I. SUMMARY

1. On July 17, 2002, the Inter-American Commission on Human Rights (hereafter called "the Commission" or the "IACHR") received a petition presented by Mr. José Gerson Revanales (hereafter referred to as "the petitioner" and/or "the alleged victim") in which he alleges that the Venezuelan government (hereafter referred to as "the State" or "the Venezuelan State") has violated Articles 1.1, 8, 11, and 25 of the American Convention on Human Rights (hereafter referred to as "the Convention" or "the American Convention") and Articles V, XIV, XVIII, and XXIV of the American Declaration of the Rights and Duties of Man (hereafter referred to as "the Declaration" or "the American Declaration"). The petitioner also argues that Articles 8, 10, 12, 22, and 23, numerals 1 and 3, of the Universal Declaration of Human Rights (hereafter, "the Universal Declaration"), Articles 6 and 9 of the Additional Protocol to the American Convention on Human Rights in the area of Social, Economic, and Cultural Rights (hereafter referred to as "the San Salvador Protocol"), and Articles 24 and 31 of the Inter-American Charter of Social Guarantees have been violated to his detriment.

2. The petitioner argues that he was removed from his "position as Internal Service Ambassador" through Resolution DGRH 0252 of the Ministry of Foreign Relations, dated June 14, 2001, in violation of Article 59 of Venezuela's Law on Foreign Service Personnel, and that he was removed from his position of General Director of Economy and International Cooperation without having gone through the disciplinary procedures established in Section XI of the Law on Foreign Service Personnel in force in Venezuela at the time that the actions took place.

3. The Petitioner reports that on July 4, 2001, he brought before the Political Administrative Chamber of the Supreme Court of Justice a motion to nullify the administration action that led to his dismissal and that he also filed a precautionary measure for protection of a constitutional right [medida de amparo cautelar], which was ruled on by the Supreme Court of Justice on December 17, 2002. The petitioner indicates that there was an unwarranted denial and delay in the administration of justice since the ruling on the precautionary measure did not take place with due procedural speed. There were unjustified excuses for admitting or dismissing the appeal, and it took almost one year and three months for the petition in question to be tried and decided on.

4. For its part, the Venezuelan State initially argued that the petition presented by the petitioner did not meet the requirements contained in subparagraphs a, c, d, e, f, h, e, and i of Article 28 of the Commission's Rules of Procedure. At the same time, it states that, looking at the content of the petition, it is difficult to establish which violations were allegedly committed by the Venezuelan State, because it does not specify which fundamental rights of the petitioner have been impaired. In a second report, the State expressed that the case has followed the usual course.

5. After studying the positions of both parties, the Commission concluded that it was competent to rule on the complaint presented by the petitioner, and that the case was admissible under Articles 46 and 47 of the American Convention. As a result, the Commission decided to notify the parties, publish this report of admissibility, and include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

6. On July 17, 2002, the Commission received a petition presented by Mr. José Gerson Revanales against the Bolivarian Republic of Venezuela.

7. The Commission admitted the petition under number 2611/2002 and on October 3, 2002 sent the pertinent sections to the State as required by Article 30.3 of its Rules of Procedure.

8. On December 3, 2002, the Venezuelan State presented before the Commission its report raising questions about the admissibility and merits of the complaint. On February 13, 2003, the Commission sent the State's report to the petitioner and gave him a period of thirty days to respond.

9. On March 10, 2003, the petitioner sent in his observations regarding the State's report, and this was forwarded to the State on March 18, 2003.

10. On March 19 of the same year, the Commission asked the petitioner to send a copy of all previous communications duly signed, along with other requirements specified in Article 28 of the IACHR Rules of Procedure, and gave him a period of 10 days to send in those copies. On March 24 of the same year, the Commission received the copies requested and they were forwarded to the State on April 2, 2003.

11. On April 2, 2003, the Commission received additional information from the petitioner, which was sent to the State on April 24 of the same year, and gave the State a period of one month to present its comments.

12. On June 27, 2003, the Commission requested that the State comment on the additional information provided by the petitioner.

