REPORT No. 59/13
PETITION 212-06
ADMISSIBILITY
ROCÍO SAN MIGUEL SOSA ET AL
VENEZUELA
July 16, 2013

I. SUMMARY

1. On March 7, 2006, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") received a petition lodged by Ligia Bolívar Osuna and Héctor Faúndez Ledesma (hereinafter "the petitioners") alleging responsibility of the Bolivarian Republic of Venezuela (hereinafter, "the State" or "the Venezuelan State") for violation of the right to humane treatment (Article 5), a fair trial (Article 8), freedom of thought and expression (Article 13), freedom of association (Article 16), to participate in government (Article 23), equal protection (Article 24), judicial protection (Article 25), and progressive development (Article 26) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), in connection with Articles 1.1, 2 and 29 of this instrument, to the detriment of Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña (hereinafter jointly "the alleged victims").

2. The petitioners contended that the alleged victims were dismissed from their jobs at the National Border Council in retaliation for signing a petition to hold the recall referendum on the term of office of then President Hugo Chávez Frías. In this regard, they claim that the alleged victims were not heard by a court of law, which met the minimum requirements of independence and impartiality and respected due process in order to restore their rights. In the view of the petitioners, the admissibility requirements prescribed in the American Convention have been fulfilled.

3. In response, the Venezuelan State moved that the petition be found inadmissible, pursuant to Articles 46.1.a and 47.d of the American Convention. The State argued that the alleged victims had not exhausted the suitable remedy to restore the allegedly violated right. On the contrary, in the view of the State, the alleged victims used an inadequate proceeding to assert their rights under domestic law, inasmuch as they chose to pursue the remedy of constitutional relief via the *amparo constitucional* proceeding, whereas they should have brought their case before a trial-level labor court. The State contended that constitutional relief through *amparo* is in order "*when no brief, summary and effective procedural means exists [that is] equivalent to constitutional protection."* According to the State, it was possible to bring an expeditious, simple and effective case before the trial-level labor courts, which presumably have jurisdiction to hear cases when dismissal from employment is involved.

4. After analyzing the positions of the parties, the Commission concluded that it is competent to decide the claim filed by the alleged victims and pursuant to Articles 46 and 47 of the American Convention, it decided to find the case admissible for purposes of examining the alleged violation of the rights enshrined in Articles 5, 8, 13, 23, 24 and 25 of the American Convention, in connection with Articles 1.1 and 2 of this instrument. It also decided to find the petition inadmissible as to the alleged violation of Articles 16 and 26 of the American Convention. Accordingly, the Commission decided to notify the parties, proceed to analysis of the merits with regard to the alleged violations of the American Convention, publish the instant Admissibility Report and include it in the IACHR Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION

5. The IACHR assigned the petition the number P-212-06, which was received by the Commission on March 7, 2006. On April 20, 2006, the IACHR requested additional information from the petitioners. The petitioners submitted additional information on August 10, 2006, March 5 and May 22, 2007.

6. The IACHR forwarded the petition to the Venezuelan State on January 8, 2008 and granted it a period of two months to submit its response. Said communication was received by the State on February 14, 2008. The State submitted its response to the petition on January 16, 2009, which was forwarded to the petitioners on February 24, 2010.

7. On January 29, 2009, the petitioners requested a hearing during the 134th regular session of the Commission, in order to address issues pertaining to admissibility and the merits of the case. On February 25, 2009, the IACHR rejected said request as untimely. On August 31, 2010 the petitioners filed another request for a hearing, which was not granted.

III. POSITTION OF THE PARTIES

A. Position of the Petitioners

8. The petitioners stated that the alleged victims Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña were employees at the National Border Council, assigned to the Ministry of Foreign Relations of the Bolivarian Republic of Venezuela. They noted that Thais Coromoto Peña had worked for the government for 20 years, 9 of which were at the National Border Council. Rocío San Miguel Sosa had done so for a total of 13 years, 7 of which she served at the National Border Council. While Magally Chang Girón had also worked as a government employee for a total of 6 years, all of which were at the National Border Council.

9. The petitioners asserted that on March 22, 2004, Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña were advised of the decision of the chairman of the National Border Council to terminate their contract of employment with said institution. In their view, said decision was based on "strictly political reasons," linked to the decision of the alleged victims to sign a petition to hold a recall referendum on the term in office of the President of the Bolivarian Republic of Venezuela, as provided for in Article 72 of the Constitution of that country.

10. The petitioners stated that, in August of 2002, several opposition political parties and civil society organizations launched a drive to call for a nationwide ballot question referendum to ask for the resignation of the President of the Republic. For this purpose, the petitioners noted that a signature collection drive was carried out and the signatures were turned over to the National Electoral Council (hereinafter "the CNE"). On December 3, 2002, the aforementioned body decided to convene the referendum on the presidential term in office for February 2, 2003. The petitioners asserted that the Acting Chamber for Electoral Matters of the Supreme Court of Justice (hereinafter "the TSJ") called off the above-mentioned referendum process and precluded any "electoral process, consultation or other mechanism of citizen participation in public matters" from being held until the National Assembly appointed new members to the National Electoral Council.

11. The petitioners noted that on that same day, February 2, 2003, a new signature collection drive got underway popularly known as "*El firmazo*" ['the Big Signature Drive"], this time in order to convene a recall referendum rather than just a ballot question or consultation on the continuation of the president's term in office. They also asserted that on August 20, 2003, more than three million signatures were brought before the CNE to petition for a recall referendum to be held. They contended that on September 12, 2003, the CNE found the petition inadmissible because it had been filed tardily and the Council established more than thirty technical requirements in order to be able to hold a recall referendum on the presidential term in office.

12. The petitioners noted that the CNE set a new period for collection of signatures to convene a referendum to recall the President of the Republic, which ran from November 28 to December 1, 2003. Said signature collection drive was popularly known as "*El reafirmazo"* ['the Big Reaffirmation']. The petitioners contended as well that in the weeks prior to this signature collection drive, both the President of the Republic and other high-ranking government officials made threatening public statements to intimidate citizens into not participating in the signature collection process.

13. They also noted that on December 2, 2003, the Ministry of Infrastructure reported to the country that the signatures gathered by the opposition in *el Reafirmazo* would be posted at the collection centers so that the 24 million Venezuelans could verify them. The signatures collected by the opposition were submitted to the CNE on December 19, 2003.

14. The petitioners claimed that on January 30, 2004, prior to the CNE validating the signatures turned over to it, the President of the Republic filed a request with the CNE to hand over a copy of the original signature sheets of all persons signing the petition to congressman Luis Tascón. On February 1, 2004, the executive officers of the CNE authorized the *Maisanta Campaign Office,* which according to the petitioners was a group represented by congressman Luis Tascón, to photocopy all of the signature sheets submitted by the opposition sectors who had petitioned for the referendum to be held on the term of office of the president. The petitioners contended that as of the time the signature sheets were handed over, there began to be accusations that the signature collection process had been fraudulent and the idea was hatched by the government and the CNE to create a signature challenge procedure to enable each signature of the petition to be either validated or withdrawn.

