Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Juan Carlos Apitz Barbera, Ana María Ruggeri Cova and Perkins Rocha Contreras v. Venezuela
Alt. Title/Style of Cause:	First Court of Administrative Disputes v. Venezuela
Doc. Type:	Judgement (Preliminary Objections, Merits, Reparations and Costs)
Decided by:	President: Cecilia Medina Quiroga; Judges: Sergio Garcia Ramirez; Manuel E. Ventura Robles; Leonardo A. Franco; Margarette May Macaulay; Rhadys Abreu Blondet
	On January 28, 2008, Judge Diego Garcia Sayan, a Peruvian national, disqualified himself from hearing this case "in the best interest of the Court." He stated that he is a "member of the Comisión Andina de Juristas (Andean Commission of Jurists) and that he holds an "executive office with said organization." He considered that "[w]hile the specific functions of his office are not directly connected with institutional communication or consideration of substantive issues, […] it would be adequate to disqualify himself from hearing the case in order to prevent the perception of the Court as an impartial and independent body from being affected." The President of the Court concluded that Judge Garcia Sayan had not participated in any way in the instant case and that he had refrained from expressing, either publicly, privately, or to the parties hereto his views on this controversy, its foundations, or details and possible solutions. However, the President, after consulting the other members and pursuant to Article 19(2) of the Rules of Procedure of the Court, found it reasonable to address and in turn grant the disqualification petition of Judge Garcia Sayan as a means to "prevent the perception of the Court as an impartial and independent body from being affected." Judge Garcia Sayan's disqualification and the President's decision were notified to the parties on January 29, 2008.
Dated:	5 August 2008
Citation:	Apitz Barbera v. Venezuela, Judgement (IACtHR, 5 Aug. 2008)
Represented by:	APPLICANT: Hector Faundez Ledesma
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In the case of Apitz Barbera et al.

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29, 31, 53(2), 55, 56 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers the following Judgment.

I. INTRODUCTION OF THE CASE AND SUBJECT OF THE DISPUTE

1. On November 29, 2006, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed, pursuant to Articles 51 and 61 of the Convention, an application against the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela"), which originated this case. The first application was filed before the Commission on April 6, 2004. On March 8, 2005, the Commission delivered Report No. 24/05, whereby it declared the case admissible. Later, on July 20, 2006, the Commission issued the Report on the Merits No. 64/06, pursuant to Article 50 of the Convention, containing recommendations for the State. Said report was notified to the State on August 14, 2006. Having concluded that Venezuela had failed to adopt its recommendations, the Commission decided to submit the instant case to the jurisdiction of the Court. The Commission appointed Paulo Sérgio Pinheiro, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates, and Ariel E. Dulitzky, Elizabeth Abi-Mershed, Débora Benchoam and Manuela Cuvi Rodríguez, as legal advisers.

2. The application is related to the removal from office of former judges of the Corte Primera de lo Contenciso Administrativo [First Court of Administrative Disputes] (hereinafter "the First Court") Ana María Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz Barbera on October 30, 2003, on the grounds that they had committed an inexcusable judicial error when they granted an amparo [protection of constitutional guarantees and rights] against an administrative act that had denied a request for protocolization of a land sale. The Commission asserted that the removal based on this error "is contrary to the principle of judicial independence and undermines the right of judges to decide freely in accordance with the law" and that they were removed "on the grounds that they had committed an alleged inexcusable judicial error when what existed was a reasonable and reasoned difference of possible legal interpretations concerning a particular procedural feature. This was a serious violation of their right to due process because of the lack of justification of the decision to remove them and their lack of access to any simple, swift, and effective recourse for obtaining a determination on the disciplinary measure to which they had been subjected." Moreover, the Commission stated that the First Court had adopted decisions "that had generated adverse reactions among senior officials of the executive branch" and that "the indicia as a whole" supported the inference that the body that ordered the removal was not independent and impartial and that such removal resulted from a "misuse of power" originating in the "cause-and-effect relationship between the statements of the President of the Republic and senior government officials concerning the decisions that went against government interests and the disciplinary investigation that was initiated and that culminated in the victims' removal."

3. In its application the Commission requested the Court to declare the State responsible for the violation of the rights enshrined in Articles 8 (right to a fair trial) and Article 25 (right to judicial protection) of the American Convention in conjunction with the duties established in Article 1(1) (obligation to respect rights) and Article 2 (obligation to adjust domestic legislation to human rights standards) thereof, to the detriment of the victims. Furthermore, it requested the Court to order certain measures of reparation.

4. On February 19, 2007, Mr. Héctor Faúndez Ledesma, representative of the alleged victims (hereinafter "the representative"), submitted a brief containing pleadings, motions and evidence (hereinafter "the brief containing pleadings and motions") under Article 23 of the Rules of Procedure. Apart from the issues addressed by the Commission, the representative affirmed, inter alia, that the body that ordered the removal "limite[d] itself to execute an express or implied order of the President of the Republic" and that "the First Court judges […] were removed on strictly political grounds to pave the way for government-friendly judges and the political ideology of the current Government." He also stated that the alleged victims "were submitted to an unprecedented procedure lacking all the guarantees of due process" and added that "such procedure is not the usual treatment conferred to other judges who have shown clear leanings toward the values of the political party now in office." The representative finally concluded that, besides the articles mentioned by the Commission, the State had violated the rights provided for in Article 23 (Right to Participate in Government), 24 (Right to Equal Protection) and "the rights deriving from the representative democracy as a form of government (Article 29(c) of the Convention) and the Inter-American Democratic Charter in connection with the provisions of Article 29(d) of the Convention," all in relation to the general obligations enshrined in Articles 1(1) and 2 thereof.

5. On April 23, 2007, the State submitted a brief containing a preliminary objection, an answer to the application and comments on the brief containing pleadings and motions (hereinafter the "answer to the application"). The State raised a preliminary objection based on the alleged failure to exhaust domestic remedies. On the other hand, the State pointed out that "the performance of the First Court […] had been highly questioned;" this being the reason why "it would be inaccurate to sustain that the petitioners had been removed for political reasons when the [removal of the judges] was based on the improper performance and negligence of the members of the First Court in public office." The State appointed Ms. Mayerling Rojas Villasmil as Agent [FN1] and Mr. Enrique Sánchez as Deputy Agent. [FN2]

[FN1] On January 10, 2007, the Ministerio del Poder Popular para las Relaciones Exteriores (Ministry of People's Power for Foreign Affairs) of Venezuela appointed Ms. Mayerling Rojas Villasmil as "Agent to represent the Venezuelan State." On April 20, 2007, Mr. Germán Saltrón Negretti, Agent for the State in charge of Human Rights issues arising before the Inter-American and International Systems, attached to the Ministry of People's Power for Foreign Affairs, notified that he had been appointed in such capacity in substitution for Ms. Rojas Villasmil and informed that Mr. Larry Devoe Márquez had been appointed Deputy Agent. On April 23, 2007, Ms. Rojas Villasmil, acting as "State Agent," filed an answer to the application. On April 25, 2007, Mr. Saltrón Negretti, also acting as "State Agent," filed a different answer to the application and, on April 27, 2007, "he ratif[ied that] the State [would] be represented by [himself], thus rendering the appointment of [Ms.] Mayerling Rojas Villasmil ineffective." On April 27, 2007, Mr. Jorge Valero, Viceministro para América del Norte y Asuntos Multilaterales (Vice-Minister for North America and Multilateral Affairs) of Venezuela stated that "the appointment of citizen Ms. Rojas Villasmil as State Agent [was] ratified." On May 4, 2007, Mr. Saltrón Negretti "ratif[ied that] the State [would] be represented by [himself], thus rendering the appointment of [Ms.] Mayerling Rojas Villasmil ineffective." Therefore, the Ministry of People's Power for Foreign Affairs of Venezuela was requested to state who the State Agent

actually was. In reply to said request, on May 10, 2007, Mr. Nicolás Maduro Moros, Minister of Popular Power for Foreign Affairs "ratif[ied] the appointment of citizen Mayerling Rojas Villasmil as State Agent for the [instant] case." Taking this last notice into consideration, the Court decided that Ms. Rojas Villasmil had been appointed State Agent in the instant case, and, therefore, the parties were informed that the briefs submitted by Mr. Germán Saltrón Negretti would not be processed.
[FN2] Cf. brief of the State of January 9, 2008, received on January 14, 2008 (File on the Merits, Book III, p. 698).
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6. Pursuant to Article 37(4) of the Rules of Procedure, on June 20 and 26, 2007, the Commission and the representative, respectively, submitted their written arguments related to the preliminary objection raised by the State.

II. PROCEEDINGS BEFORE THE COURT

7. The application of the Commission was notified to the State on December 27, 2006 [FN3] and to the representative on December 26, 2006. During the proceedings before this Court, in addition to the main briefs submitted by the parties (supra paras. 1, 4, and 5), the President of the Court [FN4] (hereinafter "the President") ordered the incorporation of sworn declarations (affidavits) of some witnesses and five expert witnesses proposed by the Commission, the representative, and the State. The parties were given the opportunity to submit comments on these statements and declarations. Finally, the President convened the parties to a public hearing to receive the declarations of two alleged victims proposed by the Commission and the representative, two witnesses proposed by the State and an expert witness proposed by the representative, as well as the parties' final oral arguments regarding the preliminary objection, the merits, and the possible reparations and costs. The public hearing in the instant case was held on January 31 and February 1, 2008 during the seventy-eighth regular session of the Court in the city of San José, Costa Rica. [FN5]

[FN3] On December 22, 2006, the State was informed of the right to appoint a judge ad hoc for the instant case. On January 19, 2007, the State requested an extension to make the appointment. A non-renewable extension was granted until February 5, 2007. On February 5, 2007, the Inter-American Commission stated that "the appointment of a judge ad hoc is only viable when a state files a petition against another state." On March 27, 2007, 44 days after the expiration of the extension, the State appointed Mr. Juan Vicente Ardilla Peñuela as judge ad hoc. On March 30, 2007, the Inter-American Commission requested the Court to consider that the State "ha[d] waived its right to appoint a judge ad hoc." The Court rejected the appointment made by the State for having been made beyond the scheduled term.
[FN4] Order of the President of the Inter-American Court of November 29, 2007.
[FN5] The hearing was attended by: a) for the Inter-American Commission: Paulo Sérgio Pinheiro, Commissioner; Elizabeth Abi-Mershed, Deputy Secretary; Débora Benchoam and Manuela Cuvi Rodríguez, legal advisers; b) on behalf of the alleged victims: Héctor Faúndez Ledesma; and c) for the State: Mayerling Rojas Villasmil, Agent; Enrique Sánchez, Deputy Agent; Gonzalo González Vizcaya, Jesús Cabrera and Herly Peña Escalona.

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8. On January 22, 2008, the Court received an amicus curiae brief filed by the International Commission of Jurists and the Due Process of Law Foundation.

9. On March 3, 2008, March 4, 2008, and March 10, 2008, the State, the representative, and the Commission submitted, respectively, their final written arguments.

10. On June 25, 2008, the State and the representative were requested to submit specific evidence to facilitate the adjudication of the case, [FN6] which was submitted on July 1, 2008, by the representative, and on July 4, 2008, by the State.

[FN6] The Court requested a copy of the "appeal for annulment" which, according to the representative, had been lodged on December 4, 2003 by Luisa Estella Morales, and a copy of the order of November 1, 2005, delivered by the Sala Político Administrativa del Tribunal Supremo de Justicia [Chamber for Political and Administrative Matters of the Supreme Tribunal of Justice], whereby, according to the representative, the motion was adjudged.

III. EVIDENCE

11. Based on the provisions of Articles 44 and 45 of the Rules of Procedure, as well as the Court's prior decisions regarding evidence and its assessment, [FN7] the Court will proceed to examine and assess the documentary evidence submitted by the parties at the different procedural stages. It will also examine and assess the testimonies and expert opinions provided by affidavit or before the Court in the public hearing. To that effect, the Court shall abide by the principles of sound criticism, within the corresponding legal framework. [FN8]

[FN7] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 25, 2001. Series C No. 76, para. 50, and Case of Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, paras. 183 and 184.

[FN8] Cf. Case of Nogueira Carvalho et al. v. Brazil, Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161, para. 55; Case of La Cantuta v. Peru, Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 59, and Case of Kimel v. Argentina. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177, para. 29.

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1. Documentary, testimonial, and expert evidence

12. The Court received the testimonies by affidavit provided by the following witnesses and expert witnesses: [FN9]

a) Ana María Ruggeri Cova, alleged victim and witness proposed by the Commission and the representative. She testified, inter alia, about the events surrounding her removal as First Court Judge, and the alleged damage suffered as a result of said removal.
b) Jacqueline Ardizzone M. de Apitz, witness proposed by the representative. She testified, inter alia, about how the removal affected the health, as well as the social and family relations of her husband, Juan Carlos Apitz.
c) María Costanza Cipriani de Rocha, witness proposed by the representative. She testified, inter alia, about how the removal affected the health, as well as the social and family relations of her husband, Perkins Rocha Contreras.
d) Sofía Yamile Guzmán, Clerk of the Sala Político Administrativa del Tribunal Supremo de Justicia [Chamber for Political and Administrative Matters of the Supreme Tribunal of Justice]. Witness proposed by the State. She testified, inter alia, about the duration of the proceedings pending before the Chamber for Political and Administrative Matters of the Supreme Tribunal of Justice and the stages of said proceedings.
e) José Leonardo Requena Cabello, Clerk of the Sala Constitucional del Tribunal Supremo de Justicia [Chamber for Constitutional Matters of the Supreme Tribunal of Justice]. Witness proposed by the State. He testified, inter alia, about the duration of the proceedings pending before the Chamber for Political and Administrative Matters of the STJ and the stages of said proceedings.
f) Alexis José Crespo Daza, Judge of the Corte Segunda de lo Contencioso Administrativo [Second Court of Administrative Disputes]. Witness proposed by the State. He testified, inter alia, about his relation to the case of the alleged victims and his incorporation to the Judiciary as Second Court Judge.
g) Param Cumaraswamy, United Nations Special Rapporteur of the Commission on Human Rights on the Independence of Judges and Lawyers (between 1994 and 2003). Expert witness proposed by the Commission. He testified, inter alia, about the guarantees that a state must afford judges under the rule of law to secure their independence and the separation of powers, how those guarantees should be understood in relation to provisional judges, and the rules governing appointment and removal of judges.
h) Jesús María Casal Hernández, lawyer and legis doctor. Expert witness proposed by the Commission. He informed, inter alia, on the Venezuelan domestic law governing the Judiciary, the alleged lack of guarantees to secure the independence of the Judiciary and the separation of powers, how those guarantees should be understood in relation to provisional judges, and the rules governing appointment and removal of judges in Venezuela.
i) Román Duque Corredor, former Judge of the Chamber for Political and Administrative Matters of the STJ. Expert witness proposed by the Commission. He informed, inter alia, on the Venezuelan domestic law governing the functions of the Judiciary, the error of law as grounds for disciplinary sanction, the alleged lack of guarantees to secure the independence of the Judiciary and the separation of powers, how those guarantees should be understood in relation to provisional judges, and the rules governing appointment and removal of judges in Venezuela.
j) Edgar José López Albujas, journalist specialized in judicial affairs. Informative deponent proposed by the representative. He referred, inter alia, to the events surrounding the removal of the First Court judges.
k) Alberto ArteagaSánchez, professor of Criminal Law. Informative deponent proposed by the representative. He referred, inter alia, to the detention of chauffeur Alfredo Romero, the entry

and search of the seat of the First Court, and the alleged accusations made by political officers through the radio and the television against the First Court judges.

[FN9] As regards the testimony of Waleed Malik, witness proposed by the State and required under Order of the President (supra note 4), on January 28, 2008, the State filed a Communication issued by the World Bank affirming that "considering that Mr. Malik gained expertise in the Venezuelan judicial system in the performance of his official duties, and that the information he possesses is therefore archived in the files of the [World] Bank, unfortunately he will not be able to testify about the Venezuelan judicial system before the Court." Furthermore, on January 25, 2008, the representative waived the testimony of Mr. Alfredo Romero, which had been requested in the above-mentioned Order "so as to avoid any work-related problem," given that Mr. Romero "is still employed by the Judiciary."

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13. The Court notes that the representative stated that "Venezuelan notaries working for the Ministry of Foreign Affairs and Justice refused to receive and certify the testimonies of María Constanza Cipriani Rondón, […] Edgar López, Jesús María Casal, and Alberto Arteaga Sánchez, which could only be certified by the Consul of Costa Rica in Caracas." The State did not contest the foregoing.

14. To this respect, the Court regrets the attitude of those notaries that refused to receive said testimonies, especially due to the fact that they exercise a public service with which they are required to comply without discrimination, all the more when considering that their work affects the proceedings before this Tribunal. Furthermore, the Court recalls that, according to Article 24(1) of the Rules of Procedure, the States Parties to a case have a duty to "facilitate compliance with summonses by persons who either reside or are present within the territory." The persons mentioned by the representative in the previous paragraph were summoned by the President of the Court to render testimony before a notary public and the State must secure, in compliance with the principle of good faith governing the execution of treaty obligations, [FN10] that no obstacles hinder the collection of evidence.

[FN10] The Permanent Court of Arbitration concluded that "[e]very State has to execute the obligations incurred by treaty bona fide, and is urged thereto by the ordinary sanctions of international law in regard to observance of treaty obligations." Cf. Reports of International Arbitral Awards, The North Atlantic Coast Fisheries (Great Britain, United States), September 7, 1910, Volume XI, pp. 167-226, p. 186.

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15. As regards the evidence rendered during the public hearing, the Court heard the testimonies of the following persons: [FN11]

a) Juan Carlos Apitz Barbera, alleged victim and witness proposed by the Commission and the representative. He testified, inter alia, about the events surrounding his removal as First Court

Judge, the removal process, the domestic resources used in the process, and the way in which these resources affected his physical and mental health and his social and family relations.
b) Perkins Rocha Contreras, alleged victim and witness proposed by the Commission and the representative. He testified, inter alia, about the events surrounding his removal as First Court Judge, the removal process, the domestic recourses used in the process, and the way in which these facts allegedly affected his physical and mental health and his social and family relations.
c) Servio Tulio León Briceño, Inspector General of Courts at the time of the events in the instant case. Witness proposed by the State. He testified, inter alia, about the legal nature of the Inspectoría General de Tribunales [Inspectorate General of Courts] and the way in which the disciplinary proceedings were instituted against the alleged victims.
d) Damián Adolfo Nieto Carrillo, member of the Comisión de Funcionamiento y Reestructuración del Sistema Judicial [Commission for Operating and Restructuring the Judicial System]. Informative deponent proposed by the State. He testified, inter alia, about the judicial disciplinary system in force in Venezuela and the measures adopted to secure the independence of the Judiciary.

[FN11] Witness Beltrán Haddad, subpoenaed under an order of the Court (supra note 4), failed to attend the public hearing in the instant case. To that respect, on January 28, 2008 the State requested the Court "not to hold the State liable […] taking into account the failure of the witness to appear to testify […] on grounds until now unknown, for this sudden attitude prevents the Court from hearing a reasonable explanation."
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2. Evidence assessment

16. In the instant case, as in others, [FN12] the Court admits and recognizes the evidentiary value of the documents submitted by the parties at the appropriate procedural stage, which have neither been disputed nor challenged, and whose authenticity has not been questioned. In relation to the documents forwarded as evidence to facilitate the adjudication of the case (supra para. 10) the Court admits them into the body of evidence of the instant case, pursuant to the provisions of Article 45(2) of the Rules of Procedure.

[FN12] Cf. Case of Velásquez-Rodríguez v. Honduras. Merits. Judgment of July 29, 1998. Series C No. 4, para. 140; Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 41; Case of Kimel, supra note 8, para. 32; Case of Salvador Chiriboga v. Ecuador. Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, para. 22, and Case of Yvon Neptune v. Haiti. Merits, Reparations and Costs. Judgment of May 6, 2008, paras. 29 and 30.
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17. The Court notes that several documents mentioned by the parties in their respective briefs have not been submitted to the Court. [FN13] Some such documents were made accessible by the parties through provided weblinks. Other documents, issued by different public institutions of the State, were only cited, but the Court was able to locate them via the Internet. According to

this Court's case law, the parties have a duty to attach to their respective main briefs all the documentation that they wish to submit as evidence, so that the Court and the other parties can learn from those documents immediately. [FN14] Nonetheless, the Court considers that, in the instant case, said documents were filed in a timely fashion and that while the parties had the opportunity to challenge them, they failed to do so. Therefore, said documents are admitted as evidence and hereby incorporated into the case, given that neither the legal certainty nor the procedural balance has been impaired.

[FN13] Documents mentioned by the Inter-American Commission: judgment No. 465 of March 22, 2001 issued by the CPAM of the STJ; judgment No. 01285 of August 20, 2003 issued by the CPAM of the STJ; judgment No. 01662 of October 28, 2003 issued by the CPAM of the STJ; judgment No. 00331 of April 14, 2004 issued by the CPAM of the STJ; judgment No. 01771 of October 14, 2004 issued by the CPAM of the STJ; judgment No. 1057 of June 1, 2005 issued by the CPAM of the STJ; judgment No. 3321 of November 3, 2005 issued by the Chamber for Constitutional Matters of the Supreme Tribunal of Justice; judgment No. 1048 of May 18, 2006 issued by the CPAM of the STJ; judgment No. 1764 of August 15, 2007, issued by the CPAM of the STJ;, and statements made by the President of the Republic Hugo Chávez Frías on October 26, 2003 on Government Online, Aló Presidente No. 169. Documents mentioned by the representative: newspaper article entitled "TSJ otorgó la titularidad a 164 jueces 'bolivarianos'," ["STJ grants tenure to 164 'bolivarian' judges'"] published on December 21, 2005, in El Universal; speech of Justice José M. Delgado-Ocando, Justice of the CPAM of the STJ; during the 2001 Opening Session on January 11, 2001.
[FN14] Cf. Case of Escué-Zapata v. Colombia. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 26.
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18. Regarding the press documents submitted by the parties, the Court notes that some of them are dateless. [FN15] However, as the parties have not challenged them on this ground or questioned their authenticity, they may be assessed when they refer to public and notorious facts or statements made by State officials, or when they corroborate aspects related to the case. [FN16]

[FN15] Cf. newspaper articles entitled: "Los Polémicos Fallos," ["Controversial Rulings"], published in El Universal (Evidence file, Book IV, Annex C, p. 1261); "Gobierno desconoce la decisión judicial de reemplazar a los médicos cubanos," ["Government disregards court decision to replace Cuban doctors"], published in El Nacional (Evidence file, Book, IV, Annex C, p. 1242); "Rangel Avalos desacatará decisión de tribunales" ["Rangel Avalos to disobey court decision"], published in El Universal (Evidence file, Book IV, Annex C, p. 1257); "Rangel Avalos reitera desacato a decisión de Corte" ["Rangel Avalos confirms disobedience of Court order"], published in El Universal (Evidence file, Book IV, Annex C, p. 1258); "Magistrados esperan frutos del pacto entre el MVR, AD, y el MAS," ["Magistrates expect results of MVR-AD-MAS pact"], published in El Universal (Evidence file, Book IV, Annex C, p. 1275); "Inspectores no hallaron irregularidades en la Corte Primera," ["Inspectors fail to find irregularities at the First Court"], published in El Nacional (Evidence file, Book IV, Annex C, p.

1244), and "Los cuestionamientos de José Vicente y Freddy Bernal," ["The challenges posed by José Vicente and Freddy Bernal"], published in El Universal (Evidence file, Book IV, Annex C, p. 1251).
[FN16] Cf. Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 86; Case of Nogueira de Carvalho et al., supra note 8, para. 65; Case of La Cantuta, supra note 8, para. 65, and Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 59.
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19. Furthermore, the Court admits the documents submitted by the State and the representative during the public hearing, for they are considered useful to adjudicate this case, have not been challenged, and their authenticity and accuracy have not been questioned.

20. With respect to the testimonies and expert opinions rendered by witnesses and expert witnesses, the Court deems them relevant insofar as they comport with their respective subject of testimony established by the Order of the President (supra para. 7), and taking into account all the observations of the parties, [FN17] which will be analyzed in each respective chapter. The Court considers that the statements made by the victims cannot be assessed separately, but rather within the context of the remaining body of evidence in this case, since they have a direct interest in the outcome. [FN18]

[FN17] On January 30, 2008, the State submitted comments on the evidence furnished by the other parties (File on the Merits, Book III, pp. 1227 to 1236).
[FN18] Cf. Case of Loayza Tamayo v. Peru. Merits. Judgment of September 17, 1997. Series C No. 33, para. 43; Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. para. 40, and Case of Kimel, supra note 8, para. 35.

IV. PRELIMINARY OBJECTION (LACK OF EXHAUSTION OF DOMESTIC REMEDIES)

21. The State affirmed that "the alleged victims ha[d] not pursued and exhausted the remedies available under domestic law and, therefore, they act[ed] in disregard for procedural concerns." As regards Apitz and Rocha, the State asserted that they had not exhausted the domestic remedies as they had failed to raise a "recourse for review" against the Order of June 3, 2003, passed by the Chamber for Political and Administrative Matters (hereinafter "CPAM") of the Supreme Tribunal of Justice (hereinafter "STJ"). The State further noted that Apitz and Rocha failed to submit a "request for removal to a higher court" against the Order of April 18, 2007 delivered by the CPAM. The State highlighted that both recourses would have served as adequate resources to solve the dispute, and that the alleged victims "were fully acquainted with them, but failed to raise and exhaust them on personal grounds exclusively." Regarding Ruggeri, the State alleged that "contrary to her former colleagues, she failed to resort to domestic judicial remedies with the aim of enervating the effects of the ruling passed by the Commission for Operating and Restructuring the Judicial System (hereinafter "the CORJS")."

22. The Commission asserted that the State addressed the issue of exhaustion of domestic remedies on October 26, 2004, in its comments on the merits of the case, i.e., beyond the scheduled term. The Commission quoted its admissibility report when referring to the fact that the State "forfeited any objection to the failure to exhaust domestic remedies, since it did not raise such an objection at the earliest opportunity in the process, namely in its response to the petition that gave rise to the proceedings." It further noted that "given that the State has not submitted new evidence allowing the Court to deliver a new order," it requests the Court "to dismiss the preliminary objection […] insofar [… its] purpose is to have this [C]ourt review an issue that has been finally resolved" by the Commission.