13. On July 22, 2003, the State sent a second report to the Commission.

14. On July 19, 2006, the State was asked for updated information about the petition.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

15. The petitioner argues that Resolution DCRH 0252 of the Ministry of Foreign Relations, dated June 14, 2001, ordered his removal from the "position of ambassador," in violation of Article 59 of the Venezuelan Law on Foreign Service Personnel.[FN2] He states that his removal from office was based on Article 29 of the Law on Foreign Service Personnel,[FN3] which is not applicable in his case.

[FN2] Article 59: When an official of the Foreign Service commits an infraction that merits his dismissal, the Minister of Foreign Relations, assisted by a review panel, shall open a corresponding trial and shall notify the party in question through the quickest means available so that he may prepare his defense, for which purpose a period of no more than three months will be allowed. The decision of the review panel will be definitive and may only be re-examined if new evidence appears which, in the judgment of the Ministry of Foreign Relations and the review panel, could radically alter the decision. If the decision were to be revoked, the dismissal would be revoked. The provisions of the criminal codes continue to apply.

[FN3] Article 69: Commissioned officials are freely appointed and removed by the National Executive.

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16. The petitioner argues that he is a career diplomat (an assertion that he substantiates with Resolution No. DCSSA/DSE 539 dated December 26, 1978, ratified by a review panel through official letter MRE 093-88 dated August 15, 1988) and not an official who can be appointed and removed at will. The petitioner argues that his dismissal illegally deprives him of his rank as ambassador, which was conferred on him by his promotion on January 8, 2001 through Resolution DCRH 034, and does not take into account the fact that an ambassador is a career diplomat "rank" and not a "position." At the time of the dismissal, the petitioner was acting in the "position" of General Director of Economy and International Cooperation, but the resolution mentioned was an effort to strip him of his "rank" as ambassador. The petitioner expresses that in any case, if what the Ministry of Foreign Relations wanted was to fire him as a government employee, it did not proceed legally there either, since it did not comply with the procedures specified in Article 12 of the Law on Foreign Service Personnel.[FN4]

[FN4] Article 12: No career official can be dismissed except in accordance with the procedures specified in Section 11 of this chapter (chapter on Disciplinary Measures).

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17. The petitioner states that his right to defense was also violated, thereby contravening the Organic Law on Administrative Procedures (LOPA),[FN5] since in official letter 9697/DGSRH dated June 15, 2001 notifying him of his dismissal, there was no indication of the rights or remedies of which he could avail himself in order to appeal the administrative act of dismissal.[FN6] [FN7]

[FN5] The Organic Law of Administrative Procedures establishes that the following remedies can be exercised against an administrative action of dismissal: administrative review, an appeal through the chain of hierarchy, or a motion to reconsider.

[FN6] Article 73 of the Federal Administrative Procedures Act: The interested parties will be notified of all administrative actions of a particular nature that affect his/her subjective rights or his/her legitimate, personal, and direct interests. The notification should contain the entire text of the document and indicate what legal remedy is available, if any, under what terms an appeal can be exercised, and before what bodies or courts the appeal should be brought.

[FN7] According to the Report of the Legal Consultancy to the General Office of Human Resources, "The notification action did not comply with the precepts established in Article 73 of the Federal Administrative Procedures Act, rendering that administration action null and void."

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18. The petitioner states that the General Director of Human Resources of the Ministry of Foreign Relations, upon realizing that he had not been advised of his rights in the official document ordering his dismissal, tried to correct his error by ordering him to sign a second notification and threatened to make his dismissal public if he refused this request. The petitioner states that when he refused to sign the new notification, the Ministry published the dismissal resolution, along with the corrected official notification document in two national newspapers on July 6, 2001, making his removal from office public in this way. The petitioner states that this act of retaliation violates his right to honor and dignity, as expressed in Article 11 of the American Convention.

19. The petitioner states that his rights to work and to social security, protected by the American Declaration and the Protocol of San Salvador, were violated when he was abruptly and unjustifiably removed from the position that he occupied and when he was taken off of the list of social security beneficiaries. At the same time, the petitioner argues that the Ministry of Foreign Relations has violated his rights to due process and to self defense, since he was blocked from exhausting the internal administrative remedies available to him when these procedures were not referred to in the notification of his dismissal.

