Institution:	Inter-American Commission on Human Rights
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Title/Style of Cause:	Elias Santana, Marieta Hernandez, Hector Faundez Ledesma, Cecilia Sosa Gomez, David Natera Febres, Andres Mata Osorio and Juan Manuel Carmona Perera v. Venezuela
Doc. Type:	Decision
Decided by:	President: Jose Zalaquett; First Vice-President: Clare K. Roberts; Second Vice-President: Susana Villaran; Commissioners: Robert K. Goldman, Julio Prado Vallejo.
Dated:	23 October 2003
Citation:	Santana v. Venezuela, Petition 0453/01, Inter-Am. C.H.R., Report No. 92/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)

I. INTRODUCTION

1. On July 1, 2001, the Inter-American Commission on Human Rights (hereafter "the Inter-American Commission", "the Commission", or "the IACHR") received a petition submitted by Cecilia Sosa Gómez against the Republic of Venezuela (hereafter "the State" or "the Venezuelan State") arguing that, by virtue of Judgment 1013 issued by the Constitutional Chamber of the Supreme Tribunal of Venezuela on June 12, 2001, the State violated her right to freedom of thought and expression (Article 13), the right of reply (Article 14), the right to equal protection (Article 24), the right to judicial guarantees (Article 8), the right to private property (Article 21(1)), and the provisions relating to restrictions regarding interpretation (Article 29.a and b) and to the scope of restrictions (Article 30), all contained in the American Convention on Human Rights (hereafter the "American Convention" or "the Convention"), contrary to the obligations contained in Article 1(1) to respect those rights, and in Article 2 on the duty to adopt legislative measures to give effect to them, as well as Article 19 of the International Covenant on Civil and Political Rights. Mrs. Cecilia Sosa attached to her petition a list of persons, with their name, nationality and signature, who declared their adherence to the complaint submitted by the petitioner to the Commission.

2. On July 16, 2001, the Commission received a petition submitted by Elías Santana, acting on his own behalf and as representative of the organization known as “Queremos Elegir" [roughly “We Want to Vote”], together with Mrs. Marieta Hernandez, a broadcaster and columnist with the newspaper Tal Cual and a founding member of that association, and the lawyer Hector Faundez Ledesma, a columnist with the newspaper El Nacional and President of the Centro por la Democracia y el Estado de Derecho (Center for Democracy and the Rule of

Law), complaining that the State of Venezuela, by means of that same Judgment 1013, had violated the right to judicial guarantees (Article 8), the right to freedom of thought and expression (Article 13), the right of reply (Article 14), political rights (Article 23(1)(a) and (c), the right to equal protection (Article 24), the right to judicial protection (Article 25), and provisions relating to restrictions regarding interpretation (Article 29) and the scope of restrictions (Article 30), contained in the American Convention on Human Rights, contrary to the obligations contained in Article 1(1) to respect those rights, and in Article 2 on the duty to adopt legislative measures to give effect to them. On July 20, 2001, the Commission, in accordance with Article 29(d) of its Rules of Procedure, decided to open file P-0434/2001 Cecilia Sosa and file P-0453 Elías Santana, and to process them together under the same case, P-0453/2001.

3. On July 20, 2001, the IACHR received a petition on behalf of the nongovernmental association "Bloque de Prensa Venezolana"[FN1] [roughly "Venezuelan Press Front"], represented by members of its Board of Directors, Messrs. David Natera Febres, Andrés Mata Osorio and Juan Manuel Carmona Perera, who were acting as well in their personal capacity as media editors, and Asdrubal Aguiar Aranguren, as their legal representative, in which they complained that the Venezuelan State, by means of the same court judgment number 1013, had violated the right to freedom of thought and expression (Article 13), the right of reply (Article 14), the right to equal protection (Article 24), and the provisions relating to restrictions regarding interpretation (Article 29(a), (b), (c) and (d) and the scope of restrictions (Article 30), recognized in the American Convention on Human Rights, contrary to the obligations contained in Article 1(1) to respect those rights, and in Article 2 on the duty to adopt legislative measures to give effect to them. Consequently, on August 6 the Commission decided to open the file P-0474/2001, and to process it together with that of Cecilia Sosa and Elías Santana (P-0453/2001). Hereafter, these persons are referred to collectively as "the petitioners".

[FN1] The Bloque de Prensa Venezolana is a nongovernmental association constituted on September 23, 1958, embracing most of the owners, editors and directors of national and regional newspapers and magazines of permanent circulation within Venezuela.

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4. For its part, the State argued that the petitioners do not meet the requirements of Article 46(1)(d) of the American Convention, and that consequently the Commission must declare the petition inadmissible, pursuant to Article 47(a). The State rejected the charge that it had violated Article 14 of the Convention, because on September 11, 2000, the director of Radio Nacional de Venezuela granted Elías Santana the right to make a correction or reply, which would be broadcast by three stations belonging to Radio Nacional de Venezuela. In its response to the petition, the State also insisted on the differentiation between factual information and opinions, arguing that in the present case the object of the complaint was a simple opinion rendered by the President on the statements made by Mr. Santana to the newspaper El Nacional. On the basis of this distinction, the State argued that the right of reply applied only to inaccurate or offensive statements or information, and not to opinions. Finally, the State argued that the operative portion of the court judgment did not violate Article 13 of the American Convention.

5. After examining the positions of the parties, the Commission concluded that it was competent to examine the petitions submitted by some of the petitioners, and that these were inadmissible, in light of Articles 46 and 47 of the American Convention.

II. PROCEEDINGS BEFORE THE COMMISSION

6. On July 1, 2001, the Commission received a petition submitted by Cecilia Sosa Gómez complaining that the Venezuelan State had violated Articles 13, 14, 24, 8, 21(1), 30, 29(a) and (b), 1 and 2 of the American Convention. That petition was processed under file number P-0434/2001. On July 16, 2001, the Commission received a complaint submitted by Elías Santana on his own behalf and as General Coordinator of the nongovernmental association Queremos Elegir, Marieta Hernandez and Hector Faundez Ledesma, against the Venezuelan State for violation of Articles 8, 13, 14, 25, 23.a and b, 24, 29 and 30 of the Convention, which complaint was processed under file number P-0453/2001. Both petitions complained that, on June 12, 2001, the Constitutional Chamber of the Supreme Tribunal of Justice of Venezuela issued judgment number 1013 which, according to the petitioners, violates various human rights enshrined in the Convention.

7. On July 20, 2001, the Commission received a petition submitted by the nongovernmental association "Bloque de Prensa Venezolana", represented by members of its Board of Directors, Messrs. David Natera Febres, Andrés Mata Osorio and Juan Manuel Carmona Perera, and Asdrubal Aguiar Aranguren, as their legal representative, which was processed under file P-0474/2001. This petition complained of the same facts as those contained in petition P-0453/2001. On August 6, 2001, the Commission decided to combine file P-0474/2001 and file P-0453/2001. On that same day it advised the petitioners of its decision and transmitted it to the State, asking that it submit a response within two months.

8. On August 21, 2001, the Commission received additional information from the petitioners, which was transmitted to the State on August 30, 2001, with a period of 30 days to present its response.

9. On September 12, 2001, the State requested, and the Commission granted, an extension of 30 days for delivery of its response. On November 8, 2001, the State presented its response, which was transmitted to the petitioners on November 16, 2001, with a period of 30 days in which to present their observations.

10. On March 8, 2002, during its 114th session, the Inter-American Commission held a hearing at which both parties asked the IACHR to rule on the admissibility or inadmissibility of the petition.

III. BACKGROUND

11. On August 27, 2000, the President of Venezuela, Hugo Chavez Frías, made public reference to Elías Santana during the course of the radio program "Aló Presidente" that the President of Venezuela hosts every Sunday over the radio network Radio Nacional de Venezuela. Following is a partial transcription of what was transmitted during that program:

… Here is a call: "civil society prepared for disobedience"--someone says--ah, Elías Santana. He is another representative of a miniscule sector of the civil society…. Gentlemen, you are not civil society, don't get confused in your perspective, because it would be a shame if you were to lose your perspective. What civil society? Civil society, in its majority, I repeat, is revolutionary, and is driving this process.