15. They asserted that on February 15, 2004, on the Sunday television program of the President of the Republic, he urged the country to go to the Web site where the "*Tascón List*" was posted in its entirety and where people could view who had signed the petition to remove him from office. The petitioners alleged that the Web site was created in February 2004 and that it featured a built-in "Signature-wide Browser" function that made it possible to investigate the names of the signers by entering a signer's national identity card number. They also contended that this browser function included a form to make corrections, a telephone number to report improper inclusion of names between the signers, and an accusation that signers had committed fraud and were traitors to the nation. In the judgment of the petitioners, as of this point in time, public employees and officials began to be pressured to disavow their signatures or retract them. According to the information provided, the signatures of more than one million citizens were challenged in this process.

16. Additionally, the petitioners claimed that on March 20, 2004, the Ministry of Health suggested that "To sign against Chavez is an act of terrorism" and that "A traitor can not be in positions of trust and that however many people as may be necessary, those that have signed, are out." The petitioners further contended that on March 29, 2004, the Ministry of Foreign Relations announced to the media: "it found it logical that an official holding a position of trust that has signed against Hugo Chavez makes his or her position available [to others]; otherwise, he or she will be transferred to other duties within the ministry of foreign relations. He or she will not be dismissed, but will no longer be able to be a close collaborator." In this regard, they noted that during March 2004, there were many complaints of political discrimination reported by the media.

17. The petitioners argued that, precisely in this particular context, Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña were advised of the decision of the Chairman of the National Border Council to terminate their labor contract with said institution. According to the petitioners, of the 22 individuals who were employed at the National Border Council at that time, the only ones who appeared on the list that was released to the public by congressman Tascón as signers of the recall referendum petition on the term of office of the President of the Republic were Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña and Jorge Guerra Navarro and that those four persons were notified of early termination of their employment.

18. The petitioners asserted that the written dismissal notification did not state the reason for the action. They claimed, however, that at the time they were served the written notice, the Executive Secretary of the institution orally informed the alleged victims separately that their dismissals were the consequence of signing the petition for the recall of the term of office of the President of the Republic. The petitioners alleged that the offer was made to Mrs. Thais Coromoto Peña that the measure would be vacated in exchange for disavowing her signature on the day of challenge called by the National Electoral Council. They also contended that the dismissal of Mr. Guerra Navarro did not actually occur because he accepted the pledge to not validate his signature before the election authorities.

19. The petitioners alleged that on April 20, 2004, the Chairman of the CNE announced that more than one million signatures would undergo the process of challenge, noting that during the "day of challenge," in addition to the validation of signatures, the signatures of any of the signers of the petition, who may have changed their minds, could be retracted. This day of challenge was convened by the CNE and was held on June 27, 2004. The petitioners noted that Rocío San Miguel, whose signature had been challenged, validated her signature on that occasion. They added that the actual presidential term recall referendum was held on August 15, 2004, as announced by the CNE, and that Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña participated in it.

20. The petitioners alleged that the referendum was followed by retaliation of those who signed and that, particularly, "at the end of 2004, Mrs. Rocío San Miguel was also expelled from the Advanced Air Force Academy and the Advanced Naval War School, where she had been serving as a professor." Furthermore, her husband, an active-duty officer of the Navy, had not been assigned to any position in his unit since August 18, 2004 as of the date of submission of the instant claim by the petitioners.

21. The petitioners asserted that on April 15, 2005, then President of the Republic Hugo Chávez Frías publically ordered congressman Luis Tascón's list to be "buried." They further noted that on April 26, 2005, the Attorney General of the Republic commissioned Prosecuting Attorney number 49 of the Metropolitan Area of Caracas to investigate the complaints of political discrimination; nonetheless, the alleged victims were never called by said prosecutor, even though a complaint had been filed by them.

22. The petitioners asserted that on August 24, 2005, the Association for the Defense of the Signers of the Petition charged that there was a "second Tascón List" called the "Maisanta List" or "Maisanta Program," which had been copied onto a compact disc and distributed throughout the different agencies of the civil service for discriminatory purposes.

23. As to the procedures followed by the alleged victims under the domestic legal system of the State, the petitioners noted that on May 27, 2004, Mmes. Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña filed charges with the Attorney General of the Republic of Venezuela regarding the facts that are the subject of the instant petition. On July 7, 2004, the office of the lead prosecuting attorney in the case ordered a criminal investigation into the charges to be opened. However, on January 21, 2005, the same prosecutor moved to dismiss the case because in his view the incidents stated in the complaint did not constitute criminal offenses as defined under Venezuelan criminal law. On April 4, 2005, Control Court 21 of the Criminal Judicial Circuit of the Metropolitan Area of Caracas dismissed the charges on the grounds that the facts stated in the complaint were not criminal offenses under the law. On April 15, 2005, the complainants filed an appeal of the dismissal ruling, inasmuch as they considered the facts laid out in the complaint to constitute the crimes set forth in Articles 166, 175, 203, 254 and 286 of the Criminal Code,[1] Article 256 of the Organic Law of Voting and Political Participation[2] and Article 68 of the Law against Corruption,[3] all related to crimes of corruption

[1] The Criminal Code of the Bolivarian Republic of Venezuela published in Official Gazette issue N° 5.768 on April 13, 2005. Article 166 of said Code prescribes that "anyone who, by means of violence, threats or disturbances, prevents or paralyzes, totally or partially, the exercise of any of the political rights, provided that the act is not prescribed under a special provision of the law, shall be punished with a prison sentence in a prison facility or political crimes facility for a period of fifteen days to fifteen months. If the guilty party is a public official and has committed the crime of abuse of power in office, the period of imprisonment is from six to thirty months." While, Article 175 establishes that "anyone who, without authority or the right to do so, by means of threats, violence or other unlawful means of compulsion, forces a person to execute an act which he or she is not obligated by law to execute or tolerate, or prevents him or her from executing one that he or she is not prohibited from executing under the law, shall be punished with a prison term of fifteen days to thirty months. If the act is perpetrated with abuse of public authority, or against a relative or spouse, or against a public official by reason their duties, or if the act has resulted in serious damages to the person, the health or the property of the aggrieved party, the punishment shall be a prison term of thirty months to five years." Article 203 establishes that "any public official who abuses their office, orders or executes to the detriment of any person any arbitrary act that is not specially defined as a crime or minor offense under a provision of the law, shall be punished with a prison term of fifteen days to one year and should he or she act out of a private interest, the punishment shall be increased by one sixth. The same punishment shall apply to any public official who, in the performance of his or her duties, incites a person to disobey the law or measures taken by the authority." Whereas Article 254 sets forth that "anyone who after committing a crime punishable by a short or long term of incarceration, without agreeing to do so prior to the same crime and without contributing to ultimately carry it out, who aids, notwithstanding ensuring the success, in eluding the investigations of the authority or [aids] criminals in avoiding the authority in a chase, or in serving sentence or those who in any way destroy or tamper with tracks or clues of a crime, shall be punished with a prison term of one to five years." Article 286 provides that "when two or more persons associate with the purpose to commit crimes, each person shall be punished, for the fact of the association, with a prison term of two to five years." Available at: http://www.defensoria.gob.ve/dp/index.php/leyes-regimen-penitenciario/1355

[2] Organic Law of Voting and Political Participation published in Official Gazette issue No. 5200 on December 30, 1997. Article 256 of said law provides: "anyone who restricts the liberty and secrecy of the vote of citizens shall be punished with a

for political purposes, abuso of power and conspiracy. On May 12, 2005, the appellate court upheld the dismissal of the case, on the grounds that the facts under investigation were not punishable offenses. On July 7, 2005, the complainants filed an appeal to the Supreme Court to overturn the decision to dismiss, which was denied by the TSJ on September 27, 2005.