20. The petitioner states that, faced with this abuse of power and in order to exercise his constitutional rights in accordance with the Organic Law of Amparo on Constitutional Rights

and Guarantees, on July 4, 2001 he lodged before the Political Administrative Chamber of the Supreme Court of Justice an appeal for annulment of the administrative action that led to his removal from his rank as ambassador and from the position he was occupying as General Director of the Economy and International Cooperation. At the same time, he also filed a precautionary protective measure for protection of his constitutional right. He argued that from July 4, 2001 until the date when he presented the petition before the IACHR (more than a year), there was no decision of any kind due to the fact that a number of judges and their alternates disqualified or recused themselves in order not to try the case.

21. The petitioner states that, on July 12, 2001, a reporting judge (magistrado ponente) was designated to rule on the admissibility of the appeal for annulment and the precautionary measure brought before the court, and that after 6 months,[FN8] this judge disqualified himself from the process because of a document presented by a representative of the Attorney General's Office (Fiscalia General) asking for "due procedural promptness."

[FN8] From the information supplied by the petitioner, it can be shown that it was approximately four months.

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22. The petitioner states that the reporting judge argued that the petitioner had "exercised pressure on him through the Office of the Attorney General," to which the petitioner replies that this is inadmissible from a legal standpoint, since the Attorney General, in accordance with the provisions of the second paragraph of Article 285 of the Constitution of the Bolivarian Republic of Venezuela, has the obligation to assure compliance with procedural guarantees.[FN9]

[FN9] Article 285 of the Constitution of the Bolivarian Republic of Venezuela establishes that: "Functions of the Public Ministry [Tr. Office of the Attorney General] include: 2) guaranteeing the prompt and proper functioning of the administration of justice, previous legal action, and due process."

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23. In considerations beyond his original complaint, the petitioner argues that the reporting judge disqualified himself from this case by alleging a non-existent cause, a determination that he makes based on the fact that the judge in question claims to base his position on a communication issued by the Attorney General's office, which is dated after the time in which the judge in question recused himself.[FN10]

[FN10] Certified copies from the Secretariat of the Venezuelan Supreme Court of Justice, provided by the petitioner, show that the communication of the Office of the Attorney General is dated November 8, 2001, while the document of disqualification from the reporting judge is dated November 1, 2001, though it arrived at the Political Administrative Chamber of the Supreme Court of Justice on November 14, 2001.

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24. The petitioner states that, after the disqualification of this reporting judge, there have been recusals from three judges pro tempore who were called to be part of the Ad-Hoc Chamber (Sala Accidental), arguing that they had excessive workloads.[FN11]

[FN11] From the information obtained on the court website, it is established that one reporting judge, two judges pro tempore, and one associate judge (conjuez) were involved in the judgment, but does not specify the motives for the recusals. The petitioner states that a reporting judge was designated at the time his appeal was brought before the courts, and that on November 13, 2001, this judge disqualified himself from trying the case. The disqualification was not declared admissible until January 25, 2002; whereupon a notification to constitute the Ad-Hoc Chamber went out to the first judge pro tempore, who recused himself on March 20, 2002; whereupon the first associate judge was called for the same purpose and he also excused himself on April 15, 2002; whereupon the Second judge pro tempore was called, but he declined to accept on June 4, 2002; whereupon a second associate judge was called, who on October 23, 2002 accepted the call to become part of the Ad-Hoc Chamber. On October 24, 2002, the associate judge who finally accepted the call was designated reporting judge, and he was the one who finally signed the decision.

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25. In considerations beyond his original request, the petitioner also stated that while he understands that the process for determining disqualification is slow, it is unjustifiable and unacceptable that a judge could not say within six months of being assigned to write the opinion of the court, whether or not this joint filing of a precautionary measure (amparo) and an appeal for annulment was admissible.[FN12]

[FN12] The Organic Law of Amparo on Constitutional Rights and Guarantees in its Articles 23 and 26 establishes that: Article 23) “If the judge should choose not to immediately correct the violation of the legally protected interest, he shall order the authority, entity, social organization, or individuals charged with violating or threatening constitutional rights or guarantees to report on the alleged violation or threat that motivated the request for amparo within forty-eight (48) hours of the time of the respective notification. Article 26: Within ninety six (96) hours after the presumed offended party has presented his report or after the expiration of the corresponding term, the judge who is trying the amparo will set the time for the parties or their legal representatives to express their respective arguments in an oral and public manner. Once that that action is completed, the judge will have a non-extendable deadline of twenty-four (24) hours to rule on the request for protection of constitutional rights (amparo).