23. The representative sustained, inter alia, that "the defendant State failed to timely assert before the Commission an alleged lack of exhaustion of domestic remedies, and failed to object to the admissibility petition filed before it," hence, its acts should be construed as a tacit forfeiture of its right to object to the failure to exhaust domestic remedies.

24. In the instant case, the Court verifies that the State has not submitted a preliminary objection of failure to exhaust domestic remedies during the proceeding before the Commission at the admissibility stage. The State forwarded this objection to the Commission through a brief filed during the merits stage. [FN19] Therefore, the Court concludes that the State tacitly waived its right to lodge this objection at the appropriate procedural time to do so.

[FN19] Cf. brief of the State of July 29, 2005, received by the Commission on August 1, 2005 (Evidence file, Book II, pp. 661 to 665).

V. COMPETENCE

25. Pursuant to the terms of Articles 62(3) of the Convention, the Court is competent to hear the instant case, because Venezuela has been a State Party to the Convention since August 9, 1977, and it accepted the contentious jurisdiction of the Court on June 24, 1981.

VI. ARTICLES 8 (RIGHT TO A FAIR TRIAL) [FN20] AND 25 (RIGHT TO JUDICIAL PROTECTION) [FN21] IN RELATION TO ARTICLES 1(1) (OBLIGATION TO RESPECT RIGHTS) [FN22] AND 2 (DOMESTIC LEGAL EFFECTS) [FN23] OF THE AMERICAN CONVENTION

[FN20] On this matter, Article 8 of the Convention provides:
Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
[FN21] On this matter, Article 25 of the Convention provides:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
[FN22] Article 1(1) of the Convention provides:
The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.
[FN23] Article 2 of the Convention provides:
Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.
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26. According to the evidence produced, the Court finds it has been proven that the judicial disciplinary body that removed from office Judges Apitz, Rocha and Ruggeri originated from a constitutional transition process which started in 1999, when an Asamblea Nacional Constituyente [National Constitutional Assembly] (hereinafter the "Constitutional Assembly") was assembled and, after declaring that an "institutional crisis" existed and that a "reorganization of all the government organs" was necessary, [FN24] adopted on December 15, 1999 the Constitución de la República Bolivariana de Venezuela [Constitution of the Bolivarian Republic of Venezuela] (hereinafter "the Constitution"). As far as the Judiciary was concerned, the Constitution provided for the establishment of disciplinary tribunals, the statutory framework of which would be found in the Código de Ética del Juez Venezolano o Jueza Venezolana [Venezuelan Code of Judicial Ethics] [FN25] (hereinafter "the Ethics Code"). Furthermore, in its transitory provisions the Constitution ordered that within one year of its installation, the National Assembly was to enact legislation regarding the Judicial system, and that "[u]ntil [an organic law on public defense] is passed, the CORJS shall be in charge of the development and effective functioning of the Sistema Autónomo de la Defensa Pública [Autonomous Public Defender System]." [FN26]

[FN24] Cf. decree whereby the reorganization of all the Government Organs is declared on August 12, 1999, issued by the Constitutional Assembly, published on August 13, 1999 in Official Gazette No. 36.764 (Evidence file, Book I, Annex A.2, p. 71).
[FN25] Cf. article 267 of the Constitution. Furthermore, the Constitution established that the Corte Suprema de Justicia [Supreme Court of Justice] was to be replaced by the STJ (Articles 253 and 262), and that entry into the judicial career was to be through public competitive selection processes (Article 255).
[FN26] Cf. fifth part of the fourth temporary provision of the Constitution.
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27. Two weeks after the new Constitution was adopted, the Constitutional Assembly issued a decree on the "Régimen de Transición del Poder Público" ["Transitional Scheme for Exercising Public Powers"], [FN27] under which the CORJS was set up. Such body was provisionally granted, among other powers, "the judicial disciplinary jurisdiction, which is the competence of disciplinary Tribunals, pursuant to Article 267 of the Constitution […] until the National Assembly enacts legislation establishing disciplinary procedures and tribunals." [FN28]

[FN27] Cf. decree whereby the Transitional Scheme for Exercising Public Powers is established of December 29, 1999, issued by the Constitutional Assembly, published on March 28, 2000 in Official Gazette No. 36.920 (Evidence file, Book I, Annex A.6, pp. 108 to 119).
[FN28] Cf. article 24 of the Decree whereby the Transitional Scheme for Exercising Public Powers is established, supra note 27.

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28. At the same time the CORJS was set up, the Inspectoría General de Tribunales [Inspectorate General of Courts] (hereinafter "the IGC"), was established as an "ancillary body to the CORJS […], to inspect and oversee the Courts of the Republic, and to gather evidence for the disciplinary proceedings against judges and other court officials." The IGC conducts the pertinent investigation and, if it deems disciplinary infringements to have been committed, it reports the case to the CORJS. [FN29]

[FN29] Cf. articles 29 to 33 of the Decree whereby the Transitional Scheme for Exercising Public Powers is established, supra note 27; articles 16 to 18 of the Rules of Procedure of the CORJS of March 28, 2000, published in Official Gazette No. 36.925 of April 4, 2000 (Evidence file, Book XII, pp. 4067 to 4069).

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29. The jurisdiction of the CORJS as the judicial disciplinary organ, and therefore that of the IGC as its ancillary body, was confirmed on August 2, 2000 by the STJ [FN30] and in the year 2004 by the Ley Orgánica del Tribunal Supremo de Justicia [STJ Organic Law], although such jurisdiction was always dependent on the creation of the disciplinary tribunals. [FN31] At the time this Judgment is delivered neither have the disciplinary tribunals been created nor the Ethics Code adopted, for which reason such provisional bodies are still exercising the aforementioned powers.

[FN30] Cf. Normativa sobre la Dirección, Gobierno y Administración del the Poder Judicial [Rules and Regulations for Directing, Governing and Managing the Judiciary] issued on August 2, 2000 by the STJ, published on August 15, 2000 in Official Gazette No. 37.014 (Evidence file, Book VI, Annex D, pp. 1385 to 1403).
[FN31] Cf. Ley Orgánica del Tribunal Supremo de Justicia [STJ Organic Law] of May 18, 2004, published on May 20, 2004, published on May 20, 2004 in Official Gazette No. 37.942 (File on the Merits, Book IV, pp. 1141 to 1146).

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30. The First Court was created by Article 184 of the Ley Orgánica de la Corte Suprema de Justicia [Supreme Court of Justice Organic Law] of July 30, 1976. [FN32] The First Court has jurisdiction, inter alia, to hear cases regarding the control of all administrative acts issued by all branches of government, except those issued by the President of the Republic and the Ministers thereof, [FN33] and the judgments it delivers may be appealed only before the STJ. [FN34]

[FN32] Cf. Ley Orgánica of the Corte Suprema de Justicia [Supreme Court of Justice Organic Law] of July 30, 1976, published on July 30, 1976 in Extraordinary Official Gazette No. 1.893 (Evidence file, Book I, Annex A.9, pp. 152 to 186).
[FN33] Cf. article 185 of the Supreme Court of Justice Organic Law, supra note 32, and declaration before a public notary (affidavit) by Mrs. Ana María Ruggeri on April 4, 2008 (File on the Merits, Book III, p. 725).
[FN34] Cf. article 185, part 8, paragraph 2 of the Supreme Court of Justice Organic Law, supra note 32.

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31. On September 12, 2000 the Plenary Chamber of the STJ appointed Ana María Ruggeri Cova, Evelyn Margarita Marrero Ortiz, Luisa Estela Morales, Juan Carlos Apitz Barbera and Perkins Rocha Contreras "to provisionally hold office as Judges of the First Court," [FN35] and such appointment was made "for the time until such offices are filled according to the outcome of the pertinent public competitive selection processes." [FN36]

[FN35] Cf. record of the session of the Plenary Chamber of September 12, 2000, issued by the STJ and published on November 20, 2000 in Official Gazette No. 37.081 (Evidence file, Book V, pp. 1339 and 1340).
[FN36] Cf. record of the swearing-in of the First Court Judges, issued by the Clerk of the STJ on September 15, 2000 (Evidence file, Book V, p. 1338).

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32. On June 11, 2002 the First Court delivered a judgment ruling on a petition for precautionary amparo and an appeal to the judiciary for annulment of an act issued by the Registrador Subalterno del Primer Circuito de Registro Público del Municipio Baruta del Estado Miranda [First Circuit Recording Office Junior Registrar in the Baruta Township of Miranda State]. Such official refused to record a piece of real estate. The First Court, unanimously, declared the amparo to be in order and admitted the proceedings for annulment. [FN37] On October 8, 2002 the aforementioned Junior Registrar's Office requested the CPAM to remove the case related to the precautionary amparo from the jurisdiction of the First Court and to determine it directly, among other matters. [FN38] On this point this Court verifies that the removal of proceedings is an exceptional legal remedy, [FN39] which allows a case to be taken away from a judicial body that would be naturally competent to hear and decide it. This happens when the proceedings in question "go beyond private interest to affect directly public interest", or when there is "a need to avoid flagrant injustices." [FN40]

[FN37] Cf. judgment No. 1430 of June 11, 2002 issued by the First Court (Evidence file, Book VIII, Annex Ñ, pp. 2579 to 2593).
[FN38] Cf. judgment No. 809 of May 29, 2003 issued by CPAM (File of Annexes to the Application, Book III, Annex B.3.a, pp. 1007 to 1034).
[FN39] Cf. judgment No. 809 of May 29, 2003 issued by CPAM, supra note 38, p. 1027.
[FN40] Cf. judgment No. 809 of May 29, 2003 issued by CPAM, supra note 38, p. 1027.

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33. When determining such petition to remove, on June 3, 2003 the CPAM declared the judgment by the First Court to be null and void, and established that the latter, by not declaring the precautionary motion not to be in order, incurred in a "serious legal error of an inexcusable character." [FN41]

[FN41] Cf. judgment No. 809 of May 29, 2003 issued by CPAM, supra note 38, p. 1031.

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34. Judicial error has been held to be inexcusable by the STJ when "it cannot be justified through reasonable legal criteria, something which turns it into a serious offense, deserving the maximum disciplinary sanction, that is, removal from office." Furthermore, it has been pointed out that "it is an undetermined or indefinite legal notion, for which reason in every specific case the attitude of a normal judge should be weighed and on such basis, considering the characteristic features of the legal culture in the country, establish whether action by the judicial officer is inexcusable." In such context, it has been repeatedly considered in the case law that "the judge incurs in inexcusable or unjustifiable error when, for instance, he pronounces a death sentence or a life sentence in a penitentiary, or when a public square is subjected to a seizure order, just to cite some extremely serious cases under the [Venezuelan] legal order." [FN42]

[FN42] Cf. judgment No. 465 of March 22, 2001 issued by CPAM, supra note 13.

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35. When dwelling on the case, the CPAM deemed it to be "an extremely serious irregularity for the First Court […], when deciding the original petition for the precautionary amparo, to have found it in order[, …] since the natural effects of [such finding] would be for the document pending registration to be recorded, something which has clear constitutive effects that, potentially, may generate a number of situations contrary to the due legal certainty the real estate registration system must express and provide." [FN43] This judgment ordered for a copy thereof to be forwarded to the IGC. [FN44]

[FN43] Cf. judgment No. 809 of May 29, 2003 issued by CPAM, supra note 38, pp. 1029 and 1030.
[FN44] Cf. judgment No. 809 of May 29, 2003 issued by CPAM, supra note 38, p. 1034.

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36. On July 17, 2003, once a copy of the judgment by the CPAM was received by the IGC, the IGC "agre[ed] to institute on its own motion the pertaining preliminary investigation." [FN45] On September 5, 2003, after analyzing the case file, the IGC commissioned an inspector to further the inquiry and ordered notice of such act to be served upon those affected, [FN46] which was done between September 10 and 12 of 2003. [FN47]

[FN45] Cf. order of July 17, 2003 issued by IGC (Evidence file, Book II, Appendix C.3, p. 506).
[FN46] Cf. order of September 5, 2003 issued by the IGC (Evidence file, Book II, Appendix C.3, p. 507).
[FN47] Cf. record of service to Judge Ana María Ruggeri Cova of September 10, 2003, record of service to Judge Evelyn Marrero Ortiz of September 11, 2003; record of service to Judge Perkins Rocha Contreras of September 11, 2003, record of service to Judge Luisa Estela Morales Lamuño of September 11, 2003, record of service to Judge Juan Carlos Apitz Barbera of September 12, 2003 issued by the IGC (Evidence file, Book II, Appendix C.3, pp. 508 to 517).

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37. On October 7, 2003, the IGC filed an accusation with the CORJS against the five members of the First Court. It held that "the Judges […] handed down a judgment […] wherein they incurred in serious inexcusable judicial error, as the [CPAM] has established" and that such finding "impli[ed the existence] of the disciplinary offense provided in part 4 of Article 40 of the Ley de Carrera Judicial [Judiciary Career Act]." It requested that "the sanction of removal from office [be] imposed on them." [FN48]

[FN48] Cf. accusation before the CORJS of October 7, 2003 issued by the IGC (Evidence file, Book III, Annex B.3.b, pp. 1036 to 1047).

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38. On October 30, 2003, the CORJS decided to remove four of the five members of the First Court. Regarding Judge Evelyn Marrero it declared "the sanction to be impossible to implement," [FN49] because she was eligible for retirement. Later, after a recourse to reconsider its own decision was brought by Judge Luisa Estella Morales, the CORJS set aside its own sanction that she be removed from office and ordered her retirement to be processed. [FN50]

[FN49] Cf. order of October 30, 2003, delivered by the CORJS, File 1052-2003 (Evidence file, Book III, Annex B.3.c, pp. 1051 to 1089).
[FN50] Cf. order of December 11, 2003, delivered by the CORJS, File 1052-2003 (Evidence file, Book III, Annex B.3.f, pp. 1160 to 1169).

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39. Judges Apitz and Rocha brought, against their sanction, a hierarchical recourse [FN51] before the Plenary Chamber of the STJ wherein they alleged the CORJS lacked jurisdiction to remove them from office, but the recourse was refused. [FN52] They also brought an appeal to

the judiciary for annulment of the removal decision, together with a remedy for precautionary amparo before the CPAM, alleging, inter alia, the violation of the right to be tried by their natural judge, of the right to defense and to due process, of the right to be presumed innocent, of the independence of judicial office, and arguing misuse of power. [FN53] The amparo was rejected and, to date, the appeal for annulment has not been determined on the merits.

[FN51] Cf. hierarchical appeal brought by Messrs. Apitz and Rocha on November 13, 2003, to the Plenary Chamber of the STJ (Evidence file, Book III, Annex B.3.d, pp. 1093 to 1112).
[FN52] Cf. judgment No. 23 of September 8, 2004, delivered by the Plenary Chamber of the STJ (Evidence file, Book II, Appendix C.13, pp. 717 to 724).
[FN53] Cf. annulment appeal brought together with a precautionary amparo by Messrs. Apitz and Rocha on November 27, 2003, to the CPAM (Evidence file, Book III, Annex B.3.e, pp. 1115 to 1158).

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40. After the members of the First Court had been removed from office or had retired, a newspaper article pointed out that "[t]he First Court […] was left vacant." [FN54] According to an affidavit included in the instant file, "[a]fter the judges of the First Court were removed from office, it remained inactive for eight months, until under an order of the [STJ] two courts were created for such instance and their respective judges and deputy judges were appointed." [FN55] In a press article published in April, 2004 (six months after the Judges' removal from office) it is reported that "[o]n account of the fact that the First Court […] remains closed, the Chamber for Constitutional Matters of the [STJ] established an alternative procedure to stop the damage caused by the ensuing denial of justice." [FN56] On October 2005 judges were appointed to the First and Second Courts for Administration Matters. [FN57]

[FN54] Cf. newspaper article entitled "Corte Primera está acéfala" ["The First Court is vacant"], published on November 4, 2003 in El Universal (Evidence file, Book IV, Annex C, p. 1315). In such article, public statements by Mrs. Ruggeri are quoted, where she says: "The First Court is left without judges, to whom should we hand it over?"
[FN55] Cf. declaration before a public notary (affidavit) by Mr. Edgar José López Albujas on January 17, 2008 (File on the Merits, Book III, p. 878). In her turn, Mr. Ruggeri stated that "after we were removed from our positions, another unusual and painful event took place, that is that the court was kept closed, without any judicial activity, for a period of almost four months, for no judges were appointed to take our places, thereby hindering defense to a very high degree. Although some employees remained at their posts, there were no judges to determine judicial matters." Cf. affidavit by Mrs. Ruggeri, supra note 33.
[FN56] Cf. newspaper article entitled "TSJ establece vía procesal alterna ante el Cierre de la Corte Primera" ["STJ creates an alternative procedural routing now the First Court is closed"], published on April 6, 2004 in El Nacional (Evidence file, Book IV, Annex C, p. 1229).
[FN57] Cf. press release of October 18, 2005, issued by the STJ, entitled "STJ President swears in Judges of the First and Second Courts for Administration Matters" (Evidence file, Book II, Annex B.1.K, pp. 725 and 726).

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41. The Court will now proceed to analyze the arguments by the parties regarding the alleged violation of the right to a fair trial and of the right to judicial protection.

1. Discretionary removal of provisional judges

42. The first issue to determine is whether the States must afford provisional judges a procedure for their removal of office similar or identical to the one afforded judges with a permanent tenure. The Commission considered that "regardless of whether the judges in a country be permanently tenured or provisional, they must be and appear to be independent," for which reason "[t]heir removal from office must be processed in strict compliance with the procedures established by law, respecting their right to due process." In his turn, the representative reported that "[t]he provisional (or temporary) character of the judges implies they lack tenure of their office and that to remove them therefrom it is not mandatory either to previously institute proceedings wherein the right to a defense be guaranteed, or to ascertain whether they have incurred in a disciplinary infraction." The State pointed out that "having the former provisional judges of the First Court been temporary appointees and therefore lacking permanent tenure of their office, their removal therefrom was effected by means of a disciplinary procedure wherein they were granted all the guarantees and the judicial protection afforded permanently to tenured judges."

43. The Court observes that the States are bound to ensure that provisional judges be independent and therefore must grant them some sort of stability and permanence in office, for to be provisional is not equivalent to being discretionally removable from office. In fact, the United Nations Human Rights Committee has expressed that dismissal of judges by the executive, before the expiry of the term for which they had been appointed, without any specific reasons given to them and without effective judicial protection being available to contest the dismissal, is incompatible with the independence of the judiciary. [FN58] Along the same lines, the Court considers that the fact that appointments are provisional should not modify in any manner the safeguards instituted to guarantee the good performance of the judges and to ultimately benefit the parties to a case. Also, such provisional appointments must not extend indefinitely in time, and must be subject to a condition subsequent, such as a predetermined deadline or the holding and completion of a public competitive selection process based on ability and qualifications, or of a public competitive examination, whereby a permanent replacement for the provisional judge is appointed. [FN59] Provisional appointments must be an exceptional situation, rather than the rule. Thus, when provisional judges act for a long time, or the fact is that most judges are provisional, material hindrances to the independence of the judiciary are generated. Such vulnerable situation of the Judiciary is compounded if no removal from office procedures respectful of the international duties of the States are in place either.

[FN58] United Nations, Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, August 23, 2007, para. 20.

[FN59] The United Nations Basic Principles on the Independence of the Judiciary intrinsically relate permanence of judges in office with their guaranteed tenure by recognizing such guarantee

until the expiry of their term of office, where such exists. Cf. Principle 12 of the United Nations Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan, Italy, August, 26 to September 6, 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985; Principle I.3 of the Recommendation No. R (94) 12 of the Council of Europe Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges adopted by the Committee of Ministers on October 13, 1994 at the 518th meeting of the Ministers' Deputies. See also affidavit on January 15, 2008 by Param Cumaraswamy (File on the Merits, Book III, pp. 822 to 836).

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44. This court has previously emphasized that the different political systems have conceived strict procedures for both the judges' appointment and their removal. On this latter point, the Tribunal has expressed that the authority in charge of the procedure to remove a judge must behave impartially and allow the judge to exercise the right of defense. [FN60] This is so inasmuch as the fact that judges may be removed from office at will fosters objective doubts in the beholder on the effective possibility to decide specific disputes without fearing reprisals. [FN61]

[FN60] Cf. Case of the Constitutional Court v. Peru. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, paras. 73 and 74.
[FN61] Principles 2, 3 and 4 of the United Nations Basic Principles, supra note 59.

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45. On the other hand, since appointments of provisional judges should be subject to such conditions of service as ensure independent exercise of their office, [FN62] the rules on the promotion, transfer, distribution of cases, suspension, and removal from office of judges having a permanent tenure must apply fully to those judges lacking such tenure.

[FN62] Principle 11 of the United Nations Basic Principles, supra note 59, and Guideline II in the Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence adopted at a meeting of representatives of the Commonwealth Legal Education Association, the Commonwealth Magistrates' and Judges' Association and the Commonwealth Parliamentary Association held on June 19, 1998.

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46. In the instant case, the Court has verified that the State afforded the victims a procedure before the CORJS before they were removed from office. It therefore remains to be determined whether such procedure conformed to the obligations of the State under the American Convention. In this regard, this Tribunal has pointed out that

All the organs that exercise functions of a substantially jurisdictional nature have the obligation to adopt just decisions based on full respect for the guarantee of due process established in Article 8 of the American Convention. Article 8(1) of the Convention, which alludes to the right

of every person to a hearing by a "competent judge or tribunal" for the "determination of his rights," is also applicable in situations in which a public rather than a judicial authority issues decisions that affect the determination of such rights, as occurred in the instant case. [FN63]

[FN63] Cf. Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, para. 149.

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2. Jurisdiction

47. The representative argued that the Plenary Chamber of the

STJ—rather than CORJS— was "the only" body that "could remove from their offices those it had previously appointed as judges of the First Court," by operation of the principle of parallelism of forms. In support of this argument, he referred to a report issued by a Commission appointed by the Plenary Chamber of the STJ. On the other hand, he argued that the disciplinary powers of the CORJS "lack[ed] any constitutional grounds whatsoever" and that "in the judicial disciplinary area, on account of legislative default, there is in place an exceptional and provisional system detrimental to the right to the […] natural judge", for "the judicial disciplinary system in Venezuela, is […] irregular and judges are […] disciplinarily judged by commissions set up for the purpose of passing judgment upon them."

48. The State indicated that under domestic rules and regulations the CORJS "has competent jurisdiction to take the pertaining disciplinary action in exercise of the powers vested in it." He contested the argument made by the representative regarding the report by the Commission of the Plenary Chamber stating it is not mandatory, that it was made "just [by] some of the Judges sitting in the Plenary Chamber", and that later all the members of the aforementioned Plenary Chamber, "upon the request of the former provisional judges of the First Court[,] confirmed […] the competent jurisdiction of the [IGC] and of the [CORJS]" (highlighted phrases not reproduced).

49. The Commission indicated that the purview of the CORJS "had been specified before the fact." Furthermore, it pointed out that the STJ had determined the point in the Plenary Chamber, recognizing the CORJS competence to investigate the petitioners for disciplinary infringements and to sanction them.

50. Article 8(1) of the Convention guarantees the right to a hearing "by a competent […] tribunal, previously established by law." This implies that every person "has the right to be heard by regular courts, following procedures previously established," for which reason the State is not to create tribunals that do not use the duly established procedures to displace the jurisdiction normally belonging to the ordinary courts. [FN64] This tends to prevent persons from being judged by special tribunals set up for the case, or ad hoc.

[FN64] Cf. Case of Castillo Petruzzi et al. v. Peru. Merits Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, para. 129, and Principle 5 of the United Nations Basic Principles.

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51. The evidence supporting allegations by the representative is related to a report adopted on July 26, 2000 by a Commission assigned by the STJ appointed to "determine the legal and disciplinary standing of the First Court." The report pointed out that

[t]he disciplinary rules to which the judges are subject pertain to the bodies with disciplinary jurisdiction to be created by law but until such statute be enacted, disciplinary authority over the Judges of the First Court […] shall be exercised by the [STJ], in Plenary Chamber. [FN65]

[FN65] Cf. report of August 10, 2000 issued by STJ Justices Jesús Eduardo Cabrera, José Peña Solis, Levis Ignacio Zerpa and Antonio García García (Evidence file, Book VII, Annex K, pp. 1844 and 1845).

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52. However, the Commission and the State are both right when indicating that on September 8, 2004, in a decision on a hierarchical recourse brought by the victims (infra para. 157), the Plenary Chamber of the STJ ratified that "jurisdiction to conduct investigations in a case where a Judge of the First Court is accused of a [disciplinary] infringement" shall be the same one to which all judges are subject, that is to say, "such cases must be submitted to the [CORJS] for consideration." Thereupon, the Plenary Chamber declined its jurisdiction on the matter. [FN66] As it may be seen, the body that, according to the representative's allegations, has competent jurisdiction, determined that the CORJS was the one who had to consider the possible responsibility of the victims by reason of their exercising their judicial functions.

[FN66] Cf. judgment No. 23 of September 8, 2004, delivered by the Plenary Chamber of the STJ, supra note 52, pp. 722 and 723.

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53. On the other hand, the disciplinary jurisdiction of the CORJS originates in a statute enacted by the Constitutional Assembly, and therefore ranking superior to the laws, [FN67] established in 1999, that is to say before the proceedings were instituted against the Judges of the First Court; [FN68] it is not an ad hoc tribunal, since it was granted competent jurisdiction in general to hear all disciplinary proceedings against judges in Venezuela, applying a common procedure; and there is no domestic rule expressly granting competent jurisdiction to hear the case in point to a body other than the CORJS. On the grounds of all the foregoing, the Court does not find a violation of the right to a hearing by a competent tribunal, previously established by law, enshrined in Article 8(1) of the Convention.