24. The petitioners also argued that the alleged victims reported the incidents that are the subject of the petition on May 27, 2004, to the Office of the People's Ombudsman. According to the account of the petitioners, the complaint was lost by this Office and after resubmitting the documents, this office officially opened a case on June 29, 2004. On August 7, that same year, the Office of the People's Ombudsman officially closed the investigation into the complaint, terminating the processing of the case file and ordering it to be archived.

25. Additionally, the petitioners noted that on July 22, 2004, the alleged victims filed an appeal for constitutional relief through an *amparo* proceeding with the Fourth Trial Court for Labor Matters of the Metropolitan Area of Caracas. Said appeal was admitted and subsequently was found to be groundless on the merits on July 27, 2005. The petitioners appealed said decision, but on September 9, 2005, the Third Superior Court for Labor Matters of the Labor Circuit Court of the Judicial District of the Metropolitan Area of Caracas upheld the trial court judgment.

26. As to the alleged violation of Article 5 of the Convention, the petitioners assert that the Venezuelan State subjected the alleged victims to cruel, inhuman and degrading treatment, by punishing them for exercising a legitimate right, which deprived them of their livelihood, stigmatized them in the eyes of the rest of society, and that the State continued to harass them in public. In the judgment of the petitioners, the treatment received by the alleged victims upset their spiritual and family life, leading to deep-seeded feelings of frustration and severely affecting their life plans and ambitions.

27. As to the alleged violation of their right to a fair trial (Article 8 of the Convention), the petitioners contended, first and foremost, that the dismissal of the alleged victims from their positions of employment was in actuality an administrative sanction, inasmuch as they were unable to exercise their rights. In the view of the petitioners, if the State was charging the alleged victims with having committed an offense, it had the duty to properly serve notice of the charges to them, bring the evidence against them to their attention and to hear their defense, in keeping with the legal precedents of the Inter-American Court of Human Rights.

28. Secondly, the petitioners alleged that both the criminal proceeding and the *amparo* proceeding for constitutional relief were marred by many irregularities and that the State did not fulfill the minimum standard of the duty to investigate this type of complaint, which must be performed earnestly and not as a simple formality predestined to failure. In particular, the petitioners asserted that, in the proceeding to seek constitutional relief through *amparo,* the alleged victims were not heard

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prison term of six months to one year [...] 12. In instances of public officials or members of the National Armed Forces, the punishment shall be doubled." Available at: http://www.tsj.gov.ve/legislacion/LOSPP.htm

[3] Law against Corruption published in Official Gazette Special Issue N° 5.637 dated April 07, 2003. Article 68 of said law prescribes: "any public official who, in abusing his duties, uses his position to favor or prejudice, a candidate, group, party or political movement in an election, shall be punished with a prison term of one to three years." Available at: http://www.oas.org/juridico/spanish/mesicic3_ven_anexo16.pdf

by an independent and impartial tribunal, within a reasonable period of time and under the due process rights afforded by the Convention.

29. As for the criminal complaint brought by the alleged victims, the petitioners contended that the Office of the Public Prosecutor failed to take the necessary measures in the investigation in order to uncover the truth of the incidents. In particular, they contended that no on-site inspection visit was conducted of the incidents nor were any staff members assigned to the National Border Council ever interviewed. They further claimed that the decision to dismiss the case took place "behind the backs of the [alleged] victims." In this regard, the petitioners argued that the Control Court did not summon the parties to the oral hearing that was held to receive their arguments on the motion for dismissal of the case filed by the Office of the Public Prosecutor, as required by Venezuelan legislation. They asserted that they appealed to the Chamber for Appeals on Criminal Matters of the Supreme Court of Justice (TSJ), to order the case to be reheard, because a hearing on the dismissal had not be conducted. Nonetheless, even though it has been a consistent legal precedent of the Supreme Court to order the retrial or rehearing of such matters, and has even done so ex officio, in criminal proceedings where the victim has not been notified or an oral hearing on dismissal has not been held, the appeal was denied.

30. As for the alleged violation of freedom of thought and expression (Article 13 of the Convention), the petitioners argued that the alleged victims were dismissed as punishment for expressing their political opinion by signing the petition for the recall referendum and, in so doing, their own opinion on the performance of the Venezuelan government. The petitioners also believed that the aforementioned punishment has a chilling effect on other citizens who, in order to not risk a similar punishment, preferred to keep quiet and refrain from expressing a critical opinion. The petitioners contended that the "Tascón List" was intended to frighten those who signed, which amounts to a constraint on freedom of expression through stigmatization and loss of other rights, such as the right to work. They stressed that there must be a wide margin of tolerance for statements about public officials, when matters of public interest are involved and that it is essential for freedom of expression to be protected and ensured in the political debate in the lead up to elections of state authorities.

31. Concerning the right to association (Article 16 of the Convention), the petitioners noted that a transitory association of citizens with a legitimate purpose materialized among everyone who sought to overturn the term in office of the President of the Republic, which could not be interfered with by the state. The petitioners contended that terminating the alleged victims from their jobs is a consequence of having exercised their freedom of association and, consequently, those who organized for a legitimate purpose were penalized.

32. With regard to the alleged violation of the right to participate in government (Article 23 of the Convention), the petitioners claimed that the alleged victims were the target of pressure to not exercise their political right to participate in the process of convening a recall referendum on the president's term in office, and that their subsequent dismissal from their job amounted to a punishment for exercising their political right to participate in said signature petition process. The petitioners also alleged that when the list of people who signed the petition to call for the referendum was made public, the right to vote by secret ballot, as provided for by Article 23.1 of the Convention, was infringed, in connection with Article 29.c of the same instrument, inasmuch as the political rights enshrined in the Convention must not be interpreted in such a way so as to exclude the right to participate in processes of referenda or, in those processes, to not respect secrecy of the expression of political will in order to guarantee the free expression of the will of the citizens.

33. The petitioners further claimed that pursuant to Article 23.1.c of the Convention, the alleged victims enjoy the right to "have access, under general conditions of equality, to the public service of their country" and that even though the exercise of that right may be regulated based on age, nationality, residence, language, education, legal or mental capacity, it may not be regulated based on political opinions or ideology. On this score, they alleged that excluding people from government jobs who do not share the official ideology of the government, fosters a system of political *apartheid* and makes exercising publically held rights subject to severe punishment.