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26. In conclusion, the petitioner argues that there was an unwarranted delay in declaring the requested constitutional appeal to be admissible or inadmissible.[FN13] This, according to the petitioner, distorts the nature of the amparo as well as the spirit, purpose, and reason for the Organic Law of Amparo (LOA) whose essence is to assure procedural promptitude and to provide timely justice to restore constitutional guarantees that were injured. Therefore, the

petitioner places the delay in the category of an indefensible denial of justice. He also suggests that the State cannot justify this lack of procedural promptness simply by attributing it to the dynamics of the legal system itself and to the overloads and backlogs in that system. He argues, therefore, that his right to the legal guarantees and protections expressed in the American Convention has been violated along with his right to petition as set forth in the American Declaration.

[FN13] The opinion of the Legal Advice Office of the Ministry of Foreign Relations under the Office of the Vice-Minister, provided by the petitioner, states that the file in question is identified with the No. 2001/0253. Admitted by the Chamber on December 17, 2002, the precautionary measure and the measure to suspend the effects of the action in question were declared inadmissible and the case was sent to the trial court (Juzgado de Sustanciacion) on that same date to verify the expiration date for the action and the exhaustion of administrative channels and, if deemed proper, to continue the process. On February 4 of this year (2003), upon not finding grounds of inadmissibility, the assistant court agreed, in accordance with the stipulations of Article 125 of the Organic Law of the Supreme Court of Justice, to send an official notification document to the Attorney General (Fiscal General), the Public Prosecutor (Procuradora General), and the Ministry of Foreign Relations, asking them to send the administrative file related to the trial.

B. Position of the State

27. The State sent the Commission its report, dated December 3, 2003, in which it argues that the petition does not meet the requirements of paragraphs a, c, d, e, f, h, and i of Article 28 of the Commission's Rules of Procedure, and therefore requests that this petition be declared inadmissible in accordance with Article 30.1 of these Rules of Procedure.

28. The State contends that, even after having studied the petition in detail, it is difficult to establish what exact violations of the Convention the State is accused of committing that would make this petition admissible, since the petition itself states that "fundamental rights have been impaired" without specifying which ones.

29. The State suggests that from an analysis of this petition one might infer that the petitioner is denouncing the alleged delay that took place in the Political Administrative Chamber of the Supreme Court of Justice, in its processing of the appeal for annulment together with the precautionary measure filed by the petitioner against the administrative action contained in Resolution No. DGRH No. 0252 of the Ministry of Foreign Relations. The State points out that in spite of the confusing and unintelligible petition, and in order to give a proper and timely response to the Commission, it went to the Supreme Court of Justice asking it for information about the actions taken by the Political Administrative Chamber on this case. On this matter, the State presented a detailed chronology of the actions involved in the petitioner's requests for procedural speed and the judges' requests to be excused from the case. The State believes that the case has followed a normal course, that the Ad-Hoc Chamber is about to be constituted, and that a reporting judge will soon be designated to decide what steps would be considered proper.

The State concludes in its report that the initial disqualification proposed by the reporting judge, as well as the successive recusals on the part of the judges pro tempore and the assistant judge explain why case is in its current situation, and therefore it requests that this petition be declared inadmissible.

30. On July 22, 2003, the Commission received a second report from the State in which the State alleges that the petitioner erroneously transcribed arguments related to the substantive matter addressed by the proceedings regarding protection of constitutional guarantees (acción de amparo) and the appeal for annulment brought by the petitioner before the Political Administrative Chamber of the Venezuelan Supreme Court of Justice. The State goes on to argue in this same report that the petitioner's complaints—alleged violations of human rights committed by the Ministry of Foreign Relations, like the illegal deprivation of the rank of ambassador, illegal removal from office, defective notification procedures at the administrative headquarters, skirting the disciplinary procedures envisaged by the Foreign Service Personnel Law—are, more appropriately acted upon through extraordinary internal action through the very courts of justice that are currently processing the case brought forth by the appellant. These complaints should be dealt with in a court of national jurisdiction, the State argues, since the competence of the Inter-American Human Rights Commission is of a subsidiary nature, as the Commission itself has stated, and as the Inter-American Human Rights Court has stated in its advisory opinions.

