaparro Álvarez and Lapo Iñiguez*, *supra* note 63, para. 107. Likewise, the European Court has pointed out that the judges must indicate with sufficient clarity the reasons for which they adopt their decisions. *Cf. Hadjianastassiou v. Greece*, judgment of 16 December 1992, Series A no. 252, p. 8, § 23.

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and that the body of evidence has been analyzed. Moreover, a reasoned decision demonstrates to the parties that they have been heard and, when the decision is subject to appeal, it affords them the possibility to argue against it, and of having such decision reviewed by an appellate body.<sup>73</sup> For all those reasons, the duty of substantiation is one of the 'due guarantees' included in Article 8.1 to safeguard the right to due process of law.

71. The Commission also considers that the imposition of a heavier punishment at the Comptroller's discretion, based on his assessment of the seriousness of the illicit act, warrants, in accordance with inter-American system of jurisprudence, granting the accused an opportunity to defend himself. That is because the effect of the additional punishment of disqualification from exercising public office is by its very nature penal as it constitutes, pursuant to Article 23.2 of the Convention, disqualification from the political right to be a candidate to elective office. Moreover, the Commission considers that, *inter alia*, the type of defense and mustering of evidence by the accused would differ significantly from the type of defense needed to deal with an administrative sanction involving a fine. In the instant case, the punishment of disqualification of López Mendoza's political rights was imposed several months after he was found guilty and after the principal punishment (a fine).

72. The Commission also considers that even in the event of a finding of administrative liability with additional heavier sanctions, the review body should have conducted an in-depth analysis of the gravity of the behavior involved, the commensurable nature of the sanction, and the appropriateness of the sanction imposed.<sup>74</sup>

73. In the instant case, it has been shown that, when they adopted/reviewed the decision to disqualify López Mendoza from public office, neither the Comptroller of the Republic nor the Supreme Court's Political-Administrative Chamber produced additional arguments to substantiate the imposition of a heavier sanction on top of the fine. Nor did they produce arguments appraising the type of illicit conduct and stating the grounds for imposing one of the highest forms of additional sanction. For the above reasons, the State violated Article 23 of the American Convention with respect to Leopoldo López Mendoza by failing to directly apply the provisions of that article in the case at hand. In addition, the State violated the due guarantees established in Article 8.1 of the American Convention in conjunction with Article 23.2, in relation to Article 1.1, to the detriment of Leopoldo López Mendoza.

## 2. The right to prompt recourse (Article 8.1 and 25 of the American Convention) in conjunction with the obligation to respect rights (Article 1.1)

74. Article 8.1 of the American Convention establishes that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. Also, Article 25 of the Convention provides:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights

<sup>73</sup> Cf. *Suominen v. Finland*, *supra* note 84. In its turn, the Human Rights Committee considered that the absence of a reasoned judgment of the Court of Appeal was likely to prevent the author from successfully arguing his petition before a higher court, thus preventing the availability of a further remedy. United Nations, Human Rights Committee, *Case of Hamilton v. Jamaica*, Communication No. 333/1988, CCPR/C/50/D/333/1988, March 23, 1994.

<sup>74</sup> I/A Court H.R., *Case of Raxcacó Reyes versus Guatemala*, Merits, Reparations and Costs, Judgment of September 15, 2005, Series C No. 133.

recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

75. The Inter-American Court has held that the states parties to the American Convention are obligated to provide effective judicial remedies to the victims of human rights violations (Article 25), remedies that should be substantiated in keeping with the rules of due process (Article 8.1), all within the general obligation to ensure the free and full exercise of the rights recognized by the Convention to all persons under its jurisdiction (Article 1.1).<sup>75</sup> In addition, the Court has held that the main purpose of international human rights law is to protect persons from the arbitrary exercise of power by the state. In that sense, "the inexistence of effective domestic remedies places the victim in a situation of defenselessness."<sup>76</sup> For that reason, the lack of an effective judicial remedy to remedy violations of rights protected by the Convention constitutes a separate violation of the Convention.<sup>77</sup>

76. Article 25.1 of the American Convention incorporates the principles recognized in international human rights law on the effectiveness of the instruments or procedural means aimed at guaranteeing such rights.<sup>78</sup> In addition, the Inter-American Court has established repeatedly that the guarantee of an effective remedy is a basic pillar, not only of the American Convention, "but also of the rule of law itself in a democratic society, in the terms of the Convention."<sup>79</sup> The judicial remedy does not have to be resolved in favor of the party that alleges the violation of his or her rights in order to be considered "effective"; nonetheless, effectiveness implies that the judicial organ has evaluated the merits of the complaint.<sup>80</sup> In that regard, the Inter-American Court has concluded: "A remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances in a given case, cannot be considered effective."<sup>81</sup> The Court has established in its case-law that the remedies available to clarify human rights violations judicially must not only exist formally, but must be adequate and effective in the task of protecting the right to justice of persons under the state's jurisdiction.<sup>82</sup>

77. The protection established at Articles 8 and 25 of the American Convention is bolstered by the general obligation to ensure the rights provided for at Article 1.1 of the American Convention, obligating the states parties to ensure to every person access to the administration of justice so as to judicially clarify human rights violations, prosecuting the persons responsible, and making reparation for the harm suffered.<sup>83</sup>

<sup>75</sup> I/A Court H.R., *Case of Palamara Iribarne*, para. 163; *Case of the Moiwana Community*, para. 142; and *Case of the Serrano Cruz Sisters*, para. 76.

<sup>76</sup> I/A Court H.R., *Case of the Constitutional Court (Aguirre Roca, Ray Ferry and Reverendo Marsano v. Peru)*, Series C, No. 71, Judgment of January 31, 2001, para. 89.

<sup>77</sup> *Id.*

<sup>78</sup> I/A Court H.R., *Judicial Guarantees in States of Emergency (Articles 27(2), 25 and 8 American Convention on Human Rights)*, Advisory Opinion OC-9/87, para. 24.

<sup>79</sup> *Id.*, para. 90.

<sup>80</sup> IACHR, Report No. 30/97, Case 10,087, Gustavo Carranza (Argentina), September 30, 1997, para. 74, Annex 31.

<sup>81</sup> *Id.*, para. 24.

<sup>82</sup> I/A Court H.R., *Case of Five Pensioners*, para. 126; I/A Court H.R., *Case of Cantos*, para. 52; I/A Court H.R., *Case of the Mayagna (Sumo) Community of Awas Tingni*, para. 112; and I/A Court H.R., *Case of Baniwa Velásquez*, para. 191, I/A Court H.R., *Case of Barrios Altos*, Judgment of March 14, 2001, para. 43.

<sup>83</sup> I/A Court H.R., *Case of Loayza Tamayo*, Judgment on Reparations, November 27 1998, Series C, No. 42, para. 169.

78. The determination as to whether a judicial proceeding satisfies the requirements of Article 25 must be made on the basis of the circumstances of each particular case and examining the process in its totality. In this regard, the Inter-American Court has established that clarifying whether the state has or has not violated its international obligations may lead to the organs of the inter-American system needing to undertake a comprehensive review of their respective domestic procedures to determine whether they have met international standards.<sup>84</sup>

79. In addition, the Inter-American Court has noted:

the aim of International Human Rights Law is to provide the individual with means of protection of the internationally recognized human rights vis-à-vis the State. Under international jurisdiction, the parties and the subject matter of the controversy are, by definition, different than under domestic jurisdiction.<sup>85</sup>

80. In this regard, the Inter-American Court has noted that safeguarding the person in the face of the arbitrary exercise of government power is the essential objective of the international protection of human rights. The non-existence of effective domestic remedies places persons in a defenseless position.<sup>86</sup>

81. The case-law cited in the foregoing paragraphs embodies the principle that the effectiveness of a remedy is not limited to the formal declaration of a violation; to the contrary, the right of access to justice implies that the state must adopt all measures necessary to remedy that situation. The Commission notes that such reparation must be integral, in those cases in which the nature of the facts so requires, that is, it should include restoration of the right or liberty violated, and the elimination of all the effects caused directly by that violation, for to the contrary the judicial remedy cannot be considered effective.

82. For that reason, the lack of an effective judicial remedy to make reparation for the rights protected by the Convention constitutes a separate violation of the Convention.<sup>87</sup> In addition, the Inter-American Court has repeatedly established that the guarantee of an effective judicial remedy is a basic pillar not only of the American Convention, "but also of the rule of law itself in a democratic society, according to the Convention."<sup>88</sup>

83. In this case, the assessment of whether judicial protection was offered is done for the purpose of determining whether the Bolivarian Republic of Venezuela has violated the American Convention as a state party to the treaty through the acts of its judicial organs. It is understood that Mr. Leopoldo López Mendoza sought, through two motions to vacate, and one constitutional motion brought before the highest court of Venezuela, the determination as to the inapplicability of Article 105 of the Organic Law, considering it at odds with the Constitution and the American Convention.

84. On October 4, 2005, Leopoldo López Mendoza filed a motion to vacate against the administrative act that declared his administrative liability (PDVSA facts) before the Political-Administrative Chamber of the Supreme Court. The parties agree in stating that as of the date on

<sup>84</sup> I/A Court H.R., *Case of Juan Humberto Sánchez*, Judgment of November 26, 2003, para. 120.

<sup>85</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, para. 73.

<sup>86</sup> I/A Court H.R., *Case of Claude Reyes*, Judgment of September 19, 2006, Series C No. 151, para. 129; I/A Court H.R., *Case of García Astu and Ramírez Rojas*, Judgment of November 25, 2005, Series C No. 137, para. 113; I/A Court H.R., *Case of Palomares Iribarne*, Judgment of November 22, 2005, Series C No. 135, para. 163.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*, para. 90.



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which the arguments on the merits were submitted to the IACHR (July 2008), the motion to vacate had not been ruled on. There is not an express provision that indicates the period of time for deciding on the admissibility of this motion or on the definitive ruling. The organs of the inter-American system have ruled that due diligence includes the obligation of discharging all the necessary formalities within a reasonable time. In addition, they have set three basic criteria for determining whether or not a delay is reasonable: (i) the complexity of the matter, (ii) the procedural activity of the affected party, and (iii) the actions of the judicial authorities.<sup>89</sup> In addition, the Commission observes that with respect to this motion, the State did not indicate that the motion to vacate was complex. From the documents in the record before the IACHR, there is no evidence that the petitioner or his representatives have been engaged in activity that has provoked an unwarranted delay in the processing of the matter. Finally, the State did not show that procedural requirements justified the duration of the process.<sup>90</sup> It is clear that a remedy in the form of a motion not ruled on three years from the date of its filing is not effective, putting the petitioner in a defenseless position

85. It has also been shown that on August 4, 2006, López Mendoza attempted to pursue a motion to vacate with a request for injunctive relief (facts of the mayor's office) before the Political-Administrative Chamber of the Supreme Court. The request for a precautionary amparo action and for the temporary suspension of Article 105 of the Organic Law was resolved on March 8, 2006. On declaring the precautionary amparo inadmissible and the request for the suspension of Article 105 of the Organic Law unfounded, the Political-Administrative Chamber concluded,

[...] there being an express administrative act by which the sanction of disqualification from holding public office was imposed on the petitioners, this Chamber considers that the alleged threat of violation of the constitutional right to defense of the moving party constitutes a situation that can no longer be remedied by this means of precautionary protection [...]

[...] As for the subsidiary request [...] it should be noted that there is no purpose in issuing a pronouncement. ... as the request of the moving parties was aimed at keeping the Comptroller General of the Republic, in the use of the powers provided for in the above-noted article, from applying the sanction of disqualification on the petitioners which, as was already said, was applied to them, as appears from the resolutions handed down by the Comptroller General of the Republic [...]