34. With regard to Article 24 of the Convention, the arguments of the petitioners are focused on the violation of the alleged victims right to equal protection under the law as a consequence of the unilateral and early termination of their labor contract based on allegedly ideological reasons. In this regard, they assert that public employees, who were committed to the political project of the president of the Republic at the time, were able to freely express their opinions without being fired from the government, in contrast with the alleged victims.

35. As for the right to judicial protection (Article 25 of the Convention), the petitioners claimed that the authorities maintained that the complainants were serving in positions of trust and that, consequently, they could be removed at the discretion of their superiors. However, the petitioners note that the alleged victims did not hold positions of trust, inasmuch as: (i) the State had not complied with the provisions of Article 53 of the Law of the Public Service Statute, which sets forth that positions of trust must expressly be listed in the organic regulations of the entities of the civil service; (ii) the alleged victims were never invited to take part at high-level meetings; and (iii) all of them had served in the civil service on the National Border Council for more than two administrations, without being replaced due to the change in government. Based on this classification, the petitioners contended, the alleged victims did not have access to a simple and prompt remedy to provide relief to them from the decisions of the administration.

36. They also contended that "in the absence of the rule of law, in which independent and impartial tribunals operate, any remedy providing relief before the Venezuelan courts would have proven to be ineffective."

37. Concerning Article 26 of the Convention, the petitioners argued that the dismissal of the victims from their jobs was an infringement of their right to work, which is an economic and social right, and that even though the Convention does not explicitly flesh out the catalogue of economic and social rights, for this purpose it refers to the economic and social norms set forth in Article 45 of the OAS Charter, which establishes said right and, therefore, the facts of the instant case constitute a violation of the right to progressive development enshrined in the aforementioned article. In this same vein, the petitioners also alleged a violation of Article 29.b and 29.d of the Convention, being that these provisions prohibit interpreting the Convention in such a way so as to confine the enjoyment and exercise of any right that may be recognized in accordance with another convention to which the State involved is a party. As this pertains to the instant case, the right to work is enshrined in the International Covenant on Economic, Social and Cultural Rights and in the Protocol of San Salvador and both instruments have been signed and ratified by the Venezuelan State.

38. Additionally, the petitioners claimed that the facts at issue reflect a clear example of political discrimination, in violation of the principle of equality set forth in Article 1.1 of the Convention and the democratic principles upon which it is founded. Moreover, the petitioners noted that publishing the so-called "Tascón List" made those who signed the petition for the recall referendum be exposed to hatred and public scorn and the persons appearing on the list as signers became the targets of a variety of forms of retaliation, such as being prevented from gaining access to public facilities, termination of their labor contracts with the civil service, obstacles to obtaining identity cards, as well as publication of their names on signs at public office and being branded as "traitors to the nation."

39. The petitioners claimed that in the context of Article 26 of the Convention, the principle of equality and non-discrimination plays a fundamental role in safeguarding the human rights of workers. In the view of the petitioners, the State has the obligation to respect and ensure the labor-related human rights of all workers and not tolerate situations of discrimination to their detriment, both when the State is the employer as well as when a third party is involved. In this regard, they contended that the alleged victims were just three of thousands of people who lost their jobs in the civil service for signing the petition for a recall referendum.

40. In conclusion, the petitioners alleged that the State has violated Articles 5, 8, 13, 16, 23, 24, 25 and 26 of the American Convention, in connection with Articles 1.1, 2 and 29 of said instrument, to the detriment of Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña. Accordingly, they requested the IACHR to take the necessary measures to restore the infringed rights and other measures of reparation as deemed appropriate.

B. Position of the State

41. The State alleged that the petition is inadmissible on the grounds of failure to exhaust domestic remedies. It argued that the remedies used by the alleged victims were not the suitable. In this regard, it asserted that the special appeal for constitutional relief (*amparo constitucional*), within the Venezuelan domestic legal system, constitutes a prompt and effective tool for the restoration of infringed rights "*when no brief, summary and effective procedural means exists [that is] equivalent to constitutional protection."* In the judgment of the State, in the instant case, a expeditious, simple and effective remedy existed, which is capable of restoring the infringed legal right: a claim before the regular labor courts for unlawful dismissal.

42. In addressing the petition process to gather signatures for convening the recall referendum of the President of the Republic, the State explained that the process requires the signatures of at least twenty per cent of all voters, as set forth in Article 72 of the Constitution of that country. Accordingly, the CNE examined the signatures it had received and challenged some of them citing irregularities. According to the State, this is what led the CNE to create the database questioned by the petitioners, which was intended to be a citizens' instrument to help verify whether or not signatures had been fraudulently included in the petition.

43. The State explained that on March 2, 2004, the CNE issued rules to regulate the challenge process in order to verify the legitimacy of the signatures and that this process was to take place on April 20, 2004. The State contends that the signature verification day was actually held on June 27, 2004, and that because the signature of Rocío San Miguel was one of the ones that had been challenged for alleged irregularities, the labor contract of Rocío San Miguel could not have been decided on the

basis of a signature that took legal effect as of the time of the challenge, in other words, once the whole petition process on the presidential referendum had concluded.

44. By the account of the State, the process of rescission of contracts of the alleged victims was conducted with strict adherence to the law and respecting the principle of the will of the signatory parties to said contracts. According to the State, on December 31, 2003, the alleged victims signed a new contract with the National Border Council, which went into effect on January 1, until December 31, 2004. The State asserted that on March 12, 2004, the chairman of the National Border Council decided to terminate the contracts of Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña under the seventh clause of those contracts, which set forth:

> "'THE CONTRACTING PARTY' reserves the right to terminate the instant contract whenever it deems it fitting, after giving notice to 'THE CONTRACTED PARTY' served at least one month in advance. 'THE CONTRACTED PARTY' will also have the same right to dissolve the contract whenever she sees fit to do so, but she must also give notice to 'THE CONTRACTING PARTY' one month in advance."

45. The State noted that the petitioners alleged that as of March 20, 2004 "the charges of political discrimination began." However, the way the State understands it, because at that time, the contracts of the alleged victims had already been rescinded, there is no link of cause and effect between their taking part in the petition process and the termination of the contracts.

46. The State claimed that, as a consequence of the termination of the contract, the alleged victims filed on June 22, 2004, for constitutional relief via the *amparo* proceeding. The judge who heard the case ruled that she did not have jurisdiction and referred the case to the Constitutional Chamber of the TSJ, which declined jurisdiction and sent the case to the Fourth Trial Court. The State asserted that on July 27, 2005, the *amparo* claim was found groundless on the merits of the matter and noted that the complainants appealed the decision, but on September 9, 2005, the Third Superior Trial Court upheld the original trial court decision.

47. The State contended that the alleged victims filed a complaint before the Office of the People's Ombudsman on May 27, 2004. It noted that on August 17, 2004, the Office of the People's Ombudsman issued an official certificate of closure of the proceeding for lack of sufficient evidence to establish that there was a violation of the human rights of the complainants. The State further noted that the alleged victims never went to the CNE to lay out their case so that this agency could determine whether there had been a violation of their political rights.

48. The State claimed that on July 6, 2004, the alleged victims filed a complaint with the Office of the Public Prosecutor, but on January 1, 2005, the Office of the Thirty-Seventh Prosecuting Attorney of the Office of the Public Prosecutor with Full Jurisdiction nationwide moved for the dismissal of the case on the grounds that it was not of a criminal nature. Said decision was upheld at the appeals level. The State also noted that the alleged victims filed a direct appeal to the highest court of review (*casación*), but it was also denied by the Criminal Appeals Chamber of the TSJ, because it was deemed "manifestly groundless."

49. As for the violation of the right to humane treatment (Article 5 of the Convention) alleged by the petitioners, the State contended that applying a clause of a contract can hardly be viewed as "cruel" treatment. The State also asserted that the complainants were unsuccessful at proving that they had been threatened, and noted that because the relevant labor law, that was applicable to the alleged victims was the Organic Labor Law rather than the Law of the Public Service Statute, they were eligible to apply for civil service positions through a competitive process.

50. The State asserted with regard to the charge of violation of the fair trial rights enshrined in Article 8 of the American Convention that the alleged victims were not the target of administrative sanctions, but of the application of a contractual clause that granted the power to the employer, as well as to the employee, to terminate the labor relationship simply by giving notice to cease their activities, without cause. In this regard, the State considered that the complainants were not "removed from office" ('*destituido'* a term reserved for public officials) but rather the legal provision that was applicable to them was the terms of their respective contracts and, supplementarily, the Organic Labor Law, which provides for the payment of certain amounts of money to cover the time that the dismissed employee is engaged in securing new employment. The State claimed that the amounts of money that the alleged victims were entitled to under the law were made available to them. Furthermore, the State asserted that the Law does not prescribe any procedure prior to terminating a contract and it was not necessary to give cause for the acts of dismissal. In this regard, it noted that the alleged victims were not public officials, as defined by the Constitution and the Public Service Statute.

51. The State went on to review some of the proceedings for constitutional relief through *amparo constitucional* that were brought by the alleged victims, and found that no errors of any kind were committed in hearing those cases and that, in every instance, it was up to the alleged victims to file the appropriate motions at the first opportunity in the procedure.

52. The State contended that the alleged victims wrongly filed a criminal complaint with the Office of the Public Prosecutor on May 27, 2004. On this issue, it argued that the complainants "intend to confuse the IACHR with the filing of non suitable remedies for the restoration of their allegedly violated right, without distinguishing between [on the one hand] the criminal responsibility that civil servants have as a consequence of their duties and of the public property they are in charge of, and, on the other hand, the consequences and obligations arising from termination of a labor relationship, which is settled in the labor rather than the criminal courts." To the State, it is obvious that, based on each response provided by the public institutions, it has not violated the human rights of the alleged victims.

53. As for the alleged violation of the right to freedom of expression (Article 13 of the Convention), as asserted by the petitioners, the State reiterates that the rescission of the contracts of the alleged victims was not a punishment, but rather involved the simple application of a contractual clause pursuant to the law. The State stressed that no court proceedings were brought against the complainants for issuing statements of a political nature, nor has the media been sanctioned or censured for being a vehicle of expression of citizens who supported the petition for the recall referendum.

54. Likewise, according to the Venezuelan State, there was no violation of the right to freedom of association (Article 16 of the Convention), because the exercise of that right on a subject of such great national consequence as a referendum on a presidential recall, must be duly regulated. In support of this claim, the State argued that on September 25, 2003, the CNE issued the "Guidelines Regulating Processes of Recall Referenda of the Terms in Office of Popularly Elected Positions," which ensures compliance of the State with the obligation to the democratic exercise of the will of the people. The State asserted that several different referenda processes carried out in Venezuela are of public knowledge and are widely known internationally, in which the participation of the citizenry, the CNE and the authorities of the State was evident.

55. With regard to the violation of the right to participate in government (Article 23 of the Convention), as alleged by the petitioners, the State contended that this right was not violated. According to the State, the complainants did not provide adequate and legally sound evidence to prove that they were the targets of political pressure to not exercise their political rights. In this regard, they contended that the rescission of a labor contract is not regarded in Venezuelan law as a sanction. They further asserted that the complainants can hardly contend that the State has infringed 'their right to have equal access to public service,' since as can be surmised from the very complaint filed by them, the settlement of a labor contract dispute was involved, in which the alleged victims lacked the status of public officials. It argued that there is nothing on record to prove that these citizens have ever taken part in a competitive process to apply for positions in the civil service and, therefore, the State could not have violated a right that has not been exercised by the complainants.

56. Concerning the violation of the right to equal protection enshrined in Article 24 of the Convention, as alleged by the petitioners, the State contended that the complainants can not allege the job security in public employment enjoyed by public officials, inasmuch as according to the State, the alleged victims were workers whose working conditions were regulated under the Organic Labor Law and it further explained that the status of public servant emanates from the legal designation in the Law of the Public Service Statute. The State argued that the alleged victims were aware of this situation and that for this reason the *amparo* proceeding brought by them for constitutional relief was filed before a labor court and not before the administrative court for matters of public servants, which would be in charge settling disputes pertaining to public officials.

57. As for the violation of the right to judicial protection (Article 25 of the Convention) alleged by the petitioners, the State argued that the fact that the *amparo* claim for constitutional relief was found groundless did not mean that there has been a violation of the provisions of the Convention, because despite the existence of the ordinary labor procedure before the labor courts, the *amparo* claim, an action of a special nature, was admitted and processed in keeping with the law. According to the State, the judge who heard the case, based on the standard of free and reasoned judgment (*sana crítica*) examined the evidence introduced by the parties and ruled pursuant to the law. Additionally, the State believed that the alleged victims had a suitable remedy available to them in the labor courts, but they chose to pursue the least suitable remedy of the *amparo* claim for constitutional relief as a mechanism to gain access "baselessly to international institutions of justice in the area of Human Rights."

58. The State also believed that it had not transgressed Article 26 of the Convention, inasmuch as Venezuelan law sets forth criteria to provide monetary reparation to workers when they are dismissed, as well as payment of unemployment benefits as provided by the Organic Labor Law. The State considered the termination of the labor relationship to have taken place under a contractual clause that allowed it, and that it does not entail a violation of the workers' rights or an abridgment of the guarantees protecting them, because it is not an obligation of the employer to maintain a life-long labor relationship with the employee. The State also underscored that contrary to the claim of the petitioners, the Protocol of San Salvador has not been ratified by it and, therefore, it is not in force as required by the nation's Constitution. The State clarified that even though it has not ratified said treaty, Venezuela has fulfilled all of the obligations set forth therein and highlighted that the Venezuelan legal system has in reality developed precisely in such a way as to favor the rights of workers.

59. In addressing the alleged violations of Article 1.1 of the Convention, the State reiterated that the alleged victims were not discriminated against for political reasons or any reasons of another nature, but that they simply did not have the status of public officials and were subject to the Organic Labor Law. In this regard, it emphasized that the termination of the labor relationship under the contractual termination clause cannot be viewed as discriminatory. The State also believed that the "signature database was of an unofficial nature and the National Electoral Council did not announce the valid signatures and those that were subject to challenge until April 20, 2004," and therefore, there cannot be a direct link between signing and termination from their jobs.