31. At the same time, the State argues that the slowness such a process might suffer from is not any different from that which could occur in some other cases that are managed in the highest Venezuelan court and which is not the result of inefficiency or a desire to trample on constitutional rights, but on the contrary, is the result of the dynamics of the legal system itself in which these cases are handled. The State points out that in any case, it is not possible to obtain procedural promptness by sacrificing or suppressing legal guarantees or essential legal steps that are geared toward supporting these guarantees, as the petitioner would appear to suggest.

32. The State also argues that it is essential to understand that the order in which cases come into the judicial system is not the same order in which the conflicts will be resolved, as the petitioner is claiming before an international organ of jurisdiction. Rather, each case proceeds according to its own particularities and, ultimately, according to the backlogs in the system. Given this reality, it is not possible to demand perfection from the State. In summary, the State argues that in the case in question, the human rights of the petitioner have not been harmed in any way, much less has the petitioner been deprived of a swift and expeditious trial. Therefore, the State reiterates its request that this petition be declared inadmissible and, that if the merits of the complaint are to be analyzed, that the petition be dismissed.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission ratione materiae, ratione personae, ratione temporis and ratione loci

33. The petitioner is empowered in accordance with Article 23 of the Rules of Procedure of the Commission. The petitioner and alleged victim is an individual whose rights under the

American Convention the Venezuelan government has committed to respect and to guarantee. Concerning the State, the Commission points out that Venezuela has been a party to the American Convention since August 9, 1977, the date on which the respective instrument of ratification was deposited. Therefore, the Commission has competence ratione personae to examine the petition.

34. The Commission has competence ratione loci to review the petition, since the petition argues that rights protected in the American Convention have been violated within the territory of a State that is party to that agreement. At the same time, the IACHR has competence ratione temporis since the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date when the actions alleged in the petition are said to have occurred.

35. With relationship to competence ratione materiae, the IACHR notes that the petitioner asserted that the State violated the right to judicial guarantees (cf. Article 8), the right to the protection of honor and dignity (cf. Article 11), the right to judicial protection (Article 25) and, the State's duty to respect the rights (Article 1.1) established in the American Convention. He further argues that the State violated the right to the protection of honor, personal reputation, and private and family life (Article V of the American Declaration), the right to work and to fair remuneration (Article XIV), the right to a fair trial (Article XVIII), and the right of petition (Article XXIV) contained in the American Declaration. He also argues that there have been violations of the rights to judicial protection (cf. Article 8), to judicial guarantees (Article 10), to the protection of honor and dignity (Article 12), to social security (Article 22), and to work and remuneration (Article 23 numerals 1 and 3) of the Universal Declaration, along with the right to work (Article 6) and to social security (Article 9) contained in the San Salvador Protocol, and the rights that protect public employees in administrative careers (Article 24) and require the obligatory provision of social security to these employees (Article 31), as established in the Inter-American Charter of Social Guarantees.

36. With respect to these matters, the Commission maintains that once the Convention came into effect in the State, this, and not the Declaration, became the primary source of law applicable by the Commission as long as the petition refers to the presumed violation of rights that are identical in both instruments and as long as it is not a matter of an ongoing violation.[FN14] In the present case, there is a similarity in subject matter between the guidelines of the Declaration and those of the Convention invoked by the petitioner. Thus, the right to the protection of honor, personal reputation, and private and family life (Article V) enshrined in the American Declaration is subsumed in the guidelines that provides for the right protected in Article 11 of the American Convention. Likewise the rights to justice (Article XVIII) and to petition (Article XXIV) enshrined in the American Declaration are subsumed in the guideline that provides for the right protected in Article 25 of the American Convention. It is important to clarify that the petitioner has used the right to petition from the American Declaration in the sense that he has not achieved any type of pronouncement from the appeal that he lodged. Therefore, in the present case, the Commission will take into account the alleged violations in function of the American Convention. In this sense, the Commission manifests its competence ratione materiae in relation to these presumed violations of the American Convention.

[FN14] IACHR Report No. 03/01 (Admissibility), Case 11.670, Amilcar Menéndez, Juan Manuel Caride, et al. (Provisional System), Argentina, January 19, 2001, para. 41 and ss.