[FN67] As the STJ has affirmed, it is understood that the decrees enacted by the Constitutional Assembly are of a "supraconstitutional" nature, however transitory. Cf. judgment No. 1048 of May 18, 2006, delivered by the Chamber for Constitutional Matters of the STJ.
[FN68] Cf. article 24 of the Decree whereby the Transitional Scheme for Exercising Public Powers is established, supra note 27.

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3. Impartiality of the CORJS

54. The arguments by the Commission and the representative deal jointly with the alleged lack of independence and impartiality of the CORJS when it removed Judges Apitz, Rocha, and Ruggeri from office.

55. In this regard, the Court underscores that, albeit independence and impartiality are related, [FN69] it is also true that they each have a legal content of their own. Thus, this Court has said that one of the principal purposes of the separation of public powers is to guarantee the independence of judges. [FN70] Such autonomous exercise must be guaranteed by the State both in its institutional aspect, that is, regarding the Judiciary as a system, as well as in connection with its individual aspect, that is to say, concerning the person of the specific judge. The purpose of such protection lies in preventing the Judicial System in general and its members in particular, from finding themselves subjected to possible undue limitations in the exercise of their functions, by bodies alien to the Judiciary or even by those judges with review or appellate functions.

[FN69] For instance, the Committee against Torture expressed that: "The Committee is concerned at the judiciary's de facto dependence on the executive, which poses a major obstacle to the immediate institution of an impartial inquiry when there are substantial grounds for believing that an act of torture has been committed in any territory under its jurisdiction." Cf. United Nations, Committee against Torture, Conclusions and Recommendations: Burundi, CAT/C/BDI/CO/1, para. 12.
[FN70] Cf. Case of the Constitutional Court, supra note 60, para. 73.

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56. On the other hand, impartiality demands that the judge acting in a specific dispute approach the facts of the case subjectively free of all prejudice and also offer sufficient objective guarantees to exclude any doubt the parties or the community might entertain as to his or her lack of impartiality. [FN71] The European Court of Human Rights has explained that personal or subjective impartiality is to be presumed unless there is evidence to the contrary. [FN72] In its turn, the so-called objective approach test consists in determining whether the judge in question offered sufficient elements of conviction to exclude any legitimate misgivings or well-grounded suspicion of partiality regarding his or her person. [FN73] That is so since the judge must appear as acting without being subject to any influence, inducement, pressure, threat or interference, direct or indirect, [FN74] and only and exclusively in accordance with —and on the basis of— the Law.

[FN71] Cf. Pullar v. the United Kingdom, judgment of 10 June 1996, Reports of Judgments and Decisions 1996-III, § 30, and Fey v. Austria, judgment of 24 February 1993, Series to no. 255-A p. 8, § 28.
[FN72] Cf. Daktaras v. Lithuania, no. 42095/98, § 30, ECHR 2000-X.
[FN73] Cf. Piersack v. Belgium, judgment of 1 October 1982, Series A no. 53, and De Cubber v. Belgium, judgment of 26 October 1984, Series A no. 86.
[FN74] Principle 2 of the United Nations Basic Principles, supra note 59.
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57. Now, then, considering that the arguments presented by the Commission and the representatives mainly allege that the CORJS was influenced by other branches of Government and by the Judiciary itself, the Court will deal with such points in the chapter on judicial independence, and leave to this chapter on impartiality the only allegation of the parties thereon, to wit, the impossibility of challenging the members of the CORJS.

58. The Commission alleged that the "disciplinary system […] lacks safeguards enabling the parties to object the […] partiality" of the CORJS inasmuch as it "forbids challenging its members." In such sense, it indicated that "even if they had, for instance, close friendship or open antagonism with any of the parties, or had previously given their opinion on the matter, a legal bar on challenging them would still operate." The representative added that "the [alleged] victims did not have the impression that the tribunal hearing their case was impartial, and that is why they challenged [its] members," however, "[t]he challenges were not even examined," for they were not allowed under the law, and the members of the CORJS "did not grant a request made before them to decline their jurisdiction either." The State made no reference to such allegations.

59. According to the evidence produced, the Tribunal verifies that the Transitional Scheme for Exercising Public Powers provides that the members of the CORJS and the IGC "will not be subject to challenge, but must decline their jurisdiction in the cases provided in Article 36 of the Ley Orgánica de Procedimientos Administrativos [Administrative Procedure Organic Law]. [FN75]

[FN75] Cf. article 31 of the Decree whereby the Transitional Scheme for Exercising Public Powers is established, supra note 27. Article 36 of the Administrative Procedure Organic Law published on July 1, 1981 in the Extraordinary Official Gazette No. 2.818 establishes:
Administration officials shall decline the competent jurisdiction statutorily vested in them to hear the matter, in the following cases:
1. When they personally, or their spouse or some relative within the fourth degree of consanguinity or the second degree of affinity, would have an interest in the outcome of the case.
2. When they would have close friendship or open antagonism with any of the persons interested or participating in the proceedings.
3. When they would have been witnesses or expert witnesses in the case to be determined, or if as officials they would have previously given their opinion therein, in such a way that they would have prejudged beforehand on the outcome of the case, or, in proceedings where the Administration is a party, they would have determined or taken part in determining the decision

on the act being challenged. Cases where the decision was reversed on the own motion of the official who had adopted it, and cases where the decision was reversed after it being reconsidered, are excluded.

4. When they would have a labor or superior-subordinate relationship with any of the persons directly interested in the proceedings.

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60. Judge Rocha filed a challenge against the members of the CORJS on the same day the order declaring him removed from office was delivered, [FN76] but before notice thereof was served. [FN77] On the next day, Judge Apitz requested the members of the CORJS to decline their jurisdiction. [FN78] Such request was also filed before notice of the order of removal from office was served. There is nothing on record to the effect that Judge Ruggeri filed any challenge or any request for jurisdiction to be declined.

[FN76] Cf. brief of October 30, 2003, filed by Mr. Rocha with the CORJS (Evidence file, Book VIII, Annex Ñ, pp. 2683 to 2689).

[FN77] The order declaring the judges of the First Court were removed from office was delivered on October 30, 2003 (supra note 49), but notice thereof was served upon the judges on November 4, 2003. Cf. Official Letters 1088 and 1087 of November 3, 2003 issued by the Rectoría Civil de la Circunscripción Judicial del Área Metropolitana de Caracas [The Caracas Metropolitan Area Judicial District Chief Civil Judge] reporting on the results of notification served upon Messrs. Rocha and Apitz (Evidence file, Book VIII, Annex Ñ, pp. 2703 and 2712).

[FN78] Cf. brief of October 31, 2003, filed by Mr. Apitz with the CORJS (File of Annexes to the Answer to the Application, Book VIII, Annex Ñ, pp. 2693 to 2698).

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61. In the Judgment ordering him removed from office no express answer was given to the challenge filed by Judge Rocha, but it was reaffirmed that members of the Commission on the Operation and Restructuring of the Judicial System "shall not be subject to challenge, but they shall decline their jurisdiction in the cases provided in Article 36 of the Administrative Procedure Organic Law." [FN79] There is nothing on record to the effect that the request for jurisdiction to be declined filed by Mr. Apitz was ever answered.

[FN79] Cf. order of October 30, 2003, delivered by the CORJS, supra note 49, p. 1081.

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62. It is pertinent that the Court determine whether the fact that the judges of the CORJS who removed the victims from office could not be challenged violated the rights of the latter to a hearing by an impartial tribunal.

63. In this regard, the Tribunal considers that the institution affording the right to challenge judges has a twofold purpose; on one hand, it works as a guarantee for the parties to the proceedings, and on the other hand, it aims at providing credibility to the role performed by the Jurisdiction. Indeed, through challenging, the parties are given the right to move for the

exclusion of a judge when, regardless of the personal conduct observed by the questioned judge, there are facts that can be proven or elements of conviction that may not warrant elimination of grounds for misgivings or legitimate suspicions of partiality regarding his person, thus preventing his decision from being seen as made by reasons alien to the Law and, therefore, the operation of the Judicial System to appear distorted. Challenging should not necessarily be seen as putting on trial the moral rectitude of the challenged official, but rather as a tool to build trust in those turning to the State in quest for action by bodies that are and appear to be impartial.

64. In such sense, challenging is a procedural means of protecting the right to a hearing by an impartial body, rather than an element making up or defining such right. In other words, judges that cannot be challenged are not necessarily partial, nor will they necessarily act in a partial manner, just the same as judges that can be challenged are not necessarily impartial, nor will they necessarily act in an impartial manner.

65. As regards declination of jurisdiction, the Court deems that even when it is allowed under domestic law, it is not enough to guarantee impartiality in the tribunal, for it has not been shown that the parties have any remedy to question the judge that must decline jurisdiction and does not.

66. Bearing the foregoing in mind, the Court concludes that there is no evidence that the State may have disregarded the right of the victims to have a hearing before an impartial tribunal, but it has been indeed shown that its legislation (supra para. 59) and its case law (supra para. 61) prevented them from requesting the review of the impartiality of the body trying them. To put it a different way, non-compliance with the duty to respect the right has not been shown, but rather that guarantee thereof is lacking.

67. Based on all of the foregoing, the Tribunal declares the State to have failed to guarantee the right of the victims to a hearing before an impartial tribunal, something that is in violation of Article 8(1) of the Convention in relation toArticles 1(1) and 2 thereof.

4. Right to a hearing

68. The Commission indicated that the CPAM decided that the judges of the First Court had incurred in an inexcusable judicial error “without first allowing them to submit [to such Chamber] the arguments showing the reasonableness of the decision adopted.”

69. The representative coincided with the Commission and added that the CPAM “did not allow [the alleged victims] to attach recent case law by that [same Chamber], wherein [the] decision [of the First Court, on the case which had been removed from it] was sustained.” He argued, furthermore, that the judges of the First Court “were not parties” in the case removed from their jurisdiction.

70. The State pointed out that “when some of the [STJ] Chambers with competent jurisdiction hear a judgment delivered by a lower court that they themselves have removed, no subjective opinion is formed which might amount to prejudice on disciplinary aspects concerning

the judges" but rather "an objective one leading to interrupt the normal course of the proceedings in the case under consideration by such lower courts."

71. In the proceedings before CPAM wherein the request to remove the case thereto was determined (supra paras. 32 and 33) the parties were the Registradora Subalterna del Primer Circuito del Municipio Baruta del Estado Miranda [First Circuit Junior Registrar in the Baruta Township of Miranda State], in her capacity as the one requesting the removal of the case to the upper court, and the attorney-at-law for the person who had brought the action on precautionary amparo before the First Court. [FN80] The judges of the First Court were not parties to such proceedings.

[FN80] Cf. judgment No. 809 of May 29, 2003 issued by the CPAM, supra note 38, p. 1007.

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72. Pursuant to Article 8(1) of the Convention, the right to a hearing requires every person to be able to have access to the state body or tribunal in charge of determining his rights and obligations.

73. In this regard, the Court underscores that, in the proceedings for the removal of the case to the upper court, no right or obligation of the judges delivering the ruling under revision is determined. [FN81] Besides, pursuant to the Judiciary Career Act, an inexcusable judicial error may not only be declared in proceedings seeking a case transfer to an upper court, but in any other proceeding in appeal or whereby any other remedy is sought from any body with jurisdiction to review. [FN82] In such sense, the division of labor characteristic of the exercise of judicial functions implies that reviewing bodies must only process the remedies sought by the parties objecting to the original decision. Consequently, by determining whether the appealed judgment was right or wrong from a legal point of view, no right of the original judges was affected and they did not become parties per se in the dispute referred to the CPAM. Therefore, the Court declares that the State did not violate the right of the victims to a hearing in such proceedings.

[FN81] Cf. article 42 of the Supreme Court of Justice Organic Law, supra note 32, and article 18 of the STJ Organic Law, supra note 31.

[FN82] Cf. article 40, part 4 of the Venezuelan Judiciary Career Act] of August 25, 1978, published on September 11, 1998 in Extraordinary Official Gazette No. 5.262 (Evidence file, Book I, Annex A.7, pp. 121 to 132).

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74. On the other hand, the representative alleged that "the victims in the instant case were never heard at any hearing, neither private nor public." In such sense he pointed out that "[s]uch possibility is not provided either in the autonomous amparo recourse procedure or in that for the recourse to the hierarchically superior instance" and that "[t]he only possibility they had to be

heard in court [would have been] through an appeal for annulment [even though] it would have required permission by the Chamber, which may grant it or not, at its discretion." The State and the Commission did not argue on this point.

75. In this regard, the Court considers that Article 8(1) of the Convention does not imply that the right to a hearing must necessarily be exercised orally in all proceedings. The foregoing notwithstanding, the Court could consider that an oral procedure is one of the "due guarantees" the State must afford the parties to certain kinds of proceedings. However, the representative has not advanced any argument justifying why an oral procedure is necessary, as a guarantee of due process, in the disciplinary procedure before the CORJS or in the one observed for the different recourses therefrom.

76. On the basis of the foregoing considerations, the Court declares that the State did not violate the right of the victims to a hearing in the aforementioned recourses proceedings.

5. Duty to state grounds

77. The Court has pointed out that the grounds are "the exteriorization of the reasoned justification that allows a conclusion to be reached." [FN83] The duty to state grounds is a guarantee linked to the proper administration of justice, [FN84] protecting the right of citizens to be tried for the reasons provided by Law, and giving credibility to the legal decisions adopted in the framework of a democratic society.

[FN83] Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 107.
[FN84] The European Court has so ruled in the Case of Suominen: "The Court then reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based." Cf. Suominen v. Finland, no. 37801/97, § 34, 1 July 2003.

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78. The Court has underscored that the decisions adopted by national bodies that could affect human rights must be duly justified, because, if not, they would be arbitrary decisions. [FN85] In such sense, the reasons given for a judgment must show that the arguments by the parties have been duly weighed and that the body of evidence has been analyzed. Moreover, a reasoned decision demonstrates to the parties that they have been heard and, when the decision is subject to appeal, it affords them the possibility to argue against it, and of having such decision reviewed by an appellate body. [FN86] On account of all the foregoing, the duty to state grounds is one of the "due guarantees" included in Article 8(1) to safeguard the right to due process.

[FN85] Cf. Case of Yatama, supra note 63, paras. 152 and 153, and Case of Chaparro Álvarez and Lapo Íñiguez, supra note 83, para. 107. Likewise, the European Court has pointed out that the judges must indicate with sufficient clarity the reasons for which they adopt their decisions. Cf. Hadjianstassiou v. Greece, judgment of 16 December 1992, Series A no. 252, p. 8, § 23.

[FN86] Cf. Suominen v. Finland, supra note 84. In its turn, the Human Rights Committee considered that the absence of a reasoned judgment of the Court of Appeal was likely to prevent the author from successfully arguing his petition before a higher court, thus preventing the availability of a further remedy. United Nations, Human Rights Committee, Case of Hamilton v. Jamaica, Communication No. 333/1988, CCPR/C/50/D/333/1988, March 23, 1994.
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79. The Commission alleged that the CORJS "did not review the description [as an inexcusable judicial error], but just 'confirmed' [the] decision" adopted by the CPAM. The Commission considers that "[t]he insufficient grounds concerning the description of the infringement show that […] the [judges'] conduct was not described as a disciplinary matter of unlawful conduct", nor "[was] their suitability to hold office assessed." It also underscored that "the defective grounds did not provide sufficient elements to quantify the sanction." The Commission indicated that in the instant case there was "a reasonable and reasoned difference of possible legal interpretations concerning a particular procedural definition," for which reason "removal from office in the instant case due to [an inexcusable judicial error] is contrary to judicial independence, as it undermines the right of judges to decide freely according to law." In such sense, "the judges were not tried for their disciplinary conduct, but for the legal interpretation they endorsed in the judgment."

80. The representative argued that "the CORJS did not allow the victims […] to produce evidence and that it did not state the grounds justifying the decision whereby it removed them from office." Likewise, he indicated that regarding the description of the inexcusable judicial error "there was no possible defense", bearing in mind that "[t]here was no defense before the [CPAM…], for the victims in the instant case were neither parties nor given notice thereof, and there could not be a defense in the CORJS […], for this 'matter had already been decided by the [CPAM].'" The representative alleged that "in said ruling the Commission failed to determine the scope of the 'inexcusable judicial error' and to explain why said facts would be grounds for removal from office, which is the highest administrative sanction."

81. The State contended that the victims were notified that an investigation against them had been commenced by the IGC and that they did not exercise their "right to defense" at that stage. Furthermore, it pointed out that "all the members of the First Court […] submitted their written defense" before the CORJS. The State added that it is an "error […] to confuse the same grounds with no grounds at all, for when a jurisdictional body delivers a decision adopting the same criteria employed in another decision by another jurisdictional body […] it has reaffirmed such grounds, rather than delivered a groundless decision."

82. As it was pointed out, the CPAM determined in a judgment that an inexcusable judicial error had been made and forwarded its ruling to the IGC. During the public hearing before the Court the then active Inspector General de Tribunales [Inspector General of Courts] stated that the investigation he had conducted consisted "simply in procuring the judgment by the First Court;" that the IGC "has neither the powers nor the jurisdiction to analyze the decisions […] of the [CPAM] from a legal standpoint," for which reason the value as evidence of the decisions concerning the inexcusable judicial error by the CPAM "is complete" to the effect of pronouncing the respective accusation; and that the accusation he effected against judges of the

First Court was self-explanatory, once the judgment originating the inception of the proceedings was attached. [FN87]

[FN87] Cf. testimony by Mr. Servio Tulio León Briceño before the Inter-American Court in the public hearing celebrated on January 31, 2008. The witness also pointed out the following: "I think that the conclusive act and the accusation made before the [CORJS] is self-explanatory, it is done, the judgment is attached, and that is how the proceedings are instituted. And I think that justifications or reasons were redundant in the judgment. However the consequences of the act that justified, in fact, commencement of the proceedings that was the judgment, were indeed analyzed, even though the judgment does not say it; no grounds that I remember were omitted."

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83. Moreover, even though in the Resolution of October 30, 2003, the CORJS transcribed the victims' arguments, in assessing and establishing disciplinary responsibility it merely summarized the considerations expressed by the CPAM in its finding of inexcusable judicial error mentioned above. [FN88] Accordingly, in response to the victims' argument that no constitutive precautionary measure which denatures the essence of precautionary amparo had been ordered, the CORJS noted that this "was settled by the decision of the [CPAM…], which, for [the CORJS], constitutes the validity requirement for a decision in this disciplinary sphere," and that "such conduct, reflected in the judicial decision, has far-reaching disciplinary significance when it takes the form of an error that is inconceivable on the part of the [judges of the First Court] because of the absurdity of the decision's effects." [FN89]

[FN88] The CORJS stated that "[the] judgment of the [CPAM] expressly declared that the First Court [committed] a serious, inexcusable judicial error" and that "[i]n its decision, the [STJ] considers that [the relief sought by the petitioner] does not constitute the reestablishment of an infringed legal situation, but the creation of a new situation, which is foreign and contrary to the nature of constitutional amparo [… with] the potential harm that this could cause […] to the rights of possible future purchasers of those lands [being more serious]." The CORJS held that "a constitutional amparo is not a proper judicial remedy to secure registration of a given document […] and because of this material reason, in combination with all other reasons explained herein, the action of the judges of the First Court […|, in the terms of the precautionary ruling, constitutes a serious inexcusable error that has been recognized as such by the [CPAM]." Cf. CORJS resolution of October 30, 2003, supra note 49, pp. 1084 to 1086.
[FN89] Cf. CORJS resolution of October 30, 2003, supra note 49, p. 1087.

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84. In this regard, the Court will emphasize the fact that international law has developed guidelines on the valid grounds for the suspension or removal of a judge, which may include, among others, misconduct or incompetence. [FN90] However, judges cannot be removed on the sole ground that one of their decisions has been overturned on appeal or review by a higher judicial body. [FN91] This safeguards the independence of judges internally, since they should not feel compelled to avoid dissenting with the reviewing body which, basically, only plays a

distinct judicial role that is limited to dealing with the issues raised on appeal by a party who is dissatisfied with the original decision.

[FN90] United Nations, Human Rights Committee, General Comment No. 32, supra note 58, para. 20. See also Principle 18 of the Basic Principles of the United Nations, supra note 59.
[FN91] In this regard, see Principle A, para. 4 (n) 2 of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted as part of the African Commission's activity report at 2nd Summit and Meeting of Heads of State of the African Union, held in Maputo, Mozambique, from July 4 to July 12, 2003.

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85. As far as domestic law is concerned, the Court notes that the STJ has required a difference to be made between the oversight that is exercised over judges under ordinary jurisdiction and under disciplinary jurisdiction, [FN92] that the seriousness of the infraction be weighed, [FN93] and that a proportionate penalty be applied. [FN94] Also, the State submitted a report addressing 5 cases in which a declaration of inexcusable judicial error by the reviewing organ led to the removal of the lower court judges by the CORJS, [FN95] in spite of which the CORJS did state that it is necessary to assess whether "the judicial error is so serious as to warrant removal." [FN96]

[FN92] For instance, in a case dealing with the allegedly wrongful removal of a judge, the CPAM held that "[The] legal judgment [of the removed judge] was reasonable and based on a decision adopted in the legitimate exercise of her functions, that is, […] at no point did it constitute the serious infraction of which she was accused by the [CORJS], for the purposes of applying the highest sanction, that is, removal from her position. Accordingly, the aforementioned Commission usurped the powers of the jurisdictional sphere and, in so doing, robbed her of the constitutional guarantee of autonomy and independence that the sanctioned judge possessed at the time of the aforesaid decision." Cf. judgment No. 01771 of October 14, 2004 issued by the CPAM, supra note 13.
[FN93] In a different case, the CPAM observed that "although, as the [IGC] pointed out, the judge under investigation committed a judicial error, as declared by the Chamber for Constitutional Matters of the [STJ], that error is not so serious as to entail his removal." Cf. judgment No. 00331 of April 14, 2004 issued by the CPAM, supra note 13.
[FN94] Thus, in a different case, the CPAM observed that "The Chamber considers that although a disciplinary infraction by a judicial officer should be sanctioned, the sanction imposed must always be consonant with the wrong committed, in order to balance the demands that are made on the judge with the rights also afforded to him. In this connection, in view of the investigative powers of an administrative judge, the Chamber believes that the sanction imposed by the disciplinary tribunal of the former Council on the Judiciary was not only disproportionate but also groundless, since its content was based essentially on the transcription that was made of the judgment emanating from the higher court that heard the conversion to divorce decree on appeal, and for this reason it is declared annulled. […] The judicial officer's conduct led to negligence in the processing of the cases of which she had cognizance, but this can in no way be identified with the development in jurisprudence that has given rise to inexcusable judicial error; on the

contrary, the infraction that she committed, if any, could be grounds for another type of sanction, such as reprimand, or, to be specific, since it is regarded as more substantial than that, the sanction of suspension. For this reason, without substituting the administrative judge's powers for those of the administration, and in order to strike a balance between the infraction committed and the sanction to be imposed, this Chamber orders the [CORJS] to modify the penalty imposed, that is, to determine whether another type of disciplinary measure commensurate with the circumstances expounded throughout this case can be substituted for it." Cf. judgment No. 01662 of October 28, 2003 issued by the CPAM, supra note 13. Similarly, in another case, the CPAM considered that "this Chamber agrees upon the existence of a judicial error to be attributed to the judge, but it disagrees on the sanction imposed on the petitioner by the [CORJS], given that even though the petitioner's conduct did engender disciplinary responsibility, the subsequent penalty should be proportionate to the wrong committed so as to guarantee the judge the rights afforded to her. Therefore, the CPAM observes that the error committed was wrongly said to amount to a specific disciplinary infraction that, in the end, resulted in the imposition by the CORJS of a sanction disproportionate to the facts of the case. Hence, the CORJS's decision must be annulled." Cf. judgment No. 01285 of August 20, 2003 issued by the CPAM, supra note 13.
[FN95] Cf. report No. 3561-07 of October 22, 2007 issued by the IGC (Evidence file, Book XIV, pp. 4246 and 4247).
[FN96] Cf. order of February 12, 2007, delivered by the CORJS (Evidence file, Book XIV, pp. 4546).
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86. To sum up, under both domestic and international law there are, on the one hand, the remedies of appeal, cassation, review, removal of cases to a higher court or the like, which are aimed at verifying that a lower court's decisions are correct, and, on the other, there is disciplinary oversight, which is intended to assess the conduct, suitability, and performance of the judge as a public official. Consequently, even if there is a declaration of inexcusable judicial error by a reviewing body, it is still necessary to analyze how serious the conduct is and whether the penalty is proportionate. [FN97] This sort of review requires an autonomous reason warranting a finding that a disciplinary offense has been committed.

[FN97] Similarly, this Court ordered that a penalty be applied proportionately to the nature and seriousness of the offense that was being tried, and the attenuating and aggravating circumstances attendant upon the case be borne in mind. Cf. Case of Raxcacó Reyes v. Guatemala. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 133.
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87. In this regard, the Court has verified that both the IGC's accusation and the CORJS's removal order were based on the arguments set out in the CPAM's decision as the only evidence and element of motive. In other words, they merely repeated the CPAM's declaration.

88. It is the Court's view that such disciplinary proceeding called for an analysis of inexcusable judicial error as a disciplinary offense, which required, first of all, reasons related to the fitness of the alleged victims to hold their offices.