60. Based on the foregoing arguments, the Venezuelan State requests that the petition be found inadmissible on the grounds that it does not fulfill the requirements of Article 46.1.a and c and 47.b of the American Convention, and the exceptions set forth in Article 46.2 of the same instrument do not apply. The Venezuelan State also requests that it not be found responsible for the alleged violation of the rights enshrined in the American Convention.

III. LEGAL ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

61. The petitioners are entitled under Article 44 of the Convention to lodge complaints before the Commission. The alleged victims are individuals, who were under the jurisdiction of the Venezuelan State at the time of the facts alleged in the petition. Moreover, Venezuela ratified the American Convention on August 9, 1977, when it deposited the instrument of ratification thereof. Consequently, the Commission is competent *ratione personae* to entertain the petition.

62. The Commission is competent *ratione loci* to examine the petition, inasmuch as violations of rights protected by the American Convention are alleged therein to have taken place within the territory of a State Party to the treaty. The IACHR is competent *ratione temporis,* because the obligations to respect and ensure the rights protected in the American Convention were in force on the State at the time when the supposed violations of the rights alleged in the petition occurred.

63. The Commission is also competent *ratione materiae* being that the petition charges potential violations of human rights protected under the American Convention. Furthermore, the Commission notes that in pleading potential violations of Article 26 of the Convention, the petitioners made reference to other international instruments, in connection with this article. Accordingly, and regarding the alleged violation of Article 45 of the OAS Charter, the Commission notes that Article 26 of the American Convention itself refers to the OAS Charter in order to give content to the rights protected therein.[4] Consequently, examination of a potential violation of this right would have to take into consideration the principles enshrined in the OAS Charter.

64. With respect to Article XIV (Right to work and to fair remuneration) of the American Declaration of the Rights and Duties of Man, the Commission recalls that the State undertook to preserve as a party to said Charter of the OAS, the rights set forth in the American Declaration, which is a source of international obligations.[5] The Commission notes that the State ratified the American Convention on August 9, 1977 and at the time of the facts of the instant petition said instrument was its main source of legal obligations.[6] In light of the foregoing, the Commission deems that the analysis on the merits of the instant case ought to focus on the provisions of the American Convention, though this does not preclude the use of the provisions of the Declaration as a source of interpretation thereof.

65. Regarding the alleged violation of Article 6 of the "Protocol of San Salvador" or Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, signed by the State on January 27, 1989 and currently pending ratification, in connection with Article 26 of the American Convention, the Commission notes that it is not competent *ratione materiae* to rule on instruments that have not been ratified by the State.[7] Notwithstanding, the Commission reiterates that under Article 29 of the American Convention, these provisions may be taken into account to determine the scope and content of the American Convention.[8]

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[4] IACHR. Report Nº 38/09. Case 12.670. Admissibility and Merits. National Association of Ex Employees of the Peruvian Social Security Institute et al. March 27, 2009. Par. 130.

[5] IA Court of HR. Interpretation of the American Declaration of the Rights and Duties of Man in the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10. Paras. 43 - 46.

[6] IA Court of HR. Interpretation of the American Declaration of the Rights and Duties of Man in the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10. Par. 46.

[7] The Commission notes that Article 19.6 of said treaty sets forth a limited clause of competence for the organs of the Inter-American system to be able to hear individual petitions pertaining to the rights enshrined in Articles 8 a) and 13. Consequently, the Commission would not be competent *ratione materiae* to rule on a potential violation of Article 6 of the Protocol of San Salvador. See: IACHR. Report Nº 38/09. Case 12.670. Admissibility and Merits. National Association of Ex Employees of the Peruvian Social Security Institute et al. March 27, 2009. Par. 69; IACHR. Report N° 86/06. Petition 499-04. Admissibility. Marino López et al (Operation Genesis). Colombia. October 21, 2006. Par. 41. IACHR. Report No. 76/09. Petition 1473-06. Admissibility. Community of La Oroya. Peru. August 5, 2009. Par. 54.

[8] IACHR. Report N° 86/06. Petition 499-04. Admissibility. Marino López et al (Operation Genesis). Colombia. October 21, 2006. Par. 41. IACHR. Report No. 76/09. Petition 1473-06. Admissibility. Community of La Oroya. Peru. August 5, 2009. Par. 54. Also see IACHR. Report Nº 38/09. Case 12.670. Admissibility and Merits. National Association of Ex Employees of the Peruvian Social Security Institute et al. March 27, 2009. Par. 70.

66. Lastly, with regard to potential violations of Article 6 of the International Covenant on Economic, Social and Cultural Rights, ratified by the State on May 10, 1978, the Commission notes that it is not an approved instrument within the regional sphere of the Inter-American system, notwithstanding, that does not preclude its use as a source of interpretation in examining the instant case, pursuant to Article 29 of the American Convention.[9]

B. Other Admissibility Requirements

1. Exhaustion of Domestic Remedies

67. In order for the IACHR to admit a petition, the requirement of prior exhaustion of available domestic remedies, as prescribed in Article 46.1.a of the American Convention, must be met in accordance with generally recognized principles of international law.

68. In the instant case, the Venezuelan State alleged that the petition at issue does not satisfy this requirement and, therefore, must be found inadmissible. In this regard, the State contended that the alleged victims chose to pursue the *amparo* remedy for constitutional relief (*amparo constitucional*), which it claimed is not suitable for the protection of their rights. It further explained that the *amparo constitucional* remedy, within the Venezuelan legal system, is a prompt and effective tool for the restoration of the infringed constitutional rights "*when no brief, summary and effective procedural means exists [that is] equivalent to constitutional protection*." In the opinion of the State, in the case at hand, an expeditious, simple and effective remedy that is capable of restoring the infringed legal right did exist: a claim for unwarranted dismissal before the trial-level labor courts.

69. The petitioners, however, claimed to have exhausted domestic remedies. In support of this, they cite the complaint filed with the Office of the People's Ombudsman on May 27, 2004, which was closed on August 17 that same year, and the criminal complaint that culminated in a decision to dismiss, which was upheld in an appeal to the TSJ. The petitioners also claimed that on July 22, 2004 they filed for constitutional relief through the *amparo constitucional* with the labor courts, which was denied on September 9, 2005. The petitioners considered this remedy as suitable, according to Venezuelan legislation in force at the time, in order to demand the enjoyment and exercise of constitutional rights and guarantees.

70. In this particular case, the IACHR must establish whether remedies pursued by the alleged victims in the domestic courts were suitable, as provided for under Article 46.1.a of the American Convention.

71. Both the Commission and the Inter-American Court of Human Rights have consistently held that the purpose of this requirement is to allow domestic authorities to take cognizance of the alleged violation of a protected right and, if appropriate, resolve the matter before it is heard in an international venue.[10]

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[9] IACHR. Report Nº 38/09. Case 12.670. Admissibility and Merits. National Association of Ex Employees of the Peruvian Social Security Institute et al. March 27, 2009. Paras. 68-70.

[10] See IACHR, Report No. 25/12 (Inadmissibility), Petition 700-04, Aurora Cortina González v. México, March 20, 2012. Par. 28.

72. Nonetheless, in keeping with the principle of effectiveness of the measures (*effet utile*), the Inter-American Court has established that not all available remedies in the State must be exhausted in order to satisfy the rule.[11] Thus, only remedies that are available and adequate, that is, suitable for the protection of the violated legal situation, must be exhausted. Likewise, the requirement of exhaustion of domestic remedies does not mean that the alleged victims have the obligation to exhaust all the remedies available to them that may be adequate.[12] The IACHR has held on other occasions[13] that if the alleged victim lodges a case with one of the valid and adequate alternatives in the domestic jurisdiction and the State had the opportunity of remedying the matter by internal means, the aim of the international norm would have been observed.

73. Similarly, the European Court of Human Rights has consistently held in its legal precedents that in order to satisfy the rule of prior exhaustion of domestic remedies "applicants must have made normal use of those domestic remedies which are likely to be effective and sufficient."[14] To this court, "When a remedy has been attempted, use of another remedy which has essentially the same objective is not required."[15]

74. Based on the case file of the *amparo constitucional* proceeding in the domestic courts, the alleged victims pursued said remedy to claim the violation of their constitutional rights to equal protection and non discrimination; to work and job stability; and to participation in government; all rights protected by the Constitution of the Bolivarian Republic of Venezuela.[16] As appears on record in the case file of the *amparo* proceeding, the alleged victims highlighted that the reason for which they were filing their complaint "was not the unwarranted dismissal, rather the unconstitutional conduct of the public administration, which by means of successive acts [...] culminated in violating the constitutional rights of the aggrieved workers."

75. The Commission notices that said remedy ended up in the Fourth Trial Court for Labor Matters. On July 27, 2005, the aforementioned court found the *amparo* claim admissible and concluded it was groundless on the merits.

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[11] IA Court of HR. *Case of Velásquez Rodríguez*. Judgment July 29, 1988. Series C No. 4, par. 64. See, also, ECHR, *Kudla v. Poland* [GC], no. 30210/96, October 26, 2000. Par. 152; and *Selmouni v. France*, no. 25803/94 July 28, 1999. Par. 74.

[12] See IACHR. Report Nº 70/04 Petition 667/01. Admissibility Jesús Manuel Naranjo Cárdenas et al (Pensioners of the Venezuelan Aviation Company VIASA) Venezuela. October 13, 2004**,** par. 52. Available at: http://www.cidh.oas.org/annualrep/2004sp/Venezuela.667.01.htm

[13] See IACHR, Report N° 40/08 (Admissibility), Petition 270-07, I.V. v. Bolivia, June 23, 2008. Par. 70. IACHR, Report N° 57/03 (Admissibility), Petition 12.337, Marcela Andrea Valdés Díaz v. Chile, October 10, 2003. Par. 40.

[14] See ECHR, *Moreira Barbosa v. Portugal*, no. 65681/01, April 29, 2004. Likewise, *Jelicic v. Bosnia and Herzegovina*, no. 41183/02, November 15 2005.

[15] See ECHR, *Moreira Barbosa v. Portugal*, no. 65681/01, April 29, 2004. The original text reads: *The Court reiterates in this connection that applicants must have made normal use of those domestic remedies which are likely to be effective and sufficient. When a remedy has been attempted, use of another remedy which has essentially the same objective is not required (see Wójcik v. Poland, no. 26757/95, Commission decision of 7 July 1997, Decisions and Reports 90, p. 24, and Günaydin v. Turkey (dec.), no. 27526/95, 25 April 2002).*

[16] Constitution of the Bolivarian Republic of Venezuela. Art. 19 and 21; Art. 70; Art. 87, 89 and 93, respectively.

76. According to the case file, this decision was appealed and on September 9, 2005, the Third Superior Circuit Court for Labor Matters of the Judicial District of the Metropolitan Area of Caracas denied the appeal and upheld the trial court judgment, thus exhausting any chance to appeal the judicial decision.

77. Based on the foregoing, the Commission notes that the constitutional *Amparo* remedy was actually found admissible by the domestic courts, pursuant to legislation in force in the State and its legal precedents, and these courts ruled on the merits of the claim. With regard to these facts, which are part of the evidence in the case file of the instant case, there is no dispute between the parties. Therefore, it is evident that the domestic courts accepted jurisdiction to hear the case and actually did so, recognizing their own suitability in order to protect the legal situation that was allegedly infringed.

78. In fact, Article 1 of the Organic Law of Amparo regarding Constitutional Rights and Guarantees establishes that: "*Any natural person inhabiting the Republic, or legal entity with a domicile in it [the Republic], may request before the competent Tribunals amparo relief provided for in Article 49 of the Constitution, for the enjoyment and exercise of the constitutional rights and guarantees, even those fundamental rights of the human person that do not expressly appear in the Constitution, for the purpose of the infringed legal situation, or the most similar situation to it, to be immediately restored*."[17]

79. While the Supreme Court of Justice of Venezuela has held that in the case of what is apparently an ordinary appeal, but that what is being pursued is fundamentally the protection of constitutional rights, *amparo* proceedings are in order as the suitable mechanism of defense. Along these same lines, it has stated that the *amparo* action may be brought immediately, "without the available procedural means or remedies having been exhausted," and that it [the *amparo* action] shall be in order "when it can be surmised from the circumstances of fact or law that surround the claim, that the use of ordinary procedural means are insufficient to restore the enjoyment of the infringed legal right."[18]

80. Based on the foregoing reasoning, the Commission finds that in the specific case, the constitutional *amparo* remedy pursued by the alleged victims fulfilled the reasonable requirements of admissibility established in domestic legislation and, as such, was capable of remedying the legal situation that was alleged to violate the constitutional rights of the victims. Accordingly, it can be regarded as an adequate and sufficient remedy for the purpose of determining compliance with the requirement of exhaustion of domestic remedies.[19] Regarding the possibility that the alleged victims had to file a suit for unwarranted dismissal before the labor courts, as was argued by the State, it must be reiterated that when more than one adequate remedy is available, the alleged victims need not exhaust but one of them, for the purposes of Article 46.1.a of the Convention.

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[17] Congress of the Republic of Venezuela. Organic Law of Amparo regarding Constitutional Rights and Guarantees. Official Gazette Nº 34.060 September 27, 1988.

[18] Bolivarian Republic of Venezuela. Constitutional Chamber of the Supreme Court of Justice. *Circuito Teatral de los Andes, CA*. v. Frist Trial Court for Civil and Commercial Matters of the Judicial District of the State of Merida. September 28, 2001. Pg. 4. Available at: http://www.tsj.gov.ve/decisiones/scon/Septiembre/1809-280901-00-2841.htm

[19] See IACHR, Report Nº 97/06. Petition 2611-02. Admissibility. José Gerson Revanales. Venezuela. October 23, 2006. Available at: http://www.cidh.oas.org/annualrep/2006sp/Venezuela2611.02sp.htm

81. Consequently, the Commission concludes that the alleged victims in the instant case did exhaust the adequate and effective remedy that was available to them to restore the infringed legal situation, thus fulfilling the provisions of Article 46.1.a of the American Convention and Article 31 of the Rules of Procedure of the Commission.[20]

2. Timeliness of the Petition before the Commission

82. Pursuant to Article 46.1.b of the American Convention, in order for a petition to be admitted, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment exhausting domestic remedies.

83. In fact, the complainants were notified of the decision of the Third Superior Circuit Court for Labor Matters of the Judicial District of the Metropolitan Area of Caracas on September 9, 2005, the date when the decision was published upholding the ruling on appeal of groundlessness of the *amparo* action pursued by the petitioners. Taking into consideration that the petition was filed on March 7, 2006, the Commission finds that the petition was lodged within the time period prescribed by Article 46.1.b of the Convention.

3. Duplication and Res Judicata

84. Article 46.1.c of the Convention establishes that admission of a petition is subject to the requirement that the matter "is not pending in another international proceeding for settlement" and Article 47.d of the Convention provides that the Commission shall not admit a petition that is "substantially the same as one previously studied by the Commission or by another international organization." In the instant case, the parties have not alleged, nor is there anything in the case file, that indicates any of said circumstances of inadmissibility.

4. Characterization of the alleged facts

85. For the purposes of admissibility, the Commission must decide whether the petition states facts that could tend to establish a violation, as provided in Article 47.b of the American Convention, whether the petition is "manifestly groundless" or it is "obviously out of order," according to subsection "c" of this article. The standard for evaluating these requirements is different from the one used to judge the merits of a complaint. The IACHR must undertake a *prima facie* evaluation to determine whether the complaint demonstrates an apparent or potential violation of a right protected by the American Convention, but not whether such a violation occurred. Such an evaluation is a summary review that does not prejudice or advance an opinion on the merits.

86. Neither the American Convention nor the Commission's Rules of Procedure require a petitioner to identify the specific rights alleged to have been violated by the State in the matter brought to the Commission, although the petitioners are free to do so. It is up to the Commission, based on the jurisprudence of the system, to determine in its admissibility reports which provisions of the relevant inter-American instruments are applicable; it may determine that those instruments were violated if the facts as alleged are proven based on sufficient evidence and information.

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[20] See IACHR. Report Nº 70/04- Petition 667/01. Admissibility. Jesús Manuel Naranjo Cárdenas et al (Pensioners of the Venezuelan Aviation Company VIASA) Venezuela. October 13, 2004**. Available at**: http://www.cidh.oas.org/annualrep/2004sp/Venezuela.667.01.htm

87. The petitioners claimed that the alleged victims Magally Chang Girón, Rocío San Miguel Sosa and Thais Coromoto Peña were notified of the unilateral and early termination of their labor contract with an entity of the State, after signing a petition for a recall referendum on the term in office of the then President of the Republic and refusing to remove their signature from said petition. They contended that the dismissal occurred after the list of names and personal information of those who signed was made public at the request of the government, in a context of threats and retaliation against those appearing on the aforementioned list. They further noted that the alleged victims had worked for the State entity for 6, 7 and 9 years, respectively, and that out of all the employees attached to the same entity with an identical work conditions to their own, only the contracts were rescinded of those who appeared on said list as having signed the petition and refused to withdraw their signature after being required by the authorities of the entity to do so.

88. The Commission infers that, should the facts described by the petitioners be true, it could constitute a violation of the rights enshrined in Articles 13, 23 and 24 of the American Convention, in connection with Articles 1.1 and 2 of the this instrument. In fact, if it is as claimed in the instant case a unilateral and early termination of a labor contract as retaliation for the decision of the alleged victims to sign a petition to hold a recall referendum on the term of office of the president, as provided for by the Constitution, there may have been a violation of the right to freedom of expression, to participate in government and equal protection of the alleged victims. If a violation of those rights is found, the IACHR will examine whether the alleged discriminatory treatment rises to the level of severity necessary to bring about state responsibility by virtue of article 5 of the Convention.

89. Additionally, the petitioners argued that the alleged victims were not heard by a tribunal which met the minimum requirements of independence and impartiality and heard their case in adherence to the principle of due process of the law for the restoration of their rights within a reasonable period of time. Should these facts be proven, the IACHR believes that they could tend to establish violations of the right to a fair trial and to judicial protection, enshrined in Articles 8 and 25 of the American Convention.

90. In light of these potential violations, the Commission must analyze State responsibility in fulfilling the obligations to respect and ensure rights and adopt such legislative or other measures as may be necessary for the exercise of the rights, as provided in Articles 1.1 and 2 of the American Convention. The Commission also finds that Articles 29 and 30 of the Convention must be used in this matter as a guideline in interpreting the obligations of the State under the Convention and to determine the scope of the restrictions allegedly put into place by the State.[21]

91. Nonetheless, Commission has also inferred that the petitioners have not submitted facts that would tend to establish, in this case, potential instances of cruel, inhuman and degrading treatment against the alleged victims, or that the right to freedom of association has been prejudiced and, therefore, the Commission finds the petition inadmissible as for the alleged violation of the right enshrined in Article 16 of the Convention. Likewise, the Commission understands that the facts alleged by the complainants do not reflect *prima facie* a violation of the progressive development of the right to work enshrined in Article 26 of the Convention.

[21] See IACHR. Report Nº 38/06. Petition 549-05. Admissibility. Mercedes Chocrón Chocrón. Venezuela. March 15, 2006. Par. 40.

92. In light of all of the foregoing, the Commission concludes that the petition is not "manifestly groundless" nor is it "obviously out of order," and accordingly, finds that the petitioners have successfully made a *prima facie* case to meet the requirements set forth under Article 47.b of the American Convention as to potential violations of Articles 5, 8, 13, 23, 24 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 of this instrument, as was laid out in detail above.

93. The Commission also concludes that based on the alleged facts, there are insufficient elements to indicate that, should they be proven, it would constitute a violation of Articles 16 and 26 of the American Convention and, therefore, the petition is inadmissible with regard to the alleged violation of these rights.

IV. CONCLUSIONS

94. The Commission concludes that it is competent to examine the claims brought by the petitioners as to the alleged violation of Articles 5, 8, 13, 23, 24 and 25 of the American Convention on Human Rights, in connection with Articles 1.1 and 2 of this instrument.

95. Additionally, it concludes that it must find inadmissible the claims regarding the alleged violation of Article 16 and 26 of the American Convention.

96. Based on the foregoing arguments of fact and law and without prejudice to consideration on the merits of the matter:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find admissible the claims of Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña, with respect to Articles 5, 8, 13, 23, 24 and 25 of the American Convention, in connection with Articles 1.1 and 2 of this instrument.

2. To find inadmissible the instant petition as to Articles 16 and 26 of the American Convention.

3. Notify the State and the petitioners of this decision.

4. Proceed to analysis of the merits of the matter.

5. Publish this report and include it in the Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 11 day of July 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President; Felipe González, Dinah Shelton, Rodrigo Escobar Gil, Rose-Marie Antoine, Commissioners.