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37. Article 26 of the American Convention includes the protection of economic, social, and cultural rights in a generic way. For its part, the American Declaration in its Article XIV establishes in a more specific way the right to work and fair remuneration. The petition argues that this Article XIV of the American Declaration and of the San Jose Pact has been violated. In this case, the Commission believes that it has competence ratione materiae with respect to the arguments on alleged violations of the guarantee of the right to work and social security and the right to compensation, by virtue of Article 26 of the American Convention.

38. There are also allegations of violations of the rights to judicial protection (Article 8), to judicial guarantees (Article 10), to the protection of honor and dignity (Article 12), to social security (Article 22), and to work and remuneration (Article 23 numerals 1 and 3) contained in the Universal Declaration, instrument over which the Commission lacks jurisdiction except in the provisions of Article 29 of the American Convention. Alleged violations also include: violations of the rights of public employees who are protected under administrative careers (Article 24), and the right to obligatory social security benefits for these employees (Article 31) contained in the Inter-American Charter of Social Guarantees. This Charter is an international instrument signed by Venezuela; which is different from the IACHR having jurisdiction over the same.

B. Admissibility Requirements

1. Exhaustion of Domestic Remedies

39. Article 46.1.a of the American Convention stipulates that, in order for a complaint presented before the Inter-American Commission to be found admissible pursuant to Article 44 of the Convention, all efforts must have been made to pursue and exhaust the domestic remedies according to generally recognized principles of international law. The goal of this requirement is to allow national authorities to review the alleged violation of a protected right and, if appropriate, to resolve it before it goes to an international body.

40. The requirement of previous exhaustion of domestic remedies applies when remedies are effectively available and are adequate and efficient for repairing the alleged violation. In this sense, Article 46.2 specifies that the requirement shall not be applicable when the domestic legislation of the State concerned does not afford due process of law for the protection of the right in question; if the alleged victim was denied access to the remedies under national law; or if there has been unwarranted delay in rendering a final judgment with respect to said remedies. As indicated in Article 31 of the Rules of Procedure of the Commission, when the petitioner argues one of these exceptions, it is the State’s duty to demonstrate that the remedies under domestic law have not been exhausted, unless that is clearly evident from the record.

41. According to what can be inferred from the principles of international law reflected in the precedents established by the Commission and the Inter-American Court: 1) the State being sued can explicitly or tacitly waive the use of this rule.[FN15] 2) In order for the failure to exhaust domestic remedies defense to be timely, it should be presented in the first stages of the proceedings before the Commission. Not presenting the defense will lead to the assumption that the State in question has tacitly waived the opportunity to present that defense.[FN16] 3) Pursuant to the burden of proof applicable in the matter, the State that argues that domestic remedies have not been exhausted should name the specific remedies that need to be exhausted and provide proof of their effectiveness.[FN17] Consequently, if the State in question does not present arguments pertaining to this requirement in a timely manner, it will be considered to have waived its right to argue that domestic remedies have not been exhausted and to meet its burden of proof in this way.

[FN15] Cfr. IACHR, Report No. 69/05, petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, paragraph 42; I/A Court H. R., Case of Ximenes Lopes. Preliminary Objection. Judgment of November 30, 2005. Series C No. 139, para. 5; I/A Court H. R., Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, para. 49; and I/A Court H. R., Case of the Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 135.

[FN16] Cfr. I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, para. 53; I/A Court H.R., Castillo Petruzzi Case. Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, para. 56; and I/A Court H.R., Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, para. 40. The Commission and the Court have established that "the first stages of the procedure" should be understood as "the stage of admissibility of the proceedings before the Commission, or, before any consideration of the substantive matter […]." See, for example, IACHR Report No. 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13, 2005, that cites, I/A Court H. R., Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 81.

[FN17] Cfr. IACHR, Report No. 32/05, Petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons affected by HIV/AIDS, Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections., supra note 3, para. 53; I/A Court H.R., Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33; and I/A Court H.R., Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.