89. Second, both the IGC's accusation and the CORJS's decision were required to state reasons regarding the serious nature of the offense allegedly committed by the First Court and the proportionate nature of the penalty that was recommended [FN98] and eventually applied. [FN99]

[FN98] Indeed, the Venezuelan legislation in force at the time of the facts contemplated the grave and inexcusable error or disregard of the law by the judge as grounds for removal, as well as for suspension. Thus, Article 40 of the Judiciary Career Act (supra note 82) states:
Provided that the due process is honored, Judges shall be suspended based on the following grounds:
4. When they have incurred in a grave and inexcusable judicial error as stated by a judgment issued by the Appeals Court, a higher judicial body or the respective Chamber of the Supreme Court of Justice, as applicable, and when the removal of the judge has been required
Furthermore, Article 38 of the Organic Law of the Consejo de la Magistratura [Council on the Judiciary] (Evidence file, Book I, Annex A.10, p. 195) states:
A judge may be suspended if:
13. He or she adjudicates a case with grave and inexcusable disregard of the applicable law as determined by the Chamber of the Supreme Court of Justice with knowledge of the issues."
In this regard, it is appropriate to demand the disciplinary tribunal's justification for imposing one sanction over another in each particular case.
[FN99] On this point it is relevant to quote Mr. Jesús María Casal Hernández who expressed that the CORJS "did not asses the alleged seriousness of the judicial inexcusable error. Such assessment could not be avoided in the event of imposing the maximum penalty of destitution. The principle of proportionality, the right of defense or the due process of law, as well as the need to honor the judge's autonomy required such assessment from the CORJS." Cf. affidavit by Mr. Jesús María Casal Hernández on January 17, 2008 (File on the Merits, Book III, p. 849).
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90. Third, considering that the duty to state reasons does not call for a detailed reply to every single argument raised by the parties, but rather, the reasons given may vary depending on the nature of the decision, which is why whether said guarantee has been satisfied is an issue that must be analyzed in each specific case, [FN100] the Court considers that the CORJS was required to provide its own response, rather than respond by reference to the CPAM's decision, at least to the main arguments of judges Apitz, Rocha and Ruggeri, namely: 1) the alleged lack of constitutive effects of the precautionary measure reviewed by the CPAM in the context of the removal of the case to a higher court, [FN101] and 2) that the decision of the First Court embodied a plausible legal interpretation of the scope of a precautionary amparo. [FN102] Regarding this latter issue, the Court believes that the reasons should operate as a guarantee which, to reply to such argument, would allow a reasonable difference in legal interpretations to be distinguished from an "inexcusable judicial error" that compromises the judge's suitability to hold such office, so that judges will not be penalized for taking legal positions that are duly supported but do not correspond to those put forward by the reviewing organs.

[FN100] The European Court has held as follows: “The Court reiterates that Article 6 para. 1 (art. 6-1) obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument (see the Van de Hurk v. the Netherlands judgment of 19 April 1994, Series A no. 288, p. 20, para. 61). The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, inter alia, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion, and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfill the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case.” Cf. Hiro Balani v. Spain, judgment of 9 December 1994, Series A no. 303-B, p. 8, § 27. See also Ruiz Torija v. Spain, judgment of 9 December 1994, Series A no. 303-A, p. 8 § 29; Suominen v. Finland, no. 37801/97, § 34, 1 July 2003; and Hirvisaari v. Finland, no. 49684/99, § 30, 27 September 2001.
[FN101] Cf. written defense of Messrs. Apitz and Rocha before the CORJS (CORJS judgment of October 30, 2003, supra note 49, pp. 1066 and 1067), and written defense of Mrs. Ruggeri before the CORJS (CORJS judgment of October 30, 2003, supra note 49, pp. 1071 to 1073).
[FN102] According to Messrs. Apitz and Rocha, “the actions of [the] [First] Court were based on duly justified procedural reasons, as they are the only available means to secure the restoration of the allegedly impaired legal situation [, such that] it exercised its own judicial functions […] even though the legal reasons that led to [the] decision conflict with other legal reasons asserted by the honorable [CPAM].” Cf. written defense of Messrs. Apitz and Rocha before the CORJS on October 14, 2003 (Evidence file, Book II, Appendix C.3, p. 540). In turn, Judge Ruggeri claimed before the CORJS that: “in case the parties to a case disagree with the judgment delivered by the Court either because they think that their rights have not been fully honored or because they have been breached, they may make use of the ordinary appeal mechanisms provided by the law. This is the rationale behind the constitutionally recognized principle of double instance. If we assume that any different criterion or interpretation applied by the higher court implies that the lower court has incurred in a judicial inexcusable error, we are not far from declaring that all reversed judgments do contain a judicial inexcusable error and, consequently, the lower judge’s disciplinary responsibility should be adjudicated.” Cf. written defense of Mrs. Ruggeri before the CORJS (CORJS judgment of October 30, 2003, supra note 51, p. 2653).
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91. Since that was not the case, in reality the disciplinary proceeding ended up being nothing but a mere formality. Accordingly, it is the Court’s view that the State failed to comply with its duty to provide reasons for the penalty of removal from office, thereby violating the “due guarantees” ordered in Article 8(1) of the American Convention, in relation toArticle 1(1) thereof, to the detriment of Mr. Apitz, Mr. Rocha, and Ms. Ruggeri.

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92. On the other hand, the State argued that the members of the First Court were not removed as a result of “political persecution, but that [the removal of its members] was the result of the misconduct and negligence […] in [the] exercise of their powers.” The State noted that “many users [materialized this] through complaints.” Indeed, the case file contains the accounts of

complaints against the three judges of the First Court who are the victims in this case; [FN103] however, it is the Court's view that the CORJS's failure to rule on these complaints in its resolution, as well as its failure to assess the suitability of the judges other than in relation to the commission of the inexcusable error turns the complaints irrelevant for the purpose of determining the reasons that led said organ to remove the judges.

[FN103] Cf. account of complaints against Apitz, Rocha, and Ruggeri issued by the IGC (Evidence file, Book II, Appendix C.3, pp. 379 to 426). Fifteen complaint forms were filed against Mrs. Ruggeri, 13 against Mr. Rocha and 14 against Mr. Apitz. Regarding these complaints, their status is "closing" in all cases; two of them, affecting all three judges, are at the "accusation" stage; one of them concerns the investigation into the inexcusable judicial error. As regards the second accusation, the file of the case before this Court contains no background documents.

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93. Lastly, the representative argued that the victims "requested the submission of recorded information, as evidence, in order to determine whether the order of amparo issued by the First Court […] was indeed constitutive in nature, as argued by the [IGC]." According to the representative, the CORJS "never ruled on whether such evidence should be admitted" and "never took any steps towards obtaining such evidence." The State noted that "the same evidentiary goal could have been achieved by requesting a certified copy of the legal tradition of the property."

94. Based on the above, the Court finds that the facts that (1) the CORJS did not rule on the request for evidence submitted by Messrs. Apitz and Rocha, and (2) such evidence was available to the victims, who could have obtained it directly at the relevant state office for subsequent submission to the CORJS, are not in dispute between the parties. Accordingly, the point at issue is whether the CORJS was required to rule on the victims' request for evidence. It is the Court's view that such was the only evidentiary request made by the victims and it was intended to provide clarification on a decisive aspect of the case, i.e. that the amparo by the First Court in fact did not produce constitutive effects and that, therefore, there was no inexcusable judicial error. Considering the above, in the Court's opinion, at the very least the CORJS should have ruled by allowing or denying the request for evidence, or even by ordering that such evidence be obtained and submitted by the victims themselves. Because of its complete silence on the matter, the Court considers the State to have violated the "due guarantees" ordered in Article 8(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Messrs. Apitz and Rocha.

6. Independence

95. The matter of judicial independence that is at issue in the instant case involves two interrelated components. First, the case falls within an alleged context of lack of independence of the Venezuelan Judiciary. Second, there is the alleged lack of independence of the CORJS.

6.1. Independence of the Judiciary, in general

96. The representative argued that "the removal of the judges of the First Court […] falls within a broader political context" in which the Government allegedly carried out a "refinement or 'ideological cleansing' of the courts of Venezuela, aimed at getting rid of any judges who […] were not aligned with the political project devised by the President of Venezuela," thereby "interfer[ing] with the independence […] of the Judiciary in general."

97. The Court will now assess whether the evidence contained in the file allows the case of the victims' removal to be framed into a pattern of cases that would demonstrate that the Venezuelan Judiciary lacks independence. In this regard, the Court has held that it is not possible to ignore the special seriousness of finding that a State Party to the Convention has carried out or has tolerated a practice of human rights violations in its territory, and that this "requires the Court to apply a standard of proof that considers the seriousness of the charge and that notwithstanding what has already been said, is capable of establishing the truth of the allegations in a convincing manner." [FN104]

[FN104] Cf. Case of Godinez Cruz v. Honduras. Merits. Judgment of January 20, 1989. Series C No. 5, para. 135, and Case of Escué Zapata, supra note 14, para. 45.

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98. A first event related by the representative is the speech delivered by a Justice of the Chamber for Constitutional Matters of the STJ at the inauguration of the 2001 annual court term. According to the representative, in that speech "[he] started to insist that the interpretation of the Constitution should serve the prevailing political project."

99. Said speech stated, inter alia, as follows:

The Highest Court can be proud and satisfied that it has provided a legal solution to the problems that arose […] in line with the axiological project of the Constitution of the Bolivarian Republic of Venezuela and with the rule of Law and Justice that enshrines such project. […] In this process, not only has the law not operated as an obstacle to social change but, on the contrary, it has turned out to be an instrument at the service of the uninterrupted juridification of change itself […] tribute has been paid to law and justice, and we have recovered our faith in legislation as an adequate means to bring about political change. In spite of the diatribe of those who oppose such change, the Highest Court has acted as expected of it, even though not everyone had the exact same expectation. From this moment onwards, constitutional doctrine will have to be developed in a progressive direction. […] Perhaps this is the start of a new legal-political climate in which to live the Venezuela we all want. [FN105]

[FN105] Cf. speech of Justice Delgado Ocando, supra note 13.

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100. The Court does not consider that such speech insists that constitutional interpretation should be at the service of the prevailing political project, as claimed by the representative. The speech deals with the legal resolution of political conflicts and, since it makes reference to an axiological constitutional project, it does not necessarily end with an expression of support to any given political position. [FN106]

[FN106] The representative also made reference to the court term's inauguration speech delivered by Judge Francisco Carrasquero on January 28, 2008, in which he apparently stated that "the paradigm of a given and alive ideology tints our actions;" however, this speech has not been added to the case file. Unlike the speech of Justice Delgado Ocando, which the Court has taken into consideration because the full text thereof was available on the web page of the STJ, the speech delivered by judge Carrasquero is not available on that page. Since the full speech is unavailable, the Court lacks the necessary elements to assess its value.

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101. The element of context brought up by the representative is the alleged "removal or 'retirement' of those judges of the [STJ] who had at some point strayed away from the official position." In this regard, the representative makes reference to the retirement of three justices of the Electoral Chamber who signed a judgment on the presidential recall referendum. [FN107] The only evidence provided on this issue is the informative statement of a reporter, [FN108] which is not sufficient to consider it a proven fact. Moreover, the representative submitted the opinion of two experts on the annulment of the appointment of a STJ justice allegedly on the grounds of his status as the rapporteur of a judgment describing as a "power vacuum" [FN109] the events of April 2002. The Court emphasizes that these expert opinions cannot, by themselves, constitute complete proof that an event took place. These expert opinions should be confronted with other elements of proof that should be added to the file and be subject to challenge. The representative also maintained that the number of magistrates of the STJ had been increased with the objective of "obtaining [its] total control." In this regard, the Court has verified that the STJ Organic Law was passed on May 19, 2004, increasing the number of STJ justices from 20 to 32 [FN110] and that the National Assembly appointed said justices on December 13, 2004. [FN111] One of the experts presented by the Commission stated that there was "an increase, motivated by reasons that were unquestionably political in nature, in the number of Justices of the Supreme Tribunal," [FN112] and, according to one of the persons who provided an informative statement, the increase from 20 to 32 justices was "aimed at regaining absolute control of the highest court;" [FN113] however, the case file contains no other evidence supporting the opinions of the aforementioned persons which, by themselves, cannot be deemed sufficient to find that the highest court of a country is controlled by the Executive Branch.

[FN107] The representative made reference to the removal "of justices Alberto Martín Urdaneta (the President of the Electoral Chamber of the STJ), Rafael Hernández, and Orlando Gravina, both serving at the Electoral Chamber as well (who signed the judgment of March 15, 2004, whereby the Chamber stayed the enforcement of a resolution issued by the National Electoral Council that had blocked the presidential recall referendum), and who were pensioned off."

[FN108] The informative deponent stated that "Arrieche (who had blocked the criminal proceedings against the aforementioned military officers) and justices Alberto Martini Urdaneta, Rafael Hernández and Orlando Gravina, of the Electoral Chamber (who found in favor of a presidential recall referendum), were removed from their offices by the National Assembly, whether via removal or retirement." Cf. statement of Mr. López Albujas, supra note 55, p. 879.
[FN109] Cf. declaration before a public notary (affidavit) by Mr. Román Duque Corredor, dated January 10, 2008 (File on the Merits, Book III, p. 871) and affidavit of Mr. Jesús María Casal Hernández, supra note 99, p. 844.
[FN110] Cf. article 2, STJ Organic Law, supra note 31.
[FN111] Cf. Legislative Act of December 13, 2004, passed by the National Assembly and published on December 14, 2004 in Official Gazette No. 38.086 (File of Annexes to the Application, Book II, Appendix C.13, pp. 727 and 728).
[FN112] Cf. affidavit of Mr. Casal Hernández, supra note 99, p. 841.
[FN113] Cf. affidavit of Mr. López Albujas, supra note 55, p. 879.
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102. A third element consists of the inciting expressions allegedly uttered by certain justices in favor of the President of Venezuela during the opening of the 2006 court term. As evidence, the Court has only found a reference in an informative statement to "magistrates [who,] in the presence of the Chief of State, voiced political remarks." [FN114] This statement fails to specify which were the alleged "political remarks" or when were they expressed, and does not explain how they would impair the independence of the Judiciary.

[FN114] Cf. declaration before a public notary (affidavit) by Mr. Alberto Arteaga Sánchez on January 17, 2008 (File on the Merits, Book III, p. 886).
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103. As the fourth element of context, the representative alleged the existence of certain statements made by public officials that would point to the Executive Branch's interference with the Judiciary. In 2005, the then Chief Justice of the STJ qualified the judges [that had just been] sworn in as "Bolivarian." The Court notes that the Justice's exact words were as follows:

Today, 164 lawyers are being sworn in as republican and Bolivarian judges […]. As we have already said, and we will say it again, we do not want judges who engage in political proselytism. The Constitution forbids political affiliation in both justices of the Supreme Tribunal and all other judges of Venezuela. We do not want judges who are sympathetic to the opposition party or the Government. We want judges who will respect and guarantee the enforcement of the Constitution of the Bolivarian Republic of Venezuela. That was the intended meaning of my words. [FN115]

[FN115] Cf. newspaper article entitled "TSJ otorgó la titularidad a 164 jueces 'bolivarianos'" ["STJ grants tenure to 164 'Bolivarian' judges"], supra note 13.
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104. The second statement was apparently made by a representative of the National Assembly, who allegedly said that:

Even though we representatives hold the power over this choice, the President of the Republic was consulted and his opinion was very much taken into consideration […] Let's be clear, we are not going to score goals against our own team. The list included eligible people from the opposition party. The opposition could have used them to reach an agreement at these last sessions, but chose not to do so. So we are not going to be doing that for them. There is no one in the group of candidates who will go against our interests.

105. The last statement was taken from a February 8, 2007 interview of Mrs. Luisa Estella Morales, a former judge of the First Court, in which she stated as follows:

It is a secret to no one that, at the time we [she and former judge of the First Court Evelyn Marrero] left the Judiciary the historical and political circumstances that surrounded the Tribunal led the country, perhaps not to an upheaval, but to a series of readjustments within the Judiciary… We needed to leave. [FN116]

[FN116] Cf. newspaper article entitled "Morales dirigirá con amplias facultades el Poder Judicial" ["Morales will lead the Judiciary Power with ample authority"] published on February 8, 2007 in El Universal on February 8, 2007 (Evidence file, Book V, p. 1349).

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106. As regards these statements, the Court notes that the first one was provided by the representative out of context; however, if viewed as a whole, it rather appears to deny the interference it is intended to prove. As regards the second statement, the evidence submitted to this Court to prove that the Assembly representative did actually make such statements consists of the statement of Mrs. Ruggeri [FN117] and that of Mr. Edgar José López Albujas. [FN118] No copy of the original document from which Ruggeri and López obtained the information was made available to this Court. Accordingly, the Court cannot verify that the statement was indeed made as indicated. Lastly, the Court finds the statement of judge Morales to be ambiguous, with it failing to conclusively demonstrate the influence of the other branches of government on the Judiciary.

[FN117] Cf. affidavit of Mrs. Ruggeri, supra note 33, p. 744.
[FN118] Cf. affidavit of Mr. López Albujas, supra note 55, p. 879.

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107. Lastly, the representative submitted an expert opinion that makes reference to a pattern of instances of dismissal or removal of judges for political reasons, [FN119] but the case file contains no evidence on which the Court can verify such opinion, which, in and of itself, is insufficient to deem the alleged pattern as an established one.

[FN119] Cf. affidavit of Mr. Duque Corredor, supra note 109, p. 867.
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108. All of the above having been taken into consideration, the Court has only been able to verify that the number of justices of the Supreme Tribunal was indeed increased and that certain statements were indeed made by public officials or members of the Judiciary. However, that is not grounds for the Court to reach any conclusion whatsoever regarding the existence of the alleged interference of the Executive Branch with the Judiciary. Neither does the file of the instant case contain conclusive evidence that the Judiciary has been the subject of ideological "cleansing." For such reasons, and based on the available evidence, the lack of independence of the Judiciary, in general, has not been proven before this Court.

6.2. Independence of the CORJS

109. The Commission argued that the instant case involved a "misuse of power," which took place because of the use of "formally valid procedures –the disciplinary investigation of the victims- as mechanisms for achieving undeclared ends." In this regard, the Commission stated that "the disciplinary procedure was used as a tool to remove judges that were a part of the majority in the First Court […] who had issued decisions that were contrary to the administration." It then argued that "indicia as a whole support the inference that there was a cause-and-effect relationship between the statements of the President of the Republic and senior government officials concerning decisions that went against government interests and the disciplinary investigation that was initiated and that culminated in the victims' removal."

110. The representative argued that "[b]ecause the Government was unable to control the content of the First Court's rulings, it chose to find a way to remove the judges. The victims' removal […] was used as a political tool to illegitimately interfere with the independent exercise of the powers and duties of the judges of the First Court," since the CORJS merely "executed an order received, either expressly or tacitly, from the President of the Republic."

111. The State maintained that the evidence submitted by the petitioners is insufficient "to conclusively verify the existence of an instance of abuse of power against [the J]udiciary so that it would remove the alleged victims."

112. There are eleven judgments of the First Court, which according to the Commission and the representative, are the true reason behind the removal of the judges of that court. Ten of those judgments were rendered between August 2002 and August 2003. Through them, the First Court respectively allowed an amparo against a military air base that was keeping a helicopter from taking-off in the context of large marching demonstrations and mass gatherings in the city of Caracas; [FN120] suspended the proceedings against Army generals by investigation councils; [FN121] declared the eviction of a General from his home, on the orders of an Army General Commander, unconstitutional; [FN122] allowed an amparo aimed at de-militarizing a State in which Army and National Guard officers were deployed; [FN123] ordered that the Mayor of Caracas be allowed to enter the Metropolitan Police Department premises, which were under military control; [FN124] suspended the requisitioning, by the National Guard and other administrative agencies, of products that were the property of private companies; [FN125]

ordered the transfer of the constitutionally allocated revenues owed to the State of Carabobo; [FN126] and invalidated administrative decisions that ended the irremovability of the workers represented by a still unchartered oil workers' union. [FN127]

[FN120] Cf. judgment No. 2326 of August 20, 2002 issued by the First Court (Evidence file, Book III, Annex B.1.a, pp. 771 to 799).
[FN121] Cf. judgment No. 3034 of October 31, 2002 issued by the First Court (Evidence file, Book III, Annex B.1.b, pp. 801 to 813), and judgment No. 3043 of November 6, 2002 issued by the First Court (Evidence file, Annex B.1.c, pp. 815 to 829).
[FN122] Cf. judgment No. 3116 of November 11, 2002 issued by the First Court (Evidence file, Book III, Annex B.1.d, pp. 831 to 852).
[FN123] Cf. judgment No. 3278 of November 25, 2002 issued by the First Court (Evidence file, Book III, Annex B.1.e, pp. 854 to 861).
[FN124] Cf. judgment No. 01 of January 7, 2003 issued by the First Court (Evidence file, Book III, Annex B.1.f, pp. 863 to 877).
[FN125] Cf. judgment No. 75 of January 22, 2003 issued by the First Court (Evidence file, Book III, Annex B.1.g, pp. 880 to 905), and judgment No. 155 of January 24, 2003 issued by the First Court (Evidence file, Book III, Annex B.1.h, pp. 908 to 923).
[FN126] Cf. judgment No. 552 of February 26, 2003 issued by the First Court (Evidence file, Book III, Annex B.1.i, pp. 926 to 938).
[FN127] Cf. judgment No. 1852 of June 12, 2003 issued by the First Court (Evidence file, Book III, Annex B.1.j, pp. 940 to 955).
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113. The evidence provided by the Commission and the representatives in support of the claim that such judgments are "contrary to the [interests of the] administration" consists of several media articles that make reference to the "controversial rulings" [FN128] of the First Court, which were allegedly "criticized by the Government." [FN129] The State contested this allegation and claimed that there had been no determination as to "which organ(s) and/or authorized agency(ies) had interpreted the judgments as contrary to the interests of the government" and that there is "no instrument to measure public opinion […] that provides an uncontestable assessment of the alleged impact."

[FN128] Cf. newspaper article entitled "Los polémicos fallos" [Controversial Rulings], published in El Universal, supra note 15.
[FN129] Cf. newspaper article entitled "Una juez y unos fallos - Retaliaciones" [A Judge and some Rulings – Retaliations], published on October 2 in El Universal (Evidence file, Book IV, Annex C, p. 1268); newspaper article entitled "Protección del TSJ exigen magistrados de Corte Primera" [First Court judges demand STJ protection], published on October 10, 2003 in El Universal (Evidence file, Book IV, Annex C, p. 1277), and newspaper article entitled "¡La Corte Administrativa!" [Administrative Court!], published on September 27, 2003 in El Universal (Evidence file, Book IV, Annex C, p. 1290).
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114. The Court notes that, according to the media articles, there was criticism targeting, among others, the rulings ordering the "suspen[sion of] investigation councils against dissident military officers" and the "de-militarization of the State of Miranda," but the articles fail to specify which public officials criticized the rulings in question or what the specific statements against those rulings were. Moreover, according to one of the expert opinions, the First Court was the subject of "public questioning of political nature" by the President of Venezuela; [FN130] however, this opinion does not specifically identify which rulings were allegedly criticized or how they were criticized. On the other hand, at the public hearing Messrs. Apitz and Rocha addressed the decision that ordered the overflight of helicopters and how such order was disobeyed by the security agencies. They also dealt with the judgment on the Investigation Councils set up against dissident military officers and the reactions of the Executive Branch urging that they be disregarded. They stated that, in the context of the de-militarization of the State of Miranda, high-ranking public authorities urged that such decision be disregarded and uttered verbal accusations against them. However, aside from their statements, they did not provide other evidence and, accordingly, the Court finds that the allegations of fact have not been demonstrated. The only possible conclusion that the Court can infer from the text of the judgments of the First Court is that such judgments created restrictions on the actions of the armed forces or brought into question the validity of the actions of the Administration. [FN131]

[FN130] Cf. affidavit of Mr. Casal Hernández, supra note 99, p. 850.

[FN131] In connection with the First Court's decision regarding the de-militarization of the State of Miranda, the representative claimed that "both on television and on the radio, the President of Venezuela announced that he had ordered the military not to comply with any decision that was contrary to his specific instructions." However, the representative failed to file any evidence in support of such claim.

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115. Altogether different is the judgment issued by the First Court on August 21, 2003, on which judges Marrero and Morales delivered a dissenting opinion, in the so-called case of the "Plan Barrio Adentro." This decision concerned a Government health plan that allowed the participation of foreign medical doctors without requiring recertification. The First Court ordered "that the [f]oreign [d]octors be substituted with [V]enezuelan or [f]oreign doctors who meet the requirements laid down in the Medical Practice Law." [FN132] Such decision led high-ranking Government authorities to make statements to the press, including the President of Venezuela, who stated that:

Do you believe that the Venezuelan people are going to follow an unconstitutional decision? Well, they are not. Which kind of court may rule the death of the poor, […] the court of injustice, […] and, even so, I repeat, there is a lot of excess fabric to be trimmed in the judicial branch, from the Supreme [Tribunal] of Justice on down, up to the parish courts, municipal courts, there was not much work done to transform the State, and that is so because we are still waiting the passing of the Supreme Tribunal of Justice's Act […] And until today the Adecos rule in that First Court […] Because this Court has lodged an aberrant decision, no, of course, it is the opposition, the Adecos mainly and the copeianos and this "jinetera" oligarchy, inside that Court, manipulating the judges to try to stop, but it is not going to stop this, forget it! […] Suppose there

is a tragedy such as the one in Vargas […] we would have to follow all that this crazy court has ruled. No, that every doctor who comes to help would have to be recertified […] Look, I am not telling you what feelings this Court arouse in me, the three of them, because there are two dissenting votes, I am not telling you about those feelings because we are talking to a nation […] But the people are telling the Court so: you know where you can go with your decision […] You can comply with it in your homes, if you wish […] Yesterday 140 additional doctors arrived, they are going to Sucre […] [FN133]

[FN132] Cf. judgment No. 2727 of August 21, 2003 issued by the First Court (Evidence file, Annex B.1.k, p. 976).
[FN133] Cf. statement of the President of Venezuela Hugo Chávez Frías on Government Online, Aló Presidente No. 161, of August 24, 2003 (File on the Merits, Book I, p. 259).

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116. In her statement, former judge Ruggeri indicated that "when the President made that statement, it was obvious that it was not only an urging not to obey [the] judgments [of the First Court] but also an urging for [their] removal, which is what actually ended up happening."