Well here, according to the newspaper El Nacional of today, Mr. Santana says on behalf of Queremos Elegir, a small group, it has the right to participate and it has always participated, but don't believe that they represent the civil society today. No, a small group, welcome, with all our respect, we are listening, we hear you, etc.

Civil society prepared for disobedience says the newspaper El Nacional, quoting Mr. Santana, if it is excluded from the appointment of authorities to the Citizen Power. This is like a threat, it sounds like a threat, I'm going to read it word for word because this is very important, this is part of the revolutionary process and the transition that we are experiencing. “If the assembly takes one step", says Elías Santana, "to choose at their discretion the new prosecutor, the new ombudsman, and the members of the Supreme Tribunal of Justice, we will be waiting there to confront them and then they will know how to eat civil society.

Another time the expression "eat", how does one eat the civil society? Coincident with the expression of the gentlemen I was referring to. This is like a threat, Mr. Santana, now more than you believe, more than you say, you have the right to say it, I'm going to respond to you on behalf of that other part of the civil society which is the great majority. The fact is, Mr. Santana, that the civil society, as I have said, has pronounced itself here in seven repeated cavalry charges: on November 8, December 6, April 25, July 25, September 15, six times, and July 30. Who was voting here? What society was voting? Was that not the civil society?

The civil society is the immense majority of Venezuela, and it supports this process.

If the National Assembly were to decide tomorrow or the day after tomorrow that the Prosecutor General or the Comptroller General or the National Elections Council should be replaced, then the National Assembly has the power that was given to it by the Constitution and popular sovereignty. Anybody who doesn't agree has the right to express his view, as they have done, but we, those who defend the process, those who are driving this process, we have, not the right but the duty to tell our people how things are and to put things in their place. So I am also responding to you, Mr. Santana, this is a call to battle, Mr. Santana. I like to issue calls to battle, come on, make my day! This threat that you are going to… if they know and you are going to confront the civil society with it, well, Mr. Santana, we will do something, you can call your civil society to one corner and I will call mine to the other. That is not the idea, because I believe that we've already had enough of these confrontations, but I'm not ready to give up confrontation if you keep seeking confrontation and threatening confrontation. (A complete transcription of the radio broadcast is attached for information of the Commissioners).

12. On the basis of such statements, Elías Santana, a broadcaster and host of the radio program "Santana Total" and General Coordinator of the Nonprofit Association "Queremos

Elegir" made a request on August 29, 2000 to Teresa Maniglia, as Director of the Independent National Radio Institute of Venezuela, for the right of correction or reply in order to respond to the President's personal remarks made during the program.

13. On September 3, 2000, President Hugo Chavez, again speaking on his program "Aló Presidente", made a statement, which is partially transcribed below:

Here are some letters that I have received from citizens who are asking the right of reply against me, naming me and the program Aló Presidente. Well that's not the idea. I have done that, every Venezuelan has done that, but when I have asked for the right to reply to some media or other I don't do it over this program or that, if there's some TV channel and I have some complaint about what was said, or what was written, or what was shown, and like the government, like any citizen I need to reply, fine, ask that medium, don't ask the Aló Presidente program. Not here, because just imagine it. To the citizens that have been heard, in any case I am going to repeat it: civil society -- to someone who said it out there -- I'm not going to get into a debate, this is not a program for debating, and I don't want to enter into polemics with anybody. I have nothing against anybody in particular, I just defend the viewpoints of the Revolution and someone who says there, whose name I don't even remember right now, that in La Casona they were eating civil society on a barbecue because of the shooting last week, in defense of La Casona, and now we have a family, the Chavez Rodriguez family, and looks what happens when we are going to work. Now if that person feels he has been referred to and wants a right, I'm not going to be debating with anybody in particular, come here to Radio Nacional and here is Teresa Maniglia, and say what you have to say. (A complete transcription of the radio broadcast is attached for information of the Commissioners).

14. On September 11, 2000, Teresa Maniglia, Director of the Independent National Radio Institute of Venezuela, replied to the request for correction or response from Elías Santana, and granted that right through its three news broadcasting stations, Antena Informativa 1050 AM, Antena Popular 630 AM and Canal Clásico 91.1 FM. Elías Santana rejected that offer, on the basis that " 1. The program "Aló Presidente" is carried not only by the three radio stations referred to, but by Television Venezuela, and by Globovision, and it creates great expectations and catches the attention of most of the social media in their different formats. 2. The radio program "Aló Presidente" has a very high audience rating, as was indicated by the host of the program during the broadcast of September 3, 2000, when he declared that it was being listened to right then by the people in the streets, the people in Tacupida, Guarico State, in Cumana and in San Cristobal, and without doubt by 'women, housewives who are listening, thousands, millions are listening to the program right now'".

15. On the basis of this objection, and reiterating his demand to exercise the right of reply, Elías Santana brought an appeal for constitutional protection (amparo constitucional) on October 9, 2000, acting on his own behalf and as General Coordinator of the Association Queremos Elegir, before the President and other magistrates of the Constitutional Chamber of the Supreme Tribunal of Justice.

16. On July 12, 2001, the Constitutional Chamber of the Supreme Tribunal of Justice of Venezuela decided, in Judgment 1013, to reject the appeal for constitutional protection brought

by Mr. Santana as inadmissible in limine litis, on the grounds that, in accordance with Venezuelan law, he had been granted his right of correction or reply.[FN2]

[FN2] See Supreme Tribunal of Justice, Constitutional Chamber, Presiding Magistrate: Jesus Eduardo Cabrera Romero, Decision of June 12, 2001:
Decision
For the reasons stated, this Tribunal, in the name of the Republic and by the authority of law, declares inadmissible… the appeal brought by Elías Santana, on his own behalf and as representative of the Association Queremos Elegir […]"in light of the refusal of the citizens President of the Republic, Hugo Chavez, and Teresa Maniglia, Director of the Independent National Radio Institute of Venezuela, to allow us the exercise of the right of reply with respect to the statements made by the host of the radio program "Aló Presidente" in his broadcasts of Sunday, August 27, and Sunday, September 3, 2000, which were transmitted by Radio Nacional de Venezuela and retransmitted by several radio and television stations. To be published and recorded.

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17. In the interpretative background to Judgment 1013, the Constitutional Chamber held that "there is a constitutional right of reply and correction for persons offended by statements, but that right does not apply to the media or to those who express themselves in the media, because, this Chamber repeats, the right of reply and correction is granted only to those who receive information and not to those who supply it […]. According to Article 9 of the Law on the Exercise of Journalism, journalists must be accorded the right of reply or correction, but they do not have that right within the meaning indicated in that Article.[FN3] […]. The reason for this is that the broadcasting medium can always reply or correct inaccurate or offensive statements about it, its journalists or its collaborators that have been broadcast in other media. […]. This court considers that the right to reply and correction does not apply to the media, or to those in the regular practice of journalism through the media, or those who maintain columns or programs in the media, or those who place announcements in the media that evoke a contrary reaction. This right is granted to those who are affected by information carried over the media, and who do not have access to public channels to contest such information or to give their version."

[FN3] Article 9 of the Law on the Exercise of Journalism declares: "Any distortion or untruthfulness in information must be corrected in a timely and effective manner. The journalist is obliged to correct it, and the company to accommodate such correction or such statement as the affected party may formulate."