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42. In this case, the petitioner has argued that he has been impeded from exhausting domestic remedies of administrative nature because these remedies were not specified in the official notification of his dismissal. Additionally, he reports that on July 4, 2001, he placed before the Political Administrative Chamber of the Supreme Court of Justice an appeal for annulment of the administrative action that led to his removal from office, together with a precautionary protective measure, which was ruled on by the Supreme Court of Justice on December 17, 2002.

43. For its part, the State has not expressly referred to a defense based on the failure to exhaust remedies of national competence, nor does it refute the petitioner's argument that he was impeded from exhausting administrative remedies.

44. From the information presented by the petitioner, it can be established that the administrative action of dismissing the alleged victim was not contested through remedies available in the same administration. Not withstanding the previous, the remedies that were presented—that is, the appeal for annulment of the administrative action that led to his dismissal, together with the precautionary measure for protection of a constitutional right—could have led to resolving the legal situation which was allegedly violating the human rights of the alleged victim and, in consequence, could have been appropriate remedies for determining if this requirement of previous exhaustion of domestic remedies was indeed met. At the same time, on December 17, 2002, during the time when the case was being presented before the Commission, the Supreme Court of Justice admitted the appeal for annulment of the administrative action, ordering the file to be sent to the trial court,[FN18] and declared the precautionary measure for protection of a constitutional right to be inadmissible.

[FN18] The judgment of the Supreme Court of Justice on December 17, 2003 stated:

1. The motion to nullify, exercised by citizen Gerson José Revanales Monsalve against the administrative action contained in Resolution No. 000252 dated June 14, 2001 issued by the Ministry of Foreign Relations, IS ADMITTED, leaving at the discretion of the trial court the pronouncement with respect to the expiration of the action and to previous exhaustion of administrative channels, in accordance with the provisions of the only paragraph of Article 5 of the Organic Law of Protection of Rights and Constitutional Guarantees. In consequence, this file containing the appeal for annulment is ordered sent to the trial court), in order to determine whether it is proper to notify the Attorney General of the Republic, the Prosecutor General of the Republic, and the Minister of Foreign Relations; whether a bulletin (cartel) should be issued, if deemed proper, and whether the evidence in the case should continue to be examined
2. INADMISSIBLE the constitutional precautionary protective measure requested together with the motion to nullify.
3. INADMISSIBLE the measure to suspend the effects of the contested administrative action, based on Article 136 of the Organic Law of the Supreme Court of Justice.

Article 136 of the Organic Law of the Supreme Court of Justice establishes:

Article 136: At the request of one of the parties, the Court could suspend the effects of an administrative action with particular consequences whose annulment has been requested, when this is permitted by the Law or when the suspension is essential for avoiding damage that is irreparable or difficult to repair definitively, taking into account the circumstances of the case. Upon making their decision, the Court could require the petitioner to exercise sufficient caution in order to guarantee the results of the judgment.

The lack of adequate procedural initiative by the party requesting suspension could lead to a revocation of this suspension, contrario imperio.

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45. The Commission considers the December 17, 2002 decision of the Supreme Court of Justice on the appeal for annulment and on the protective measure to have satisfied the requirement to exhaust available domestic remedies.

2. Timeliness of the Petition

46. Under Article 46.1.b of the Convention, all petitions must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment rendered at the national level. The six-month rule ensures certainty and legal stability once a decision has been adopted.

47. In relation to the current petition, the IACHR has established that the domestic remedies were exhausted with the December 17, 2002 decision of the Venezuelan Supreme Court of Justice and that the petition was filed with the IACHR on July 17, 2002. Therefore, the Commission concludes that this requirement is now satisfied.

3. Duplication of Procedures and Res Judicata

48. The petition dossier contains no information to indicate that this matter is pending in any other international settlement proceeding or has been previously examined by the Inter-American Commission. Therefore, the IACHR concludes that the present case has met the admissibility requirements established in Articles 46.1 and 47.d of the American Convention.

4. Nature of the Alleged Violations

49. The Commission considers that it is not at this state of the current procedure that it must be established whether or not the American Convention has been violated. For the purposes of admissibility, the IACHR must determine whether events have been described that amount to a possible violation, as stipulated in Article 47.b of the American Convention, or if the petition is "manifestly unfounded," that is, "clearly and totally inadmissible" according to section (c) of the same article.