117. Moreover, the Minister of Health stated that she "[wa]s unaware of this arbitrary, excessive decision that does not conform to any rule of law." [FN134] The Mayor of the Municipality of Libertador stated that "there is no way the plan will get suspended" [FN135] and urged "the population to get ready to demonstrate in defense of the Barrio Adentro plan." [FN136] Lastly, the Mayor of Sucre said: "I am not going to comply with the court judgment even if they throw me in jail." [FN137]

[FN134] Cf. newspaper article entitled "Gobierno desconoce la decisión judicial de reemplazar a los médicos cubanos" ["Government disregards court decision to have Cuban doctors replaced"], published in El Nacional, supra note 15.
[FN135] Cf. newspaper article entitled "Ni en sueños se suspende el plan Barrio Adentro" ["No way the Barrio Adentro plan will get suspended"], published on August 28, 2003 in El Universal (Evidence file, Book IV, Annex C, p. 1255).
[FN136] Cf. newspaper article entitled "Los cuestionamientos de José Vicente y Freddy Bernal," ["The challenges posed by José Vicente and Freddy Bernal"] published in El Universal, supra note 15.
[FN137] Cf. newspaper articles entitled "Rangel Avalos desacatará decisión de tribunales" ["Rangel Avalos to disobey court decision"] and "Rangel Avalos reitera desacato a decisión de Corte" ["Rangel Avalos confirms disobedience of Court order"], published in El Universal, supra note 15. At the public hearing before the Court, Mr. Apitz stated as follows: "Representative Nicolás Maduro, who is currently the Minister of Foreign Affairs, [stated] to the media that our pictures should have been displayed in public locations so that people could identify us on the streets and give us what we deserved." However, no evidence supporting such allegations was incorporated to the case file before this Court. Cf. declaration rendered before the Inter American Court at the public hearing celebrated on January 31, 2008.

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118. Regarding such statements, the State expressed that "the media that discussed or reported the news did not […] allow [these] officials a chance to comment on their statements in order to clarify their scope." It also contended that the documentary evidence on such statements "is, about ninety percent (90%), limited to news that were reported in a not so representative section of the Venezuelan print media, presented in a time sequence that deviates from any logical pattern of legal coherence." It is the Court's view that the circumstances alleged by the State do not question the existence of such statements or complain that they have been distorted or are false. The statements clearly show that judges Apitz, Rocha and Ruggeri were professionally discredited with claims that they should not be a part of the Judiciary and urgings to disobey the decision adopted upon a majority vote by the First Court.

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119. In combination with the above, as a contextual fact that would explain the reasons for the misuse of power, the Commission and the representative argued that two distinct political trends were at play within the First Court, namely the one embraced by the three victims in the instant case, which was against government interests, and that of judges Morales and Marrero, who apparently "systematically" delivered dissenting opinions on those decisions that went against government interests," and "were subsequently appointed to the [STJ]." In turn, the State denies that such two judges were "'rewarded' with their 'promotion' to the [STJ]."

120. The Court notes that the only evidence submitted in connection with the above consists of two media articles published in 2003 that described the two judges as pro-government. [FN138] However, the judgments of the First Court that were incorporated to the case file (supra para. 112) show that most of such decisions were reached unanimously. [FN139] Judge Morales delivered a dissenting opinion on four of those judgments, [FN140] as did judge Apitz on one of these. [FN141] Only in the case of "Barrio Adentro" did judges Marrero and Morales both deliver a dissenting opinion. Therefore, it is the Court's view that there is no evidence that these two judges systematically ruled for the Government. What has indeed been demonstrated is that judges Marrero and Morales were not removed but retired due to the alleged judicial error committed by all members of the First Court, and later on were appointed to the STJ. Further below, the Court will analyze the effects of this fact in connection with the right to equal protection before the law.

[FN138] Cf. newspaper article entitled "Magistrados esperan frutos del pacto entre el MVR, AD y el MAS" ["Magistrates expect results of MVR-AD-MAS pact"], published in El Universal, supra note 15, and newspaper article entitled "Comisión de Reestructuración Judicial destituyó a 4 magistrados" ["Commission for Restructuring the Judicial System removes 4 magistrates"], published on October 31, 2003 in El Universal (Evidence file, Book IV, Annex C, p. 1246).

[FN139] Cf. First Court judgments No. 3034 of October 31, supra note 121; No. 3043 of November 6, 2002, supra note 121; No. 3278 of November 25, 2002, supra note 123; No. 01 of January 7, 2003, supra note 124; No. 552 of February 26, 2003, supra note 126, and No. 1852 of June 12, 2003, supra note 127.

[FN140] Cf. dissenting opinions of judge Morales on the judgments No. 2326 of August 20, 2002, supra note 120; No. 3116 of November 11, 2002, supra note 122; No. 75 of January 22, 2003, supra note 127, and No. 155 of January 24, 2003, supra note 125.
[FN141] Cf. dissenting opinions of judges Apitz and Morales on the judgment No. 3116 of November 11, 2002, supra note 122.
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121. Furthermore, the representative argued that "recently, while she was the Chief Justice of the STJ and the Chamber for Constitutional Matters of said Court, judge Luisa Estella Morales acted as an advisor to the President of Venezuela, as the executive secretary to a Presidential Council for the drafting of the constitutional reform bill" which allegedly evidences the "political bonds between the Executive Branch and the Judiciary." In this regard, the Court notes that the evidence provided in this case only confirms that judge Morales was sworn in in that capacity on January 17, 2007. [FN142] However, no other evidence incorporated to the case file warrants a conclusion, based on that fact alone, that the alleged political links between the Executive Branch and the Judiciary actually exist.

[FN142] Cf. newspaper article entitled "Si el Presidente se excede al cambiar la Constitución, el Tribunal Supremo de Justicia aplicará correctivos" ["Supreme Tribunal to apply sanctions if President takes constitutional changes too far"], published on February 9, 2007 in El Nacional (Evidence file, Book V, p. 1348), and newspaper article entitled "Velaré para que la reforma no viole la Constitución" ["I will make sure the reform does not violate the Constitution"], published on February 9, 2007 in El Universal (Evidence file, Book V, p. 1347).

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122. In turn, the Commission and the representative argued that the circumstances surrounding the criminal investigation opened in connection with the removal of a file from the First Court, which led to a search of the Court's premises, also evidenced the misuse of power.

123. As to this incident, on September 18, 2003, Mr. Alfredo Romero, judge Rocha's chauffeur, was placed in detention for the alleged concealing of a public document, as he delivered a First Court file at the residence of an external rapporteur of said Court, [FN143] on the authority of judges Apitz and Rocha. [FN144]

[FN143] Cf. newspaper article entitled "Aparece documento clave en caso de Corte Primera" ["Key document in First Court case found"], published on October 4, 2003 in El Universal (Evidence file, Book IV, Annex C, p. 1270).
[FN144] Cf. judgment No. 375 of October 23, 2003, rendered by the Criminal Cassation Chamber of the STJ (Evidence file, Book II, Appendix C.1, pp. 266 to 278), and testimony of Mr. Rocha at the public hearing held before the Inter-American Court on January 31, 2008.
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124. On September 23, 2003, in the context of the criminal investigation related to this offense, the First Court was the scenario of a search that extended for several hours and was conducted by long-gun-carrying officers of the General Directorate of Intelligence and Prevention Services (DISIP), [FN145] and in the presence of the Public Prosecutor's Office.

[FN145] Cf. testimony of Mr. Apitz, supra note 137; affidavit of Mr. López Albujas, supra note 55, p. 877, and newspaper article titled "Cierre de Corte Primera bloqueó sentencia a favor de Globovisión" ["Ruling in favor of Globovisión blocked by First Court close-down"], published in El Universal on November 9, 2007 (Evidence file, Book IV, Annex C, p. 1317).

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125. On October 6, 2003, judges Apitz and Rocha were summoned by the Public Prosecutor's Office [FN146] and, on October 7, 2003, acting "on its own motion" the IGC started a disciplinary investigation into the events of September 18, 2003. [FN147] On October 8, 2003, "at the request of the [IGC]", the CORJS applied a "precautionary measure of suspension" for a 60-day term to Messrs. Apitz and Rocha "in order to conduct the necessary investigation […] into the serious events of […] September 18 [of that year.]" [FN148]

[FN146] Cf. summons of October 6, 2003 to Mr. Apitz, and summons of October 6, 2003 to Mr. Rocha, issued by the Public Prosecutor's Office (Evidence file, Book III, Annex B.3.b, pp. 1048 and 1049).
[FN147] Cf. account of complaints against Mr. Rocha, supra note 103, pp. 396, 397 and 403, and account of complaints against Mrs. Ruggeri, supra note 103, pp. 379, 380 and 382.
[FN148] Cf. resolution No. 117 of October 8, 2003, issued by the CORJS, applying a precautionary measure of suspension to Messrs. Apitz and Rocha (Evidence file, Book III, Annex B.4.a, pp. 1172 and 1173).

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126. While Mr. Alfredo Romero was held in detention (supra para. 123), his lawyer stated to the press that "Romero can be nothing but a political prisoner, since it is more than evident that he has been in detention for twelve days now without due cause, and that political pressure is being exerted on those judges of the First Court who dared rule in a manner that did not sit well with the Government." [FN149]

[FN149] Cf. newspaper article entitled "Chofer de la Corte Primera es 'carnada de una trampa política'" ["First Court driver used as 'bait in political trap'"], published on September 30, 2003 in El Universal (Evidence file, Book IV, Annex C, p. 1266).

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127. On October 23, 2003, the Criminal Cassation Chamber of the STJ ruled that the detention of Mr. Rocha's driver was unfounded, as the removal of the file did not meet the requirements of an offense and was a "common practice" in the Venezuelan Judiciary that was not the subject of

an "express prohibition." The Chamber "invalidate[d] any investigation which may be conducted into the same events." [FN150]

[FN150] Cf. judgment No. 375 of October 23, 2003, rendered by the Criminal Cassation Chamber of the STJ, supra note 144, pp. 274 to 276.

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128. On October 26, 2003, following the ruling of the Criminal Cassation Chamber referred to in the preceding paragraph, the President of Venezuela spoke of the First Court in the following terms

la Cortecita [the little court] […] A chamber, a court, that is, where most of the judges had sold out to the interests of the coup-plotting opposition, and one night it turns out that they obtained, and they captured, a police team captured the chauffeur of one of those judges carrying a file. In other words, they removed a file on corruption from the archive there, and the judge's chauffeur was carrying the file to be delivered to the attorneys of the defendant, who is a leader of one of these opposition parties that in essence are nothing other than Acción Democrática and COPEI. [FN151]

[FN151] Cf. statement made by the President of the Republic Hugo Chávez Frías on October 26, 2003 on Government Online, Aló Presidente No. 169, supra note 13.

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129. In her statement, former judge Ruggeri expressed that "such discrediting remarks sought to pave the way for [the] removal [of the members of the First Court] or to scare [them] into adhering to the political project of the Government."

130. The State considered that the statements of "high-ranking Government officials […] do not ope legis amount to misuse of power." It added that if such statements "are put into context, it is evident that they were aimed at protecting a public interest that arose as a result of an unmistakable need in a democratic society."

131. The Court has repeatedly insisted on the importance of freedom of expression in any democratic society, particularly in connection with public-interest matters. [FN152] However, freedom of expression is not an absolute right and its exercise can be subject to restrictions, [FN153] particularly where it interferes with other rights guaranteed in the Convention. [FN154] Accordingly, making a statement on public-interest matters is not only legitimate but, at times, it is also a duty of the state authorities. However, in making such statements the authorities are subject to certain restrictions such as having to verify in a reasonable manner, although not necessarily exhaustively, the truth of the facts on which their opinions are based, [FN155] and this verification should be performed subject to a higher standard than that used by private parties, given the high level of credibility the authorities enjoy and with a view to keeping citizens from receiving a distorted version of the facts. [FN156] Furthermore, they should bear in mind that, as public officials, they are in a position of guarantors of the fundamental rights of the

individual and, therefore, their statements cannot be such that they disregard said rights. Likewise, public officials, particularly the top Government authorities, need to be especially careful so that their public statements do not amount to a form of interference with or pressure impairing judicial independence and do not induce or invite other authorities to engage in activities that may abridge the independence or affect the judge's freedom of action. [FN157]

[FN152] Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, paras. 112 and 113; Case of Ricardo Canese v. Paraguay, Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, paras. 82 and 83, and Case of Kimel, supra note 8, para. 87.
[FN153] Cf. Case of Kimel, supra note 8, para. 54.
[FN154] Cf. Case of Kimel, supra note 8, para. 56.
[FN155] Cf. Case of Kimel, supra note 8, para. 79.
[FN156] Cf. Case of Kimel, supra note 8, para. 79.
[FN157] On this point it is relevant to quote the affidavit of Mr. Param Cumaraswamy (supra note 59, p. 830) who stated that "[w]hile constructive public criticism of judgments or decisions in temperate language would be permissible even from political forces, when such criticism is couched in virulent, intemperate, threatening and intimidating language and in bad faith, it will be considered a threat or interference with judicial independence."

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132. Considering that the Criminal Cassation Chamber viewed the removal of a case file off the premises of the First Court, which did not present the elements of a criminal offense, as a "common practice," it is the Court's opinion that the criminal proceeding, the disciplinary investigation and the precautionary measure of suspension against the judges of the First Court were excessive and create suspicion as to the true reason behind such actions. Moreover, the circumstances surrounding the search of the First Court, which extended for ten to eleven hours and was conducted by about forty-six DISIP officials carrying long guns, appear as disproportionate to the fact that was being investigated. In combination with the statements made by the highest Government authority three days after the ruling of the Criminal Cassation Chamber of the STJ, the above evidences an intimidating conduct upon the judges of the First Court. [FN158]

[FN158] The number of hours during which the search extended and the number of DISIP officials involved in that search were provided by Mr. Apitz in his testimony before the Court (supra note 139). Likewise, Mrs. Ruggeri stated that the search lasted for "more than 6 hours" (supra note 33, p. 735). The State did not contest these facts and, therefore, the Court considers them to be proven facts.

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133. On the other hand, the representative claimed that "the [CORJS] had a preconceived notion regarding the cleansing of the [J]udiciary." The representative's claims were based on the

statement of Beltrán Haddad, who was the rapporteur of the decision ordering the victims' removal, in which he wrote:

We must continue the fight for a true Justice system, over those judges who cling to the past. Even though we have achieved acceptable levels of cleansing over the past three years, the goals are not alike and coherent when it comes down to competitive examinations and the development of a true judicial institute […] We currently need judges who are committed to the ethical and social values of the new reality rather than to legal concepts exclusively. This forces us into a new political project for the Justice system. That is the path we need to go down.

134. However, in a section of this exact same article that was not quoted by the representative, Mr. Haddad also said that:

The judges of the First Court […] were removed due to the serious inexcusable judicial error that had been previously held to be such by the [CPAM] of the [STJ], which becomes evident because of the ludicrous and contrary-to-law nature of a decision that fails to take its own consequences into consideration. We did not act arbitrarily or in the spirit of political retaliation. We have no political affiliation and the operative section of our ruling is limited to the penalty of removal only. Accordingly, it is not true that the judgment closed down a Court of Venezuela or denied access to justice to a large number of people. [FN159]

[FN159] Cf. newspaper article entitled "Clan de la justicia entredicha," [The Justice-in-question clan], written by Beltrán Haddad and published on December 3, 2003 in El Nacional (File on the Merits, Book IV, p. 1071).

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135. Considering the above, it is the Court's view that the press article submitted by the representative is not sufficient to conclude that the actions of the rapporteur of the CORJS's decision on removal were aimed at an "ideological cleansing," in the terms suggested by the representative.

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136. Based on what was set out in the paragraphs above, the Court finds that the following facts have been established: 1) the judges of a high court of Venezuela, such as the First Court, which is in charge of reviewing the acts of the Administration, were removed from their offices and, following their removal, such court was left without judges for several months, which clearly undermines the aforementioned reviewing role; 2) the removal took place after, upon a majority vote, the First Court rendered a judgment that was the subject of serious criticism coming from the highest levels of Government, with the argument that the victims should not be judges and public statements that the judgment would not be obeyed; 3) the removal also took place after a criminal proceeding, a disciplinary investigation and the precautionary suspension of two of the victims, all due to a fact that was later on described as "common practice" by the highest court of Venezuela; 4) that same fact also led to a disproportionate search of the premises

of the First Court, and 5) lastly, the removal came after the highest Government authority said all the victims were "coup-plotters." [FN160]

[FN160] Cf. statement made by the President of the Republic Hugo Chávez Frías on October 26, 2003 on Government Online, Aló Presidente No. 169, supra note 13.

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137. In the opinion of this Court, these facts evidence the clear exertion of pressure on the First Court. That said, what needs to be determined in this international proceeding is whether the organ that ordered the victims' removal from office –the CORJS- offered them sufficient guarantees to be considered an independent tribunal that determined the disciplinary proceeding against the victims without any sort of involvement in the pressure exerted on them.

138. In accordance with the Court's previous decisions, an adequate appointment process and a fixed term of office are some of the ways to guarantee the independence of judges. [FN161] Also, the Court has already held that neither regular nor temporary judges can be subject to discretionary removal (supra paras. 43 and 44).

[FN161] Cf. Case of the Constitutional Court, supra note 60, para. 75.

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139. The Commission stated that since the Constitutional Assembly ceased to operate, "removals and new appointments [from and to the CORJS] have been made by the [STJ] without following a pre-defined procedure." According to the Commission, the members of the CORJS "can be discretionally removed and appointed, and, therefore, their offices have no stability guaranteeing their independence." The representative agreed with the Commission and stated that the positions of the members of the CORJS "are temporary" and that they "can be removed at any point in time." The State argued that the members of the CORJS have "full independence and impartiality," as they are "appointed by the [J]udicial [B]ranch of which they are members."

140. The Court has verified that the Decree on the Public Authorities Transitional Regime, of December 27, 1999, established that "the [CORJS] [would] be made up of such citizens as the […] Constitutional Assembly may appoint until such time as the Executive Directorate of the Judiciary, the disciplinary Tribunals and the Autonomous Public Defense System [we]re effectively in operation." [FN162] On January 18, 2000, the Constitutional Assembly appointed the seven members of the CORJS. [FN163]

[FN162] Cf. article 28 of the decree whereby the Transitional Scheme for Exercising Public Powers is established, supra note 27.

[FN163] Cf. decree of January 18, 2000, issued by the Constitutional Assembly and published in Official Gazette No. 36.878 on January 26, 2000, cited in the CORJS resolutions of March 10, 2000 and March 22, 2000, which were published in Official Gazette No. 36.925 of April 4, 2000 (Evidence file, Book XII, pp. 4064 and 4065). On March 28, 2000 the CORJS approved its Rules

of Procedure and established that said Commission would be made up of seven regular members and three alternates. Cf. Article 3 of the Rules of Procedure of the CORJS, supra note 29.

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141. On August 2, 2000, the STJ assumed the authority to reorganize the CORJS [FN164] and, on August 9, 2000, because some of the members of the CORJS had been appointed to a different office, the Plenary Chamber of the STJ ratified the appointments of three of the seven members selected by the Constitutional Assembly as regular members, while the other three members became alternates. [FN165] From 2005 onwards, the Chamber for Constitutional Matters of the STJ has, [FN166] via various judgments, repeatedly modified the make-up of the CORJS, sometimes by appointing the alternates in substitution of the regular members, [FN167] and others by appointing new members. [FN168] At the public hearing held before the Court, Mr. Damián Nieto Carrillo, the CORJS's President, stated that "continuance [in] office is [n]ot established with absolute certainty," that the members of the Commission are "virtually temporary members because [they are] awaiting the [enactment of the] Code [of Ethics]" and "they [can] be removed at any time." [FN169]

[FN164] Cf. article 30 of Normativa sobre la Dirección, Gobierno y Administración del Poder Judicial [Rules and Regulations for Directing, Governing and Managing the Judiciary], supra note 30.

[FN165] Cf. minutes of session of the Plenary Chamber of the STJ of August 9, 2000, published in Official Gazette No. 37.019, of August 22, 2000, quoted in resolution No. 117 of October 8, 2003 issued by the CORJS, supra note 148, p. 1172.

[FN166] On June 1, 2005, through a judgment rendered on an action for unconstitutional legislative inaction, the Chamber for Constitutional Matters of the STJ ordered "the substitution" of the regular and alternate members of the CORJS. Cf. judgment No. 1057 of June 1, 2005, rendered by the Chamber for Constitutional Matters of the STJ, supra note 13.

[FN167] Cf. judgment No. 3321 of November 3, 2005, rendered by the Chamber for Constitutional Matters of the STJ, supra note 13.

[FN168] Cf. judgment No. 1764 of August 15, 2007, rendered by the Chamber for Constitutional Matters of the STJ, supra note 13.

[FN169] Cf. informative statement of Damián Adolfo Nieto Carrillo, delivered at the public hearing held before the Inter-American Court on January 31, 2008.

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142. The available evidence leads to the conclusion that the STJ has full discretion to reorganize the CORJS, and there is no pre-established procedure or mechanism conforming to the due guarantees for the appointment or removal of members of the CORJS.

143. On the other hand, the Commission stated that "in observance of the principle of the margin of appreciation of States," a temporary disciplinary regime can be admissible provided that a "strict judgment shows that this judicial policy is warranted." In the Commission's view, the temporary disciplinary regime instituted in Venezuela "has tended to become permanent, although no objective or reasonable factors have been shown to justify [it]," even more so where the irremovability of judges "is not respected if the institutional framework that regulates [it] is

provisional and temporary." Accordingly, "the jurisdictional checks and balances that were necessary in order for judges who were overseeing disciplinary proceedings against judicial officials to be fully independent were impeded." In the Commission's view, this affected the case under consideration, as "the existing regulatory mechanisms did not offer the guarantees that a disciplinary jurisdiction must offer" and gave various authorities the opportunity "to wield excessive power, which in the case under consideration was demonstrated by the misuse of power at the time the victims were removed."

144. The representative further stated that this transitional regime "tends to become permanent" and "is grounded in a constitutional omission and in the rules of an emergency regime that is extraordinary in nature, whose rules are contrary to the guarantees of judicial independence and due process."

145. The State maintained that the different public authorities have "made persistent efforts to do away with […] the transitional regime within the [J]udicial [B]ranch." In this regard, it made reference to the bill for the enactment of the Code of Ethics submitted to the National Assembly, the "Rules on the Leadership, Governance, and Administration of the Judicial Branch," and a court declaration of "legislative inaction" whereby the Legislative Branch was urged "to pass such legislation." The State further indicated that the transitional regime features the "coexistence and coherent application of pre-constitutional, supra-constitutional and post-constitutional rules," without which "it would have been […] unfeasible to guarantee the enjoyment of all rights of the Venezuelan people." It also stated that "[t]he appointment of the former temporary judges of the First Court was made under the same transitional regime."

146. The Court has verified that the transitional regime has been in place since 1999, even though the Constitution provided that its effective term was not to extend beyond one year from the creation of the National Assembly. [FN170] The State made reference to a judgment rendered in 2006 by the Chamber for Constitutional Matters of the STJ, whereby it declared the "unconstitutional legislative inaction on the part of the National Assembly […] in connection with the legislative procedure instituted to enact the so-called bill for the Code of Ethics […], drafted by the Assembly in 2003, which in the end was not promulgated." [FN171]

[FN170] Cf. fifth part of the fourth temporary provision of the Constitution.

[FN171] Cf. judgment No. 1048 of May 18, 2006 issued by the Chamber for Constitutional Matters of the STJ, supra note 13. The STJ "Urg[ed| the [CORJS] to provide advice and cooperation to the National Assembly in order to orderly carry out the legislative work that will allow the enactment and implementation of the future judicial disciplinary code in the spirit of cooperation between the various organs of the Public Administration enshrined in Article 136 of the Constitution."

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147. Based on the above, the Court finds that the Venezuelan Judicial Branch itself has condemned the legislative inaction in the adoption of the Code of Ethics. This inaction has consequences in the instant case, since the victims were tried by a special organ that has no defined stability and the members of which can be appointed or removed without a pre-defined

procedure and at the STJ's sole discretion. Basically, even though the misuse of power by the CORJS, acting under the direct pressure exerted on it by the Executive Branch for it to remove the victims, is not an established fact in the instant case, the Court finds that, given the discretionary removal of the members of the CORJS, due guarantees were not provided to ensure that the pressure to which the First Court was being subjected would not influence the decisions of the disciplinary organ.

148. Based on the foregoing, the Court declares that the State violated the right of Mr. Apitz, Mr. Rocha and Mrs. Ruggeri to be tried by a tribunal subject to sufficient guarantees of independence, in disregard of Article 8(1) of the Convention, in relation to Articles 1(1) and 2 thereof.

7. Efficacy of the recourses filed

149. The Court acknowledges that the recourses filed in the instant case concern the following two issues: i) the provisional suspension measure imposed by the CORJS in accordance with the disciplinary investigation for mishandling of files (supra para. 125), and ii) the sanction of removal imposed by the aforementioned disciplinary authority due to the commission of an "inexcusable judicial error" (supra para. 38).

7.1. Recourse for constitutional amparo against the order for suspension of justices Apitz and Rocha

150. As mentioned above, on October 8, 2003, the CORJS ordered a 60-day suspension on magistrates Apitz and Rocha pursuant to the investigation procedure initiated due to the undue withdrawal of a judicial record from the First Court. On October 9, 2003, the aforementioned justices brought an autonomous constitutional protection action before the Chamber for Constitutional Matters of the STJ. [FN172]

[FN172] Cf. autonomous constitutional protection action brought by Messrs. Apitz and Rocha on October 9, 2003 (Evidence file, Book III, Annex B.4.b, p. 1177).

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151. On June 21, 2004, the Chamber for Constitutional Matters declared "the action terminated due to inactivity in proceedings" and imposed "upon claimant a fine of five thousand bolivars." [FN173] The judgment established that "the case record had been inactive for more than six months, maximum time period to bring an amparo; therefore, under the circumstances, that could qualify as abandoned proceedings, as held by the Chamber in various decisions." [FN174]

[FN173] Cf. judgment No. 1186 of June 21, 2004, rendered by the Chamber for Constitutional Matters of the STJ (Evidence file, Book XVII, p. 4965).

[FN174] Cf. judgment No. 1186 of June 21, 2004, rendered by the Chamber for Constitutional Matters of the STJ, supra note 173, p. 4964.

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152. The representative held that the amparo should "have been decided without delay within three days following submission."

153. The Commission indicated that "the victims filed no arguments regarding the decision [… that] declared the stage closed due to abandonment of proceedings" and that "in view of the insufficiency of charges and evidence, [the Commission] refrained from issuing a supported opinion on the efficacy and adequacy of the action."