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18. As well, the Constitutional Chamber of the Supreme Tribunal indicated that Judgment 1013 "will be binding doctrine for the interpretation of Article 57 and 58 of the Constitution" of Venezuela.[FN4] In explaining its decision, the Tribunal declared, with reference to Articles 57 and 58 of the Constitution, that "the communications media, in permitting people to be informed and satisfying their right with respect to such information or news, are acting on two levels: a

general level, where they must issue truthful, timely and impartial information, and avoid the dissemination of false news, or news manipulated by half-truths; disinformation that denies the opportunity to know the reality of the news; or conjecture or slanted information intended to achieve a specific purpose against something or someone. This constitutional right, which every person enjoys, creates for the media the obligation to provide truthful, timely and impartial information, which gives the right to reply or correction, which may be exercised through an appeal, if the legal situation of the person is affected by the inaccurate information (even if it does not refer to him), and this prevents him from receiving and imparting information or ideas in such a way as to exercise his right to freedom of thought or expression."

[FN4] Articles 57 and 58 of the Constitution of Venezuela read as follows:
Article 57. Any person has the right to express freely his thoughts, his ideas and his opinions aloud, in writing or by any other form of expression, through any medium of communication and dissemination, without censorship. Any person making use of the right assumes full responsibility for everything expressed. Anonymous authorship, war propaganda, and messages that promote discrimination or religious intolerance are prohibited.
Censorship is prohibited in holding public officials accountable for matters under their responsibility.
Article 58. Communication is free and pluralistic and implies the duties and responsibilities stipulated by law. Every person has the right to timely, truthful and impartial information, without censorship, in accordance with the principles of the Constitution, as well as the right of reply and correction when he is affected directly by inaccurate or offensive information. Children and adolescents have the right to receive information appropriate for their integral development.

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19. With respect to the contents of information, the Tribunal ruled that "it is also a violation of the right to truth and impartial information" if a majority of a medium's columnists express the same ideological tendency, unless that medium openly declares itself, through its editorials or its spokesmen, to be a party to those views.

IV. POSITION OF THE PARTIES

A. The petitioners

1. Cecilia Sosa P-0434/2001

20. According to the petition submitted to the IACHR on July 5, 2001 by Cecilia Sosa, the Constitutional Chamber of the Supreme Tribunal of Justice issued, on June 12, 2001, judgment number 1013, restricting and limiting the rights enshrined in Articles 13, 14, 24, 8.1, 21.1, 30, 29.a and b in relation to Articles 1 and 2 of the American Convention.

21. The petitioner declared that she was submitting her complaint as a victim, as a Venezuelan citizen, and as a columnist for a national newspaper, and on behalf of Venezuelans and residents of Venezuela who were offended by the judgment, "who may identify themselves and become party to this complaint".[FN5] She added that Judgment 1013 restricts the right of

all inhabitants of Venezuela to receive information, to have access to the thoughts expressed by others, to exercise the right of correction or reply, as well as the right not to be discriminated against, and the right to enjoy the appropriate judicial guarantees.

[FN5] Mrs. Cecilia Sosa attaches to her petition a list containing the name, nationality and signature of persons who have declared that they would be party to the complaint submitted to the IACHR.

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22. The petitioner maintains that Judgment 1013, far from limiting itself to deciding the personal action brought by Mr. Santana, interpreted Articles 57 and 58 of the Constitution, thereby producing legal consequences for all tribunals and judges in the Republic, since Article 335 of the Constitution provides that rulings of the Constitutional Chamber on the content or scope of constitutional rules and principles are binding for other Chambers of the Supreme Tribunal of Justice and all other tribunals. The petitioner argues that the judgment, although it is a decision in abstracto, affects all citizens subject to Venezuelan jurisdiction.

23. With respect to Article 30 of the American Convention, the petitioner argues that the State, in interpreting the scope of Articles 57 and 58 of the Venezuelan Constitution, ignored the compulsory and binding force of the provisions contained in the American Convention by virtue of Article 23 of the Venezuelan Constitution.[FN6]

[FN6] Article 23 of the Venezuelan Constitution provides: "Treaties, covenants and conventions on human rights, signed and ratified by Venezuela, have constitutional hierarchy and take precedence in the domestic legal system, to the extent that they contain rules for enjoyment and exercise more favorable than those established in this Constitution and in the laws of Venezuela, and they must be applied immediately and directly by the tribunals and other bodies of the Public Power".

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24. With respect to Article 13 of the American Convention (freedom of thought and expression), the petitioner argues that, in interpreting Articles 57 and 58 of the Venezuelan Constitution, the Supreme Tribunal violated both domestic law (Article 23 above) and the provisions of the Convention. The petitioner notes that the requirement for timely, truthful and impartial information contained in Article 58 of the Venezuelan Constitution, and interpreted by the Supreme Tribunal, violates international standards of the inter-American system relating to freedom of expression. She adds that the Supreme Tribunal's interpretation establishes particular controls over the social communications media, intended to impede the communication and circulation of ideas and opinions, which constitutes prior censorship, contrary to the provisions of Article 13 of the Convention. The petitioner also argues that the judgment discriminates when it declares that "it is restrictive of true and impartial information if a majority of a medium's columnists express the same ideological tendency, unless that medium openly declares itself, through its editorials or its spokesmen, to be a party to those views".

25. With respect to Article 14 of the American Convention (right of reply), taken together with Articles 1.1 and 2 of the Convention, the petitioner argues that the State violated it by allowing the Supreme Tribunal to decide that "the media and those who habitually exercise journalism through the media do not have a right to reply, nor do those who maintain columns or programs in them, nor those who, through their paid announcements or advertisements, evoke a contrary reaction in a different medium."

26. The petitioner argues that through the decision of the Supreme Tribunal, the State violated the right protected by Article 24 of the Convention (equal justice), because Judgment 1013 discriminates and fails to provide equal protection before the law with respect to exercise of the right of correction or reply for directors and editors of communications media, and for those who habitually communicate through them.

27. With respect to Article 8 (judicial guarantees) of the Convention, the petitioner argues that the State violated the right to a fair trial. She argues that the Tribunal's decision interpreted the right to freedom of thought and expression and the right to correction or reply, denying her and other Venezuelans the opportunity to be heard before the competent courts.

28. The petitioner maintains that the Convention, in Article 21, guarantees all persons the use and enjoyment of their property. Yet, she argues, the judgment created a new form of subordination or limitation of this right, which constitutes discrimination against the owners of the social communications media. According to the petitioner, this discrimination lies in the requirement that the judgment imposes on the media to maintain ideological balance among its columnists, in order that its information should not be considered an attack against truthful and impartial information. This represents, according to the petitioner, a violation of Article 21 of the Convention (the right to private property) and the institution of prior censorship by the State.

29. The petitioner argues that the State violated Article 29 (limitations regarding interpretation) of the Convention, in that Judgment 1013 places severe limits on the enjoyment and exercise of the rights and freedoms recognized in Articles 13 and 14 of the Convention.

30. Finally, with respect to admissibility, the petitioner maintains that domestic remedies have been exhausted, since there is no recourse against the decisions of the Supreme Tribunal, and the petition therefore meets all the requirements of Article 46 of the Convention.

2. Elías Santana P-0453/2001

31. On July 16, 2001, the IACHR received a petition submitted by Elías Santana, in his own name and as General Coordinator of the Association Queremos Elegir, together with Mrs. Marieta Hernandez, a broadcaster and columnist with the newspaper Tal Cual and a founding member of the Association Queremos Elegir, and Mr. Hector Faundez Ledesma, a lawyer and columnist with the newspaper El Nacional. That petitioner argues that, by means of Judgment 1013 issued on June 12, 2001 by the Constitutional Chamber of the Supreme Tribunal of Justice, the State restricted and limited his rights enshrined in Articles 13, 14, 23, 24, 8.1, 25, 30, 29.a and b, in relation to Articles 1 and 2 of the American Convention.

32. According to the complaint, on August 27, 2000, during the course of the radio program "Aló Presidente", carried over several frequencies of Radio Nacional de Venezuela and Television Venezuela, both of which are owned by the State, the President of the Republic, Hugo Chavez, allegedly referred, in derogatory and offensive terms, to Mr. Santana and the Association Queremos Elegir[FN7], for statements that Mr. Santana had published on August 27, 2000, in the newspaper El Nacional.

[FN7] See Part III of this report, with the paragraphs broadcast by President Chavez against which Mr. Santana requested the right of reply.

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33. According to the petitioner, on August 27 and 29, 2000, and subsequently on September 3, 2000, Mr. Santana requested both the host of the program and the Director of the Independent National Radio Institute of Venezuela, to allow him to exercise his right of correction or reply, provided in Article 58 of the Venezuelan Constitution. On September 3, 2000, the President of the Republic, during his program "Aló Presidente", refused the right of correction or reply requested by Mr. Santana, declaring that it was not the business of that radio and television program to grant the right of correction or reply, since that decision was up to the Director of the Independent National Radio Institute of Venezuela. The petitioners maintain that on September 11, 2000, the Director of the Independent National Radio Institute of Venezuela informed Mr. Santana that his correction or reply would be broadcast on a day to be determined by Radio Nacional de Venezuela, but in a program different from the one that had carried the information that gave rise to the request. Mr. Santana objected to this decision, and on October 9, 2000, he filed an appeal for constitutional protection with the Constitutional Chamber of the Supreme Tribunal of Justice, invoking his right of reply. On June 12, 2001, the Constitutional Chamber of the Supreme Tribunal of Justice of Venezuela issued its Judgment 1013.

34. The petitioners argue that Judgment 1013 excludes social communicators, speakers and columnists from the right of correction or reply. They also argue that the appeal brought by Mr. Santana was not heard by an independent and impartial tribunal, because the court that heard it was composed of judges whose appointments had been contested by Mr. Santana and by the Association Queremos Elegir as being contrary to the provisions of the Constitution. The petitioners added that the appeal was not decided within a reasonable time, since it should have been decided within 96 hours, and according to Article 27 of the Constitution it should have been handled "promptly and with preference over any other matter". Nevertheless, the appeal was resolved eight months later, and without any hearing of the parties. The petitioners argue that the appeal for protection was decided in limine litis, without hearing the parties and their arguments.

3. Asdrubal Aguiar Aranguren and others P-0474/2001

35. According to the petition received by the IACHR on July 20, 2001, presented by the "Bloque de Prensa Venezolana", represented by members of its Board of Directors, Messrs. David Natera Febres, Andrés Mata Osorio and Juan Manuel Carmona Perera, and Asdrubal Aguiar Aranguren, as their legal representative, the Constitutional Chamber of the Supreme Tribunal of Justice of Venezuela issued a definitive appeal ruling on June 12, 2001 that violated

the freedom of expression and of thought, the right to information, and the right to private property and equality, among other obligations.

36. The petitioners argue that Judgment 1013 constitutes a flagrant and deliberate violation on the part of Venezuela, acting through the judiciary, of Articles 1.1, 2, 13, 14, 24, 29.a, b, c, and d, 30 of the American Convention, with a prejudicial legal effect on communication activities (freedom of expression and the right to information) and on free business management (the right to free use and enjoyment of private property) of the owners, editors and directors of the written press who, as such and as individuals, are members of the "Bloque de Prensa Venezolana", and in particular Messrs. David Natera Febres, Andrés Mata Osorio and Juan Manuel Carmona Perera. The petitioners' arguments take the same line as the petitioners referred to above. Among their arguments, the petitioners claim that the decision of the Constitutional Chamber of the Supreme Tribunal violates the principles protected in Articles 14.1 and 24 of the American Convention, because it interprets the right of reply in a discriminatory manner. That decision, claim the petitioners, excludes a specific group of civil society by reason of their profession or by reason of their activities in connection with the communications media.

37. The petitioners argue that Judgment 1013 restricts and limits the right to freedom of expression and the right of reply. They add that the law is the only way to regulate or restrict those rights, and not the interpretative route or through jurisprudence, as the Supreme Tribunal of Justice attempted to do.

B. The State

38. According to the State, the petitioners do not meet the requirements of Article 46.1d of the American Convention and consequently, pursuant to Article 47.a, the Commission must declare the petition inadmissible.

39. The State denies the violation of Article 14 of the Convention, on the grounds that, on September 11, 2000, the Director of Radio Nacional de Venezuela granted Mr. Santana the right to issue a correction or reply, which would be carried over three radio stations belonging to Radio Nacional de Venezuela. The State argues that it was Mr. Santana who refused to have his opinions broadcast under these conditions, because he insisted that it should be on the same program, "Aló Presidente", at the same time and with the same coverage, on which grounds he proceeded to bring an appeal for protection before the Supreme Tribunal of Justice.

40. The State argues that the interpretation of Articles 57 and 58 of the Venezuelan Constitution given by the Constitutional Chamber of the Supreme Tribunal of Justice in its Judgment 1013 does not violate the standards of interpretation of the American Convention, because the object of interpretation is the provisions of the Venezuelan Constitution and not those of the Convention.

41. The State also argues that the host of the program "Aló Presidente", in making critical comments about the statements of Mr. Santana in the newspaper El Nacional of August 27, 2000, was merely exercising his freedom of expression. The State maintains that this was just one more case of political disagreement within a democratic society.

42. The State also argues that a differentiation must be made between information and mere opinions. What was at issue in the present case was simply an opinion of the President on the statements made by Mr. Santana in the newspaper El Nacional. The State also maintains that Judgment 1013 reiterates one of the most basic positions of international doctrine and jurisprudence, to the effect that the right of reply applies only against inaccurate or offensive statements, and not against opinions.

43. The State also said that the Constitutional Chamber, in establishing a binding doctrine for interpretation of Articles 57 and 58 of the Venezuela Constitution, was performing a didactic service as to the scope and interpretation of the rights protected in those articles, making use of its "judicial right" without creating legislation, under the powers conferred upon it in Article 335 of the Constitution[FN8]. The State also denies violation of Article 29 of the American Convention, because that Article refers to the interpretation of the rules contained in the Convention.

[FN8] Article 335 of the Constitution of Venezuela provides:
The Supreme Tribunal of Justice shall ensure the supremacy and effectiveness of constitutional rules and principles: it shall be the highest and final interpreter of the Constitution and shall see to its uniform interpretation and application. The interpretations issued by the Constitutional Chamber on the content or scope of constitutional rules and principles are binding on other chambers of the Supreme Tribunal of Justice and on other courts of the Republic.

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44. The State argues that, contrary to the claim of the petitioners, Judgment 1013 does not violate the right to freedom of thought and expression, because it limits itself to distinguishing, in detail, the contents and scope of the two articles of the Venezuelan Constitution that enshrine those rights.

45. With respect to the discriminatory treatment of journalists' right of correction or reply, the State argues that Judgment 1013 referred specifically to the condition of the well-known journalist Elías Santana, who, according to the Chamber, has ample possibilities of access to other media for giving effect to his right of correction or reply.

46. Finally, the State concludes that Judgment 1013 is not contrary to any of the rights protected by the American Convention, and it requests that the petition be declared inadmissible.

V. ANALYSIS

1. The Commission’s jurisdiction ratione personae, ratione loci, ratione temporis, and ratione materiae

a. Ratione loci

47. The IACHR has jurisdiction ratione loci, because the petition in question declares that the alleged victims were subject to the jurisdiction of the Venezuelan State at the time the alleged violations occurred. Venezuela has been a member State of the Organization of American States since 1948, in which year it ratified the OAS Charter, and it has been subject to the jurisdiction of the Commission by virtue of the American Convention since August 9, 1977, on which date it deposited the instrument of ratification.

b. Ratione temporis

48. The above information is also relevant in affirming that the IACHR has jurisdiction ratione temporis, inasmuch as the alleged violations took place after the American Convention came into force with respect to Venezuela.

c. Ratione personae

49. With respect to procedural legitimacy, the Commission holds that, in general, its jurisdiction in the processing of individual cases refers to deeds that affect the rights of a specific person or persons. The various petitioners claim to be individual victims for whom Venezuela is committed to respect and guarantee the rights enshrined in the American Convention. Therefore, the Commission has jurisdiction ratione personae to examine the petitions as they relate to Elías Santana, Marieta Hernandez, Hector Faundez Ledesma, Cecila Sosa, Juan Manuel Carmona Perera, David Natera Febres, Andres Mata Osorio and Asdrubal Aguiar Aranguren.

50. The Commission lacks jurisdiction ratione personae to consider the alleged violations of the legal persons Queremos Elegir or the nongovernmental association Bloque de Prensa Venezolana, in light of the provisions of Article 1.2 of the American Convention, and Article 46 of the Convention. The jurisprudence of the Commission has consistently maintained that complaints brought before it are inadmissible if they have been the subject of proceedings before the domestic courts on behalf of legal persons rather than individual victims[FN9], because the Commission lacks jurisdiction ratione personae to examine complaints referring to the rights of legal persons. Additionally, the Commission holds that, in principle, legal associations cannot be considered victims of interference with the rights of their individual members, unless they can prove that those rights, identified pursuant to Article 46.1d of the Convention, have been directly affected[FN10]. This was not argued in the judicial appeals filed domestically to defend the interests of the members of the two associations[FN11].

[FN9] See Report Nº 67/01, Case 11.859 Tomás Enrique Carvallo Quintana, Argentina, IACHR, 2001 Annual Report quoting Report Nº 103/99, Bernard Merens and Family, Argentina, 27 September 1999, 1999 Annual Report; Report
Nº 10/91, Case 10.169, Peru, Banco de Lima. IACHR, 1990-1991 Annual Report, p. 452; Report Nº 47/97, Paraguay, Tabacalera Boquerón. IACHR, 1997 Annual Report, p. 229; Report Nº 39/99, Argentina, Mevopal, S.A., pending publication.
[FN10] The American Convention, in Articles 46.1a and 47, establishes the subsidiary nature of the Inter-American system, and therefore the necessity of having exhausted the remedies available within domestic jurisdiction. It is the State that, in principle, and in accordance with its

internal procedures, must resolve its violations, and if it does not do so, the case will move to the jurisdiction of the inter-American system. As to the characterization of a victim, Article 44 of the Convention provides that " Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party". In contrast to the provisions of the European Convention and the United Nations Covenant on Civil and Political Rights, petitioners in the Inter-American system do not need to maintain that they are victims of a violation of the Convention.
[FN11] See IACHR, Case 10.169, Report Nº 10/91, Annual Report 1990-1991, "considering" 2.
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51. With respect to the persons subscribing to the petition submitted by Mrs. Sosa, the IACHR concludes that they do not meet the requirements of Article 46 of the Convention.

52. Also inadmissible is the complaint with respect to the effect on all Venezuelans and inhabitants of Venezuela in general, invoked in the petition submitted by Mrs. Sosa. That petition must be declared inadmissible in light of Article 47 of the Convention, because the petition constitutes an actio popularis (class-action suit) brought in the name of an undetermined group of persons.

53. Article 44 of the Convention, dealing with the jurisdiction of the Commission, establishes that "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party".

54. In contrast to other systems for the protection of human rights, the Inter-American system allows various kinds of petitioners to submit petitions on behalf of victims. In fact, the wording of Article 44 is very open, allowing any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, to lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State party, without requiring, as does the European system or the United Nations Committee on Human Rights, that they be victims as such, i.e. that they have a direct or indirect personal interest in the adjudication of the petition. The victim's authorization is not required, nor do the petitioners have to submit powers of attorney from the alleged victims.[FN12]

[FN12] See Tom Zwart, The Admissibility of Human Rights Petitions: The Case Law of the European Commission of Human Rights and the Human Rights Committee (Dordrecht, Boston: M. Nijhoff, 1994), page 50 ff. See also IACHR Case 1954, Report 59/81, Annual Report 1981-1982 and Case 2141, Resolution 23/81, Annual Report 1980-1981, quoted in Mónica Pinto, La denuncia ante la Comisión Interamericana de Derechos Humanos (Editores del Puerto, 1993), page 35.
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55. Nevertheless, the liberal stance of the inter-American system on this point must not be interpreted as meaning that a case can be submitted before the Commission in abstracto.[FN13]

The jurisprudence of this Commission, in interpreting Article 44 of the Convention, has followed the rule that, in order for a petition to be admissible, there must be concrete, individually identified and distinguished victims[FN14], and "class-action" petitions[FN15], i.e. those brought in the name of all the people of a country, such as applies to the present case, are not admissible.

[FN13] See IACHR, Case 11.553, Report Nº 48/96 (Costa Rica), 1996 IACHR Annual Report, para. 28.
[FN14] See IACHR, Case 12.404. Report Nº 51/02 (Peru), 2002 Annual Report.
[FN15] See supra, note 13, para. 28.

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56. In examining the Commission's jurisprudence on the application of Article 44 of the Convention, it is clear that that rule has been interpreted as meaning that jurisdiction ratione personae in the processing of individual petitions refers to deeds that affect the rights of a specific person or persons. In the case of petition 12.404 (Peru), the Commission considered a complaint in which the Ombudsman claimed to be acting in representation in the abstract, on behalf of a group of potential women voters, in the form of class-action petitions. The Commission admitted that petition only with respect to those individual victims who were duly identified and distinguished, in accordance with the jurisprudence of the Inter-American system.[FN16]

[FN16] See supra, note 14, para. 35.

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57. In its report 48/96, on the Costa Rican case quoted above, the Commission ruled that:

An individual cannot institute an actio popularis and present a complaint against a law without establishing some active legitimation justifying his standing before the Commission. The applicant must claim to be a victim of a violation of the Convention, or must appear before the Commission as a representative of a putative victim of a violation of the Convention by a state party.[FN17]

[FN17] See supra, note 13, para. 28.

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58. Similarly, the Commission declared in its report on the case of Maria Eugenia Morales de Sierra, of Guatemala, that:

…in order to initiate the procedures established in Articles 48 and 50 of the American Convention, the Commission requires a petition denouncing a concrete violation with respect to a specific individual.[FN18]

[FN18] See IACHR, Case 11.625, Report Nº 28/98 (Guatemala), 1997 Annual Report, paragraph 30-32. See I-A Court, Advisory Opinion OC-14/94, "International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Articles 1 and 2 of the American Convention)" of December 9, 1994, paragraphs 45-49.

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59. The fact that petitions submitted as class actions are inadmissible does not mean that the petitioner must always identify each victim in whose name the petition is submitted. In fact, the Commission has admitted petitions on behalf of groups of victims when the group was specific and defined and the individuals composing it could be identified, as in the case of members of a defined community, for example.[FN19]

[FN19] See for example IACHR, Case 12.250, Report Nº 34/01, Massacre in Mapiripan (Colombia), 2000 Annual Report, para. 27. See also IACHR, Case 12.053, Report Nº78/00, Mayan Indigenous Communities and Their Members (Belize), 2000 Annual Report, paras. 45-46.

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60. From an analysis of the petition submitted by Mrs. Sosa it is clear that it was submitted, in part, on behalf of the citizens of Venezuela, arguing that the State has violated the right to freedom of expression for all Venezuelans and inhabitants of the Republic of Venezuela. The IACHR must therefore declare inadmissible this portion of the complaint, relating to all the citizens and inhabitants of Venezuela, because it amounts to a class-action suit, without identifying and distinguishing specific victims or a specific group of victims.

d. Ratione materiae

61. The Commission has jurisdiction ratione materiae to examine the complaints that are not excluded ratione personae, because the claims presented with respect to Elías Santana, Marieta Hernandez, Hector Faundez Ledesma, Cecila Sosa, Juan Manuel Carmona Perera, David Natera Febres, Andres Mata Osorio and Asdrubal Aguiar Aranguren relate to violations of rights protected in the American Convention.

2. The question of admissibility

62. Article 47 of the American Convention requires the Commission to consider a petition inadmissible if:

a. any of the requirements indicated in Article 46 has not been met;
b. the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention;
c. the statements of the petitioner or of the State indicate that the petition or communication is manifestly groundless or obviously out of order; or

d. the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

63. Item "b" of that Article refers to cases in which the petition does not state facts that tend to establish a violation of the rights guaranteed by the Convention, even where the requirements of Article 46 have been met. By virtue of Article 47.b, the IACHR must conduct a prima facie assessment to determine whether the petition states facts that tend to establish a violation of the rights guaranteed by the Convention. This involves a summary analysis that does not require forming an opinion on the merits. The Commission will now analyze the characterization of the violations denounced. For ease of understanding, the case of Elías Santana is examined separately from the other petitions.

Elías Santana

64. The IACHR will now examine whether the allegations of the petitioner constitute a violation of the rights guaranteed by the Convention in light of the two arguments put forth by the State: the first, to the effect that the petitioner was granted the right of a correction or reply within domestic jurisdiction, and the second, to the effect that the right of correction or reply did not apply because what was involved was an opinion and not factual affirmations.

65. On this point, the IACHR believes it unnecessary to express an opinion on both questions: if the right of reply was granted within domestic jurisdiction in conformity with the requirements of the Convention, it is unnecessary to examine whether that right applies or not in light of the expressions that were to be contested. Notwithstanding, the IACHR will address both questions that were debated by the parties during proceedings before the Commission.

66. The Commission must note the controversy surrounding the scope accorded to the right of reply as it relates to the right to freedom of expression. Among the viewpoints in play are those, on one hand, that hold that the right of reply limits freedom of expression because it obliges the media to provide free coverage for information that is not necessarily consistent with their editorial line, while others maintain that the right of reply strengthens freedom of expression by fostering a greater flow of information. Consequently, the scope of the right of reply must be scrutinized strictly to ensure that it does not infringe the right to freedom of expression.

67. Article 14 of the Convention provides that:

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.
2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.

68. The Commission considers that Article 14(1) of the Convention guarantees the right of reply through the same medium of communication, under the conditions established by law. The Inter-American Court addressed this aspect in its Advisory Opinion on the Enforceability of the Right to Correction or Reply, OC-7/86[FN20], finding that "Article 14(1) does not indicate whether the beneficiaries of the right are entitled to an equal or greater amount of space, when the reply once received must be published, within what time frame the right can be exercised, what language is admissible, etc. Under Article 14(1), these conditions are such as the law may establish". The phrase "conditions are such as the law may establish" refers to various conditions for exercising the right of reply or correction. That phrase concerns the effectiveness of this right within the domestic legal order, and not its creation, existence or international enforceability. The court went on to indicate that:

[FN20] I.A.Court, Enforceability of the Right to Reply or Correction (ArtICLES 14(1), 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-7/86, August 29, 1986, Inter-Am. Ser. A Nº 7 (1986), para. 27.

The fact that the States Parties may fix the manner in which the right of reply or correction is to be exercised does not impair the enforceability, on the international plane, of the obligations they have assumed under Article 1(1). That Article contains an undertaking by the States Parties "to respect the rights and freedoms" the Convention recognizes and "to ensure to all persons subject to their jurisdiction the free and full exercise of these rights and freedoms.... " If for any reason, therefore, the right of reply or correction could not be exercised by "anyone" who is subject to the jurisdiction of a State Party, a violation of the Convention would result which could be denounced to the organs of protection provided by the Convention.[FN21]

[FN21] Ibid., para. 28.

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69. In the present case, the IACHR notes that Article 58 of the Venezuelan Constitution provides that "Every person has the right […] of reply and correction when he is affected directly by inaccurate or offensive information." Additionally, Article 9 of the Law on the Exercise of Journalism declares: "Any distortion or untruthfulness in information must be corrected in a timely and effective manner. The journalist is obliged to correct it, and the company to accommodate such correction, or such statement as the affected party may formulate." With respect to the petition of Mr. Santana, as declared by the parties, on September 11, 2000, the Director of Radio Nacional de Venezuela, in application of internal policy, granted Elías Santana the right to reply through the three broadcasting stations belonging to Radio Nacional de Venezuela,[FN22] the same medium as that through which President Hugo Chavez had broadcast the allegedly offensive comments against Mr. Santana. However, Mr. Santana refused to have his opinion broadcast under these conditions, insisting that it should be on the same program, "Aló Presidente", at the same time and with the same coverage. He thereupon filed an appeal for protection with the Constitutional Chamber of the Supreme Tribunal of Justice against

the President of the Republic and the Director of Radio Nacional de Venezuela, asking the court to order the defendants to grant him a period of 10 minutes on the radio program "Aló Presidente" immediately following the judgment, so that he could exercise the right of reply to the information concerning himself and his Association Queremos Elegir.[FN23] It must be remembered, as noted earlier in footnote 6, that the Constitutional Chamber of the Supreme Tribunal of Justice, in the name of the Republic and with the authority of law, declared inadmissible in limine litis the appeal filed by Elías Santana on behalf of himself and the Association Queremos Elegir.

[FN22] The State reports that Teresa Maniglia, Director of Radio Nacional de Venezuela, advised Mr. Santana that his opinion would be carried through its three news broadcasting stations, Antena Informativa 1050 AM, Antena Popular 630 AM and Canal Clásico 91.1 FM. Communication from the Ministry of Foreign Relations of Venezuela, received November 8, 2001, paragraph 6.4.
[FN23] Document on the IACHR files.

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70. In light of this prima facie evaluation, the Commission finds that the arguments put forward by Elías Santana in his petition alleging a violation of Article 14 of the Convention do not constitute a violation of that article, because the State, in accordance with Venezuelan law and the terms of the Convention, granted him the right of correction or reply.

71. Moreover, in the present case, the Venezuelan State maintained that the host of the program "Aló Presidente", in commenting critically on statements by Elías Santana in the newspaper El Nacional on August 27, 2000, was merely exercising his freedom of expression. The State added that this was just another example of political disagreement in a democratic society, arguing that "when what is imputed is an opinion, with no factual basis, there is no information that can be disproved, and [the only recourse] is through ordinary action, existing or as created by law". The IACHR agrees with the State's arguments to the effect that the statements of President Chavez against which Elías Santana demanded the right of reply are merely expressions of opinion.[FN24]

[FN24] See paragraph 11 of this report with a partial transcription of the broadcast in question.

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72. The Commission notes that, in accordance with Article 14 of the Convention, a presumed victim may demand the right of correction or reply to obtain an immediate correction, using the same medium to publish or broadcast the demonstrable truth about a fact that may have been distorted by the reporter of the information in question. That action relates solely to information of a factual nature, and not to commentary or opinion. It may be noted that, with respect to expressions of opinion, the European Court of Human Rights has held that there are some circumstances in which the expression of a value judgment must be backed by a sufficient body of factual evidence to form that judgment. Under this interpretation, it would be possible to correct factual information in the case of statements of opinion based on provable facts. In these

circumstances, it would be necessary to prove a link between the value judgment and the facts backing it, case by case.[FN25]

[FN25] See European Court, Feldek vs. Slovakia, Judgment of July 12, 2001, para. 75.

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73. In the Inter-American system, regarding the issue of the type of expressions (statements of fact or opinions) and the right of correction or reply, the IACHR wishes to draw attention to a substantial discrepancy between the wording of Article 14.1 in its English version, on one hand, and in its Spanish, Portuguese and French versions on the other.

Article 14(1) in its English version reads

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

Article 14(1) in its Spanish version reads

1. Toda persona afectada por informaciones inexactas o agraviantes emitidas en su perjuicio a través de medios de difusión legalmente reglamentados y que se dirijan al público en general, tiene derecho a efectuar por el mismo órgano de difusión su rectificación o respuesta en las condiciones que establezca la ley.

Article 14(1) in its French version reads

1. Toute personne offensée par des données inexactes ou des imputations diffamatoires émises à son égard dans un organe de diffusion légalement réglementé et qui s'adresse au public en général, a le droit de faire publier sa rectification ou sa réponse, par le même organe, dans les conditions prévues par la loi.

Article 14(1) in its Portuguese version reads

1. Toda pessoa atingida por informações inexatas ou ofensivas emitidas em seu prejuízo por meios de difusão legalmente regulamentados e que se dirijam ao público em geral, tem direito a fazer, pelo mesmo órgão de difusão, sua retificação ou resposta, nas condições que estabeleça a lei.

74. In its Advisory Opinion on Enforceability of the Right to Correction or Reply, the Inter-American Court noted the difference between the original texts, certified as equally authentic, without pronouncing itself on the implications of that difference for the scope of the right protected by Article 14(1).

75. Article 13 of the American Convention protects the expression not only of information but of ideas as well. The broad concept of protection established in Article 13 was not reflected in the final wording of Article 14 of the Convention in its Spanish, Portuguese and French versions, which expressly exclude references to ideas, protecting only the right of correction or reply as it relates to inaccurate or offensive "information". The omission from that Article of the broader wording of Article 13 leads to the conclusion that the Convention expressly excludes expressions of opinion as subject to the right of reply.[FN26]

[FN26] It has been interpreted in this way by the courts of some member states. For example, see the ruling of the Supreme Court of Argentina, which held as follows: Correction applies only when this is required to rebut a statement of facts. With reference to Article 14 of the American Convention on Human Rights it declared that the clear terminology of that Article limits the right to the factual sphere, that relating to facts the existence or non-existence of which can be judicially proven. It excludes that broad sector in which the decisive element concerns not the facts but their interpretation: this is the field of ideas or beliefs, conjectures, opinions, and value judgments. In this field there also exist elements of fact, but the essential point is the acceptance or rejection that the factual basis evokes in the person making the statement. This applies both to inaccurate and to offensive information. Even in the latter case, the offensive nature must come from the facts themselves as reported, and which the victim may seek to correct, and not from the formulation of value judgments. The Covenant is not alone in excluding from the right of correction or reply what is generically known as opinions. Petric vs Diario Página 12 case of 6/22/99 (LL 1996-A-689) in Gregori Badeni, Tratado de Libertad de Expresión, LexisNexis, Editorial Abeledo-Perro, Buenos Aires 2002, p. 332. See also, Judgment 1013 of the Constitutional Chamber of the Supreme Tribunal of Justice of Venezuela: "When what is imputed is an opinion with no factual basis, there is no information that can be disproved, and [the only recourse] is through ordinary action, existing or as created by law". Constitutional Chamber of the Supreme Tribunal of Justice, June 12, 2001.

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76. The IACHR notes, moreover, that in accordance with the jurisprudence of the inter-American system, the truthfulness of an idea is impossible to verify[FN27]. Similarly, within the European system, the European Court has noted that: "While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfill and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10".[FN28] The requirement of "truthfulness" in value judgments may imply the virtually automatic censoring of any information that cannot be subjected to proof, which would prevent, for example, practically any kind of political debate based primarily on ideas and opinions of a purely subjective nature. The possibility of correcting or responding to the opinion would bring with it the risk of interminable interferences that would inhibit the media and lead to self-censorship.[FN29] There would be an endless series of corrections or responses if it is accepted that there is a right of response to an opposing opinion or one that is deemed an attack against a person's honor or reputation. Consequently, if the objective of the right of correction or reply is to correct false or inaccurate information, then opinions that cannot be subjected to such verification must be excluded.

[FN27] IACHR 1994 Annual Report, Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights, OEA/Ser.I/V/II.88, Doc. 9 rev. (1995), Section IV. B. para. 5, which indicates that:

Even those laws which allow truth as a defense inevitably inhibit the free flow of ideas and opinions by shifting the burden of proof onto the speaker. This is particularly the case in the political arena where political criticism is often based on value judgments, rather than purely fact-based statements. Proving the veracity of these statements may be impossible, since value judgments are not susceptible of proof.

See also, I-A Court, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985, (Ser. A) Nº 5 (1985), para. 77:

… A system that controls the right of expression in the name of a supposed guarantee of the correctness and truthfulness of the information that society receives can be the source of great abuse and, ultimately, violates the right to information that this same society has.

[FN28] European Court, Feldek vs. Slovakia, Judgment of July 12, 2001, para. 75.

[FN29] Gregori Badeni, Tratado de Libertad de Expresión, LexisNexis, Editorial Abeledo-Perro, Buenos Aires 2002,
p. 301.

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77. With respect to the linguistic differences in the wording of Article 14 of the Convention, the IACHR considers that this issue must be resolved through the various means of interpretation available in international law. In interpreting Article 64, the Court has resorted to traditional international law methods, relying both on general and supplementary rules of interpretation, which find expression in Articles 31 and 32 of the Vienna Convention on the Law of Treaties.[FN30]

[FN30] I-A Court, "Other Treaties" Subject to the Consultative Jurisdiction of the Court (Art. 64 of the American Convention on Human Rights), Advisory Opinion OC-1/82, September 24, 1982, (Ser. A) No. 1 (1982), para. 33.

Article 31 of the Vienna Convention provides:

31. General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
(c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.
Article 39 of the Vienna Convention provides:
39. General rule regarding the amendment of treaties
A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except in so far as the treaty may otherwise provide.
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78. Article 32 of the Vienna Convention establishes that "recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable" Article 33.4 of that Convention specifies that "when a comparison of the authentic texts discloses a difference of meaning which the application of Articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted."[FN31]

[FN31] Vienna Convention on the Law of Treaties, UN Doc. A/Conf. 39/27 (1969), 1155 UNTS 331, 23 May 1969, Part III:, Observance, Application and Interpretation of Treaties, Section 3, Article 31 to 33. See also I-A Court, Advisory Opinion OC-3/83 of 8 September 1983, Restrictions to the Death Penalty (Arts. 4(2) and 4(4) of the American Convention on Human Rights), where the Court uses the interpretation rules of the Vienna Convention, summarizing and interpreting them as follows:
49. These rules specify that treaties must be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." [Vienna Convention, Art. 31(1).] Supplementary means of interpretation, especially the preparatory work of the treaty, may be used to confirm the meaning resulting from the application of the foregoing provisions, or when it leaves the meaning ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable. (Ibid., Art. 32.)
50. This method of interpretation respects the principle of the primacy of the text, that is, the application of objective criteria of interpretation. In the case of human rights treaties, moreover, objective criteria of interpretation that look to the texts themselves are more appropriate than subjective criteria that seek to ascertain only the intent of the Parties. This is so because human rights treaties, as the Court has already noted, " are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States; " rather " their object and purpose is the protection of the basic rights of individual human beings, irrespective of their nationality, both against the State of their nationality and all other contracting States […].
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79. Consequently, the IACHR considers that it must resort to a supplementary means of interpretation, in analyzing the right guaranteed by Article 14 as it relates to the right of correction or reply to ideas, relying upon the preliminary work for the San Jose Treaty.

80. It should be noted that the distinction as to the scope of the right of reply is particularly important in the present case, because the State and the petitioners have presented their arguments with a view to establishing whether an opinion is susceptible of correction or reply under Article 14 of the Convention.[FN32]

[FN32] On the basis of Article 14.1 of the Convention, the Venezuelan State argues that it guarantees the right of correction or reply only to persons affected by inaccurate or offensive statements of fact and not for the issuance of adverse opinions or articles which that person may disagree with or find unbalanced. Accordingly, the State characterizes the critical comments about Elías Santana aired by President Hugo Chavez on the program "Aló Presidente" as representing a clash of political opinions that is normal in a democratic society.

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81. The meaning and language of Article 14 of the Convention was the subject of extensive discussion and transformation in the preliminary documents and acts of the Inter-American Specialized Conference on Human Rights.

82. In its initial Spanish version, the Article provided that " toda persona afectada por informaciones o conceptos inexactos y agraviante emitidos en su perjuicio o a través de medios de difusión que se dirijan al público en general, tienen derecho a efectuar por el mismo órgano de difusión, en la misma forma y gratuitamente su rectificación o su respuesta". The term conceptos could be interpreted as having the same meaning as the word "ideas" found in the English version of Article 14(1).

83. In light of the controversy that arose during discussion of this Article, a working group was formed to draft the wording, consisting of delegates from Argentina, Nicaragua, Panama, Mexico, Ecuador, Colombia and the United States, and Professor Justino Jiménez de Aréchaga, at that time a member of the IACHR, who was invited to advise the working group. Its resulting text was voted and approved, and became the current Spanish version of Article 14(1). Nevertheless, the English version retained the word "ideas", while incorporating the other amendments proposed by the working group.

84. Finally, the IACHR is of the opinion that if there were an open-ended right to use the communications media to correct or to reply to the various ideas and opinions expressed by journalists, interviewees and other speakers, this would have a dampening effect on the broadcasting or publication of statements relating to political issues. Moreover, the media would lose editorial control over their own programming, and would tend to limit themselves to airing superficial matters.[FN33]

[FN33] Rafael Chavero Gazdik, “Un buen Comienzo, la Sentencia 1.013 de la Sala Constitucional y el Derecho de Réplica y Rectificación” page 197 in Allan R. Brewer-Carías et al, “La Libertad de Expresión amenazada (La sentencia 1013)”, Instituto Interamericano de Derechos Humanos, Editorial Jurídica Venezolana, 2001.

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85. In conclusion, the Commission also finds that the arguments of the petitioner Elías Santana alleging violation of Article 14 of the American Convention do not constitute a violation of that Convention, because the statements in dispute, in the Commission's view, constitute mere opinions, which are not protected by Article 14 of the American Convention. With respect to the other rights under the Convention that the petitioner alleges were violated, the Commission holds that he has not presented sufficient evidence to demonstrate the specific manner in which he personally was injured by the operative portion of the judgment, beyond the alleged violation of Article 14 of the Convention.

Other petitioners

86. Petitioners Marieta Hernandez, Hector Faundez Ledesma, David Natera Febres, Andres Mata Osorio and Juan Manuel Carmona Perera and Cecila Sosa, all of them columnists, journalists or media directors, argue that they have been injured by the Venezuelan State in accepting Judgment 1013 issued by the Supreme Tribunal of Justice as binding doctrine for the interpretation of Articles 57 and 58 of the Venezuelan constitution. The petitioners argue that the Supreme Tribunal, "instead of confining itself to deciding the personal complaint brought by Mr. Santana, interpreted Articles 57 and 58 of the Constitution of Venezuela, with important legal consequences for all tribunals and judges in the Republic, since Article 335 of the Constitution provides that rulings of the Constitutional Chamber on the content or scope of constitutional rules and principles are binding for other Chambers of the Supreme Tribunal of Justice and all other courts.”[FN34] According to the petitioners, that judgment affects them directly by establishing that "the media and those who habitually exercise journalism through the media do not have a right to reply, nor do those who maintain columns or programs in them", which makes them victims because they are journalists, columnists or media directors.

[FN34] Article 335 stipulates: “The Supreme Tribunal of Justice shall ensure the supremacy and effectiveness of constitutional rules and principles: it shall be the highest and final interpreter of the Constitution and shall see to its uniform interpretation and application. The interpretations issued by the Constitutional Chamber on the content or scope of constitutional rules and principles are binding on other chambers of the Supreme Tribunal of Justice and on other courts of the Republic.”

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87. In regard to the binding nature of the judgment of the Supreme Tribunal, the Venezuelan State replied that "the legal effects of the order constituting the decision are those that may cause injury to the persons covered by it". The State adds that "the petitioners did not explicitly complain of the operational portion of the judgment before the Commission, i.e. they did not contest the decision. The principal object of their complaints was restricted to a group of

paragraphs that form part of the argumentation giving the interpretative rationale for the decision, as if those paragraphs had their own independent life". In the case of the present petition, the fact constituting the alleged violation of rights can only be the operative portion of the judgment. The effectiveness of the ruling is limited to the decision and does not extend to its motives. And once the decision has acquired the authority of res judicata, that also is limited to the decision itself and does not extend to the motives, i.e. the interpretative reasoning that let the Tribunal to deny the appeal".[FN35]

[FN35] Communication from the Ministry of Foreign Relations of Venezuela, received on November 8, 2001, paragraph 7, pages 20 and 21.

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88. Having examined the evidence provided in the petitions P-0453.2001, P-0434/2001 and P-0474.2001 with respect to Marieta Hernandez, Hector Faundez Ledesma, David Natera Febres, Andres Mata Osorio and Juan Manuel Carmona Perera and Cecila Sosa, the Commission holds that the petitioners have not submitted sufficient evidence to demonstrate the specific manner in which their personal situation was injured by the operative portion of the judgment, nor have the petitioners presented the information necessary pursuant to Article 46(1) of the Convention in their particular cases. To the extent that the complaint filed by Marieta Hernandez, Hector Faundez Ledesma, David Natera Febres, Andres Mata Osorio and Juan Manuel Carmona Perera and Cecila Sosa before the Commission was not brought before the domestic courts, it cannot be said that the State had the opportunity to resolve the individual disputes relating to the individual rights of these persons. In this respect, the petitioners must present themselves as victims of a violation of the Convention, or they must appear before the Commission as representatives of a putative victim of a violation of the Convention by a state party. The Commission has held, in a similar situation, that "it is not sufficient for an applicant to claim that the mere existence of a law violates her rights under the American Convention, it is necessary that the law have been applied to her detriment."[FN36]

[FN36] IACHR, Case 11.553, Report Nº48/96 (Costa Rica), 1996 IACHR Annual Report, paragraph 28.

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89. By virtue of its prima facie evaluation, the Commission finds that the charges of the petitioners mentioned above with respect to Articles 13, 14, 24, 8.1, 21.1, 30, 29.a and b in relation with Articles 1 and 2 of the American Convention must be rejected as failing to meet the requirements of Article 46 and 47 of the Convention.

VI. INSTRUCTION TO THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION

90. In addition to the arguments presented above with respect to the inadmissibility of the case, the Commission must declare its concern over the claims of the petitioners with respect to the interpretation given to Articles 57 and 58 of the Venezuelan Constitution by the Supreme

Tribunal in its Judgment 1013. For this reason, the Commission instructs the IACHR's Special Rapporteur for Freedom of Expression to prepare a special report on Judgment 1013 and the standards of protection of human rights as they relate to freedom of expression in the inter-American human rights system, in light of the American Convention and the Declaration of Principles on Freedom of Expression.

91. Article 41 of the American Convention empowers the Commission to prepare studies and reports and to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions.

92. This instruction is based, in part, on the importance of the debate over the contents of this judgment, the legitimate interest demonstrated by society as a whole and by the international community as to the affects on freedom of expression that might flow from the application of the Supreme Tribunal's interpretation by other courts.

V. CONCLUSION

93. From the considerations of fact and of law set forth here, the Commission concludes that this case does not satisfy the admissibility requirements of Article 46 and 47 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case inadmissible.
2. To transmit this report to the parties.
3. To instruct the IACHR's Special Rapporteur for Freedom of Expression to prepare a special report on Judgment 1013 in light of the international obligations of the Venezuelan State with respect to Article 13 of the American Convention on Human Rights.
4. To publish this report and include it in the Annual Report of the Commission to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 22nd day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.