50. The standards for assessing these matters differ from those required to decide on the merits of a case. The IACHR must make a prima facie evaluation to determine whether or not the petition substantiates the apparent or potential violation of a right protected by the American Convention, but not to establish whether or not the violation actually occurred. This assessment is a summary analysis and does not imply prejudice or advance an opinion regarding the merits of the case. By establishing two clear stages of admissibility and merits, the IACHR Rules of Procedure reflect this distinction between the assessment the Commission must make to declare a petition admissible and that which is required to establish the occurrence of a violation.

51. In its first report, the State argued to the Commission that there were no acts that constituted a violation of the human rights of the Petitioner and that the complaint did not meet the requirements established by Article 28 of the Rules of Procedure of the Commission. The State argued that one could infer from an analysis of the petition that the petitioner is denouncing the alleged delay of the Political Administrative Chamber of the Supreme Court of Justice, in

processing the appeal for annulment and precautionary measure for protection of a constitutional right [medida de amparo cautelar) lodged by the petitioner against the administrative action contained in Resolution No. DGRH No. 0252 of the Ministry of Foreign Relations. The State presents a chronological summary of the actions contained in the requests for procedural promptness on the part of the petitioner and the recusal requests presented by the judges. It considers that the case has followed a normal course and states that the Ad Hoc Chamber is almost ready to be constituted and will choose a reporting judge to decide a proper course. The State concludes in its report that the initial disqualification of the reporting judge, along with the successive recusals of the justices pro tempore and the associate judges (conjuez) explain why the case is in its current situation and, in this sense, requests the petition be declared inadmissible. In its second report, dated July 22, 2003, the State recognized that: "These complaints -- including human rights violations in which the Foreign Ministry is alleged to have played a part, like the illegal deprivation of the rank of Ambassador, illegal removal from office, defective notification procedures at the administrative headquarters, skirting the disciplinary procedures envisaged by the Foreign Service Personnel Law—are more appropriately acted upon through extraordinary internal action through the very courts of justice that are currently processing the case brought forth by the appellant. These complaints should be dealt with in a court of national jurisdiction, since the competence of the Inter-American Human Rights Commission is of a subsidiary nature, as the Commission itself has stated, and as the Inter-American Human Rights Court has stated in its advisory opinions."

52. For its part, the petitioner maintained that the dismissal occurred without following Venezuelan domestic rules and that the precautionary measure for protection of a constitutional right (amparo) was not resolved with the speed that this kind of appeal merits. The petitioner also maintains that the disciplinary procedure that should have been available to him (as contained in the Foreign Service Personnel Act) was ignored entirely, and that this constituted an illegal act through which not only was he deprived of the position he held, but also of his rank as ambassador, a rank that the petitioner indicates he obtained after having met all conditions and receiving a promotion into the diplomatic career. Finally, in terms of the requirements established by Article 28 of the Commission's Rules of Procedure, the petitioner sent the information required on March 24, 2003.

53. The Commission considers that the petitioner's arguments do not involve "manifestly groundless" or "obviously out of order" prima facie complaints. Therefore, the Commission considers that if the alleged actions proved to be true and the petitioner has been dismissed without proper respect for his right to due process and without having been given a simple and swift remedy for questioning this decision, the situation could amount to a violation of Articles 8 and 25 of the American Convention, all of this in connection with the general obligations stipulated in Articles 1 of that instrument, in light of the jurisprudence of the Inter-American system.

V. CONCLUSIONS

54. The Commission concludes that the case is admissible and that it is competent to examine the complaint presented by the petitioner regarding the alleged violation of Articles 8 and 25 in

concordance with Article 1.1 of the Convention, according to the requirements established in Articles 46 and 47 of the American Convention.

55. Based on the arguments of fact and law set forth above and without prejudging the merits of the case:

THE INTER-AMERICAN HUMAN RIGHTS COMMISSION

DECIDES:

1. To declare the instant case admissible, in relationship to Articles 8 and 25 of the American Convention and in concordance with Article 1.1 of the same treaty.
2. To declare inadmissible the matters referring to Article 11 of the American Convention.
3. To notify the State and the petitioner of this decision.
4. To initiate proceedings on the merits of the case.
5. To publish this decision and include it in the Annual Report to be presented before the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 21st day of the month of October, 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Paolo G. Carozza and Víctor E. Abramovich, Commissioners.