154. The State made no reference to this action. Notwithstanding, the State filed a statement related to "the duration of judicial proceedings before the Chamber for Constitutional Matters of the [STJ]." In that statement, the State indicates "that constitutional protection actions[…] are the issues requiring the most time and attention from the Chamber" and that "by the end of 2006 and 2007, [the Chamber] held special sessions in order to reduce judicial workload […] and attempt to come up to date." [FN175] Furthermore, the statement indicates that "there are no strict rules as to the duration of amparo-related proceedings," given "the multiple aspects inherent thereto such as the subject matter, prior claims, main parties, interested third parties, evidence, reports, public order, etc." [FN176] Lastly, the statement establishes that "the burden to further proceedings that lay on claimants was not complied with, thus resulting in disregard of proceeding," though "[t]his type of decision in no manner prevented claimants from filing the constitutional amparo again, since no prejudgment was made on the merits of the controversy." The Court notes that the State did not provide sufficient argumentative support as to the elements of that statement that would allow the analysis of the alleged noncompliance with the burden of furthering proceedings, supposedly falling on the victims, and the time elapsed to solve the recourse for constitutional amparo, so that the Court could appraise such statement based on sound judgment principles and in consistency with the remaining evidence. [FN177]

[FN175] Cf. declaration before a public notary (affidavit) by Mr. José Leonardo Requena Cabello on January 10, 2008 (File on the Merits, Book III, pp. 798 and 803).
[FN176] Cf. affidavit of Mr. Requena Cabello, supra note 175, p. 800.
[FN177] Cf. Case of Chaparro Álvarez and Lapo Íñiguez, supra note 83, para. 230.

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155. The recourse for constitutional amparo is regulated under the Organic Law on the Protection of Constitutional Rights and Guarantees of 1988. The following provisions of this law apply to the instant case:

Section 14.- The amparo and any substantial or accessory aspect related thereto, until the enforcement of the appropriate judicial order, is undoubtedly of public order nature.
[…]
Section 22.- The Court addressing the petition for a constitutional amparo will be empowered to redress the affected legal situation without satisfying any formal requirements and any prior summary investigation.

Should that be the case, the writ of amparo shall be based on and supported by evidence indicating a serious presumption of actual or potential violation.
Section 23.- If the Court decides not to immediately redress the affected legal situation as described above, the Court shall order the authority, entity, social institution or individuals accused of actual or potential violation of constitutional rights or guarantees to, within a maximum term of forty-eight (48) hours as from appropriate notice, report on the alleged actual or potential violation that led to the petition for constitutional amparo.
Failure to submit such report will be construed as admission of the facts raised.
[…]
Section 25.- The constitutional amparo proceeding will not include any type of settlement between the parties; nevertheless, the injured party may, at any stage and condition of proceedings, abandon the action brought, unless the nature of the right involved is essentially of public order or may impair uses and custom.
Malicious withdrawal from or abandonment of proceedings by the injured party will be sanctioned by the sitting Judge or Higher Authority, as the case may be, with a fine of two thousand bolivars (Bs. 2,000.oo) to five thousand bolivars (Bs. 5,000.oo).
Section 26.- The court hearing the amparo will determine, within ninety-six (96) hours following submission of the Report by the person allegedly responsible or expiration of the applicable term, the date for the parties or their legal representatives to orally or publicly present their respective allegations.
After that, the Court will have a non-extendable term of twenty-four (24) hours to decide on the petition for constitutional amparo.

156. The Court finds that, though the victims could resort to an amparo action, which is the most suitable remedy within the Venezuelan domestic jurisdiction for the purposes of the instant case, and that such remedy was timely presented and admissible, it did not prove fast enough to address claims regarding alleged human rights violations. Undoubtedly, it cannot be held that 256 days is a short time period to render a decision on a recourse for constitutional amparo, as set forth in Article 25(1) of the Convention. Therefore, the Court considers that the State violated the right enshrined in the aforementioned provision, as regards Article 1(1) thereof, to the detriment of Mr. Apitz and Mr. Rocha.

7.2. Hierarchical recourse filed against the order for removal

157. On November 13, 2003, Mr. Apitz and Mr. Rocha filed a hierarchical recourse before the Plenary Chamber of the STJ requesting the latter "[t]o declare that the Justices of the First Court" were only "subject to the disciplinary authority exercised by the Plenary Chamber of the [STJ]." [FN178] On September 8, 2004, the Court "overruled the petition filed." [FN179]

[FN178] Cf. hierarchical appeal filed by Messrs. Apitz and Rocha on November 13, 2003, supra note 51, p. 1112.
[FN179] Cf. judgment No. 23 of September 8, 2004, delivered by the Plenary Chamber of the STJ, supra note 52.

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158. The representative alleged that the hierarchical appeal "should have been decided within […] 90 days;" however, such decision took ten months. The Commission "refrained from rendering an opinion, due to […] insufficiency of charges and of evidence." The State did not file allegations on this matter.

159. It took 9 months and 26 days for the STJ to rule on the hierarchical recourse, even though Section 91 of the Organic Law on Administrative Procedures sets forth that "the hierarchical appeal shall be decided within ninety (90) days following submission." [FN180]

[FN180] Cf. Article 91 of the Ley Orgánica de Procedimientos Administrativos [Organic Law on Administrative Procedures], supra note 75, p. 146.

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160. The Court notes that it was the Venezuelan lawmaker who established that the term set forth in the law is the one that must be adhered to when a matter such as that analyzed herein is involved and, therefore, domestic authorities are expected to comply with those terms. In the instant case, Venezuela has offered no explanation whatsoever specifying the reasons why the STJ needed more than nine months to solve the matter.

161. Based on the considerations above, the Court finds that the State violated the right to be heard within a reasonable term, as set forth in Article 8(1) of the Convention, in accordance with Article 1(1) thereof, to the detriment of Mr. Apitz and Mr. Rocha.

7.3. Appeal for annulment and precautionary measure of amparo against the order for removal from office

162. On November 27, 2003, Mr. Apitz and Mr. Rocha filed with the CPAM an administrative appeal for annulment together with a precautionary measure for amparo against an order for removal from office issued by the CORJS (supra para. 38). [FN181] On September 29, 2004, the appellants requested that "the appeal and precautionary measure be admitted" and "expressed their interest in furthering proceedings until final completion." [FN182] On September 20, 2005, and October 10, 2006, the appellants restated their petition for admissibility of the appeal. [FN183]

[FN181] Cf. annulment appeal filed together with precautionary measure of amparo by Messrs. Apitz and Rocha, supra note 53.

[FN182] Cf. petition filed by Messrs. Apitz and Rocha on September 29, 2004, with the CPAM (Evidence file, Book VI, Annex B, p. 1373).

[FN183] Cf. petitions filed by Messrs. Apitz and Rocha on September 20, 2005, and on October 10, 2006, with the CPAM (Evidence file, Book VI, Annex B, pp. 1374 and 1375).

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163. On April 18, 2007, the CPAM found the constitutional amparo action inadmissible and declared "admissible the administrative appeal for annulment for the sole purpose of processing

and verification by the Substantiating Court regarding the lapse of the application." [FN184] To the date of the present Judgment, the CPAM has not rendered any decision on the merits of the case.

[FN184] Cf. judgment No. 535 of April 18, 2007, rendered by the ad-hoc CPAM (Evidence file, Book XVII, p. 4983).

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164. The Commission alleged that it took "more than three years" for the Courts to reject the appeal for constitutional amparo, and "more than four years after its filing, no judgment on the merits was rendered." The Commission added that for the victims these circumstances purport "a defenselessness and denial of justice situation, which persists to this date." Furthermore, the Commission held that "the fact that more than three years have elapsed without a substantive solution shows that it takes an unreasonable amount of time to obtain judicial protection, especially when juxtaposed with the fact that the victims were prosecuted and sanctioned in a period of less than a month."

165. The representative stood by the comments of the Commission and added that "given the low complexity of the matters brought before the courts in the instant case, evidently the appeal has not been decided within a reasonable term." Moreover, it indicated that "the Court had 3 days to grant the appeal for annulment; however, as said appeal had been filed together with a precautionary measure of constitutional amparo, the Court had to solve the latter 'forthwith.'"

166. The State held that "the appeal for annulment and the amparo do not consider a conclusive time period; therefore, its efficacy must be assessed taking into account all the effects resulting from the continuous chain of disqualifications."

167. The Organic Law on the Protection of Constitutional Rights and Guarantees sets forth that:

[…]
Whenever the amparo action is exercised against administrative measures having specific consequences or denials or abstentions by the Administration, such action can be brought before the competent Administrative Court of that jurisdiction, if any, together with the administrative appeal for annulment or against omissions, respectively, as applicable. In these cases, the Court will shortly, summarily, effectively and in accordance with the provisions of Section 22, if appropriate for the purposes of constitutional protection, suspend the effects of the act appealed in order to guarantee the constitutional right that has been violated during proceedings.
[…] Whenever the amparo action is exercised against administrative acts together with the administrative appeal on the grounds of a constitutional right violation, the appeal may be filed at any time, even after expiration of the time periods set forth by law and it will not be necessary to completely exhaust the administrative stage. [FN185]

[FN185] Cf. article 5 of the Organic Law on the Protection of Constitutional Rights and Guarantees.

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168. In accordance with these provisions, the CPAM has considered that "the treatment given to the amparo action exercised together with the petition for nullification of administrative acts must be reviewed" [FN186] and agreed "to provide similar treatment to that applied in the case of other precautionary measures; therefore, once the main claim is admitted by the Chamber […] the appealed precautionary measure should be solved forthwith." [FN187] The difference between the amparo and other precautionary measures is that the former "exclusively refers to violations of constitutionally protected rights and guarantees; therefore, given the relevance of any such violation, the need for a prompt decision regarding the requested measures is greater." [FN188]

[FN186] Cf. judgment No. 535 of April 18, 2007, rendered by the ad-hoc CPAM, supra note 184, p. 3841.
[FN187] Cf. judgment No. 535 of April 18, 2007, rendered by the ad-hoc CPAM, supra note 184, pp. 3842 and 3843.
[FN188] Cf. judgment No. 535 of April 18, 2007, rendered by the ad-hoc CPAM, supra note 184, p. 3841.

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169. The Court confirms that under Venezuelan domestic law, the precautionary nature of the amparo filed together with the appeal for annulment calls for temporary -though immediate- protection, given the nature of the harm caused. These circumstances allow for restoration of the affected legal situation to its status prior to the occurrence of the alleged violation, while a final decision is rendered in the main judicial proceeding.

170. Based on the considerations above, the Court must carry out an analysis establishing a difference between the duration of the amparo and the duration of the appeal for annulment since -though exercised together- they pursue different goals. Thus, the Court considers that the amparo should be a "simple and prompt recourse," pursuant to the terms of Article 25(1) of the Convention, [FN189] while the annulment should be decided "within a reasonable time," in accordance with Article 8(1) thereof.

[FN189] In this sense, the Human Rights Committee indicated as follows: "the right to an effective remedy may in certain circumstances require States Parties to provide for and implement provisional or interim measures to avoid continuing violations and to endeavour to repair at the earliest possible opportunity any harm that may have been caused by such violations." Cf. United Nations, Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, March 29, 2004, CCPR/C/21/Rev.1/Add.13, par. 19.

7.3.1. Precautionary measure of constitutional amparo

171. The Court finds that despite Venezuelan laws and judicial precedents regarding the need for prompt and direct determination of the measure submitted, it took 3 years for the CPAM to issue a decision on the requested precautionary amparo. In this Court's opinion, such delay cannot be justified in any possible way and is contrary to the need for prompt action. Therefore, the Court finds that the State violated Article 25(1) of the Convention, as regards Article 1(1) thereof, to the detriment of Mr. Apitz and Mr. Rocha.

7.3.2. Appeal for annulment

172. As explained above, the appeal for annulment was filed more than four years ago and it is still pending. In order to determine if that term is reasonable, the Court, based on its case law, considers it is necessary to take into account: a) the complexity of the matter, b) the procedural activity carried out by the interested party, and c) the conduct of judicial authorities. [FN190] Accordingly, the burden was on the State to provide the reasons –based on the criteria described above- that would justify the current absence of a final decision on the merits. [FN191]

[FN190] Cf. Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs. Judgment of January 29, 1997. Series C No. 30, para. 77; Case of Kimel, supra note 8, para. 97, and Case of Salvador Chiriboga, supra note 12, para. 78.
[FN191] Cf. Case of the 19 Tradesmen v. Colombia. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 191.

7.3.2.1. Complexity

173. The State did not detail the reasons leading to ascertain the complexity of the matter and merely alleged that "the consideration of the efficacy of the action should be made taking into account all other effects of the continuous chain of disqualifications that resulted in the organization of an ad-Hoc Chamber." The Court verifies that such argument is, in fact, related to the procedural activity carried out by the interested party, so it will be analyzed later (infra para. 175).

7.3.2.2 Procedural activity carried out by the interested parties

174. As regards the procedural activity carried out by Mr. Apitz and Rocha, the Court finds that in three instances they requested the Court to render a decision on the appeal filed (supra para. 162). Moreover, the case file does not show that the parties to the case developed any activity resulting in undue delay of proceedings. Consequently, the Court finds that there was no attempt to delay proceedings on the part of the victims; on the contrary, they acted diligently in order to obtain a decision by the CPAM.

7.3.2.3 Activity by judicial authorities

175. In connection with the allegations of the State, the Court verifies that, indeed, various judges from the CPAM disqualified themselves for the purposes of hearing the claim brought by the two victims. Thus, Judge Hadel Mostafá Paolini, appointed Judge-Rapporteur for the purposes of deciding on the admissibility of the appeal and the amparo action, [FN192] had also acted as rapporteur in the decision that determined the commission of an "inexcusable judicial error." [FN193] Moreover, Judge Levis Ignacio Zerpa and Yolanda Jaimes Guerrero were members of this Chamber at the time such error was admitted. [FN194] Lastly, Judge Evelyn Marrero Ortíz was a member of the First Court at the time of the decision whereby the victims were removed from office. [FN195]

[FN192] Cf. judgment No. 535 of April 18, 2007, rendered by the ad-hoc CPAM, supra note 184, p. 3832.
[FN193] Cf. judgment No. 809 of May 29, 2003 issued by the CPAM, supra note 38, p. 1007.
[FN194] Cf. judgment No. 809 of May 29, 2003 issued by the CPAM, supra note 38, p. 1034.
[FN195] Cf. judgment No. 1430 of June 11, 2002, rendered by the First Court, supra note 37, p. 3176.

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176. However, it was not until September 29, 2005, 22 months after the appeal was filed, that Judges Yolanda Jaimes Guerrero and Hadel Mostafá Paolini expressed their will to disqualify themselves; so did Judges Evelyn Marrero Ortiz and Levis Ignacio Zerpa on October 18, 2005, and March 2, 2006, 23 and 28 months later, respectively. All disqualifications were admitted on December 20, 2006. [FN196]

[FN196] Cf. judgment No. 535 of April 18, 2007, rendered by the ad-hoc CPAM, supra note 184, p. 3833.

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177. In that regard, the Court finds that even though it could be argued that processing and ruling on the disqualification of four judges from a 5-member tribunal hinders the ordinary development of proceedings, a delay of more than 20 months in filing the related disqualifications and more than 1 year in ruling thereon is excessive.

178. As to the activity carried out by the CPAM, the Court finds that it took 3 years, 4 months and 22 days to declare the appeal admissible. This period is excessive considering that it involves a relatively simple procedural act whose only purpose is to verify compliance with admissibility requirements. [FN197]

[FN197] Cf. judgment No. 535 of April 18, 2007, rendered by the ad-hoc CPAM, supra note 184, p. 3845 and 3846.

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179. Furthermore, the Court notes that at the public hearing, Mr. Rocha indicated that "the [CPAM] has not yet released the notices for summoning the interested parties; once these notices are released, we must have them published with the press to notify any interested party and continue with the proceedings." [FN198] Furthermore, Mr. Apitz stated that "notices [were] being released for the [CORJS], the Attorney General, and the Public Prosecutor's Office." [FN199] These statements were not challenged by the State.

[FN198] Cf. testimony of Mr. Rocha, supra note 144.
[FN199] Cf. testimony of Mr. Apitz, supra note 137.

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180. On the other hand, the State filed an information statement regarding "the duration of judicial proceedings before the [CPAM]." Such statement shows statistical figures that reflect the result of the Chamber's activities. Furthermore, the witness stated that despite "intense jurisdictional activity," such Chamber has "the highest judgment record," in any event, "there are still many old cases." [FN200] The State produced this evidence but did not provide sufficient argumentative support thereon, limiting therefore the ability of the Court to understand and appraise evidence based on sound judgment principles, as previously stated in paragraph 154 supra. Furthermore, the Court considers that the high number of cases pending at a tribunal does not justify per se such an excessive delay in deciding an appeal.

[FN200] Cf. declaration before a public notary (affidavit) by Mrs. Sofía Yamile Guzmán on January 10, 2008 (File on the Merits, Book III, pp. 762 to 792).

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181. Based on the considerations above, the Court finds that the State has not successfully justified that the time it took the CPAM to rule on the appeal for annulment is consistent with the reasonable time principle. Consequently, the Court finds that the State violated Article 8.1(1) of the Convention, as regards Section 1(1) thereof, to the detriment of Mr. Apitz and Mr. Rocha.

7.4. Alleged violation of the right to judicial protection to the detriment of Ana María Ruggeri Cova

182. The representative stated that the "conspiracy of public authorities […] in consistency with the desires publicly disclosed by the President of the Republic […] constitutes in itself a violation of […] Article 25 of the Convention, insofar as it renders illusory the effectiveness of any judicial remedy raised before Venezuelan courts." Moreover, the representative stated that "Ana María Ruggeri filed with the [IGC] a defense brief, [… which] was rejected by the CORJS." The Commission did not allege a violation of the right to judicial protection to the detriment of Mrs. Ruggeri. Furthermore, the State indicated that "as opposed to former colleagues, [Mrs. Ruggeri] did not file with the Venezuelan judicial authorities any appeal to weaken the effects of the decision rendered by the CORJS."

183. The Court finds that the allegations of the representative are inadmissible because the "defense brief" filed by Mrs. Ruggeri is not an appeal, but a procedural act whereby allegations and evidence are submitted. Moreover, the evidence incorporated to the record does not show that Mrs. Ruggeri has filed any judicial appeal against the order for removal from office.

184. As to the allegation made by the representative regarding the "conspiracy of public authorities," as indicated in paragraph 108 supra, it could not be proven that the Venezuelan Judiciary reports to a State authority.

185. Consequently, the Court finds that no violation of the right to judicial protection was committed to the detriment of Mrs. Ruggeri.

VII. ARTICLE 23 (POLITICAL RIGHTS) [FN201] AND ARTICLE 24 (RIGHT TO EQUAL PROTECTION) [FN202], IN RELATION TO ARTICLES 1(1) (OBLIGATION TO RESPECT RIGHTS) AND 2 (DOMESTIC LEGAL EFFECTS) OF THE AMERICAN CONVENTION

[FN201] 1. Article 23 of the Convention establishes:
Every citizen shall enjoy the following rights and opportunities:
a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
c. to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.
[FN202] Article 24 of the Convention states that:
All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

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186. The representative held that "the removal of the alleged victims from the First Court" for political reasons "prevented them from exercising public office, such as the administration of justice, which is tantamount to restricting their access to public office." Moreover, it stated that "the two judges who systematically challenged the judgments of the First Court regarding those cases that had solid political connotations […] were not sanctioned for [the aforementioned] 'inexcusable judicial error'" "but were promoted" as Justices of the STJ. On the contrary, the victims "were not admitted to the Judiciary […] because [… a]fter being removed […] they are not allowed to access any judicial office;" a disqualification that is of "permanent nature." However, for judges Marrero and Morales "that disqualification does not exist since they were not subject to disciplinary sanctions." Ultimately, "[t]hat discriminatory treatment reflects that either such 'inexcusable judicial error' did not exist and was nothing but an excuse to continue

with the ideological purging of the Judiciary, or those who committed that error did not enjoy equal protection under the law and had no equal access to public office."

187. The Commission did not allege any violation of Article 23 of the Convention as it held that "the victims […] had equal access to public office" and that "the discussion regarding Article 23 is absorbed by the analysis of the provisions of Articles 8 and 25 of the Convention." As regards the violation of Article 24, in the report on admissibility, the Commission held the petition was inadmissible since, in its opinion, "the petitioners have not accounted for the differences between the retiring status of the three removed judges and that of the two judges actually retired," therefore, "[g]iven the diverging circumstances, differentiated treatment as to retirement benefits would not purport discrimination."

188. The State alleged that there was no discrimination since "the petitioners could not be granted retirement benefits, as they had neither served for ten years in the Judiciary nor for twenty years in the Public Administration." As to the appointment of Judges Morales and Marrero in the STJ, the state indicated that the alleged victims "did not participate as candidates in the selection process, which was publicly called and in which the [aforementioned] former judges did participate as candidates." The State added that there is no "reliable evidence" of "a series of legal prohibitions that would hinder the candidacy of the alleged victims." In this regard, the State mentioned that the prohibition could only derive from "an express act of disobedience by the National Assembly that, on the basis of such regulatory provisions […], prevents the candidacy of former provisional judges for the corresponding selection."

189. The Court has established that the alleged victim, his next of kin or his representatives may invoke rights other than those included in the Commission's application based on the facts presented by the Commission. [FN203] In addition, the Court considers that, even though the petition was declared inadmissible by the Inter-American Commission in relation to the alleged violation of Article 24, [FN204] the Court is able to examine the possible violation of this right, because the decisions on inadmissibility that the Commission takes, based on Article 47(b) and (c), are prima facie juridical assessments that do not limit the Court's competence to rule on a point of law that the Commission has only analyzed in a preliminary manner. The Court will therefore divide the examination of the arguments of the parties as follows: (1) discrimination in the application of the sanction of removal from office; (2) discrimination regarding access to the Judiciary, and (3) discrimination regarding the application of procedural law.

[FN203] Cf. Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, para. 179; Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, para. 125; Case of De La Cruz Flores v. Peru. Merits, Reparations and Costs. Judgment of November 18, 2004. Series C No. 115, para. 122, and Case of Yatama, supra note 63, para. 183.

[FN204] Cf. Report on Admissibility N° 24/05 issued by the Inter-American Commission on Human Rights on March 8, 2005, para. 46 (File of Attachments to the Application, Book I, Appendix B, p. 66).

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1. Discrimination in the application of the sanction of removal from office

190. The State's principal defense in relation to the existence of possible discrimination is that "there can be no discriminatory treatment among those who are not equal, only among those who are equal," and that, in this case, the three victims were not in a situation of equality in relation to the other two judges of the First Court, as regards both retirement, and access to other positions in the Judiciary.

191. The five judges who were members of the First Court were subjected to an administrative procedure because they had unanimously handed down a judgment on the basis of which the existence of an inexcusable judicial error was declared.

192. Judges Apitz, Rocha and Ruggeri were removed from office by the disciplinary instance in application of Article 40, part 4 of the Judiciary Career Act, [FN205] which establishes that "judges shall be removed from office [...] [w]hen they have incurred in grave inexcusable judicial error." [FN206] In other words, this provision establishes that, based on a specific assumption –the commission of an inexcusable judicial error– there is an explicit juridical consequence –dismissal.

[FN205] Cf. decision of October 30, 2003 issued by the CORJS, supra note 49, pp. 1087 to 1089.
[FN206] Cf. article 40, part 4 of the Venezuelan Ley de Carrera Judicial [Judiciary Career Act], supra note 82.

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193. This punitive consequence was not applied to Judges Marrero and Morales. [FN207] In the case of Judge Evelyn Marrero, the CORJS did not order her dismissal even though it had verified she had also committed the same inexcusable judicial error. In doing so, the CORJS took into consideration that there was a preceding decision that declared that this judge had complied with the requirements for retirement, so that:

"... given the binding legal opinion of the Chamber for Constitutional Matters of the [STJ], of February 8, 2002, and in order to safeguard a social right, such as the right to retirement, which cannot be infringed, this disciplinary instance declares that the existence of the said decision of the [STJ] renders the enforcement of the sanction impossible as regards citizen EVELYN MARGARITA MARRERO ORTIZ and, consequently, it declares that there is no issue at stake to be decided." [FN208]

[FN207] However, a certified copy of the decision of the CORJS was attached to the file of the five judges. Cf. decision of the CORJS of October 30, 2003, supra note 49, p. 1089.
[FN208] Cf. decision of October 30, 2003 issued by the CORJS, supra note 49, pp. 1087 and 1088 (highlight omitted).

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194. Judge Luisa Estella Morales Lamuño, who had initially been removed from office together with the other three judges filed a recourse for reconsideration of the decision, and this was resolved when the CORJS decided "to set aside the disciplinary sanction of removal from office" against her. The CORJS arrived at this conclusion because it considered that the judge had complied with the requirements for special retirement before the start of the disciplinary procedure. [FN209]

[FN209] Cf. decision of December 11, 2003 issued by the CORJS, supra note 50.

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195. Accordingly, the Court observes that there was a difference in treatment between the three judges who were removed from office and Judges Marrero and Morales, since the dismissal sanction was never imposed on the former, and was revoked in relation to the latter, based on the "binding legal opinion" of the Chamber for Constitutional Matters. [FN210] Consequently, the CORJS did not impose the sanction corresponding to the disciplinary infringement in the case of the judges who complied with the requirements to retire before they committed the error.

[FN210] The judgment in question declared admissible an application for amparo against a decision of the CORJS because the latter incurred in "disregard […] of the right to retirement […] acquired a long time before the start of the disciplinary administrative procedure." Cf. judgment of February 8, 2002 issued by the Chamber for Constitutional Matters of the STJ (Evidence file, Book VIII, Annex Ñ, p. 2745).

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196. The Court notes that the victims in this case did not comply with the requirements of age and years of service to retire. [FN211] In this regard, it might be considered that the victims were not in a situation of equality with Judges Morales and Marrero -who did comply with these requirements- that would justify a similar treatment.