86. The motion to vacate filed in the contentious-administrative jurisdiction was decided on August 5, 2008, that is, three years after having been filed. The Political-Administrative Chamber decided to reject the motion, leaving in place the administrative resolution appealed. With respect to the arguments on due process violations in the investigative phase and in the proceeding that resulted in the determination of administrative liability of López Mendoza, the Chamber concluded,

[...] that the procedure established in the [Organic Law] was followed fully by the Office of the Comptroller, for the interested parties were notified of the facts that triggered the investigative power to be exercised, as well as the facts which, within the investigation, led to the opening of the procedure for determining administrative liability.

87. In the same judgment, with respect to the allegation of violations of the right to due process related to the right to defense, as a result of the application of Article 105 of the Organic Law, the Chamber held

<sup>89</sup> I/A Court H.R. *Case of the Meliwa Community*, para. 160. Also: European Court of Human Rights: *Wimmer v. Germany*, No. 60534/00, § 23, 24 May 2005; *Panchenko v. Russia*, No. 45100/98, § 129, 8 February 2005; and *Iodarov v. Bulgaria*, No. 39832/98, § 45, 18 January 2005.

<sup>90</sup> I/A Court H.R., *Case of Genie Lacayo v. Nicaragua*. Merits, Reparations, and Costs, Judgment of January 29, 1997. Series C No. 30, para. 77; *Case of Kimel*, *supra* note 8, para. 97, and *Case of Salvador Chiriboga*, *supra* note 12, para. 78.

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[...] the provision referred to) makes it possible for the highest-level Comptroller Authority to decide on sanctions "without any other procedure" and "based on the extent of the wrongdoing committed."

[...]

One observes that the imposition of the sanctions provided for at Article 105 of the [Organic Law] on citizens [...] and Leopoldo López Mendoza is a consequence of the result of the administrative investigation undertaken by the Office of the Comptroller General of the Republic.

Accordingly, once the irregularities committed were determined, the participation of the highest-ranking authority of the Office of the Comptroller was limited to pondering those irregularities, "[...] in view of [their] seriousness [...]" for the purposes of imposing the respective sanction, without the need to initiate another administrative procedure, as provided by that provision.

[...]

In view of the foregoing this High Court concludes that in the case under study, the sanction of disqualification of the moving parties was a consequence of the procedure that culminated in the finding of their administrative liability, which is why there was no violation of the rights to defense and to due process as alleged by the petitioner and it so finds.

88. As regards this remedy, the State justified the delay pointing to the existence of the complexity of the case and the procedural activity, given that:

not only was it filed together with a precautionary amparo action, which itself implied a preliminary procedure in this respect, but there was also a request to join by a third party, filed on July 13, 2006, by attorney Edgar Parra, in his capacity as legal representative for Council Member Antonio Jiménez, who also requested a precautionary measure, which was the subject of new pronouncements by the Chamber.

89. With respect to this remedy, the Commission observes that the State did not specifically indicate what constituted the complexity when it comes to ruling on the motion to vacate related to the facts of the mayor's office. This observation is mindful that the request for injunctive relief and admissibility of the motion to vacate were decided in March 2006, and that it was not until August 2008 that the final ruling was handed down in respect of that motion. In addition, the State did not make any reference to the conduct of the petitioner, and on the diligence of the competent authorities it merely submitted a list of actions by the Supreme Court,<sup>91</sup> without constructing any argument around it. It should be noted that as regards the argument related to the motion to join as a third-party to the case on July 13, 2006, by attorney Edgar Parra Moreno, the Commission considers that even though processing this motion could delay the regular processing of the matter, the delay of more than two years after that third-party joinder in resolving the motion to vacate and three years since it was filed is excessive.<sup>92</sup>

90. Finally, on June 21, 2006, the petitioner brought a motion to vacate as unconstitutional, with a precautionary amparo against Article 105 of the Organic Law, before the Political-Administrative Chamber of the Supreme Court. According to the record, on January 31, 2007, the Constitutional Chamber admitted the motion and declared the request for precautionary amparo to be inadmissible. On August 6, 2008, the Supreme Court denied the motion to vacate.

91. During the proceedings before the Commission, the State justified the procedural delay of the constitutional motion based on the complexity of the case, the procedural activity of the interested parties, and the activity of the judicial authorities. As regards the complexity of the case, others were

<sup>91</sup> See brief of September 24, 2008, in which the State filed a list of proceedings before the Political-Administrative Chamber of the Supreme Court (it indicated that it would submit annexes which to date have not been received at the IACHR) in Case 2005 5124 before the Political-Administrative Chamber, related to the facts of the mayor's office. Annex 30.

<sup>92</sup> I/A Court H.R., *Case of Apitz Barbero et al. ("First Court the Contention Administrative Jurisdiction") v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para.

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joined that challenged the constitutionality of Article 105 of the Organic Law; this was even more complex in the case of popularly elected public officials. With respect to the petitioner's procedural activity, the State indicated that he met his procedural burdens in timely fashion throughout the process, but that "other interested persons sought to intervene in the respective proceedings, or due to the identity of the subject matter to be resolved, the judicial organ ordered the joinder of the actions, which no doubt led to them being more drawn out."

92. The Commission does not consider it unreasonable that the Constitutional Chamber of the Supreme Court has taken two years to resolve the constitutional motion given the complexity of the matter to be decided, and the joinder of other cases in the same proceeding. Even so, the Commission notes that the petitioner pursued several remedies in timely fashion for the purpose of seeking to challenge or request the suspension of the effects in a provision that impeded the exercise of his political rights to run for elective office. This in consideration of his effort to run as a candidate for the elections of November 2008 and mindful that the process of registration to that end should be done from August 5 to 14, 2008. The Commission considers that the time lapsed to resolve, all together the remedies pursued, is not reasonable. That situation is even more important if one bears in mind the nature of the rights and interests at stake in the case, more specifically the petitioner's claim to run as a candidate for the November 2008 elections.

93. The possibility of registering, in August 2008, the nomination of Leopoldo López Mendoza for the November 2008 elections depended on a timely and effective decision by the judicial organs of his country with respect to the compatibility of Article 105 of the Organic Law with the Constitution and the American Convention. The basis of the administrative act by the National Electoral Council for which the registration of López Mendoza was rejected was the application of Article 105 of the Organic Law, thus the only way to declare the inapplicability of that article to the particular case was by examining its constitutionality.

94. Now, it should be noted that the Constitutional Chamber of the Supreme Court held that Article 105 of the Organic Law is compatible with the Venezuelan Constitution and the American Convention, in addition to indicating that the article authorizes the Comptroller to impose the sanction stemming from the finding of administrative liability "*without any procedure*" it being a question of the "expression of two administrative acts by the same sanction-imposing power" and reiterated its case-law, concluding that the "sanctions that correspond to the finding of administrative liability thus the provision challenged does not violate the constitutional right to due process."

95. The Commission considers, first, that when analyzing the international responsibility of the State to guarantee judicial protection, one should bear in mind that the substantive ruling on the case focuses on motions to vacate related to the violation of the right to participate in government through the political right to be nominated to run for elective office, accordingly they merited a prompt, and effective response, in keeping with the standards of the Convention. Moreover, as regards the role of the Judicial branch in the face of alleged violations of the American Convention, the Court has indicated:

the Judiciary must exercise a sort of "conventionality control" between the domestic legal provisions which are applied to specific cases and the American Convention on Human Rights. To perform this task, the Judiciary has to take into account not only the treaty, but also the interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention.<sup>93</sup>

96. The expression "sentencing by a competent court in criminal proceedings" in Article 23.2 of the Convention as one of the only grounds for regulating political rights does not give rise to

<sup>93</sup> See I/A Court H.R., *Case of Almonacid Arellano*, Judgment of September 26, 2006, Series C No. 154, para. 124.

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difficulties as regards its scope, thus the interpretive rule applies that establishes that when a law is clear and does not require any major interpretive effort, only its direct application is in order.<sup>94</sup> Accordingly in situations such as this, the fullness of the exercise of the right is intimately linked to the existence and effectiveness of the judicial proceedings that operate as a guarantee.

97. As the Commission has stated in the case of *Castañeda v. Mexico*:

The right to the judicial effective tutelage in the present case must include the possibility of a wide debate and merits with regard to the constitutionality or the compatibility of certain electoral norms with the international law of the human rights, in opportune time and in an effective way.<sup>95</sup>

98. In the instant application, the Commission concluded that in this case the domestic courts, in their decisions, failed in their duty to provide an effective remedy on not having made a direct application of the content of Article 23.2 of the American Convention, which entailed a violation of the rights of López Mendoza, disqualifying him from running for elective office.

99. The Inter-American Court has indicated that:

a remedy must be ... effective that is, capable of producing the result for which it was devised. A remedy can become ineffective if it is subject to procedural requirements that render it inapplicable; if it in fact has no grounds on which to make the authorities accountable; [...] or if it is not applied impartially." Furthermore, "... when it is proven that the appeals are thrown out ... on insubstantial grounds ... resorting to them becomes a senseless formality [...]"<sup>96</sup>

100. The Commission considers that the remedies pursued by the petitioner in the domestic jurisdiction, in practice, were ineffective. This is because the decisions reached by the various judicial mechanisms dismissing repeatedly the claim related to the compatibility of Article 105 of the Organic Law, for strictly procedural reasons, or on grounds that it is historically enshrined in the Venezuelan law, corroborate its inefficacy in terms of offering a remedy to the violation of the right enshrined in Article 23 of the American Convention, to the petitioner's detriment.

101. Accordingly, the Venezuelan State has breached its obligation to provide judicial protection in keeping with Article 25 of the American Convention to the victim in this case, on not having analyzed, in keeping with its international obligations, the unconstitutionality of a provision that is *per se* contrary to the Convention. The Commission also concludes that the State violated Article 8.1 as regards the motion to vacate brought before the Political-Administrative Chamber of the Supreme Court (PDVSA grants) considering that to date it has not been resolved.

3. The obligation of the State to take all measures within its reach to bring its domestic law into line with the provisions of the American Convention (Articles 1.1 and 2)

102. Article 1.1 of the Convention provides,

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those

<sup>94</sup> Supreme Court of Argentina: A. 671. XXXVII Alianza "Frente para la Unidad" (elecciones provinciales gobernador y vicegobernador, diputados y senadores provinciales) s/ oficialización listas de candidatos [36] Alliance "Front for Unity" (provincial elections governor and deputy governor, provincial deputies and senators) re: official registration of lists of candidates]. September 20, 2001. Annex 31.

<sup>95</sup> IACHR, Report No. 113/06 Case 12,535 (Jorge Castañeda Gutman) October 26, 2006. para. 140. Annex 32.

<sup>96</sup> IACHR, Report No. 1/95 Case 11,006 (Alan García), February 7, 1995. Annex 32.

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rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

103. Article 2 of the American Convention stipulates:

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

104. In the preceding application the Commission concluded that the Venezuelan State has violated the political rights of Mr. López Mendoza on having applied to him a provision that authorizes an administrative entity to impose a sanction of disqualification from holding public office, without any conviction, by a competent judge, in a criminal court. There are many ways a state can violate an international treaty, and specifically the Convention. In this case, it can be done, for example, by failing to adopt the provisions it is obligated to by Article 2. In addition, of course, issuing provisions that are not in conformity with what is required of it pursuant to obligations under the Convention. For these purposes, it does not matter whether those provisions were adopted in keeping with the domestic legal order.<sup>97</sup>

105. The Court has noted in that in light of Article 2 of the Convention, bringing the domestic law into line with the Convention implies adopting measures along two lines: (i) suppressing provisions and practices of any nature that entail a violation of the guarantees provided for in the Convention, and (ii) adopting laws and pursuing practices conducive to the actual observance of those guarantees.<sup>98</sup> In this sense, the obligation of the first line is only satisfied when the reform is actually undertaken.<sup>99</sup>

106. On this last point, one should note that even though the State ratified the American Convention on August 9, 1977, it has kept in force the legislation that expressly includes the administrative jurisdiction as the suitable one for imposing the sanction of disqualification of political rights.<sup>100</sup>

107. Notwithstanding this, the Court has established that "when the Legislative Power fails to set aside and/or adopts laws which are contrary to the American Convention, the Judiciary is bound to honor the obligation to respect rights as stated in Article 1(1) of the said Convention, and consequently, it must refrain from enforcing any laws contrary to such Convention."<sup>101</sup> In this sense, the domestic judges and courts are subject to the rule of law, and, therefore, are obligated to apply the provisions in force in the legal order. Yet when a state has ratified an international treaty such as the

<sup>97</sup> IACHR, Report No. 119/99, Case 11,428 (Susana Higuchi Miyagawa), Peru, October 6, 1999, para. 26. Annex 32.

<sup>98</sup> I/A Court H.R., *Case of Almonacid Arellano*, Judgment of September 26, 2006, Series C No. 154, para. 118; I/A Court H.R., *Case of Ximenes Lopes*, Judgment of July 4, 2006, Series C No. 149, para. 83; I/A Court H.R., *Case of Gómez Palomino*, Judgment of November 22, 2005, Series C No. 136, para. 91; I/A Court H.R., *Case of the "Mapiripán Massacre"*, Judgment of September 15, 2005, Series C No. 134, para. 109.

<sup>99</sup> I/A Court H.R., *Case of Almonacid Arellano*, Judgment of September 26, 2006, Series C No. 154, para. 118; I/A Court H.R., *Case of Raxcacó Reyes*, Judgment of September 15, 2005, Series C No. 133, para. 87; I/A Court H.R., *Case of the Yakye Axa Indigenous Community*, Judgment of June 17, 2005, Series C No. 125, para. 100; I/A Court H.R., *Case of Caesar*, Judgment of March 11, 2005, Series C No. 123, paras. 91 and 93.

<sup>100</sup> Article 105 of the Law on the Office of the Comptroller General of the Republic.

<sup>101</sup> See I/A Court H.R., *Case of Almonacid Arellano*, Judgment of September 26, 2006, Series C No. 154, para. 121.

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American Convention, its judges, as part of the state apparatus, are also subject to it, which means they are under an obligation to see to it that the effects of the Convention provisions are attained.<sup>102</sup>

108. This does not mean that the Commission has powers to rule on how one adopts a legal provision domestically. That is a function of the competent organs of the state. What the Commission must verify in a specific case is whether the provision contradicts the Convention, and not whether it contradicts the domestic legal order of the state.<sup>103</sup>

109. Yet even if Article 105 of the Organic Law had not been applied in the instant case, that fact would not suffice to satisfy the requirements of Article 2 of the Convention in this case: First, because according to what has been noted in the previous paragraphs, Article 2 imposes a legislative obligation to suppress any provision that violates the Convention, and second, because the criterion of the domestic courts may change, and so a decision may be made at some time in the future to apply a provision which for the domestic legal order remains in force.<sup>104</sup>

110. As the Court has established, Article 23 of the Convention not only establishes that every citizen shall enjoy rights, but also "opportunities." This implies the obligation to ensure, with positive measures, that every person who formally has political rights should have a genuine opportunity to exercise them. In this sense, it is essential that the State generate the optimal conditions and mechanisms such that political rights can be exercised effectively, respecting the principle of equality and non-discrimination.<sup>105</sup>

111. Based on the foregoing, the Commission concludes that the Venezuelan State has breached its duty to adapt the domestic order to the object and purpose of the American Convention, on keeping in force the provisions that unreasonably restrict political rights or acts that apply such provisions, in keeping with Article 23 of the American Convention in connection with Article 2 of the treaty.

112. Finally, the Commission also considers that the State has breached its obligation to guarantee, under Article 1.1 of the American Convention, according to which the states party must ensure the exercise of the rights and freedoms recognized in the Convention for persons under their jurisdiction. It is an obligation that involves the duty to organize the government apparatus, and, in general, all structures through which government power is exercised, such that they are capable of legally ensuring the free and full exercise of human rights. It is as a consequence of this obligation that the states parties have the legal duty to prevent, investigate, and sanction every violation of the rights protected in the American Convention.<sup>106</sup> The Inter-American Court of Human Rights has held: "If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction."<sup>107</sup>

113. In the instant case this duty to guarantee is violated insofar as the Inter-American Commission finds a violation of the guarantee of the right to participate in government in conditions of equality, in respect of which no judicial protection was offered. In consideration whereof, the State failed to meet its obligations under Articles 2 and 1.1 of the American Convention.

<sup>102</sup> See I/A Court H.R., *Case of Almonacid Arellano*, Judgment of September 26, 2006, Series C No. 154, para. 124.

<sup>103</sup> IACHR, Report No. 119/99, Case 11,428 (Susana Higuchi Miyagawa), Peru, October 6, 1999, para. 29.

<sup>104</sup> See I/A Court H.R., *Case of Almonacid Arellano*, Judgment of September 26, 2006, Series C No. 154, para. 123.

<sup>105</sup> I/A Court H.R., *Case of Yatama*, *supra* note 49, para. 195.

<sup>106</sup> I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, Series C. No. 4, para. 166.

<sup>107</sup> *Id.*, paras. 174 and 176.

### VIII. REPARATIONS AND COSTS

114. The *jurisprudence constante* of the Inter-American Court is that "it is a principle of international law that any violation of an international obligation that has caused damage creates a new obligation, which is to adequately redress the wrong done."<sup>108</sup> Given the facts alleged in the present application, and in application of that jurisprudence, the Commission is submitting to the Court its claims as to the reparations and costs that the Venezuelan State must pay as a consequence of its responsibility for the human rights violations committed against Leopoldo López Mendoza.

115. Pursuant to the Rules of Court, which give the individual autonomous standing in its proceedings, in these submissions the Commission will confine itself to elaborating upon the general standards that the Court should apply in the matter of reparations and costs in the instant case. The Inter-American Commission understands that it is up to the victims and their representatives to spell out precisely what their claims are, pursuant to Article 63 of the American Convention and Article 24 and others of the Rules of Court.

#### A. Obligation to make reparations

116. Article 63.1 of the American Convention provides that:

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

117. As the Court has previously held,

Article 63(1) of the American Convention reflects a customary rule that is one of the fundamental principles of contemporary international law regarding the responsibility of States. When a wrongful act occurs that is imputable to a State, the latter incurs international responsibility for violation of an international rule, and thus incurs a duty to make reparation and putting an end to the consequences of the violation.<sup>109</sup>

118. Reparations are crucial to ensuring that justice is done in an individual case and are the means by which the Court's judgments are carried beyond the realm of moral condemnation. Reparations are the measures that will cause the effect of the violations committed to disappear. Reparation of the damage caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which is to restore the situation as it was prior to the violation.

119. The obligation to make reparations is regulated in all its aspects (scope, nature, modes and determination of beneficiaries) by international law and cannot be modified by the respondent State by invoking the provisions of its own domestic laws; nor can the latter decline to discharge that obligation by invoking provisions of its own domestic laws.

<sup>108</sup> I/A Court H.R., *Case of Lori Berenson Mejia*, Judgment of November 25, 2004, Series C No. 119, para. 230; I/A Court H.R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, para. 85; I/A Court H.R., *Case of De la Cruz Flores*, Judgment of November 18, 2004, Series C No. 115, para. 138.

<sup>109</sup> I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) vs. Venezuela*, Preliminary Objection, Merits, Reparations and Costs, Judgment of July 5, 2006, Series C No. 150, par. 116 that cites *Case Baldeón García*, par. 175; *Case of the Sawhoyariaso Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment of March 29, 2006, Series C No. 146, par. 196, y *Case Acevedo Jaramillo et al.*, par. 295.

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120. In the instant case, the Commission has proved that the State incurred in international responsibility by violating the victim's political rights, right to a fair trial, and right to judicial protection, and by failing to observe its obligation of respecting and ensuring human rights and to adopt provisions of domestic law as a consequence Leopoldo López's disqualification from public office through an administrative action in breach of the standards of the Convention, and by failing to have ensured him his right to a fair trial and to judicial protection in connection with that situation.

#### B. Measures of reparation

121. The United Nations Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms has classified the components of that right into four general categories: restitution, compensation, rehabilitation, and measures of satisfaction and of non-repetition.<sup>110</sup> In the view of the United Nations Special Rapporteur on the Question of the Impunity of Perpetrators of Violations of Human Rights, these measures include the following: cessation of continuing violations, verification of the facts, full and public disclosure of the truth, an official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons connected with the victim, an apology that includes a public acknowledgement of the facts and acceptance of responsibility, enforcement of judicial or administrative sanctions against persons responsible for the violations, prevention of further violations, etc.

122. The Court has held that reparations are measures intended to cause the effect of the violations committed to disappear.<sup>111</sup> Measures of reparations are the different ways in which a State can redress the international responsibility it has incurred, and under international law consist of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>112</sup>

123. The United Nations Commission on Human Rights has held that

(i)n accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>113</sup>

124. In consideration of the criteria established by the case-law of the inter-American and universal systems, the Commission presents its conclusions and claims regarding the redress measures

<sup>110</sup> Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117, E/CN.4/Sub.2/1996/17.

<sup>111</sup> I/A Court H.R., *Case of La Cantuta*, Merits, Reparations and Costs, Judgment of November 29, 2006 Series C No. 162, para. 202; I/A Court H.R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 416; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2006, Series C No. 158, para. 144.

<sup>112</sup> See United Nations, *Final Report presented by Theo Van Boven, Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms*, E/CN.4/Sub.2/1990/10, July 26, 1990. See also: I/A Court H.R., *Blake Case. Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of January 22, 1999, Series C No. 48, para. 31; I/A Court H.R., *Suárez Rosero Case. Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of January 20, 1999, Series C No. 44, para. 41.

<sup>113</sup> United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, *The Administration of Justice and the Human Rights of Detainees, Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*, prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117, May 24, 1996, para. 7.



for the material and nonmaterial damages and other forms of redress and satisfaction applicable in the case at hand.

## 1. COMPENSATION MEASURES

<sup>125</sup> The Court has established basic criteria that should guide fair compensation intended to make adequate and effective economic amends for the harm arising from violations of human rights. The Court has also ruled that indemnification is merely compensatory, and that it is to be granted in volume and fashion sufficient to repair both the material and the nonmaterial harm inflicted.<sup>124</sup>

126. In the case at hand, the Commission believes it appropriate for reparations to be made for the consequences of the violations committed against the victim through the payment of a sum of money as compensation for the harm inflicted in the case at hand.<sup>125</sup> In general terms, the indemnities of such cases have the basic objective of repairing the real material and non-material damages caused to the injured party.<sup>126</sup> The calculation of the damages must necessarily be proportional to the "gravity of the violations and the resultant damage."<sup>127</sup> Moreover, the reparations have the additional but no less fundamental objective, of preventing future violations.

## 2. MEASURES OF CESSATION AND SATISFACTION AND GUARANTEES OF NONREPETITION

127. Satisfaction is understood as any measure that the perpetrator of a violation is required to take under the provisions of international instruments or customary law, for the purpose of acknowledging the commission of an unlawful act.<sup>128</sup> "The objects of satisfaction are three, which are often cumulative: apologies or other acknowledgment of wrongdoing [...]; the punishment of the individuals concerned; and the taking of measures to prevent a recurrence of the harm."<sup>129</sup>

128. While reserving the right to later expand its arguments on this point, the Commission believes that the State must, first of all, adopt the measures necessary to reestablish Mr. Leopoldo López Mendoza's political rights. In addition, the State must amend its domestic legislation, in particular Article 105 of the Organic Law of the Office of the Comptroller General of the Republic and of the National Fiscal Oversight System, which provides for disqualification from holding popularly elected office, to bring it into line with the provisions of Article 23 of the American Convention. Finally, the Commission believes that the State must strengthen the guarantees of due process in the administrative procedures of the office of the Comptroller General of the Republic, in accordance with the standards of Article 8 of the American Convention.

<sup>124</sup> I/A Court H.R., *Case of Hilaire, Constantino, Benjamin et al.*, Judgment of June 21, 2002, Series C No. 94, para. 204; I/A Court H.R., *Garrido and Baigorria Case, Reparations* (Art. 63.1 American Convention on Human Rights), Judgment of August 27, 1998, Series C No. 39, para. 41.

<sup>125</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, para. 189; *Case of the 19 Merchants*, para. 221; *Case of Molina Theissen, Reparations* (Art. 63.1 of the American Convention on Human Rights), Judgment of July 3, 2004, Series C No. 108, para. 42.

<sup>126</sup> I/A Court H.R., *Case of Bulacio*, Judgment of September 18, 2003, Series C No. 100, para. 70; *Case of Hilaire, Constantino, Benjamin et al.*, *supra*, para. 204; and *The "Papel Blanca" Case (Puriagua Morales et al.)*, *Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of May 25, 2001, Series C No. 76, para. 80.

<sup>127</sup> United Nations, *Principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*, E/CN.4/Sub.2/1996/17, para. 7. See also: I/A Court H.R., *Case of Hilaire, Constantino, Benjamin et al.*, *supra*, para. 205; *Cartoral Benavides Case, Reparations* (Art. 63.1 of the American Convention on Human Rights), Judgment of December 3, 2001, Series C No. 88, para. 42, and *Cesti Hurtado Case, Reparations* (Art. 63.1 of the American Convention on Human Rights), Judgment of May 31, 2001, Series C No. 78, para. 36.

<sup>128</sup> Brownlie, *State Responsibility*, Part 1, Clarendon Press, Oxford, 1983, p. 208.

<sup>129</sup> *Idem*.

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C. The persons entitled to the right to receive reparations

129. Article 63.1 of the American Convention requires reparation of the consequences of a breach of a right or freedom and that fair compensation be paid to the injured party. The persons entitled to that compensation are, as a rule, those directly harmed by the facts of the violation in question.<sup>120</sup> In the present case, the person entitled to the right to receive compensation is Mr. Leopoldo López Mendoza.

D. Costs and expenses

130. The *jurisprudence constante* of the Court is that costs and expenses should be understood to be included within the concept of reparation established in Article 63.1 of the American Convention because the measures taken by the victim or victims, their heirs or their representatives to have access to international justice imply disbursements and commitments of a financial nature that must be compensated.<sup>121</sup> The Court has also held that the costs to which Article 59(1)(h) of its Rules refers also include the various necessary and reasonable expenses that the victim or victims incur to have access to the oversight bodies established by the American Convention. The fees of those who provide legal assistance are included among the expenses.<sup>122</sup>

131. In the present case, the Commission is asking the Court, once it has heard the representatives of the victims, to order the Venezuelan State to pay the costs incurred in bringing their case to the domestic courts, and the costs that they incurred in bringing the case to the Commission and those resulting from the filing of the present application with the Court and that have been duly proven by the representatives.

IX. CONCLUSION

132. Based on the considerations in the present application, the Commission concludes that the State is internationally responsible for the violation of the right to participate in government (Article 23.2); the right to judicial guarantees and judicial protection (Articles 8.1 and 25), together with the obligations to respect and ensure and the duty to adopt provisions of domestic law established in the American Convention (Article 1.1 and 2, respectively), on having imposed a disqualification from holding public office on Mr. Leopoldo López Mendoza, by administrative means, in violation of the standards of the Convention.

X. PETITION

133. As a consequence, the Inter-American Commission asks the Court to adjudge and declare that the State did violate Mr. Leopoldo López's political rights, right to a fair trial, and right to judicial protection as provided for in Articles 23, 8.1, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof.

134. Furthermore, the Commission is asking the Court to order the State:

<sup>120</sup> I/A Court H.R., *Case of Villagrán Morales (The "Street Children" Case), Reparations*, Judgment of May 26, 2001, para. 107 and 108.

<sup>121</sup> I/A Court H.R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, para. 143; I/A Court H.R., *Plan de Sánchez Massacre Case*, Judgment of November 19, 2004, Series C No. 110, para. 115; I/A Court H.R., *De la Cruz Flores Case*, Judgment of November 18, 2004, Series C No. 115, para. 177.

<sup>122</sup> I/A Court H.R., *Case of the "White Van" (Panigua Morales et al.)*, Reparations, Judgment of May 25, 2001, para. 212.

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- to adopt the measures necessary to restore the right to participate in government of Mr. Leopoldo López Mendoza.
- to bring its domestic legal order into line with Article 23.2 of the American Convention, in particular by amending Article 105 of the Organic Law on the Office of the Comptroller General and the National Fiscal Oversight System so that it not include disqualification from being nominated to run for elective office among its accessory sanctions imposed administratively.
- to strengthen guarantees of due process in the administrative proceedings of the Office of the Comptroller General of the Republic in line with the standards set in Article 8 of the American Convention.
- to reimburse the legal costs and expenses incurred by the victim in pursuing his case before the domestic courts and those arising from its processing by the inter-American system.

#### X. EVIDENTIARY SUPPORT

##### A. DOCUMENTARY EVIDENCE

135. The documentary evidence available at this time is listed below:

Appendix 1. IACHR, Report No. 67/08 (Admissibility), Case 12.668, Leopoldo López Mendoza, July 25, 2008.

Appendix 2. IACHR, Report on Merits No. 92/09, Leopoldo López Mendoza, August 8, 2009.

Appendix 3. Case file from the Inter-American Commission on Human Rights.

Annex 1. Legislation (pertinent parts):

- Constitution of the Bolivarian Republic of Venezuela, Published in the Official Gazette on Thursday, December 30, 1999, No. 36.860.
- Organic Law of the Office of the Comptroller General of the Republic and of the National Fiscal Oversight System, published in the Official Gazette of the Bolivarian Republic of Venezuela No. 37.347, December 17, 2001.
- [https://geo.cne.gov.ve/regionales2008/documentos/RESOLUCION\\_NORMAS\\_DE\\_POSTULACIONES\\_VERSION\\_FINAL.pdf](https://geo.cne.gov.ve/regionales2008/documentos/RESOLUCION_NORMAS_DE_POSTULACIONES_VERSION_FINAL.pdf)
- Law Against Corruption, published in Official Gazette No. 5.637 (special edition) of April 7, 2003.
- Organic Law of the Office of the Comptroller General of the Republic and of the National Fiscal Oversight System, published in the Official Gazette of the Bolivarian Republic of Venezuela No. 37.347, December 17, 2001.

Annex 2. Municipal Gazette No. 5381, November 2004: Minutes of the special meeting held on November 6, 2004, containing the swearing-in of Citizen Mayor Leopoldo López Mendoza, bearer of national ID card No. 11.227.699.

Annex 3. Order of Decision of the General Directorate for Special Procedures, Bureau for the Determination of Administrative Liabilities of the Office of the Comptroller General, October 29, 2004.

Annex 4. Annex G, submitted by the State in its communication of September 24, 2008.

Annex 5. Annex H, submitted by the State in its communication of September 24, 2008.

Annex 6. Annex E, from the petitioner's original submission.

Annex 7. Decision of the Office of the Comptroller General of the Republic of the motion for reconsideration of March 28, 2005.

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- Annex 8. Amparo filing lodged with the Court of Administrative Disputes by Eva Elizabeth Ramos Ramirez, Thibaldo Aular Borhas, Shully Rosenthal Waintrub, Nelson Yanez.
- Annex 9. Decision by the Seventh Superior Court of Administrative Disputes of August 25, 2004.
- Annex 10. Decision of the office of the Comptroller General of the Republic on the motion for reconsideration brought by the representative of Leopoldo López Mendoza and others.
- Annex 11. Document No. 08-01-881 of August 30, 2005.
- Annex 12. Resolution No. 01-00-235 of September 26, 2005.
- Annex 13. Resolution No. 08-01-881 of August 30, 2005.
- Annex 14. Motion for consideration addressed to the Comptroller General of the Republic against Resolution No. 01-00-000206 (PDVSA facts).
- Annex 15. Motion for consideration addressed to the Comptroller General of the Republic against Resolution No. 08-01-235 (facts of the mayor's office).
- Annex 16. Resolution No. 01-00-000004 of January 9, 2006, by the Comptroller General of the Republic, ruling the remedy lodged against Resolution No. 01-00-000206 groundless.
- Annex 17. Resolution No. 01-00-000005 of January 9, 2006, by the Comptroller General of the Republic, ruling the remedy lodged against Resolution No. 08-01-235 groundless.
- Annex 18. Document citing Judgment No. 354 of February 26, 2002 (Case: *José Omar Lucena Gallardo v. Ministry of Interior and Justice*) of the Political-Administrative Chamber of the Supreme Court.
- Annex 19. Note No. 01-00-000005 of January 11, 2006.
- Annex 20. Copy of the contentious-administrative motion to vacate lodged by the petitioner's representatives with the Political-Administrative Chamber of the Supreme Court.
- Annex 21. Decision of the Supreme Court's Political-Administrative Chamber of March 8, 2006.
- Annex 22. Section: OF THE AMPARO PRECAUTIONARY MEASURE contained in the decision of the Supreme Court's Political-Administrative Chamber of March 8, 2006.
- Annex 23. Political-Administrative Chamber of the Supreme Court, decision of August 5, 2008.
- Annex 24. Document that contains, *inter alia*, a challenge to Article 105 of the LCGRSNCF on the grounds that it violates several constitutional provisions and principles.
- Annex 25. Constitutional Chamber of the Supreme Court of Justice, decision of January 31, 2007.
- Annex 26. Decision convening a public, oral session of the Court of Substantiation of the Supreme Court's Constitutional Chamber.
- Annex 27. Constitutional Chamber of the Supreme Court of Justice, decision of August 6, 2008.
- Annex 28. National Electoral Council, Automated System of Nominations, 2008 Regional Elections.
- Annex 29. Certifying document.
- Annex 30. State's submission of September 24, 2008.
- Annex 31. Supreme Court of Justice of the Argentine Nation: A. 671, 36th Alliance "Front for Unity" (Provincial elections for governor and deputy governor, provincial deputies and senators) re: official registration of lists of candidates, September 20, 2001.
- Annex 32. IACHR reports:
- IACHR, Report No. 137/99, Case 11.863 (Andrés Aylwin Azócar *et al.*), December 27, 1999.
  - IACHR, Report No. 30/97, Case 10.087, Gustavo Carranza (Argentina), September 30, 1997.
  - IACHR, Report No. 113/06, Case 12.535 (Jorge Castañeda Gutman) October 26, 2006.
  - IACHR, Report No. 1/95 Case 11.006 (Alan García), February 7, 1995.
  - IACHR, Report No. 119/99, Case 11.428, Susana Higuchi Miyagawa (Peru), October 6, 1999.

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- Annex 33. Power of Attorney.  
Annex 34. CVs of expert witnesses.

**B. STATEMENTS BY VICTIMS, WITNESSES, AND EXPERTS**

**Victim**

136. The Commission asks that it hear statements from the victim Leopoldo López Mendoza, who will speak about his disqualification from holding public office, the conditions whereby he was prohibited from participating in the 2008 regional elections, and the proceedings he pursued to combat that situation, among other aspects related to the purpose and goal of the present law suit.

**Expert witnesses**

137. The Commission asks the Court to hear the testimony of the following expert witnesses:

Attorney Humerto Noguera Alcalá, to speak about the allowable limits and scope of political rights in light of inter-American and international standards, and the compatibility of the administrative proceedings brought against Mr. Leopoldo López with the rights enshrined in the American Convention, among other aspects related to the purpose and goal of the present law suit.

Attorney Fabían Aguinaco Bravo, to speak about the restriction of political and electoral rights and the scrutiny that such restrictions demand, and the inter-American and international standards related to transparency in public functions for strengthening democracies and the informed participation of individuals in the construction thereof.

**XI. INFORMATION ON THE REPRESENTATIVES**

138. In compliance with Article 34 of the Court's amended Rules of Procedure, the Inter-American Commission submits the following information:

139. Leopoldo López Mendoza granted a power of attorney to Enrique Sánchez Falcón y José Antonio Maes Aponle to represent him before the Inter-American Court of Human Rights.

Washington, D.C.  
December 14, 2009