[FN211] A decision of the Plenary Chamber of the STJ had established that it was possible to concede special retirement to "those who have 20 years or more of service in the Public Administration with at least 10 years in the Judiciary. The minimum age required shall be 50 years for women and 55 for men." Cf. decision issued by the Plenary Chamber of the STJ, published in Official Gazette No. 37.388 of February 20, 2002, cited in the decision of the CORJS of December 11, 2003, supra nota 50, p. 1168. At the time of the facts, Judges Apitz and Rocha both had 3 years and one month of service in the Judiciary, and Judge Ruggeri had 3 years and eight months service in the Judiciary, and the three judges had respectively, 6, 10 and 30 years service in the Public Administration. Cf. Executive Directorate of the Judiciary, Analysis of the Calculation of Retirement of Mrs. Ruggeri of March 1, 2004, of Mr. Rocha of July 19, 2004, and of Mr. Apitz of July 19, 2004 (Evidence file, Book II, Appendix C.3, pp. 626 to 629).

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197. However, the conduct of the five judges fell within the factual assumption of the norm established in the already cited Article 40, part 4, because they had agreed unanimously to hand down the judgment that was declared to constitute an inexcusable judicial error. The question raised therefore is whether compliance with the requirements for retirement introduced a difference between two groups of persons that should have been taken into consideration for the purposes of the disciplinary provisions, i.e. to assess judges' suitability for the exercise of public office. The Court finds that retirement is a factor that is completely unrelated to assessment of suitability for the exercise of public office, as well as to the ascertainment, qualification, and imputation of the facts that caused the process of destitution. The Court finds that the five judges in this case had an identical degree of disciplinary responsibility, and the fact that some of them complied with the requirements to retire did not alter in any sense such a finding.

198. Evidence of the fact that retirement is a factor that is external to the disciplinary assessment is that it is possible to apply the sanction corresponding to a disciplinary infringement and, at the same time, concede the right to retirement corresponding to years of service. While the CORJS relied on judicial precedents that allowed for replacement of removal actions for retirement measures in order not to deprive judges from social security retirement benefits, the instant file contains evidence that the Chamber for Constitutional Matters of the STJ had previously declared as unconstitutional the section of Article 41 of the Judiciary Career Act that prohibited the enjoyment of retirement to judges who had been dismissed. [FN212] This leads the Court to conclude that there was no need to set aside the disciplinary sanction of removal from office in order to concede the right to retirement corresponding to years of service. Both situations could occur simultaneously.

[FN212] Cf. judgment No. 238 of February 20, 2003 issued by Chamber for Constitutional Matters of the STJ (File on the Merits, Book IV, p. 1120).

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199. Moreover, the CPAM indicated that "this condition does not exempt this Chamber from ordering the [IGC] to take the necessary steps, using the respective administrative procedure, in order to establish the appropriate disciplinary responsibilities […] which are not in any way excluded because there is an acquired right in their favor, such as retirement." [FN213] In another case, the same Chamber indicated that "whether or not the sanctioned judge had obtained the benefit of retirement, this does not prevent the pertinent decisions from being taken, should it be found true that the judge had conducted herself inappropriately in the exercise of her judicial office, and this should be recorded in her personal file." [FN214]

[FN213] Cf. judgment No. 4579 of June 29 2005 issued by the CPAM (File on the Merits, Book IV, p. 1048).
[FN214] Cf. judgment No. 617 of April 24, 2007 issued by the CPAM (File on the Merits, Book IV, p. 1058).

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200. The Court concludes that the five judges should be considered as identically situated as regards the commission of the disciplinary infringement. However, the Court lacks jurisdiction to determine whether a disciplinary sanction should be imposed in the instant case and, in such event, to whom would it apply. Indeed, the Court is not able to determine whether Judges Marrero and Morales should have been sanctioned in the exact same fashion as the alleged victims in the instant case. Thus, Article 24 of the Convention does not grant the alleged victims the right to demand the imposition of the disciplinary sanction of removal from office against Judges Marrero and Morales. [FN215] Hence, it is not possible to declare the violation of Article 24 in the present case.

[FN215] Similarly, the Human Rights Committee stated that "the exemption of only one group of conscientious objectors and the inapplicability of the exemption for all others cannot be considered reasonable [given that] when a right of conscientious objection to military service is recognized […], no differentiation shall be made among conscientious objectors on the basis of the nature of their particular beliefs. However, in the instant case, the Committee considers that the author has not shown that his convictions as a pacifist are incompatible with the system of substitute service in the Netherlands or that the privileged treatment accorded to Jehova's Witnesses adversely affected his rights as a conscientious objector against military service." United Nations, Human Rights Committee, Case of Brinkoff v. The Netherlands, Communication No. 402/1990, CCPR/C/48/D/402/1990, July 27, 1993, para. 9.3.

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2. Discrimination as regards access to other positions in the Judiciary

201. The representative argued that discrimination existed not only when removing the victims from office, but that they were discriminated against as regards access to other positions in the Judiciary, because Judges Marrero and Morales were able to reincorporate into the judicature, being appointed to the STJ, while the victims are impeded from acceding to judicial positions "derived directly from the law."

202. The Court observes that, as a result of their removal from office, the three victims could not return to occupy other positions in the Judiciary. Moreover, Venezuelan laws establish the following provisions in this regard:

i) Section 7 of the STJ Organic Law, which stipulates:

to be a Justice of the [STJ], candidates must satisfy the following requirements:
[…]
4. They must not have been subject to administrative or disciplinary proceedings or to a lawsuit and they must not have been sentenced thereunder by a final and conclusive judgment or decision. [FN216]

[FN216] Cf. STJ Organic Law, supra note 31.

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ii) Section 11 of the Judiciary Career Act, which establishes:

The following persons shall not be appointed Judges: […] anyone having a criminal record or upon whom sentence was imposed by a Court or professional disciplinary authority that adversely affects their reputation; anyone engaging in conduct that affects the dignity of the office or impairs its image in the eyes of the public. [FN217]

[FN217] Cf. Judiciary Career Act, supra note 82.

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203. The State argued that there is no "reliable evidence" of a legal prohibition that would prevent the reincorporation of the victims into the Judiciary. However, it did not submit case law or any other type of evidence to invalidate the evident implications of the STJ Organic Law and the Judiciary Career Act on this point. To the contrary, in its final written arguments, the State itself affirmed that, based on the Judiciary Career Act in force at the time of the facts, and "given the nature of the sanction of removal from office, applicable to all those judges who have committed grave errors in the performance of their duties, it has been established that one of the consequences is to preclude the official who has been dismissed from reincorporating into the Judiciary, when their unsuitability for the office they occupied has been proved." Consequently, the Court finds it has been proved that it was impossible for the victims to attain other positions in the Judiciary as a result of their removal from office.

204. Since Judges Morales and Marrero had retired, rather than being removed from office, they did not have this impediment. Indeed, the Court observes that Article 41 of the Judiciary Career Act establishes that "[j]udges who have retired can be re-appointed" [FN218] as such. The State also acknowledged that "the only exceptional case of reincorporation into the Judiciary or any other position in the public administration of the State [is] when a judge allegedly implicated in grounds for removal from office has been granted […] the benefit of retirement, which […] makes it impossible to impose any disciplinary sanction, given that the right to retirement operates ex officio." In other words, Judges Marrero and Morales could resume their functions in the judiciary and in fact did, because on December 13, 2004, Luisa Estela Morales and Evelyn Marrero, who had issued the same sentence that was qualified as inexcusable judicial error and which resulted in the dismissal of Judges Apitz, Rocha, and Ruggeri, were appointed justices of the STJ. [FN219]

[FN218] Cf. Judiciary Career Act, supra note 82.
[FN219] Cf. special session of the National Assembly of December 13, 2004, supra note 113.

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205. Based on the above, it has been proven that the victims had a legal impediment to accede to the Judiciary and that, because of this, they did not submit their names for the selection process to accede to other positions, [FN220] which was not the case of the other judges of the

First Court. However, the Court must assess whether this circumstance effectively constituted a violation of Article 23(1)(c) of the Convention.

[FN220] Cf. testimony of Mr. Apitz, supra note 137; testimony of Mr. Rocha, supra note 144, and testimony of Mrs. Ruggeri, supra note 33, p. 745.

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206. This article does not establish the right to accede to public office, but the right to do so "under general conditions of equality." Consequently, compliance with the obligation to ensure and respect this right means that "the criteria and processes for appointment, promotion, suspension, and dismissal must be objective and reasonable," [FN221] and "that persons do not suffer discrimination in the exercise" of this right. [FN222] In the instant case, the criteria that prevented access to the Judiciary for the three judges complied with these standards, because the prohibition of reincorporation into public office of those who have been dismissed is an objective and reasonable condition whose ultimate objective is to guarantee the correct exercise of the judicial task. In addition, it cannot, in itself, be considered discriminatory by allowing the reincorporation of those who have retired. Given that the Court lacks jurisdiction to determine whether a disciplinary sanction should have been imposed in the instant case and, in such event, upon whom (supra para. 200), it is also unable to analyze the consequences that such imposition would have engendered.

[FN221] Cf. United Nations, Human Rights Committee, General Comment No. 25, Article 25: The right to participate in public affairs, voting rights and the right of equal access to public service, CCPR/C/21/Rev. 1/Add. 7, July 12, 1996, para. 23.
[FN222] Cf. United Nations, Human Rights Committee, General Comment No. 25, supra note 221, para. 23.

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207. Based on the foregoing, the Court finds no discrimination as regards access to other positions in the Judiciary, either as established in the applicable Venezuelan law or in the act that executed it. Consequently, the facts set out in the case sub judice should not be considered a violation of Article 23(1)(c) of the Convention.

3. Discrimination upon enforcing procedural law

208. The representative also alleged that discrimination occurred regarding the enforcement of "procedural law" since an "appeal for annulment filed by Luisa Estella Morales a week after the one filed by former Judges Apitz and Rocha" was "decided within less than one year," while "the other has not been decided though four years and three months have elapsed." The State has not provided a response to this argument.

209. In this regard, the Court considers that the arguments of the representative should not be analyzed under the provisions of Article 24 of the Convention but pursuant to the general non-discrimination obligation contained in Article 1(1) thereof. The difference between the two

articles lies in that the general obligation contained in Article 1(1) refers to the State's duty to respect and guarantee "non-discrimination" in the enjoyment of the rights enshrined in the American Convention, while Article 24 protects the right to "equal treatment before the law." In other words, if the State discriminates upon the enforcement of conventional rights containing no separate non-discrimination clause a violation of Article 1(1) and the substantial right involved would arise. If, on the contrary, discrimination refers to unequal protection by domestic law, a violation of Article 24 would occur. [FN223] Given that the arguments in the instant case refer to an alleged discrimination regarding the judicial guarantee to be heard within a reasonable term, the matter should be analyzed pursuant to Articles 1(1) and 8(1) of the Convention.

[FN223] In this sense, the Court expressed that "[a]rticle 1(1) of the Convention, a rule general in scope which applies to all the provisions of the treaty, imposes on the States Parties the obligation to respect and guarantee the free and full exercise of the rights and freedoms recognized therein 'without any discrimination.' In other words, regardless of its origin or the form it may assume, any treatment that can be considered to be discriminatory with regard to the exercise of any of the rights guaranteed under the Convention is per se incompatible with that instrument." On the contrary, article 24 of the Convention "prohibits all discriminatory treatment originating in a legal prescription. The prohibition against discrimination so broadly proclaimed in Article 1(1) with regard to the rights and guarantees enumerated in the Convention thus extends to the domestic law of the States Parties, permitting the conclusion that in these provisions the States Parties, by acceding to the Convention, have undertaken to maintain their laws free of discriminatory regulations." Cf. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84, January 19, 1984. Series A No. 4, para. 53 and 54.

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210. On November 11, 2003, Judge Morales filed a recourse for reconsideration with the CORJS challenging the resolution ordering removal from office and requesting revocation of the sanction given that the requirements for retirement were met before the commencement of disciplinary proceedings. [FN224]

[FN224] Cf. recourse for reconsideration filed by Luisa Estella Morales with the CJSOR on November 11, 2003 (Evidence to Facilitate the Adjudication of the Case file, Book XVIII, pp. 5057 to 5074).

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211. On December 3, 2003, due to the fact that the CORJS had not ruled on the aforementioned recourse within the 5-day term set forth by law, Judge Morales filed an appeal for annulment together with a constitutional amparo action and, in the alternative, a non nominal precautionary measure, [FN225] based on the same grounds as those specified in the recourse for reconsideration mentioned in the paragraph above.

[FN225] Cf. appeal for annulment and precautionary amparo action filed by Luisa Estella Morales with the CORJS on December 3, 2003 (Evidence to Facilitate the Adjudication of the Case file, Book XVIII, pp. 4986 to 5027).

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212. On December 11, 2003, the CORJS ruled on the recourse for reconsideration revoking the order for removal from office and instructing commencement of retirement benefit proceedings (supra para. 194).

213. The Judge submitted a copy of the resolution to the CPAM on February 18, 2004. [FN226] Such Chamber rendered a decision on November 1, 2005, regarding the appeal filed, and established that, in view of the new resolution by the CORJS that renders the act appealed ineffective, "the claim brought by the appellant was fully addressed […] therefore, [the] Chamber considers it useless to render a decision on an administrative act that has completely lost efficacy upon motion, therefore there is no matter to be decided." [FN227]

[FN226] Cf. minutes of the Secretary of the CPAM of February 18, 2004, which specifies that Luisa Estella Morales submitted a copy of the resolution issued by the CORJS on December 11. (Evidence to Facilitate the Adjudication of the Case file, Book XVIII, p. 5112).

[FN227] Cf. judgment No. 6080 of November 1, 2005, rendered by the CPAM (Evidence to Facilitate the Adjudication of the Case file, Book XVIII, pp. 5125 to 5129).

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214. Judges Apitz and Rocha did not file a recourse for reconsideration with the CORJS after removal from office, but on November 27, 2003, they filed an appeal for annulment and a precautionary amparo action with the CPAM, alleging, inter alia, a violation of the right to be tried by a competent judge previously designated by law, the right to defense and due process of law, the presumption of innocence, independence of the Judiciary and alleged misuse of government power. As stated above (supra para. 163), such Chamber granted the appeal for annulment and rejected the precautionary amparo action through the judgment rendered on April 18, 2007. [FN228] To this date, no decision on the merits of the appeal for annulment has been rendered.

[FN228] Cf. judgment No. 535 of April 18, 2007 issued by the CPAM, supra note 184, pp. 4954 to 4983.

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215. The Court finds that the arguments raised in both petitions for annulment are different in nature since Judge Morales requested, among other things, that the sanction imposed upon her be revoked since she satisfies the requirements for retirement. This latter issue is not present in the appeal filed by the victims. Furthermore, the resolution of the recourse for reconsideration by the CORJS modifies the matter that has to be decided by the CPAM, since the act appealed by Judge Morales was rendered ineffective. The judgment issued by such Chamber only verified this fact and declared lack of a valid purpose. Ultimately, these are two separate procedures. Therefore,

the Court believes that the State has not violated the general clause of non-discrimination as enshrined in Article 1(1) of the American Convention on Human Rights, in relation to the substantive right to be heard within a reasonable time, under the provisions of Article 8(1) thereof.

VIII. ARTICLE 29 (C) AND (D) OF THE CONVENTION [FN229] IN RELATION TO ARTICLE 3 OF THE INTER-AMERICAN DEMOCRATIC CHARTER [FN230]

[FN229] Article 29 of the American Convention establishes that:
No provision of this Convention shall be interpreted as:
a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;
c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.
[FN230] Article 3 of the Inter-American Democratic Charter states that:
Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.

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216. The representative held that the Inter-American Democratic charter "is not simply a political statement without any legal value but the reflection of prior Laws." The representative added that in such instrument "States undertook international obligations that can never be irrelevant for the purposes of exercising human rights." According to the representative, a combined reading of these Articles allows an inferral of a "right to democracy" that in this case is related to "the exercise of power in accordance with the Rule of Law, the doctrine of separation of powers, and independence of the Judiciary." In this sense, the representative alleged that "the violation of the rights of petitioners is [t]he consequence of the weakening of democracy and the lack of independence of the Venezuelan public authorities," since such violation results from the interference of the Executive Branch, directly through the President of the Republic, upon the constitutional powers of the Judiciary." The Commission did not allege any violation of these articles but announced "their enforcement […] as interpretation guidelines." The State did not present arguments on this matter.

217. In its prior decisions, the Court has resorted to Article 29 of the Convention in three diverse instances. Firstly, the Court has referred to the "Restrictions Regarding Interpretation" of Article 29 to define the content of certain provisions of the Convention. [FN231] In this regard,

subparagraph (a) has been used to define the scope of the restrictions to the guarantees established in the Convention. [FN232] Similarly, pursuant to subparagraph (b) of the Article, the Court has construed the guarantees contained in the Convention in accordance with the standards established in other international instruments [FN233] and domestic laws. [FN234] Furthermore, subparagraph (c) has been used to construe conventional rights in accordance with the rights that result from representative democracy as a form of government. [FN235]

[FN231] The Court found it was convenient to "bear in mind the significance of the prohibition of forced or compulsory labor, in light of the general rules of interpretation established in Article 29 of the Convention;" to that effect "the Court f[ound] it useful and appropriate to use other international treaties than the American Convention." Cf. Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, paras. 154 and 157. Furthermore, the Court found that "[n]ote should also be taken of the provisions of Article 29 of the Convention" in order to "determine whether the proceedings to which Articles 25(1) and 7(6) apply are included among the essential judicial guarantees referred to in Article 27(2)." Cf. Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, paras. 15 to 17.

[FN232] In this regard, it has been established that the ultimate responsibilities that could limit the right to freedom of expression should not only be "necessary", as set forth in Article 13, but more specifically "necessary for a democratic society." Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 41 to 44. Article 29 has also been resorted to indicate that "a reservation may not be interpreted so as to limit the enjoyment and exercise of the rights and liberties recognized in the Convention to a greater extent than is provided for in the reservation itself." Cf. Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights). Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 66 and Case of Boyce et al. v. Barbados. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169, para. 15. Furthermore, the scope of the reservations or conditions that States may impose upon accepting the contentious jurisdiction of the Court has been construed. In that regard, the Court established that "it would be meaningless to suppose that a State which had freely decided to accept the compulsory jurisdiction of the Court had decided at the same time to restrict the exercise of its functions as foreseen in the Convention." Cf. Case of Benjamin et al. v. Trinidad and Tobago. Preliminary Objections. Judgment of September 1, 2001. Series C No. 81, para. 81 and Case of Constantine et al. v. Trinidad and Tobago. Preliminary Objections. Judgment of September 1, 2001. Series C No. 82, para. 81.

[FN233] In this sense, the inclusion of communal property in the case of the indigenous or tribal communities within the right to private property under Article 21 should be highlighted. Cf. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, paras. 147, 148 and 153; Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, paras. 124, 126 and 127; Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, paras. 117 and 118, and Case of Saramaka People v. Surinam. Preliminary Objections, Merits,

Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, paras. 92 and 93. Furthermore, the construction whereby Article 22 of the Convention covers "the right to not be forcefully displaced." Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 188. Another example is the right of children not to be recruited in the armed forces or other groups set forth in Article 19 of the Convention. Cf. Case of the "Mapiripán Massacre," para. 153.

[FN234] In accordance with domestic legislation, the Court has allowed the construction of "a right to property related to the patrimonial effects of the right to a pension" under Article 21 (Cf. Case of the "Five Pensioners" v. Peru. Merits, Reparations and Cost. Judgment of February 28, 2003. Series C No. 98, paras. 101 to 103) and the need for specific protection of the political rights for the members of ethnic and indigenous communities (Cf. Case of Yatama, supra 63, paras. 203 to 205).

[FN235] Through the application of Article 29(c), the Court held that the scope of the legality principle set forth in Article 9 for criminal proceedings covers disciplinary administrative proceedings (Cf. Case of Baena Ricardo et al. v. Panamá. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 105 and 106) and has recognized the relatives of the victims of forced disappearance as victims, additionally, of a violation of Article 8(1) of the Convention (Cf. Case of Blake v. Guatemala. Merits. Judgment of January 24, 1998. Series C No. 36, paras. 96 and 97).

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218. Secondly, Article 29 has been used to define construction criteria, such as the principle of "evolving interpretation" of human right treaties, which is "consistent with general interpretation rules" contained in such Article. [FN236] Furthermore, the principle of "application of the most favorable rule for protection of human rights" has been developed in connection with Article 29(b) [FN237] and the prohibition of depleting the main content of rights as a result of Article 29(a). [FN238]

[FN236] Cf. Case of the Mayagna (Sumo) Awas Tingni Community, supra note 233, para. 148; Case of the "Five Pensioners," supra note 234, para. 103; Case of the Yakye Axa Indigenous, supra note 233, para. 125; Case of the "Mapiripán Massacre," supra note 233, para. 106; Case of the Sawhoyamaxa Indigenous Community, supra note 233, para. 117, and Case of the Ituango Massacres, supra note 231, para. 155.

[FN237] Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85, supra note 232, para. 52; Case of Ricardo Canese, supra note 152, para. 180 and 181, and Case of the "Mapiripán Massacre," supra note 233, para. 106.

[FN238] Cf. Case of Benjamin et al., supra note 232, paras. 63 and 81; Case of Constantine et al., supra note 232, para. 63 y 81; Case of Carpio Nicolle et al. v. Guatemala. Merits, Reparations and Costs. Judgment of November 22, 2004. Series C No. 117, para. 132, and Case of Yatama, supra note 63, para. 204.

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219. Thirdly, the Court resorted to Article 29 to determine the scope of its advisory jurisdiction. In this regard, it has been noted that, in accordance with Article 29(d), "in

interpreting the Convention in the exercise of its advisory jurisdiction, the Court may have to interpret the [American] Declaration [of the Rights and Duties of Man].” [FN239] Furthermore, the Court has held that “to exclude, a priori, from its advisory jurisdiction international human rights treaties that are binding on American States would weaken the full guarantee of the rights proclaimed in those treaties and, in turn, conflict with the rules enunciated in Article 29 (b) of the Convention.” [FN240]

[FN239] Cf. Interpretation of the American Declaration of the Rights and Duties of Man within 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, para. 36.
[FN240] Cf. “Other treaties” subject to the advisory jurisdiction of the Court (Art. 64 American Convention on Human Rights). Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, para. 42. See also Reports of the Inter-American Commission on Human Rights (Art. 51 American Convention on Human Rights). Advisory Opinion OC-15/97 of November 14 1997. Series A No. 15, para. 31.

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220. To respond to the allegations of the representative, it is necessary to determine, firstly, if Article 29(c) enshrines an individual guarantee that, if not complied with, may originate in itself a declaration of a violation under the contentious jurisdiction of the Court.

221. In that regard, pursuant to the contentious jurisdiction of the Court, the interpretation principles contained in Article 29(c) can only result in a violation of a right unduly construed in accordance with those principles.

222. Therefore, it is necessary to analyze the right the representative alleges violated in relation to such interpretation principles. The representative makes reference to the “right to democracy” regarding the exercise of powers under the Rule of Law, separation of powers and independence of the Judiciary. However, the Court has referred to the concept of democracy under interpretation provisions. Indeed, the Court has indicated that “any fair demands by democracy must […] guide the interpretation of the Convention and, particularly, those provisions that are critically related to the preservation and operation of democratic institutions.” [FN241] Furthermore, in the case of the Constitutional Court, the Court stated that:

the Preamble to the Convention reaffirms the intention of the American States to “consolidate in th[e] hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights [and obligations] of man.” This requirement is consistent with the interpretation rule contained in Article 29(c) of the Convention. The facts of the instant case are contrary to the requirements of the Convention. [FN242]

Based on the considerations above, the Court was not declaring a violation of Article 29(c), but was defining the scope of the obligation contained in Article 1(1) regarding the duty to respect and guarantee rights.

[FN241] Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85, supra note 232, para. 44.
[FN242] Cf. Case of the Constitutional Court, supra note 60, para. 111.

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223. Therefore, the Court finds that the interpretation problems that may affect the instant case are those concerning the rights analyzed herein, such as the rights enshrined in Articles 8 and 25 of the Convention. Consequently, this Court rejects the alleged violation of Articles 29(c) and 29(d) of the American Convention regarding Article 3 of the Inter-American Democratic Charter.

IX. REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)

224. It is a principle of International Law that any violation of an international obligation that causes damage generates the duty to make adequate reparations. [FN243] In its decisions in this regard, the Court has based its considerations on Article 63(1) of the American Convention. [FN244]

[FN243] Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, para. 25; Case of Zambrano Vélez et al., supra note 18, para. 131, and Case of Cantoral Huamaní and García Santa Cruz, supra note 12, para. 156.
[FN244] Article 63(1) of the Convention sets forth that:
If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

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225. In accordance with the considerations on the merits and the violations of the Convention as declared in the foregoing chapters, as well as in light of the criteria adopted by the Court in its prior decisions regarding the nature and the scope of the obligation to repair, [FN245] the Court will now examine the claims made by the Commission and by the representative and the position of the State, in order to determine the measures aimed at redressing the damage.

[FN245] Cf. Case of Velásquez Rodríguez, supra note 243, paras. 25 to 27; Case of Garrido and Baigorria v. Argentina. Reparations and Costs. Judgment of August 27, 1998. Series C No. 39, para. 43, and Case of the " White Van" (Paniagua Morales et al.), supra note 7, paras. 76 to 79.

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1. Injured party

226. The Court will now determine which persons are to be regarded as "injured parties" under the terms of Article 63(1) of the American Convention and, therefore, beneficiaries of the reparations ordered by the Court.

227. The Court deems that Ana María Ruggeri Cova, Juan Carlos Apitz Barbera, and Perkins Rocha Contreras are "injured parties" as victims of the violations declared to have been committed to their detriment, and therefore shall be entitled to the reparations ordered by the Court both for pecuniary and non-pecuniary damages.

228. As for Jacqueline Ardizzone Montilla, Mr. Apitz's wife, and María Costanza Cipriani, Mr. Rocha's wife, the Court notes that the Commission in its Report on the merits has not declared them to be victims of any violation of the Convention (supra para. 1); that in its application, the Commission identified Mr. Apitz, Mr. Rocha and Ms. Ruggeri as the only beneficiaries of the reparations ordered and did not identify their next of kin as victims; and that their representative did not allege any violation to the detriment of their next of kin either, but in his brief containing pleadings and motions he requested compensation for non-pecuniary damages on behalf of Mr. Apitz and Mr. Rocha's wives on the grounds that "moral damage is reflected on the psychological consequences that the violation of human rights may have both for the victim and his next of kin."

229. In this regard, the Court reiterates that all those persons who have been declared to be victims of violations of rights enshrined in the Convention are deemed to be injured parties. According to the case law of the Court, the alleged victims must be identified in the application and in the Commission's report, under Article 50 of the Convention. Furthermore, under Article 33(1) of the Court's Rules of Procedure, it is the duty of the Commission and not of the Court, to accurately identify the alleged victims at the appropriate procedural stage in a case submitted before the Court. [FN246]

[FN246] Cf. Case of the Ituango Massacres, supra note 231, para. 98, and Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 29.

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2. Compensation

2.1 Pecuniary damages

230. In its case law, the Court has developed the theory of pecuniary damages and the cases in which compensation must be set according thereto. [FN247]

[FN247] The Court has established that pecuniary damages entail "the pecuniary damage, which implies the loss of, or detriment to, the income of the victim, and the expenses incurred by the next of kin due to the events in the instant case." Cf. Case of Gómez Palomino v. Peru. Merits,

Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, para. 124; Case of García Asto and Ramírez Rojas v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2005. Series C No. 137, para. 259, and Case of Blanco Romero et al. v. Venezuela. Merits, Reparations and Costs. Judgment of November 28, 2005. Series C No. 138, para. 78.

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231. The Commission requested "reparations for the victims for the back salaries and economic benefits that the victims have not received since the time they were removed from office until they are reinstated in their positions" and that "the amount of compensation be set in equity."

232. The representative requested the amount of US$ 5,000.00 (five thousand United States dollars) as consequential damages "to cover the medical expenses incurred by Juan Carlos Apitz, Perkins Rocha, and Ana María Ruggeri in order to overcome the psychological distress resulting from their removal from office and the public aggression shown against them by the President of the Republic." As for loss of profits, the representative alleged that the victims, at the moment they were removed from office earned Bs. 3,500,000.00 (three million five hundred thousand bolivars) per month and were entitled to sixteen salaries per year." The representative argued that "taking into consideration the raises applied to the salary of judges having the same rank from March 2004 to February 28, 2007," each alleged victim has been prevented from earning the amount of US$ 194,761.33 (one hundred ninety-four thousand, seven hundred sixty-one United States dollars and thirty-three cents) or its equivalent amount in national currency."

233. The State argued that "it had not been proven" that the "fact of their removal from office had caus[ed] emotional distress both to the victims and to their next of kin (their wives and children), and even less, that it would require psychiatric treatment in the future," as "it would suffice to examine the pertinent medical reports to note […] that such claim was not properly validated and neither was the fact that such circumstance would continue." Furthermore, the State pointed out that "taking into consideration the compensatory amount, the request was not sufficiently substantiated with conclusive evidence that legally supports the truthfulness of what has been claimed," as "in the case of temporary former judges, the salaries of the judges who currently hold office as judges of the First Court […] according to law may not be se[t] in United States dollars, and furthermore, they largely excee[d] their equivalent amount in the Venezuelan currency."

234. As for the expenses incurred in connection with the medical treatment undergone by the victims, the representative merely submitted a psychological report related to some visits of Mr. Apitz to a psychologist. No other evidence was submitted regarding the treatment undergone, its cost, or duration. Besides, no other evidence was submitted on the medical or psychological treatment received by Mr. Rocha and Ms. Ruggeri.

235. Regarding the back payment of lost salaries and related benefits, the representative filed the affidavit rendered by Ms. Ruggeri, who provided information about her salary at the time she was removed from office and the amount she should receive taking into account the salary increases applied thereto. [FN248] Notwithstanding, no other evidentiary document was

submitted to support the foregoing affidavit, as, for instance, her salary record, her tax return or any other item that might be assessed by the Court. [FN249] Nor did the representative file any documentary evidence to support the criteria to be adopted in calculating the amount of the victims' unearned salaries.

[FN248] Cf. affidavit of Mrs. Ruggeri, supra note 33, p. 746.
[FN249] Cf. Case of Bueno Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 147.

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236. However, the Court cannot neglect the fact that the victims did suffer some sort of pecuniary damages as a result of the infringement of their rights, as stated in this Judgment. Therefore, the Court sets in equity compensation for pecuniary damages in the amount of US$ 48,000.00 (forty-eight thousand United States dollars) or its equivalent amount in the Venezuelan currency for each victim. The State shall pay this amount directly to the beneficiaries within the term of one year as from notice of this Judgment.

2.2. Non-pecuniary damages

237. As in prior cases, the Court will now determine reparations for non-pecuniary damages. [FN250]

[FN250] "[N]on-pecuniary damages may comprise both the pain and suffering caused to the direct victim and to his next of kin, the impairment of values that are significant to persons, as well as the non-pecuniary damages caused by the modification of the living conditions of the victim and his next of kin. As it is not possible to assess an accurate amount to measure such damage, in order to provide for integral reparation to the victims, said damages could only be compensated in two ways […] with the payment of amounts of money or the delivery of goods or services susceptible of having a pecuniary value, which the Court may determine […] in terms of equity, as well as by means of acts or works which may have a public impact, […] such as a commitment to avoid such violations in the future, in an attempt to repair the reputation of the victims, the acknowledgment of the victims' dignity or the relief of their next of kin," Cf. Case of Neira Alegría v. Peru. Reparations and Costs. Judgment of September 19, 1996. Series C No. 29, para. 57; Case of Zambrano Vélez et al., supra note 18, para. 141, and Case of Cantoral Huamaní and García Santa Cruz, supra note 12, para. 175.

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238. The Commission considered it "relevant to redress the consequences of the removal from office suffered by the victims" and highlighted "the importance that establishing the truth of the facts regarding their removal has for [them]." It further stated that it must be taken into consideration that "as a result of the decision of the CORJS the victims have been prevented from exercising judicial functions in the future."

239. The representative alleged that the victims had to "endure for months a systematic campaign of intimidating actions, such as the detention of Alfredo Romero and the search of the seat of the First Court, as well as all types of verbal aggressions," and that many of those attacks "were launched by the President of the Republic through radio and television speeches, in which he called them 'oligarchs,' 'corrupt,' 'bandits,' 'coup-plotters,' etc." According to the representative, the social and family life of the victims "was seriously affected, as a result of the stigma of having been removed from office for allegedly being corrupt and unsuitable for their positions." The three victims endured great suffering as "their professional careers were unfairly curtailed" and "despite their devotion to the Judiciary, they had been disgracefully removed from their positions and were no longer able to have their candidacies considered to sit on the [STJ]." The representative further considered that the damage suffered by the victims "seriously affected their professional and academic reputation" and "impaired their self-esteem and their family relationships" as "it went into the public domain." The representative requested as non-pecuniary damages for each of the victims the amount of US $ 100,000.00 (one hundred thousand United States dollars) or its equivalent amount in national currency.

240. The State considered that it had not been proven that "the victims had to live for months with the stigma of enduring verbal aggression," nor that "the representatives were victims of labor or social discrimination regarding their academic or personal activities," since they did not prove "that the university or teaching institutions where they work had imposed sanctions on them as a consequence of the removal from their positions as temporary judges of the First Court."

241. In their respective statements before this Court, Mrs. Ruggeri [FN251] and Messrs. Apitz [FN252] and Rocha [FN253] expressed that their reputation, professional and scholarly activities, social connections, and family life were affected by their removal. Also, they indicated they had suffered from persecution and that they had been severely criticized in public fora, particularly by the press. This was reaffirmed by Mrs. María Constanza Rondón, [FN254] Mr. Rocha´s wife, and by Mrs. Jacqueline Ardizzone Montilla, [FN255] Mr. Apitz´s wife. Furthermore, the representative submitted to the Court a psychological report on Mr. Apitz that states that he "has been suffering intense psychological distress." [FN256]

[FN251] Cf. affidavit of Mrs. Ruggeri, supra note 33.
[FN252] Cf. declaration of Mr. Apitz, supra note 137.
[FN253] Cf. declaration of Mr. Rocha, supra note 144.
[FN254] Cf. affidavit by Mrs. María Constanza Cipriani Rondón on January 9, 2008 (File on the Merits, Book III, pp. 757 and 759).
[FN255] Cf. affidavit by Mrs. Jacqueline Ardizzone Montilla on January 10, 2008 (File on the Merits, Book III, pp. 751 to 755).
[FN256] Cf. psychological report prepared by Mrs. Mariela Hernández (Evidence file, Book V, p. 1356).

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242. In prior cases, the Court has repeatedly held that a judgment declaring a violation of rights is in and of itself a form of redress. [FN257] Notwithstanding, taking into consideration

the circumstances of the instant case, the moral damages suffered by the victims as a result of the violations committed against them, the insults they had to endure, the lack of judicial response to their claims and all the other non-pecuniary consequences they suffered, the Court deems it relevant to establish payment of compensation, set on equitable grounds, for non-pecuniary damages. [FN258] Therefore, the Court sets in equity the amount of US $40,000.00 (forty thousand United States dollars) for each of the victims as compensation for non-pecuniary damages. The State shall pay this amount directly to the beneficiaries within the term of one year as from notice of this Judgment.

[FN257] Cf. Case of Suárez Rosero v. Ecuador. Reparations and Costs. Judgment of January 20, 1999. Series C No. 44, para. 72; Case of Zambrano Vélez et al., supra note 18, para. 142, and Case of Cantoral Huamaní and García Santa Cruz, supra note 12, para. 180.
[FN258] Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 26, 2001. Series C No. 77, para. 84; Case of Escué Zapata, supra note 14, para. 149, and Case of La Cantuta, supra note 8, para. 219.

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3. Measures of satisfaction and guarantees of non-repetition

243. In this section the Court will determine the measures of satisfaction aimed at redressing non-pecuniary damages and will order measures of public scope or repercussion. [FN259]

[FN259] Cf. Caso Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 268; Case of 19 Tradesmen, supra note 191, para. 253, and Case of Zambrano Vélez et al., supra note 18, para. 147.

3.1. Reinstatement in their positions

244. The Commission requested that "the victims be reinstated in their position as judges of the First Court (…) or a position of similar hierarchy if it were not possible to reinstate them in the court where they sat." It added that "should they be reinstated in a temporary position, the pertinent public competitive selection processes should be conducted as soon as possible through an adequate and effective procedure." In turn, the representative requested that "in order to secure the independence of the Judiciary" "the victims' removal from office be set aside and reinstatement in their positions be effected."

245. The State alleged that setting aside removal from office and reinstating the judges in their position "is no reparation" since if "the State's responsibility were determined, the prior situation of the judges would be restored, and taking the facts regarding the appointment defects as proven" this, "far from being reparative, is clearly 'condemnatory.'"

246. The Court has determined that the removal of the victims from their position was the result of a process that was in violation of judicial guarantees and judicial protection.

Consequently, taking into consideration that the irremovability of judges, whether they be temporary or permanent, must ensure that those who were arbitrarily removed from their position as judges be reinstated therein, the Court deems that as a reparation measure the State must reinstate the victims, if they so desire, in a position in the Judiciary in which they have the same rank, salary and related social benefits as they had prior to their removal. If, due to legitimate reasons that are beyond the will of the victims, the State could not reinstate them in the Judiciary within the term of six months as from notice of this Judgment, it shall pay each of the victims the amount set in equity of US $ 100,000.00 (one hundred thousand United States dollars) or its equivalent amount in national currency, within eighteen months as from notice of this Judgment.

3.2. Publication of the Judgment and public apology

247. The Commission and the representative requested that the State "publicly apologize to the victims, through the same communications means that the State used to attack them" and that such public apology "be published for two successive Sundays in El Nacional and El Universal de Caracas newspapers, together with the operative paragraphs of the Judgment rendered by the Court."

248. The State considered that the claims submitted by the victims were not relevant as "only on two occasions did the President refer to the instant case and not as the main subject of his speeches, but just as a statement typically made by the President of a democratic country, as he must refer to any situation which is in the public domain, just to cite an eminent national and international emblematic figure."

249. As established by the Court in prior cases, [FN260] as a measure of satisfaction the State must publish once in the Official Gazette and in another newspaper of widespread circulation, paragraphs 26 to 40, 42 to 45, 84 to 91 and 136 to 147 of this Judgment, together with the operative paragraphs thereof, without footnotes, within the term of six months as from notice of this Judgment.

[FN260] Cf. Case of Cantoral Benavides v. Peru. Reparations and Costs. Judgment of December 3, 2001. Series C No. 88, para. 179; Case of Zambrano Vélez et al., supra note 18, para. 215, and Case of Cantoral Huamaní and García Santa Cruz, supra note 12, para. 192.

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250. As for the other claims, the Court considers that rendering this Judgment and ordering the publication of a section thereof in the Official Gazette and in another newspaper of widespread circulation, are in and of themselves sufficient reparation in the instant case and that ordering a public apology is not relevant.

3.3. Adaptation of domestic laws to the provisions of the Convention

251. The Commission requested that "immediate measures aimed at promoting the enactment of the Venezuelan Code of Judicial Ethics be adopted, so that an end may be put to the exceptional functioning of the disciplinary jurisdiction regarding judges," thus ensuring that "this

jurisdiction is in conformity with the American Convention and secures the independence and impartiality of the Judiciary." The representative agreed with the Commission and further requested the adoption of "such measures as may be necessary to […] ensure that in the process of selection of judges no political criteria or other undue considerations are applied."

252. The State argued that "no reparation is in order as the conduct of the State conforms to the local legal provisions and the International Law applicable to the case, since the application filed by the Commission has no valid purpose or grounds, for the State of Venezuela has caused no damage whatsoever to the petitioners."

253. As established above, in 2006 the Chamber for Constitutional Matters of the STJ [FN261] declared the "unconstitutional legislative inaction on the part of the National Assembly […] in connection with the legislative procedure instituted to enact the so-called bill for the Code of Ethics […], drafted by the Assembly in 2003, which in the end was not promulgated." Taking into account that the Venezuelan Judicial Power itself has considered it imperative that the Code of Ethics be enacted and that the transitional regime has extended over nine years, and in view of the declared violations of Article 2 of the Convention, this Court determines that the State must adopt such measures as may be required to pass the Code of Ethics within the term of one year as from notice of this Judgment. Furthermore, the Court deems that as long as the provisional regime is in force, the State must ensure both the impartiality of the disciplinary organ, permitting, inter alia, that the members of the CORJS be challenged, and its independence, providing for an appropriate selection and appointment process and secured tenure of office.

[FN261] Cf. judgment No. 1048 of May 18, 2006 issued by the Chamber for Constitutional Matters, supra note 13.

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4. Costs and expenses

254. The Commission requested "payment of costs and expenses duly proven [...] as incurred in connection with the proceedings started both at the domestic and international levels."

255. The representative alleged that "the expenses incurred in connection with bringing the case before the domestic courts, of judicial investigation, press, and television, and of photocopies and archival preparation" amounts to US $ 3,500.00 (three thousand five hundred United States dollars), which, according to the representative, must be reimbursed by the State to Juan Carlos Apitz. The representative further requested the amount of "US $ 2,460.00 (two thousand four hundred and sixty United States dollars) for "two air tickets" for Juan Carlos Apitz. For "two hotel rooms for three days in Washington" for Héctor Faúndez Ledesma and Juan Carlos Apitz, "plus meals and transportation expenses" the representative requested reimbursement to Mr. Apitz of "US $ 2,836.00 (two thousand eight hundred and thirty-six United States dollars)." For "tickets Caracas-San José–Caracas" for the victims of the instant case and their representative, he requested reimbursement of "US $ 4,800.00 (four thousand eight hundred United States dollars). Furthermore, for "hotel accommodation and living expenses" in San José, Costa Rica, he requested the amount of US $2,800.00 (two thousand eight

hundred United States dollars). Finally, for "fees," the representative requested US $ 30,000.00 (thirty thousand United States dollars).

256. The State considered that, regarding the costs and expenses alleged by the representative, "the relation between the compensatory amount for the victims and their next of kin and the amount claimed by the representative in terms of percentage is disproportionate."

257. As stated by the Court in prior cases, costs and expenses are comprised within the concept of reparation as set forth in Article 63(1) of the American Convention, since the steps undertaken by the victims in order to get justice, both at the domestic and international levels, implies incurring expenses that must be compensated when the international responsibility of the State is determined by means of a condemnatory judgment. As regards the reimbursement of such costs and expenses, the Court must prudently determine its scope, which comprises the expenses incurred to start proceedings in the domestic jurisdiction as well as those arising from the proceedings started before the Inter-American system, taking into consideration the circumstances of the case in point and the nature of the international jurisdiction for the protection of human rights. This assessment is to be made based on the principle of equity and taking into consideration the expenses stated by the parties, provided that the quantum thereof is reasonable. [FN262]

[FN262] Cf. Case of Ricardo Canese, supra note 152, para. 212; Case of Gómez Palomino, supra note 247, para. 150; Case of García Asto and Ramírez Rojas, supra note 247, para. 286; and Case of Blanco Romero, supra note 247, para. 114.

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258. In the instant case, at the time the brief of request and arguments was submitted (supra para. 4), the representative did not submit the receipts for the costs and expenses allegedly incurred by Mr. Apitz, Mr. Rocha, and Ms. Ruggeri, nor did he put forward clear arguments to support such claim. In this regard, the Court considers that the claims made by the victims or their representative with regard to costs and expenses and the documentary evidence supporting them, must be filed before the Court at the start of each procedural stage, at the first time granted for them to do so in writing, [FN263] that is, in the brief containing pleadings and motions, without prejudice to such evidence being updated at a subsequent stage, as new costs and expenses are incurred in connection with the proceedings started before this Court.

[FN263] Cf. Case of Molina Theissen v. Guatemala. Reparations and Costs. Judgment of July 3, 2004. Series C No. 108, para. 22, and Case of Acosta Calderón v. Ecuador. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129, para. 41.

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259. Due to the insufficiency of the evidence referred to in the foregoing paragraph, the Court requested the representative by means of two communications of the Secretariat [FN264] to submit evidentiary documents showing the costs and expenses incurred. However, no reply was received. Regarding this issue, the Court wishes to point out that it is a power and not an

obligation of the Court to request the parties to submit evidence to facilitate the adjudication of the case. As it was noted in the foregoing paragraph, the duty to submit the pertinent evidence in a timely manner in the instant case is incumbent upon the representative.

[FN264] Notes of the Secretariat of the Court of February 23 and March 7, 2007 (File on the Merits, Book I, pp. 264 and 289).

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260. Taking the foregoing considerations into account and the insufficiency of documentary evidence to prove the expenses incurred by the victims and the representative both in the proceedings started before the domestic courts and before the Inter-American system, the Court determines in equity that the State must deliver the amount of US$ 5,000.00 (five thousand United States dollars) to each victim as reimbursement of costs and expenses. This amount shall be delivered within the term of one year from notice of this Judgment and includes any expenses that the victims may incur in the future at the domestic level or during monitoring compliance herewith. In turn, the victims will deliver the amount they deem appropriate to their representative before the domestic courts and the Inter-American system.

5. Method of Compliance

261. Payment of the amounts set as compensation and as reimbursement of costs and expenses on behalf of Ms. Ruggeri and Messrs. Apitz and Rocha shall be made directly thereto. Should the beneficiaries die before they receive due compensation, it shall be delivered to their successors, pursuant to the applicable domestic legislation. [FN265]

[FN265] Cf. Case of Myrna Mack Chang, supra note 259, para. 294; Case of Zambrano Vélez et al., supra note 18, para. 137, and Case of Cantoral Huamani and García Santa Cruz, supra note 12, para. 162.

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262. The State must discharge its pecuniary obligations by tendering United States dollars or an equivalent amount in Venezuelan currency, at the New York, USA, exchange rate for both currencies, as quoted on the day prior to the day payment is made.

263. If the beneficiaries of compensation are unable to receive the payments ordered within the specified term due to causes attributable thereto, the State shall deposit these amounts into an account or certificate of deposit in the beneficiaries' name with a Venezuelan financial institution, in United States dollars and under the most favorable financial terms permitted by law and banking practice. If after ten years such compensation has not been claimed, these amounts shall be returned to the State together with accrued interest.

264. The amounts awarded herein as compensation for pecuniary and non-pecuniary damages and as reimbursement of costs and expenses shall be paid to the beneficiaries in full and shall not be reduced for tax purposes.

265. Should the State fall into arrears, banking default interest rates in effect in Venezuela shall be paid on the amounts due.

266. In accordance with its usual practice, the Court retains the authority that derives from its jurisdiction and the provisions of Article 65 of the American Convention, to monitor full compliance with this judgment. The instant case shall be closed once the State has fully complied with the provisions herein set forth. Within six months from the date of notice of this judgment, the State shall submit to the Court a report on the measures adopted in compliance herewith.

X. OPERATIVE PARAGRAPHS

267. Therefore,

THE COURT

DECIDES,

unanimously:

1. To dismiss the preliminary objection raised by the State, under the terms of paragraph 24 of this Judgment.

DECLARES,

unanimously that:

2. The State has not violated the right of Juan Carlos Apitz Barbera, Perkins Rocha Contreras and Ana María Ruggeri Cova to have a hearing by a competent court, in accordance with paragraphs 47 to 53 of this Judgment.
3. The State has not secured the right of Juan Carlos Apitz Barbera, Perkins Rocha Contreras and Ana María Ruggeri Cova to have a hearing by an impartial court, which is in violation of Article 8(1) of the American Convention on Human Rights, in relation to the general obligations set forth in Articles 1(1) and 2 thereof, in accordance with paragraphs 54 to 67 of this Judgment.
4. The State has not violated the right of Juan Carlos Apitz Barbera, Perkins Rocha and Ana María Ruggeri Cova to be heard in the proceedings for removal of the case to the upper court, neither has it violated the right of Juan Carlos Apitz Barbera and Perkins Rocha Contreras to be heard at a hearing in the appeals proceedings, in accordance with paragraphs 68 to 76 of this Judgment.
5. The State has failed to comply with the duty to state grounds arising from the guarantees of Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Juan Carlos Apitz Barbera, Perkins Rocha Contreras and Ana María Ruggeri Cova, in accordance with paragraphs 77 to 94 of this Judgment.
6. It has not been established that the Judiciary, in general, is not independent, in accordance with paragraphs 96 to 108 of this Judgment.

7. The State has violated the right of Juan Carlos Apitz Barbera, Perkins Rocha Contreras and Ana María Ruggeri Cova to a fair trial by an independent court, under the provisions of Article 8(1) of the American Convention on Human Rights, in relation to the general duties established in Articles 1(1) and 2 thereof, in accordance with the provisions of paragraphs 109 to 148 of this Judgment.
8. The State has violated the right to be heard within a reasonable time, as enshrined in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Juan Carlos Apitz Barbera and Perkins Rocha Contreras, in accordance with paragraphs 157 to 161 and 172 to 181 of this Judgment.
9. The State has violated the right to simple, prompt, and effective recourse to a competent court for the protection of one's rights as enshrined in Article 25(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Juan Carlos Apitz Barbera and Perkins Rocha Contreras, in accordance with paragraphs 150 to 156 and 171 of this Judgment.
10. The State has not violated the right to judicial protection of Ana María Ruggeri Covas, under the provisions of Article 25(1) of the American Convention on Human Rights, in accordance with paragraphs 182 to 185 of this Judgment.
11. The State has not violated the right to equality before the law of Juan Carlos Apitz Barbera, Perkins Rocha Contreras, and Ana María Ruggeri Covas, under the provisions of Article 24 of the American Convention on Human Rights, in accordance with paragraphs 190 to 200 of this Judgment.
12. The State has not violated the right to have access, under general conditions of equality, to the public service in his country, as enshrined in Article 23(1)(c) of the American Convention on Human Rights, to the detriment of Juan Carlos Apitz Barbera, Perkins Rocha Contreras, and Ana María Ruggeri Cova, in accordance with paragraphs 201 to 207 of this Judgment.
13. The State has not violated the general clause of non-discrimination as enshrined in Article 1(1) of the American Convention on Human Rights, in relation to the substantive right to be heard within a reasonable time, under the provisions of Article 8(1) thereof, in accordance with paragraphs 208 to 215 of this Judgment.
14. The alleged violation of Article 29(c) and 29(d) of the American Convention on Human Rights, in relation to Article 3 of the Inter-American Democratic Charter is not admissible, under the terms of paragraphs 216 to 223 of this Judgment.
15. This Judgment is in and of itself a form of redress.

AND DECIDES:

unanimously that:

16. The State must pay the amounts set in this Judgment as pecuniary and non-pecuniary damages, and as reimbursement of costs and expenses within the term of one year as from notice of this Judgment, under the terms of paragraphs 236, 242, and 260 thereof.
17. The State must reinstate Juan Carlos Apitz Barbera, Perkins Rocha Contreras, and Ana María Ruggeri Cova, if they so desire, in a position in the Judiciary in which they have the same salaries, related benefits, and equivalent rank as they had prior to their removal from office. If, due to legitimate reasons that are beyond the will of the victims, the State could not reinstate

them in the Judiciary within the term of six months as from notice of this Judgment, it shall pay each of the victims the amount set in paragraph 246 of this Judgment.

18. The State must publish the sections established in paragraph 249 of this Judgment, within the term of six months as from notice thereof.

19. The State must adopt the measures required to pass the Venezuelan Code of Judicial Ethics, within the term of one year as from notice thereof, in accordance with the provisions of paragraph 253 of this Judgment.

20. The Court will monitor full compliance with this Judgment and deem the instant case closed once the State has fully complied with the provisions set herein. Within six months from the date of notice of this Judgment, the State shall furnish the Court with a report on the measures taken in compliance herewith.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on August 5, 2008.

Cecilia Medina Quiroga
President

Sergio García Ramírez
Manuel E. Ventura Robles
Leonardo A. Franco
Margarette May Macaulay
Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary