In the case of Perozo et al. v. Venezuela,

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, 56 and 58 of the Rules of Procedure of the Court (hereinafter, the "Rules of Procedure") delivers the present Judgment.

I. INTRODUCTION TO THE CASE AND PURPOSE OF THE APPLICATION

1. On April 12, 2007 in accordance with Articles 51 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") submitted an application to the Court against the Bolivarian Republic of Venezuela (hereinafter, the "State" or "Venezuela") in relation to the case N° 12.442, originating in petition 487/03 forwarded to the Secretariat of the Commission on June 27, 2003 by Gabriela Perozo, Aloys Marín, Efraín Henríquez, Oscar Dávila Pérez, Yesenia Thais Balza Bolívar, Carlos Quintero, Felipe Antonio Lugo Durán, Alfredo José Peña Isaya, Beatriz Adrián, Jorge Manuel Paz Paz, Mayela León Rodríguez, Richard Alexis López Valle, Félix José Padilla Geromes, John Power, Miguel Ángel Calzadilla, José Domingo Blanco, Jhonny Donato Ficarella Martín, Norberto Mazza, Gladys Rodríguez, María Arenas, José Vicente Antonetti Moreno, Orlando Urdaneta, Edgar Hernández, Claudia Rojas Zea, José Natera, Aymara Anahi Lorenzo Ferrigni, Carlos Arroyo, Ana Karina Villalba, Wilmer Escalona Arnal, Carla María Angola Rodríguez, José Iniciarte, Guillermo Zuloaga Núñez and Alberto Federico Ravell. On February 27, 2004 the Commission adopted the Report on Admissibility N° 07/04, by which it admitted such petition. Afterwards, on October 26, 2006, the Commission adopted the Report on Merits N° 61/06 under the terms of Article 50 of the Convention, which made certain recommendations to the State. [FN2] On April 12, 2007, the Commission decided, under the terms of Article 51(1) of the Convention and 44 of its Rules of Procedure, to bring the case to the Jurisdiction of the Court, on the grounds that the "State did not adopt the recommendations made in [its] report". The Commission appointed Mr. Paulo Sergio Pinheiro, Commissioner, Mr. Santiago A. Canton, Executive Secretary, and Ignacio Álvarez, the then Special Rapporteur on Freedom of Expression as Delegates and Ms. Elizabeth Abi-Mershed, current Deputy Executive Secretary, Mr. Juan Pablo Albán Alencastro, Ms. Débora Benchoam and Silvia Serrano as legal advisors. Mr. Ariel E. Dulitzky and Mrs. Alejandra Gonza, who are not longer officers of the Commission, were also appointed as legal advisors.

[FN2] In the Report on Merits, the Commission concluded that Venezuela "is responsible for the violation of the right to humane treatment (Article 5), freedom of expression (Article 13), right to a fair trial (Article 8) and right to judicial protection (Article 25) of the American Convention, in relation to the general obligation to respect and ensure the human rights enshrined in Article 1(1) therein. Finally, the Commission made certain recommendations to the State (record on merits, Volume I, page 11)

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2. The facts presented by the Commission referred to a series of actions and omissions which occurred between October 2001 and August 2005, consisting of statements made by public officers, acts of harassment and physical and verbal assault, as well as hindrance to broadcast, committed by State agents and private individuals, to the detriment of forty-four (44) people associated with Globovisión television station, among them, reporters, associated technical supporting staff, employees, executives and shareholders, and also to certain investigations and criminal proceedings initiated or conducted at the domestic level in relation to those facts.

3. The Commission asserted that the alleged victims were subjected to different attacks due to the fact that they sought for, received and imparted information and that the State did not adopt the measures necessary to prevent the acts of harassment, neither it investigated and punished the responsible with due diligence. The Commission requested the Court to declare that the State is responsible for the violation of the rights enshrined in Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 13 (Right to Freedom of Thought and Expression) and 25 (Right to Judicial Protection) of the American Convention, in relation to the general obligation to respect and ensure the human rights embodied in Article 1(1) of said treaty, to the detriment of these forty-four alleged victims. [FN3] As a result of the above mentioned, the Commission requested to the Court that the State be required to take certain measures of reparation and reimburse costs and expenses.

[FN3] The alleged victims in this case are Aloys Emmanuel Marín Díaz, Ana Karina Villalba, Aymara Anahí Lorenzo Ferrigni, Beatriz Alicia Adrián García, Carla María Angola Rodríguez, Gabriela Margarita Perozo Cabrices, Gladys Rodríguez, Janeth del Rosario Carrasquilla Villasmil, Jhonny Donato Ficarella Martín, Jesús Rivero Bertorelli, José Vicente Antonetti Moreno, María Cristina Arenas Calejo, Martha Isabel Herminia Palma Troconis, Mayela León Rodríguez, Norberto Mazza, Yesenia Thais Balza Bolívar, Angel Mauricio Millán España, Carlos Arroyo, Carlos Quintero, Edgar Hernández, Efraín Antonio Henríquez Contreras, John Power, Jorge Manuel Paz Paz, José Gregorio Umbría Marín, Joshua Oscar Torres Ramos, Wilmer Jesús Escalona Arnal, Ademar David Dona López, Alfredo José Peña Isaya, Carlos José Tovar Pallen, Felipe Antonio Lugo Durán, Félix José Padilla Geromes, Miguel Ángel Calzadilla, Oscar Dávila Pérez, Ramón Darío Pacheco Villegas, Richard Alexis López Valle, Zullivan René Peña Hernández, José Rafael Natera Rodríguez, Oscar José Núñez Fuentes, Orlando Urdaneta, Claudia Rojas Zea, José Inciarte, Alberto Federico Ravell Arreaza, Guillermo Zuloaga Núñez and María Fernanda Flores Mayorca.

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4. On July 12, 2007 the representatives of thirty-seven of the forty-four alleged victims, [FN4] Mr. Carlos Ayala Corao and Mrs. Margarita Escudero León, Ana Cristina Núñez Machado and Nelly Herrera Bond (hereinafter, the "representatives"), submitted the brief containing pleadings, motions and evidence (hereinafter, "brief containing pleadings and motions"), under the terms of Article 23 of the Rules of Procedure. The representatives alleged that the facts of the instant case are such that constitute the "subject-matter of the case" as "a series of facts that are not included in the Commission's application [which would] be directly related to the facts claimed to be in breach of the American Convention, [which] should be appraised [...] as part of the 'context' in which the facts contained in the application occurred or as facts that aggravated the [alleged] violations […]". The representatives requested the Court to declare that the State is responsible, apart from the violations alleged by the Commission, for the violation of Article 21 (Right to Property) of the Convention, to the detriment of two shareholders of Globovisión, in relation to some facts that they alleged "have caused damage and have deprived the television station and its shareholders from the use and enjoyment of the equipment" of said station. Furthermore, they argued that the State has violated Article 24 (Right to Equal Protection) of the Convention, in relation to Article 13 therein, for alleged restrictions imposed on Globovisión journalist teams in order to access official sources of information. In

turn, in the final arguments they requested the Court to declare that the State is responsible for the violation of Articles 5, 13, 8 and 25 "in relation to" Article 1,2 and 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Woman ("Convention of Belem do Pará"). Finally, the requested the Tribunal to order the State to adopt a series of measures of reparation.

[FN4] According to the powers –of- attorney submitted by the Commission, said accredited representatives have acted on behalf of thirty-seven of the alleged forty-four victims. The Commission expressed that since the alleged victims Alfredo José Peña Isaya, Félix José Padilla Geromes, José Natera, Miguel Ángel Calzadilla, Orlando Urdaneta, Yesenia Thais Balza Bolivar and Zullivan René Peña Hernández, who have not yet appointed a representative for the proceeding of the case before the Court at the moment of the filing of the application, the Inter-American Commission, in its capacity of guarantor of the general interest within the Inter-American system, provisionally assumes the defense of their interest. During the processing of the case, the representatives stated that one more of the alleged victims, Mr. José Natera, was also being represented by them.

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5. On September 11, 2007, the State submitted a brief containing preliminary objections, the answer to the complaint and observations to the brief of pleadings and motions (hereinafter, "answer to the complaint"). In said brief, the State raised four preliminary objections, namely, "untimeliness in the filing of the arguments and evidence contained in the brief of pleadings, motions and evidence submitted by the [alleged] victims", the "inadmissibility of the new arguments and allegations contained in the autonomous brief signed by the alleged victims"; the "prejudice in the roles played by some judges of the Court" and the lack of exhaustion of domestic resources. The State requested the Court to adjudge and declare that the alleged violations of the rights enshrined in Articles 5, 8, 13, 21, 24 and 25 of the Convention, attributed to the State by the Commission and the alleged victims, to be inadmissible and inexistent.Consequently, it requested the Court to reject the application and the autonomous brief of pleadings, as well as each one of the claims made and reparations requested. The State appointed Mr. Germán Saltrón Negretti as Agent and Mr. Larry Devoe Márquez as Deputy Agent. [FN5]

[FN5] State's brief of June 5, 2007.

II. COMPETENCE

6. The Court has jurisdiction over this case in accordance with Article 62(3) of the American Convention, given the fact that Venezuela has been a State Party to the American Convention since August 9, 1977 and has accepted the binding jurisdiction of the Court on June 24, 1981.

III. PROCEEDINGS BEFORE THE COURT

7. On May 11, 2007 the Secretariat of the Court (hereinafter, "the Secretariat"), prior to a preliminary examination of the application conducted by the then President of the Court and in accordance with Articles 34 and 35(1) of the Rules of Procedure, notified, via facsimile, said application to the State [FN6] and the representative. [FN7] On that same day, the application was forwarded via courier together with the exhibits, which were received by the representatives and the State on May 14, 2007. [FN8] On June 29, 2007, the State appointed Mr. Pier Paolo Pasceri Scaramuzza as Judge ad hoc.

[FN6] Upon notice of the application to the State, the State was informed of its right to answer the application and, if applicable, to submit comments to the brief containing pleadings, motions and evidence presented by the alleged victims or their representatives within a period of 4 months of the notification, which may not be extended in accordance with Article 38 of the Rules of Procedure. Furthermore, under the terms of Articles 35(3) and 21(3) of the Rules of Procedure, the State was requested to designate, within one month, an Agent to represent the State before the Court and, if it deems necessary, a Deputy Agent. Lastly, the State was communicated of its possibility to appoint a judge ad hoc within thirty days following notice of the application, to participate in the discussion of the case.

[FN7] Furthermore, upon notice of the application to the representatives, they were informed of their right to submit a brief containing pleadings, motions and evidence within a non-renewable term of two months, as of notice of said application, in accordance with Articles 23 and 36(1) of the Rules of Procedure.

[FN8] Moreover, the State was requested to, upon the filing of the brief containing the answer to the application, forward full and legible copies of the documentation requested by the Commission in paragraph 261 of the application, namely " copies of all the documents related to the investigations and proceedings carried out under domestic jurisdiction in connection with the incidents covered by this case, together with authenticated copies of the applicable legislation and regulatory provisions", as long as said information was not already contained in the case file before this Tribunal. On April 17, 2008, following the instructions of the President of the Court, the State was one more time requested to forward, no later than April 25, 2008, all the information and documentation requested by means of the Secretariat's note of May 11, 2007. On May 6, 2008, the State furnished such information and documentation in response to such request.

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8. After the filing of the brief containing pleadings, motions and evidence (supra para. 4), on September 17, 2007, the representatives submitted a brief with "additional information to the autonomous brief of pleadings, motions and evidence" (infra para. 51 and 52).

9. Upon the filing of the brief containing the State's response to the application (supra para. 5), on October 12, 2007, the then President of the Court issued a Decision by means of which he decided not to accept the State's request, filed as a preliminary objection, in order to exclude Judges Cecilia Medina Quiroga and Diego García-Sayán from hearing the case and he furthermore, submitted such decision to the full Court. On October 18, 2007, the Court issued an Order by means of which the State's request of disqualifying Judges Cecilia Medina Quiroga and

Diego García-Sayán from hearing the case was declared inadmissible and the Court accepted the self-disqualification of Judge García-Sayán (infra para. 35 to 37).

10. On November 15 and 16, 2007, the Commission and the representatives submitted, respectively, the written arguments to the preliminary objections raised by the State.

11. On March 18, 2008 the President of the Court ordered to receive the affidavits of fifteen people, and the expert opinions of six people proposed by the Commission, the representatives and the State, with respect to which the parties had the opportunity to submit observations.Moreover, the President of the Court convened the Inter-American Commission, the representatives and the State to a public hearing in order to listen to the statements of three witnesses and three expert witnesses proposed by the parties (infra para. 93), as well as the oral final arguments of the parties on the preliminary objections and possible merits, reparations and costs. [FN9]

[FN9] Cf. Order of the President of the Inter-American Court of Human Rights of March 18, 2008.

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12. On April 11, 2008, the representatives submitted "an objection or challenge" against one of the witness proposed by the State and on the 18th of that same month and year, the State submitted a "formal objection" against two persons proposed as expert witnesses by the representatives. [FN10] On May 2, 2008 the Court issued an order by which it dismissed the objection presented by the representatives against the witness and accepted the objection made by the State against the two persons proposed as expert witnesses.

[FN10] Upon the submission of the objections, following the instructions of the President, it was requested to the parties and the people who have been summoned to appear as expert witnesses and challenged to present the observations they consider convenient. On April 22, 2008 the State submitted the observations to the objections of Mr. Hernández López and the Commission stated that it had no observations to make. On April 25, 2008, the Commission and the representatives presented the observations to the objection made against the people offered as expert witnesses, who in turn forwarded their corresponding comments on May 1, 2008.

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13. On May 7 and 8, 2008 the Court held the public hearing during its LXXIX Period of Sessions at its seat. [FN11]

[FN11] To this hearing, there appeared: a) on behalf of the Inter-American Commission: Paulo Sérgio Pinheiro, Commissioner, delegate, Juan Pablo Albán A., advisor and Silvia Serrano, advisor; b) on behalf of the representatives: Carlos Ayala Corao, Margarita Escudero León, Ana Cristina Núñez Machado and Freddy Aray Larez; and c) on behalf of the State: Germán Saltrón Negretti, State's Agent for Human Rights of the Ministry of the Popular Power for Foreign

Affairs; Larry Devoe, Deputy Agent; and as advisor Roselyn Daher, Legal Consultant of the National Commission on Telecommunications; Alejandro Castillo, 5º Prosecutor of the Government Attorney's Office before the Supreme Tribunal of Justice; Julián Isaías Rodríguez; Soledad Ramírez; Pedro Maldonado, General Director of Human Rights of the Ministry of the Popular Power for Domestic Affairs; Luisa Sifontes and Lizángela Gómez, members of the Legal Consultancy of the Popular Power for Domestic Affairs and Justice.

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14. On May 28, 2008 the Secretariat, following the instructions of the President and in accordance with Article 45(2) of the Rules of Procedure, requested the parties to refer to some of the issues of the written final arguments. [FN12] Moreover, under the terms of Article 45(1) of the Rules of Procedure of the Court, the State was requested to present a complete and specific report on the investigations related to this case. [FN13]

[FN12] The parties were requested to refer to specific issues under the following terms:

a) In relation to the alleged violations of certain human rights, the parties are requested to specifically refer to the existence and scope of the causal link between the facts alleged in the instant case and the alleged international responsibility of the State;

b) As to the available domestic resources, the parties are requested to inform whether apart from the actions established in the criminal legislation, there are other suitable and effective resources to protect the human rights that have been violated in the instant case, as well as to obtain reparations or compensation in case it is determined the existence of such human rights violation;

c) The parties are requested to state whether, apart from the alleged criminal proceedings initiated by the alleged victims, other type of actions that are established in the domestic legislation were initiated in order to try to obtain reparations for the alleged human rights violations of this case; and

d) As to the conduct of the State in the facts of this case, the parties are requested to explain the reasons to assert whether the State's participation in such facts would have been diligent and which would have been the participation of the alleged victims. Specially, the parties are requested to make reference to the State's argument according to which the alleged victims would "be responsible for the incidents that occured", whether they would have contributed to the occurrence of the alleged facts as human rights violations.

[FN13] The State was requested to present a complete and timely report on the investigations related to the Globovisión mass media, conducted before the 50º Plenipotentiary Prosecutor of the Office of the Prosecutors General and also to refer to each one of the facts denounced; the legal classification of the facts; the persons that appear as aggrieved parties, affected parties or alleged victims as well as the current state of the investigations. Moreover, the State was requested to inform on two possible complaints related to the communication media Globovisión conducted before the 29º Prosecutor of the Office of the Prosecutors General of the Judicial District of the Metropolitan Area of Caracas, and if applicable, to forward copies of the respective investigations.

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15. On June 9, 2008 the Commission, the State and the representatives submitted, respectively, their final written arguments on the preliminary objections and the possible merits, reparations and costs. On July 18, 2008, the representatives filed the brief of "observations to the final written arguments presented by the […] State" (infra para. 53).

16. On July 25, 2008, following the instructions of the President, the parties were notified that in paragraph 362 of the application, the Commission requested the Court to incorporate to the case file of these proceedings "a copy of all the proceedings related to the provisional measures ordered by the Inter-American Court in favor of the reporters, executives and other employees of the Venezuelan television station, Globovisión". Following the instructions of the President, the representatives and the State were requested to submit, no later than August 1, 2008, the observations they consider appropriate to the request made by the Inter-American Commission. The Court did not receive any observation in such regard.

17. On December 4, 2008 the representatives of the allegad victims informed on an allegedly "new administrative sanction procedure [initiated by the National Telecommunications Commission (CONATEL)] against Globovisión". The Secretariat informed the parties, following the instructions of the President, that said brief would be brought to the attention of the full Court and that its admissibility and legal basis would be resolved in time fashion (infra para. 54).

18. On January 16, 2009 the Secretariat informed the parties that, under the terms of Article 45(1) of the Rules of Procedure, certain domestic laws presented by the State in the case of Ríos v. Venezuela would be admitted into the body of evidence and the parties were granted the possibility to present observations thereto (infra para. 111). On that same day, the representatives filed a brief by means of which they informed about an alleged attack against reporters, executives and employees of Globovisión and requested the Tribunal to "take into account these serious acts at the moment of render a judgment in this case". On January 26, that same year, the parties were informed on the fact that the brief would be brought to the attention of the full Court, for all relevant legal purposes, and that the admissibility and legal basis of such brief would be resolved in time fashion (infra para. 55).

19. Furthermore, the following organizations, entities and institutions filed briefs as amici curiae: On April 25, 28 and 30, 2008 the non-governmental organizations "Asociación Internacional de Radiodifusión-AIR" and the "Observatorio Iberoamericano de la Democracia", the "Colegio Nacional de Periodistas" of Venezuela and the National Union of Journalists of Venezuela (SNTP), respectively; on May 2, 2008 the organization "Sociedad Interamericana de Prensa"; on May 6, 2008 the "Universidad Católica Andrés Bello" and the "Institute of Legal Defense-IDL"; on May 7 and 30 and on June 2, 2008, the "Asociación de Radiodifusores de Chile- ARCHI", the "Association of the Bar of the City of New York" and the "Netherlands Institute for Human Rights- SIM" and on July 29, 2008 the "Cámara Venezolana de la Industria de la Radiodifusión".

IV. PROVISIONAL MEASURES

20. On July 16, 2004, the Commission requested the Court to order the State to adopt provisional measures. On August 3, 2004, the then President of the Court, in consultation with

all the judges of the Court, issued an Order in which the State was ordered to adopt such measures as might be necessary to "safeguard and protect the lives, safety, and freedom of expression of the reporters, executives and employees of Globovisión, and of the other persons who are in the facilities of said broadcaster or who are directly linked to the journalistic operation of this broadcaster[;] such measures as might be necessary to protect the perimeter of the head offices of the Globovisión social communications broadcaster [and] to investigate the facts". [FN14] On September 4, 2004 the Court ratified to its full extent the Order of the President. [FN15]

[FN14] Cf. Order of the then President of the Inter-American Court of Human Rights of August 3, 2004.
[FN15] Cf. Order issued by the Inter-American Court of Human Rights on September 4, 2004.

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21. On October 23, 2007 the representatives of the beneficiaries of the provisional measures, "on their own behalf, and on behalf of all the journalists, management, and other employees of Globovisión," requested, inter alia, that the "content [of said provisional measures] be expanded". The State objected to the foregoing and requested the Court to rescind the measures. On November 21, 2007, the Court rejected the State's requests for rescission of the measures and the representatives' request for expansion of such measures and required the State to maintain the provisional measures decided in the Order of September 4, 2004. [FN16]

[FN16] Cf. Order issued by the Inter-American Court of Human Rights on November 21, 2007.

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22. On December 17, 2007 the representatives submitted a new request for expansion. On the 21 of that same month and year, the then President rejected said request. [FN17] The Court ratified that order on January 29, 2008. [FN18]

[FN17] Cf. Order of the then President of the Inter-American Court of Human Rights of December 21, 2007.
[FN18] Cf. Order issued by the Inter-American Court of Human Rights on January 29, 2008.

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23. Upon the delivery of this Judgment, the provisional measures ordered in September 2004 are still in force.

V. PRELIMINARY OBJECTIONS

A) First Preliminary Objection ("On the untimeliness in the filing of arguments and evidence contained in the Brief of Pleadings, Motions and Evidence submitted by the alleged victims".)

24. In this first preliminary objection, the State requested that "any assessment of the autonomous brief signed by the [alleged] victims be omitted, due to the fact that such brief was untimely filed inasmuch as the term established to such end had already expired". According to the State, the application was notified on May 11, 2007 therefore the period of time established in Article 36(1) of the Rules of Procedure expired on July 11 of that same year. Nevertheless, the State argued that the representatives filed their brief containing pleadings and motions "one day after the expiration of such term".

25. The Court notes that this issue has been already considered by the President in the Order of March 18, 2008 issued in consultation with all the Judges of the Tribunal, given the fact that the State asserted, using that same argument, that the evidence furnished by the representatives "may not be validly incorporated into the proceeding". In this manner, the President considered the following issues:

7. That […] the President observes that the State has put forward an argument as a preliminary objection and as ground for its objection as to the admission by the Court of the testimonial evidence and expert opinions furnished by the representatives. In general, by means of a procedural act of such nature (preliminary objection), the questioning would be based on the admissibility of a case or the Jurisdiction of the Court ratione personae, materiae, temporis or loci to hear a case or some evidence thereof. Therefore, the issue regarding the formal admissibility of a brief submitted by one of the parties does not constitute per se an issue of preliminary nature that need to be filed by means of an objection. Nevertheless, this President deems appropriate to make a decision in such regard, inasmuch as the preliminary issue needs to be solved in order to continue with the processing of the case. […]
9. That, according to the usual practice of the Tribunal, the terms are counted, for the interested party, as from the moment in which a communication is effectively and completely received at the place designated by the party in order to receive notices and official communications, via facsimile, normal mail or courier. […]
10. That, it springs from the records of the case file that the application's brief was notified via facsimile to the representatives of some of the alleged victims on May 11, 2007 and that on that same day, it was forwarded via courier together with all the exhibits, which were received by the representatives on May 14, 2007. In fact, this has been duly informed to the parties by means of a Secretariat's note of August 30, 2007, after the State would have requested such information [...] That is, the term to file the brief containing pleadings and motions commenced to run on May 14, 2007. Given the fact that the representatives' brief was received by the Court on July 12, 2007, this Presidency verifies that the brief was filed within the corresponding procedural term and, therefore, the testimonial evidence and expert opinions were furnished in time fashion. […] [FN19]

[FN19] Order of the President of the Inter-American Court of Human Rights of March 18, 2008.

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26. The State, nevertheless, indicated in its oral arguments put forward during the public hearing, that, according to the Rules of Procedure, this decision is the responsibility of the Full Court to make and not of its President or, in any case, it must be decided in the corresponding

judgment on the merits; therefore, by admitting the representatives' brief, the Order of the President is void since it violated the Rules of Procedure and deprived the full Court of the consideration of a case of its exclusive jurisdiction. Based on those reasons, the State requested the Court that this objection be admitted and the corresponding autonomous brief be considered acknowledged.

27. The Court repeats, under the same terms of such President's Order of March 18, 2008, that the issue about the formal admissibility of a brief submitted by one of the parties does not constitute per se an issue of preliminary nature that need to be put forward by means of an objection; moreover, the Court deems that this procedural issue has already been decided by the President in such Order. Based on the foregoing, the Court considers the first preliminary objection raised by the State to be inadmissible.

B) SECOND PRELIMINARY OBJECTION ("On the Alleged Inadmissibility of the new Arguments and Allegations contained in the Autonomous Brief signed by the Alleged Victims".)

28. The State alleged that the representatives intend to include in the case file new facts and arguments by means of their autonomous brief, seeking in this way an assessment by the Court and, in consequence, the State's conviction for the alleged human rights violations on the ground of such arguments and facts and, furthermore, "the representatives intend the Court […] convict the State for the alleged violation of Articles 21 and 24 of the American Convention, […] even though the Commission's application does not contain any request" in that regard. The State asserted that the possibility of prosecution is subjected to the facts of the application only and to the rights that have been denounced as breached in the Commission's application; therefore, it requested the Court to "exclude and omit the new arguments and allegations contained in the autonomous brief submitted by the representatives from the judgment on the merits".

29. The representatives alleged that the Inter-American Court has taken up the procedural principle of full jurisdiction as to the consideration and application of law, regardless one of the parties invokes it or not, apart from the principle iura novit curia. They pointed out that in the brief of pleadings and motions they referred to the same facts presented by the Commission and, moreover, to supervening facts and a series of events that, even though they are not contained in the application, they are "directly linked" to those facts (supra para. 4 and infra para. 60 and 61), therefore the Court should not be impeded from hearing those. As a consequence, they stated that they have legal standing to allege other rights not included in the application and therefore, requested the Court to declare groundless this preliminary objection.

30. The Commission, on the other hand, made no specific declarations regarding this objection but it limited to expressed "its opinion". The Commission stated that, once the proceeding is initiated, the Rules of Procedure establishes the way an alleged victim and his or her representatives may actively and autonomously intervene throughout the proceeding, which does not violate the State's right to defense.

31. Based on the allegations made by the State and without prejudice to the arguments related to what constitutes the factual framework of the instant case (infra para. 64 to 75) with respect to this preliminary objection, it is the Tribunal's responsibility to only rule about the possibility of

the alleged victims and their representatives to allege the violation of other rights other than those that have been mentioned in the application.

32. With regard to the possibility of participation by the alleged victims, their next of kin or their representatives in the proceedings before the Court, and of alleging other facts or the violation of other rights not included in the application, the Court has established that it is not admissible to allege new facts other than those stated in the application, without detriment to stating those that help explain, clarify or dismiss those mentioned in the application, or respond to the applicant's claims.Furthermore, supervening facts may be submitted to the Court at any stage of the proceeding before the judgment is issued. [FN20] Furthermore, the alleged victims and their representatives may argue violations of the Convention other than those included in the application, in a manner consistent with their condition as those truly entitled to the rights set forth in the Convention, as long as such legal arguments are based upon the facts set out in the application, [FN21] since such application constitutes the factual framework of the proceeding. [FN22] The purpose of that possibility is to make the locus standi in judicio procedural capacity effective, as recognized for the alleged victims, their next of kin or their representatives in the Rules of Procedure, without disregarding the limits established in the Convention regarding their participation or the exercise of the competence of the Court or diminishing or violating the State's right to defense, as the State has procedural opportunities to respond to the pleadings of the Commission and of the representatives at all stages of the proceeding.

It is ultimately for the Court to decide in each case on the legal basis of a claim of such nature, in safekeeping of the procedural balance among the parties. [FN23]

[FN20] Cf. Case of the "Five Pensioners" v. Perú. Merits, Reparations, and Costs. Judgment of February 28, 2009. Series C No. 98, para. 154; Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, para. 174; and Case of Heliodoro Portugal v. Panamá. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 228.

[FN21] Cf. Case of the "Five Pensioners" v. Perú, supra note 20, para. 155; Case of Valle Jaramillo et al. v. Colombia, supra note 20 para. 174; and Case of Heliodoro Portugal v. Panamá, supra note 20, para. 228.

[FN22] Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations, and Costs. Judgment of September 15, 2005. Serie C No. 134, para. 59; Case of Tiu Tojín v. Guatemala. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 21; and Case of Bayarri v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 30, 2008. Series C Nº 187, para. 30.

[FN23] Cf. Case of the "Maripirán Massacre" v. Colombia, supra nota 22, para. 58; Case of Heliodoro Portugal v. Panamá, supra note 21, para. 228; Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 1, 2006, Series C No. 148, para. 89.

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33. Moreover, the application serves as a frame for the legal claims and the claims for reparations. That is to say, the timely procedural moment for the defendant State to accept or

contest the central subject of the litigation is in its answer to the Commission's application. Likewise, the procedural moment that allows the alleged victims, their family members or representatives to fully exercise their right of locus standi in judicio, is the brief with pleadings, motions and evidence. [FN24]

[FN24] Cf. Case of Yvon Neptune v. Haití. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180, para. 18.

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34. The Court notes that, in effect, the representatives have alleged the violation of other rights not contained in the application, namely, the right to property and the right to equal protection, respectively recognized in Articles 21 and 24 of the Convention. Based on the foregoing, the inclusion of these arguments is part of the exercise of the procedural capacity, therefore these arguments shall be considered by the Court as long as they refer and limit to the facts contained in the application. Consequently, the Court rejects the second preliminary objection raised by the State.

C) THIRD PRELIMINARY OBJECTION ("On the prejudice in the roles played by some judges of the Court")

35. In the third preliminary objection raised by the State, the State requested the Court that Judges Cecilia Medina Quiroga and Diego García-Sayán be "disqualified from hearing" the instant case. In order to support such request, the State referred to, inter alia, the existing relationship between the Judges and a non-governmental organization. The State mentioned that one of the lawyers that legally represent the alleged victims in this case is the president of that organization and director of the board of directors According to the State's opinion, Judges Medina and García-Sayán would have already made, together with the rest of the members that form part of that organization, prior negative opinions against the State and attempted to discredit it, which constitute an aspect that "compromise the impartiality of the judges at the time of giving a verdict in the instant case."

36. This argument was considered in a decision made by the then President of the Court on October 12, 2007 (supra para. 9) by which it deemed pertinent to determine, inter alia, and "in light of the evidence of the trial available at that moment, […] not to accept […] the disqualification of Judges Cecilia Medina Quiroga and Diego García-Sayán in the hearing of the case of […] Perozo et al. v. Venezuela and exercise the power vested in it to submit the motion to the Full Court, under the terms of Article 19(2) of the Court's Statute".

37. The State's argument was considered by the Court in a decision of October 18, 2007 (supra para. 9), in which it was decided that such argument did not constitute per se a preliminary objection. It was, however, considered appropriate to take a decision in that regard as a matter precedent that need to be solved in order to continue hearing the case. Based on a series of considerations stated in the Order and in light of the criteria of the Court, the Tribunal considered the State's request to be contrary to law. Nevertheless, the Court analyzed a request for disqualification made by Judge García-Sayán, in relation to his wish of "not affecting, in any

way, the perception of absolute impartiality of the Tribunal and in order not to focus the Tribunal's attention on matters other than those related to the consideration of the merits of those cases under its jurisdiction". The Court deemed reasonable to admit such argument and accepted the excuse of Judge García-Sayán. [FN25] That is to say, the State's argument, which is not in the nature of being a preliminary objection, has been already decided by the Court in said Order. Therefore, the third preliminary objection raised by the State is inadmissible.

[FN25] By accepting the excuse presented by Judge Diego García-Sayán, the Court also decided to continue hearing the instant case with a Tribunal composed of the members that are today delivering this Judgment. Cf. Order issued by the Inter-American Court of Human Rights of October 18, 2007.

D) FOURTH PRELIMINARY OBJECTION ("Failure to exhaust domestic remedies")

38. The State asserted that even though the alleged victims have used the remedies available pursuant to the Venezuelan legal system, by turning to the Public Prosecutor to submit the corresponding complaints for the alleged violations of their constitutional rights, said complaints are being processed at several stages; therefore the Venezuelan tribunals are responsible for delivering, in due time, the corresponding decision. The State alleged that it has expressly ordered, in all cases where workers of the television station Globovisión appear as possible victims, the corresponding investigations on the facts that have allegedly led to the commission of punishable acts. The State acknowledged that it is the State's duty to specify the domestic remedies that need to be exhausted and pointed out, in that regard, that according to the terms of the Code of Criminal Procedure of Venezuela, the alleged victims of illegal criminal acts have, at their disposal, a set of procedural remedies that may be used when they deem that the performance of the Public Prosecutors' Office constitute a violation of their interests or a non-compliance with its constitutional and legal duty. Specially, the State referred to the available remedies and prerequisites to question the decisions of shelving the prosecutor's case and ordering the stay of proceeding and it further argued that none of the alleged victims have filed any remedy; therefore, it considers that the domestic remedies have not been exhausted and requests the Court to reject the application.

39. Afterwards, in the final written arguments, the State further indicated that, in the cases of alleged commission of verbal attacks (acts of threats, defamation and slander) and injuries, the victim must directly turn to a tribunal and bring the corresponding charges, which has not been done by the victims. Besides, the State argued that, in the alleged case that personnel of Globovisión would have not had access to the coverage of official acts, none of the victims had filed an appeal for legal protection, which, in the State's opinion, is a "prompt, summary and effective remedy to argue the facts they alleged to have suffered". Moreover, the State pointed out that it did timely argue the lack of exhaustion of domestic remedies "in the first answer forwarded to the Inter-American Commission, during the processing of this case", in a brief dated July 25, 2005. [FN26] Moreover, the State pointed out that the requirement of prior exhaustion of domestic remedies, established in Article 46 of the American Convention, constitutes the main guarantee of the subsidiary nature of the Inter-American system and alleged

that the Inter-American Commission has the responsibility and obligation to verify the compliance with all the procedural requirements, including the prior exhaustion of domestic remedies, before processing or consider certain petition, which in the State's opinion, the Commission failed to do.

[FN26] In the final written arguments, the State quotes, word for word, that in the Communications AGV N° 000680 of July 25, 2005, the State, inter alia, pointed out: "Therefore, currently, the 15° Plenipotentiary Public Prosecutor of the Office of the Prosecutors General is studying the records that form part of this case file in order to decide what considers best. […] The case is also at an investigative phase during which the practice of the following proceedings have been ordered […]".

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40. The representatives sustained that the alleged violations contained in the application have been timely denounced and informed to the Public Prosecutors' Office of Venezuela. The fact that the State admitted that the complaints are being processed constitutes an acceptance of the admissibility of the case inasmuch as six years have passed since the occurrence of the first events. Furthermore, they alleged that it applies, in this case, the exception to the rule of exhaustion of domestic remedies for "unwarranted delay" in rendering a decision on said remedies and that such criterion has been adopted and applied to the Report on Admissibility N° 7/04 of the Inter-American Commission, in which it was also decided the dismissal of the State's argument according to which the alleged victims have not filed certain remedies for review. Furthermore, they asserted that the State organs would have explicitly closed some investigations already initiated, based on the ground of its own ineffectiveness to justify the abandonment of the alleged victims at the domestic level. They stated that the Public Prosecutors' Office is the only body in Venezuela capable of prosecuting a crime on an ex officio basis, and it is therefore entitled to conduct the necessary investigation and to determine the perpetrators of the illegal acts; however, the great majority of the cases are at the initial stage of the investigation and the only conclusive decisions would have been that of shelving the case and ordering the stay of the proceedings, without identifying the responsible. Lastly, they stressed that the procedural inactivity is evident and that the State has made a mistake regarding the role of the victim and the role of the Public Prosecutors' Office.

41. Moreover, the Commission sustained that the State, by not alleging the lack of exhaustion of the two remedies mentioned during the admissibility proceeding, impliedly waived its right to defense, and therefore, it is prevented from arguing this legal position for the first time in the response to the application, by virtue of the principle of estoppel. Furthermore, the Commission alleged that this issue was duly settled in the Report on Admissibility N° 7/04, which expressly refers to the lack of the answer from the State as to the admissibility of the complaint. The Commission considers that in such report, the application of the exception established in Article 46(2)(b) of the American Convention was properly weighted, in light of the elements contained in the case file; therefore a new discussion about this issue is irrelevant. It pointed out that the State did not allege that the decision on admissibility was based on mistaken information or that it would have been prevented from exercising its right to defense. The Commission considers that the content of the adopted decision on admissibility according to the rules established by the

Commission and its Rules of Procedure should not be subjected to a new procedural examination before the Court. Lastly, the Commission asserted that the State's arguments do not constitute a preliminary objection, given the fact that the inefficacy of the complaints filed at the domestic level and the poor judicial activity in the investigations are elements of the merits of the case subjected to the Court's consideration; therefore any discussion related to that issue must be addressed as part of the merits of the case.

42. The Court has already developed clear guidelines for the analysis of an objection regarding an alleged failure of exhaustion of domestic remedies. [FN27] This rule must be analyzed considering the formal and material conditions, established in Articles 46 and 47 of the American Convention and in the pertinent regulatory provisions of the Inter-American system that reinforces complements and contributes to the protection offered by the domestic legislation of States Party. As to the formal conditions, considering that this objection is a defense available to the State, the mere procedural issues should be verified, such as the procedural moment the objection was filed (whether it was timely alleged); the facts on which the objection is based and whether the interested party has alleged that the decision on admissibility was based on mistaken information or has been prevented from exercising the right to defense. Regarding the material conditions, the Court shall verify whether the domestic remedies have been filed and exhausted according to the generally known principled of International Law: in particular, whether the State filing this objection has specified the domestic remedies that remain to be exhausted and also the State must demonstrate that such remedies were at the victim's disposal and were appropriate, suitable and effective. Considering that this is a question of the admissibility of a petition before the Inter-American system, the conditions of this rule need to be verified insofar as it is alleged, even though the analysis of the formal requisites takes precedence over the material conditions and, on certain occasions, the latter are related to the merits of the case. [FN28]

[FN27] Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 88; Case of Nogueira de Carvalho et al. v. Brasil. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161, para. 51; Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 26, 2006. Series C No. 154, para. 64.

[FN28] Thus, when certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of such remedies or the lack of due process of law, not only is it contended that the victim is under no obligation to pursue such remedies, but, indirectly, the State in question is also charged with a new violation of the obligations assumed under the Convention. Thus, the question of domestic remedies is closely tied to the merits of the case. Cf. Case of Velásquez Rodríguez v. Honduras, Preliminary Objections, supra nota 27; para. 91; Case of Fairén Garbi and Solís Corrales v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 2, para. 90; and Case of Godínez Cruz v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 3, para. 93. Therefore, on several occasions, the Tribunal has analyzed the arguments relating to said preliminary objection together with other issues on the merits. Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections, supra note 27, para. 96; Case of Heliodoro Portugal v. Panamá, supra note 20, para. 19; Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, para. 34; Cf. Case of Castillo Petruzzi et al. v. Perú.

Preliminary Objections. Judgment of September 4, 1998. Series C. No. 41, para. 53 and Case of Salvador Chiriboga v. Ecuador. Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, para. 45.

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43. In the instant case, as is evident from the case file of the processing of the petition before the Commission, on June 27, 2003 the Commission received the initial petition and on July 3, 2003, it acknowledged receipt to the petitioners and registered it under number 487-03. Then, on August 19, 2003 the Commission forwarded the copy of the petition to the State for the State to submit its response within 60 days, under the terms of Article 30.3 of the Rules of Procedure of the Commission. There is no record indicating that the Commission would have extended such term. The Report on Admissibility Nº 7/04 was adopted by the Commission on February 27, 2004 and it was notified to the State on March 11, that same year, moment in which the Commission informed the State that the petition was registered under case number 12.442, invited the State to submit the observations on the merits within the term of two months and invited the parties to reach a friendly settlement. Nevertheless, as affirmed by the State itself, the State would have sent the first communication to the Commission on July 25, 2005 during the processing of the merits of the case, after the adoption of the Report on Admissibility. In such communication, the State did not specify the domestic remedies the alleged victims should have exhausted; neither had it expressly alleged the failure to exhaust such remedies; the State just limited to mention, in general terms, in an exhibit to the communication, that the 50º Plenipotentiary Prosecutor would have initiated some actions.

44. Therefore, the Court verifies that the State did not raise such preliminary objection until after the adoption of the Report on Admissibility by the Commission, by means of a brief filed during the stage on the merits. Consequently, the Court concludes that the State failed to raise such objection at the appropriate procedural moment; therefore, the Court rejects the forth preliminary objection raised by the State.

45. The Court cannot consider the arguments put forward by the State in the final written allegations regarding this objection, which do not complement those initially offered, for being untimely presented. With respect the rest of the arguments exposed by the State and the representatives, only those that are closely related to the merits of the case, shall be considered, where appropriate, in the following chapters.

VI. PRIOR CONSIDERATIONS

A) Alleged victims

46. The representatives stated that Mr. José Domingo Blanco was excluded from being an alleged victim in the application due to a "material error", but that he must be considered as such, in relation to a series of alleged facts. They noted that Mr. Blanco appears as one of the petitioners and alleged victims in the Reports on Admissibility and Merits of the Commission.

47. The Court verifies that, in effect, in the application lodged by the Commission, Mr. José Domingo Blanco appears as one of the original petitioners in the processing of the case before

the Commission and that he has been included as one of the victims in the Report on Merits. Nevertheless, the Commission itself has pointed out in the application that

[On] March 26, 2007 the petitioners told the Commission that Mr. José Domingo had left the Globovisión television channel in April 2001. The incidents described in the "considerations of law" section of this application and on the basis of which the Report on Merits was adopted in the case at hand, began in November 2001. Consequently, even though he was named as an alleged victim in the original complaint, the Commission understands that he should not be considered as such.

48. The Court further notes that the facts mentioned by the representatives regarding this person are not contained in the application and that, in spite of the request made by the representatives, nor the Commission or the State has rendered a decision to such effect during this proceeding. As a consequence, the Court understands that his person is not an alleged victim to this case.

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49. Furthermore, the representatives alleged that the relatives of the alleged victims "have to be considered victims as well", since they have suffered a "considerable non-pecuniary damage"; therefore they requested that some of the next-of-kin be considered beneficiaries of the reparations. Nor the Commission or the State has made some comment in this regard.

50. As to the alleged victims of a case, the Court has established that they must be mentioned in the application and in the Commission's report pursuant to Article 50 of the Convention Consequently, according to Article 33(1) of the Court's Rules of Procedure, it is the Commission, and not this Court, who must identify the alleged victims in a case, at the appropriate procedural opportunity. [FN29] As a consequence, the Court only considers as alleged victims of this case the 44 people identified by the Commission as such.

[FN29] Cf. Case of the "Ituango Massacres" v. Colombia, supra note 23, para. 98; Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 229; and Case of Chaparro Alvarez and Lapo Iñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and costs. Judgment of November 21, 2007. Series C No. 170, para. 224.

B) Admissibility of other briefs submitted by the representatives

51. By means of the brief received by the Secretariat on September 21, 2007, the representatives forwarded "Additional Information to the Autonomous Brief Containing Pleadings, Motions and Evidence". In said brief, "in order to provide additional information to the context of the violations denounced", the representatives mention other alleged facts that they consider to be in breach of human rights. [FN30] These alleged facts coincide, moreover, with the facts established as grounds for a request of October 23, 2007 to expand the content of the

provisional measures ordered by the Tribunal in the case of “Globovisión” Television Station (supra párrs. 21) made by the representatives of the beneficiaries of the measures, “on their own behalf, and on behalf of all the journalists, management, and other employees of Globovisión".

[FN30] The representatives put forward a series of arguments related, inter alia, to: “The abusive use of messages broadcast on the national radio and television network by the President of the Republic; the imposing of Government propaganda by the Venezuelan State in violation of Article 10 of the Radio and Television Social Responsibility Act; the indirect pressure and censure exercised by the Venezuelan State by not offering Globovisión contracts for official publicity and the indirect pressure exercised by the State by failing to grant the concessions and permits requested by Globovisión to expand its coverage.”

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52. The Court considers that, even though such facts could be related to the facts and arguments presented in this case, those facts are not included as such in the application and they have been informed to the Tribunal by the representatives by means of an action that is not established in the Rules of Procedure for written procedure. Such facts might form part, besides, of other cases pending resolution at the domestic or international level. As a consequence, this Tribunal considers that such brief is inadmissible and the Tribunal shall not render a decision about the facts stated therein.

53. Following the presentation of the final written arguments, on July 18, 2008 the representatives filed a brief containing “observations to the final written arguments presented by the […] State”. Considering that such action is not established in the Rules of Procedure within the section on written procedure, and that the Tribunal has neither requested it, the Court shall not take into account the arguments put forward by the representatives in such brief, except for the observations that exclusively refer to the information provided by the State in its final written argument regarding the investigations and domestic procedures, since up to the moment the representatives have not exercise their right to defense in that regard (supra para 14 to 16).

54. Moreover, by means of a brief received on December 4, 2008 at the Secretariat, the representatives informed on a “new administrative sanction procedure [initiated by the National Telecommunications Commission (CONATEL)] against Globovisión" and they requested the Tribunal to “take into consideration these serious facts at the moment of delivering a judgment in this case”. This was also informed within the procedure of provisional measures. Based on the same reasons previously stated (supra para. 52 and 53) the Tribunal cannot consider those alleged facts.

55. Finally, by means of a brief received on January 16, 2009 by the Secretariat (supra para. 18) the representatives informed on an alleged "attack [against reporters, management and other employees of Globovisión"] by organized groups of people openly supporters of the National Government […] called “Grupo La Piedrita”, who at the dawn of January 1, 2009 fired a tear gas bomb against the premises of Globovisión and made serious threats to its personnel”. The representatives requested the Tribunal to “take into account these serious facts at the moment of making a decision" and presented that same information to the procedure of provisional

measures. Based on the same reasons previously mentioned, the Tribunal cannot consider those alleged facts.

C) Facts and Allegations

56. The parties have forwarded to the Court a series of arguments in reference to facts of this case and the context in which said facts would have occurred, as well as other factual and legal arguments addressed to disprove the other parties' allegations that do not form part of the proceeding before this Tribunal. In consideration of the above mentioned, the Court deems it is pertinent to point out the facts that it shall consider in this Judgment.

C.1 Facts presented by the parties

57. In the application lodged with the Court, the Commission defined the factual framework of the instant case under the title "Considerations of Fact". In that section, the Commission included a sub-section in which it described, in six paragraphs and in general terms, the political situation and the context of "threats [and attacks] against social communicators" in which the facts of this case would have occurred. Based on the reports on the Situation of Human Rights in Venezuela of 2003, as well as the Annual Report of 2004, the Commission stated that, at the time the incidents addressed in this case began, Venezuela "was going through a period of political and institutional conflict that led to an extreme polarization of society".

58. Moreover, the Commission pointed out that on April 9, 2002, a strike called by the Workers' Confederation of Venezuela and Fedecámaras began and on April 11, that same year, an opposition march took place, demanding the resignation of the President of the Republic. This situation, according to the Commission, led to tragic acts of violence that culminated with a large number of injuries and deaths, an attack on the constitutional government through a coup d' état and the subsequent restoration of the constitutional order. The prevailing situation of Venezuela generated an environment of ongoing attacks and threats against reporters, cameramen, photographers and other workers of mass media.

59. As to the facts of this case, the Commission presented approximately 54 facts that occurred between October 2001 and August 2005, consisting in statements of government officials and alleged acts of aggressions, threats and harassment committed against the alleged victims. Furthermore, the Commission made reference to the existence of five investigations and procedures initiated or conducted by criminal courts in relation to these facts. The foregoing is based on the legal arguments.

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60. Moreover, the representatives alleged that the facts mentioned in the instant case "have been reviewed, alleged and proved" in the application, which are known to the parties within the framework of the petition, the precautionary and provisional measures, as well as a series of alleged facts that they qualify as "supervening". These would be directly linked to the facts contained in the application, which occurred before and after the submission thereof, which "must be assessed by the Court [...] as part of the 'context' in which the facts took place [...] or as

facts that worsened the alleged violations, [which] are also attributable to the State and that originated its international responsibility". These incidents "have continued and continue occurring, and even the aggressions and threats have been worse, [therefore they are] ongoing facts […] that qualify within the concept established by the Court to 'supervening' facts". They made reference to the following "three types of facts": Those that constitute "per se the object of the case" considering that they have been mentioned in the application; those that would allow explaining, clarifying or dismissing the ones contained in the application and the supervening facts, which occurred after the submission of the application. In the final written arguments, the representatives intend the Court to further assess other facts that occurred after August 2005 and until May 2008, "which have been timely and duly informed to the Court within the framework of the provisional measures".

61. Besides, the representatives referred to a series of incidents, situations and considerations that they intend to include within the factual framework of this case and that they consider are important to demonstrate a "pattern of hostility, threat and aggression against journalists and mass media" and a "State policy or at least, a behavior pattern of the State towards the exercise of liberty of expression". These alleged facts consist, inter alia, in a series of domestic rules and judicial decisions, namely, inter alia: administrative sanction procedures against television stations, in particular, Globovisión, addressed to partially suspend the broadcasts or even cancel or refuse to renew the concession of the television station; multiple judicial proceedings that tend to sanction the mass media, even take away the signal. The representatives asserted that in the particular case of Globovisión, criminal actions have been instituted against executives and reporters of that company by the Public Prosecutors' Office and they mentioned the alleged existence of a discredit campaign against such television station initiated by State's mass media. The also mentioned the existence of indirect pressure of the State by not granting the concessions and permits that Globovisión has requested in order to expand its coverage and the irregular dismissals of judges that have rendered rulings in favor of the television station.

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62. Moreover, in the briefs and interventions, apart from referring to most of the factual and legal aspects of this case, the State referred to, inter alia, the role that private mass media play in Venezuela that, in the State's opinion, have turned into "unyielding political opposition to the legitimately elected government"; it has objected to the interpretation the representatives made of some domestic rules and judicial decisions; it has pointed out certain facts and people that participate in "a plan to affect the government and prepare a coup d' état for April 2002 "; and other "rebellion acts of 'golpistas' officials in Altamira Square, plans for a business and oil strike, the "guarimbas" of 2003 and the referendum to recall the President's mandate of 2004". The State asserts that during the development of such incidents, the mass media "initiated a knife-edge media campaign in which the population was openly prompted to join the desestabilization acts, and it also fostered, in a systematic and permanent way, acts to desestabilize […] peace and law and order, [...and] the disobedience of laws and authority [by means of the broadcast] of messages covered in fear, hate and discrimination against some sectors of the population, government's supporters, despite of being clearly forbidden by the domestic and international legislation". The State pointed out that "the act of declaration of the de facto Government in Miraflores Palace, was honored by the participation and presence of several owners and

managers of mass media of the country, among them […], it stands out the presence of the Director […] and one of the shareholders of the television station "Globovisión", alleged victim in this case.

63. The State mentioned that the arguments of the other parties to the case "are oriented to question the free and institutional exercise, in line with the legal system, of the sovereign authority that the Bolivarian Republic of Venezuela has as a free and sovereign State in the international community". It further asserted that "considering the statements made by the Commission and the representatives, when questioning the validity and content of the constitutional text of the Bolivarian Republic of Venezuela, as well as the exercise of the judicial function by the maximum tribunal of the Republic, the exercise of the legislative power by the body which is constitutionally in charge of legislating […] and the exercise of the administrative authority of the State to control and monitor the strict compliance with the law", the State deems that such statements constitute "clear and evident interferences with the exercise of the sovereign powers of the State, which have been constitutionally attributed to it".

C.2 Facts

64. The Court has long held that, at the international level, State responsibility under the American Convention can only required after the State has had the opportunity to redress it by its own means, and attribution of said responsibility to a State for acts by State agents or private individuals must be established based on the specificities and circumstances of each case. [FN31] The international jurisdiction is of a subsidiary, [FN32] reinforcing and complementary nature. [FN33]

[FN31] Cf. Case of the "Maripirán Massacre" v. Colombia, supra nota 22, para. 113.
[FN32] Cf. Case of Acevedo Jaramillo et al. v. Perú. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 157, para. 66; and Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 47.
[FN33] Cf. Preamble of the American Convention on Human Rights. Cf. The Effect of Reservations on the Entry into Force of the American Convention on Human Rights. (Art. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982, Series A Nº2, para. 31; The Word "Laws" in Article 30 of the American Convention on Human Rights. Advisory Opinion OC-6/86 of May 9, 1986, Series A Nº6, para. 26; and Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 61.

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65. Whenever a case is brought to the Jurisdiction of the Court in order to determine whether the State Party to the American Convention is responsible for alleged human rights violations, enshrined therein or other applicable treaties, the Tribunal should analyze the specific facts of the case in light of the applicable provisions and determine whether the persons who have turned to the Inter-American system are the victims of such alleged violations and, if applicable, whether the State should adopt certain measures of reparations in their favor. All this, in the exercise of Court's contentious jurisdiction.

66. As to the facts of the case at hand, the application constitutes the factual framework of the proceeding and the criteria regarding the admissibility of new and supervening facts have also been established (supra para. 32).

67. Even though supervening facts may be forwarded to the Tribunal by any of the parties at any stage of the proceeding before the delivery of the Judgment, this does not mean that any situation or incident that occurs after those procedural acts may constitute a supervening fact within the proceeding. A fact of this nature must be phenomenologically linked to the facts of the proceeding and therefore it is not enough that certain situations or facts to be related to facts and arguments presented in a case for this Tribunal to be able to hear them. The representatives have not specified what is that they understand for ongoing facts nor have they argued why such facts, even in that hypothesis, would have to be considered as supervening. Besides, supervening facts and references in context do not constitute new opportunities for the parties to introduce facts different from those that form part of the factual framework of the proceeding.

68. As to the facts discussed within the framework of the precautionary measures ordered by the Inter-American Commission (supra para. 60), that is an autonomous procedure that the Commission applies based on its Rules of Procedure, with respect to which the Court has no interference nor shall it hear the case.

69. The Court notes that in a procedure of provisional measures, initiated in July 2004, as from a request from the Commission, the State was ordered to adopt such measures as might be necessary to "safeguard and protect the lives, safety, and freedom of expression of the reporters, executives and employees of Globovisión, and of the other persons who are in the facilities of said broadcaster or who are directly linked to the journalistic operation of this broadcaster" (emphasis added), as well as "to protect the perimeter of the head offices of the Globovisión social communications broadcaster" [and] to investigate the facts". In this way, even though the alleged victims of this case have been also beneficiaries of those protective measures, the specific or potential group of these beneficiaries is broader than the group of people formed by the alleged victims of this case. It is worth mentioning that the procedure of provisional measures has developed in a parallel, but autonomously, with the processing of this case before the Commission and the Court. Definitely, the object of this procedure of incidental, precautionary and protective nature is different to the object of a merely contentious case, not only for the procedural aspects but also for the assessment of the evidence and the scope of the decisions. Therefore, the arguments, considerations of fact and evidence discussed in the framework of the provisional measures, even though they may have a close relationship with the facts of this case, are not automatically considered as such or as supervening facts. Moreover, the Court has been informed that there is another procedure pending before the Commission of a case related to Globovisión Television Station; therefore the provisional measures may have, in the end, incidence in that proceeding. Based on the foregoing, the proceedings within the framework of said provisional measures shall not be considered in the instant case, as long as it has not been formally introduced in the case by means of the appropriate procedural acts.

70. Furthermore, it is relevant to refer to the arguments put forward by the Commission and the representatives as to the merits of the controversy regarding the effects of a non-compliance

with the orders to adopt such measures decided by this Tribunal under Article 63(2) of the Convention. The Court has establishes that it is mandatory for the State to adopt such provisional measures as this Court may order. These orders imply a special duty to protect the beneficiaries of the measures, insofar as they are in force, and any breach thereto may trigger international responsibility of the State [FN34]. Nevertheless, this does not mean that any fact, incident or situation that may affect the beneficiaries during the enforcement of such measures, is automatically attributed to the State. It is necessary in each case to assess the evidence furnished and the circumstances in which certain fact occurred, even during the validity of the provisional measures of protection.

[FN34] Cf. Case of Hilaire, Constantine and Benjamín et al. v. Trinidad and Tobago. Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94, para. 196 to 200. Cf. Case of the Communities of Jiguamiandó and Curbaradó. Provisional Measures. Order of the Inter-American Court of Human Rights of February 7, 2006, considering clause seven. Case of James et al. Provisional Measures. Order of May 25, 1999. Series E No. 2, Operative Paragraph 2(b); Orders of June 14, 1998 and August 29, 1998 and May 25, 1999 and August 16, 2000. Series E No. 3, Having Seen Clause 1 and 4; and Order of November 24, 2000. Series E No. 3, Having Seen 3. Matter of the Mendoza Prisons. Provisional Measures. Order of the Court of March 30, 2006, Considering clause ten.

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71. Furthermore, it is worth recalling that the Commission, in the chapter entitled "Preliminary Questions" of the Report on Merits, considered the following issues:

67. During the proceeding, the petitioners proceeded to denounce new facts that they consider to be in breach of human rights. Nevertheless, the Commission notes that from the facts presented after the adoption of the Report on Admissibility, some of them are of a different nature to the ones mentioned in the petition that was declared admissible in said report.

68. Such is the case of the alleged ways of indirect restrictions to the exercise of the right to freedom of expression for the facts related to: i) the beginning of judicial and administrative proceedings against Globovisión; ii) the approval and subsequent entry into force of the "Contents Act" (Ley de Contenidos); iii) the alleged abusive use of joint television stations by the President of the Republic; iv) the alleged decrease in the hiring of official advertising with Globovisión; v) the alleged refusal to renew the concessions; and vi) the alleged failure to process the requests to expand the coverage.

69. The Commission deems that the foregoing issues do not form part of the object of the case and, as a consequence, it shall not review the evidence related to such facts nor shall it render a decision about them within the framework of this Report on Merits, which does not preclude the inclusion of the other facts that, even though they were presented after the Report on Admissibility, due to their nature, can be considered as supervening to the facts alleged in the initial petition. […]

72. Moreover, some of the issues alleged by the representatives include controversies that are still pending resolution before the domestic courts of Venezuela and that may form part, in addition, of other cases pending resolution at the domestic or international level. These

situations, assessments and arguments of the parties as to the facts not mentioned in the factual framework, do not form part of the controversy of the case at hand. Therefore, the Court shall not decide on such aspects in particular. It shall take them into account, where appropriate, as allegations of the parties and as context of disputed facts.

73. The State alleged that the private means of communication hurled "continuous insults […] frequently, against the great majority of supporters of the government of the President of the Republic [,… who would have] been frequently qualified [... as a] series of expressions of discredit that are only purported to humiliate, offend and degrade the public sectors, to support a legitimately formed and elected government". The State pointed out that "a series of insults and defamatory remarks tend to create and foster feelings of rejection and repudiation to the work done by private means of communication in the great majority of people that support the Venezuelan government, who logically and based on grounds, question the work done by such means in the Venezuelan society; as a result, there are tense situations that, on certain occassions, may generate in unfortunate violent situations on the part of the sector of the population that is offended, as a direct consequence and responsibility of the behavior and attitude of some means of communication and the feelings of rejection they generate by means of the jobs they do".

74. The Court recalls that in the instant case, its role is to determine, as an international court of human rights exercising its contentious jurisdiction, the State's responsibility under the American Convention for the alleged violations and not the responsibility of Globovisión, or of its managers, shareholders or employees, in relation to certain facts or historical incidents that occurred in Venezuela, nor even their role or performance as a social media. The Court does not determine the rights of Globovisión, in its capacity as company, corporation or legal entity. Even if it is true that Globovisión or its personnel has committed the acts that the State understands they did, this does not provide a justification for failing to comply with the State's obligation to respect and guarantee human rights. [FN35] Dissent and different opinions or ideas are consubstantial to the pluralism that must rule in a democratic society.

[FN35] Cf. mutatis mutandi, ECHR, Özgür Gündem v. Turkey, Judgment of 16 March 2000, Reports of Judgments and Decisions 2000-III, para. 45.

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75. In the final written arguments, the representatives presented a series of considerations and allegations about "a campaign of intimidation and retaliation carried out by the State […] against the Court, the [Commission], the [alleged] victims and […] their representatives, on occasion of the hearing", in reference to expressions and statements of state agents regarding the alleged victims and the videos published by the state television station. They allege that it forms part of "a State policy implemented from the high spheres of power in order to intimidate and discredit, both at the national and international level, this case and to continue with a policy of retaliation and harassment against the victims for having exercise their right to petition [before the bodies of the system]". In such regards, according to Article 44 of the Convention, any person or group of persons may lodge petitions with the Inter-American System; therefore the effective exercise of such right implies that no act of retaliation may be performed against them. States Parties must

guarantee, in compliance with their treaty obligations, the right to make petitions during all the stages of the proceedings before international courts.

D) Alleged violations

76. The Commission as well as the representatives alleged that the State is responsible for the violation of the freedom to seek, receive and impart information and ideas (Article 13(1) of the Convention).

77. The Commission argued that the acts described in the application constituted restrictions "to the essential content of the right to freedom of expression, which is, to freely seek, receive and impart information, under the terms of Article 13(1) of the Convention", in relation to the obligation to respect rights enshrined in Article 1(1) therein, though it did not specify to the detriment of whom such restriction was imposed nor it determined the facts that would have generated the violation; otherwise, it referred, in general, to the "incidents described in the section of considerations of facts of the application". In the application, the Commission asserted that the facts occurred during a period of institutional and political conflict, in which "an environment of insults, violence and ongoing threat was generated" against the employees of the social media, mainly during times of greater social and political conflicts in the country. The Commission alleged that said context, speeches or statements made by the highest state authorities, among which the Commission indicated 15 statements made by the President of the Republic and one made by the Ministry of Domestic Affairs and Justice, helped to create an environment of intolerance and social bias, incompatible with the duty to prevent human rights violations incumbent on the State and that "they can result in violent acts against people that are identified as employees of certain media".

78. More specifically, taking into account that great part of the facts mentioned in the application has been committed by individuals, the Commission alleged that it is possible to hold the State internationally responsible for those acts committed by third parties, since the State knew about the situation of real danger and did not adopt any reasonable measure to avoid it. Furthermore, the Commission argued that the repetition of this type of events addressed to employees who were identified with the television station Globovisión, by the mere fact of belonging to such media as considered by a sector of the society to be oppositors and golpista, "implies an expansion of the effects as to the freedom to perform activity in front of other people who are in the same situation", since the behavior of the individuals aimed at adversely affect their activities to seek and impart information and did not constitute violent acts due to personal issues or some element different from the working relationship with the television station. Furthermore, the Commission considered that the State has not acted in a diligent and prompt way when investigating the facts.

79. The representatives substantially coincided with the argument put forward by the Commission and insisted in that, even though in principle the speech of the public authorities, even such of critical and insulting content, is covered by the freedom of expression, such is not covered by such freedom inasmuch as it truly, imminently and in a verifiable way encourages violent acts among the population. In those cases, they alleged, the State is responsible not only for the official speech of violence in which Globovisión, its journalists and managers were

repeatedly, publicly and openly insulted, but also for the insults prompted in the civil society by groups of individuals who were performing and following such messages.

80. Moreover, the Commission and the representatives alleged the violation of Article 5 of the Convention, though both parties disagreed about the facts, arguments and reasons asserted to support the alleged violations.

81. Hence, the Commission mentioned four facts that affected six alleged victims, namely: That Mrs. Janeth Carrasquilla Villasmil was insulted during a situation in which state agents made disproportionate use of force to control a situation of disturbance of the public peace; and that Mr. Alfredo Peña Isaya, Oscar Nuñez, Ángel Millán, Joshua Torres and Mrs. Martha Palma Troconis were hit by unidentified persons while they were working. The Commission alleged that considering the fact that they put up with such insults, the State is responsable for the violation of the right to humane treatment, in relation to the state obligation to respect such right, to the detriment of Mrs. Carrasquilla and in relation to the general obligation to ensure it, to the detriment of Mr. Peña Isaya, Núñez, Millán, Torres and Palma.

82. The representatives agreed with the Commission as to the allegation of these four facts as being in breach of the right to humane treatment and they argued another three facts where another three alleged victims "would have also been victims of physical assaults, that due to a material mistake, [they would have] not been included as such in the [Commission's list]". The representatives argued that the statements made by high state officials constitute, per se, violations of the state duty to respect, ensure and prevent violations of the right to humane treatment. They requested the Court to declare that the State violated the right to humane treatment, "in its psychic dimension", to the detriment of the alleged victims they represent. Finally, the representatives alleged that the State has violated Articles 5, 13, 8 and 25 of the American Convention "in relation to" Articles 1, 2 and 7(b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Woman (hereinafter, "Convention of Belem do Pará").

83. The State denied having violated Articles 5 and 13 of the Convention. The State pointed out that the sporadic facts contained in the application do not form part of the everyday profession of the alleged victims; they are not attributable but to non-identified third parties, as has been acknowledged and confessed by the alleged victims and the Commission; neither are they imputable to the State, inasmuch as there is no causal link between the State's behavior and the alleged damage. Therefore, the State alleged that the obligation to prevent is an obligation of means and not results and the alleged facts do not either respond to "the will legitimately expressed by the social organs of the State". Moreover, according to the State's point of view, "the condemnatory power of the Court, for the human rights violations, implies the guilt, malice or at least, negligence of the alleged offender, that is, that every conviction must be subjective, based on a trial for contempt initiated against the defendant State"; that the State is not held responsible whenever [it] "has implemented all those measures of legal, administrative and political nature that promote the protection of human rights and ensure that potential human rights violations be effectively considered and tried as illegal acts, entailing punishments for those who commit it".

84. The State mentioned that in those cases, the behavior of the security bodies of the States has been proportionate, reasonable, necessary and essential, "since there have been serious disorderly conducts from the part of groups of the opposite party that cause, in connivance with Globovisión and other private television stations, serious attacks against the good operation of the institutions and the social order". The State alleged that the Venezuelan authorities have taken all the reasonable steps in order to reduce the risk and it has made use of all the legal and available means in order to determine the truth, the pursuit, apprehension and punishment of the responsible for any disorderly conduct or other type of attack. The Office of the Public Prosecutor has conducted inquiries about each complaint filed by the alleged victims, has carried out proceedings and has requested the cooperation of such victims.

85. The Commission and the representatives alleged that the State failed to comply with its duty to investigate the facts of the case, prosecute and punish all the responsible in a prompt and effective way, within a reasonable term, according to the terms of Articles 8 and 25 of the American Convention, to the detriment of all the alleged victims.

86. As to the reasonable term of the investigations, the Commission alleged that the investigations have lasted almost six years and the courts have still not tried all the responsible, specially the state agents, which is aggravated by the Venezuelan legislation inasmuch as it does not provide any maximum term for an investigation to last. After many years since the beginning of such inquiries, the Commission noted that several investigations are still in the initial phase or pending resolution and that none of the incidents reported domestically has progressed beyond the preliminary investigation phase. The representatives emphasized that the phase of investigation has been excessively extended to the detriment of the right of the victims to access to the criminal administrative courts promptly and forthwith.

87. The State presented an analysis of each one of the investigations and concluded that it has activated the judicial mechanism in order to conduct the corresponding investigations and, if applicable, determine the respective responsibilities; therefore, by means of the entire legal system, it protected the rights enshrined in Articles 8 and 25 of the Convention. Moreover, it pointed out that it is not possible to demand results since the situation is complex and not clear and it may require greater time of investigation than other cases.

88. Given the fact that there is a connection between the facts contained in the application that the Commission and the representatives have alleged to constitute a violation of said conventional rules, the Court deems it is relevant to jointly analyze these facts and arguments, in the first chapter on the merits of the case (chapter VIII). Specially, in view of the characteristics of the instant case and the following reasons (infra para. 297 to 305) the alleged violations of the right to a fair trial and judicial guarantees, enshrined in Articles 8 and 25 of the Convention, shall be analyzed as part of the State's obligation to investigate possible human rights violations, contained in Article 1(1) of the Convention, as a way of guarantee of other rights that were also allegedly violated.

89. Moreover, the Commission and the representatives alleged that some of the statements made by the President of the Republic, in particular those that refer to the use of the state's radio spectrum by Globovisión and the concession under which it operates, constituted forms of

indirect restriction incompatible with the right to freely seek and impart information, in violation of Article 13(1) and 13(3) of the Convention. Moreover, the Commission alleged that, at least, on six occasions the alleged victims were restricted to access to official sources of information or state premises, which constitute undue restrictions to the right to seek, receive and impart information, in the terms of Article 13 of the American Convention; in turn, the representatives pointed out 16 facts in this sense that they consider to be violations of Articles 13 and 24 the Convention, for being discriminatory treatment. These allegations shall be considered in a second chapter on the merits of the controversy (chapter IX).

90. Lastly, the representatives alleged that 17 facts constituted the violation of the right to property of Mr. Federico Ravell and Guillermo Zuloaga, in the capacity as shareholders of Globovisión, and therefore they alleged the violation of Article 21 of the Convention. This allegation shall be considered in a third chapter on the merits of the controversy (chapter X).

VII. EVIDENCE

91. Based on the provisions of Article 44 and 45 of the Rules of Procedure, as well as the consistent practice of the Court as to evidence and assessment thereof, [FN36] the Court shall examine and assess the evidence contained in the case file. [FN37]

[FN36] Cf. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, para. 86; 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 Bámaca Velásquez v. Guatemala. Reparations and Costs. Judgment of February 22, 2002. Series C No. 91, para. 15. Cf. Case of the Miguel Castro Castro Prison v. Perú. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 183 and 184; Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006, Serie C No. 154, para. 67, 68 and 69; and Case of Servellón García et al. v. Honduras. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para. 34.

[FN37] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits. Judgment of March 8, 1998. Serie C No. 37, para. 76; Case of Valle Jaramillo et al. v. Colombia, supra note 20 para. 49; and Case of Bayarri v. Argentina, supra note 22, para. 31.

A) DOCUMENTARY, TESTIMONIAL AND EXPERTS' OPINION EVIDENCE

92. By means of the President of the Court, this Tribunal received the affidavits of the following witnesses, regarding the issues set forth below: [FN38] The issues related to their statements shall be presented where appropriate, throughout the Judgment:

a) Mayela León Rodríguez, alleged victim and witness proposed by the Commission; she is a reporter at Globovisión.

b) Carla María Angola Rodríguez, alleged victim and witness proposed by the Commission; at the moment, she is a reporter and presenter at Globovisión.

c) Janeth Carrasquilla Villasmil, alleged victim and witness proposed by the Commission; at the moment, she is a reporter and correspondent at Globovisión.
d) Oscar Nuñez Fuentes, alleged victim and witness proposed by the Commission; he is a technician at Globovisión.
e) Wilmer Escalona Arnal, alleged victim and witness proposed by the Commission, is a cameraman at Globovisión.
f) Richard López Valle, alleged victim and witness proposed by the Commission, is a cammeraman at Globovisión.
g) Martha Isabel Herminia Palma Troconis, alleged victim and witness proposed by the representatives, is a reporter at Globovisión.
h) Alberto Federico Ravell Arreaza, alleged victim and witness proposed by the representatives, is a shareholder and General Director of Globovisión.
i) Jhonny Donato Ficarella Martin, alleged victim and witness proposed by the representatives, is a reporter at Globovisión.
j) Beatriz Alicia Adrián García, alleged victim and witness proposed by the representatives, is a reporter at Globovisión.
k) María Cristina Arenas Calejo, alleged victim and witness proposed by the representatives, is a reporter and presenter at Globovisión.
l) Aymara Anahí Lorenzo Ferrigni, alleged victim and witness proposed by the representatives, is a reporter at Globovisión.

The witnesses mentioned above rendered statements, inter alia, regarding the alleged facts of threats, insults, harassment and alleged barriers to access to information sources, in which they were all involved, the investigations conducted as well as the consequences those events have had in their lives and professions. Mr. Ravell also rendered a statement, inter alia, about the alleged attacks committed to the premises of the television station and the verbal insults hurled against him by public officials and "supporters of the ruling party".

m) Daniel Antonio Hernández López, witness proposed by the State, is an economist and philosopher. He rendered a statement, inter alia, about the origins and evolution of the media in Venezuela, the political role of the radio and television and the work of Globovisión.
n) José Ángel Palacios Lascorz, witness proposed by the State, is an audiovisual producer. He rendered an opinion, inter alia, about the incidents of April 2002 and the conduct of Globovisión during such events.
o) Marcos Fidel Hernández Torrolv, witness proposed by the State, is a journalist. He rendered a statement, inter alia, about the work done by several private mass media, among them, Globovisión – over the last time, in the political reality of Venezuela.p) Jorge Vicente Santistevan and de Noriega, expert witness proponed by the Commission, is a lawyer. He rendered an opinion, inter alia, regarding the different scopes of the freedom of expression as a human right, in the strengthening of democracy and in the region, as well as threats and systematic restrictions to journalists and mass media to inform on issues affected with public interest.
q) Javier Sierra, expert witness proposed by the Commission, is a Project Director at the World Press Freedom Committee. He rendered an opinion, inter alia, on the role of independent press in the attempt of the coup d'état in the Venezuelan State, the legal framework of the press work in Venezuela, the attacks against the Venezuelan press, the intimidation and self-censorship

of Venezuelan journalists, the insults by different State agents against the press, the journalistic performance in an environment filled with fear and the role of international press freedom organizations.

r) Alberto Arteaga Sánchez, expert witness proposed by the representatives, is a criminal law teacher. He rendered an opinion, inter alia, regarding the role of the Public Prosecutors' Office in the Venezuelan criminal process, the role of the victim in the investigations and proceedings for criminal actions, the period of duration of a criminal investigation and the ways to initiate a criminal proceeding in Venezuela.

s) Magadalena[sic] López de Ibáñez, expert witness proposed by the representatives, is a clinical psychologist. She rendered an opinion, inter alia, about the psychological and psychosomatic effects, as well as the biopsychological damage experienced by journalists, cameramen, camera assistants and executives of Globovisión.

t) María Alejandra Díaz Marín, expert witness proposed by the State, is a lawyer. She rendered an opinion, inter alia, about the historical background of the legislation on telecommunications and the exercise of social communication in Venezuela, the national legal framework of freedom of expression, information and communication in Venezuela, and the compatibility between the national and international legislation and with the freedom of expression, information and communication.

[FN38] The written statement of Mr. Andrés Antonio Cañizález has not been included into the body of evidence of this case and the expert opinion rendered by Carlos José Barros has not been furnished, according to the provision of the President's Order of March 18, 2008 (supra para. 11) since by means of the Court's Order of May 2, 2008, the objections made by the State against said expert witnesses were accepted.

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93. Moreover, the Court heard the following testimonies rendered during the public hearing: [FN39]

a) Ana Karina Villalba, alleged victim and witness proposed by the Commission, is a journalist of Globovisión. She rendered a statement, inter alia, regarding the incidents of September 11, 2002 and other facts that hindered her journalistic performance and the complaints she filed for such incidents. Furthermore, the described the consequences that said events have had in her personal life and the exercise of her profession.

b) Gabriela Margarita Perozo Cabrices, alleged victim and witness proposed by the representatives, works for the Investigation Department of Globovisión. She rendered a statement, inter alia, regarding the physical and verbal insults she and her team endured when covering the news of November 22, 2001, as well as other intimidation acts and events by which she was refused the access to information. Furthermore, the described the consequences that said events have had in her personal life and the exercise of her profession.

c) Omar Solórzano, expert witness proposed by the State; he is a lawyer and worked at the Ombudsman Office between 2002 and 2005. He stated, inter alia, about several demonstrations and concentrations carried out in Venezuela as of 2002 and the work performed by the Ombudsman Office and the security bodies to guarantee the safety of all people present, among them, workers and journalists of Globovisión.

d) Alís Carolina Fariñas Sanguino, expert witness proposed by the State; she is the Second Public Prosecutor acting before the Cassation Chamber and the Constitutional Chamber of the Supreme Court of Justice of Venezuela. She rendered a statement, inter alia, regarding the criminal and criminal-procedural system of Venezuela and in particular, about the role and rights of the victims in the Venezuelan criminal proceeding and the exercise of the criminal action.

[FN39] The expert witness, Toby Daniel Mendel, summoned by means of the President's Order of March 18, 2008 (supra para. 11) did not appear to the public hearing of this case. The Inter-American Commission informed, on May 5, 2008, that "due to force majeure events, the expert witness Toby Mendel [..] propos[ed] by the Commission, could not travel to the City of San José to render [his] statement […] as required in the resolution of Notice to the Public Hearing of […] March 18, 2008".

B) EVIDENCE ASSESSMENT

94. In the case at hand, as in many other cases, [FN40] the Court admits the evidentiary value of such documents forwarded by the parties in the procedural stage that have not been disputed nor challenged, or its authenticy questioned.

[FN40] Cf. Case of Velásquez Rodríguez. Merits, supra note 33, para. 140; Case of Valle Jaramillo et al. v. Colombia, supra note 20 para. 53; and Case of Bayarri v. Argentina, supra note 22, para. 35.

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95. Nevertheless, the Court has long held that, in admitting and assessing evidence, the procedures observed before this Court are not subject to the same formalities as those required in domestic judicial actions and that the admission of certain items into the body of evidence must be made paying special attention to the circumstances of the specific case, and bearing in mind the limits set by the respect for legal certainty and for the procedural equality for the parties. [FN41]

[FN41] Cf. Case of Baena Ricardo et al. v. Panamá. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, para. 71; Case of Tiu Tojín v. Guatemala., supra note 22, para. 38; and Case of Bayarri v. Argentina, supra note 22, para. 41.----------

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96. Together with the brief of pleadings and motions, the representatives forwarded, in exhibit number 50, the statements of 22 alleged victims, in simple copies, which were duly transmitted to the State. Then, the representatives tendered, on November 27, 2007 and on February 20, 2008, documents containing statements of the alleged victims, authenticated by the Consul General of the Republic of Costa Rica in the Bolivarian Republic of Venezuela, arguing that "due to serious impediments, they were unable to tender such items of evidence when they

submitted their autonomous brief containing pleadings, motions and evidence". In this way, the representatives requested, based on Article 44(3) of the Rules of Procedure, that said evidence be admitted, inasmuch as they could not be previously produced due to the public notaries' refusal to authenticate them. The statements forwarded on this second occasion are much more than the ones tendered at the beginning. Moreover, the format and some sections of the statements do not coincide with the ones that were initially forwarded and later on, authenticated.

97. In such regard, the State objected to the inclusion of said evidence upon considering that the representatives "were trying to produce, by means of a written statement, the testimony of a group of [alleged] victims of this case, all of this in order to avoid complying with the procedure established for the introduction of witnesses in the proceeding and, above all, in order to prevent the State from exercising its right to object to and interrogate a witness". Therefore, the representatives answered that the State's right to defense would have not been violated "considering that the written statements do not stop, in any way, the State from objecting or making observations to the witness or statement itself".

98. Based on the foregoing, this Court considers that the right to defense of the State has not been violated, inasmuch as the State had the opportunity to object to the content of such statements. Nevertheless, the Court admits into the body of evidence the 22 statements that were forwarded by the representatives in time fashion, that is, together with their brief of pleadings and motions, as it has held in other cases, [FN42] which shall be assessed taking into account the observations of the parties thereto. As to the statements forwarded on November 27, 2007 and February 20, 2008 by the representatives, even though they alleged that they had a serious impediment pursuant to the terms of Article 44(3) of the Rules of Procedure to tender the evidence in due time, such statements were transmitted to the State and the State had the opportunity to present the observations thereto. Therefore, the Tribunal admits them into the body of evidence under the terms of Article 45(1) of the Rules of Procedure.

[FN42] Cf. among others, Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C Nº. 120, para. 39; Case of the Rochela Massacre v. Colombia. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 62; Case of Miguel Castro-Castro Prison v. Perú, supra note 36, para. 189.

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99. The representatives expressed that the public notaries refused to legally authenticate the statements of the witnesses and expert witnesses required by the Order of the Court's President on March 18, 2008. The State denied such allegation. The Court considers it is improper that those officers in charge of exercising their public duty of authenticating documents, refused to take the statements of the people convened by an international court of human rights. According to Article 24(1) of the Rules of Procedure, the States Parties to a case have the obligation to "facilitate compliance with summonses by persons who either reside or are present within their territory". Therefore, the State must guarantee, in view of the principle of bona fide that must rule compliance with treaty obligations, [FN43] that no act of hindrance prevents production of evidence. Nevertheless, in the case at hand the Court does not have any elements to determine the veracity of the hindrance so alleged.

[FN43] The Permanent Court of Arbitration established that "[ev]ery State has to execute the obligations incurred by Treaty bonafide, 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), 7 September 1910, Volume XI, pp. 167-226, p. 186.

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100. Moreover, it spring from the documentation on record, furnished by the State as exhibits to the response to the petition, that Mrs. Alís Carolina Fariñas Sanguino has previously participated in the investigations of some facts of this case in her capacity as Regular Plenipotentiary Prosecutor of the 21° Public Prosecutors' Office. Based on such record, the Court considers it is appropriate to assess such statement as testimony and not as expert opinion, inasmuch as the information she could have provided regarding the criminal investigations conducted by the Public Prosecutors' Office in relation to the facts of this case could be useful for adjudicating the instant case.

101. Regarding the press releases submitted by the parties, those that have not been challenged, this Tribunal considers that they may have evidentiary value insofar as they refer to public and notorious facts or statements made by state officials or when they corroborate aspects related to the case [FN44] and evidenced by other means. [FN45]

[FN44] Cf. Case of Velásquez Rodríguez. Merits, supra note 33, para. 146; Case of the "White Van" (Paniagua Morales et al.). Merits, supra note 37, para. 75; Case of Valle Jaramillo et al. v. Colombia, supra note 20 para. 62; and Case Ticona Estrada v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 42.
[FN45] Cf. Case of the Rochela Massacre v. Colombia, supra note 42, para. 59; Case of Yvon Neptune v. Haití, supra note 24, para 30; Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, para. 67.

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102. The representatives objected to the incorporation of several documents furnished by the State in its response to the petition for considering them irrelevant for the purpose of the case [FN46]. In such regards, the Tribunal decides to admit them into the body of evidence and assess them taking into account the observations made by the representatives in the body of evidence. As to appendix A.14, the Tribunal considers that the content of such annex does not adjust to the purpose of the proceeding; therefore, its admission into the body of evidence is irrelevant.

[FN46] In particular, they requested the Court to declare inadmissible: Press release published in the Venezuelan newspaper, "El Nacional", dated April 16, 2002, which contained interviews with directors and representatives of several mass media (appendix marked as "A.8"); press release, original, published in the Venezuelan newspaper "El Nacional", dated July 12, 2007

(appendix marked as "A.9"), identified as "Messages transmitted During the Lock-Out of 2002 and 2003", which contain several messages transmitted by private mass media during the month of December, month in which it was carried out the "Lock-out by the political sectors of the opposition to the National Government (Appendix marked as "A.13"); CD that contains the presentation in Power Point format of the work entitled "The Way we are Manipulated by the Media?" (Cómo los medios nos manipulan?") prepared by the psychiatric Heriberto González Méndez (appendix marked as "A.14") and copies certified by the Instituto Autónomo Biblioteca Nacional y de Servicios de Biblioteca of a series of press Articles published in different newspaper with widespread circulation in Venezuela (appendices marked as "A.11").
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103. The Court shall assess the testimonies and expert opinions rendered by the witnesses and expert witnesses inasmuch as they adjust to the purpose defined in the President's Order of March 18, 2008 (supra para. 11) and the purpose of the instant case (supra para. Said statements shall be analyzed in the corresponding chapter. In view of the fact that the alleged victims have a direct interest in the case, their statements shall not be assessed separately and but as a whole with the rest of the body of evidence of the proceeding, [FN47] inasmuch as they are useful as long as they provide more information on the alleged violations and their consequences. [FN48]

[FN47] Cf. Case of Loayza Tamayo v. Perú. Merits. Judgment of September 17, 1997. Series C No. 33, para. 43; Case of Valle Jaramillo et al. v. Colombia, supra note 20 para. 54; and Case of Ticona Estrada v. Bolivia, supra note 44, para. 37.
[FN48] Cf. Case of "White Van" (Paniagua Morales et al.); Reparations and costs; supra note 36, para. 70. Case of Garcia Prieto et al. v. El Salvador. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, para. 22; Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 59.
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104. Pursuant to the terms of Article 45(2) of the Rules of Procedure, the Court admits into the body of evidence the information and the documents presented by the State, requested by this Tribunal as evidence to facilitate adjudication of the case (supra para. 7 and 14 in fine).

105. Furthermore, the Court incorporates into the records of evidence, those documents submitted by the representatives together with "the additional brief" to the brief of requests and pleadings (supra para. 8, 51 and 52) namely, copies of the case file being processed before the Ombudsman Office of Venezuela, in accordance with Article 45(1) of the Rules of Procedure, for considering it useful to adjudicate this case and as long as said copies have been obtained by the representatives after the presentation of the autonomous brief and refer to facts that form part of the factual framework of the instant case.

106. In the application, the Commission requested this Tribunal to incorporate to this case file "a copy of all the proceedings related to the provisional measures ordered by the Inter-American Court in favor of the reporters, executives and other employees of the Venezuelan television station Globovisión". The Commission did not provide any ground for such request and,

moreover, upon consultation to the other parties in this regard, they present no argument in this sense. The Court has already held that the proceedings related to the processing of the provisional measures are independent from this case (supra para. 69); therefore it is not appropriate to resolve in favor of this request. Nevertheless, the Tribunal shall assess the evidence mentioned by the Commission to assert the facts of the case on two occasions, [FN49] forwarded by the representatives within the procedure of provisional measures, considering that the Commission expressly offered this evidence in the petition and that the State knew about the videos, and had the opportunity to exercise its right to defense.

[FN49] Hence, the Commission quoted as evidence two videos related to the incidents of July 11, 2005 and August 27, 2005 and mentioned that said evidence "was already in the power of the Tribunal". The other parties made no allegation in this regard. On both occasions, the Commission quoted the evidence incorrectly

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107. As to the videos submitted by the Commission, the representatives and the State at the different procedural opportunities, which have not been challenged or their authenticity questioned, this Court shall assess their content within the context of the body of evidence, taking into account the observations made by the parties.

108. The Commission tendered as evidence some transcriptions of the statements made by public officials of the State. In some cases, the Commission made reference to the direct electronic link of the transcription tendered as evidence. [FN50] The Court considered that neither the legal certainty nor the procedural balance has been impaired in the cases in which one of the parties provides, at least, the direct electronic link to the document that such party mentions as evidence, since it can be immediately traced by the Court and the other parties. [FN51] In this case, the Court verifies that the Commission submitted said transcriptions as exhibits to the application and that the other parties have made no objection or observation whatsoever to the content and authenticity thereof.

[FN50] The Commission provided the electronic links of exhibits 35, 36, 37, 38 and 39 in the application.

[FN51] Cf. Case of Escué Zapata v. Colombia. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 26; Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, supra note 29, para. 17.

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109. As to the videos provided by the Commission regarding the statements made by the public officials, this Court has reviewed them and notes that such videos contain images that do not correspond to the facts mentioned within the factual framework of the instant case. In such regard, the Court shall only take into account the evidence related to the speeches described in the application, including those clarifications and details brought up by the representatives regarding the excerpts identified by the Commission thereof. This Tribunal also notes that in the videos presented by the Commission regarding said statements, there are certain differences in

relation to the transcriptions furnished and that the videos only show excerpts of all the speeches and that they have been edited. [FN52]

[FN52] Specifically, the Court notes that in the statement of January 12, 2003, a segment of the speech was omitted from the transcription. Furthermore, the Tribunal verifies that in the description of the statements of October 4, 2001 and June 9, 2002 presented by the Commission and the representatives, the order of the speech has been modified. As to the statement of October 4, 2001, even though it was alleged as omitted on October 5, 2001, from the content of the video so furnished, there is evidence proving that it was actually made on October 4, 2001.

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110. Regarding the other documents and videos furnished by the representatives and the State together with their respective briefs of final arguments, the Court considers that they were untimely submitted and therefore it does not admit them into the body of evidence.

111. Finally, based on the principle of procedural economy and promptness, the Court considers useful to admit certain domestic laws submitted in the case of Luisiana Rios et al. V. Venezuela [FN53], into the body of evidence.

[FN53] These documents, presented as exhibits to the State's brief of October 24, 2008 in this case, are: "Full Copy of the Official Gazette Number 38.536 of October 4, 2006, that contains the last Act for the Partial Amendment of the Code of Criminal Procedure […] Full Copy of the Official Gazette Number 5.558 of November 14, 2001, that contains the Code of Criminal Procedure in force in Venezuela at the time of the events […] Full Copy of the Official Gazette Number 5.208 of January 23, 1998, that contains the Code of Criminal Procedure in force at the time of the events […] Full Copy of the Official Gazette Number 38.647 of March 19, 2007, that contains the Basic Law of the Public Prosecutors' Office in force at the present time , […] Full Copy of the Official Gazette Number 5.262 of September 11, 1998, that contains the Basic Law of the Public Prosecutors' Office in force at the time of the events [and] Full Copy of the Official Gazette Number 37.995 of August 5, 2004, that contains the only Ombudsman Act, in force at the time of the events […]".

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112. Upon formally examining the evidence contained in the records of the instant case, the Court shall now proceed to analyze the violations alleged by the American Convention in consideration of the facts that the Court consider proven, as well as the legal arguments of the parties. In doing so, the Tribunal will assess them on the basis of sound judgment, within the applicable legal framework [FN54]. It is worth mentioning that international courts are deemed to have authority to appraise and assess evidence following the rules of logic and based on experience, and has always avoided rigidly setting the quantum of evidence required to reach a decision [FN55]. Circumstantial or indirect evidence or inference may be used, as long as solid conclusions regarding the facts can be inferred from such evidence [FN56].

[FN54] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala, Merits, supra note 37, para. 76; Case of Valle Jaramillo et al. v. Colombia, supra note 20 para. 54 and Case of Ticona Estrada v. Bolivia, supra note 44, para. 31.
[FN55] Cf. Case of "White Van" (Paniagua Morales et al.) v. Guatemala; Reparations and costs; supra note 36, para. 51; Case of Almonacid Arellano et al., supra note 27, para. 69; and Case of Servellón García et al. v. Honduras, supra note 36, para. 35.
[FN56] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 33, para. 130.

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113. The Court shall come to the corresponding determination observing that the evidence tendered, including the statements, coincide with each other, that there are other supporting items of evidence and, in general, that the evidence furnished is sufficient, varied, suitable, reliable and relevant to prove the facts subjected to the analysis. That is to say, it is necessary to verify that the assumptions put forward by the parties are proven, as well as the degree of rational credibility of the conclusion the party alleging it intend to reach. Hence, each specific hypothesis alleged within a specific context must be supported by evidence, in order to be confirmed on the basis of the available evidence; which will allow considering proven the hypothesis that results more acceptable in comparison to the rest of them, according to the degree of confirmation, support or legal basis of the evidence.

VIII. ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) OF THE AMERICAN CONVENTION IN RELATIONTO ARTICLE 5(1) (RIGHT TO HUMANE TREATMENT) [FN57] AND 13(1) (FREEDOM OF THOUGHT AND EXPRESSION) [FN58] THEREOF

[FN57] Article 5(1) of the Convention provides: "Every person has the right to have his physical, mental and moral integrity respected".
[FN58] Article 13(1) of the Convention provides that: "Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice".

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114. Article 5(1) of the Convention enshrines the right to personal, physical and moral integrity.

115. Article 13 of the Convention acknowledges to all persons not only the right and freedom to express their thoughts, but also the right and freedom to seek, receive and disseminate information and ideas of all kinds. [FN59]

[FN59] Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30-32. Cf. Case of "The Last Temptation

of Christ" (Olmedo- Bustos et al.) v. Chile. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73, para. 64; Case of Ivcher Bronstein v. Perú. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, para. 146; Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 108; Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 77; and Case of Kimel V. Argentina. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177, para. 53.

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116. Freedom of expression, especially in matters of public interest, "is a cornerstone upon which the very existence of a democratic society rests." [FN60] It should not only be guaranteed in relation to the dissemination of information or ideas that are favorably received or considered to be inoffensive or indifferent, but also for in the case where such information or ideas shock, concern or offend the State or any sector of the population. Such are the requirements of pluralism, which imply tolerance and the spirit of openness, without which no democratic society can exist. Any condition, restriction or sanction imposed in that respect, should be proportionate to the legitimate end sought. [FN61] Without effective freedom of expression, exercised in all its forms, democracy is enervated, pluralism and tolerance start to deteriorate, the mechanisms for control and complaint by the individual become ineffectual and, above all, a fertile ground is created for authoritarian systems to take root in society. [FN62]

[FN60] Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 supra notes 59 para. 70. Cf. Case of Herrera Ulloa v. Costa Rica, supra note 59, para. 112; Case of Ricardo Canese, supra note 59, para. 82; Case of Kimel v. Argentina, supra note 59, para. 87 and 88; Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra note 29, para. 131.

[FN61] In this sense, Article 4 of the Inter-American Democratic Charter provides that: "transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy. Cf. Case of Ivcher Bronstein v. Perú, supra nota 59, para. 152; and Case of "The Last Temptation of Christ" (Olmedo Bustos et al.), supra nota 59, para. 69.

[FN62] Cf., in similar terms, Case of Herrera Ulloa v. Costa Rica, supra note 59, para. 116

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117. Notwithstanding, freedom of thought and expression is not an absolute right and it can be subjected to some restrictions, [FN63] particularly where it interferes with other rights guaranteed in the Convention. [FN64] Given the importance of freedom of thought and expression in a democratic society and the great responsibility it entails for professionals in the field of social communications, the State must not only minimize restrictions on the dissemination of information, but also extend equity rules, to the greatest possible extent, to the participation in the public debate of different types of information, fostering informative pluralism. Under these terms is to be explained the protection of the human rights of those who face the power of the media, who are required to discharge their social function responsibly,

[FN65] and the attempt to ensure the structural conditions, which allow the equitable expression of ideas. [FN66]

[FN63] Cf. Case of Herrera Ulloa v. Costa Rica, supra note 59, para. 120; Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra note 29, para. 131; Case of Kimel v. Argentina, supra note 59, para. 54; Case of Ricardo Canese v. Paraguay, supra note 59, para. 95; Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, para. 79.
[FN64] Cf. Case of Kimel v. Argentina, supra note 59, para. 56; Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra note 29, para. 131.
[FN65] Cf. Case of Herrera Ulloa V. Costa Rica, supra note 59, para. 117 and 118.
[FN66] Cf. Case of Kimel v. Argentina, supra note 59, para. 57. The Tribunal has held that "there must be […], a plurality of means of communication, the barring of all monopolies thereof, in whatever form". Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85, supra note 59 para. 34.
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118. The effective exercise of freedom of expression depends upon social conditions and practices that stimulate such exercise. It is possible to illegally restrict such freedom by the legal or administrative actions of the State or by de facto conditions that put, directly or indirectly, in a situation of risk or greater vulnerability those who exercise or attempt to exercise such freedom, by actions or omissions of state agents or private individuals. Within the framework of the obligations to guarantee the rights enshrined in the Convention, the State must abstain from acting in a way that fosters, promotes, favors or deepens such vulnerability [FN67] and it has to adopt, whenever appropriate, the measures that are necessary and reasonable to prevent or protect the rights of those who are in that situation, as well as, where appropriate, investigate the facts that affect them.

[FN67] Cf.; inter alia, Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03. Series A Nº 18, para. 112-117, Case of the "Maripirán Massacre" v. Colombia, supra nota 22, para. 173-189.
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119. In the case at hand, the Court notes that most of the facts alleged in the application to be in breach of Articles 5 and 13 have been committed by private individuals, to the detriment of reporters and other members of news teams of Globovisión, and against the assets and vehicles of the television station as well.

120. The Court has pointed out that the international responsibility may also be generated by acts of private individuals not attributable in principle to the State. [FN68] The State may be found responsible for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these erga omnes obligations embodied in Articles 1(1) and 2 of the Convention.

[FN68] Cf. Case of the "Maripirán Massacre" v. Colombia, supra nota 22, para. 111; Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 113; Case of Valle Jaramillo et al. v. Colombia, supra note 20 para. 77.

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121. However, the Court has also recognized that a State cannot be responsible for every human rights violation committed by individuals subject to its jurisdiction. Indeed, the nature erga omnes of the State's Convention obligations do not entail its unlimited responsibility for every act of an individual. It must be considered in light of the particular circumstances of the case and the way the State has carried out its obligations as guarantor, conditioned by its awareness of a situation of real and imminent risk. [FN69]

[FN69] Cf. Case of the Pueblo Bello Massacre v. Colombia, supra note 68, para. 123; Case of Valle Jaramillo et al. v. Colombia, Merits, Reparations and Costs, supra note 20 para. 78.

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122. Based on the foregoing criteria, the Court shall analyze the facts alleged and the evidence tendered, within the context in which the incidents occurred.

A) Context of the facts and declarations made by public officials

123. As has been previously mentioned (supra para. 77 and 78) the Commission considered it was "public and notorious that the news teams of Globovisión were being restricted from performing their jobs", which implied that the State had the special duty of protection and that the ongoing contents of the statements given by the highest-rank officers of the State could result in acts of violence against the people identified as employees of that company.

124. Moreover, the representatives alleged that the speeches already mentioned constituted "threats and moral attacks against […] Globovisión, its executives and shareholders", whose content would demonstrate "a violent speech, full with threats and intimidation" against them and the reporters. They submitted three types of arguments regarding those speeches: a) that they constitute "in themselves, a violation […] of the State duty to respect and guarantee the right to humane integrity of all person under its jurisdiction", since it is "an "official speech that incite to physically attack people who are exposed to the public contempt, made with abuse of power and using the means the State provides the President due to its high rank"; b) that such speeches "are the direct cause" of the attacks of which the reporters and employees of Globovisión are victims every day; specifically, of the facts contained in the application, which "have been justified and considered as legitimate by the President of the Republic himself, considering the ongoing nature of those messages even after the commission of the physical attacks against the reporters"; and c) that the content of such speeches "form part of a 'policy' or at least, a repeated pattern on the part of the President's government […] before independent and critical social media against

independent television stations in particular, like Globovisión, where the [alleged] victims work at".

125. In the final written arguments, the State repeated that the evidence furnished does not constitute proof of the causal relationship alleged.

126. The Court notes that the arguments put forward in the Commission's application coincide with certain comments and conclusions of the Report on Merits N° 61/06 of October 26, 2006 regarding the content of some statements given by high-rank State's officials, but there are contradictions in other issues. Moreover, on account of some of the statements "contain opinions regarding the way in which Globovisión works, for example, the way they manipulate or distort the information or assume a political role linked to the interests of the opposition or even, golpistas", the Commission made the following considerations:

[…] most of the statements annexed, though they may have a strong and critical content that may even be considered offensive, constitute legitimate expressions of thoughts and opinions regarding the special methods that a mass media may use in order to exercise journalism, which are protected and guaranteed under Article 13 of the American Convention and the Commission does not find that such statements constitute a violation of such treaty.
177. The Commission deems that the importance of the mass media, and above all, the work done by the reporters, do not imply a sort of immunity in relation to the possible criticism of the society in general, including public officials. On the contrary, as vehicles of social communication they must be open and set a tolerance margin before the public scrutiny and criticism of the receivers of the information they impart.
178. Moreover, it is not possible to disregard that the Commission pointed out in its Report on the Situation of Human Rights in Venezuela, that during the visit in loco it was informed of the measures implemented by the mass media that restricted the access to vital information of the Venezuelan society during the dramatic events of April 2002, that led to the coup d' état and the restoration of democracy. In such regard, it also pointed out that even though the editorial decisions, grounded in political reasons, do not violate the rights enshrined in the Convention, the best ways to contribute to the debate are those that allow the mass media to comply meticulously with the duty to inform to the population.
179. Mass media and social communicators perform a function of a public nature. It is evident the particular exposure to criticism to which the people who decide to show the public audience their work voluntarily subject. The opinion of the receivers of the information that the media and its employees produce, fosters the responsible exercise of the role of informing, considering the importance for the media of the credibility of their work.
180. Therefore, it is evident that within the framework of public debate in Venezuela, the issue regarding how the mass media do their job is an issue for public debate and then, the criticism and ratings made in this matter by officials or individuals must be tolerated as long as they do not directly lead to violence.
181. Based on these considerations, the Commission deems that the statements of the officials, despite the fact that they may be shocking, strong, offensive or insensitive at a moment in which the history of Venezuela had its population clearly divided into political positions, cannot be considered as the State's failure to comply with the duty to respect the right to freedom of

expression and opinion, when such right implies exactly its exercise [FN70] (emphasis added and footnotes omitted)

[FN70] IACHR. Report on the Merits Nº 61/06 of October 26, 2006. para. 175 to 182 (records of evidence, volume I, pages 63-65).

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127. Moreover, upon the analysis of the facts according to Article 13 of the Convention in said Report on Merits, the Commission deemed important to take into account the content of some of those declarations in order to determine whether the different State authorities have had the opportunity to adopt reasonable measures knowing for sure the risk the reporters and workers of Globovisión were at that moment. The Commission considered that "though the strong content of the statements cannot be considered a direct cause of the subsequent acts committed to the detriment of the employees of Globovisión", […] the repetition of some contents of the statements given by the highest-rank State officials, with which such media identified [...] contribute to create an environment of intense discussion and bias in society and in the communication media, apart from high intolerance and fanatism that may result in acts of violence against the people identified as employees of such media and in the intent to prevent them from performing their profession". The Commission also pointed out that, even though they cannot be considered "in conventional terms as an outbreak of violence", such statements "may be construed as such by passionate supporters of one group or of another in a context of extreme political bias like the Venezuelan context"; therefore, the continuing nature of such statements is incompatible with the duty to prevent actions that may affect the exercise of the right to freedom of expression [FN71].

[FN71] IACHR. Report on the Merits Nº 61/06 of October 26, 2006. para. 277 to 281 (records of evidence, volume I, pages 63-65).

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128. The Court has long held that to establish that there has been an abridgment of the rights embodied in the Convention it is not necessary to establish, as would be the case in domestic criminal law, the guilt of its perpetrators or their intent, and it is also not necessary to individually identify the agents deemed responsible for said abridgments. [FN72] It is sufficient that the State has failed to comply with a treaty obligation.

[FN72] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 33, para. 173; Case of La Cantuta v. Perú. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 156; Case of the "Mapiripán Massacre", supra note 22, para 110.

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129. Besides, the attribution of international responsibility to a State for acts by State agents or private individuals must be established based on the specificities and circumstances of each case, [FN73] and also on the corresponding special obligations that are applicable. Although this

attribution is made on the basis of international law, the many different forms and characteristics that the facts may assume in situations that violate human rights makes it almost illusory to expect international law to define specifically – or rigorously or numerus clausus – all the hypotheses or situations – or structures – for attributing to the State each of the possible and eventual acts or omissions of State agents or individuals. [FN74]

[FN73] Cf. Case of the "Mapiripán Massacre", supra note 22, para. 113; Case of Valle Jaramillo et al. v. Colombia, supra note 20 para. 78; and Case of the Pueblo Bello Massacre, supra note 68, para. 123.
[FN74] Cf. Case of the "Mapiripán Massacre", supra note 22, para. 113; and Case of the Pueblo Bello Massacre, supra note 68, para. 116.

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130. As to the actions or omissions that may be attributed to the State, in general terms, any abridgment of the human rights recognized by the Convention that may be attributed, according to the rules of international Law, to actions or omissions by any public authority constitutes an act attributable to the State, as it is a principle of International Law that the State is responsible for the acts of its agents carried out in their official capacity and by their omissions, even if they act outside the limits of their sphere of competence or in violation of domestic law. [FN75] In other words, international responsibility generates immediately with the internationally unlawful act attributed to the State or bodies of the State, whatever their hierarchical level. [FN76]

[FN75] Cf. Case of Velásquez Rodríguez. Merits, supra note 33, para. 173; Case of the White Van (Paniagua Morales et al.). Merits, supra note 37, para. 91; Case of Yvon Neptune v. Haití, supra note 24, para 43; Case of Cantoral Huamaní and García Santa Cruz v. Perú. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 79.
[FN76] Cf. Case of the Constitucional Court v. Perú, Merits, Reparations and Costs. Judgment of January 31, 2001, Series C. Nº 71, para. 109; Case of Yvon Neptune v. Haití, supra note 24, para 43; Case of Cantoral Huamaní and García Santa Cruz, supra note 75, para 79. Cf. Case of La Cantura v. Perú. Merits, Reparations and Costs. Supra note 72, para. 156.

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131. The Internacional Court of Justice has held that the statements emanating from high-ranking official political figures are of particular probative value when they acknowledge facts or conducts of the State, [FN77] but they can also generate obligations for the State. [FN78] Furthermore, such declarations may be regarded as evidence that such facts are attributable to the State such officials represent. [FN79] In order to determine this, it is important to take account of the manner in which the statements were made public when analyzing them. [FN80]

[FN77] Cf. ICJ, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgment of 27 June 1986, I.C.J. Reports 1984, p. 390, para. 64.

[FN78] Cf. ICJ, Nuclear Tests Case (Australia v. France), Judgment of 20 December 1974, I.C.J. Reports 1974, p. 253, paras. 43, 46; and CIJ, Nuclear Tests Case, (New Zealand v. France), Judgment of 20 December 1974, I.C.J. Reports 1974, p. 457, paras. 46, 49.
[FN79] Cf. ICJ, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgment of 27 June 1986, I.C.J. Reports 1984, p. 390, para. 71.
[FN80] Cf. PCIJ, Legal Status of Eastern Greenland, Judgment of 5 April 1933, Ser. A/B53, page 69. Cf. ICJ, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgment of 27 June 1986, I.C.J. Reports 1984, p. 390, and para. 65.
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132. It is clear that the incidents of the case at hand happened in an environment and during periods of strong bias and social and political conflict. The parties and some of the witnesses, who referred to certain relevant events that occurred during the period of 2001 to 2005, many of which are of public knowledge, coincided in this point.

133. In the annual Reports and in the Reports on the Situation of Human Rights in Venezuela issued between 2003 and 2006, the Commission verified the existence of an environment of aggression and threat against freedom of expression and, specially, against the humane treatment of reporters, cameramen, photographers and other workers of social media. Upon identifying the areas of special focus in the subject, the Commission notes the existence of acts of "threats, attacks and harassment against social communicators, especially against those who work on the street, as well as the lack of investigation in relation to such threats and attacks". It also referred to the lack of investigation into that acts and noticed that, on several occassions, it requested the State to adopt precautionary measures in order to protect the life, humane integrity and freedom of expression of reporters, cameramen and photographers who were attacked. Among the recommendations made by the Commission in its reports, it emphasized the idea of "publicly condemn, from the highest levels of government, attacks on media workers, in order to prevent actions that might encourage" the deprivation of life, attacks, threats and intimidation against them. The Commission also received information on attacks to mass media and communicators outside the context of political and social conflict, an increase of criminal actions initiated against social communicators and actions that may constitute ways of indirect restriction of the exercise of freedom of expression. The Commission expressed it concern because these facts that may hinder the free exercise of journalism, of those media considered to be opposite parties, and of official mass media as well. [FN81]

[FN81] Cf. IACHR Report on the Situation of Human Rights in Venezuela, OEA/Ser.L/V/II, 118doc. 4 rev. 2, December 29, 2003, para. 367; Annual Report of the Inter-American Commission on Human Rights 2005, Chapter IV, "Development of Human Rights in the Region", OEA/Ser.L/V/II.124, Doc.7, February 27, 2006; Annual Report of the Inter-American Commission on Human Rights 2006, Chapter IV; "Development of Human Rights in the Region" OEA/Ser.L/V/II.127, Doc. 4, rev.1, March 3, 2007.
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134. The Rapporteurship for Freedom of Expression of the Inter-American Commission, by means of communications and reports, has made several statements about the situation in

Venezuela and has stated that the declarations made by high-ranking officials "that may considered a kind of intimidation for mass media and reporters". Furthermore, it indicated that such statements that "may contribute to create an environment of intimidation towards the press, which do not facilitate the public debate and exchange of opinions and ideas, necessary to live in democracy" [FN82].

[FN82] Cf. IACHR Report of the Rapporteurship for Freedom of Expression in the Annual Report of the Inter-American Commission on Human Rights 2000. OEA/Ser./L/II.111, doc.20 rev., April 16, 2001.

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135. Several situations triggered reactions from OAS political bodies. For example, the Permanent Council of the Organization, by means of Resolution 833, of December 16, 2002, decided: [FN83]

To urge the Government of Venezuela to ensure full enjoyment of freedom of expression and of the press and to exhort all sectors of Venezuelan society to contribute to promoting peace and tolerance among all Venezuelans and all social actors to refrain from encouraging political confrontation and violence.

[FN83] Cf. Organization of American States, "SUPPORT FOR THE DEMOCRATIC INSTITUTIONAL STRUCTURE IN VENEZUELA AND THE FACILITATION EFFORTS OF THE OAS SECRETARY GENERAL" OEA/Ser.G. CP/RES. 833 (1348/02), December 16, 2002.

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136. It is appropriate to recall that in the time of the facts of the instant case, the Court issued several orders requesting the State of Venezuela to adopt protective provisional measures in favor of people related to mass media. [FN84] During that time, the Court verified, on several occasions, non-compliance with the orders on provisional measures. [FN85]

[FN84] Cf. Case of Luisiana Ríos et al. regarding Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of November 27, 2002; Matter of Marta Colomina and Liliana Velásquez regarding Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of September 8, 2003; Matter of "El Nacional" and "Así es la Noticia" Newspapers regarding Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of July 6, 2004; and Case of Globovisión Television Station regarding Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of September 4, 2004.

[FN85] Cf. Case of Luisiana Ríos et al. regarding Venezuela. Provisional Measures. Orders of the Inter-American Court of Human Rights of February 20, 2003; November 21, 2003; December 2, 2003; September 8, 2004 and September 12, 2005; Matter of Marta Colomina and Liliana Velásquez regarding Venezuela. Provisional Measures. Orders of the Inter-American

Court of Human Rights of September 8, 2003; December 2, 2003 and July 4, 2006; and Joint Order of the Inter-American Court of Human Rights on several matters (Liliana Ortega et al.; Luisiana Rios et al.; Luis Uzcátegui; Marta Colomina and Liliana Velásquez) regarding Venezuela of May 4, 2004.

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137. The State itself acknowledged that several violent situations against reporters of different mass media occurred during such periods. In fact, although the State brought it up in the arguments in order to disqualify the causality link between the facts of the case at hand and the official speech, the State referred to 13 facts in which reporters and employees of "the official media[…] have been subjected, as the alleged victims mentioned it […], to attacks during the performance of their duties" and it also argued that those facts would prove "that workers of the State media as well as workers of the television station Globovisión were attacked, despite of the fact that the alleged official speech has never referred to the employees of State media".

138. It is within this context that high-ranking public officials gave the statements referred to in the Commission's application, [FN86] in a television show and in public interventions, on different dates and at different events, from 2001 to 2005, which were broadcasted by mass media [FN87] and took place during periods of greater political instability and social conflict. [FN88] The State did not contest the fact that such public officials rendered said statements.

[FN86] Besides, the representatives referred to three more statements of the President of the Republic and six statements of other public officials that, according to them, would help "explaining" the alleged violations. Even though the representatives may put forward those facts that allow explaining, clarifying and disproving the facts mentioned in the application, this Court considers that those other statements do not explain these incidents inasmuch as they do not make reference to them but to statements different from the ones exposed therein. Based on the foregoing, the Court shall not consider those other statements.

[FN87] The Court notes that the 15 statements given by the President of the Republic to which the Commission and the representatives referred were made within the framework of a television show called "Aló Presidente", which is weekly program addressed by the President of the Republic himself, as well as at official and public acts, during a period of four years between 2001 and 2005. Specifically, the Commission referred to the following speeches, statements and declarations of the President of the Republic: On October 4, 2001 at an Oath Extraordinary Meeting of the National Executive Direction of the Movement Quinta República at the Plenary Session of the Central Park; on January 27, 2002 in the show "Aló Presidente" broadcasted alive from Mérida; on June 9, 2002 in the show of "Aló Presidente" Nº 107 from the State of Zulia; on June 13, 2002 at the opening of a medical dispensary in the State of Vargas; on September 18, 2002 in the Reopening Act of the Bolivarian Educational Unit; on December 7, 2002 in the protest for the peace and defense of the Constitution; on December 18, 2002 in the program of "Aló Presidente" Nº 130; on December 15, 2002 in the Program of "Aló Presidente" Nº 135 from the Marine Customs Offices La Guaira; on November 9, 2003 in the program of "Aló Presidente" Nº 171from Tinaquillo, State of Cojedes; on January 12, 2004 at an interview Publisher in the newspaper El Universal; on February 15, 2004 in the program of "Aló Presidente" Nº 182 from Salón Ayacucho of the Palacio de Miraflores; on May 9, 2004 in the

program of "Aló Presidente" Nº 191 from the Mother and Child Hospital of Barinas in Caracas; on August 16, 2004 at a press conference of national and international media in Salón Ayacucho of Palacio de Miraflores; and on October 4, 2005 in national television. Besides, the Commission referred to a statement made by the Ministry of Domestic Affairs and Justice on December 10, 2002 in a Resides Show of the television station "Venezolana de Televisión".
[FN88] For example, the declarations of December 7, 8, 10 and 15, 2002 relate to events that occured in December, 2002 in Plaza Francia, in the neighbor of Altamira.
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139. The speeches and declarations above mentioned, which are of a pure political nature, refer to the private mass media in Venezuela, in general, and to Globovisión, its owners and executives, in particular, though they do not mention any specific reporters. The evidence tendered allows verifying that those statements contain expressions that have been emphasized by the Commission and the representatives in their arguments. Hence, the media Globovisión and in some cases, its owners and executives, are classed as "enemies of the revolution" [FN89] or "enemies of the people of Venezuela." [FN90] Moreover, such media or its owners are identified, expressly or impliedly, as participants of the coup d' État of 2002 and the people are invited to identify them as such and to "defend the mental health of the [Venezuelan] people"; [FN91] Globovisión is included as one of the four private media referred to as "the Four Horsemen of the Apocalypse"; [FN92] and also is accused of "conspiracy against the revolution" [FN93] of "fascist and golpista [coup plotters] perversion" [FN94] and of answering to a "terrorist plan". [FN95] Furthermore, it is questioned the truth of the information broadcasted by Globovisión and some of the statements make reference to the concession according to which the mass media conduct business and the possibility to cancel it (infra para. 363 to 369).

[FN89] Statement of October 4, 2001. Cf. transcription (records of evidence, Volume V, pages 1274- 1275; volume X, pages 3015-3035) and video (appendix 2 to the application).
[FN90] Statement of May 9, 2004. Cf. transcription of the show N° 191 "Aló Presidente" of May 9, 2004 (records of evidence, volume VI, pages 1921-1922).
[FN91] Statement of December 7, 2002. Cf. transcription (records of evidence, volumen V, pages. 1394-1396)
[FN92] Statement of January 12, 2003. Cf. transcription (records of evidence, Volume V, pages 1523 to 1525- 1550) and video (appendix 2 to the application).
[FN93] Statement of October 4, 2001. Cf. transcription (records of evidence, Volume V, pages 1274- 1275; volume X, pages 3015-3035) and video (appendix 2 to the application).
[FN94] Statement of September 18, 2002. Cf. transcription (records of evidence, Volume V, pages 1283- 1284 and pages 1377-1378) and video (appendix 2 to the application). Cf. statements of February 15, 2004. Cf. transcription (records of evidence, volume VI, page 1857) and May 9, 2004. Cf. transcription of show N° 191 "Alo Presidente" of May 9, 2004 (records of evidence, volume VI, pages 1921-1922).
[FN95] Statement of December 8, 2002. Cf. transcription (records of evidence, Volume V, pages 1399 to 1407) and video (appendix 2 to the application). Cf. statements of June 13, 2002. Cf. video (appendix 2 to the application); January 12, 2003. Cf. transcription (records of evidence, volume V, pages 1523-1525 and 1550) and video (appendix 2 to the application) and May 9,

2004. Cf. transcription of show N° 191 "Aló Presidente" of May 9, 2004 (records of evidence, volume VI, pages 1921-1922).

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140. Globovisión was classified in the application of the Commission as "a private television channel legally registered" [FN96] and as "a media company that broadcasts 24-hour news programming, with an editorial line that is critical of the government and was one of the four private Venezuelan television channels identified as active political participants in such upheavals as the April 2002 coup d'état and the general strike of December of that year." Furthermore, the Commission pointed out that "the channel has also been singled out domestically on account of the way it covers certain stories, arguing that it incites violence, is disrespectful toward the President of the Republic, and broadcasts false and biased information". [FN97]The State did not dispute this characterization of Globovisión; it even coincides with the arguments regarding the political role that the television station would have had at certain moments (supra para. 62, 63 and 73).

[FN96] Cf. Articles of Incorporation of Globovisión Tele C.A. and its corresponding entry in the Merchant Registry (records of evidence, Volume IV, appendix 1 to the application, pages 839-854).

[FN97] In making this reference to Globovisión, the Commission quoted the following: "Summary and recommendations of the Report of Human Rights Watch: Caught in the Crossfire: Freedom of Expression in Venezuela. In Internet at: http://www.hrw.org/spanish/informes/2003/venezuela_prensa.html".

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141. From the analysis of the alleged facts (infra para. 169 to 279) the Court notes that the facts were commited by private individuals and most of them occurred while the alleged victims were working, who indicated how their personal and professional lives have been affected. In general terms, they agree on the fear they felt every time they had to work in the streets, in some areas in particular or while covering certain stories; they also referred to security measures that they had to adopt while being at work and also to their health conditions and the consequences in their interpersonal relationships (infra para. 286 and 287).

142. Moreover, other actions were addressed at Globovisión. For example, it has been proven that on two occassions, on July 9 and November 18, 2002, unidentified inviduals threw fragmentation grenades at the premises of Globovisión and that, on another occasion, on July 17, 2002, a tear-gas canister was thrown at the premises (infra para. 198 to 202, 215 and 216) Moreover, several incidents showed that the premises, vehicles and broadcasting equipment of the television station were damaged by unidentified individuals (infra para. 173, 191, 197, 216, 254 and 257) and that there were protests outside the premises (infra para. 220-222).

143. It is evident for this Tribunal that during such periods, the people linked by its labor relationship to Globovisión, or its journalistic function, had to face threatening and frightening situations and their rights were jeopardized. In fact, since January 2002, the Commission ordered precautionary measures in favor of the employees of Globovisión [FN98] and since the year

2004, this Tribunal ordered Venezuela to adopt protective provisional measures in favor of the people associated with Globovisión (supra para. 20-23). Moreover, as has been mentioned, the State referred to eight decisions rendered between February 2002 and May 2005 by domestic courts, in which it was ordered protective measures in its favor (infra para. 164, 167 and 168). Most of the specific incidents analyzed were reported before state authorities; especially, before the Attorney General's Office (infra para. 302-305). from this it follows that state authorities were familiar with such situations.

[FN98] By means of these measures, the Commission requested the State to abstain from "all actions [..] as an effect aggression or intimidation against exercise of [the] right to freedom of expression as journalists and other social communication workers, as well as that of Venezuelan society as a whole". These measures were extended during the years 2003 and 2004 in order to protect the life, humane treatment and freedom of expression of "reporters, cameramen, executives, photographers and premises of the attacked media", among them Globovisión.

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144. The representatives alleged that "the attacks and insults against reporters and other employees of Globovisión on the part of private individuals [… are] the direct result of their verbal violence attacks", inasmuch as "it is not casual" that, after the violent verbal attack made in such speeches, violent events occurred against the reporters and the premises a the few days later". [FN99] They pointed out that organized groups of private individuals, who are openly known as 'organized groups of supporters of the ruling party', identified as members of state groups called "Bolivarian Circles" or even as 'pure supporters that could not be identified as state agents', would have been "following guidelines consistent with the messages broadcasted to the public from the highest spheres of power".

[FN99] The representatives presented a chart in which they point out, chronologically, the declarations of the President of the Republic, on one side, and 19 of such facts consisting in alleged attacks to which the alleged victims have been subjected as a consequence of such speeches, on another side, in order to justify the causal link between the facts and the speeches given and the subsequent violation of the humane treatment of Globovisión's employees.

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145. In such respect, the Court notes that in the Report on Merits, the Commission considered that:

123. Before analyzing the general parameters for the imposition of responsibility in relation to the facts committed by private individuals, the Commission considers it is necessary to refer to the arguments of the petitioners regarding the direct responsibility of the State for the incidents caused by members of the Bolivarian Circles.The Commission notes that this argument was put forward only in the initial petition, since in all the subsequent briefs, the petitioners made reference, in general terms, to "the supporters of the government" in order to identify the attackers. Besides, the evidence furnished does not suggest and it is even impossible to infer from it, that some of the incidents of physical or verbal violence would have been effectively

committed by people who are officially registered with such entities. [...] Based on the foregoing, the assessment on responsibility must be limited to acts committed by private individuals in general terms.

146. In fact, in the application the Commission did not ascribe the State responsibility to facts committed by people or groups that form part of the so-called "Bolivarian Circles". Such circumstance falls, in principle, outside the factual framework of the instant case. Even in the case that such fact alleged by the representatives supplements the arguments put forward by the Commission, it must be observed that the representatives did not submit any argument or evidence proving the importance as to the formation of such associations, entities or groups of people, their functioning and above all, the ways in which they are being supported, financed, led or, in some sort of way, associated with the government or some state institution or entity. Even in the uncertain case that any of the facts so alleged were ascribed to those groups or people linked with them, it would still be necessary to tender specific evidence of such bond- and of the non-compliance with the state duties to prevent and protect- in order to attribute the actions of such people to the State.

147. The representatives neither specified the effects that a relationship of "organized people linked to the government" would have on such facts, nor did they define what they understand by "groups of organized individuals who are openly known to be supporters or followers of the Government" or "supporters of the ruling party". In fact, the State has used similar terms in its defense and has neither specified who it is referring to (supra para. 73). The Court notes that the mere "support" or character of "follower" or "supporter" of a person or group of persons towards the government or "ruling party" is not a cause for the imposition of responsibility, per se, of the acts of those on the State. The affinity or even self-identification of a person with the ideas, proposals or actions of the government form part of the exercise of the freedoms in a democratic society, certainly within the limits established in the relevant domestic and international rules.

148. Regarding the arguments made by the representatives as to that the statements of public officials constituted a "pattern" or "State policy" (supra para. 61, 82 and 124) the Court has established that it cannot ignore the special seriousness of finding that a State Party to the Convention has carried out or has tolerated a practice of disappearances in its territory. This requires the Court "to apply a standard of proof which considers the seriousness of the charge and which, notwithstanding what has already been said, is capable of establishing the truth of the allegations in a convincing manner". [FN100]

[FN100] Cf. Case of Godínez Cruz V. Honduras. Merits. Judgment of January 20, 1989. Series C Nº. 5, para. 135; Case of Valle Jaramillo et al. V. Colombia, supra note 20 para. 97; Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela, supra note 29, para. 97.

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149. In relation to the above mentioned, the Court has long held that the obligation of State Parties to guarantee the rights enshrined in the Convention implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public

power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. [FN101] Furthermore, in several cases related to arbitrary detention, torture, execution and disappearance, the Court has taken into account the existence of "systematic and massive practices", "patterns" or "state policies" in which serious incidents have been framed, when the "preparation and execution" of violation of human rights of the victims could not have been perpetrated without the "superior orders of State high-rank officials, or without the collaboration, acquiescence and tolerance revealed by direct actions or omissions carried out in a coordinated and interrelated manner" by members of the different services of the States concerned. In those cases, instead of that having institutions, mechanisms and powers of a State functioning as a guarantee of protection against the criminal activities of its agents, it has been verified that the State's power was "orchestrated as a means and resource to violate rights that should have been respected and safeguarded", which has also benefited from the general situation of impunity of the grave human rights violations that existed at the time, promoted and tolerated by the absence of judicial guarantees and the ineffectiveness of the judicial institutions to deal with or contain the systematic human rights violations. [FN102]

[FN101] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 33, para. 166; Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.) v. Perú. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 92; Case of Almonacid Arellano et al. V. Chile, supra note 27, para. 110.

[FN102] Cf., among other, Case of Velásquez Rodriguez v. Honduras. Merits, supra note 33; Case of Myrna Mack Chang V. Guatemala. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C. N° 101; Case of the "Mapiripán Massacre" V. Colombia, supra note 22; Case of the Pueblo Bello Massacre V. Colombia; supra note 68; Case of the Ituango Massacres V. Colombia; supra note 23; Case of Goiburú et al. V. Paraguay, supra note 48; Case of Almonacid Arellano et al. V. Chile; supra note 27; Case of the Miguel Castro Castro Prison V. Perú, supra note 36; Case of La Cantuta v. Perú; supra note 72; and Case of La Rochela Massacre V. Colombia, supra note 42.

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150. In the case at hand, said public officials, in exercise of their powers, made use of the means the State provided them with in order to give statements and speeches and for this reason, they are of an official nature. In this sense, even though it is not necessary to know all the incidents that occurred in Venezuela that affected the mass media or its employees, or all the statements or speeches delivered by high-ranking state officials, the important issue is, for the purposes of this case and in the context in which the incidents occurred, that the content of such statement was repeated on several occasions during such period. Nevertheless, it has not been proven that such speeches show or reveal, per se, the existence of a State policy. Besides, having the Court determined the subject-matter of this case (supra para. 57 to 75) it noted that no sufficient evidence has been furnished proving that actions or omissions carried out by state organs or structures, through which the public power is exercised, have been part of a State policy, according to the terms so alleged.

151. Certainly, in a democratic society it is not just legitimate but also, sometimes, a duty of the state authorities to make statements about issues of the public interest. Nevertheless, when

doing so they have to verify reasonably, though not necessarily in an exhaustive manner, the truthfulness of the facts supporting their opinions, [FN103] 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, the broad scope and possible effects their sayings may produce on certain sectors of the society and with a view to keeping citizens from receiving a distorted version of the facts. [FN104] 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 [FN105] so that they must not amount to a form of interference with or pressure impairing the rights of those who intend to contribute to public deliberation by means of expression and dissemination of its thought. This duty of special care is particularly emphasized in those situations of greater social conflict, disorderly conducts or social and political bias, precisely because of the risks entailed for certain people or groups at a given time.

[FN103] Cf. Case of Kimel V. Argentina, supra note 59, para. 79; Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela, supra note 29, para. 131.
[FN104] Cf. Case of Kimel V. Argentina, supra note 59, para. 79; Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela, supra note 29, para. 131.
[FN105] Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela, supra note 29, para. 131.

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152. The Commission considered that a "means of reasonable prevention" of possible mistaken interpretations of the content of such political speeches would have been a clear and unequivocal public condemnation of the acts that potentially pose a threat to the personal integrity of the executives, reporters and other employees of the television station, in order to prevent the incidents. Nevertheless, it is relevant to mention that, in the Report on Merits, the Commission "took note of the fact that in April 2003, the President of the Republic issued an appeal "to respect journalists and treat them with dignity, as they deserve," though it considered that "in such environment of recurrent statements", such public condemnation could have had the effect of prevention. [FN106]

[FN106] IACHR. Report on merits, para. 140 to 143 (records of evidence, volume I, pages 55-56).

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153. In such respect, the State alleged that "the government of the Bolivarian Republic of Venezuela has always been firm and clear in the condemnation of any type of violent act and specially, several institutions, bodies and authorities of the national government have condemned and repudiated some violent acts committed against reporters of Globovisión, as well as any other type of attack towards news team and premises of several mass media; in fact, measures have been adopted according to the domestic legal system, in order to try avoiding all type of attacks against the media and the employees working in there". The State pointed out during the public hearing that "the President of the Republic himself, the Vice-President and the

Ombudsman of the Venezuelan State have condemned the violent incidents and have appealed to their supporters in order to respect the media workers in Venezuela". The State further alleged that "[the] President has been very clear when he asserted that his critical message regarding some of the media was not addressed to the reporters and employees working in such media, but to the political positions of the media owners".

154. The Court deems that from the evidence furnished in support of the already mentioned statements, [FN107] it does not spring the existence of such public appeals "that demonstrate a profound and dynamic condemnation […] from the instances of the Public Power [on occasion of] the acts committed by private individuals against some media workers ". In the context of the facts of the case at hand, it is possible to consider that the appropriate conduct of the high-ranking public officials towards the attacks of reporters, by virtue of their role of communicators within a democratic society, would have been a public statement of disapproval of such acts.

[FN107] Cf., video identified as "Statements of State Officials" (appendix to the response to the petition, marked as "A.15 I" and "A.15. II").

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155. Notwithstanding the foregoing, though it is true that there is a risk intrinsic in the journalistic activity, the risky situations the people that work for such media would normally face could be worse if that media is the object of official speeches that may provoke or suggest actions or be interpreted by public officials or sectors of the society as directions, incitements or any other form of authorizations or support, for the commission of acts that jeopardize or violate the life, personal security or other rights of the reporters or of those who exercise their right to freedom of expression.

156. The Court considers it does not spring from the content of such speeches or declarations,that the attacks or violent acts against the alleged victims have been authorized, incited, directed or ordered by state agents, public officials, and groups of people or specific individuals. Moreover, such statements do not either suggest that such officials undertook as acts of themselves, or that they "justified" or "considered legitimate" or supported or congratulated, the actions that jeopardized or caused damage to the alleged victims, after the attacks committed against them. [FN108]

[FN108] In the case of Diplomatic and Consular Staff in Tehran, the International Court of Justice noted that the religious leader of Irán, the Ayatollah Khomeini, had made several public declarations inveighing the United States as responsible for all his country's problems, which would appear that the Ayatollah Khomeini was giving utterance to the general resentment felt by supporters of the revolution at the admission of the former Shah to the United States. It also noted that a spokesman for the militants, in explaining their actions afterwards, did expressly referred to a message issued by the Ayatollah by which he called the students and pupils to expand with all their might the attacks against United States and Israel, so they may force the United States to return the deposed and criminal shah and to condemn his great plot Nevertheless, the Tribunal deemed that" it would be going to far to interpret such general

declarations of the Ayatollah of the people or students of Iran as amounting to an authorization from the State to undertake the specific operation of invading and seizing the United States Embassy. To do so would, indeed, conflict with the assertions of the militants themselves who are reported to have claimed credit for having devised and carried out the plan to occupy the Embassy. Again, congratulations after the events, such as those reportedly telephoned to the militants by Ayatollah on the actual evening of the attack and other subsequent statements of official approval, though highly significant in another context shortly to be considered, do not alter the initially independent and unofficial character of the militants' attack on the Embassy". Cf. ICJ, United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment of 24 May 1980, I.C.J. Reports 1980, p. 3, párr. 59.

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157. However, the fact that in several official declarations of the highest authority, Globovisión, specially its owners and executives, were related to terrorist activities, plans of political destabilization or the coup d' État of 2002, placed those who work for this particular media in a position of greater vulnerability towards the State and certain sectors of the society

158. The self-identification of all the alleged victims with the editorial line of Globovisión is not a condition sine qua non to consider that a group of persons, formed by people linked to this media, had to face, to a greater or lesser extent according to the position they had, the same situation of vulnerability. In fact, it is not relevant or necessary for all Globovisión's employees to share the same opinion or political position as the editorial line of the media. It is enough the mere perception of the "opposite", "golpista", "terrorist", "uninformed" or "destabilizing" identity, coming from, mainly, the content of said speeches, so that this group of people, for the possibility of being identified as workers of such television station and not for other personal conditions, were liable to suffer unfavorable consequences of risky situations for their rights, caused by private individuals.

159. It has not been proven that the individuals involved in the attacks against the alleged victims would have claimed or declared, in some way, to have relied on the official support or instructions of some state agency or official to commit such attacks, even in those cases in which they used certain external symbols (clothes alluding to the government). Moreover, there is no evidence on record regarding the identity of such people or the reason they had to commit the attacks; therefore, the Court has no element to consider that such actions were not attributable to them, in their capacity as individuals.

160. However, within the contexts in which the facts of the instant case occurred (supra para. 132 to 137) and considering the opinion about the media that state authorities and certain sectors of the society have, it is possible to consider that the declarations of high-ranking public officials created or at least, contributed to emphasize or exaggerate situations of hostility, intolerance or animosity of some sections of the population towards the people linked to such media. The content of some of the statements, by virtue of vote of confidence of whom made them and repeated them, constituted an omission of the state authorities from the duty to prevent the facts; inasmuch as such declarations could have been interpreted by individuals and groups of individuals in a form so as to lead to violent acts against the alleged victims, as well as restrictions to their professions.

161. The Court considers that, in the situation of real vulnerability in which the alleged victims were when doing their jobs, known by the state authorities, some of the contents of said declarations are not in line with the state's obligation to ensure the rights to humane treatment and freedom to seek, receive and impart information of those people, given the fact that such statements could have produced frightening effects on the people associated with the media and could have constituted a breach of the duty to prevent violent or risky situations for their rights.

B) Facts in breach of the personal integrity of the alleged victims and their freedom to seek receive and impart information

162. Some of the incidents mentioned by the Commission and the representatives, in which they alleged that the humane integrity of some of the alleged victims has been violated, occurred within the context of public demonstrations or protests, organized by different social groups. [FN109]

[FN109] In this sense, a witness proposed by the State, Mr. Omar Solórzano, who worked at the Ombudsman Office between 2002 and 2005, stated that during those four years, where the situation of Venezuela was that of "a political pugnacity", several sectors of the society organized demonstrations almost every day and that more than 2000 protests, approximately, were conducted during that period. Cf. statement rendered by Mr. Omar Solórzano at the public hearing held before the Inter-American Court on May 7, 2008. This piece of information has not been challenged by the parties.

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163. The State mentioned that in the cases in which state agents are hold responsible for physical aggressions to journalists, no evidence has been furnished in order to prove an alleged use of excessive force. It pointed out, in general terms, that if the alleged victims participated in disorderly conducts and due to their own negligence, suffered from some kind of damage, it cannot be expected for the State to respond for the damage caused, when the State has adopted all the proper measures to protect them and investigate the facts Moreover, it asserted that the alleged victims neglected the instructions given by the police force and did not take any minimum measure to prevent it, at the time of carrying out an activity risky by nature.

164. The State mentioned eight decisions issued between February 2002 and May 2005 by domestic courts, whereby protective measures were ordered in favor of specific persons associated with Globovisión and some of those decisions were ordered just in favor of persons that worked for such media and at the premises of the television station. The State further alleged that such protection has been acknowledged on several occassions by representatives of Globovisión and quoted, in that sense, several statements made by alleged victims or employees of the media. Moreover, it pointed out the state authorities did not limit to said protective measures, but also that it adopted several measures to ensure law and order and safety of people before each of the protests organized in Venezuela during the time frame of this case law. Before each protest, the authorities organized police coordination meeting in which every of the actors, apart from the Office of the Public Prosecutors, the Ombudsman, among other sectors, were

present in order to prepare the security raids. It also mentioned that, as the result of several police coordination meetings organized between September and December 2005, "special protective measures were generally developed in order to protect journalists".

165. The representatives denied that the alleged aggressions suffered by the alleged victims were the consequence of their own behavior. They pointed out that they were commited during the exercise of their profession in the street. They denied, in addition, having been involved in disorderly conducts. They indicated that said situations also constitute news; without implying by that they had chosen to get involved in such acts. Furthermore, they alleged that there is no record in the case evidencing that the alleged victims have disregarded the directions or instructions given by security forces and that the State has not complied with its obligation to investigate the insults denounced.

166. In this aspect, the Court has established that the use of force by governmental security forces must be grounded on the existence of exceptional circumstances and that it can only be used once all other methods of control have been exhausted and failed, [FN110] state agents must distinguish between persons who, by their actions, constitute an imminent threat of death or serious injury, or a threat of committing a particularly serious crime involving a grave threat to life, and persons who do not present such a threat. [FN111] In that respect, the Court deems absolutely necessary to emphasize the extreme care which States must observe when they decide to use their Armed Forces as a mean for controlling social protests, domestic disturbances, internal violence, public emergencies and common crime. [FN112] Accordingly, in circumstances of social protests and public demonstrations, while it is the duty of Contracting States to adopt reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used [FN113].

[FN110] Cf. Case of Montero Aranguren et al. (Retén de Catia) V. Venezuela. Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 67; Case of Zambrano Vélez et al. V. Ecuador, supra note 32, para. 83 to 85.

[FN111] Cf. Case of Zambrano Vélez et al. V. Ecuador, supra note 32, para. 65. Cf. also IACHR Report on Terrorism and human rights (OEA/ser.4.V/II.116) of October 22, 2002, para. 111, and United Nations Report of Special Rapporteur Philip Alston on Extrajudicial, Summary and Arbitrary Executions (A/61/311), September 5, 2006.

[FN112] Cf. Case of Zambrano Vélez et al. V. Ecuador, supra note 32, para. 51. Cf. Case of Montero Aranguren et al. (Retén de Catia) V. Venezuela, supra note 110, para. 78.

[FN113] Cf. ECHR. Case of Plattform “Ärtze Für das Leben” v. Austria, Judgment of 21 June 1988, Series A no. 139, para. 34

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167. It is appropriate to clarify that the Court should not determine or assess whether the State adopted measures to guarantee law and order and the safety of people before each demonstration organized in Venezuela during the period of time in which the facts of this case occurred. If the State asserts to have adopted effective preventive and protective measures, the State should then prove the cases and situations in which the alleged victims acted beyond of what the state

authorities could have reasonable foreseen and done or that they disobeyed their instructions. The State is inconsistent when alleging, on the one hand, that the alleged victims participated in "serious disorderly conducts" and that in the middle of those situations "they changed to the violent side" and on the other hand, that it adopted effective protective measures in their favor. The State did not prove, regarding the incidents that the Court shall promptly analyze, that the alleged victims took part of acts related to disorderly conducts or that they disobeyed the instructions given by security forces that were destined to protect them. As to the protective measures ordered by domestic courts, the Tribunal considers that the mere order to adopt such measures do not demonstrate that the State has effectively protected the beneficiaries of such order in relation to the analyzed facts.

168. As a consequence, the Court shall take into account the fact that domestic courts ordered protective measures but it shall not decide on the suitability and effectiveness of such measures or on the evidence furnished to such end.

B.i Facts

169. The Commission alleged that on November 22, 2001, reporter Gabriela Perozo, producer Aloys Marín, cameraman Efraín Henríquez and camera assistant Oscar Dávila were covering a story when a group of individuals started hiting the vehicle and the equipment they use to broadcast the news; hence, they had to cover the story from the roof [FN114]. The State mentioned that Aloys Marín mentioned in the application as a victim of this incident, was not present at that moment and it also pointed out that it does not spring from the testimonies that there has been any participation of state agents in the alleged attacks.

[FN114] The Commission indicated in the application that "On November 22, 2001, reporter Gabriela Perozo, producer Aloys Marín, cameraman Efraín Henríquez, and camera assistant Oscar Dávila went to the La Hoyada district in central Caracas to cover a march. When the team got out of their vehicle, a group of individuals began to rain blows on the car and on the camera while the cameraman was holding it. They also pulled on the microwave cable. Globovisión workers covered the incident from a nearby rooftop" .

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170. In the affidavit rendered in the public hearing, [FN115] as well as in other statements, [FN116] Mrs. Perozo offered a version of the facts that coincides with the version submitted by the Commission. However, her statements are inconsistent as to the inactivity on the part of the security officers in said incidents, given the fact that she only mentioned this fact in the hearing, whereas in the statement rendered before the Prosecutor, she declared that "an officer helped Oscar Dávila, I do not remember whether it was one of the National Guard, who helped us dispersing the demonstrators but they kept insulting us until we entered into a building". [FN117]

[FN115] Cf. statement rendered by Mrs. Gabriela Perozo at the public hearing held before the Inter-American Court of Human Rights on May 7, 2008.

[FN116] Cf. request for justification of June 17, 2003 presented on June 20, 2003 before the 20º Municipal Court of the Judicial District of Caracas Metropolitan Area, that contain the statement of Gabriela Perozo (Records of evidence, volume 4, p. 885) and Statement of Gabriela Perozo. (records of evidence, Volume 10, appendix 50 of the brief containing pleading, motions and evidence. 3069)
[FN117] Cf. transcript of interview of January 23, 2007 with Gabriela Margarita Perozo Cabrices (records of evidence, volume XXXII, pages 8208-8209).
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171. Moreover, in the transcript of interview with Efraín Henríquez, he declared that he received "slight blows in the legs that left bruises" [FN118] and he asserted that, when the camera assistant got out in order to locate the van, he was not attacked "since, at that moment, the National Guard had already dispersed the demonstration, because a protest was coming". [FN119] Mr. Enrique Dávila Pérez declared that he did not see any security officers in the place, "but far from the place and during the protest, someone was deploying tear-gas canisters towards [them]". [FN120] In other statements, Aloys Marín, Efraín Henríquez and Oscar Dávila gave a version of the facts similar to the one given by Mrs. Perozo in the public hearing. [FN121]

[FN118] Cf. Transcript of interview with Efraín Antonio Henríquez Contreras of February 28, 2002 before the 2º and 74º Public Prosecutor's Offices of the Metropolitan Area of Caracas and Nacional Bancaria y Salvaguarda (records of evidence, volume XXXII, pages 8186-8189) and transcript of interview with Efraín Antonio Henríquez Contreras of January 14, 2005 before the 50º Prosecutors Office (records of evidence, volume XXXII, pages 8191-8192)
[FN119] Cf. Transcript of interview with Efraín Antonio Henríquez Contreras of February 28, 2002 before the 2º and 74º Prosecutors Offices of the Metropolitan Area of Caracas and Nacional Bancaria y Salvaguarda (records of evidence, volume XXXII, pages 8186-8189) and transcript of interview with Efraín Antonio Henríquez Contreras of January 14, 2005 before the 50º Prosecutors Office (records of evidence, volume XXXII, pages 8191-8192)
[FN120] Cf. transcript of interview of July 11, 2006 with Oscar Enrique Dávila Pérez before the 50º Plenipotentiary Prosecutors' Office (records of evidence, volume XXXII, pages 8206-8209).
[FN121] Cf. Request for justification of June 17, 2003, with the 20th Municipal Court of Caracas Metropolitan Area Judicial District, containing the declarations of Aloys Marin, Efraín Henríquez and Oscar Dávila (records of evidence, volume IV, pages 886-888).
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172. The Court notes that the complaint was lodged more than two months after the incident. The only proceedings carried out were the interviews conducted in the capacity of witnesses to several alleged victims. [FN122] The representatives mentioned that other investigative proceedings have been conducted as of February 18, 2002, such as expert reports for technical consistency and interviews. [FN123] On February 27, 2007 more than five years after the filing of the complaint, the 50º Assistant Prosecutor requested the discontinuance of the case regarding this fact, in relation to the commission of injuries, by virtue of the extinguishment of the criminal action. [FN124] On March 1, 2007 the case file was allocated to the 51º Investigating Trial Court of Caracas Metropolitan Area, though there is no record that such request has been decided. Given that the State did not provide any reason why the corresponding request has not been

resolved, this Court considers that the domestic authorities failed to comply with the duty to make a decision with due diligence and promptness (infra para. 344).

[FN122] Cf. transcript of interview of February 28, 2002 with Efraín Antonio Henríquez Contreras before the 2º and 74º Prosecutors Office of the Metropolitan Area of Caracas and Nacional Bancaria and de Salvaguarda (records of evidence, volume XXXII, pages 8186-8189).
[FN123] Cf., charter of complaint filed before the Attorney General's Office, prepared by the representatives (records of evidence, volume XIV, appendix 69 to the brief of pleadings, motions and evidence, page 4005).
[FN124] Cf. Request for discontinuance of the 50º Plenipotentiary Assistant Prosecutor of the Attorney General's Office of February 27, 2007 (records of evidence, volume XXXII, pages 8210-8216).

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173. Even though it is possible to consider as proven that the vehicle in which Gabriela Perozo, Aloys Marín, Efraín Henríquez and Oscar Dávila were traveling, was surrounded and hit that day by unidentified individuals, that some of them were beaten and that, as a result of that situation, they were prevented from continuing doing their normal job, this Tribunal deems that it is not possible to consider as proven that the authorities failed to protect the alleged victims that day in view of the fact that there are inconsistencies in the statements tendered regarding the lack of intervention of security officers at the scene of the facts.

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174. The Commission indicated that on December 10, 2001 reporter Yesenia Balza, cameraman Carlos Quintero and camera assistant Felipe Lugo were about to begin the coverage of a demonstration when they were surrounded by approximately 20 people who insulted and threatened them; some of them tried to cover the cameras with their hands and handkerchiefs, cornered them in order to make them leave the place and surrounded the vehicle from which they were trying to get out of; all of this prevented the news team from covering the story. [FN125] In addition, the representatives alleged that the attackers took the camera away from Carlos Quintero, pushed him to the floor and kicked him and "when […] he managed to get up, the attackers started to push the three of them, without even seeing that reporter Yesenia Balza was pregnant". The State mentioned that the complaint was lodged a month and twenty-one days after the incidents; that said complaint was based on alleged physical attacks committed against Carlos Javier Quintero and that Yesenia Balza and Felipe Lugo were only mentioned as eyewitnesses to the facts.

[FN125] The Commission alleged in the application that "On December 10, 2001, reporter Yesenia Balza, cameraman Carlos Quintero, and camera assistant Felipe Lugo were about to begin their coverage of a demonstration when they were surrounded by a group of some 20 people who shouted "liars," "manipulators," "traitors," frauds," and similar insults at them. Some of these individuals tried to cover the cameras with their hands and white handkerchiefs. They

then surrounded them to force them to abandon the area and surrounded the car in which they attempted to leave. This prevented the team of reporters from covering the demonstration".

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175. The Court notes that the video furnished by the Commission as evidence for this incident shows private individuals preventing the alleged victims from doing their jobs and, at a given moment, struggling with the cameraman. [FN126] Mrs. Balza made a statement in the direction indicated by the representatives. [FN127] The statements rendered by Mr. Quintero and Felipe Antonio Lugo Duran coincided with the version provided by Mrs. Balza and they further stated that they were injured in the back. [FN128]

[FN126] Cf. video (appendix 3 to the application)
[FN127] Cf. Request for justification of June 17, 2003, with the 20th Municipal Court of Caracas Metropolitan Area Judicial District, containing the declaration of Yesenia Thais Balza (records of evidence, volume IV, page 889).
[FN128] Cf. Request for justification of June 17, 2003 before the 20º Municipal Court of Caracas Metropolitan Area containing the statement of Carlos Quintero (records of evidence, volume IV, page 890); transcript of interview with Carlos Javier Quintero of March 7, 2002. before the 2º and 74º Prosecutor's Office of the Caracas Metropolitan Area (records of evidence, volume XXX, pages 7683-7684); transcript of interview of April 26, 2005 with Carlos Javier Quintero before the 50º Plenipotentiary Prosecutor's Office (records of evidence, volume XXX, pages 7686-7688); transcript of interview with Felipe Antonio Lugo Durán of March 2, 2002 before the 2º and 74º Prosecutor's Office of the Caracas Metropolitan Area (records of evidence, volume XXX, pages 7679-7682) and request for justification of June 17, 2003 before the 20º Municipal Court of Caracas Metropolitan Area containing the statement of Felipe Antonio Lugo Durán (records of evidence, volume IV, pages 893).

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176. The Court notes that the complaint was lodged a month and a half after the incident, for alleged physical attacks committed against Felipe Antonio Lugo Duran and Carlos Javier Quintero. In this investigation, the only proceedings carried out were the interviews with the alleged victims conducted in the capacity of witnesses [FN129]. The representatives mentioned that another interviews have been conducted between February and March, 2002 [FN130]. On January 22, 2007 almost five years after the filing of the complaint, the 50º Assistant Prosecutor requested the discontinuance of the case, by virtue of the extinguishment of the criminal action [FN131] and on March 25, 2008 the 36º Investigating Trial Court of Caracas Metropolitan Area ordered such discontinuance upon considering that the criminal action had already prescribed [FN132]. In such regards, it spring from the proceedings conducted in the investigation that there has been an unwarranted procedural inactivity on the part of the Attorney General's Office of more than 3 years.

[FN129] Cf. transcript of interview with Felipe Antonio Lugo Duran of March 5, 2002 before the 2º and 74º Prosecutor's Office of Caracas Metropolitan Area (records of evidence, volume XXX, pages 7679-7682); Transcript of interview with Carlos Javier Quintero of March 7, 2002 before

the 2º and 74º Prosecutor's Office of Caracas Metropolitan Area (records of evidence, volume XXX, pages 7683-7684) and transcript of interview with Carlos Javier Quintero of April 26, 2005 before the 50º Plenipotentiary Prosecutor's Office (records of evidence, volume XXX, pages 7686-7688)
[FN130] Cf., charter of complaints filed before the Attorney General's Office, prepared by the representatives (records of evidence, volume XIV, appendix 69 to the brief of pleadings, motions and evidence, page 4007).
[FN131] Cf., Request for discontinuance of the 50º Plenipotentiary Assistant Prosecutor of the Office of the General Prosecutor of January 22, 2007 (records of evidence, volume XXX, pages 7692-7698).
[FN132] Cf., Decision of the 36º Investigating Trial Court of Caracas Metropolitan Area of March 25, 2008 (records of evidence, Volume XXX, pages 7701-7702).
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177. Considering the evidence on record, the Court concludes that Yesenia Balza, Carlos Quintero and Felipe Lugo have been attacked, beaten and insulted by unidentified private individuals, who prevented them from doing their jobs, causing damage to their physical integrity.

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178. The Commission alleged that on January 9, 2002 Mr. Alfredo Peña Isaya was beaten by unidentified individuals, which violated his right to humane treatment [FN133]. The State mentioned that there are some inconsistencies in the statements regarding this fact and that, therefore, they should not be taken into account and also that there is no supporting evidence regarding the participation of state agents in the alleged attacks. Furthermore, the State mentioned that it was not possible to determine the type and intensity of the injury allegedly inflicted on Alfredo José Peña Isaya, since at the moment of the events, he did not go to a health center for a medical check-up, which is unsubstantial considering the time that passed until he lodged a complaint.

[FN133] The Commission argued in the application that "On January 9, 2002, reporter Beatriz Adrián, cameraman Jorge Paz, and camera assistant Alfredo Peña Isaya were on their way to the Miraflores Palace to cover a story when their vehicle was surrounded by a group of some 30 men who kicked the vehicle and threatened to "burn them along with their car." Some members of the group opened the door where Alfredo Peña Isaya was sitting and hit him a number of times. At that moment the police arrived and enabled the team of journalists to return to Globovisión headquarters. They were unable to cover the store".
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179. The Court verifies that this fact was reported before the Attorney General's Office [FN134] and before the Ombudsman, [FN135] as well as in the request for justification of June 2003 [FN136] and before the Prosecutor Offices of Caracas Metropolitan Area. [FN137] The proceedings conducted were interviews with alleged victims in the capacity as witnesses. [FN138] In turn, a transcript of an interview was also furnished to the records of the case and in

such interview Mr. Alfredo José Peña Isaya described, in detail, the blows he would received, [FN139] apart from other rendering another statements. [FN140]

[FN134] Cf. Complaint lodged with the National Directorate of Common Crimes on January 31, 2002 (records of evidence, volume IV, appendix 7 to the application, pages 931-963).
[FN135] Cf. Complaint lodged with the Ombudsman on February 1, 2002 (records of evidence, volume IV, appendix 9 to the application, pages 977-1023).
[FN136] Cf. Request for justification of June 17, 2003, with the 20º Municipal Court of Caracas Metropolitan Area, containing the declaration of Jorge Manuel Paz (records of evidence, volume IV, page 895).
[FN137] Cf. Complaint lodged with the 2º Prosecutor's Office of the Attorney General's Office of the Judicial District of Caracas Metropolitan Area on March 10, 2003 (records of evidence, volume IV, appendix 8 to the application, pages 965-975).
[FN138] Cf. transcript of Interview with Alfredo José Peña Isaya of February 19, 2002 before the 2º and 74º Prosecutor Offices of Caracas Metropolitan Area (records of evidence, volume XXXII, pages 8377-8380); transcript of interview with Beatriz Adrián Garcia of March 6, 2006 before the 50º Plenipotentiary Prosecutor Office (records of evidence, volume XXXII, pages 8393-8394) and charter of complaints filed with the Attorney General's Office prepared by the representatives (records of evidence, volume XIV, appendix 69 to the brief of pleadings, motions and evidence, page 4008)
[FN139] Mr. Peña Isaya pointed out, when being asked about whether he was injured in the incidents, that "yes, since he ha[d] a swelling in the left shoulder and a strong pain in the left leg where he received the kick; the other blows were slight" and that the did not receive medical care for such injuries. Cf. Transcript of the interview of February 19, 2002 with Alfredo José Peña Isaya before the 2º amd74º Prosecutor Offices of Caracas Metropolitan Area (records of evidence, volume XXXII, pages 8377-8380).
[FN140] Cf. Statement of Beatriz Adrián (records of evidence, volume X, appendix 50 to the brief of pleadings, motion s and evidence, page 3060); transcript of interview of March 6, 2006 with Beatriz Adrián García before the 50º Plenipotentiary Prosecutor Office (records of evidence, volume XXXII, pages 8393- 8394).
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180. On August 10, 2006 more than four years and six months after the filing of the complaint, the 50º Assistant Prosecutor requested the discontinuance of the case regarding this fact, in relation to the alleged commission of the crime of intentional injuries, by virtue of the extinguishment of the criminal action [FN141]. Four days after, the case file was allocated on the 52º Investigating Trial Court of the District of Caracas Metropolitan Area, though there is no proof of a decision on that request. Given that the State did not provide any reason why the Investigating Judge has not rendered a decision regarding such requests, the Court considers that the domestic authorities failed to comply with the duty to resolve with due diligence and promptness (infra para. 344).

[FN141] Cf. Request for discontinuance of the 50º Plenipotentiary Assistant Prosecutor of the Attorney General's Office of August 10, 2006 (records of evidence, volume XXXII, pages 8397-8404).

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181. This Tribunal notes that the evidence furnished is consistent in that, in effect, Mr. Peña Isaya was beaten by private individuals and therefore, Beatriz Adrián and Jorge Paz were prevented from doing their job in that situation. Nevertheless, the testimonies coincide with the fact that in certain moment, the police would have arrived at the site to protect the alleged victim.

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182. The Commission alleged that on January 11, 2002 cameraman Richard López and his assistant, Féliz Padilla were surrounded by a group of people that kicked the vehicle and insulted them; therefore, they could not cover the story and they managed to escape from the location thanks to the intervention of the Metropolitan Police. The State mentioned that the complaint was lodged twenty days after the incident for alleged verbal attacks against Mr. Félix José Padilla Geromes and also that state agents did not participate in the incidents.

183. The Court notes that the items of evidence on record, such as the testimonies offered by Félix Padilla [FN142] and Richard López [FN143] and the briefs addressed to Venezuelan authorities by the alleged victims, [FN144] are not demonstrated by other supporting evidence. However, as is evident from the Commission's argument, before an alleged attack committed by individuals, state agents allowed the news team to withdraw from the place, even though they could not attend the event they were supposed to cover. The corresponding complaint for this fact was lodged 20 days after the incident and the State informed that on February 28, 2002 it conducted an interview with Félix Padilla, but it did not furnish any evidence proving this action. Considering that no other proceeding has been conducted after such date, the Court notes an unwarranted procedural inactivity on the part of Attorney General's Office of more than 6 years.

[FN142] Cf. Request for justification of June 17, 2003, with the 20º Municipal Court of Caracas Metropolitan Area containing the declaration of Felix Padilla Geromes (records of evidence, volume IV, page 898).

[FN143] Cf. Statement of Richard López (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, page 3082) and affidavit of Richard López Valle of April 15, 2008 (records of evidence, volume XXXII, pages 8795-8799)

[FN144] Cf. complaint lodge with the 2º Public Prosecutor's Office of the Judicial District of Caracas Metropolitan Area of March 10, 2003 (records of evidence, volume IV, appendix 8 to the application, pages 96—975) and complaint filed with the Ombudsman on February 1, 2002 (records of evidence, volume IV, appendix 9 to the application, pages 977-1023).

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184. As a result, it is possible to consider that, under the circumstances above mentioned, Mr. Richard López and Félix Padilla were prevented from performing their jobs by private individuals.

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185. The Commission alleged that on January 20, 2002 Mayela León, Jorge Paz and an assistant, would have been surrounded, threatened and verbally attacked at Cajigal Observatory when they were trying to cover the broadcasting of the show "Aló Presidente". [FN145] The representatives mentioned that the attackers "started to beat and kick them and shouted at them insults".

[FN145] The Commission alleged in the application that "On January 20, 2002, reporter Mayela León, cameraman Jorge Paz, and an assistant were at the Cajigal Observatory to cover an Aló Presidente broadcast. Before they could get out of their vehicle, they were surrounded by a group of about 50 people shouting slogans like "tell the truth," "frauds," "liars," and "traitors." On the Globovisión newscast, Mayela León made the following statement: "The Presidential Guard said they had been ordered to work with the journalists and offer them help […] when the attackers saw cameras, they become more aggressive […] what we decided was that they would me escort me to my van and that we weren't going in because they were determined not to let us". Jorge Paz indicated in that same show that "we felt we were surrounded […] I've never felt like that before […] when I tried to pick up the camera they became more aggressive."

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186. The Court verifies that Mayela León, in the affidavit she rendered, [FN146] as well as in the statement rendered before the 20º Trial Court of Caracas [FN147] gave a version of the facts that coincides with the version of the Commission. The video furnished by the Commission is part of the transmission of a Globovisión newscast, in which there appears a group of people without doing anything in particular; then, there is another group of people shouting with little percussion instruments and following, there appears Mayela León and Jorge Paz, narrating the alleged facts. [FN148]

[FN146] Cf. affidavit rendered by Mayela León Rodríguez on April 15, 2008 (records of evidence, volume XXXIII, pages 8768-8772).
[FN147] Cf. Request for justification of June 17, 2003, filed with the 20º Municipal Court of Caracas Metropolitan Area containing the declaration of Mayela León Rodríguez (records of evidence, volume IV, page 896).
[FN148] During the newscast, Mayela León mentioned that she "was nicely escorted (…) by people of the Presidential guard to the van". In the video, there appears a group of people shouting "out, out" to a man shouting "tell the truth" and another person shouting "traitors, traitors" and then more people shouting "liars, traitors". Cf. video (appendix 3 to the application)

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187. Regarding these facts, several complaints were lodged with the Venezuelan authorities [FN149] and furthermore, the criminal complaint was filed eleven days after the incident. The proceedings conducted, according to the State, consisted in interviews with the alleged victims. The State has not furnished items of evidence proving these and other procedures for taking

evidence, neither did it inform on proceedings conducted after that date; therefore, the Court notes an unwarranted procedural inactivity on the part of the Attorney General's Office of more than 6 years.

[FN149] Cf., Complaint lodged with the National Directorate of Common Crimes on January 31, 2002 (records of evidence, volume IV, appendix 7 to the application 7, pages 931-963). Complaint lodged with the 2º Public Prosecutor's Office of the Judicial District of Caracas Metropolitan Area on March 10, 2003 (records of evidence, volume IV, appendix 8 to the application, pages 964-975) and complaint filed with the Ombudsman on February 1, 2002 (records of evidence, volume IV, appendix 9 to the application, pages 977-1023).

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188. The Court deems that the evidence tendered allows considering that Mayela León and Jorge Paz were prevented from continuing with their jobs by a group of unidentified private individuals under the circumstances above mentioned.

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189. The Commission mentioned that on February 18, 2002 unidentified people would have damaged a vehicle of Globovisión. [FN150] The State argued that the complaint regarding this fact was lodged a year and a month after the incident.

[FN150] The Commission allegad in the application that "On February 18, 2002, unidentified individuals broke the windows of a van bearing a Globovisión logo that was parked while reporter Jhonny Ficarella, cameraman John Power, and assistant Miguel Ángel Calzadilla covered a story".

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190. This fact was reported before the 2° Public Prosecutor's Office of the Attorney General's Office of the Judicial District of Caracas Metropolitan Area on March 10, 2003 and that among the proceedings already initiated, it can be mentioned the interviews conducted with John William Power Perdomo and Johnny Donato Ficarella Martin; [FN151] a request to the Claims Department of the Scientific, Criminal and Forensic Investigating Division in order to collect the statements of the claim and the order for the reparation of the van of Globovisión, damaged in such incident, in order to conduct a damage assessment report; a request from the Public Prosecutor to Globovisión in order to forward the video, recorded by the news team and a request for the technical-scientific verification of the van, license plate 15P-GAC, which is the company's property. [FN152] By June 2008, the Public Prosecutor Office was making the corresponding decision.

[FN151] Cf. transcript of interview of February 26, 2002 with Jhonny Ficarrella Martin before the 2º and 74º Public Prosecutor's Office of the Metropolitan Area of Caracas and Nacional Bancaria and de Salvaguarda (records of evidence, volume XLI, pages 10557-10560).

[FN152] Cf. Memorandum F30NN-248-2008 of April 25, 2008 (records of evidence, volume XXXII, page 8459).
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191. The Court notes that, considering the evidence furnished, a vehicle of Globovisión was, in fact, damaged by individuals, though it has not been proven that such incident would have jeopardized the personal integrity of the alleged victims or their professional activities.

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192. The Commission alleged that on April 3, 2002 reporter José Vicente Antonetti was wounded in the forehead while he and Mr. Edgar Hernandez and Ericsson Alvis were covering a protest at the Venezuelan Social Security Institute. [FN153] The representatives pointed out that Globovisión's employees were attacked by a group of individuals of the ruling party who hit and kicked them, struck the equipment of the television station and threw "dirty water and eggs" at them. The representatives argued that in said incidents, there were members of the so-called "Bolivarian Circles" and also, they pointed out that one of the attackers was the Personnel Manager of Social Security Institute. Based on the allegations made by the Commission, the representatives stated that the right to humane treatment of Mr. Antonetti was violated. The State pointed out that the complaint regarding those facts was lodged a year after the incident for physical attack, of a slight nature, against Ericcson José Alvis Piñero and that Mr. Antonetti was not attacked.

[FN153] The Commission argued in the application that "On April 3, 2002, reporter José Vicente Antonetti, cameraman Edgar Hernández, and assistant Ericsson Alvis were covering a demonstration at the Venezuelan Social Security Institute, when a group of individuals, upon noticing their presence, began to shout "go away, go away," and struck their cameras. Among the group was the institute's personnel director; subsequently, the director of the institute gave a statement saying he could not be held responsible for a subordinate's behaving in that way. Reporter José Vicente Antonetti received a wound on his forehead".
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193. The Court notes that the statements rendered by the witnesses were consistent in pointing out that Mr. Ericsson José Alvis Piñero was subjected to physical attack. [FN154] From the video furnished as evidence, it does not spring that someone has been beaten, [FN155] while according to the statements rendered by several witnesses before the Attorney General's Office, [FN156] and this proceeding, [FN157] several reporters would have been subjected to attacks. In the first statement, rendered in April 2002, Mr. Antonetti Moreno mentioned that "his cameraman was attacked by the Personnel Director of the Social Security Institute and another three individuals" and that he as well as his assistant, were forced to intervene and he also mentioned that "Ericsson Alvis was injured and the camera damaged". Even though Mr. Antonetti Moreno mentioned that he was "beaten", he did not describe in detail who would have beat him or the kind of blow he would have received. [FN158] In a subsequent statement rendered before a judge, as well as in a statement furnished by the representatives, [FN159] Mr.

Antonetti mentioned that “he was wounded in the forehead” in a second attack organized by supporters of the national Government, who belong to the "Bolivarian Circles”. [FN160]

[FN154] Cf. Transcript of Interview of April 4, 2002 with Isnardo José Bravo before the 2º and74º Public Prosecutors Office of Caracas Metropolitan Area (records of evidence, volume XXXII, page 8275-8277); transcript of interview with Edgar Alfredo Hernández Parra of April 3, 2002 before the 2º and 74º Public Prosecutors Office of Caracas Metropolitan Area (records of evidence, volume XXXII, pages 8271-8272) and transcript of interview with Ericsson José Alvis Piñero of April 3, 2002 before the 2º and 74º Public Prosecutors of Caracas Metropolitan Area (records of evidence, volume XXXII, pages 8264-8265).

[FN155] In the video, it is possible to see people arguing; however, the video does not show someone hitting an identified employee from Globovisión. At the end of the tape, there is a –unidentified- person with a wound in the forehead. Cf. video (appendix 3 to the application).

[FN156] Cf. Transcript of Interview with Maria Elisa González Mijares of April 4, 2002 before the 2º and 74º Public Prosecutors Office of Caracas Metropolitan Area (records of evidence, volume XXXII, page 8273-8274); transcript of interview with Antonio Campos Giovanni of April 4, 2002 before the 2º and 74º Public Prosecutors Office of Caracas Metropolitan Area (records of evidence, volume XXXII, pages 8286-8287) and transcript of interview with Héctor Ojeda Montilla of April 4, 2002 before the 2º and 74º Public Prosecutors of Caracas Metropolitan Area (records of evidence, volume XXXII, pages 8288-8289).

[FN157] Cf. statement of Edgar Hernández (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, page 3055) and request for justification of June 17, 2003 before the 20º Municipal Court of the Judicial District of Caracas Metropolitan Area that contains the statement of Edgar Hernández (Records of evidence, volume IV, p. 906)

[FN158] Cf. transcript of interview with José Vicente Antonetti Moreno of April 3, 2002 before the 2º and 74º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume XXXII, pages 8267-8268).

[FN159] Cf. statement rendered by José Vicente Antonetti Moreno (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and arguments, page 3044).

[FN160] Cf. Request for justification of June 17, 2003 before the 20º Municipal Court of Caracas Metropolitan Area, containing the declarations of José Vicente Antonetti Moreno and Edgar Hernández (records of evidence, volume IV, pages 905-906).

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194. On April 3, 2002, the 2º and 74º Public Prosecutor Offices of Caracas Metropolitan Area ordered to conduct the corresponding investigations [FN161], though a complaint was lodged 11 months after the incidents. In the complaint lodged with the Public Prosecutor Offices, there is only one reference made to the fact that in his incident, the alleged victims would have been "pushed, insulted and physically and mentally abused” by individuals belonging to the so-called “Bolivarian circles” [FN162]. The Venezuelan authorities considered, as from the first statements offered by the witnesses, that the physical attacks would have been committed against Mr. Ericsson José Alvis Piñero and not against Mr. Antonetti [FN163]. The Court notes that several steps were taken to such end [FN164] and that a legal-medical examination was conducted on Mr. Alvis Piñero in which it was determined the existence of slight injuries [FN165]. Furthermore, the inspector appointed to the Motorized Brigade was summonsed and

interviewed about the incidents [FN166] and a legal and expert examination was conducted on the recording camera according to which the camera lenses were broken [FN167]. On February 6, 2006 the 50º Assistant Prosecutor requested the discontinuance of the case, in relation to the alleged commission of the crime of slight intentional injuries, by virtue of the extinguishment of the criminal action, as well as the dismissal of the complaint related to the others [FN168]. On February 8, 2006 the case file was allocated to the 39º Investigating Trial Court of Caracas Metropolitan Area, though there is no record that such request has been decided.

[FN161] Cf. Order issued by the 2º and 74º Public Prosecutors of Caracas Metropolitan Area on April 3, 2002 (records of evidence, volume XXXII, page 8263)

[FN162] Cf. Complaint lodged with the 2º Prosecutor's Office of the Attorney General's Office of the Judicial District of Caracas Metropolitan Area on March 10, 2003 (records of evidence, volume IV, appendix 8 to the application, pages 965-975).

[FN163] Cf. Request for discontinuance and dismissal of the 50º Plenipotentiary Assistant Prosecutor of the Attorney General's Office of February 6, 2006 (records of evidence, volume XXXII, pages 8315-8336).

[FN164] Interviews conducted in the capacity as witnesses before the 2º and 74º Public Prosecutor Offices of Caracas Metropolitan Area with Ericsson José Alvis Piñero, on April 3, 2002 Cf. Transcript of interview (records of evidence, volume XXXII, pages 8264-8265), with José Vicente Antonetti Moreno of April 3, 2002. Cf., transcript of interview (records of evidence, volume XXXII, pages 8267-8268), with Edgar Alfredo Hernández Parra on April 3, 2002 Cf., transcript of interview (records of evidence, volume XXXII, pages 8271-8272), with María Elisa González Mijares on April 4, 2002 Cf. Transcript of interview (records of evidence, volume XXXII, pages 8273-8274); with Isnardo José Bravo on April 4, 2002 Cf. Transcript of interview (records of evidence, volume XXXII, pages 8275-8277); with Alicia María Velasco Viso on April 4, 2002 Cf. Transcript of interview (records of evidence, volume XXXII, pages 8278-8280); with Rosa Angélica Aponte de Bueno on April 4, 2002 Cf. Transcript of interview (records of evidence, volume XXXII, pages 8281-8283); with Vilmer Ernesto Marcano Villamediana on April 4, 2002 Cf. Transcript of interview (records of evidence, volume XXXII, pages 8284-8285); with Giovanni Antonio Campos on April 4, 2002 Cf. Transcript of interview (records of evidence, volume XXXII, pages 8286-8287); with Héctor Rodolfo Ojeda Montilla on April 4, 2002 Cf. Transcript of interview (records of evidence, volume XXXII, pages 8288-8289); with Rubén González Flores on April 24, 2002 Cf. Transcript of interview (records of evidence, volume XXXII, pages 8301-8302), and with José Govanny Araujo Mancilla on April 24, 2002 Cf. Transcript of interview (records of evidence, volume XXXII, pages 8303-8304).

[FN165] Cf. expert report of April 6, 2002 of the National Department of Legal Medicine (records of evidence, volume XXXII, page 8294)

[FN166] Cf. Official letter FMP-74-AMC-391-02 of April 23, 2002 before the 2º and 74º Public Prosecutor Offices of Caracas Metropolitan Area (records of evidence, volume XXXII, pages 8297).

[FN167] Cf. expert report of April 26, 2002 of the National Department of Criminal Investigations (records of evidence, volume XXXII, page 8305- 8311)

[FN168] Cf. Request for discontinuance and dismissal of the 50º Plenipotentiary Assistant Prosecutor of the Attorney General's Office of February 6, 2006 (records of evidence, volume XXXII, pages 8315-8336).

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195. The Court deems that, from the evidence tendered by the parties, even though it is possible to conclude that Mr. José Vicente Antonetti and Edgar Hernández were prevented from doing their jobs by private individuals, the evidence furnished is not enough to consider as proven the commission of the violation of the right of Antonetti Moreno to humane treatment.

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196. The Commission indicated that on June 13, 2002 Beatriz Adrián, Jorge Paz and Alfredo Peña were surrounded, threatened and insulted by a group of approximately 40 people at the Federal Legislative Palace and that the vehicle in which they were, was damaged. The Commission pointed out that members of the Metropolitan Police that were at the scene, helped the employees of Globovisión leave [FN169]. The complaint was lodged almost nine months after the incidents and the State informed that several proceedings were initiated in order to investigate such events [FN170]. In such regards, this Tribunal notes that the Attorney General's Office took more than four and a half years in adopting the first measure; such delay is unjustified.

[FN169] In the application, the Commission alleged that "On June 13, 2002, a Globovisión team comprising reporter Beatriz Adrián, cameraman Jorge Paz, and assistant Alfredo Peña was at the federal parliament building covering a session of the National Assembly. As the media workers were preparing to leave, the Assembly building was surrounded by a group of some 40 individuals whose shouts and threatening attitude hindered their exit. The Globovisión journalist was interviewing one of these individuals, asking him to explain why he was behaving like that, when another person struck her microphone and knocked it to the floor. Members of the Metropolitan Police who were on the scene finally enabled the Globovisión workers to leave. Their vehicle, which was marked with the station's logo, was scratched, beaten, and sprayed with paint".
[FN170] The State informed that on October 10, 2007 the 50º Plenipotentiary Public Prosecutor ordered the appearance in the proceedings of Jorge Paz and Beatriz Adrian in order to render a testimony about the investigated facts.
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197. The evidence on record indicates that the vehicle of Globovisión was damaged by individuals [FN171], and that state authorities protected the reporters of Globovisión, helping them, according to their own statements, to get out in order to prevent being insulted [FN172], therefore, it has not been proven that the personal integrity of the alleged victims has been violated. However, these facts prevented Mrs. Beatriz Adrián and Mr. Jorge Paz and Alfredo Peña Isaya from doing their jobs.

[FN171] In the video, it can be seen that one of the inviduals, who was allegedly "insulting" and "trying to hit or take the material away from the news team", ducked and returned the equipment to the reporter of Globovisión that was at the other side of the gate. It cannot be seen in the

images that the demonstrators tried to grab the material from the news team that was interviewing them at the other side of the gate, as has been alleged by the representatives and mentioned in the statements rendered by Jorge Paz and Alfredo Peña. Cf. Video (appendix 3 to the application) and request for justification of June 17, 2003 before the 20º Municipal Court of the Judicial District of Caracas Metropolitan Area containing the statements of Alfredo José Peña Isaya, Beatriz Adrián and Jorge Manual Paz Paz (records of evidence, volume IV, pages 892 and 894/895).

[FN172] Cf. Video (Appendix 3 to the application), Request for justification of June 17, 2003 before the 20º Municipal Court of the Judicial District of Caracas Metropolitan Area, containing the statements of Alfredo José Peña Isaya, Beatriz Adrián and Jorge Manuel Paz Paz (records of evidence, volume IV, pages 892 and 894-895), Brief filed with the 2° Public Prosecutor office of the Attorney General's Office of Caracas Metropolitan Area on March 10, 2003 (records of evidence, volume IV, appendix 8 to the application, pages 965-975); brief of October 26, 2004 filed with the 68° Public Prosecutor of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749) and statement of Beatriz Adrián (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, page 3061) and affidavit rendered by Beatriz Alicia Adrián García on April 8, 2008 (records of evidence, volume XXXII, pages 8508-8513)

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198. The Commission alleged that on July 9, 2002 a grenade was thrown into the parking of the central building of Globovisión, causing damage to the building itself and to some vehicles. [FN173] The representatives further argued that it would be a fragmentation grenade that it was thrown and destroyed seven vehicles; also, that grenade left marks in all the walls surrounding the parking area. The State [FN174] as well as the representatives [FN175] informed about certain investigative proceedings. Besides, according to the State, the incidents are related to the placement of other explosive devices at the offices of the Embassies of Colombia and Spain, within the framework of a campaign associated with the political destabilization lived in those years.

[FN173] The Commission alleged in the application that "On July 9, 2002, a grenade was thrown into the parking lot of Globovisión's main building which, along with a number of vehicles belonging to station employees, suffered material damage. Members of the Directorate of Intelligence Services and Prevention ("DISIP") came to the incident site and collected evidence".

[FN174] Cf. final arguments of the State (records of evidence, volume VIII, pages 2429-2438).

[FN175] It mention, in particular, interviews, gathering of evidence, transcripts of visual inspection, official letters of the Public Prosecutor Office requesting some kind of reference of the explosive to the Claims Department, official letters of the Investigating Department against Terrorism, Division of Armament of the National Armed Forces, expert's report and planimetry. Cf. charter of complaints presented before the Attorney General's Office prepared by the representatives (records of evidence, volume XIV, appendix 69 to the brief of pleadings, motions and evidence, page 4016).

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199. As to the investigations into this fact, the State informed that on July 9, 2002 the National Department of Homicides of the Scientific, Criminal and Forensic Investigations Division received a radio telephone call from an official informing about the detonation of an explosive device at Globovisión television station. Besides, the State informed it had conducted several procedures for taking evidence [FN176]. In this regard, this Tribunal notes that the State has not furnished evidence to prove that such procedures for taking evidence have been followed; nevertheless, the representatives have also mentioned several proceedings conducted by the Attorney General's Office between July 2002 and November 2004. Hence, this Court considers that no sufficient evidence has been tendered in order to determine that the State has not conducted the investigation into this fact with due diligence.

[FN176] The Official Letter Nº 9700-017-5644 of that same date, signed by the Police Chief of the National Department of Homicides was forwarded to the 5º Public Prosecutor Office of the Attorney General's Office of Caracas Metropolitan Area in order to notify such office of the commission of a crime against public and private interests, where the television station of Globovisión is the aggrieved party. Police records of the initial proceedings carried out at the headquarters of Globovisión were issued once members of the National Division of Visual Inspection, Claims Department, Simón Rodríguez Police Station, Explosive Department of the DISIP and the Metropolitan Police arrived at the scene of the facts and determined the epicenter of the denotation of the explosive device, putting on record the material damage caused. Furthermore, the pictures of the place were taken and items of evidence of a forensic nature, such as lead and multimeter fragments, collected. Two people were interviewed at the scene. The 5º Public Prosecutor Office of Caracas Metropolitan Area ordered the opening of the corresponding investigation. By means of memorandum Nº 9700-0175683 of that same date, the Chief of the National Department of Homicides forwarded the procedural records to the Chief of the National Division against Terrorism, in order to continue with the corresponding investigation. The Claims Department of the Scientific, Criminal and Forensic Investigations Division forwarded the memorandum Nº 9700-38-358 to the Microanalysis Department together with a safety lever, olive green, that corresponded to a fragmentation hand grenade of German fabrication DM-51 in order to subject it to special actives to detect any hidden track. At the headquarters of the National Division against Terrorism of the Scientific, Criminal and Forensic Investigations Divisions, several people were interviewed and two other persons were summoned to render a statement. Official Letter Nº 9700-2004-004 signed by the Police Chief of the National Division against Terrorism was sent to the Director of the National Office of Foreign Affairs, requesting police pictures and Photostats of ID cards and all ten fingerprints of two persons. Official Letter Nº 9700-035-3815 issued by the Microanalysis Department was received in the National Division against Terrorism of the Scientific, Criminal and Forensic Investigations Division; such official letter provided a response to the request of reactivation of any hidden track and concluded that: "In the surface of the piece under study, there is no latent fingerprint". The National Division against Terrorism of the Scientific, Criminal and Forensic Investigations Division received a technical report related to all the technical proceedings conducted, as a result of the technical investigations initiated at the scene of the fact, located in Avenue Los Pinos de la Alta Florida, place were the DM-51 bivalent hand grenade exploded, at the premises of Globovisión television station.

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200. The Court notes that the items of evidence tendered coincide in that a grenade exploded in the parking area of Globovisión, that it damaged some of the vehicles that were parked in the site of loss and that it also damaged the walls surrounding the area [FN177]. Furthermore, the parties agree in that several proceedings were conducted on the site of loss and that no person was injured.

[FN177] Cf. video (appendix 3 to the application); request for justification of June 17, 2003 presented before the 20º Municipal Court of the Judicial District of Caracas Metropolitan Area, containing the statement of José Inciarte (records of evidence, volume IV, page 915) and brief of October 26, 2004 filed with the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749).

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201. The Commission alleged that on July 17, 2002 a tear-gas canister was thrown at the headquarters of Globovisión and that it activated in the parking of the television station. There were no injured people or material damage.

202. Taking into account the evidence on record and the statements made by the parties, the Court consider as proven that a tear-gas canister was thrown by unidentified people in the circumstances previously mentioned [FN178]. Even though this fact was reported, approximately, two years after the incident [FN179], there is no evidence that an investigation has been conducted (infra para. 302, 318).

[FN178] According to the statements, the people that were at that moment at the headquarters of Globovisión, Claudia Rojas Zea and José Natera, agreed on the fact that such incident did in fact occur. Cf. Request for justification of June 17, 2003 presented before the 20º Municipal Court of the Judicial District of Caracas Metropolitan Area, containing the statements of Claudia Rojas Zea and José Natera (Record of evidence, volume IV, p. 907-908).
[FN179] Cf. brief of October 26, 2004 forwarded to the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749).

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203. The Commission pointed out that on September 4, 2002 Mrs. Aymara Lorenzo and Mr. Carlos Arroyo and Félix Padilla were verbally attacked, that their equipment was stolen while they were covering a demonstration and the police officer, who was on site, did not intervene to help them [FN180].

[FN180] The Commission alleged in the application that " On September 4, 2002, while reporter Aymara Lorenzo, cameraman Carlos Arroyo, and their assistant Félix Padilla were covering a demonstration, some of the protesters shouted at them and tried to take away their reporting equipment. One woman, identified in the video, stole Lorenzo's microphone and headphones; the journalist then approached one of the Military Police officers who were there, told him what was happening, explaining that they "were surrounded," and requesting protection for the entire Globovisión team; the officer did not, however, intervene".

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204. The State mentioned that the complaint for alleged verbal attack was lodged six months after the incident and that neither of the state agents had participated in such facts. The State alleged that the type or intensity of the injuries allegedly suffered by Mr. Carlos José Arroyo Flores could not be determined, given the fact that at that moment, he did not go to a health center for a check-up. Furthermore, the State informed that on September 2007, the 50º Public Prosecutor Office conducted an interview with Mr. Arroyo Flores and Mrs. Lorenzo Ferrigni. In such regard, this Tribunal notes that the State has not furnished evidence to prove that such procedures for taking evidence have been followed. Besides, the Court notes an unwarranted procedural delay on the part of the Attorney General's Office given the fact that the first proceeding was carried out more than four years after the opening of the investigation.

205. The Court notes that, apart from the statements rendered by the alleged victims [FN181] and a video edited and broadcasted by Globovisión itself, [FN182] no evidence was furnished in order to prove that the authorities failed to act and protect the employees of Globovisión. On the contrary and though not further evidence has been tendered in relation to the circumstances in which the incident occurred, it has been confirmed that members of the military police let them, at least, pass the security perimeter. [FN183] Hence, it has not been proven that the authorities stopped protecting the alleged victims. Nevertheless, it is possible to conclude that Mrs. Aymara Lorenzo and Mr. Carlos Arroyo and Félix Padilla were prevented from doing their jobs on such occasion.

[FN181] Cf. Request for justification of June 17, 2003, filed with the 20º Municipal Court of Caracas Metropolitan Area containing the declaration of Felix Padilla Geromes, Carlos Arroyos and Aymara Anahí Lorenzo Ferrigni (records of evidence, volume IV, page 898, 911 and 909-910).

[FN182] The video shows several individuals and a voice, it seems the voice of the reporter of Globovisión, saying "the people you see in the screen were […] who grabbed and took away the microphone and now is insulting my assistant" and then, it shows people struggling with the cameraman. Next, the video shows people arguing. Immediately after that, there appears in the screen, the reporter of Globovisión next to officers of the police, wearing a military green uniform and a ribbon with the initials "MP", to whom she says "I would like protection for us since they are attacking us, Commander Martínez". At that moment, a person approaches the reporter, wearing a while shirt, and starts talking to the reporter but she continues saying "they are attacking us, harassing us, we would like protection from the officers of the Military Police, the news team of Globovisión, as you can see we are surrounded, they have tried to hit me twice, they took away the headphone". After this scene, the video shows for a minute, people struggling

with an unidentified cameraman, whose camera is knocked over and there are people kicking other people. Cf. Video (appendix 3 to the application).
[FN183] The statements of Mrs. Aymara Lorenzo coincides with the foregoing, but she added that "after several requests, the officer leading the troop, allowed us passing the security perimeter on the condition that we abandoned the place [and] the Military Police did not intervene against our attackers, who even started throwing stones to us." Cf. Request for justification of June 17, 2003, filed with the 20º Municipal Court of Caracas Metropolitan Area containing the declaration of Felix Padilla Geromes, Carlos Arroyos and Aymara Anahí Lorenzo Ferrigni (records of evidence, volume IV, page 898), 911 and 909-910).

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206. The Commission alleged in the application that on September 11, 2002 reporter Ana Karina Villalba, cameraman Alí Vargas and assistant Anthony Infantino were prevented from covering a story when a woman threatened them and hit the microphone of Mrs. Villalba, though a police officer, who was at the site, held the woman back [FN184]. The State mentioned that the complaint related to this fact was lodged six months after the incident and that physical and verbal attacks committed against Ana Karina Villalba were reported therein. The State also pointed out that there are inconsistencies between the facts established in the application, the facts narrated by Mrs. Villalba and the facts verified by the Attorney General's Office.

[FN184] The Commission alleged in the application that "On September 11, 2002, reporter Ana Karina Villalba, cameraman Alí Vargas, and assistant Anthony Infantino were on the Llaguno Bridge, in the city of Caracas, trying to cover a gathering to commemorate the events of April 11, 2002. As Ana Karina Villalba approached one of the people there to conduct an interview, a woman with a wooden stick dealt a heavy blow to the microphone she was holding, shouted at the interviewee to demand that he "give no statement to them," and threatened the young man who was about to be interviewed with the same stick. Although a police officer who was on site stopped the woman, she returned when she realized the Globovisión team was still in the area. "Are you going to carry on filming?" asked the woman, threatening to hit Ana Karina Villalba in the face with her stick. The police stopped her again and the reporter had to cover the story as she walked away from the site".
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207. In the statement rendered during the public hearing before the Court, Mrs. Villalba declared on such occasion "a woman hit her with a stick […], beat her, and chase her with a stick and that […] anyone who tried to approach us to give a statement, was also attacked". And then, at the end of such incident, a police officer approached her and told her "you'd better leave, since we cannot guarantee your security" and she expressed they had to withdraw from the place. Furthermore, in response to questions made by the State, Mrs. Villalba declared that she was beaten in the back on that occasion and that the woman who attacked her "hit her with a stick several times". Moreover, she mentioned that she did not undergo a medical examination since the injury was not serious enough. In addition, she expressed that in the place of the events, there were "officers of the "National Guard […], military officers and […] officers of the Metropolitan

and […] Caracas Police or officers of the Municipality of Libertador". In two statements presented by the representatives, Ana Karina Villalba briefly narrated this same fact [FN185].

[FN185] Cf. statement of Ana Karina Villalba (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, page 3076) and request for justification of June 17, 2003 presented before the 20º Municipal Court of the Judicial District of Caracas Metropolitan Area containing the statement of Ana Karina Villalba (Records of evidence, volume IV, p. 912)

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208. The video of the facts provided by the Commission shows that a woman with a stick prevented Mrs. Villalba from conducting an interview; then, it is possible to hear some kind of blow onto the microphone and that a police officer escorted Mrs. Villalba outside the place while many of the people were shouting at the alleged victims, telling them to leave and were separated by the police officer [FN186].

[FN186] Cf. video (appendix 3 to the application)

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209. The Court notes that the complaint was lodged six months after the incidents, for alleged physical attack committed against Mrs. Villalba. Even though the State did not furnished evidence of the proceedings conducted, it mentioned that several testimonies were obtained and that on May 26, 2008 the Public Prosecutor requested the Department of Audiovisual Analysis and Spectography of the Scientific, Criminal and Forensic Investigation Division to conduct a matching and technical coherence examination of the video furnished by the representatives of Globovisión. Besides, the Court notes an unwarranted procedural delay on the part of the Attorney General's Office given the fact that the first proceeding was carried out more than four years after the opening of the investigation.

210. As from the analysis of the evidence available, the Court considers as proven that an unidentified woman prevented Mrs. Villalba from interviewing another person in Llaguno Bridge, though there is no record that she was beaten. Besides, the police who was looking after the news team prevented the reporter from being attacked. There is no evidence proving that the integrity of Mrs. Villalba was damaged.

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211. The Commission pointed out that on September 21, 2002 reporter Rossana Rodríguez Gudiño, cameraman Felipe Lupo Durán and assistant Wilmer Escalona Arnal were surrounded by a group of individuals who threatened them and damaged their vehicle while forcing them to abandon it. The vehicle was stolen and later on, returned [FN187] regarding this fact, the representatives pointed out that the stolen equipment included a camera, microphones, a tripod and a radio communications apparatus and that no police officer showed up at the scene and prevented the incidents from happening. The State pointed out that the complaint regarding this

fact was lodged five months and sixteen days after the incident, but the investigation was conducted ex officio for alleged damage caused to the vehicle of Globovisión.

[FN187] The Commission pointed out in the application that "On September 21, 2002, when reporter Rossana Rodríguez Gudiño, 47 cameraman Felipe Lugo Durán, and assistant Wilmer Escalona Arnal were in a Globovisión vehicle on their way to cover a story in central Caracas, the vehicle was surrounded by a group of individuals armed with bottles, one of whom also had a firearm. They struck the vehicle, broke its windows, and forced the Globovisión employees to get out and surrender their equipment. They then took the car to a nearby location before returning it, now damaged, to the media workers; the reporters were then able to leave, without having covered the story, thanks to the intervention of a ruling party official The assailants kept a videotape and some of the equipment they had seized, and they threatened the reporters that if they didn't leave, "they would be burned.

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212. Regarding these facts, Mr. Felipe Lugo Durán further declared that the attackers took possession of the video tape that was in the camera, a radio apparatus and the battery of the camera. Similarly, he referred to Mr. Wilmer Escalona Arnal in his affidavits as well as in other testimonies [FN188].

[FN188] Cf. Request for justification of June 17, 2003 presented on before the 20º Municipal Court of the Judicial District of Caracas Metropolitan Area, containing the statements of Felipe Antonio Lugo Durán, Wilmer Escalona Arnal (records of evidence, volume IV, pages 893 and 903); Affidavit rendered by Wilmer Escalona Arnal on April 15, 2008 (records of evidence, volume XXXII, pages 8790-8793) and Statement of Wilmer Escalona Arnal (records of evidence, volume X, appendix 50 to the brief containing pleading, motions and evidence)

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213. The State informed that even though the complaint was filed more than five months after the incident, the investigation would have been opened, ex officio, on the same day of the facts. On September 21, 2002, officials appointed to the DISIP visited the premises of Globovisión, in order to obtain information about the facts and took the statement of Mrs. Rossana Rodríguez. The State has not informed on the proceedings carried out after such date. In such regard, the Court notes an unwarranted procedural delay on the part of the Attorney General's Office of more than four and a half years.

214. Therefore, it deems that the evidence on record is not enough to consider this fact as proven, except for the damage to certain assets. Nevertheless, the Court notes that the State did not justify the reasons why there was not procedural activity in the investigation for four and a half years.

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215. The Commission alleged that on November 18, 2002, at around midday, unidentified individuals threw a grenade at Globovisión's headquarters. The explosion caused a fire in the parking lot and entrance to the station, damaging the building and several vehicles. The representatives pointed out that the object thrown was a fragmentation grenade; that in order to put out the fire, the intervention of the fire brigade of Caracas was needed and that neither of the employees of the television station was injured; though the employees would have had "the typical shock that every person who is a victim of a terrorist attack suffers from". Regarding this fact, there is no evidence proving that an investigation has been conducted (infra para. 302 and 318), though from the arguments put forward by the representatives, it can be inferred that investigative proceedings were carried out between November 19, 2002 and December 14, 2005 such as interviews, technical reports, records related to the investigations and transcripts [FN189].

[FN189] Cf., charter of complaints filed before the Attorney General's Office, prepared by the representatives (records of evidence, volume XIV, appendix 69 to the brief of pleadings, motions and evidence, page 4021).

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216. The Court notes that the evidence furnished suggests that this incident, in effect, took place [FN190], that several vehicles were damaged, as well as the surface of the building of Globovisión. There is no evidence neither showing damage to the physical integrity of the people that were in there or proving that a state agent had participated of the facts.

[FN190] The camera shows a charred vehicle and another two vehicles in combustion with a man trying to put out the fire with a fire extinguisher. The firemen also appear working in the site in order to control the fire. The video also shows another half- charred vehicle, which fire was already extinguished There are also two vehicles that are burned and surrounded by yellow restraining tapes. Cf. video (appendix 3 to the application); request for justification of June 17, 2003 presented before the 20º Municipal Court of the Judicial District of Caracas Metropolitan Area, containing the statement of José Inciarte (records of evidence, volume IV, page 915) and brief of October 26, 2004 filed with the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749).

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217. The Commission mentioned that on December 3, 2002, reporter Aymara Lorenzo, cameraman Richard López and camera assistant Félix Padilla were covering a little protest when the National Guard fired baton rounds at the news team after it had succeeded in dispersing the demonstrators [FN191]. The representatives mentioned that when a very small number of demonstrators were there, a group of the National Guard started to clear the area using a completely disproportionate level of violence, throwing tear-gas canisters and pellets and that, when there were just a few reporters of Globovisión and of other television station, they

continued shooting, creating a situation of evident attack and harassment and even, injuring some of the workers from the media.

[FN191] The Commission pointed out in the application that "On December 3, 2002, reporter Aymara Lorenzo, cameraman Richard López, and camera assistant Félix Padilla were covering a small demonstration that had started in connection with a strike called by the Democratic Coordination opposition umbrella group, the Venezuelan Workers' Confederation, and the Federation of Chambers of Commerce, protesting the intervention of the Metropolitan Police and the militarization of the country's main cities. When the journalist approached a person to ask some questions, the National Guard fired baton rounds at the news team after it had succeeded in dispersing the demonstrators.

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218. From the video furnished as evidence by the Commission, it is possible to observe that there was a protest and at some moment, reporters from Globovisión and from other mass media tried to interview members of the police, who declined to make statements. Furthermore, it is possible to hear something like gunshots fired into the air by officers of the National Guard while the reporters were moving away and it can also be seen a security officer hiting one of the civilian that was on the site with a microphone and wearing a bullet-proof vest [FN192]. It is impossible to tell from the video whether such person was one of the alleged victims. Mr. Félix Padilla [FN193], Mr. Richard López [FN194] and Mrs. Aymara Lorenzo agreed with the arguments put forward by the representatives [FN195]. These facts were reported by the alleged victims before the Venezuelan authorities [FN196]. The representatives mentioned that several investigative proceedings were conducted between January 24, 2003 and May 4, 2005 by the 50º Plenipotentiary Public Prosecutor Office [FN197]. The State did not inform any proceeding carried out as of the complaint.

[FN192] Cf. video (appendix 3 to the application)

[FN193] Cf. Affidavit rendered by Aymara Lorenzo on April 8, 2008 (records of evidence, volume XXXII, pages 8519-8522) and Request for justification of June 17, 2003 presented before the 20º Municipal Court of the Judicial District of Caracas Metropolitan Area, containing the statements of Félix Padilla Geromes and Aymara Anahí Lorenzo Ferrigni (records of evidence, volume IV, pages 898-901 and 909-910).

[FN194] Cf. Affidavit rendered by Richard López on April 15, 2008 (records of evidence, volume XXXIII, pages 8795-8799) and statement of Richard López Valle (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, page 3082)

[FN195] Cf. Request for justification of June 17, 2003, filed with the 20º Municipal Court of Caracas Metropolitan Area containing the declaration of Felix Padilla Geromes and Aymara Anahí Lorenzo Ferrigni (records of evidence, volume IV, and page 898 -901 and 909-910).

[FN196] Cf. complaint lodge with the 2º Public Prosecutor Office of the Attorney General's Office of the Judicial District of Caracas Metropolitan Area on March 10, 2003 (records of evidence, volume IV, appendix 8 to the application, pages 965 - 975) and brief of October 26, 2004 presented to the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749).

[FN197] Cf., charter of complaints filed before the Attorney General's Office, prepared by the representatives (records of evidence, volume XIV, appendix 69 to the brief of pleadings, motions and evidence, page 4012).
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219. The Court notes that there it has not been proven that an officer had directly attacked the alleged victims or that he treated them using force, specially tear-gas canisters or pellets. Also, it was not found that the shots of the video have been directed to any of the alleged victims.

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220. The Commission alleged that on December 10, 2002 several groups of people organized protests at the entrance of some media, including the central building of the television station Globovisión in Caracas; on such occasion, there were people shouting insults against the television station and its employees for hours. The representatives mentioned that the demonstrators hit and scratched the walls and doors of the television station, preventing the employees from going in and out of the building until the early morning; on such incident, there were supporters of the government and public servants.

221. The Court notes that in the video furnished by the Commission, which contains scenes of the facts, it is possible to observe an unidentified group of people gathered together, many of them are shouting and carrying objects that made noise. The video does not show any physical attack commited against employees of Globovisión or any act damaging its premises. [FN198] These facts were reported before the Venezuelan authorities three months after they occurred [FN199]; nevertheless, there is no evidence suggesting that an investigation has been conducted (infra para. 302 and 318).

[FN198] Cf. video (appendix 3 to the application)
[FN199] Cf. complaint lodge with the 2º Public Prosecutor Office of the Attorney General's Office of the Judicial District of Caracas Metropolitan Area on March 10, 2003 (records of evidence, volume IV, appendix 8 to the application, pages 965 - 975) and brief of October 26, 2004 presented to the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749).
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222. The Court deems it is not possible to conclude that said protest has been violent, under the terms expressed by the representatives and that, even though some of the expressions used may be interpreted as verbal insults, it has not been proven that the protests were aimed at damaging the physical integrity or property of the employees. It does not spring from the existing evidence that State authorities had participated in those incidents.

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223. The Commission argued that on January 3, 2003 reporter Carla María Angola and her news team were insulted by individuals and that some kind of liquid, identified by Mrs. Angola

as urine, was thrown at her [FN200]. The State mentioned that the complaint for verbal attacks committed against Carla María Angola Rodríguez was lodged three months alter the incident.

[FN200] The Commission alleged in the application that "On January 3, 2003, while reporter Carla María Angola was covering a march, a group of individuals began to shout insults at the news team – "coup plotters," "liars" – and made obscene gestures at the camera. A container of liquid, which she identified as urine, was thrown at the journalist".

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224. The Court notes that from the video furnished by the Commission, it is possible to see a group of individuals organizing a protest, shouting with flags and making obscene gestures at the camera of Globovisión, while the reporter was interviewing several people. Some of the people were shouting "go away" and "liars", "golpistas", "unhappy", among others, at the microphone. The reporter emphasized the presence of the Metropolitan police at an approximate distance of 25 meters from the place where the demonstration was being organized and then, she said that a liquid was thrown at her [FN201]. In the statements, Mrs. Angola ratified the facts already mentioned [FN202], which were reported before the Public Prosecutor Offices of Caracas. [FN203]

[FN201] Cf. video (appendix 3 to the application)
[FN202] Cf. Affidavit rendered by Carla Maria Angola Rodríguez on April 15, 2008 (records of evidence, volume XXXIII, pages 8774-8778) and Request for justification of June 17, 2003 presented before the 20º Municipal Court of the Judicial District of Caracas Metropolitan Area, containing the statements of Carla María Angola Rodríguez (records of evidence, volume IV, page 914).
[FN203] Cf. complaint lodge with the 2º Public Prosecutor Office of the Attorney General's Office of the Judicial District of Caracas Metropolitan Area on March 10, 2003 (records of evidence, volume IV, appendix 8 to the application, pages 965 - 975) and brief of October 26, 2004 presented to the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749).

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225. The Court notes that the complaint was lodged more than two months after the incident, for alleged verbal attacks against Mrs. Angola. The State informed that on September 20, 2007 Mrs. Angola was interviewed, though it did not prove whether such proceeding was carried out. Besides, the Court notes procedural inactivity on the part of the Attorney General's Office which has not been justified by the State, given the fact that the first proceeding was carried out more than four years after the opening of the investigation.

226. The Court considers as proven the fact that unidentified private individuals prevented Mrs. Carla Angola from doing her job on that occasion. There is no other evidence that corroborates the police presence at the scene of the incidents or that, if they happened to be there, they had not protected the alleged victim, knowing that they could.

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227. The Commission argued that on August 9, 2003 a group of demonstrators stayed at the entrance of Globovisión's headquarters for several hours, shouting insults at the station and preventing the employees from entering or leaving [FN204]. The representatives mentioned that the premises of Globovisión were violently taken and that the walls and doors of the television station were hit and scratched. The State made no reference to this fact in particular.

[FN204] On August 9, 2003, a group of protesters gathered at the entrance to Globovisión's headquarters for the space of several hours, shouting slogans at the station and preventing workers from entering or leaving.

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228. The representatives produced the statements of Claudia Rojas and José Natera, alleged victims of the case, as evidence of this incident. Both of them declared, without specifying date or circumstances, that "violent supporters of the ruling party" on one occasion, gathered at the headquarters of the television station to organize a demonstration outside the premises. Both testimonies coincide in expressing the tension that they and other workers of the television station and even some of their relatives, felt as a consequence of those facts [FN205]. In addition, the Commission tendered as evidence for this fact the complaint lodged with the 68° Public Prosecutor Office of Caracas Metropolitan Area [FN206]. However, there is no evidence proving that an investigation has been conducted (infra para. 302 and 318).

[FN205] Cf. statement rendered by Claudia Rojas Zea and José Rafael Natera Rodríguez (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and arguments, page 3040 and 3053).
[FN206] Cf. brief of October 26, 2004 forwarded to the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749).

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229. The Court considers as proven that unidentified private individuals organized a demonstration outside the premises of the television station on that date, in view of the fact that the testimonies coincide with each other and the State has not disputed the alleged fact.

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230. The Commission alleged that on December 3, 2003, Mr. Oscar Núñez and Ángel Millán were beaten and threatened with firearms, while they were covering riots that had broken up in the center of Caracas, when their camera was snatched. The Commission further alleged that, despite the fact that the Nacional Guard did not intervene, a political leader intervened in order to prevent the alleged victims from receiving more blows and threats [FN207]. The representatives argued that the attackers were supporters of the Government. The State pointed out that the complaint was lodged more than ten months after the incident; that there was no participation of state agents in the narration of the facts and that it was impossible to determine the type or

intensity of the injury allegedly inflicted on those persons, since after the incidents, they did not go to any health center for a check-up.

[FN207] The Commission pointed out in the application that "On December 3, 2003, a Globovisión news team comprising reporter Beatriz Adrián, Oscar Núñez, and Ángel Millán was attempting to cover rioting that had broken out in central Caracas. The rioters approached the cameraman and his assistant, who was on a motorcycle, and began to shout at them: "Go away, imbeciles." Before leaving the news team attempted to conduct an interview, whereupon some individuals, riding a motorcycle, pushed the cameraman and forced him to hand over his camera. The cameraman surrendered the camera and his assailants sped off on the motorcycle. The Globovisión reporter and cameraman followed their assailants and sought assistance from a group of National Guard members who were in the area. However, when they caught up with the assailants who had taken the Globovisión camera, a group of individuals attacked the Globovisión reporter and camera, threatened them with firearms, took their motorcycle, radio, and gas masks, without the National Guard intervening. At that moment the political leader Lina Ron arrived on the scene and intervened to prevent the Globovisión team from receiving further blows and threats".

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231. This Tribunal notes that the complaint for physical and verbal attacks treats and robbery was lodged more than nine months after the incident [FN208]. The State informed on several procedures for taking evidence that it would have been conducted; however, it did not tender any item of evidence of nor informed on the proceedings that would have led to the conclusion of the investigations. Therefore, the Court notes an unwarranted procedural delay, since the first proceeding was carried out more than four years after the opening of the investigation (infra para. *).

[FN208] Cf. brief of October 26, 2004 forwarded to the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749).

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232. In the body of evidence, there is the affidavit rendered by Beatriz Adrián [FN209] that coincides with the version presented by the Commission and the statements of Mr. Oscar Nuñez, alleged victim, in which she declared- without providing specific dates or circumstances- that on one occasion, she was subjected to a beating by supporters of the government" [FN210]. No other item of evidence has been furnished to support the alleged facts.

[FN209] Cf. affidavit rendered by Beatriz Adrián Garcia on April 8, 2008 (records of evidence, volume XXXIII, pages 8508-8513).

[FN210] Cf. Affidavit rendered by Oscar José Nuñez Fuentes on April 15, 2008 (records of evidence, volume XXXIII, pages 8785-8788) and statement of Oscar Nuñez (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, page 3043)

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233. Hence, this Tribunal considers that there is no sufficient evidence to conclude that the alleged victims were attacked by individuals or that those individuals prevented them from performing their journalistic duties on that occasion. Moreover, the evidence tendered is not enough to consider as proven the fact that the National Guard did not intervene, though it could, in order to protect the alleged victims in such incident. Consequently, it has not been proven that the personal integrity of the alleged victims has been violated or the exercise of their profession affected.

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234. The Commission alleged that on December 3, 2003 a group of individuals threw bottles at the news team of Globovisión, composed of Ademar Dona, José Umbría and reporter Martha Palma Troconis, who were covering a demonstration of employees of the Venezuelan Social Security Institute; that they tried to hit the cameraman and his assistant, who were insulted. The news team of Globovisión withdrew without finishing the coverage of the story [FN211]. The State pointed out that the complaint for these incidents was lodged ten months and twenty-three days after the alleged verbal attacks.

[FN211] On December 3, 2003, a Globovisión news team comprising Ademar Dona, José Umbría, and reporter Martha Palma Troconis were covering a demonstration by employees of the Venezuelan Social Security Institute. A group of people were in the area, engaged in an argument; on Cf.ing the Globovisión team, they began to throw bottles at them. Some insulted the cameraman and his assistant, and attempted to hit them. The Globovisión workers withdrew without being able to cover the story".

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235. This incident was reported before the 68º Public Prosecutor Office of Caracas Metropolitan Area [FN212], almost eleven months after it occured and the State informed that on October 10, 2007, the Public Prosecutor Office in charge of the case, ordered the appearance in the proceedings of Mrs. Palma Troconis and Mr. Umbría so as to render a testimony about the investigated facts. On October 18, 2007, Mr. Ademar David Dona López was interviewed. As to the investigation, the Court notes an unwarranted procedural delay, since the first proceeding was carried out more than three years after the opening of the investigation (infra para. *).

[FN212] Cf. brief of October 26, 2004 forwarded to the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749).

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236. Mr. Dona López [FN213] and Mrs. Palma Troconis [FN214] offered to render a statement in this regard; however, no sufficient evidence has been tendered to consider this fact proven.

[FN213] Cf. statement rendered by Ademar Dona (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and arguments, page 3080).
[FN214] Cf. statement rendered by Martha Isabel Palma Troconis (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and arguments, page 3056).

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237. The Commission alleged that on January 18, 2004, while the cameraman Joshua Torres and his assistant, Zullivan Peña, were recording an attack, several people hit and damaged the vehicle in which they were, with pipes and stones. The vehicle was even shot. The alleged victims managed to pull over far from the area where the attackers were, under the protection of the Metropolitan Police. [FN215]

[FN215] The Commission argued in the application that "On January 18, 2004, a Globovisión news team comprising cameraman Joshua Torres and camera assistant Zullivan Peña were in a station-owned vehicle on Avenida Urdaneta in central Caracas, on their way to Plaza Bolívar to cover a rally of the Movement toward Socialism political party. The cameraman began to film an attack on a passer-by and, when the individual in question noticed, he and other people began to beat the Globovisión vehicle with pipes and stones. The Globovisión workers heard gun shots, with which one of the vehicle's tires deflated and the vehicle's rear right-hand mudguard suffered an impact. They also broke the passenger-side window and dented the roof and driver's door. The Globovisión team managed to stop far away from where their assailants were, under the protection of the Metropolitan Police.
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238. Regarding this fact, the Commission only tendered as evidence a brief submitted to the 68º Public Prosecutor Office of Caracas Metropolitan Area [FN216]. However, there is no evidence proving that an investigation has been conducted (infra para. 302 and 318).

[FN216] Cf. brief of October 26, 2004 forwarded to the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749).
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239. However, the State made no reference to this incident; therefore, it is possible to consider it as a true, non-disputed fact and deem that such attack by private individuals constituted a way of preventing Mr. Joshua Torres and Zullivan Peña from doing their jobs. Furthermore, the Court notes that it spring from the same narration of facts that the police helped the alleged victims.

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240. The Commission alleged that on February 19, 2004, reporter Jesús Rivero Bertorelli and Mr. Efraín Henríquez and Carlos Tovar, were insulted and received death threats. In order to get out of the place where they were, they requested protection to a group of the National Guard,

who initially refused to escort them but finally agreed to their request and accompanied them to their vehicle [FN217]. The State only mentioned that, as a consequence of the complaint lodged [FN218], several investigations have been conducted and that on March 16, 2006 it was ordered the discontinuance without prejudice of the case [FN219], but it has not furnished a copy of such complaint; therefore it is impossible for the Court to verify whether the State has conducted an investigation with due diligence.

[FN217] The Commission alleged in the application that, "On February 19, 2004, a Globovisión news team comprising reporter Jesús Rivero Bertorelli, Efraín Henríquez, and Carlos Tovar was at the Labor Ministry, covering a demonstration during which a member of the Worker Justice Organization was injured. As the Globovisión workers were filming the attack, they began to receive insults and death threats. To escape the area, the Globovisión team sought protection from a National Guard contingent that was on site. The guards initially refused to escort them, but they finally agreed and accompanied them to their vehicle".
[FN218] Cf. brief of October 26, 2004 forwarded to the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749).
[FN219] Cf. Report Nº 40631 of June 19, 2006 (records of evidence, volume XX, appendix A7.8, page 5259) and Report Nº 55301 of August 15, 2006 (records of evidence, volume XX, appendix A7.9, page 5264).
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241. The Court notes that the evidence furnished is not ample or sufficient to consider this fact proven. Furthermore, it spring from the circumstances of the fact narrated, according to the allegations of the parties, that the alleged victims were protected by a contingent of the National Guard.

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242. The Commission alleged that on February 27, 2004, Mr. Miguel Ángel Calzadilla was injured by tear-gas canisters or pellets shot by members of the National Guard while covering a demonstration in Caracas [FN220]. The representatives alleged that in this incident, the State violated his right to humane treatment. The State argued that the complaint was filed seven months and thirty days after the incident and that it was not possible to establish the type or degree of injury allegedly inflicted on Miguel Calzadilla, since at the moment of the events, he did not go to any hospital to receive treatment.

[FN220] The Commission alleged in the brief containing the application that "a Globovisión news team comprising Mayela León and Miguel Ángel Calzadilla, was covering a Democratic Coordination march in Caracas. The National Guard installed a barricade to halt the progress of the demonstrators, and also deployed tear-gas canisters and shotgun pellets. Attacks were also directed at the media workers covering the march, and Globovisión's Miguel Ángel Calzadilla was injured."
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243. This Tribunal verifies that Mrs. Mayela León declared before the public prosecutor office that "when she arrived at that point, the National Guard deployed tear-gas bombs and shotgun pellets in order to disperse the demonstrators; a few minutes later, the camera assistant Miguel Ángel Calzadilla, was injured as a result of the pellets". [FN221] Nevertheless, the Court notes that when Mrs. León rendered the affidavit in this proceeding, she did not mention this incident [FN222].

[FN221] In her statement, she mentioned that "Miguel Calzadilla, assistant, was injured as a result of the pellets". Cf., transcript of interview with Mayela León Rodríguez of April 21, 2004 before the 21º Plenipotentiary Public Prosecutor Office (records of evidence, volume XXX, page 7530).
[FN222] Cf. affidavit rendered by Mayela León Rodríguez on April 15, 2008 (records of evidence, volume XXXIII, pages 8768-8772).

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244. On March 18, 2004 the 21º Public Prosecutor Office of the Judicial District of Caracas Metropolitan Area ordered, ex officio, the opening of the investigation [FN223]. This incident was later on reported in a brief submitted to the Attorney General's Office of the Republic [FN224]. On March 23, 2004 the Public Prosecutors' Office requested protective measures in favor of Mayela León [FN225], but on May 18 of that same year, the Court denied such request. On November 21, 2005, the 21º Public Prosecutor Office requested the discontinuance of the proceedings since Mayela León "was not injured in a negligent, malice or unpremeditated way by the officers in charge of providing protection to the dignitaries present at the so-called 'Summit of the G-15" [FN226]. On April 29, 2008, the 47º Judge in charge of the Investigating Trial Court of Caracas Metropolitan Area declared the discontinuance of the proceedings "due to insufficient elements to prove the guilt of any person" [FN227]. Considering that the State admitted that no legal-medical examination was conducted, in spite of the fact that the proceeding was initiated ex officio and that it did not justify the reasons why such examination was not conducted, this Tribunal finds that the State did not act with sufficient diligence in the development of the investigation.

[FN223] Cf. Order to open an investigation issued by the 21º Plenipotentiary Public Prosecutor Office of March 18, 2004 (records of evidence, volume XXX, page 7522).
[FN224] Cf. brief of October 26, 2004 forwarded to the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749).
[FN225] Cf. request for Protective Measures of March 22, 2004 in favor of Mayela León issued by the 21º Plenipotentiary Public Prosecutor Office. (Records of evidence, volume XXX, page 7523).
[FN226] Cf., Request for discontinuance of the 50º Plenipotentiary Public Prosecutor Office of November 21, 2005 (records of evidence, volume XXX, pages 7537-7539).
[FN227] Cf. Decision of the 47º Investigating Trial Court of Caracas Metropolitan Area of April 29, 2008 (records of evidence, Volume XXX, pages 7541-7542).

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245. The Court deems that there is no sufficient evidence to allow proving that Mr. Miguel Ángel Calzadilla was injured as a result of the incidents of that day, or that the alleged injuries were caused as a result of the acts of the officers of the National Guard.

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246. The Commission argued that on March 1, 2004, reporter Janeth Carrasquilla was hit in the head while covering a demonstration, by a tear-gas bomb, as a result of which she was injured. Moreover, it alleged that this action implied an excessive use of the force that is allowed in situations involving disorderly conducts [FN228]. The representatives, in turn, pointed out that in said incident, while a group of demonstrators were heading for the headquarters of the party "Movimiento Quinta República" of the area, a contingent of the National Guard arrived on scene to protect the headquarters of the ruling party and began throwing tear-gas canisters, some of which went towards the demonstrators and some went where the reporters were, who were pursued and attacked by those officers. In addition, the State pointed out the existence of inconsistencies between the different statements made by Janeth Carrasquilla and the testimonies of eyewitnesses of such incidents.

[FN228] The Commission alleged in the brief containing the application that "On March 1, 2004 reporter Janeth Carrasquila was with her news team on Avenida Bolívar Norte in the city of Valencia, covering a demonstration protesting a National Electoral Council decision related to the recall referendum. A contingent of the National Guard arrived on scene and began to throw tear-gas canisters, some of which also went toward where the reporters were; the journalists fled from the attack and were pursued by a group of National Guards. . During the National Guard's onslaught, Janeth Carrasquilla was hit in the head by a tear-gas canister, as a result of which she required six stitches".

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247. The Court deems that there is no evidence in the case file that allows to determine the character and intensity of the demonstration or the specific needs in the use of force regarding the alleged victim, therefore, it is not appropriate to analyze said incident under the principle of proportionality in the use of force on the part of the State, as intended by the Commission.

248. Even though it is possible to consider as proven that Mrs. Carrasquilla received an impact during said events and as a result, her head was injured, the Court notes relevant inconsistencies in her statements [FN229]. Furthermore, this Tribunal notes that eyewitnesses of the facts, in their statements rendered before the Prosecutor and the Investigations Division did not identify the object that hit her head [FN230], while another witness stated that she was hit with a "stone" [FN231]. The medical examination of Mrs. Carrasquilla failed to indicate whether the injury was the result of a tear-gas bomb [FN232]. Definitely, it has not been proven that the injury was the result of some object thrown by a member of the National Guard.

[FN229] On the one hand, the affidavit rendered before this Tribunal and the complaint lodged on those incidents with the 68º Public Prosecutor Office of Caracas Metropolitan Area coincide

with the version of the facts provided by the Commission and the representatives, Cf. brief of October 26, 2004 forwarded to the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749) and affidavit rendered by Janeth del Rosario Carrasquilla Villasmil on April 15, 2008 (records of evidence, volume XXXIII, pages 8780-8783). Nevertheless, in the first statements rendered before the 3º Public Prosecutor Office of the Judicial District of the State of Carabobo on March 8, 2004, the alleged victim stated that she could not identify the type of object that hit her, neither who hit her (Records of evidence, volume XXX, page 7718) and in the statement rendered before the Scientific, Criminal and Forensic Investigations Division, Mrs. Carrasquilla stated that she was hit by "blunt object" without specifying its type (records of evidence, volume XXX, page 7758)

[FN230] Cf. Transcript of Interview with Juan José Linares Malpica of March 8, 2004 before the 3º Public Prosecutor Office of the Judicial District of the State of Carabobo (records of evidence, volume XXX, page 7745) and statement of Mauro Acosta Padrón of May 27, 2004 before the Scientific, Criminal and Forensic Investigations Division, Sub- Department of Las Acacias (records of evidence, volume XXX, page 7761).

[FN231] Cf. transcript of interview with Darwin Domingo Rosales Devia of May 27, 2004 before the Scientific, Criminal and Forensic Investigations Division of the State Area of Carabobo. Sub-Department of Las Acacias. (records of evidence, volume XXX, page 7763)

[FN232] In said medical examination of March 19, 2004, it was determined that Janeth Carrasquilla had "a blunt force cut wound in the occipital region of the scalp caused by a blunt object, concussion" and it concluded that "the injuries deserved medical care, including 20-days recovery and inability to work, after effects to be provided", though in said expert opinion there was no specification of the type of object that could have hit on her head. Cf. medical examination performed on Janeth Carrasquilla on March 9, 2004 (records of evidence, volume XXX, page 7726).

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249. On March 4, 2004 the corresponding criminal investigation was iniated ex officio [FN233], and in said investigation, several steps were taken, like the granting of police protective measures in favor of Janeth Carrasquilla [FN234]; several interviews with people in their capacity as witnesses [FN235] and a medical examination. On June 6, 2005 the Public Prosecutor Office requested the discontinuance of the case [FN236] and on July 7, 2005 the corresponding Tribunal ordered the discontinuance, after considering that there was no evidence to determine the identity of the person criminally responsible for the commission of the illegal act, subject-matter of the inquiry [FN237].

[FN233] Cf. Order issued by the 10º Public Prosecutor Office of the Judicial Division of the State of Carabobo of March 4, 2004 (records of evidence, volume XXX, page 7715).

[FN234] Cf. transcript of interview with Janeth Carrasquilla Villasmil of May 31, 2004 before the 3º Public Prosecutor Office of the Judicial District of the State of Carabobo (records of evidence, volume XXX, page 7766).

[FN235] Cf. Transcripts of Interview with Janeth del Rosario Carrasquilla Villasmil of March 8, 2004 before the 3º Public Prosecutor Office of the Judicial District of the State of Carabobo (records of evidence, volume XXX, page 7718) and of March 9, 2004 before the Scientific, Criminal and Forensic Investigations Division, Sub-department of Las Acacias (records of

evidence, volume XXX, page 7758-7759) and of May 31, 2004 before the 3º Public prosecutor office of the Judicial District of the State of Carabobo (records of evidence, volume XXX, page 7766); Transcript of Interview with Juan José Linares Malpica of March 8, 2004 before the 3º Public Prosecutor Office of the Judicial District of the State of Carabobo (records of evidence, volume XXX, page 7745) and statement of Mauro Acosta Padrón of May 27, 2004 before the Scientific, Criminal and Forensic Investigation Division, sub-department of Las Acacias (records of evidence, volume XXX, page 7761). Transcript of Interview with Darwin Domingo Rosales Devia of May 27, 2004 before the Scientific, Criminal and Forensic Investigation Division, sub – department of Las Acacias (records of evidence, volume XXX, page 7763-7364).
[FN236] Cf. Request for discontinuance made by the 3º Public Prosecutor Office of the Judicial Division of the State of Carabobo, on June 6, 2005 (records of evidence, volume XXX, page 7709-7713).
[FN237] Cf. Decision of the Investigating Trial Court of the Judicial Criminal District of the State of Carabobo of June 7, 2005 (records of evidence, Volume XXX, pages 7768-7770).
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250. This Tribunal concludes that Mrs. Janeth Carrasquilla was truly injured in the exercise of journalism by a blunt object threw by an unidentified person. Even though it has not been proven that the violation of her physical integrity is attributable to the State, such circumstance impeded her from continue covering those events.

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251. The Commission pointed out that on March 1, 2004 reporter Johnny Ficarella received a direct tear-gas canister which was thrown by a contingent of the National Guard [FN238]. The representatives alleged that in this incident, the State violated his right to humane treatment of Mr. Ficarella. The representatives pointed out that in this event, a contingent of the Nacional Guard and the Military Police that were on site began to throw tear-gas bombs and shotgun pellets to the demonstrators and that one of the military officers threw a tea—gas canister directly to reporter Johnny Ficarella, that hit him on the right part of his body and made him fell. In the middle of the confusion, the camera assistant helped the reporter. Thanks to the protection provided by the bullet-proof vest, the injury was not severe. The State made no reference to this fact in particular.

[FN238] The Commission alleged in the application that "On March 1, 2004 a Globovisión news team comprising reporter Johnny Ficarella, cameraman John Power, and assistant Darío Pacheco were in the Caurimare district, to the east of Caracas, covering a demonstration protesting a National Electoral Council decision relating to the recall referendum, when a National Guard contingent began firing shotgun pellets and tear gas. One tear-gas canister scored a direct hit on Johnny Ficarella".
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252. This fact was reported before the 68º Public Prosecutor Office of Caracas Metropolitan Area [FN239]. Regarding this fact, there is no evidence proving that an investigation has been

conducted (infra para. 302 and 318). Furthermore, the testimony of the alleged victim was forwarded to the proceeding [FN240].

[FN239] Cf. brief of October 26, 2004 forwarded to the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749).
[FN240] Cf. affidavit rendered by Jhonny Donato Ficarella Martin on April 8, 2008 (records of evidence, volume XXXIII, pages 8502-8507).

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253. The Court has adopted the criteria by which when the State does not contest a fact and fails to conduct an investigation, the fact is considered proven due to the silence of the State; therefore, the Court considers proven that the integrity of Mr. Ficarella was damaged and that the situation prevented Mr. John Power and Dario Pacheco from continuing doing their jobs under such circumstance.

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254. The Commission alleged that on March 1, 2004 a news team composed of Carla Angola, together with the cameraman and the camera assistant, was covering a demonstration when the cameraman was surrounded by a group of people that tried to prevent him from doing his job. When the situation became violent, the camera assistant helped him escaped and the three of them ran towards the vehicle while objects were being thrown at them; the vehicle was dented [FN241]. The State mentioned that the complaint regarding those facts was lodged nine months and twenty-five days after the incident, even though on the date of such incident, the Attorney General's Office initiated, on its own motion, the corresponding investigations for the alleged attacks.

[FN241] On March 1, 2004, a news team comprising Carla Angola and her cameraman and camera assistant went to the town of Baruta to cover a clash between a group of government supporters and an opposition group. Upon arriving, the cameraman began to film and, a few minutes later, he was surrounded by a group of individuals who wanted to keep him from doing his job. As the situation became violent, the camera assistant helped him escape and the three media workers ran toward their vehicle while a hail of objects fell onto it, damaging its bodywork."

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255. Mrs. Carla María Angola, in the affidavit, [FN242] and in the statement rendered before the 21º Prosecutor confirmed the version given by the Commission and she also declared that cameraman Richard López was beaten by people who were at the place [FN243]. In the statement rendered before the Prosecutor, Mrs. Angola declared that she did not see any police officer on site, but they were "down the streets, retiring", where the Police of Baruta was located [FN244]. Mr. Elvis Elier Flores Rivas mentioned that a police officer accompanied the news team of Globovisión [FN245]. Mr. Richard López confirmed the above version [FN246].

[FN242] Cf. affidavit rendered by Mayela León Rodríguez on April 15, 2008 (records of evidence, volume XXXIII, pages 8774-8778).
[FN243] Cf., transcript of interview with Carla Maria Angola Rodríguez of April 21, 2004 before the 21º Plenipotentiary Assistant Public Prosecutor Office (records of evidence, volume XXXII, page 8448-8449).
[FN244] Cf., transcript of interview with Carla Maria Angola Rodríguez of April 21, 2004 before the 21º Plenipotentiary Assistant Public Prosecutor Office (records of evidence, volume XXXII, page 8448-8449).
[FN245] Cf., transcript of interview with Elvis Elier Flores Rivas of May 3, 2004 before the 21º Plenipotentiary Assistant Public Prosecutor Office (records of evidence, volume XXXII, page 8450).
[FN246] Cf., transcript of interview with Richard Alexis López Valle of May 3, 2004 before the 21º Plenipotentiary Assistant Public Prosecutor Office (records of evidence, volume XXXII, page 8451).

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256. On March 1, 2004 the 21º Plenipotentiary Public Prosecutor ordered, ex officio, the beginning of the investigation [FN247] and several interviews were conducted with people in their capacity as witnesses [FN248]. The State informed that on September 1, 2005 the Assistant Public Prosecutor Office ordered the discontinuance without prejudice of the case based on the fact that the forensic medical examination was not conducted on due time, the insufficient information furnished and that it was impossible to obtain items of evidence using other means [FN249]. According to the State, on November 4, 2005, such Prosecutor Office served notice of the discontinuance on Carla María Angola, Kliever Flores Rivas and Richard Alexis López Valles, as well as on the Legal Department of Globovisión. Considering that the State admitted that no legal-medical examination was conducted, in spite of the fact that the proceeding was initiated ex officio and that the State did not justify the reasons why such examination was not conducted, this Tribunal finds that the State did not act with sufficient diligence during the course of the investigation.

[FN247] Cf. Order to conduct an investigation issued by the 21º Plenipotentiary Public Prosecutor Office of March 1, 2004 (records of evidence, volume XXXII, page 8443).
[FN248] Cf. transcript of interview with Carla María Angola Rodríguez of April 21, 2004 before the 21º Plenipotentiary Assistant Public Prosecutor Office (records of evidence, volume XXXII, page 8448-8449) ; transcript of interview with Elvis Elier Flores Rivas of May 3, 2004 before the 21º Plenipotentiary Assistant Public Prosecutor Office (records of evidence, volume XXXII, pages 8450) and transcript of Interview with Richard Alexis López Valle on May 3, 2004 before the 21º Plenipotentiary Assistant Public Prosecutor Office (records of evidence, volume XXXII, pages 8451)
[FN249] Cf. Discontinuance without prejudice of the case decreed by the 21º Plenipotentiary Assistant Public Prosecutor Office on September 1, 2005 (records of evidence, volume XXXII, pages 8452-8453).

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257. The Court notes that even though the testimonies are not clear as to the presence, in that place, of a police officer that was accompanying the alleged victims, it is possible to conclude that the facts constituted a hindrance to perform the jobs of the alleged victims in a specific situation, on the part of the individuals.

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258. The Commission argued that on May 29, 2004 a news team comprised of reporter Martha Palma Troconis, cameraman Joshua Torres and his assistant, Victor Henríquez was attacked and threatened, in the neighbor of La Lucha in Caracas while they were covering the recall referendum signature verification process. Moreover, Mr. Torres was beaten in the head with a pipe and the camera was snatched from him and that the reporter was also beaten by the demonstrators, who pushed her to the ground [FN250]. The State mentioned that the complaint regarding this fact was lodged almost five months after the incidents and that it spring from the statements rendered by the witnesses that the state agents did not participate in such incidents.

[FN250] The Commission argued that on May 29, 2004 a news team comprised of reporter Martha Palma Troconis, cameraman Joshua Torres and his assistant, Victor Henríquez was attacked and threatened, in the neighbor of La Lucha in Caracas while they were covering the recall referendum signature verification process. Upon Cf.ing that a team from the station was present, one female demonstrator approached the reporter and threatened to attack her if they did not leave immediately. When the cameraman got out of the vehicle to try and film what was happening, he was struck in the head with a pipe and his camera was snatched from him. The reporter tried to stop the attack and she was also beaten, kicked, and pushed to the ground by the demonstrators. Both went to a health center for a medical check-up. The camera was recovered later".

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259. The Court notes that according to the statement given in the affidavit rendered by Mrs. Palma Troconis, she agreed with the facts mentioned by the Commission [FN251] and in a statement rendered before the Public Prosecutor Office, she mentioned that there were security members of Plan República and the Metropolitan Police on site [FN252]. Mr. Joshua Torres Ramos gave a similar version of the facts and pointed out that when the attack was over, the Metropolitan Police installed a barricade to protect them [FN253]. Likewise, other persons were also witnesses to the incidents and the attacks to which the alleged victims have been subjected [FN254]. Moreover, expert assessments were conducted on Mrs. Palma Troconis [FN255] and Mr. Torres Ramos [FN256] who ratified the existence of the injuries and their intensity.

[FN251] In the affidavit, Martha Palma Troconis mentioned that "as a result of the attack of May 29, 2004 she has suffered from anguish, fear and depression". Cf. affidavit rendered by Martha Isabel Herminia Palma Troconis on April 8, 2008 (records of evidence, volume XXXIII, pages 8490-8492).

[FN252] Cf. transcript of interview with Martha Isabel Ermina Palma Tronconis of May 30, 2004 before the 68º Public Prosecutor Office of the Judicial District of Caracas Metropolitan Area (records of evidence, volume XXX, pages 7558-7560).
[FN253] Cf. transcript of interview with Joshua Oscar Torres Ramos of May 31, 2004 before the 68º Public Prosecutor Office of the Judicial District of Caracas Metropolitan Area (records of evidence, volume XXX, pages 7564-7565).
[FN254] Cf. transcript of interview with Víctor Henríquez Parima of May 30, 2004 before the 68º Public Prosecutor Office of the Judicial District of Caracas Metropolitan Area (records of evidence, volume XXX, pages 755e) and transcript of interview with Sandra Inés Sierra Núñez of May 31, 2004 before the 68º Public Prosecutor Office of the Judicial District of Caracas Metropolitan Area (records of evidence, volume XXX, pages 7568 and 7570)
[FN255] Cf. Cf. expert report of June 9, 2004 of the National Department of Legal Medicine (records of evidence, volume XXX, page 7607)
[FN256] Cf. Cf. expert report of June 10, 2004 of the National Department of Legal Medicine (records of evidence, volume XXX, page 7618)
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260. This Tribunal notes that right before the incident, the individuals who were on the site attacked the security officers, who were unable to stop such attacks since they were outnumbered [FN257]. Other testimonies narrate the unstable situation and the conflict of that precise moment [FN258]. Besides, in this incident, the news team of Globovisión was being accompanied by a Metropolitan police officer, appointed to the television station, who would have also been beaten and tried to help the alleged victims [FN259]. A video shows a part of the described facts [FN260], though at the end of the video, a person, identified by the interviewer as Mrs. Palma Troconis, asserted that five people had attacked them and that the officers of the Metropolitan Police and the guard "could do nothing to avoid it". On the other hand Mr. Joshua Torres, in the same video, declared that he was not sure if the camera has been snatched from him.

[FN257] Cf. transcript of interview with Pedro Julio Rojas of May 31, 2004 before the 49º Public Prosecutor Office of the Judicial District of Caracas Metropolitan Area (records of evidence, volume XXX, pages 7571-7573).
[FN258] Cf. transcript of interview with Luis Eduardo Orellana of June 3, 2004 before the 68º Public Prosecutor Office of the Judicial District of Caracas Metropolitan Area (records of evidence, volume XXX, pages 7577-7578) and transcript of interview with Antonio de Jesús Vivas Quintero of July 1, 2004 before the 68º Public Prosecutor Office of the Judicial District of Caracas Metropolitan Area (records of evidence, volume XXX, pages 7580 and 7602-7603)
[FN259] Cf. transcript of interview with Germán José Piñate Arenas of June 3, 2004 before the 68º Public Prosecutor Office of the Judicial District of Caracas Metropolitan Area (records of evidence, volume XXX, pages 7575-7576).
[FN260] Cf. video (appendix 51 to the brief of pleadings, motions and evidence).
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261. On May 29, 2004 the 49º Public Prosecutor Office of Caracas Metropolitan Area decided to conduct the corresponding inquiry [FN261]. Several judicial proceedings were ordered, including interviews with the alleged victims and witnesses and the expert's opinions already

mentioned. On February 22, 2006, the 37º and 50º Public Prosecutor Offices requested the discontinuance of the case "considering the clear extinguishment of the criminal action" [FN262]. On April 6, 2007, the 47º Investigating Trial Court of Caracas Metropolitan Area declared the discontinuance of the case for slight injuries due to the extinguishment of the criminal action [FN263].

[FN261] Cf. order to open investigation of the 49º Public Prosecutor Office of the Judicial District of Caracas Metropolitan Area of May 29, 2004 (records of evidence, volume XXX, pages 7553).
[FN262] Cf. Request for discontinuance of the 37º and 50º Public Prosecutor Offices of the Judicial District of Caracas Metropolitan Area of October 12, 2004 (records of evidence, volume XXX, pages 7619-7633).
[FN263] Cf. Decision of the 11º Investigating Trial Court of Caracas Metropolitan Area of April 6, 2007 (records of evidence, Volume XXX, pages 7581-7582).

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262. The Court deems that the parties have furnished sufficient, reliable and appropriate items of evidence to determine that Mrs. Marta Palma Troconis as well as Joshua Torres were attacked by individuals under the circumstances already described, who prevented them from doing their jobs and that, at some point, the state's security agents were present at the scene. Both of them were beaten. Notwithstanding, it does not spring from the evidence tendered that State agents were negligent or that they failed to comply with their duties, given the fact that the prevailing circumstances at the time of the incidents were unstable, that the alleged victims mentioned that police officers present, in that area, could not intervene and that the news team of Globovisión was being accompanied by a police officer who has been assigned to the television station, who would have been also attacked. Based on the information provided, other people were also attacked and at a certain point, violent acts were committed against State's security officers who were present in the area as well. As a consequence, even though it has been proven that Mrs. Martha Palma Troconis and Mr. Joshua Torres were prevented from performing their jobs as a result of the attacks they suffered by private individuals; it has not been proven that such prejudice is directly attributable to the State.

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263. The Commission alleged that on May 29, 2004 in El Valle, Caracas, during the recall referendum signature verification process, the monitor representing the government tried to prevent Carla Angola and her news team of Globovisión from entering one of the voting centers; however, one of the military officers who was on duty allowed them to enter the voting center and they were able to record the images and the corresponding interviews. On the exit to the street, the news team was insulted and threatened by four unidentified people, who tried to hit the camera. Finally, the attackers hit the Globovisión's vehicle, denting the bodywork [FN264].

[FN264] The Commission alleged in the application that "On May 29, 2004, Globovisión news led by reporter Carla Angola went to the El Valle area of Caracas to cover the recall referendum

signature verification process. At one of the three establishments they visited, the monitor representing the government tried to prevent the reporter and her team from entering; however, a member of the military who had been assigned protective duties allowed them to enter and they were thus able to film what was going on and to conduct interviews. As they emerged onto the street, the news team members were insulted and threatened by four unidentified individuals. The cameraman filmed part of the incident as the assailants tried to hit his camera. The government monitor threatened the reporter with calling more attackers, making specific reference to the "Tupamaros" group associated with the government of President Hugo Chávez. As the reporter and her team got back into the station vehicle the assailants began to kick it, denting the bodywork".

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264. Mrs. Carla María Angola, in the affidavit forwarded to the Court, confirmed the version of the facts put forward by the Commission [FN265]. This fact was reported before the 68º Public Prosecutor Office of Caracas Metropolitan Area [FN266]. Regarding this fact, there is no evidence proving that an investigation has been conducted (infra para. 302 and 318).

[FN265] Cf. affidavit rendered by Mayela León Rodríguez on April 15, 2008 (records of evidence, volume XXXIII, pages 8774-8778).

[FN266] Cf. brief of October 26, 2004 forwarded to the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749).

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265. Even though the evidence furnished is not enough, the State made no reference to this incident; therefore, it is possible to consider it is a true and non-disputed fact. This situation prevented Mrs. Carla Angola from performing her job under such circumstances.

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266. The Commission argued that on January 23, 2005 during the covering of a demonstration, a group of demonstrators damaged the vehicle of Globovisión [FN267]. The State made no reference to this fact in particular.

[FN267] The Commission argued in the application that, "On January 23, 2005, while covering a march, a Globovisión team went to Avenida Francisco de Miranda in Caracas to film from the roof of the Embassy Suites hotel. As they were working, a group of marchers approached the Globovisión vehicle and damaged its bodywork".

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267. As items of evidence, a video showing a vehicle of Globovisión stained with red paint [FN268] and a copy of the complaint submitted before the Attorney General's Office were furnished [FN269], on March 8, 2006, more than a year after the incidents. However, there is no evidence proving that an investigation has been conducted (infra para. 302 and 318). Therefore, the Court considers that such items of evidence are sufficient to consider this fact proven.

[FN268] Cf. video (appendix 31 to the application)
[FN269] Cf. copy of the complaint filed with the Attorney General's Office on March 8, 2006 (records of evidence, volume XIV, pages 4080-4140).

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268. The Commission argued that on April 11, 2005, in the vicinity of bridge Llaguno, a news team of Globovisión, led by Mayela León, came across difficulties in covering an event for the insults shouted at them by some people. The employees of Globovisión had to withdraw from the place without covering the story. The State does not mention this fact in the arguments nor does it mention any of the investigative steps it would have taken.

269. The incident was reported on March 8, 2006; though there is no record that an investigation has been conducted (infra para. 302 and 318).

270. The evidence furnished regarding this fact [FN270] suggests it is possible to consider that Mrs. Mayela León was prevented from performing her job.

[FN270] Cf. Video (appendix 34 to the application); brief of October 26, 2004 filed before the 68º Public Prosecutor Office of Caracas Metropolitan Area (records of evidence, volume V, pages 1671-1749); affidavit rendered by Mayela León Rodriguez on April 15, 2008 (records of evidence, volume XXXIII, pages 8768-8772) and copy of the complaint filed with the Attorney General's Office on March 8, 2006 (records of evidence, volume XIV, pages 4080-4140).

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271. The Commission argued that on July 11, 2005 a news team led by reporter Mayela León failed to cover a story in the vicinity of Palacio de Miraflores since they felt intimidated by insults shouted at them by the people who were there. The commission mentions that the video, in which the images of the protest were recorded, was stolen by private individuals and later on recovered and seized by the National Guard, under the protection of a security zone decree [FN271].

[FN271] The Commission alleged in the application that "On July 11, 2005, a team of journalists led by reporter Mayela León went to the Miraflores Palace to cover a protest by a group of individuals left homeless following heavy rains who were asking the President of the Republic to provide them with housing. The team did not cover the story because they felt intimidated by insults leveled at them by people who were there and by threats made against the cameraman and his assistant, followed by the removal of the video containing the images of the protest. All this took place in the vicinity of the Miraflores Palace, because of which the National Guard, covered

by a security zone degree, was able to recover and confiscate the cassette. The National Guard allowed them to enter at their own risk and later asked them to leave".

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272. This tribunal notes that the Commission tendered a video provided by the representatives in the procedure of provisional measures [FN272]. The video shows several scenes of peaceful demonstrations organized in different places. On occassions, it is possible to see people being interviewed by Globovisión and, in a newscast, Mrs. Mayela León is telling the facts described in the complaint, but there are no images of such incidents, just the account of them.

[FN272] The Commission literally quotes as evidence "Video, APPENDIX 14 of APPENDIX E of the brief of the beneficiaries' representatives of November 15, 2005, in the provisional measures proceedings (already with the Court)." There is no record of any brief submitted on that date. Nevertheless, the fact is mentioned in a brief of August 30, 2005 of the representatives and the corresponding video was forwarded. Reference to the video may be found in such brief (records of provisional measures, volume VI, pages 1756 and 2003). Cf. supra para. 106.

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273. The incident was reported on March 8, 2006; though there is no record that an investigation has been conducted (infra para. 302 and 318).

274. This Court notes that the evidence furnished [FN273] is not ample and sufficient to consider this fact proven.

[FN273] The only evidence available regarding this fact is the copy of the complaint filed with the Attorney General's Office on March 8, 2006 (records of evidence, volume XIV, pages 4080-4140).

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275. The Commission argued that on August 27, 2005 when a news team of Globovisión was covering a protest, some individuals on motorcycles threw objects, which forced them to leave and they continue covering the story from inside the vehicle on a street corner. It also alleges that in the place, there were state security agents, who were trying to solve the situation of law and order. [FN274]

[FN274] The Commission alleged in the application that "On August 27, 2005, when a Globovisión news team was covering an opposition march at the corner of Corazón de Jesús and Avenida Universidad in Caracas, clashes broke out between demonstrations and a group of government supporters during which stones and other projectiles were thrown and a series of gunshots were heard. Individuals on motorcycles threw objects, including rocks, at the Globovisión team, who were forced to leave the area and continue to cover the event from inside

their car on a street corner. Members of the security forces were on site and were attempting to resolve the public order situation".

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276. This Commission tendered a video provided by the representatives in the procedure of provisional measures [FN275]. The video shows different moments of confrontation between two groups of people who were throwing blunt objects. The, it shows individuals, according to the reporter of Globovisión, attacking a police van while they were leaving the area. At some moments, there were no police officers. At the end of the video, it is possible to see several individuals in motorcycles trying to attack the cameraman of Globovisión and throwing an object that exploded; it looked like a banger. Nevertheless, it does not seem that the object damaged the alleged victims. In the last scene, there appears that the alleged victims were reporting the events from the vehicle.

[FN275] The Commission literally quoted as evidence "Video, APPENDIX 16 of APPENDIX F to the brief presented by the beneficiaries' representatives on November 15, 2005, in the provisional measures proceedings (already with the Court)." According to the record of the case file of provisional measures, the fact mentioned and the corresponding video was forwarded by the representatives of the provisional measures in the brief of October 18, 2005 (records of provisional measures, volume VII, pages 2135 and 2296). Cf. supra para. 106.

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277. The incident was reported on March 8, 2006; though there is no record that an investigation has been conducted (infra para. 302 and 318).

278. The Court considers the evidence furnished suggests that the alleged victims would have had difficulties in covering the events mentioned based on the acts of the private individuals.

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279. From the analysis of the facts alleged, the Court concludes that the alleged violation of the right to humane treatment of the alleged victims as a result of the actions of the state security agents, in the seven incidents above mentioned (supra para. 80 to 82, 181, 195, 233, 245, 250, 253 and 262) has not been proven. Moreover, it has been verified in five of the facts proven that individuals or groups of unidentified people violated the right to humane treatment of Alfredo José Peña Isaya, Carlos Quintero, Felipe Antonio Lugo Durán, Janeth del Rosario Carrasquilla Villasmil, Jhonny Donato Ficarella Martin, Joshua Oscar Torres Ramos, Martha Isabel Herminia Palma Tronconis and Yesenia Thais Balza Bolívar and prevented them from performing their jobs. Lastly, it has been also verified in fifteen of the proven facts that unidentified people or groups of private individuals hindered Aloys Emmanuel Marín Díaz, Ana Karina Villalba, Aymara Anahí Lorenzo Ferrigni, Beatriz Alicia Adrián García, Carla María Angola Rodríguez, Carlos Arroyo, Ramón Darío Pacheco Villegas, Edgar Hernández, Efraín Antonio Henríquez Contreras, Félix José Padilla Geromes, Gabriela Margarita Perozo Cabrices, John Power, Jorge Manuel Paz Paz, José Vicente Antonetti Moreno, Mayela León Rodríguez, Richard Alexis López Valle and Zullivan René Peña Hernández from exercising their professions.

B.ii Mental and moral integrity of the alleged victims

280. The representatives requested the Court, based on the statements rendered by the alleged victims and the expert opinion of the clinical psychologist, Magdalena López de Ibáñez, to declare that the State violated the right to humane treatment, "in its psychic dimension", to the detriment of the alleged victims they represent, as a consequence of the above mentioned declarations made by high-ranking officials, as well as of "the practice and recurring commission, during […] the years 2001 to 2005, of a [set of] facts of physical violence, threats to life and to humane treatment", which would have caused a series of physical and mental disturbances to all the equipment of Globovisión and, specially, to the alleged victims.

281. The Commission did not submit allegations in this regard.

282. The State pointed out that the alleged violation of the mental integrity was not included in the application and that the alleged victims intend to create evidence in their favor, inasmuch as the declarations made by the officials cannot be considered evidence in order to prove such violation. It also expressed, regarding the expert opinion of Mrs. López de Ibáñez, that "it is unspecified, makes general conclusions and when it refers to each one of the people evaluated, it does not make a diagnosis". Likewise, the State considered that it was a defective expert's opinion, given the fact that she did not evaluate the alleged victims from the medical's point of view, she did not ordered additional studies and she used a limited methodology. The State intends, in this way, to disqualify the expert opinion's conclusion regarding the fact that the syntomatology presented by the victims who were examined, was directly associated with situations of physical attack and harassment; therefore, it requested the Court to disregard the expert's opinion in the assessment of the facts of the case at hand.

283. The Court notes that the representatives sustained its argument, inter alia, in the statements of the alleged victims, who made reference to the abridgement of their integrity as the result of several situations in which they were involved, without specifying some incident in particular. In particular, they mentioned that immediately after the attacks during the exercise of their profession, they suffered from "states of anguish, fear and depression", "stress", heart diseases, "panic attacks", "insomnia", "chronical gastritis", "claustrophobia" and "digestive problems", among other ailments. Nevertheless, this Tribunal has long held that the statements made by the alleged victims and other people with a direct interest in the case are useful as long as they provide more information on the alleged violations and their consequences, though they cannot be assessed in isolation (supra para. 103).

284. In addition to such statements, the only item of evidence furnished regarding this issue is the already mentioned expert's opinion of Mrs. Magdalena López de Ibáñez, expert witness proposed by the representatives. This expert's opinion consists in the psychological evaluation of 38 alleged victims, by means of the conduction of individual interviews, tests and questionnaires with each one of them [FN276].

[FN276] Cf. affidavit rendered by Magdalena López de Ibañez on April 8, 2008 (records of evidence, volume XXXIII, pages 8551-8567).

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285. The Court considers that an expert opinion must be supported by sufficient information or verifiable facts, based on methods and reliable principles and must be related to the facts of the case. As to the assessment of this expert's opinion, the Court finds, in the first place, that such opinion is not supported with sufficient information on the physical and mental health condition of the alleged victims. The evidence tendered regarding the ailments that the alleged victims would have suffered from is not enough and it does not specify whether such persons received any kind of medical care. The relevant issue in here is that in the expert's opinion, on many occassions, no specific reference was made to the facts of the case that would have specifically affected the health of the alleged victims and even constant reference was made to facts that do not form part of this case. Although it is useful to determine certain health problems of the alleged victims, it is insufficient to establish a specific relation between such problems and the facts of the case at hand.

286. Notwithstanding the foregoing, it has been proven that the alleged victims were subjected to intimidation and hindrances, and in some cases, attacks, threats and harassments during the exercise of their profession (supra para. 141, 161 and 279). In several statements, these persons mentioned that their personal and professional lives have been affected in different ways. Many of them agreed on pointing out that they were afraid of working in the streets [FN277] and stated that it was necessary to use bullet-proof vest and anti-gas masks in the exercise of their profession [FN278]. Even, some of the alleged victims expressed their fear for attending public places and covering certain events [FN279]. Some of the alleged victims stated that they need psychological treatment or that the relationships with their families and colleagues and friends were affected as a consequence of their professions of reporters of Globovisión [FN280]. Moreover, they mentioned the several negative consequences that the attacks, insults and threats to which they were subjected, brought to their family lives, as well as, in many cases, the specific medical problems.

[FN277] Cf. Statements rendered by Ana Karina Villalba and Gabriela Perozo at the public hearing held before the Inter-American Court on May 7, 2008; affidavit rendered by Aymara Anahí Lorenzo Ferrigni on April 8, 2008 (records of evidence, volume XXXIII, pages 8519-8522); affidavit rendered by Beatriz Alicia Adrián García on April 8, 2008 (records of evidence, volume XXXIII, pages 8508-8513); affidavit rendered by Carla María Angola Rodríguez on April 15, 2008 (records of evidence, volume XXXIII, pages 8774-8778); affidavit rendered by Carlos Javier Quintero on September 12, 2007 (records of evidence, volume XXIV, pages 6484-6485); affidavit rendered by Felipe Antonio Lugo Durán on October3, 2007 (records of evidence, volume XXIV, pages 6433-6435); statement rendered by John Power (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, pages 3041-3042); affidavit rendered by Jorge Manuel Paz Paz on August 21, 2007 (records of evidence, Volume XXIV, pages 6463-6465); statement rendered by Joshua Torres Ramos (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, page 3081); affidavit rendered by Martha Isabel Herminia Palma Troconis on April 8, 2008 (records of

evidence, volume XXXIII, pages 8490-8492); affidavit rendered by Richard López Valle on April 15, 2008 (records of evidence, volume XXXIII, pages 8795-8799).

[FN278] Cf. affidavit rendered by Aymara Anahí Lorenzo Ferrigni on April 8, 2008 (records of evidence, volume XXXIII, pages 8519-8522); affidavit rendered by Beatriz Alicia Adrián García on April 8, 2008 (records of evidence, volume XXXIII, pages 8508-8513); affidavit rendered by Carla María Angola Rodríguez on April 15, 2008 (records of evidence, volume XXXIII, pages 8774-8778); affidavit rendered by Efraín Henríquez Contreras on January 30, 2008 (records of evidence, volume XXV, page 6515); affidavit rendered by Janeth del Rosario Carrasquilla Villasmil on April 15, 2008 (records of evidence, volume XXXIII, pages 8780-8783); statement rendered by John Power (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, pages 3041-3042); affidavit rendered by Jhonny Donato Ficarella Martin on April 8, 2008 (records of evidence, volume XXXIII, pages 8502-8507); affidavit rendered by Martha Isabel Herminia Palma Troconis on April 8, 2008 (records of evidence, volume XXXIII, page 8490-8492); affidavit rendered by Mayela León Rodríguez on April 15, 2008 (records of evidence, volume XXXIII, pages 8768-8772); and statement rendered by Ramón Darío Pacheco (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, pages 3067-3068); and affidavit rendered by Oscar José Nuñez Fuentes on April 15, 2008 (records of evidence, volume XXXIII, pages 8785-8788).

[FN279] Cf. Affidavit rendered by Aloys Marin Díaz on January 30, 2008 (records of evidence, volume XXV, pages 6512-6513); affidavit rendered by Aymara Anahí Lorenzo Ferrigni on April 8, 2008 (records of evidence, volume XXXIII, pages 8519-8522); affidavit rendered by Beatriz Alicia Adrián García on April 8, 2008 (records of evidence, volume XXXIII, pages 8508-8513); affidavit rendered by Jhonny Donato Ficarella Martin on April 8, 2008 (records of evidence, volume XXXIII, pages 8502-8507); statement rendered by José Vicente Antonetti Moreno (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, page 3046); statement of Joshua Torres Ramos (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, page 3081); affidavit rendered by Martha Isabel Herminia Palma Troconis on April 8, 2008 (records of evidence, volume XXXIII, pages 8490-8492); affidavit rendered by Mayela León Rodríguez on April 15, 2008 (records of evidence, volume XXXIII, pages 8768-8772); statement rendered by Ramón Darío Pacheco (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, pages 3067-3068); and affidavit rendered by Richard López Valle on April 15, 2008 (records of evidence, volume XXXIII, pages 8795-8799).

[FN280] Cf. Affidavit rendered by Beatriz Alicia Adrián García on April 8, 2008 (records of evidence, volume XXXIII, pages 8508-8513); affidavit rendered by Carla María Angola Rodríguez on April 15, 2008 (records of evidence, volume XXXIII, pages 8774-8778); statement rendered by Carlos Arroyo (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, pages 3063-3064); statement rendered by Edgard Hernández (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, page 3055); statement rendered by José Vicente Antonetti Moreno (records of evidence, volume X, appendix 50 to the brief of pleadings, motions and evidence, page 3046); affidavit rendered by Martha Isabel Herminia Palma Troconis on April 8, 2008 (records of evidence, volume XXXIII, pages 8490-8492); affidavit rendered by Mayela León Rodríguez on April 15, 2008 (records of evidence, volume XXXIII, pages 8768-8772); and affidavit rendered by Richard López Valle on April 15, 2008 (records of evidence, volume XXXIII, pages 8795-8799).

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287. In view of the impairments in the personal and professional lives that the alleged victims declared to have suffered as a consequence of the proven facts and considering the contexts in which they occured, the Court considers that there are sufficient evidence to conclude that the State is responsible for the violation of its obligation to guarantee the right to mental and moral integrity of Aloys Emmanuel Marín Díaz, Ana Karina Villalba, Aymara Anahí Lorenzo Ferrigni, Beatriz Alicia Adrián García, Carla María Angola Rodríguez, Carlos Arroyo, Carlos Quintero, Ramón Darío Pacheco Villegas, Edgar Hernández, Efraín Antonio Henríquez Contreras, Felipe Antonio Lugo Durán, Gabriela Margarita Perozo Cabrices, Janeth del Rosario Carrasquilla Villasmil, Jhonny Donato Ficarella Martín, John Power, Jorge Manuel Paz Paz, José Vicente Antonetti Moreno, Joshua Oscar Torres Ramos, Mayela León Rodríguez, Martha Isabel Herminia Palma Troconis, Richard Alexis López Valle and Yesenia Thais Balza Bolívar.

B.iii Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Woman

288. During the public hearing, the representatives alleged that "of the facts of this case mentioned in the application, […] 80% of them were committed against female reporters of Globovisión", including Mrs. Ana Karina Villalba, Aymara Lorenzo, Beatriz Adrián, Carla Angula, Claudia Rojas, Gladys Rodríguez, Jeannette Carrasquilla, María Arenas, María Fernanda Flores, Marta Palma Trocones, Mayela León and Yesenia Balsa. They further asserted that of the 12 women, some of them were repeatedly attacked on two, three and even four occasions. They alleged that, based on the foregoing, the State is also responsible for the violation of the right to humane treatment of those persons, "in relation to Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Woman, ratified by the Venezuelan State on January 16, 1995". These arguments were repeated and supplemented by the representatives in the final written arguments, in which they also requested the Court to declare the violation of Articles 5, 13, 8 and 25 of the Convention, "in connection with Articles 1, 2 [and] 7(b) of the Inter-American Convention" previously mentioned.

289. The representatives pointed out that 13 out of the 44 alleged reporter victims, which represent 30% of the attacked people, are women and they alleged that the physical and moral attacks the reporters suffered from "mainly responded to the gender". They argued that the attacks led by private individuals and state agents against the female victims had the "characteristic of and were committed under the aggravating circumstances […] of the facts described in the application" inasmuch as the attacks were also committed on account of the gender of such people, resulting, as a consequence, in an attack specially addressed to women, recurring and tolerated by the State.

290. As has been previously mentioned (supra para. 32 to 34) under the terms of the American Convention and the Rules of Procedure of the Court, during the procedure of a contentious case before this Tribunal, the appropriate procedural moment that allows the alleged victims, their next-of-kin or representatives to fully exercise their right of locus standi in judicio is the brief of pleadings and motions. Although the representatives are able to submit their own requests and arguments in the proceedings before this Court, respecting the adversarial principle, and the

procedural principles of defense and due process, this possibility does not exempt them from presenting them at the first procedural opportunity granted to them for this purpose; that is, in their requests and arguments brief [FN281]. In spite of the fact that the representatives did not allege the violation of said Convention of Belem do Pará at the appropriate procedural opportunity, the Court shall make a decision regarding this argument.

[FN281] Cf. Case of the Pueblo Bello Massacre V. Colombia, supra note 68, para. 225.

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291. In the case of Miguel Castro Castro Prison v. Peru, the Court set the scope of Article 5 of the American Convention as to the aspects specific to violence against woman, taking into consideration as a reference of interpretation the relevant provisions of the Convention of Belem do Pará and the Convention on the Elimination of All Forms of Discrimination against Women, since these treaties supplement the international corpus juris in matter of protection of women's right to humane treatment, of which the American Convention forms part [FN282]. In this sense, the Court held that besides the protection granted by Article 5 of the American Convention, Article 7 of the Convention of Belem do Pará expressly states that the States must ensure that the state authorities and agents abstain from any action or practice of violence against women [FN283].

[FN282] Cf. Case of Miguel Castro- Castro Prison V. Perú, supra note 36, para. 276.
[FN283] Cf. Case of Miguel Castro- Castro Prison V. Perú, supra note 36, para. 292.

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292. The Court notes that the representatives based their arguments, mainly, on quantitative criteria to allege that the aggressive acts were caused "because of the sex" of the alleged victims. Whereas in the final oral arguments they alleged that "of the facts of the instant case contained in the application, 29 attacks and insults, that is, 80%, were committed against female reporters of Globovisión", in the final written arguments they alleged that of the 44 victims, 13 are women, representing in this way a 30%. In their final written arguments, the representatives emphasized two facts in particular.

293. This Tribunal notes that they refer to an incident occurring on "December 10, 2008" against Mrs. Yesenia Balza. Assuming that the date is a material error and that the referred fact is the incident that occurred on December 10, 2001 (supra para. 174 to 177), it is an alleged and non-disputed fact that Mrs. Balza was three months pregnant at that time. Nevertheless, the representatives have not established the grounds of the way in which the described fact reveals that the attack suffered by Mrs. Balza had a reason or purpose, or at least, a connotation or effect based on the sex or gender of the victim or in her condition of pregnancy.

294. Besides, the representatives alleged that some publications of pro-government newspapers referred to Mrs. Carla Angola in ways that "denigrated her as a woman […] and also incited the public to deeply offend her and rape her" The Court notes that the application only makes reference to three facts involving Mrs. Angola, namely, the incidents of January 3, 2003;

March 1, 2004 and May 29, 2004 (supra para. 223, 254 and 263) and none of them mentioned the publications put forward by the representatives. It was during the public hearing that the representatives referred to this fact, classifying it as "attacks in-context". No evidence proving such publications was tendered together with the application. Therefore, such alleged facts do not form part of the litigation of the case at hand.

295. The Court deems it is necessary to clarify that not all human right violation committed against a woman implies necessarily a violation of the provisions established in the Convention of Belem do Pará. Even though female reporters have been attacked in the facts of this case, in all the situations, they were attacked together with their male colleagues. The representatives have neither demonstrated in what way the attacks were "especially address[ed] to women" nor have they explained the reasons why women turned into a special target "[due to their] gender". What it has been demonstrated in this case is that the alleged victims had to face risky situations and on several occassions, they were physically and verbally attacked by private individuals, because of their jobs at the television station Globovisión and not because of other personal condition (supra para. 143, 150, 151 and 157 to 161). Hence, it has not been proven that the facts were based on the gender or sex of the alleged victims.

296. Furthermore, the Court considers that the representatives did not specify the reasons for and the way in which the State committed a "planned or directed" action towards the alleged female victims and they neither explained to what extent the proven facts in which they were impaired "were aggravated due to the condition of being a woman". The representatives also failed to specify which facts and in which way those facts represent attacks that "disproportionately affected women". They neither established the grounds of the allegations as to the existence of actions that, under Articles 1 and 2 of the Convention of Belem do Pará, may be conceived as "violence against woman" nor which "appropriate measures" would be that, pursuant to Article 7(b) therein, the State failed to adopt in this case "to justify or abolish laws and rules in force or to modify judicial or customary laws that support the persistence or the tolerance of violence against woman".Finally, the Court deems it is not appropriate to analyze the facts of the case at hand according to the referred provisions of the Convention of Belém do Pará.

C) Investigations into the facts

297. The Court shall refer in this section to one of the arguments put forward by the Commission and the representatives in order to hold the State responsible for the acts committed by third parties, in relation to the fact that the State did not effectively investigate the incidents nor did it identify, prosecute and punish the responsible.

298. The general obligation to guarantee the human rights recognized in the Convention, enshrined in Article 1(1) therein, when combined with the specific rights of the Convention, can be fulfilled in several ways, depending on the right that the State must guarantee and the particular circumstances of the case [FN284]. Therefore, it is appropriate to determine whether, in this case and in the context in which the incidents occurred, the general obligation to guarantee rights bound the State to comply with the obligation to effectively investigate the alleged facts, as a means to guarantee the right to freedom of expression and humane integrity

and, in turn, prevent said facts from happening again. The obligation to investigate cases of violations of certain substantive right must be protected or ensured [FN285]. The duty to investigate "becomes particularly compelling and important in view of the seriousness of the crimes committed and the nature of the rights wronged" [FN286], since the corresponding duty to investigate and punish those responsible has become jus cogens [FN287]. In cases of extrajudicial execution, forced disappearance, torture and other serious human rights violations, the Tribunal has considered that the realization of a prompt, serious, impartial and effective investigation ex officio, is a fundamental element and a condition for the protection of certain rights that are affected or annulled by these situations, such as the right to personal liberty, humane treatment and life [FN288]. It is considered in the instant case that impunity will not be eliminated unless it is accompanied by the determination of the general responsibility - of the State- and individuals- and the specific criminal responsibility of its agents or of individuals, which are complementary [FN289]. Considering the nature and seriousness of the facts in these cases, even in such situations of systematic human rights violation, the customary international and treaty law impose on State parties the obligation, among others, to conduct an investigation following the above mentioned characteristics, in accordance with the requirements of due process.Failure to conduct an investigation of these characteristics, in such situations, would entail the State's international responsibility [FN290].

[FN284] Cf. Case of Vargas Areco V. Paraguay. Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155, para. 73; Case of Valle Jaramillo et al. V. Colombia, supra note 20 para. 97; Case of García Prieto et al. V. El Salvador, supra note 48. para 98.
[FN285] Cf. Case of the Pueblo Bello Massacre V. Colombia, supra note 68, para. 142; Case of Heliodoro Portugal V. Panamá, supra note 20, para. 115; Case of Zambrano Vélez et al. V. Ecuador, supra note 32, para. 110.
[FN286] Case of La Cantuta V. Perú, supra note 72, para. 157. Cf. Case of Goiburú et al. V. Paraguay, supra note 48, para. 128.
[FN287] For example, in La Cantuta, it was determined that "the prohibition against the forced disappearance of people and the corresponding duty to investigate and punish those responsible has become jus cogens" Cf. Case of La Cantuta V. Perú, supra note 72, para. 157.
[FN288] Cf. Case of the Pueblo Bello Massacre V. Colombia, supra note 68, para. 145; Case of Heliodoro Portugal V. Panamá, supra note 20, para. 115; and Case of La Cantuta V. Perú, supra note 72, para.
[FN289] Cf. Cf. Case of Goiburú et al. V. Paraguay, supra note 48, para. 88.
[FN290] Cf. Case of Velásquez Rodríguez, supra note 33, para. 166 and 176; Case of Godínez Cruz. Merits, supra note 100, para. 175; Case of Cantoral Huamaní and García Santa Cruz V. Perú, supra note 75, para. 102; Case of Miguel Castro-Castro Prison V. Perú, supra note 36, para. 119; Case of Ximenes Lopez V. Brazil, Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, para. 147; Case of the Ituango Massacres, supra note 23, para. 297.
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299. The obligation to investigate "does not derive solely from the treaty norms of International Law binding upon the States Parties, but also from the domestic legislation that makes reference to the duty to investigate certain unlawful conducts" [FN291]. In such cases, the States Parties must establish, pursuant to the procedures and the relevant organs created by its

constitutions and norms [FN292], which unlawful conducts shall the State investigate ex officio and determine the specific way in which the criminal procedure shall be exercised at the domestic level, as well as the rules that allow aggrieved parties to report or exercise the criminal action and, if appropriate, participate during the investigation and criminal proceeding. In order to demonstrate that certain remedy, such as a criminal investigation, is appropriate, the State shall need to verify whether such domestic remedy is suitable to address an infringement of a legal right [FN293].

[FN291] Case of García Prieto et al. V. El Salvador, supra note 48. para 104.
[FN292] Cf. The Word "Laws" in Article 30 of the American Convention on Human Rights. Advisory Opinion OC-6/86 of May 9, 1986, Series A Nº6, para. 32.
[FN293] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 33, para. 64.

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300. As to the freedom of expression, the suitability of a criminal proceeding as an adequate and effective remedy to guarantee such right shall depend on the type of the action or omission that violates such right [FN294]. In effect, if the freedom of expression of a person is being impaired by an action that has violated, in turn, other rights such as the right to personal freedom, humane integrity or life, then, the criminal investigation may constitute, under such terms, a suitable remedy to protect such situation. In certain cases, a criminal proceeding may not be the means necessary to ensure proper protection for freedom of expression. Criminal proceedings should be "resorted to where fundamental legal rights must be protected from conducts which imply a serious infringement thereof and where they are proportionate to the seriousness of the damage caused" [FN295].

[FN294] The Court has considered that Article 13 may be violated under two different circumstances, depending on whether the violation results in the denial of freedom of expression or whether it results from the imposition of restrictions that are not authorized or legitimate Cf. the Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Art. 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85, supra note 59 para. 53 and 54; Case of Ricardo Canese V. Paraguay, supra note 59, para. 77.
[FN295] Case of Kimel V. Argentina, supra note 59, para. 77.

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301. The State pointed out that, under the Venezuelan legal system, there are other remedies that do not imply the need to resort to criminal proceedings, which could have been effective to guarantee the right to freedom of expression in this case. Specifically, it alleged that the writ of amparo established in the Basic Law on the Protection of Constitutional Rights and Guarantees [Ley Orgánica de Amparo sobre Derechos y Garantías Constitucionales] constitutes a prompt and effective remedy to challenge the facts alleged by the Commission and the representatives as impediments to access to the coverage of official events.

302. Of the 54 facts alleged in the application (including the 16 statements rendered by public officials), 40 facts were reported before the Attorney General's Office and in 8 of the facts, the

investigation was initiated, ex officio, by the Attorney General's Office, even though such facts were, later on, reported by the alleged victims. None of the criminal complaints lodged with the Attorney General's Office by reporters and employees of Globovisión refer to the six facts alleged in the application of the Commission as barriers to access to official sources and/or state facilities (infra para. 370 to 395). Even though the Commission alleged, in the application, the existence of five investigations (supra para. 2 and 59) from the evidence furnished by the parties and the evidence requested to facilitate adjudication of the case (supra para. 7 and 14) the Tribunal notes that of the facts and statements brought to the attention of the Attorney General's Office, 19 of them were investigated [FN296]. None of these investigated facts relates to the statements rendered by public officials [FN297]. There is no record of any investigation conducted in relation to the other 13 incidents reported [FN298].

[FN296] Facts of November 22, 2001; December 10, 2001; January 9, 11 and 20, 2002; February 18, 2002; April 3, 2002; June 13, 2002; July 9, 2002; September 4, 11 and 21, 2002; January 3, 2003; December 3, 2003 (2 incidents on that same day); February 27, 2004; March 1, 2004 (2 incidents that same day) and May 29, 2004.

[FN297] The State informed on the investigation conducted by the 34º Plenipotentiary Public Prosecutor Office in relation to a complaint filed on March 8, 2006, regarding several statements rendered by public officials between September 19, 2004 and October 12, 2005, among other incidents. This complaint was combined to a subsequent complaint. The incidents reported and the investigations do not form part of the factual framework of this case. Nevertheless, the first complaint included a statement made by the President of the Republic on October 4, 2005, which is in fact mentioned by the Commission in its application. This complaint was dismissed on October 9, 2007 by the 10º Investigating Trial Court of the Criminal District of Caracas Metropolitan Area, on the basis of Article 301 of the Code of Criminal Procedure.

[FN298] The Court was informed on other investigations related to facts that are not included within the factual framework of the application. Hence, in response to a request of evidence to facilitate adjudication of the case, the State informed on the investigation conducted for an incident that occured on February 21, 2002; the investigation related to the incidents that occurred on February 19, 2004 at the premises of Globovisión, located in Lomas del Cuño of the National Park "El Ávila"; the case file opened for facts that allegedly occurred on November 23, 2006 and the investigation related to the facts of August 27, 2007 for the crime of threats, in which Ana Karina Villalba appears as victim. Therefore, even though such investigations may be related to the alleged victims or the media Globovisión, this Tribunal shall not analyzed them.

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303. The Court notes that most of the criminal complaints lodged with the Attorney General's Office, regarding the facts of this case and those facts alleged to be in breach of Articles 5, 13 and 21 of the Convention, deal with alleged physical and verbal attacks committed against reporters and other employees of Globovisión, as well as alleged damage to assets and premises of Globovisión, many of which, as has been analyzed, constituted restrictions on the jobs of the employees of said media (supra para. 279). Furthermore, the speeches delivered by public officials were reported before the Attorney General's Office given the fact that they allegedly constituted crimes.

304. Furthermore, there is no record that the alleged victims had resorted to other proceedings or other remedies established within the domestic legal system, apart from the criminal proceedings, regarding those incidents and the statements rendered by high- ranked state authorities. Only one complaint was lodged with the Ombudsman in relation to some of the reported facts (infra para. 350 to 357).

305. Given the circumstances of these facts, considering that an important issue of this controversy is that the parties have emphasized the complaints and investigations conducted by the criminal courts and the Ombudsman, it is necessary to point out the cases in which the State had the obligation, according to its domestic law, to conduct a prompt and effective investigation ex officio in order to ensure the rights impaired in this case,

C.i The criminal action under the Venezuelan legislation and the lack of investigation into some of reported facts

306. The State mentioned that the Commission did not include in the controversy the fact that the same petitioners acknowledged that many of the facts constituted slander or insults that, pursuant to the Venezuelan legislation, are crimes prosecutable on an ex officio basis. This means that the alleged victims themselves had to bring the corresponding charges. The State also asserted that it has enabled the whole judicial mechanism in order to conduct the corresponding investigations and, if applicable, to establish the appropriate responsibilities that may correspond by law to the Attorney General's Office to try and investigate, in each of the cases.

307. The Commission alleged that once a publicly prosecutable crime has been committed, the State is obliged to pursue and promote the criminal proceedings to their final consequences and that, in such cases, this is the suitable way to clear up incidents, prosecute the guilty, and impose the applicable punishments, apart from enabling other forms of redress. The Commission held that "anyway, several years passed since the communication of the notitia criminis to the State until the State finally closed the case files for alleged inadmissibility of the complaints; that is, in real terms, the [alleged] victims were never informed of the fact that they have resorted to an allegedly wrong channel in order to be able to correct the alleged flaws".

308. The representatives asserted that the complaints were lodged with the Attorney General's Office, who as the "only body entitled to publicly prosecute crimes in Venezuela and head of the investigation, is competent to order the opening of the corresponding criminal investigation". Furthermore, they alleged that most of the cases deals with criminal facts that are publicly known and that while they were happening, they were even broadcasted by Globovisión and other media, constituting notorious facts that should have been investigated ex officio by the Attorney General's Office, even in those cases where the alleged victims failed to report them by virtue of the principle of officiality related to the monopoly exercised by the Office of Prosecutors General to prosecute criminal actions.

309. Article 285 of the Political Constitution of the Bolivarian Republic of Venezuela establishes, within the so- called "Civic Power" [Poder Ciudadano] (one of the powers of the State), the inherent powers of the Attorney General's Office, among which is the obligation to order and conduct criminal investigations, as well as "to bring, in the name of the State, criminal

charges that do not need to be brought by the request of the party, except for those cases established by law" [FN299]. The Basic Code of Criminal Procedure of Venezuela (hereinafter, "COPP") establishes that the body entitled to prosecute criminal actions is the State, by means of the Attorney General's Office, "who is bound to exercise such duty, with the legal exceptions" [FN300]. There are three kinds of crimes under Venezuelan legislation: those prosecutable on an ex officio basis [FN301], those prosecutable at the prior request of the victim [FN302] and those prosecutable only at the request of a party [FN303].

[FN299] Constitution of the Bolivarian Republic of Venezuela reprinted due to a material error in the Official Gazette Nº 5453 of March 24, 2000 (volume of evidence XXVIII, pages 6851/2).

[FN300] Basic Code of Criminal Procedure, approved on January 20, 1998, published in the Official Gazette Nº 5208, extraordinary, of January 23, 1998, with a partial amendment approved on August 25, 2000 and published in the Official Gazette Nº 37.022 of that same date and the partial amendment approved on November 12, 2001 and published in the Official Gazette Nº 5558, extraordinary, of November 14, 2001, section 11 (records of evidence, volume XLV, page 13230).

[FN301] Hence, the Venezuelan legislation establishes as a general rule the criminal prosecution on an ex officio basis of illicit facts that are classified as crimes that are publicly actionable. The Venezuelan criminal procedure system determines that an ordinary proceeding of a publicly actionable crime can be initiated on an ex officio basis by the Office of Prosecutors General, in a private suit or at the request of the victim. In this way, section 283 of the COPP provides that "the Office of Prosecutors General, upon hearing of the commission of a publicly actionable crime, shall order the judicial proceedings intended to investigate and record the commission of the crime, together with all the circumstances that may influence in its classification and the responsibility of the perpetrators and other accomplices and the guarantee of active and passive objects related to the commission of the crime". Upon the filing of the complaint, "the prosecutor of the Office of Prosecutors General shall promptly order the opening of the investigation and the judicial proceedings necessary to record the circumstances classified under section 283. By means of such order, the Office of Public Prosecutor shall conduct the investigation ex officio". Cf. Basic Code of Criminal Procedure, supra note 300, sections 24, 283, 285, 292 and 300 (records of evidence, volume XLV, pages 13230, 13245.

[FN302] This second category of crimes shall be prosecuted in accordance with the general rule related to publicly actionable crimes, though he party may desist from the action at any time during the proceeding, which shall extinguish the respective criminal action. Cf. Basic Code of Criminal Procedure, supra note 300, section 26 (records of evidence, volume XLV, page 13231).

[FN303] The Venezuelan Criminal Code specifies the crimes that can be prosecuted in a private suit, whose procedure shall be ruled by the special procedure established in the Basic Code of Criminal Procedure. Hence, certain illicit acts that were classified by the State as crimes prosecutable in a private suit, like threats, slander or libel, may not be prosecuted but as a consequence of the charges brought by the aggrieved party or its legal representatives. In those cases, it is necessary that the victim brings charges before the competent tribunal, by means of a suit, in order to proceed to trial. Nevertheless, the domestic court may obtain judicial help from the Office of Prosecutor General in order to carry out the preliminary investigation if the plaintiff requests in the suit proceedings conducive to identify the defendant, establishes his domicile or residence to prove the illicit act or to gather evidence. Cf., Criminal Code, published in the

Official Gazette Nº 5494 Extraordinary, on October 20, 2000, amended by the Partial Reform Law of the Criminal Code of March 3, 2005, published in the Official Gazette Nº 5768 Extraordinary of April 13, 2005, sections 175 in fine and 449 (records of evidence Volume XXVIII, p. 6989 and 7002) and Basic Code of Criminal Procedure, supra note 300, sections 25, 400 and 402 (records of evidence, volume XLV, pages 13231 and 13251).

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310. Hence, the ex officio action that the State may or is bound to carry out in the cases reported at the domestic level are governed by the principle of officiality regarding crimes that are publicly actionable[FN304] . Therefore, once brought to the attention of state authorities, the facts that constituted publicly actionable crimes - which could be physical attacks-, should have been investigated, promptly and effectively, by the State and the Attorney General's Office should have expedited such proceedings. Other facts alleged to be in breach of the Convention and that were reported before the Attorney General's Office classify, under the Venezuelan legislation, as offenses that can be prosecuted in a private suit or at the request of a party.

[FN304] Cf. Basic Code of Criminal Procedure, supra note 300, sections 24, 25 and 26 (records of evidence, volume XLV, pages 13230, 13231)

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311. Section 301 of the COPP (2001) governs the requests for dismissal of the complaints or suit made by the Attorney General's Office when, inter alia, privately actionable crimes would have been brought to the attention of such authority [FN305]. Regarding the cases in which the reported facts that, according to the State, constituted privately actionable crimes, the Attorney General's Office had the obligation, pursuant to the mentioned rule of the COPP, to request the Investigating Judge to dismiss the complaint. Hence, the failure of state authorities to render a timely decision that could clarify that the procedural channel chosen was not the adequate procedural solution, inasmuch as the means through which it was brought to the attention of the authority was not the means established in the domestic legal system or because the authority before which the complaint or suit was brought was not competent, did not allow or contribute to the effective determination of some facts and, where applicable, the corresponding criminal responsibilities [FN306]. The State cannot justify its total inactivity to carry out an investigation alleging that the facts were not brought to the attention of the competent authority by means of the procedural channel established in the domestic legislation, since, at least, the Attorney General's Office had the obligation to request the dismissal of the complaint if "after the opening of the investigation, the court decides that the facts of the proceedings constitute a crime prosecutable only at the request of the aggrieved party".

[FN305] Hence, said rule establishes that "The Office of the Prosecutors General, within fifteen days following the receipt of the complaint or suit, shall request the Investigating Judge, by means of a reasoned brief, the dismissal of such complaint or suit when the fact is not a crime or when the action has clearly prescribed, or there is some sort of legal hindrance in the development of the proceeding. The Court shall proceed according to the provisions of this

section if, after the opening of the investigation, it determines that the facts of the proceeding constitute crimes which may only be prosecuted at the request of the aggrieved party".
[FN306] Cf. mutatus mutandi, Case of Yvon Neptune V. Haití, supra note 24, para 79 to 81.
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312. Regarding the arguments of the representatives (supra para. 308) the Court considers that occurrence of an event in a public place or its broadcasting in a media does not automatically constituted such event into a "public and notorious" fact for judicial purposes. The authority in charge of the criminal prosecution within a State does not necessarily have to act on an ex officio basis in such cases. In this sense, it is not the duty of this Tribunal to verify whether each one of the facts alleged by the representatives was, in fact, broadcasted on television nor does it have to evaluate the criminal importance or possible meaning of each fact in order to determine the obligation of the Attorney General's Office to conduct the corresponding investigations ex officio.

313. There still exists an additional controversy between the parties as to the way in which the Attorney General's Office had to proceed in relation to the complaints containing several facts that would constitute publicly as well as privately actionable crimes.

314. The representatives asserted that "all the complaints lodged with the Attorney General's Office […] present facts of criminal relevance (publicly or privately actionable) with solely criminal purpose, […] so that by virtue of the connection between both criminal types presented in the complaint itself and in order to seek consistency within the proceeding, the Attorney General's Office has the obligation to investigate the commission of such facts". The State, in addition, expressed that the investigations into the privately actionable crimes should be conducted at the request of the aggrieved party; therefore "in compliance with its obligation to conduct a serious investigation, it broke down the facts put forward in the [public and private] accusation in order to effectively prompt the procedural proceedings it is allowed to initiate according to the legal system, avoiding, in this way, unsuccessful results".

315. The Venezuelan legislation establishes that in the case of related crimes, when one of them is publicly actionable and the other is privately actionable, the case shall be heard by a court competent to try the publicly actionable crime and the rules of ordinary procedure shall govern [FN307]. Upon request of the interested party only, the court shall be able to prosecute private actions.In this case, the State would be obliged to adopt all the necessary measures of evidence and conduct a diligent investigation.

[FN307] Section 75 of the Organic Code of Criminal Procedure provides: "If any of the related crimes corresponds to the competence of an ordinary court and other crimes to the competence of special courts, the case shall be heard by the ordinary criminal court". When a same person is responsible for the commission of a publicly actionable crime and a crime prosecutable at the request of the aggrieved party, the case shall be heard by the court competent to try the publicly actionable crime and the rules of ordinary procedure shall govern". Basic Code of Criminal Procedure, supra note 300, section 75.
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316. The evidence on record suggests that, as of the first complaint lodged on January 31, 2002, subsequent complaints, containing a great number of different facts that occurred between 2001 and 2005, were consolidated with such complaint. In addition, in several of the facts reported there is no identity of victims or of persons suspected of having committed a crime and these offenses were committed in different areas and on different dates. Nevertheless, the Court notes that all the complaints relate to incidents that allegedly affected reporters and employees of Globovisión. In fact, it spring from the evidence that most of the cases related to the media, and not only to Globovisión, were assigned to the same Public Prosecutor Office. On March 12, 2005, the 50° Plenipotentiary Public Prosecutor Office ordered, after three years of the filing of the first complaint, "to organize the entire proceedings received, considering the incidents and the people affected", by virtue of the "complexity of the case and [...] the several complaints lodged" [FN308].

[FN308] Cf. Record of the 50° Plenipotentiary Public Prosecutor Attorney of March 12, 2005 (records of evidence, volume XXX, page 7678; volume XXXII, pages 8185, 8262 and 8387).

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317. In this sense, it is not up to the Tribunal to exercise substitutional jurisdiction in this case to determine whether the facts reported as illicit acts were related or not, under the rules of COPP and whether the consolidation of the facts denounced was appropriate or not. It is neither for this Tribunal to establish whether by means of the breakdown mentioned by the State, it was possible to come to a better or more effective result of the investigations. Nevertheless, the Court notes that the judicial authorities did not decide on the validity or applicability of the rules of ancillary proceedings, nor did them render a decision that would clarify if the procedure initiated was the appropriate one (infra para. 321).

318. Furthermore, even though the State cannot justify its total inactivity to carry out an investigation in view of the fact that the incidents were not brought to the attention of the competent authority, by means of the procedure established in the domestic legislation, the Court notes from the evidence furnished that, as to the reported facts and statements of which there is no record that an investigation has been conducted (supra para. 302) the complaints were lodged several months, even years, after the incidents. This is true with respect to several facts regarding the alleged physical and verbal attacks and damage to the property [FN309], as well as with respect to the statements rendered by public officials [FN310].

[FN309] In this way, the incident of March 1, 2004 was reported 8 months after it happened; the incident of January 18, 2004, 9 months after it happened; the incident of February 19, 2004 was reported 8 months after it happened; the incident of August 27, 2005 was reported 6 months after it happened; the incident of July 11, 2005 was reported 8 months after it happened; the incident of December 10, 2002 was reported 3 months after it happened; the incident of August 9, 2003 was reported more than a year and two months after it happened;; the incident of July 17, 2002 was reported 2 months and three months after it happened; the incident of November 18, 2002 was reported almost 2 months after it happened; the incident of April 11, 2005 was reported

almost 10 months after it happened; the incident of January 23, 2005 was reported more than one year after it happened ; the incident of December 3, 2002 was reported 3 months after it happened ; and the incident of May 29, 2004 was reported 5 months after it happened .
[FN310] Thus, the statement made by the President on October 4, 2001 was reported almost four months after such date; the statement of January 27, 2002 was reported one year and one month after that date; the statement of June 9, 2002 was reported 9 months after that date; the statement of June 13, 2002 was reported 9 months after that date; the statement of September 18, 2002 was reported 6 months after that date; the statement of December 7, 2002 was reported 3 months after that date; the statement of December 8, 2002 was reported 3 months after that date; the statement of December 15, 2002 was reported 3 months after that date; the statement of January 12, 2003 was reported almost 2 months after that date; the statement of November 9, 2003 was reported almost a year after that date; the statement of January 12, 2004 was reported more than nine months after that date; the statement of February 15, 2004 was reported more than 8 months after that date; the statement of May 9, 2004 was reported more than five months after that date; the statement of August 16, 2004 was reported more than two months after that date; the statement of October 4, 2005 was reported more than five months after that date and the statement made by the Ministry of Domestic Affairs and Justice on December 10, 2002 was reported three months after that date.
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319. In this respect, the Court considers that the delay of the alleged victims in bringing the alleged illicit facts to the attention of the competent authorities, in due time, should be taken into account when evaluating the due diligence and, if applicable, the effectiveness of the investigations. This in view of the fact that the passage of time hinders, and even invalidates the practice of the procedures for taking evidence in order to prove the materiality of the fact, identify the possible perpetrators and accomplices and determine the probable criminal responsibilities.

320. In this case, the alleged victims or their representatives did not allege any impediment to lodge the complaints nor did they provide a satisfactory explanation in relation to the delay in bringing to the attention of the competent authorities the facts they considered so serious. Therefore, what is reasonable is that the alleged victims would have displayed greater diligence and interest when resorting to the available remedies in order to carry out the investigation in question [FN311].

[FN311] Cf., in this sense, the case-law of the European Court of Human Rights. Bayram and Yildrim v. Turkey, Decision of 29 January 2002, Reports of Judgments and Decisions 2002-III; Yildiz and others v. Turkey, Decision of 28 September 2006; and Elsanova v. Russia, Decision of 15 November 2005 .
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321. As to the facts that were effectively brought to the attention of the Attorney General's Office, the Court considers that given that this office is in charge of the criminal prosecution, such authority should have rendered a decision to order the opening of the corresponding investigation or to request the dismissal of the complaint, where appropriate. This has not been

verified in the instant case regarding the facts brought to the attention of the Attorney General's Office inasmuch as there is no evidence on record that an investigation has been conducted.

C.ii Criminal investigations regarding 19 of the facts

322. It spring from the documentation furnished by the parties that by the time this Judgment is rendered, of the 19 investigations opened, four of them were dismissed, one was discontinued and there are three requests for dismissal filed by the prosecutor of the case that are pending judicial decision (infra para. 344 and 347).

323. In none of the reported cases the responsible have been determined and, where applicable, the imposition of a punishment to the perpetrators of the reported incidents has not been established.

324. There is no documentation on record proving that other investigations have been initiated regarding the reported facts, which are within the factual framework of the application.

325. Therefore, this Tribunal shall now analyze the proceedings and inquiries conducted regarding the reported and investigated facts and the procedure followed before the Ombudsman.

C.ii.1 Changes in the assignment of the Public Prosecutor's Office in charge of the criminal prosecution

326. According to information provided, as of the first complaint lodged on January 31, 2002 by reporters and others employees of Globovisión with the National Directorate of Common Crimes [FN312], other subsequent complaints, centered on a great number of different incidents that occurred between 2001 and 2005, were consolidated with the case.

[FN312] Cf. Complaint lodged with the National Directorate of Common Crimes on January 31, 2002 (records of evidence, volume IV, and appendix to the complaint 7, pages 931-963).

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327. In response to the initial complaint, on February 18, 2002, both the 2º and 74º Public Prosecutor's Office of the Judicial District of Caracas Metropolitan Area, to which the hearing of the complaint has been jointly assigned, ordered the opening of investigations [FN313]. Then, on March 10, 2003 the employees of Globovisión lodged an expansion of the complaint with the 2º Public Prosecutor's Office [FN314].

[FN313] Cf. court order issued by the 2º and 74º Public Prosecutor's Office of Caracas Metropolitan Area of February 18, 2002 (records of evidence, volume XXX, page 7674; volume XXXII, pages 8178 and 8376)

[FN314] Cf. Complaint lodged with the 2º Public Prosecutor's Office of the Judicial District of Caracas Metropolitan Area of March 10, 2003 (records of evidence, volume IV, appendix 8 to the application, pages 965-975).

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328. On February 27, 2004 the then Director of Common Crimes assigned such investigation to the 68º Public Prosecutor's Office of the Judicial District of Caracas Metropolitan Area [FN315]. In the brief submitted on October 26, 2004 before the said Public Prosecutor's Office, the alleged victims repeated and updated the complaints for the attacks to which employees and reporters of Globovisión would have been subjected since the year 2001 and also, they requested information on the progress of the investigations into the facts previously mentioned [FN316].

[FN315] Cf. Official letter Nº DDC-R-9800 sent to the 68º Public Prosecutor's Office of the Judicial District of Caracas Metropolitan Area on February 27, 2004 (records of evidence, volume XXX, page 7675; volume XXXII, pages 8179, 8258 and 8381).
[FN316] Cf. Brief lodged with the 68º Public Prosecutor's Office of the Judicial District of Caracas Metropolitan Area of October 26, 2004 (records of evidence, volume V, pages 1671-1749).

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329. In turn, on January 26, 2005 the Director of Common Crimes agreed to assign the 50º Plenipotentiary Public Prosecutor's Office "in order for such office to hear and decide on the cases related to the different media, [among them] Globovisión" [FN317]. On March 12, 2005, more than three years after the opening of the investigation, as has been mentioned, the 50º Public Prosecutor ordered "to organize the entire proceedings received" [FN318]. In such regard, there is no evidence that the Attorney General's Office has carried out any procedural activity between April 2002- when some interviews were conducted- and January 2005, of which the State provided no explanation whatsoever. By June 2008, the hearing of said case would have been assigned to the 30º Plenipotentiary Public Prosecutor's Office, according to information provided by the State. As a consequence, this case was successively assigned to different public prosecutor's offices.

[FN317] Cf. Official letter Nº DDC-R-7717 sent to the 50° Plenipotentiary Public Prosecutor's Office on January 26, 2005 (records of evidence, volume XXX, page 7677; volume XXXII, pages 8184, 8261 and 8386).
[FN318] Cf. Record of the 50° Plenipotentiary Public Prosecutor Attorney of March 12, 2005 (records of evidence, volume XXX, page 7678; volume XXXII, pages 8185, 8262 and 8387).

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330. It does not spring from the facts the justification or reasons of the number and frequency of the changes made as to the authority in charge of the inquiry. The State did not make any justification either. There is nothing on records that suggests those changes were necessary; besides, it is not clear that they constituted an improvement in the development and effectiveness of the investigations.

C.ii.2 Procedural delay of the Attorney General's Office

331. The representatives asserted that the conduct of the Attorney General's Office was negligent in the course of the criminal proceedings regarding the complaints lodged. They argued that the alleged victims not only requested investigative measures, but also furnished the available items of evidence. They further alleged that, in most of the cases, the Attorney General's Office failed to conduct the investigations or abandoned them after carrying out the first proceedings; therefore, in order to determine that this unsuccessful result has not been the product of a mechanic application of certain procedural formalities considering that the State also failed to effectively look for the truth, the State, then, has to demonstrate it has carried out a prompt, exhaustive, serious and impartial investigation.

332. The State asserted that it has enabled the entire judicial mechanism in order to conduct the corresponding investigations and, if applicable, to establish the appropriate responsibilities that may correspond by law to the Attorney General's Office to try and investigate in each of the cases, as well as in those cases where the Attorney General's Office must conduct the corresponding investigations at the request of the aggrieved party.

333. As to the term of length of the preliminary or investigative phase in Venezuela, section 313 of the COPP provides that "the Attorney General's Office shall try to comply with such term with the diligence the case so requires. After six months as of identification of the accused, the accused may require the investigation judge the determination of a prudential time, of no less than thirty days and no more than a hundred and twenty days, for the conclusion of the investigation".

334. The expert witness Arteaga stated that "the Venezuelan criminal procedure does not provide for a definite duration term" and he specified that "in accordance with the provisions of section 313 of the Basic Code of Criminal Procedure, the Attorney General's Office is bound to conclude [the investigative phase] with the due diligence the case so requires that, at his entire discretion, should be in a maximum of six months, depending on the complexity of the case" [FN319].

[FN319] Cf. expert report (in the form of affidavit) rendered by Alberto Arteaga Sánchez on April 8, 2008 (records of evidence, volume XXXIII, pages 8528-8529).

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335. In such respect, this Tribunal notes that in none of the proceedings instituted in relation to the facts of this case, the State has identified a person as the accused and that the criminal procedure legislation of Venezuela does not provide a precise term for the investigation, prior identification of the accused; otherwise, it establishes that the investigation shall be conducted "with the due diligence the case so requires" (supra para. 333). Therefore, the moment in which the Attorney General's Office took cognizance of the case, ex officio or at the request of a party, is relevant to evaluate whether the investigations were conducted with diligence.

336. The multiple facts jointly reported could have contributed to turn the investigation into a complex one, in general terms, even though each fact in particular was not necessarily complex to be investigated. Besides, most of the facts occured in circumstances in which it was difficult to

identify the alleged perpetrators. As to the conduct of the interested parties, this Tribunal emphasized that many of the facts were reported several weeks, months or even years after the incidents occurred (supra para. 318 to 320).

337. The Court notes that regarding nine of the facts that were investigated, there is evidence of procedural inactivity during periods of three and six years (supra para. 176, 183, 187, 196, 204, 209, 213, 225 and 231), and the State has not explained or justified such delay. As to six of the investigated facts (supra para. 196, 204, 209, 213, 231 and 235) the State took more than four years in carrying out the first proceedings, without justifying the delay in the gathering of evidence tending to the verification of the materiality of the fact and the identification of the perpetrators and accomplices. This Tribunal finds that the investigations related to the facts reported on January 31, 2002 and those that were consolidated to this case, have not been conducted in a diligent and effective way.

C.ii.3 Lack of diligence in the development of some investigations

338. The Court has held that "the authority in charge of the investigation must ensure that all necessary investigative steps are undertaken and must take appropriate action, in accordance with domestic legislation, when this does not occur" [FN320].

[FN320] Case of García Prieto et al. V. El Salvador, supra note 48. para 112.

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339. In a series of facts reported to be physical attacks (supra para. 172, 176, 179, 187, 204, 244, 252 and 256), no legal-medical evaluation was conducted in order to establish the existence the injuries and the seriousness thereof.

340. In cases of torture or mistreatment, the time elapsed till the performance of the pertinent medical examinations is essential in order to unquestionably determine the existence of the damage [FN321]. The lack of such examination or its late performance hinders or makes it impossible to determine the seriousness of the facts in order to legally classify the conduct into some of the criminal types; even more, in those cases where there is no other evidence. The Court considers the State has the obligation to perform the examination and verify the injuries the moment they complaint is filed and the injured party appears, unless the time elapsed between such complaint and the moment the incident happened makes it impossible to classify the injury.

[FN321] Cf. mutatis mutandi, Case of Bayarri V. Argentina, supra note 22, para. 93; Case of Bueno Alves V. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 111.

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341. In those cases where no legal-medical examination was conducted, the complaints were lodged between 11 days and 6 months after the incidents occurred. In some of these cases, the

Tribunal considers that the lapsing of time made such examination impossible or ineffective. Nevertheless, the Court notes that the investigations related to the facts of February 27 and March 1, 2004 (supra para. 244 and 256) were conducted ex officio and in spite of that, no legal examination was ordered. Hence, the State did not furnish sufficient evidence to prove that the Attorney General's Office undertook the appropriate steps in this investigation. From this it follows that the authority in charge of the criminal prosecution failed to carry out an effective and diligent investigation in those cases.

C.ii.4 Lack of a timely decision of the authority in charge of the criminal prosecution when the reported facts constituted privately actionable crimes

342. The State alleged that the filing of the complaint of the aggrieved party has never been authorized by the alleged aggrieved persons, and for that reason, no proceeding has been initiated under the judicial system. Specially, regarding seven incidents of which there is a clear unwarranted procedural inactivity of the Attorney General's Office (supra para. 183, 187, 196, 204, 209, 225 and 231), the State alleged that the fact would be framed within the criminal type of slander, which falls within the category of privately actionable crimes.

343. As has been mentioned (supra para. 311) regarding the facts the State alleged to have constituted privately actionable crimes, in those cases, the Attorney General's Office had the obligation to request the Investigating Judge to dismiss the complaint. Hence, the failure of state authorities to render a timely decision that could clarify that the procedure initiated was not the adequate procedural solution, did not allow or contribute to the effective determination of several of the illicit acts and, where applicable, the corresponding criminal responsibilities. Therefore, this Tribunal finds that the State cannot justify its total inactivity to conduct an investigation on the basis of facts that were not brought to the attention of the competent authority by means of the procedure established by the domestic legislation.

C.ii.5 Unwarranted delay in the rendering of decisions regarding requests for dismissal

344. The Court notes that, as has been informed by the State, in the investigations into the facts of November 22, 2001; April 3 and January 9, 2002 (supra para. 172, 178 and 180) the Investigating Judge has not render a decision regarding the requests for dismissal filed by the Public Prosecutor after a year and a half and two years, respectively, as of their submission. In such regard, the Basic Code of Criminal Procedure establishes that "upon the filing of the request for dismissal, the Judge shall convene the parties and the victim to an oral hearing in order to discuss the grounds of the petition, unless the Judge deems the discussion is not necessary to prove the motive" [FN322]. Besides, the COPP provides that "the judges could not abstain from deciding because of silence, contradiction, deficiency, inaccuracy or ambiguity in the terms of the laws, nor could they unduly withhold any decision. Otherwise, they shall be held responsable for denial of justice" [FN323]. Given that the State did not provide some reason for which the corresponding Investigating judges have not yet rendered a decision regarding such requests for dismissal, this Court considers that the domestic authorities failed to comply with their duty to make a decision in such regard with due diligence.

[FN322] Section 323, Basic Code of Criminal Procedure, supra note 300.
[FN323] Section 6, Basic Code of Criminal Procedure, supra note 300.

C.ii.6 Decisions to dismiss and discontinue the case without prejudice in relation to the lack of objection or request to reopen the case on the part of the petitioner

345. The State argued that the Venezuelan system of criminal prosecution empowers the Attorney General's Office to order the discontinuance of the proceedings when the result of the investigations is insufficient to bring charges. In this case, the proceedings initiated by the Attorney General's Office have been well grounded and justified. The alleged victims did not object to any of the decisions rendered on the dismissal and discontinuance of the proceedings.

346. The representatives argued that the State has intended to justify its inefficacy to continue developing the corresponding investigations on the lack of exercise of the pertinent actions by the alleged victims against such decisions, alleging that the failure to exercise such remedies evidences the alleged victims' conformity with such decisions. The victims' inactivity does not justify the State's inactivity, inasmuch as the State is the only party obliged to comply with its role of investigator as the only authority entitled to prosecute crimes.

347. As has been mentioned, in the investigations into the facts of December 10, 2001; February 27, 2004; March 1, 2004 and May 29, 2004, it was decreed the dismissal of the suit, in two of them, by the application of the statute of limitations of the criminal action and in the other two, due to the lack of evidence to identify the responsible (supra para. 176, 244, 249 and 261) Moreover, in the investigations into the facts of March 1, 2004 (supra para. 256) the Public Prosecutor's Office decreed the discontinuance without prejudice of the suit, and there is no record proving that the alleged victims exercised the corresponding right to object to such decision.

348. Section 120, subsection 8 of the COPP establishes that he who is considered a victim, though he is not the plaintiff, may object to the dismissal of the criminal proceeding. Moreover, pursuant to section 325 thereof, even in those cases there is no plaintiff, the victim may file a motion to appeal and writ of cassation against the decisions declaring the dismissal of the case. Moreover, sections 315 to 317 of the COPP governs the procedural figure of the discontinuance without prejudice, "when the result of the investigation is insufficient to bring charges" and also the right of the victim, who has intervened in the proceedings to request the reopening of the investigation and indicated the appropriate measures, and the right to address to the investigating judge in order to examine the grounds of the decision.

349. This Court considers that the power to file remedies against the decisions of the Attorney General's Office or of the judicial authorities is a right of the victim, which represents a positive progress in the Venezuelan legislation [FN324], however, said power does not exonerate the State from its obligation to carry out a diligent and effective investigation in the corresponding cases. The lack of objection to a judicial decision or the lack of a request to reopen the case does not change the fact that the State has failed to comply with some duties related to the development of diligent measures of investigation.

[FN324] Section 328 of the COPP (2000) provided that the Attorney General's Office and the victim are able to file an appeal against the decision to dismiss the case; however, section 117, subsection 8 of the COPP (2000) subjected the power to object to such dismissal to the Prosecutor's appeal.

C.iii Procedure before the Ombudsman

350. The Commission alleged that the State also received express notification of the alleged acts of harassment and attack from the complaints submitted to the Ombudsman.

351. The representatives alleged that the attacks would have been timely reported and brought to the attention of the Ombudsman. In an "additional brief" (supra para. 8, 51 and 52) the representatives mentioned that on February 1, 2002 reporters and other employees of Globovisión filed a complaint with the Ombudsman in order for it to take the measures necessary to ensure their rights, in accordance with the provisions of Article 281 of the Constitution. They pointed out that such complaint was expanded on March 13 and April 24, that same year, based on the attacks they were subjected to. They further alleged that the Ombudsman limited to take down the statements of several reporters and other employees and, more than five years after the submission of the complaint, the Ombudsman concluded that such complaint should be set aside without showing any type of results. The representatives argued that the Ombudsman would have denied access to the case files and also, to the copies of the case file when they requested it.

352. The State, in the final arguments, confirmed that it was notified of alleged attacks committed against reporters by means of several complaints filed with different state authorities, one of them the Ombudsman. In order to prove that it had implemented protective measures in favor of the reporters of Globovisión, the State alleged that it had organized several meetings of police coordination in order to implement security assistance within the framework of the demonstrations and that in such meetings, the Ombudsman had participated.

353. The Ombudsman is an organ of the Civic Power. The Constitution establishes that the "Civic Power" has functioning, financial and administrative autonomy [FN325] and that is in charge of promoting, defending and securing the rights and guarantees enshrined in the Constitution and international human rights treaties, apart from the legitimate, collective and diffuse interests of the citizens [FN326].

[FN325] Cf. Article 273 of the Constitution of the Bolivarian Republic of Venezuela, supra note 299.

[FN326] Cf. Article 280 of the National Constitution of the Bolivarian Republic of Venezuela. In the exercise of those functions, the powers of the Ombudsman include, inter alia, the power to "safeguard the correct functioning of the public services, to support and protect the legitimate, collective and diffuse rights and interests of the people, against all arbitrary treatment, misuse of power and errors committed when providing those rights and interests, adopting, where

applicable, the measures necessary to demand from the State the compensation for damages caused as a result of the functioning of those public services; to urge the Prosecutor or the Office of Prosecutors General of the Republic to proceed with the appropriate actions or motions against public officials responsible for the violation of human rights". Cf. section 281 of the Constitution of the Bolivarian Republic of Venezuela, supra note 299.

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354. Section 121 of the COPP (2001) establishes that "The Ombudsman and any natural person or human rights defense association may present a complaint against public officials or employees, or agents of the police force who had violated the human rights in exercise of their functions or as a result thereof" [FN327].

[FN327] Basic Code of Criminal Procedure, supra note 300.

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355. The witness proposed by the State, Mr. Omar Solórzano García, mentioned that "some reporters approached the Ombudsman with complaints, petitions; even that is in the files of the Ombudsman". He also expressed that it was not up to the Ombudsman to initiate the corresponding criminal actions, since that it is an authority of the Attorney General's Office in Venezuela; that the Ombudsman substantiates the complaints, draw up records and, if it considers that some type of crime was committed, urges the Attorney General's Office to initiate the corresponding investigations and, if necessary, makes recommendations to the bodies involved. He further alleged that the transcripts of the meetings were available. Likewise, he emphasized that the alleged attacks the reporters would have subjected to were committed by third parties, not by state agents and that the Ombudsman, as an institution, has the obligation to ensure the human rights of the citizens before the State and monitors that the procedures of the Attorney General's Office are respected, so that the human rights of the individuals are not violated.

356. In this case, the complaints were submitted to the Ombudsman on February 1, 2002 and expanded on March 13 and April 24, 2002 [FN328]. The first complaint reintroduced the same facts that in the complaint of January 31, 2002 submitted before the Attorney General's Office (supra para. 316, 326 and 337). In statements of grounds of November 1, 2005 and February 2, 2006 the Bureau of Judicial Affairs of the Ombudsman recommended to dismiss the complaint filed and considered that it was not competent to defend the rights of the plaintiffs. Specially, it concluded that "the plaintiffs should resort to the Fundamental Rights Protection Department of the Attorney General's Office in order to request to conduct the investigations and proceedings it deems pertinent" [FN329]. Said statements of grounds were brought to the attention of the Director of Judicial Services of the Ombudsman, who communicated the approval to the Director of Judicial Affairs on February 23, 2006 [FN330].

[FN328] Cf. brief presented on February 1, 2002 before the Ombudsman (records of evidence, volume XVIII, appendix 9 to the application, page 977-1023); brief presented on March 13, 2002 before the Ombudsman (records of evidence, volume XVIII, appendix 11 to the application,

pages 1033-1039) and brief presented on April 24, 2002 before the Ombudsman (records of evidence, volume XVIII, appendix 10 to the application, pages 1025-1031)
[FN329] Cf. statements of grounds of the Department of Judicial Affairs of the Ombudsman of November 1, 2005 and February 2, 2006 (records of evidence, volume XVIII, pages 5041-5050 and 5052-5060).
[FN330] Cf. statement of ground DGSJ-00183 of the Bureau of Judicial Affairs of the Ombudsman of February 23, 2006 (records of evidence, volume XVIII, page 5061).
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357. The Court considers that, even though in certain events, the filing of a complaint with the Ombudsman may imply effective and useless measures in case of alleged human rights violations, it is not, in fact, a remedy to which the people must necessarily resort. Once the proceeding begins, the Ombudsman must, within the sphere of its authority, activate the corresponding proceedings and decide what it is appropriate if the issue falls outside its competence. It is clear that the facts reported were also brought to the attention of the Attorney General's Office and that it was not up to the Ombudsman to initiate the corresponding criminal actions. Nevertheless, there is no evidence on record of the reasons why the Ombudsman failed to decide on the lack of investigations. Moreover, even though most of the facts reported were committed by unidentified individuals, at that moment, it was alleged direct actions or possible negligence from the part of the security forces and state agents; therefore, it is not clear why the Ombudsman did not act accordingly. The Court notes that the decision of the Ombudsman was adopted with a clear delay, failing to notice the mentioned deficiencies in the investigations conducted by the Attorney General's Office and, besides, did not contribute to modify the flaws in the investigations, under the terms mentioned in this case.

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358. Upon assessing whether the investigations constituted a means to guarantee the right to freedom of expression and humane treatment, as well as to prevent the violation of these human rights, the Court takes into consideration that the multiple facts jointly reported could have contributed to the formation of a complex investigation in general terms, even though the investigation of each fact in particular was not necessarily complex. Moreover, this Tribunal finds that many of the facts were reported several weeks, months or even years after the incidents.

359. Finally, the Court notes that only 19 out of the 48 facts reported were investigated; that in most of the investigations opened, there is an unwarranted procedural delay and that in some of the investigations, the necessary steps to proceed with the confirmation of the materiality of the facts have not been taken. Moreover, in those 19 investigations, as a result of which no responsible has been identified yet, there have been unwarranted delay in the rendering of certain decisions by the authorities charge of the criminal prosecution, as well as by those that play a judicial role. Therefore, this Tribunal finds that in those cases, the investigations did not constitute an effective means to ensure the right to humane treatment and the right to seek, receive and impart information of the alleged victims.

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360. From the analysis of the allegad facts and the evidence tendered to such purpose, it has been established that the content of the statements made by high-ranking public officials placed the people who worked for such particular media, and not only its owners, executives or those in charge of the editorial line, into a position of greater relative vulnerability towards the State and certain sections of the society (supra para. 157 to 161). Especially, the repetition of the content of such statements or speeches during said period could have contributed to emphasize an environment of hostility, intolerance or animosity, from the part of sections of the populations towards the alleged victims associated with such media.

361. Therefore, the set of proven facts that affected the alleged victims occurred when they were trying to perform their jobs. At least in most of the facts that were proven (supra para. 279) on several occassions and in certain situations or events, which could have been of public interest or important for the news in order to be eventually imparted, the possibilities of the alleged victims to seek and receive information, as news team, were restricted or eliminated by the acts of private individuals who attacked, intimidated or threatened them. Furthermore, it is clear for the Tribunal the intimidating or frightening effect that such incidents, as other addressed to the television station Globovisión, like the setting off of explosives or tear-gas canisters at the headquarters of the television station, could have caused to the people who were present there and who were working at that moment in such media.

362. Therefore, the Court considers that the set of proven facts constituted ways to restrict, obstruct and intimidate the practice of journalism of the alleged victims, expressed in attacks or risk situations for their personal integrity, which in the contexts of the statements given by high-ranking public officials and the failure of state authorities to comply with the duty of due diligence in the conduct of the investigations, constituted a failure of the State's obligation to prevent and investigate the facts. Therefore, the State is responsible for the non-compliance with the obligation contained in Article 1(1) of the Convention to ensure the right to freely seek, receive and impart information and the right to humane treatment, enshrined in Articles 13(1) and 5(1) of the American Convention, to the detriment of Alfredo José Peña Isaya, Aloys Emmanuel Marín Díaz, Ana Karina Villalba, Ángel Mauricio Millán España, Aymara Anahí Lorenzo Ferrigni, Beatriz Alicia Adrián García, Carla María Angola Rodríguez, Carlos Arroyo, Carlos Quintero, Ramón Darío Pacheco Villegas, Edgar Hernández, Efraín Antonio Henríquez Contreras, Felipe Antonio Lugo Durán, Gabriela Margarita Perozo Cabrices, Janeth del Rosario Carrasquilla Villasmil, Jhonny Donato Ficarella Martín, John Power, Jorge Manuel Paz Paz, José Vicente Antonetti Moreno, Joshua Oscar Torres Ramos, Martha Isabel Herminia Palma Troconis, Mayela León Rodríguez, Miguel Ángel Calzadilla, Oscar José Núñez Fuentes, Richard Alexis López Valle, and Yesenia Thais Balza Bolívar. Moreover, the State is responsable for the non-compliance with the obligation contained in Article 1(1) of the Convention to ensure the right to freely seek, receive and impart information enshrined in Article 13(1) of the American Convention, to the detriment of Ademar David Dona López, Carlos José Tovar Pallen, Félix José Padilla Geromes, Jesús Rivero Bertorelli, José Gregorio Umbría Marín, Wilmer Jesús Escalona Arnal and Zullivan René Peña Hernández.

IX. ARTICLES 13(1) AND 13(3) (RIGHT TO FREEDOM OF THOUGHT AND EXPRESSION) AND 24 (RIGHT TO EQUAL PROTECTION) [FN331] IN CONJUNCTION WITH ARTICLE 1(1) OF THE AMERICAN CONVENTION

[FN331] Article 24. Right to Equal Protection
All people are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

A) Declarations made by public officials related to the concession under which the television station Globovisión operates

363. The Commission considered that the statements made by the President of the Republic and the Ministry of Domestic Affairs and Justice, previously mentioned, specially those that referred to the reporting angle of the private media in Venezuela, the use of radio spectrum, which are property of the State by Globovisión and the intervention methods the State may use, "can serve to polarize the society and influence, through arbitrary pressure, the contents, the reporting angle, and in general, the ideas and thoughts transmitted by the media". The Commission asserted that a harsh criticism of the reporting angle of the media, followed by the possible consequences that may result therefrom, coming from an authority with the power of decision over those consequences, upon which the possibility of continuing the operations genuinely depend, does constitute a way of indirectly restricting the right of free expression. Therefore, it requested the Court to declare the State is responsible for the violation of Article 13(1) and 13(3) of the Convention in connection with Article 1(1) therein.

364. The representatives agreed with the above arguments and further stated that since the year 2001, the President of the Republic and other state officials have been giving a series of statements "threatening the private television stations – especially, Globovisión- with cancelling or refusing to renew the concession, as well as with reprisals against the independent editorial line critical of the government" which, according to the representatives, constitute a pressure mechanism and an indirect restriction to the freedom of expression and information of all the private media critical of the national government and "of all the Venezuelan people". Furthermore, they asserted that the continued and repeated threats to close Globovisión constitute "a clear case of misuse of power against Globovisión". According to the representatives, the motives of such threats regarding the cancelling or non-renewal of the concession of Globovisión have nothing to do with the concessions regime for open television stations or with the interpretation of the applicable administrative law; actually, they are trying to silence a media if it continues working as a television station whose independence and critical expressions disturb the political project of the government. According to the representatives, this is entirely unacceptable in a democratic society and completely incompatible with the system of principles and values enshrined in the Convention, in the OAS Charter and in the Inter-American Democratic Charter.

365. The State, in addition, denied having incurred in a violation of the right to freedom of expression and sustained, inter alia, regarding the cases expressly mentioned in Article 13(3) of

the Convention as indirect mechanism of restriction, that "such illegal practices were frequent in Venezuela before the year 1999; however, these practices have been forbidden by the State".

366. The Commission identified five statements made by the President of the Republic [FN332] and the representatives considered that other two declarations of the President of November 9, 2003 and August 16, 2004, which form part of the factual framework of the complaint, should also be analyzed in this section [FN333]. They refer to the concession based on which the media operate and, in some of such declarations, the possibility of cancelling the concession is mentioned. Nevertheless, apart from the statements mentioned in previous chapters regarding the content of such declarations (supra para. 123 to 161), the Court shall decide whether such declarations could have been conceived by the alleged victims as threats and it shall also determine whether or not declarations may be analyzed an indirect means or way to restrict the freedom of expression, under the terms of Article 13(3) of the Convention [FN334].

[FN332 Said statements were made on June 9, 2002 in the Program "Aló Presidente" N°. 107 from the State of Zulia; on December 8, 2002 in the Program "Aló Presidente" N° 130; on January 12, 2003 in the Program "Aló Presidente" N° 135 from the Marine Customs Office, La Guaira; on January 12, 2004 in an interview published in the newspaper El Universal and on February 15, 2004 in the Program "Aló Presidente" N° 182 from Salón Ayacucho of Palacio de Miraflores.

[FN333] Furthermore, the representatives pointed out four declarations of the President given in the year 2006 and ten statements made by other public officials between 2006 and 2007, which are not contained in the application, and according to them, allow explaining the facts mentioned in the application . Moreover, they would prove that "the President of the Republic and other high-ranking officials have never stopped threatening the independent television stations of Venezuela, with the refusal to renew or cancel the concession" Even though, in principle, the facts that explain and clarify the content of the application are admissible this Court considers that the last statements do not explain the facts, inasmuch as they do not make reference to the facts but to new statements, different from and subsequent to the ones of the application. Based on the foregoing, though the Court shall not take into account said statements in its considerations, it notes that the content of some of them is similar to the ones analyzed hereafter. Furthermore, the representatives alleged three facts that they considered are supervening, namely, statements of the President of May 29 and June 2, 2007; and a declaration of the former Telecommunications Minister of April 17, 2007. The facts mentioned by the representatives as supervening facts are not directly related to the facts of the complaint, but they are statements different from and subsequent to the ones contained within the factual framework of the application, though their content may be similar; therefore, the Court shall not analyze them.

[FN334] Hence, on November 9, 2003 the President mentioned, with reference to four private television stations that "when they go past the line drawn by the law, they will automatically be closed, to ensure peace in Venezuela, to ensure calm in Venezuela". Cf. Transcript (records of evidence, volume VI, appendix 36, pages 1826 to 1827). Moreover, on January 12, 2004, the President of the Republic told to the newspaper El Universal that: "if any television stations urge the people towards rebellion again, I'll take [the company] away too. I have the decree ready. It'd be better for me if they did, because they would be under military occupation come what may. I would give immediately an order, take it by force and those inside, if they have got

weapons, defend your selves, but we're going in with weapons because that's how a country defends itself". Cf. Interview for the newspaper "El Universal" of January 12, 2004 (records of evidence, volume VI, appendix 35, page 1753). In addition, on February 15, 2004 the President acknowledged that they were "ready to take [Globovisión] off the air, operation ready, armed forces ready, to take down the antennas on [his] orders" and he further said, referring to Globovisión and another television station that: if you did that again [referring to the coup d' état of 2002] you would be taken by the military, no matter what the cost". Cf. Transcript (records of evidence, volume VI, appendix 37, pages 1857).

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367. Article 13(3) of the American Convention provides that "the right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions". A literal interpretation of this rule allows considering that it specifically protects communication, broadcasting and circulation of ideas and opinions; therefore the use of "indirect methods or means" to restrict such aspect of the right to expression is forbidden. The enumeration of indirect methods provided by Article 13(3) is merely an example and it is not limited to consider "any other means" or indirect means derived from new technologies. Furthermore, Article 13(3) of the Convention imposes on the State the obligation to ensure the rights and liberties, even within the environment of private relationships, since such Article does not only deal with indirect governmental restrictions, but also "private… controls" producing the same result" [FN335].

[FN335] Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 supra notes 59 para. 48

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368. In this respect, the Tribunal deems that in order for a violation of Article 13(3) of the Convention to take place it is necessary that the means or mechanism effectively restrict, at least indirectly, communication and circulation of ideas and opinions.

369. Such declarations, analyzed in the context in which they occurred, contain opinions on the alleged conduct or participation of Globovisión, or people linked to this television station, in recent events organized under circumstances of high political bias and social conflict in Venezuela, which do not form part of the subject-matter of this case (supra para. 72 to 74). Regardless of the situation or reason that generated such statements, in a state in which the law prevails, the controversial situations must be addressed by means of the procedures established in the domestic legal system and according to applicable international standards. In the context of vulnerability surrounding the alleged victims, certain expressions contained in the statements above mentioned could be conceived as threats and had a frightening effect or even caused self-censorship, in those people due to their relationship with said the television station. Lastly, the Court deems that, in consideration of the criteria mentioned in the above paragraph, those other

effects of these declarations have already been analyzed supra under Article 13(1) of the Convention, in conjunction with Article 1(1) therein.

B) Barriers to access to official sources of information of state premises

370. The Commission alleged in its application that, at least, on six occasions the news teams of Globovisión were restricted to access to official sources of information and to cover certain stories by the means they consider appropriate in order to impart them, which constituted undue restrictions to the detriment of the news teams of Globovisión, under Article 13(1) of the American Convention. Regarding those same facts, the representatives also allegad the violation of Article 24 of the Convention.

371. Even though the Commission did not clearly identify the specific facts they are referring to, it indicated that the common element in such incidents was the fact that the sources of information to which the news team of Globovisión tried to access were, in all instances, official. The Commission noted that in most of these situations, the official media were afforded access and transmitted the events, possibility that was denied to the news team of Globovisión, claiming that the events were private, open only to official media or that Globovisión was not "on the list" to enter the place in spite of having met the prerequisites. The Commission alleged that the burden of claiming and providing adequate grounds for justifying a restriction of any right protected by the Convention falls on the State and that in the case at hand, Venezuela did not prove that the alleged restrictions were prescribed by law, or that it was necessary to protect national security, rights of others, order, health or morals or that the official or private nature of a media constitutes a reasonable and objective criteria of distinction as to the access to certain sources of information.

372. The representatives pointed out 16 facts that they consider to be barriers to access to sources of information, among which they include not only situations in which they could not access to official premises, but also other situations in which reporters would have to leave the area without covering the story or demonstration. The representatives also alleged facts that they were not expressly mentioned in the application of the Commission [FN336], which shall not be analyzed given the fact that they do not form part of the factual framework of the instant case.

[FN336] In particular, they mention three incidents that were included in the framework of the provisional measures regarding the media Globovisión, of January 27, 2005; February 14, 2005 and April 21, 2005. Moreover, in the final written arguments they referred to 35 "additional" facts regarding alleged restrictions to access to sources of information. Apart from the foregoing, the representatives mentioned in the final arguments that they received a letter from Venezolana de Televisión on May 26, 2008 by which they were notified that a new rate schedule was ordered for the rebroadcasting of its signal by third parties, being Globovisión the only broadcast media of Venezuela that has received such communication; such request was later on denied. The Commission mentioned this fact in the final written arguments. This aspect does not specifically refer to the alleged facts as alleged restrictions to access to official sources of information, since it was not mention whether such rates apply to the retransmissions of the six facts contained in the application. In this way, they would not be supervening fact since they do not clarify, explain

or disprove the facts already alleged; otherwise, they are news facts that clearly fall outside the factual framework of the case.

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373. The representatives alleged that the State by directly or indirectly restricting, due to action or omission or lack of diligence, the access of Globovisión to national events, and preventing the news team from covering those events in order to broadcast them, has denied the possibility to the citizens of controlling, assessing and, finally, intervening in the management of the government and its actions. Besides, they pointed out that in spite of being able to access to the contents of the actions by means of the retransmission of the signals of State stations, they were prevented from presenting the information from another point of view different from the official one, even when being able to interview the public officials on certain occassions at official events.

374. The State pointed out that neither the Commission nor the representatives proved, in the six alleged facts, that the news teams of Globovisión were prevented from having access to official sources. The State argued that "the fact that certain television stations could have entered with more news teams and equipment to cover a particular event, may have many explanations, which does not necessarily imply the violation of a right"; for example, the insufficient physical space at the premises where the activity was being developed. In turn, it pointed out that most of the events that take place in a public office are not of a public nature, in the sense that all events all open for the public, given the fact that it would rendered the activity of the State's organs inoperative. The State also mentioned that dealing with issues related to a country's security and defense, such issues are per se confidential; "otherwise the democratic stability or sovereignity of the Nation may be jeopardized". Furthermore, the State asserted that it is up to the Ministry of the Popular Power of Communication and Information [Ministerio del Poder Popular para Comunicación e Información] and the Ministry of the Popular Power of the President's Office [Ministerio del Poder Popular del Despacho del Presidente] to define the nature of the official acts and the scope of its broadcasting, according to which, in the exercise of its communicational policy, the State establishes whether or not it invite certain media. In the final arguments, it pointed out that all the public and official acts were broadcasted alive by means of the signal of the state television station and that other media were allowed to freely retransmit that signal and broadcast the contents of the act. Lastly, the Sate pointed out that, between 2001 and 2005, the national government organized approximately 394 official acts; therefore, the alleged restrictions to access to the sources of information only correspond to 1.8% of the official events celebrated and based on that, it was impossible to sustain that there was a State policy aimed at restricting the journalistic work of Globovisión regarding the coverage of the official acts.

375. In order to avoid an arbitrary exercise of the public power, the restrictions must be justified by reference to collective purposes and must not restrict, beyond what is strictly necessary, the right enshrined therein [FN337]. With respect to the accreditations or authorizations necessary for the media to participate in official events, which imply a possible restriction to the exercise of the freedom to seek, receive and impart information and any kind of ideas, it is essential to prove that their application is legal and legitimate and necessary and proportionate to the goal in question in a democratic society. The relevant criteria for the accreditation scheme should be specific, fair and reasonable, and their application should be

transparent [FN338]. It corresponds to the State to show that it has complied with the above requirements when establishing restrictions to the access to the information it holds [FN339].

[FN337] Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 supra notes 59 para. 40, 45 and 46; Case of Kimel V. Argentina, supra note 59, para. 63 and 83; and Case of Claude Reyes et al. V. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006, Serie C No. 151, para. 89 and 91; Case of Palamara Iribarne V. Chile, supra note 63, para. 85; Case of Ricardo Canese V. Paraguay, supra note 59, para. 96 and Case of Herrera Ulloa V. Costa Rica, supra note 59, para. 120, 121 and 123.
[FN338] Cf. United Nations, Human Rights Committee, Gauthier v. Canada, Communication No 633/1995, U.N. Doc. CCPR/C/65/D/633/1995 (5 May 1999), para. 13.6.
[FN339] Cf. Case of Claude Reyes et al. V. Chile, supra note 337, para. 93

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376. The Commission mentioned that the reporters of Globovisión would have complied with the requirements established for the entry to the official acts. According to the narration of the facts, a request for authorization would have been sent; though there is no comment regarding which the requirements were or where they came from. There is no evidence on record as to the requirements for admission, or as to the letters that were allegedly sent to request such authorizations.

377. In this case, the representatives have not claimed that the alleged lack of access to official sources comes from a rule or norm ordered by the State. Hence, the alleged facts refer to alleged de facto restrictions or factual impediments, therefore the representatives have the burden to prove that the State restricted the access of the alleged victims to certain official sources of information. Once the restrictions are proven by the party claiming them, the State has the burden to prove the reasons and circumstances under which such restrictions were imposed, and if applicable, justify the criteria it used to allow the access of reporters of some media and deny the access of others.

378. As to the alleged violation of Article 24 of the Convention, the representatives pointed out the unequal and discriminatory treatment, inasmuch as the State has intended to separate and exclude certain media, as Globovisión, from the access to information in view of the content of the messages that such means expresses, broadcasts and pursues and its editorial line critical of the government The State, in addition, emphasized that such arguments are not contained in the Commission's application and that the representatives' brief should limit to the facts contained therein. The Court shall refer to the representatives' argument insofar as it restricts the factual framework of this case.

379. This 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" [FN340]. 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" [FN341].

[FN340] Cf. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica Advisory Opinion OC-4/84 of September 19, 1984, Series A Nº.14, para. 53. Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 209.

[FN341] Cf. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica Advisory Opinion OC-4/84 of September 19, 1984, Series A Nº.14, para. 54. Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela, supra note 29, para. 209.

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380. It is possible for a person to feel discriminated by the way other people think about its relation to a group or social sector, independently of whether such perception corresponds to reality or to the victim's self-identification. Considering what has been established in the previous chapter (supra para. 360 to 362) it is possible that the people linked to Globovisión have been included in the category of "political opinions" contained in Article 1(1) of the Convention and for this reason, be subjected to discrimination in certain situations. As a result, the alleged discriminations of fact should be analyzed under the general non-discrimination obligation contained in Article 1(1) of the Convention [FN342], in connection with Article 13(1) therein.

[FN342] The difference between the two Articles lies in that 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. Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela, supra note 29, para. 209. Cf. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica Advisory Opinion OC-4/84, supra note 341 para. 53 and 54.

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381. The foregoing having been mentioned, this Tribunal shall limit the analysis to those facts in which it was not allowed to access to the information that is under the control of the State and to those facts that were alleged in the Commission's application, according to the same terms mentioned therein. The incidents in which the news team of Globovisión could not cover certain events due to the actions of private individuals have been already analyzed in the previous chapter, under the respective concepts.

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382. The Commission alleged that on November 12, 2004 a news team of Globovisión has been denied access to an event that took place at the Ministry of Defense, whose headquarters is the Army Command, in spite of the fact that the Ministry of Communication and Information invited all the private media to participate and Globovisión complied with the requirements to cover the event. It alleged that the official media as Venprés, Venezolana de Televisión and radio nacional YVKE were afforded access to the place.

383. The evidence that the Commission and the representatives tendered to classify these facts as barriers to access to official sources of information consist in a video of a transmission at the television station of that same day and the video shows the entrance to an area of the building where there are military officers walking [FN343]. At the same time, the situation is narrated but there is no visible evidence that substantiate the alleged facts. The evidence does not suggest either who of the alleged victims that are members of the news team of Globovisión had been denied access to the military facilities. Finally, no evidence was tendered in order to prove that other media had, in fact, access to the sources of information.

[FN343] Cf. video (appendix 29 to the application)

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384. The Commission alleged that on January 28, 2005 a news team of Globovisión was denied access to Fuerte Tiuna, on occasion of the hearing held in a trial against alleged Colombian paramilitary officers arrested in Venezuela; that the facts had to be transmitted via the telephone, since members of the Military Police, who were securing the place, impeded the news team from setting up the equipment in order to broadcast live images, despite Globovisión had complied with the forwarding of the letter requested as a condition to access the place. It pointed out that the official television station, Venezolana de Televisión, was allowed in to cover the story.

385. As to this alleged fact, the Commission and the representatives furnished as evidence the narration by telephone of what happened in said hearing by a reporter of Globovisión [FN344]. At the end of the narration, the reporter expresses that, despite the written request that Globovisión sent as a condition to access the place, they were denied entrance. However, the recording is insufficient to show the barrier to access to official sources of the alleged victims; besides, he allegedly sent letter has not been furnished and it neither proves that reporters from other media had access to the facility.

[FN344] Cf. video (appendix 30 to the application)

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386. The Commission alleged that on February 15, 2005 a news team of Globovisión was refused permission to enter the Palacio de Miraflores to cover the visit of the President of Colombia. Reporter Aymara Lorenzo and her assistants, who were planning to broadcast live via

microwave tone and who allegedly had complied with the requirements for their entry and the entry of the respective technical equipment, were informed at the entrance of the place that they could not access it since they were not in the accreditation list and that they should wait for an inspection of the equipment and the personnel. Later on, they were allowed in but they had to use a time-shifted broadcasting.

387. The evidence tendered by the Commission and the representatives consists of a video, in which it is possible to listen to a narration of the said situation [FN345]. Furthermore, the reporter mentions that the coordinating chief of Globovisión would have tried to contact the Press Department, but that it was impossible for her to communicate and she narrates that other press media were allowed in without problems. Next, the video shows the reporter in the Press Room of Palacio de Miraflores narrating the story of the visit of the Colombian President. The reporter explains that she and her team were allowed in, due to a flaw of the security devices. Nevertheless, the evidence furnished is not ample or sufficient to consider the fact proven, since the recording does not show that the alleged victims were impeded from having access to the official sources; moreover, there is no evidence of the letter sent or of the fact that other media company were allowed in. There is also no specification regarding the other members of Globovisión's team, apart from Aymara Lorenzo, whose access to Palacio Miraflores was restricted.

[FN345] Cf. video (appendix 34 to the application)

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388. The Commission alleged that on February 16, 2005 a Globovisión news team led by reporter Ruth Villalba was refused permission to enter Palacio Miraflores and install their microwave equipment in order to cover a cabinet meeting.

389. The evidence furnished by the Commission and the representatives consist of the testimony of Mrs. Aymara Anahi Lorenzo Ferrigni [FN346] and a video where it is possible to listen to a telephone narration that the news team had been waiting for two hours and still, they were not allowed in with the microwave equipment [FN347]. The video shows a scene where reporter Ruth Villalba is being told that the waiting was due to an "administrative discussion" taken place at Palacio de Miraflores and it is mentioned in the recording that not even the people in charge of the press had information on what was being discussed. Also, the video shows another transmission of a reporter who narrates the alleged discrimination when trying to have access to such sources. It does not spring from the evidence tendered by the parties the identification of the rest of the members of the news team and Mrs. Ruth Villalba is not among the alleged victims of this case. In sum, no evidence was furnished regarding the alleged facts since the recording does not show that the access to the official sources would have been denied to those alleged victims.

[FN346] Cf. affidavit rendered by Aymara Anahí Lorenzo Ferrigni on April 8, 2008 (records of evidence, volume XXXIII, pages 8521).
[FN347] Cf. video (appendix 34 to the application)

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390. The Commission alleged that on August 17, 2005 a news team of Globovisión led by Mayela León was prevented from covering the meeting between the President of the Republic and then former president of Nicaragua; that upon arriving at the Palacio, the presidential press office told them the meeting was private and that the only reporters who could come in were those from state media. The representatives further argued that "officers of the Military House […] prohibited the entrance of the news team of Globovisión and of the rest of private media companies that were in there".

391. In such regard, the Commission and the representatives tendered the testimony of Mrs. Mayela León Rodríguez [FN348] and a video in which the reporter narrates the alleged fact via the telephone [FN349]. Neither the Commission nor the representatives furnished evidence regarding the alleged information provided by the Direction of Presidential Press at to the private nature of the meeting. It does not spring from the evidence furnished by the parties the identity of the remaining members of Globovisión's team. The evidence offered is insufficient to establish that access to official sources was denied to the alleged victims.

[FN348] Cf. affidavit rendered by Mayela León Rodríguez on April 15, 2008 (records of evidence, volume XXXIII, pages 8768).
[FN349] Cf. video (appendix 32 to the application)

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392. The Commission alleged that, on an undetermined date, the President of the Criminal Judicial District of Caracas ordered that chains be deployed in various areas of the Palacio de Justicia in order to prevent access to the media, including Globovisión's workers. This took place even though the President of the Supreme Court of Justice said he would guarantee the media's freedom of movement and passage through all areas of the Palacio. The representatives alleged that such incident took place on May 7, 2005.

393. The evidence furnished is a video in which a reporter, broadcasting from the Palacio de Justicia, explains the described situation [FN350]; the camera shows a chain with a sign that reads "no trespassing"; there are also a group of people seated on the floor who said to be reporters and expressed that they were not allowed in. The video also shows an interview with a reporter of the national chain whose access would have been restricted. The Court considers that the evidence furnished is insufficient to prove this fact; specially, the barrier placed on the alleged victims to access to official sources. On the contrary, according to the narration in the video, the measure would have affected all reporters present in the place; therefore this would not prove that the measure was adopted specifically against the reporters of said television station. The parties did not present statements or documents in support of the directions or declarations made by said public officials.

[FN350] Cf. video (appendix 34 to the application)

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394. It is deduced from the analysis of the alleged facts that the items of evidence tendered are not conclusive or sufficient to consider such facts proven. It does neither spring from the evidence presented by the parties that the alleged victims would have objected to the alleged barriers to access to the official sources of information (supra para. 302 to 304).

395. Based on the foregoing, this Tribunal considers that it has not been proven the existence of barriers to access to official sources of information or a discriminatory treatment on the part of state authorities towards the alleged victims, resulting in the violation of their right to freely seek, receive and impart information, under the terms of Articles 1(1) and 13(1) of the Convention, in this sense.

X. ARTICLES 13(1) AND 21 (RIGHT TO PROPERTY) [FN351] IN CONJUNCTION WITH ARTICLE 1(1) OF THE AMERICAN CONVENTION

[FN351] Article 21 of the Convention establishes that:
1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. .
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man by man shall be prohibited by law.

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396. The Commission alleged that the reporters of Globovisión would have been prevented from performing their jobs because of facts marked by the use of physical and verbal violence that were "accompanied by other facts such as the obstruction of the lens of the cameras with hands or handkerchiefs, the cornering and blows to the camera and microphones, the violent plundering of work instruments, the damage to vehicles which are property of Globovisión while the workers were in them or when the vehicles were parked, theft of video tapes which contained information gathered at the place of the events or other technical instruments or protective equipment such as cameras, anti- gas masks and radios, throwing of stones, liquids and others objects to workers of Globovisión or to the vehicles they were in". The Commission further alleged that in those cases, "the property was fully identified as the property of the television station" and that "the nature of the facts allowed concluding that the motive was the damage in itself and not the commission of other crimes". It also argued that the damage to the property of Globovisión constituted "a way of pressure that restricts the exercise of the right to freedom of expression by means of intimidation and fear of being the target of the attack".

397. Whereas the Commission did not specify the facts that provoked the violent acts against the property and premises of Globovisión, the representatives pointed out 17 specific facts in the application that, according to them, affected the coverage of information and opinions of the news team of that media [FN352]. The representatives, in turn, alleged that those 17 facts

constituted the violation of the right to property of Mr. Federico Ravell and Guillermo Zuloaga, in their capacity as shareholders of Globovisión. They alleged that such facts constitute "conclusive evidence of a series of pecuniary damage caused to recording equipment, vehicles, premises and other property of Globovisión that have deprived the station and its shareholders of their use and enjoyment, which amounts to an unlawful restriction or in this case, deprivation of the property under the terms specified in the text of Article 21 of the Convention. They pointed out that, according to the case-law, they may claim protection of property, under the terms of the judgment rendered by the Court in the case of Ivcher Bronstein v. Perú and Cantos V.Argentina. They alleged that this violation was, to a good extent, a means for the violation of other human rights; therefore, the purpose would not only be to protect the property as a mere pecuniary or commercial interest but also to provide international protection in situations where the violation of Article 21 is connected with the abridgement of other provisions of the Convention. The representatives mentioned that the damage to the property of the company Globovisión was not "totally covered by the insurance policy" and they specified that this also constituted the arbitrary intervention inside a media company to determine its role as a media in order to fully exercise freedom of expression. Besides, they alleged that, as a result of such facts, Globovisión has gone to great economical expenses as to security, trying to protect the premises and the personal integrity of its workers; which implied an "additional punishment" for the exercise of the freedom of expression, inasmuch as it could reassign the same items to the broadcasting of programs.

[FN352] The referred incidents would have occurred on November 22, 2001; January 9, 2002; February 18, 2003; April 3, 2002; June 13, 2002; July 9, 2002; September 4, 2002; September 11, 2002; September 21, 2002; November 18, 2002; December 3, 2003; January 18, 2004; March 1, 2004; May 29, 2004, two other incidents occurred that day; January 23, 2005 and July 11, 2005.

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398. The State made no specific allegation regarding the alleged violation of the right to freedom of expression in this sense. As to the alleged violation of the right to property, the State repeated that the facts and arguments, which are subject-matter of the international proceeding, are those determined in the application of the Commission; therefore, it requested to Court to not analyze them. Besides, it argued that there is no evidentiary support of this argument, since the only evidence tendered would be the sayings of the alleged victims. It also mentioned that the petitioners themselves have acknowledged that the alleged attacks against the property of Globovisión would have been committed by undetermined individuals, in an isolated way. Finally, the State alleged that the property that was allegedly damaged or impounded would be the property of a legal entity, that is, Globovisión, considering that the terms of the Globovisión are clear inasmuch as the protected interests are those of human beings, under Article 1.2 therein.

399. Regarding the alleged violation of Article 21 of the Convention and pursuant to the case-law developed by this Tribunal, the concept of property is a broad one and comprises, among other aspects, the use and enjoyment of "property", defined as those material objects which are susceptible of being possessed, as well as any rights which may be part of a person's assets [FN353]. The right to property is not an absolute one and it may be restricted to the cases and the

forms established by law [FN254]. In fact, the Court has considered in previous cases that, although the figure of legal entities has not been expressly recognized by the American Convention, as it is in Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, this does not mean that, in specific circumstances, an individual may not resort to the Inter-American system for the protection of human rights to enforce his fundamental rights, even when they are encompassed in a legal figure or fiction created by the same system of law.

[FN353] Cf. Case of Ivcher Bronstein V. Perú, supra note 59, para. 122; Case of the Mayagna (Sumo) Awas Tingni Community V. Nicaragua, supra note 36, para. 144; Case of Salvador Chiriboga V. Ecuador, supra note 28, para. 55; Case of Chaparro Álvarez and Lapo Íñiguez. V. Ecuador, supra note 29, para. 174; Case of Palamara Iribarne V. Chile, supra note 63; para. 102; Case of the Yakye Axa Indigenous Community V. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C, Nº 125, para. 137; and Case of the Moiwana Community V. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C, Nº 124, para. 129. Cf., Case of the "Five Pensioners" V. Perú, supra note 120, para. 102.
[FN354] Cf. Case of Ivcher Bronstein V. Perú, supra note 59, para. 128; Case of Salvador Chiriboga V. Ecuador, supra note 28, para. 60 and 61; Case of Chaparro Álvarez and Lapo Íñiguez. V. Ecuador, supra note 29, para. 174.
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400. However, it is worth making a distinction in order to identify which situations could be examined by this Court within the framework of the American Convention.In this respect, this Court has already examined the possible violation of the rights of individuals when they are shareholders [FN355]. In such cases, the Court has made a distinction between the rights of a company's shareholders from those of the company itself, indicating that domestic legislation grants shareholders specific direct rights, such as receiving the agreed dividends, attending and voting at general meetings and receiving part of the assets of the company when selling their shares, among others [FN356].

[FN355] Cf. Case of Ivcher Bronstein V. Perú, supra note 59, para. 123, 125, 138 and 156.
[FN356] Cf. Case of Ivcher Bronstein V. Perú, supra note 59, para. 127; and Case of Chaparro Álvarez and Lapo Íñiguez. V. Ecuador, supra note 29, para. 181. Cf., Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970, p. 36, para. 47.
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401. In this case, it is an undisputed fact in this proceeding that Mr.Alberto Federico Ravell and Guillermo Zuloaga are shareholders of the company UNITEL de Venezuela C.A., which, at the same time, owns the television station Globovisión and the evidence tendered suggest that they were shareholders of, at least partially, the television station of Globovisión at the moment of the alleged facts [FN357].

[FN357] The representatives presented the Articles of incorporation and the minutes of the shareholders' meeting of Unitel de Venezuela C.A., Corpomedios GV Inversiones, C.A and Globovisión Tele, C.A., in order to prove the participation of Mr. Ravell and Zuloaga as shareholders of Globovisión (records of evidence, volume XIV, pages 4148 and subs.) It spring from the documents furnished that the company Corpomedios GV Inversiones C.A. holds 100% of the shares of the company Globovisión Tele C.A (according to the Minutes of Extraordinary General Meeting of Shareholders of Globovisión Tele, C.A, of August 22, 2001; records of evidence, volume XIV, pages 4187 and subs). In turn, the company Corpomedios GV holds 60% of the shares in the company Unitel de Venezuela C.A., Half of 40% of the remaining shares belong to Sociedad Mercantil Sindicato Avila, C.A and the other half to Sociedad Mercantil DNS Inversiones 2000, C.A. (Cf., minutes of Extraordinary General Meeting of Shareholders of Corpomedios GV Inversiones, C.A., of February 1, 2000; records of evidence, volume XIV, pages 4171 and subs.) In turn, the company Unitel de Venezuela C.A., by May 15, 2000, was formed by the shareholders Guillermo Antonio Zuloaga Núñez, who holds 66% of the shares and Alberto Federico Ravell, who holds 17% of the shares, and Montferrat S.A. holds the remaining 17% of the shares (Cf., minutes of the Extraordinary General Meeting of UNITEL de Venezuela C.A., May 15, 2000; records of evidence, volume XIV, pages 4151 and subs.). On January 3, 2005, it was registered an increase in the share capital of UNITEL de Venezuela, C.A, but such increase did not affect the percentage of shareholding. (Cf. Minutes of the Ordinary General Meeting of UNITEL de Venezuela C.A., of January 3, 2005 (records of evidence, volume XIV, pages 4164 and subs.).

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402. However, it has been established in the proven facts of the case that, on several occasions, some property of Globovisión was damaged, in particular, its premises, vehicles and part of the technological transmission equipment (supra para. 191, 197, 200, 214, 216, 211, 220 and 239). That is, the damage was caused to the premises and assets of Globovisión, as a company or legal entity. It has not been clearly proven that the damage to such assets was translated into an abridgment of the rights of Mr. Ravell and Zuloaga, in their capacity as shareholders of the company. Moreover, in some of the facts it has been established that security agents protected the alleged victims in risk situations, in which the priority was clearly the life and integrity of the people and not the transmission equipment. As to the security expenses which Globovisión have incurred for the protection of the premises and its workers, such outlays may be related to the facts of the instant case, though not only to them.

403. The Court considers that the alleged facts as violation of the right to property of Mr. Ravell and Zuloaga coincide with the arguments alleged supra as acts attributable to undetermined individuals who obstructed, on certain occasions, exercise of the profession of the alleged victims. These acts form part of the context and type of situations already analyzed in the chapter related to Article 1(1) of the Convention in connection with Articles 5 and 13 therein. Therefore, the Court deems that it has not been proven that the State violated the right to property of the alleged victims, under the terms of Article 21 of the Convention.

XI. REPARATIONS (Application of Article 63(1) of the American Convention) [FN358]

[FN358] Article 63(1) of the Convention provides that:
If the Court finds that there has been a violation of a right or freedom protected by [this] Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

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404. It is a principle of International Law that any violation of an international obligation that has caused damage entails the duty to provide adequate reparation [FN359]. All aspects of this obligation to make reparations are regulated by international law [FN360]. The Court has based its decisions in this regard on Article 63(1) of the American Convention.

[FN359] Cf. Case of Velásquez Rodríguez V. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, para. 25; Case of Valle Jaramillo et al. V. Colombia, supra note 20 para. 198; Case of Bayarri, supra note 22, para. 119.
[FN360] Cf. Case of Aloeboetoe et al. V. Surinam. Merits. Judgment of December 4, 1991. Series C No. 11, para. 44; Case of Valle Jaramillo et al. V. Colombia, supra note 20 para. 198; Case of Bayarri, supra note 22, para. 120.

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405. The reparations for human rights violations have been determined by this Tribunal based on the evidence furnished, its case-law and the arguments of the parties, according to the circumstances and characteristics of each case, in relation to the pecuniary damage [FN361] and the non-pecuniary damage as well [FN362]. The non-pecuniary damage may be compensated by the payment of a sum of money determined by the Court, applying judicial discretion and the principle of equity [FN363], as well as other forms of reparation, such as measures of satisfaction and guarantees of non-repetition. In the cases in which the Tribunal has ordered the payment of pecuniary compensations, it has established that the State may comply with its obligations by the payment in dollars of the United States of America or in an amount equivalent to the national currency the State, at the rate of exchange in effect on the international market [FN364], considering the need to preserve the value of the compensatory amounts, in relation to the time that elapsed since the processing of the case at the national and international level, and the moment the payment so ordered is effectively done.

[FN361] This Tribunal has established that pecuniary damages involve "the loss of or detriment to the victims' income, the expenses incurred as a result of the facts, and the monetary consequences that have a causal nexus with the facts of the sub judice case". Case of Bámaca Velásquez V. Guatemala. Reparations and Costs, supra note 36, Para. 43.
[FN362] The non-pecuniary damage may include both the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to them, as well as other sufferings that cannot be assessed in financial terms. Since it is not possible to assign the non-pecuniary damage a precise monetary equivalent, it may only be compensated by the payment of a sum of money or the assignment of goods or services,

determined by the Court, applying judicial discretion and the principle of equity as well as the execution of acts or works of a public nature or repercussion, which have effects such as recovering the memory of the victims and commitment to the efforts to ensure that they do not happen again. 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.
[FN363] Cf. Case of "the Street Children" (Villagrán Morales et al.) V. Guatemala; supra note 362, para. 84; and Case of Ticona Estrada V. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 130; and Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 242.
[FN364] Cf. Case of Aloeboetoe et al. V. Surinam. Reparations and costs. Judgment of September 10, 1993. Series C No. 15, para. 89.
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406. Once established the non-compliance by the State with the obligations to guarantee (Article 1(1)) the rights enshrined in Articles 5(1) and 13(1) of the Convention and in light of the criteria established by the constant practice of the Tribunal regarding the scope and nature of the obligation to repair [FN365], the Court shall consider the claims made by the Commission and the representatives and the arguments of the State.

[FN365] Cf. Case of Velásquez Rodríguez, supra note 359, para. 25-27; Case of Garrido and Baigorria V. Argentina. Reparations and Costs. Judgment of August 27, 1998. Series C No. 39, para. 43; Case of the "White Van" (Paniagua Morales et al.) V. Guatemala, supra note 36, para. 76 to 79.

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407. The Inter-American Commission pointed out that the alleged victims made important economic efforts in order to obtain justice at the domestic level and overcome the physical, moral and professional consequences caused by the facts of the instant made. Moreover, it mentioned that "the victims have experienced psychological suffering, anguish uncertainty, and lifestyle alterations by reason of being unable to perform their profession on account of acts of persecution, harassment, and physical and moral attacks, and of the personal and professional consequences of those act"; therefore, it requested the Court to "order the payment of a compensation for such non-pecuniary damage".

408. Furthermore, the Commission requested the Court to order the State:

a) To adopt all the measures necessary to prevent actions by both state agents and private citizens that could hamper the seeking, receiving, and imparting of information by social communicators and support staff;
b) To adopt all the measures necessary to respond with due diligence whenever there are acts of State agents as well as private individuals that hamper the seeking, receiving, and imparting of information by social communicators and support staff.;

c) To conduct an impartial and exhaustive investigation in order to prosecute and punish all those materially and intellectually responsible for the facts set out in this case and publish the results of those investigations;
d) To ensure the victims the free access to official sources of information; without any type of interference or arbitrary conditions;
e) To repair the damages caused to the victims by the acts of State authorities; and
f) To pay the costs and expenses incurred in the processing of the case both at the national level and the expenses derived from the processing of the case before the Inter-American system.

409. The representatives alleged that the violations committed and the damage to the assets and the premises of Globovisión have caused a series of economic outlays and extraordinary expenses that constitute a considerable asset impairment for the shareholders of Globovisión who, in accordance with their shareholding in said company, have sustained considerable economic impacts. In this sense, they alleged that Globovisión, since the year 2001 until the present day, has incurred into expenses to acquire equipment and security systems, to hire surveillance services and build security areas and the payment of a non-refundable amount to the insurance company; therefore, the "shareholders of Globovisión suffered a loss that amounts to US$ 947.297, 438". They requested the Court to order the State the payment of a compensation for pecuniary damage in favor of the shareholders of Globovisión, Mr. Alberto Federico Ravell and Guillermo Zuloaga. The receipts furnished consist of reports from the accounting department of the television station regarding security expenses and reports on the expenses for material, non-refundable damage issued by the insurance company.

410. In relation to the non-pecuniary damage, the representatives pointed out that the alleged victims have had to suffer the constant humiliation and the public discredit to which the public authorities and the 'followers and supporters of the ruling party' subjected them, as well as the lack of a serious, diligent and effective investigation by state authorities in order to determine the incidents and to identify and punish the responsible, which has originated an important impairment to the alleged victims. Therefore, they requested the Court to order the compensation in fairness for the non-pecuniary damage caused.

411. Besides, the representatives requested the Court to order the State:

1. To adopt the measures necessary to stop and prevent those actions of officials or government agents as well as of private individuals that affect the personal integrity, that impede the search, access, expression and broadcasting of information or that affect the right to property of the alleged victims in the case at hand;
2. To adopt the measures necessary to deal with, promptly and effective, in protection of the victims, the situations in which the officials and state agents or private individuals caused an impairment to the personal integrity, that impede the search, access, expression and broadcasting of information or that affect the right to property of the victims in this case.
3. To adopt the measures necessary to carry out a serious, thorough and complete investigation to determine the responsible of the violations mentioned in this proceeding and, once the alleged responsible are identified, to subject them to due process in order to determine the legal responsibility.

4. The result of such investigations must be made public and the Venezuelan State must publicly recognize the international responsibility by means of the publication in a national newspaper of whatever judgment this Tribunal may render;
5. To issue a strong condemnation of the attacks to which the victims have been subjected in the instant case , from its highest level and to adopt a conduct that promotes the respect for freedom of expression, tolerance and dissident opinions and positions;
6. To publish the most relevant parts of whatever judgment on merits the Court may hand down, in a newspaper of national circulation during the time the Court deems appropriate and to publish the entire text of the judgment in the official gazette of the State;
7. To freely provide, through national health centers, the appropriate treatment required by the victims of this case, prior statement of their consent to such effect, for the necessary time, including the provision of medicines;
8. To guarantee the equitable, fair and free access to information and news, without the imposition of discretional and arbitrary conditions;
9. To adopt the legislative measures and of whatever kind that are necessary to fully ensure the exercise of the freedom of expression and information;
10. To abstain from continue attacking and intimidating the human rights defenders and the victims for having resorted to the Inter-American system for the protection of human rights in this case and, as a consequence, to adopt all the necessary measures to guarantee and respect the rights contained in the American Convention;
11. To abstain from keep attacking and intimidating the Commission and the Court as well as its members, for having heard and decided the case, according to their mandates and duties under the American Convention;
12. To pay the victims identified in this case, the compensations that may correspond for the pecuniary and moral damage caused to them; and
13. To pay the costs and expenses incurred during the processing of this case, both at the domestic level and at the Inter-American system for the protection of Human Rights.

412. The State pointed out that no unlawful damage was caused to the alleged victims and let al.one, there is no obligation to repair it; therefore, it requested the Court, in general terms, to dismiss each of the claims and reparations requested by the Commission and the alleged victims.

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413. The case-law of this Tribunal has repeatedly established that a judgment constitutes per se a form of reparation [FN366].

[FN366] Cf.; inter alia, Case of Neira Alegría et al. V. Perú. Reparations and Costs. . Judgment of September 19, 1996. Series C No. 29, para. 56; Case of Valle Jaramillo et al. V. Colombia, supra note 20 para. 224 and Case of Ticona Estrada V. Bolivia, supra note 44, para. 130.

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414. Moreover, the State must conduct effectively the investigations and criminal proceedings in process and any future proceedings in order to determine the corresponding responsibilities for the facts of this case and to apply the appropriate legal provisions.

415. As has been established in other cases [FN367], the State should publish, at least one, in the Official Gazette and in another newspaper of wide national circulation, paragraphs 1 to 5, 114 to 168, 279 to 287, 302 to 304, 322 to 324, 330, 335 to 337, 343, 344, 358 to 362, 404 to 406 and 413 to 416 of this Judgment, without the corresponding footnotes and the operative paragraphs. Said publications shall be made within six months following notice of this Judgment.

[FN367] Cf. Case of Cantoral Benavidez V. Perú. Reparations and Costs. . Judgment of December 3, 2001. Series C No. 88, para. 79 and Case of Ticona Estrada V. Bolivia, supra note 44, para. 130; para. 160; Case of Tiu Tojín V. Guatemala, supra note 22, para. 106

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416. In this sense, having verified that the victims of this case were in a situation of vulnerability which was shown by the acts of physical and verbal attacks committed by private individuals (supra para. 143, 155 to 161, 279, 287 and 360 to 362) this Tribunal deems it is appropriate to order, as a guarantee of non-repetition, the State to adopt the measures necessary to prevent the undue restrictions and direct and indirect impediments to the exercise of the freedom to seek, receive and impart information.

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417. As held by the Court in prior cases, costs and expenses are included within the concept of reparation as enshrined in Article 63(1) of the American Convention. [FN368].

[FN368] Cf. Case of Garrido and Baigorria V. Argentina. Reparations and Costs; supra note 365, para. 82; Case of Valle Jaramillo et al. V. Colombia, supra note 20 para. 243; and Case of Ticona Estrada V. Bolivia, supra note 44, para. 177.

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418. The Inter-American Commission requested the Tribunal, once the representatives of the victims have been heard, to order the State to pay the costs and expenses incurred in pursuing this case at the national level, as well as those arising from its processing before the inter-American system. In the brief of pleadings and motions, the representatives requested the Court to order the State to pay the expenses related to the conduct of this case before the domestic and international courts during the period of 2001-2007 and they also pointed out that such expenses have "affected the budget and property of Globovisión and, consequently, its shareholders".

419. Based on the foregoing and the evidence tendered, the Court determines, in fairness, that the State must grant the amount of US$ 10.000 (ten thousand dollars of the United States of America), as costs and expenses.

420. The reimbursement of the costs and expenses established in this Judgment shall be directly delivered to the victims or to one of them, as appointed by them, who shall cover what may correspond for the legal assistance provided, according to the criteria of the victims or their

representatives or the agreement entered into between them and their legal advisors, within the term of one year, as from notice of this Judgment

421. If, due to reasons attributable to the beneficiaries of the above reimbursement, they were not able to collect it within the period set for that purpose, the State shall deposit said amount in an account held in the beneficiaries' name or draw a certificate of deposit from a reputable Venezuelan financial institution, under the most favorable financial terms allowed by the legislation in force and the customary banking practice in Venezuela. If after ten years compensation set herein were still unclaimed, said amounts plus accrued interests shall be returned to the State.

422. The State must discharge its pecuniary obligations by tendering dollars of the United States of America or an equivalent in the Venezuelan legal currency, at the New York, USA exchange rate between both currencies prevailing on the day prior to the day payment is made.

423. The payments may not be affected or subject to any current or future tax or charge. Consequently, such payments shall be fully delivered to the beneficiaries according to the terms established in this Judgment.

424. Should the State fall into arrears with its payments, Venezuelan banking default interest rates shall be paid on the amounts due.

425. In accordance with its consistent practice, the Court retains the authority deriving from its jurisdiction and the provisions of Article 65 of the American Convention, to monitor full compliance with this Judgment. The instant case will be closed once the State has complied in full with all the provisions herein. Within a term of one year as from the date notice the Judgment is served, the State shall submit to the Court a report on the measures adopted in order to comply with the Judgment.

XII. OPERATIVE PARAGRAPHS

426. Therefore:

THE COURT,

DECIDES:

Unanimously,

1. To dismiss the first preliminary objection raised by the State, in accordance with paragraphs 25 to 27 of this Judgment.

Unanimously,

2. To dismiss the second preliminary objection raised by the State, in accordance with paragraphs 31 to 34 of this Judgment.

Unanimously,

3. To dismiss the third preliminary objection raised by the State, in accordance with paragraphs 36 to 37 of this Judgment.

By six votes to one,

4. To dismiss the fourth preliminary objection raised by the State, in accordance with paragraphs 42 to 45 of this Judgment.

Judge ad hoc Pasceri Scaramuzza dissenting.

DECLARES:

By six votes to one, that:

5. The State is responsible for the non-compliance with the obligation contained in Article 1(1) of the Convention to ensure the right to freely seek, receive and impart information and the right to humane treatment, enshrined in Articles 13(1) and 5(1) of the American Convention, to the detriment of Alfredo José Peña Isaya, Aloys Emmanuel Marín Díaz, Ana Karina Villalba, Ángel Mauricio Millán España, Aymara Anahí Lorenzo Ferrigni, Beatriz Alicia Adrián García, Carla María Angola Rodríguez, Carlos Arroyo, Carlos Quintero, Ramón Darío Pacheco Villegas, Edgar Hernández, Efraín Antonio Henríquez Contreras, Felipe Antonio Lugo Durán, Gabriela Margarita Perozo Cabrices, Janeth del Rosario Carrasquilla Villasmil, Jhonny Donato Ficarella Martín, John Power, Jorge Manuel Paz Paz, José Vicente Antonetti Moreno, Joshua Oscar Torres Ramos, Martha Isabel Herminia Palma Troconis, Mayela León Rodríguez, Miguel Ángel Calzadilla, Oscar José Núñez Fuentes, Richard Alexis López Valle, and Yesenia Thais Balza Bolívar, under the terms and for the reasons mentioned in paragraphs 114 to 362 of this Judgment. Moreover, the State is responsable for the non-compliance with the obligation contained in Article 1(1) of the Convention to ensure the right to freely seek, receive and impart information enshrined in Article 13(1) of the American Convention, to the detriment of Ademar David Dona López, Carlos José Tovar Pallen, Félix José Padilla Geromes, Jesús Rivero Bertorelli, José Gregorio Umbría Marín, Wilmer Jesús Escalona Arnal and Zullivan René Peña Hernández, under the terms and for the reasons mentioned in paragraphs 114 to 362 of this Judgment.

6. It has not been established that the State violated the right to equal protection, enshrined in Article 24 of the American Convention on Human Rights, under the terms and for the reasons mentioned in paragraphs 375 to 381 of this Judgment.

7. It has not been established that the State violated the right to property, enshrined in Article 21 of the American Convention on Human Rights, under the terms and for the reasons mentioned in paragraphs 399 to 403 of this Judgment.

8. It has not been established that the State violated the right to seek, receive and impart information, enshrined in Article 13(3) of the American Convention on Human Rights, under the terms and for the reasons mentioned in paragraphs 366 to 469 of this Judgment.

9. The Court did not analyze the facts of the instant case under Articles 1, 2 and 7(b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Woman ("Convention of Belem do Pará") based on the reasons established in paragraphs 388 to 396 of this Judgment.

Regarding the declarative paragraphs, Judge ad hoc Pasceri Scaramuzza dissenting.

And Orders:

By six votes to one, that:

10. This Judgment is in itself a form of redress.
11. The State must, effectively and within a reasonable term, conduct the investigations and necessary criminal proceedings, still in process at the domestic level and all future investigations or proceedings in order to determine the corresponding responsibilities for the facts of the case at hand and apply the appropriate legal provisions, according to paragraphs 414 of this Judgment.
12. The State shall publish, at least once, in the Official Gazette and in another newspaper of wide national circulation, paragraphs 1 to 5, 114 to 168, 279 to 287, 302 to 304, 322 to 324, 330, 335 to 337, 343, 344, 358 to 362, 404 to 406 and 413 to 416 of this Judgment, without the corresponding footnotes and the operative paragraphs therein, in the term of six months, as from notice of this Judgment, under the provisions of paragraphs 415 of this Judgment.
13. The State must adopt all the measures necessary to prevent the undue restriction or direct or indirect impediments to the exercise of the freedom to seek, receive and impart information of the people defined as victims in this case, under the terms of paragraph 416 herein.
14. The State must pay the amount set in paragraphs 419 of this Judgment, as reimbursement of costs and expenses, within the term of one year, as from notice of this Judgment, under the terms of paragraph 420 to 424 herein.
15. It will monitor full compliance with this judgment and will consider the case closed when the State has executed the operative paragraphs. Within a term of one year as from the date notice the Judgment is served, the State shall submit to the Court a report on the measures adopted in order to comply with the Judgment.

Regarding the declarative paragraphs, Judge ad hoc Pasceri Scaramuzza dissenting.

Judge ah hoc Pasceri Scaramuzza informed this Court of his Dissenting Opinion, which is attached to this Judgment.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on January 28, 2009.

Cecilia Medina Quiroga
President

Sergio García Ramírez

Manuel E. Ventura Robles

Leonardo A. Franco
Margarette May Macaulay
Rhadys Abreu Blondet

Pier Paolo Pasceri Scaramuzza
Judge ad hoc

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary

DISSENTING OPINION OF JUDGE ad-hoc PIER PAOLO PASCERI SCARAMUZZA

In the case of Perozo et al V. the Bolivarian Republic of Venezuela

With the permission of the opinion of the majority of my colleagues, I, Pier Paolo Pasceri S., Judge ad-hoc of the Inter-American Court of Human Rights , regret to dissent from the judgment for having a different criterion as to the grounds and the operative paragraphs exposed therein (except for operative paragraphs 1, 2 and 3 of the decision) [FN1] and therefore I am unable to join the decision adopted by the majority of the judges of this Court, whose favorable opinions adopted the judgment on the merits as to the remaining issues that formed part of the decision from which I dissent today. In that sense, I shall now present the grounds in the following way:

I do not agree with foregoing judgment since, in my opinion, there are procedural and substantive reasons that must be observed:

[FN1] The reason for which I do not dissent from these operative paragraphs are the following:
a) regarding the decision related to “On the untimeliness in the filing of arguments and evidence contained in the Brief of Pleadings, Motions and Evidence submitted by the alleged victims”, it must be observed that such decision has been considered in the Order of the Court's President of March 18, 2008, and since it was not appealed, the decision became final. In fact, an appeal could have been filed against this decision by virtue of the terms of article 29 (2) of the Rules of Procedure of the Inter-American Court of Human Rights; but there is no record that such decision has been appealed; therefore, since it is a final decision, it cannot be subjected to a review in the judgment on the merits and insofar as such decision was ratified, I am unable to dissent from it now. In fact, it provides:

Article 29. Decisions.

1. The judgments and orders for discontinuance of a case shall be rendered exclusively by the Court.

2. All other orders shall be rendered by the Court if it is sitting and by the President if it is not, unless otherwise provided. Decisions of the President that are not purely procedural may be appealed before the Court.

3. Judgments and orders of the Court may not be contested in any way.

b) As to the decision related to"New Arguments and Allegations contained in the Autonomous brief signed by the Alleged victims", the reason why I agree with this is that I share the grounds expressed in the judgment regarding this issue. In fact, the judgment declares that the alleged victims cannot introduce new facts different from those that are contained in the application presented before the Court. Likewise, according to the judgments, the victims may put forward, on the basis of the facts mentioned by the Commission, new allegedly violated rights or facts that allow explaining, clarifying or disproving the facts mentioned in the application, which, in my opinion, results in the better understanding by the full Court of the matter under question, always limiting to the facts mentioned in the application.

c) Regarding the decision on the "prejudice in the roles played by some judges of the Court", the reason why I agree with the solution provided to this problem was mentioned in the decision that, in that moment, became final. To accept that, on this occasion, that there is a possibility of reanalyzing the decision, would imply to modify or eliminate the effect of a former adjudication that resulted from the Decision of October 18, 2007 made by the judges that, at that time, composed the Court (page 1103 of the records on the merits); which, in light of the terms of article 29 (3) of the Rules of Procedure of the Inter-American Court of Human Rights, may not be contested,

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1) Procedural reasons:

The procedural reasons are related to the objection of non-exhaustion of domestic remedies that was not decided but until the date the judgment was delivered, and was dismissed by the sentencing majority. In my opinion, said objection should have been admitted in light of the claims contained in the application filed by the Inter-American Commission on Human Rights and as a consequence, regarding the petitions contained in the autonomous brief of the alleged victims.

Even when the undersigned believes that the criminal actions are not consistent or sufficient to satisfy the claims lodged before this Court as shall be analyzed infra, it is evident that the State has expressed before this Court its nonconformity with the fact that the Court tried the case instead of the domestic law. That springs from the brief of the answer to the application.

In that sense, the judgment from which I dissent constitutes an anticipated ruling on matters that should be decided before courts of the Venezuelan State. Therefore, the application should have not been admitted at the beginning of this proceeding or prior to the decision on the merits of the instant case and, as a consequence, the case should be filed.

The foregoing consideration is based on the following reasons:

1.1. On Consistency

I understand that there are actions, petitions or remedies within the Venezuelan legislation that could still settle and satisfy, eventually, the same claims put forward before this international instance (contained in the application filed by the Commission or in its autonomous brief), to which the petitioners did not resort.

It spring from the reading of the application filed by the Commission- and similarly, from the autonomous brief containing the requests [FN2]-, that, in accordance with the claims made before this Court, it was requested to hold the Venezuelan State responsible for:

- Violation of the right to freedom of expression (article 13 of the American Convention)
- Violation of the right to humane treatment (article 5 (1) of the American Convention)
- Violation of the rights to a fair trial and judicial protection (articles 8(1) and 25 of the American Convention)

[FN2] In fact, it was put forward in the autonomous brief of requests of the alleged victims that:
"1) The Venezuelan State has violated the right to humane treatment enshrined in article 5.1 of the American Convention of Human Rights, in relation to its obligation to respect and guarantee the human rights established in article 1.1 regarding:
Mental integrity: …omissis...
B. physical integrity .... omissis ...
And that for these violations, the State is held internationally responsable.
2) The Venezuelan State has violated the right to freedom of thought and expression enshrined in article 13 of the American Convention of Human Rights, in relation to its obligation to respect and guarantee the human rights established in article 1(1) and that it is held internationally responsible for such violation.
3) The Venezuelan State has violated the right to property enshrined in article 21 of the American Convention of Human Rights, in relation to its obligation to respect and guarantee the human rights established in article 1(1) and that it is held internationally responsible for such violation.
4) The Venezuelan State has violated the right to a fair trial and judicial protection enshrined in articles 8 and 25 of the American Convention of Human Rights, in relation to its obligation to respect and guarantee the human rights established in article 1(1) and that it is held internationally responsible for such violation.
As a consequence, in light of the violations declared and after the adjudication of international responsibility of the Venezuelan State for such violations, the State is required to adopt the following measures of reparations for the victims:
1. To adopt the measures necessary to stop and prevent those actions of officials or government agents as well as of private individuals that affect the personal integrity, that impede the search, access, expression and broadcasting of information or that affect the right to property of the alleged victims in the case at hand;
2. To adopt the measures necessary to deal with, promptly and effective, in protection of the victims, the situations in which the officials and state agents or private individuals caused an

impairment to the personal integrity, that impede the search, access, expression and broadcasting of information or that affect the right to property of the victims in this case.

3. To adopt the measures necessary to carry out a serious, thorough and complete investigation to determine the responsible of the violations mentioned in this proceeding and, once the alleged responsible are identified, to subject them to due process in order to determine the legal responsibility.

4. The result of such investigations must be made public and the Venezuelan State must publicly recognize the international responsibility by means of the publication in a national newspaper of whatever judgment this Tribunal may render;

5. To issue a strong condemnation of the attacks to which the victims have been subjected in the instant case , from its highest level and to adopt a conduct that promotes the respect for freedom of expression, tolerance and dissident opinions and positions;

6. To publish the most relevant parts of whatever judgment on merits the Court may hand down, in a newspaper of national circulation during the time the Court deems appropriate and to publish the entire text of the judgment in the official gazette of the State;

7. To freely provide, through national health centers, the appropriate treatment required by the victims of this case, prior statement of their consent to such effect, for the necessary time, including the provision of medicines;

8. To guarantee the equitable, fair and free access to information and news, without the imposition of discretional and arbitrary conditions;

9. To adopt the legislative measures and of whatever kind that are necessary to fully ensure the exercise of the freedom of expression and information;

10. To pay the victims identified in this case, the compensations that may correspond for the pecuniary and moral damage caused to them; and

11. To pay the legal costs and expenses incurred during the processing of this case, both at the domestic level and at the Inter-American system for the protection of Human Rights". The emphasis is mine.

And as a consequence, the Venezuelan State:

- Must adopt all the measures necessary to prevent actions by both state agents and private citizens that could hamper the seeking, receiving, and imparting of information by social communicators and support staff;
- Must adopt all the measures necessary to respond with due diligence whenever there are acts of State agents as well as private individuals that hamper the seeking, receiving, and imparting of information by social communicators and support staff.;
- Must conduct an impartial and exhaustive investigation in order to prosecute and punish all those materially and intellectually responsible for the facts set out in this case and publish the results of those investigations;
- Must ensure the victims the free access to official sources of information; without any type of interference or arbitrary conditions;
- Must repair the damages caused to the victims by the acts of State authorities; and
- Must pay the legal costs and expenses incurred in the processing of the case both at the national level and the expenses derived from the processing of the case before the Inter-American system.

In keeping with my opinion and by way of example, it should be emphasized that there is an appropriate action within the Venezuelan legal system for the autonomous protection of constitutional rights, which has a similar regulation under the American Convention on Human Rights, such as the right to freedom of expression, enshrined in article 57 of the Constitution of the Bolivarian Republic of Venezuela (hereinafter, CBRV), right to defense and due process (or which is the same, right to a fair trial and judicial protection) established in articles 26 and 49 of the CBRV, right to humane treatment, established in article46 of the CBRV; the appropriate action is the action for the protection of constitutional rights or also called constitutional amparo set forth in article 27 of the CBRV , which was developed in the Organic Law of Amparo of Constitutional Rights and Guarantees and in some binding judgments of the Constitutional Chamber of the Supreme Court of Justice, which could have been an effective remedy in Venezuela if immediately or directly taken, for the case there were no regular actions capable of protecting the persons demanding justice within the Venezuelan legal system.

It spring from the court records followed before this Court that no action for constitutional amparo was lodged in order to protect or reestablish the rights allegedly violated or threatened to be violated, which are enshrined and regulated, in a similar way, under the American Convention on Human Rights, as previously discussed.

Moreover, it should be mentioned that a possible decision of amparo could have satisfied some or all the claims contained in the petition which were transcribed supra- and that, in a similar and expanded way, were requested by the alleged victims in its autonomous brief- for example, by ordering the adoption of those measures necessary to prevent that actions of the State's agents as well as of private individuals from keep hindering the search, reception and dissemination of information urging the law enforcement personnel to take specific steps to avoid the repetition of events such as these; or by guaranteeing the identified petitioners the exercise of the right to freedom of thought and expression; specially , the exercise of their profession; or by ordering, as an example of an action for amparo against judgments or against the omission of actions, an impartial and thorough investigation in order to prosecute and punish all the responsible for the facts mentioned in the complaint.

Moreover, outside the framework of the constitutional law but within the scope of Venezuelan administrative proceedings, it is worth mentioning that administrative courts do not only hear about statements of the government (of administrative acts, administrative contracts) but it also hear about the omissions or deficiency (of public utilities for instance) as well as about the control over de facto proceedings or material or ordinary behavior of the administration itself, having constitucional authority (article 259 of the CBRV [FN3]) to order the necessary measures to restore the subjective legal situations harmed by administrative actions .

[FN3] Article 259. The administrative and adjudicatory jurisdiction corresponds to the Supreme Court of Justice and other courts determined by law. The administrative organs have the authority to annul the general or individual administrative acts that are contrary to law, even because of misuse of power; condemn the payment of sums of money and the reparation of damages originated under the responsibility of the Administration; hear about claims in relation

to public utilities and order the necessary measures to restore the subjective legal situations impaired by the administrative actions.

Progressively, the judicial protection the Venezuelan State was providing by means of its judiciary, regarding these last proceedings (de facto proceedings or material or ordinary proceedings) was formally and positively provided for in the Venezuelan legislation inasmuch as it enshrined the possibility for administrative courts to hear about claims against de facto proceedings attributable to organs of the National Executive branch and other national high-ranking authorities that exercise the Public Power (article 5 (27), consistent with the first paragraph of the same article, all of them of the Organic Law of the Supreme Tribunal of Justice of Venezuela). It follows that claims tending to control the de facto proceedings that may have conducted the organs of the Executive and other national high-rank authorities exercising the public power, might have been lodged and processed by means of this action stipulated in the domestic legislation.

Moreover, by way of example, the pecuniary claims contained in the autonomous brief of requests, pleadings and evidence of the victims (page 619, of the measures of full reparation requested by the victims that were included in numeral 21 (rectius10), lodged with this Court, should have been referred to by means of the specific action that exists within the Venezuelan legislation, which is, that of pecuniary claims against the Republic, with all the requirements that such action implies (article 5, numeral 24, consistent with the first paragraph of the same article, all of them of the Organic Law of the Supreme Tribunal of Justice of Venezuela [FN4]).

[FN4] Article 5

" The competences of Supreme Tribunal of Justice, as the highest Tribunal of the Republic are:

…omissis...

24. To know the demands proposed against the Republic, States, Municipalities or any Autonomous Institute, Public Entity or Company in which the Republic exerts a decisive and permanent control in terms of direction or administration, if its value exceeds the 70,001 tax unit)

…omissis...

The Tribunal shall hear in its Plenary Division the matters referred to in this article, numerals 1 to 2. The Constitutional Division shall hear the matters provided for in numerals 3 to 23. The Political Administrative Division shall hear the matters provided for in numerals 24 to 37. The Penal Cassation Division shall hear the matters provided for in numerals 38 to 40. The Civil Cassation Division shall hear the matter provided for in numerals 41 to 42. The Social Cassation Division shall hear the matters provided for in numerals 43 to 44. The Electoral Division shall hear the matters provided for in numerals 45 and 46. The matters provided for in numerals 47 to 52 shall be heard by the division corresponding to the matter in question.

In view of the fact that all of the foregoing is by no means intended to be exhaustive in relation to the possibilities existing within the Venezuelan domestic legislation, I must point out that there are, apart from said actions, other remedies within the Venezuelan criminal jurisdiction,

which, as has been alleged by the Venezuelan State, were not fully exhausted. A brief comment regarding such remedies will be made below.

The domestic remedies described, in the opinion of the undersigned, comply with the requirements of the Convention, according to which States Parties have the obligation to provide effective legal remedies to the alleged victims of human rights violations (article 25), and to substantiate such remedies pursuant to the rules of due process of law (article 8.1), all of that in accordance with the general obligation of States Parties to ensure to all persons subject to their jurisdiction the free and full exercise of the rights enshrined in the Convention (article 1.1).

It spring from the court records followed before this Court, when compared to the what has been alleged herein, that the alleged victims did not effectively exhaust those remedies tending to the protection of human rights, the reparation of damage, among other things, provided for by domestic law , which under the terms of articles 46.a and 47 of the American Convention on Human Rights (1969) [FN5], constitute grounds of inadmissibility, which in my opinion, was an issue of international public law verifiable, even unofficially, by the Commission [FN6] or the Court, even when, as has been mentioned, this preliminary objection was initially raised by the Venezuelan State before this Court at the moment of answering the application.

[FN5] Article 46 1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law; (…)
Article 47 The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if: a)any of the requirements indicated in Article 46 has not been met; (…)
[FN6] According to article 31 (1) of the Rules of Procedure of the Inter-American Commission on Human Rights, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted.

It is then that only upon the exhaustion of these remedies (and bearing in mind the proper consistency and connection that must exist between the petition made before the domestic courts and the petition that should be made before the Commission and this Court) the parties shall be able to resort to the Inter-American system of protection or, failing that, to prove that the remedies are ineffective and inoperative to solve the issue at stake.

In other words, the petition lodged before this Inter-American system for the protection of human rights must be closely related to the remedies exhausted at the domestic level in order to verify, among other things, the suitability of the proceeding chosen to protect, at the international level, the situation reported to be violated, as well as the proper exhaustion of domestic remedies, all this to give the State the possibility of not only examining and determining, by means of the domestic remedies, the case but also repairing the damage probable caused. The international jurisdiction is of a subsidiary, reinforcing and complementary [FN7] nature.

[FN7] Case of Acevedo Jaramillo et al V. Perú. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Legal Costs. Judgment of November 24, 2006. Series C No. 157, para. 66; Case of Zambrano Vélez et al V. Ecuador. Merits, Reparations and Legal Costs. Judgment of July 4, 2007. Series C No. 166, para. 47;the Effect of Reservations on the Entry into Force of the American Convention on Human Rights. (Art. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982, Series A Nº.2, para. 31; The Word "Laws" in Article 30 of the American Convention on Human Rights. Advisory Opinion OC-6/86 of May 9, 1986, Series A Nº.6, para. 26, and Case of Velásquez Rodríguez V. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 61.

There is no evidence in the court records showing that the remedies mentioned supra (or some other recourse that may exist) were filed or whether they were effective within the domestic courts; no reason was given about why such remedies were not filed, in accordance with the requirement stipulated in article 46 (2) a), b), c) of the Convention; as a result, the Commission, in my opinion, had to examine the reasonings about the exhaustion of the domestic remedies and come to the conclusion that the petition filed before it should be declared to be inadmissible.

This Court has ruled upon, on several occassions, on the procedural opportunity to determine about a ground of inadmissibility as the one put forward by the State and the Court has pointed out it may decide on the objection prior to the judgment on the merits[FN8] or as a preliminary phase, in the judgment that finally settles the controversy. [FN9]

[FN8] See, Judgment in favor of a preliminary decision different from the decision on the merits. Case of Fairén Garbi and Solís Corrales V. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 2, para. 90; and Case of Godínez Cruz V. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 3, para. 93.
[FN9] See, Judgment in favor of joining the decision of exhaustion of remedies to the merits of the case: Case of Velásquez Rodríguez. Preliminary Objections, Judgment of June 26, 1987.

In the case at hand, the petitioners alleged to have exhausted the domestic remedies by means of complaints filed before the Attorney General's Office and some proceedings instituted before the criminal courts, which, I insist, are not consistent with the legal claims lodged before this Court. [FN10]

[FN10] From another point of view, in consideration of the suitability of the criminal proceedings, consult the concurring opinion of Judge Sergio García Ramírez in the judgment of the Inter-American Court in the case of Kimel, of May 2, 2008.

In fact, the criminal court exercising criminal jurisdiction in Venezuela (and not acting as constitutional court) within the sphere of its authorities, could not rule upon the violation of

freedom of expression (as has been one of the decisions of this Court) or order measures necessary to avoid acts of State's agents and private individuals tending to hamper the seeking, reception and dissemination of information by mass media and associated personnel; or require measures necessary to prevent that acts of State's agents or private individuals hinder the seeking, reception and dissemination of information or guarantee the exercise of the right to freedom of expression and thought, particularly, the exercise of the profession of the petitioners. The majority has an opinion different to what I put forward herein as has been read from the operative paragraphs of the judgment and paragraph 300 thereof. These claims, as we saw, are protected by other remedies that were not exhausted.

The foregoing shows sufficient reasons to dissent from the majority opinion.

1.2 On the procedural moment to raise the objection

One of the reasons given by the majority of the judges to dismiss the objection of non-exhaustion of domestic remedies was that the State failed to point out the remedies that remained to be exhausted by the alleged victims and that it did not allege either, the lack of exhaustion of such remedies [FN11], coming to the conclusion, in this way, that said preliminary objection was not raised but until the adoption of the Report on Admissibility by the Commission by means of a brief submitted during the stage of merits, substantiated before the Commission; therefore, the majority of the judges concluded that the State did not raise this objection at the appropriate procedural moment.

[FN11] The other reason given by the Court to dismiss the preliminary objection is based on the Court's assessment regarding the other allegations put forward by the State and the representatives and the fact that they are closely tied to the merits of the case and shall, therefore, be considered, where pertinent, in the corresponding chapters ...

It is impossible to agree either on the procedural moment to raise the objection, though it seems this is an alternative criteria established in previous decisions [FN12], inasmuch as that would mean to accept that an State's agent may change, before the Commission or the Court, the terms under which the State (whichever state it is) accepted to become a member state to the American Convention on Human Rights. We understand that if the goal was to establish a preclusive opportunity to raise this objection, the text of the American Convention should expressly establish so.

[FN12] Cases: A) Respondent State may expressly or impliedly waive the right to invoke this rule (Case of Castillo Páez, Preliminary Objections. Judgment of January 30, 1996. Series C No. 24, para. 40; Case of Loayza Tamayo; Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, para. 40). B) the objection asserting non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings or as has been established in subsequent judgments, the objection, to be timely, must be raised at the stage of admissibility of the case before the Commission, that is, before any consideration as to the merits; otherwise, the

express waive of the right to invoke it shall be presumed by the party having the right to it (Case of Castillo Páez, Preliminary Objections. Ibid. page. 40; Case of Loayza Tamayo; Preliminary Objections. Ibid., para. 40; Case of Loayza Tamayo; Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, para. 56). Case of Kimel, supra note 26, para. 49; Case of Herrera Ulloa, supra note 27, para. 81; Case of the Mayagna (Sumo) Awas Tingni Community. Preliminary Objections, supra note 29, para. 53. c) the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective (Case of Castillo Paéz, Preliminary Objections. Ibid. para. 40; Case of Loayza Tamayo; Preliminary Objections. Ibid., para. 40; Case of Cantoral Benavidez; Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31; Case of Durand and Ugarte, Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33).
This criterion has been recently ratified in the following matters: Case of the Saramaka People V. Surinam. Preliminary Objections, Merits, Reparations and Legal Costs. Judgment of November 28, 2007. Series C No. 172, para. 43 and Case of Salvador Chiriboga V. Ecuador. Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, para. 40.

Nothing of the foregoing means that the purpose of the decision of the majority opinion regarding the preclusion effect of the terms was not understood, but that such terms should be expressly established.

It is evident how necessary is to count on procedural rules and to have those rules expressly and positively embodied, in order to establish the procedural cases and the consequences that a State may hypothetically face: Untimely presentation of arguments related to international public law; express waiver of the right to invoke the non-exhaustion of domestic remedies; procedural opportunity and phase in which the objection of non-exhaustion of domestic remedies must be raised; possibility that the Commission eliminates this phase; obligation for the State invoking such objection to indicate the remedies that remain to exhaust, as well as to prove the effectiveness of such remedies.

There is no set of rules, in this sense, currently within the Inter-American system and in my opinion; they are rules of vital importance for the processing of those cases of a global nature, that the Commission as well as the Court, must hear, respectively; therefore, for what the law ought to be, the State Parties must approve a regulatory text, in the Protocol to the amendment of the procedural part of the American Convention on Human Rights or simply, amend article 62 of the American Convention to regulate this aspect. That shall lead to the improvement of the Inter-American system for the Protection of Human Rights and shall ensure legal certainty and stability for the parties in the proceeding.

I insist, to accept that international courts may declare the untimeliness or express or implied waiver of the right to invoke objections that imply the analysis of rules of international public law, such as the example of exhaustion of domestic remedies, would cause a clear inequality between the parties who are settling their issues at the domestic level and those who, by not doing it, have direct access to international courts; resulting, maybe, in excessive work of the Ministry of Foreign Affairs, the procedural risk implied in bringing a case to the jurisdiction of an international court or considering, maybe, that the objection of exhaustion of domestic

remedies has never been admitted by the Court due to, certainly, the lack of clarity with which this issue is embodied in the set of rules previously mentioned. This, coupled with an increase in the number of cases, would make of this Court, instead of a subsidiary tribunal, a main tribunal, and the problems that this implies.

It would seem that the case-by-case and particular solution of one or several international cases could generate a clear unbalance in domestic set of rules and a clear inequality among nations.

To my understanding, if a question of admissibility was decided before the Commission, that same question should be analyzed, once again, by the Court considering the judicial functions of this last body as opposed to the first one. This function is in line with the full jurisdiction the Court exercises over the decisions made by the Commission [FN13].

[FN13] See Case of Tibi, Judgment of September 7, 2004. Series C Nº 114, para. 144; Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 79 and Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 65.

This inherent power of exercising the jurisdiction in toto has been upheld by this Court in previous cases [FN14] pointing out that the American Convention is drafted in broad terms which indicate that the Court exercises full jurisdiction over all the issues related to a case. This Tribunal is competent, therefore, to decide whether there has been a violation of any of the rights and liberties enshrined in the American Convention and to protect, by means of the appropriate measures, the consequences that derive from said situation; however, it is also competent to try the prerequisites on which the possibility to hear a case is based and to verify the compliance with the procedural rule concerning the interpretation or application of the Convention [FN15].

[FN14] See Case of the "Street Children" (Villagrán Morales et al). Preliminary Objections. Judgment of September 11, 1997, Serie C No. 32, para. 17 and 19. This judgment ratifies the criteria exposed in the judgment of the case of Velásquez Rodríguez, Preliminary Objections. Judgment of June 26, 1987.

[FN15] See Case of the 19 Tradesmen. Preliminary Objection. Judgment of June 12, 2002. Series C No. 93, para. 27; Case of Goiburú et al. Preliminary Objections. Judgment of September 1, 2001. Series C No. 82, para. 71; Case of Goiburú et al. Preliminary Objections. Judgment of September 1, 2001. Series C No. 81, para. 71; and Case of Hilaire. Preliminary Objections. Judgment of September 1, 2001. Series C No. 80, para. 80.

I believe that any decision delivered by this Court must be subsidiary to the system of justice of each State and the Court may only issue a ruling prior to a State's decision, if the ineffectiveness of the remedies was proven; which did not happen in the case at hand, consistent with the claims made before this Court, considering that such remedies were not lodged.

I hereby present my dissenting opinion for considering that there must be harmony among the Convention, the Rules of Procedure of the Commission and of the Court and the domestic set of rules of the defendant State, which I have tried, in my capacity as judge ad hoc, to bring to the attention of the Court's Judges in order for them to closely learn about the law enforced in the State under question and the practice developed by it, together with its standards, in order to bring it in line with the precepts of the American Convention.

2) Substantive reasons:

Even when technically it would not be necessary to carry out an analysis regarding the merits of the case at hand, I think it is appropriate to analyze them inasmuch as by dismissing the preliminary objection of exhaustion of domestic remedies, the Court pointed out:

"Therefore, the Court verifies that the State did not raise such preliminary objection until after the adoption of the Report on Admissibility by the Commission, by means of a brief filed during the stage on the merits. Consequently, the Court concludes that the State failed to raise such objection at the appropriate procedural moment; therefore, the Court rejects the forth preliminary objection raised by the State.

The Court cannot consider the arguments put forward by the State in the final written allegations regarding this objection, which do not complement those initially offered, for being untimely presented. With respect the rest of the arguments exposed by the State and the representatives, only those that are closely related to the merits of the case, shall be considered, where appropriate, in the following chapters".

It spring from the foregoing that according to the Court, the objection of non-exhaustion of domestic remedies was related to the merits; therefore, the Court analyzed it upon examining the alleged violation of the right to humane treatment and freedom of thought and expression.

Hence, even though in the operative paragraph of the judgment, the Court did not declare that the Venezuelan State failed to comply with the obligation established in article 8 [FN16] of the Convention (right to a fair trial), the operative paragraph related to the declaration of the State's responsibility for the non-compliance with the obligation contained in article 1.1 ejusdem as to ensure the free exercise of the right to seek, receive and impart information and the right to humane treatment embodied in articles 13.1 and 5.1 therein, is based on a line of argument that is connected by a common factor which is- according to the majority opinion- the ineffectiveness of the Venezuelan system of justice; from there, the connection of the procedural reasons to dissent from the majority opinion and the relevancy of these brief considerations as to the merits.

[FN16] Article 8 (Right to a Fair Trial)

1. 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.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
b. prior notification in detail to the accused of the charges against him;
c. adequate time and means for the preparation of his defense;
d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
g. the right not to be compelled to be a witness against himself or to plead guilty; and
h. the right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.
5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

In fact, Chapter VIII of the text of the judgment is divided into three subchapters; the first one refers to the context of the facts reported and the declarations made by public officials; the second one refers to the facts that violated the personal integrity of the alleged victims and their right to freely seek, receive and impart information; and lastly, the third subchapter is related to the investigation into the facts.

It is noted in the first of the subchapters that:

a) the Court contextualizes the situation presented, pointing out that all the incidents of the case at hand occurred in an environment and during periods of strong bias and social and political conflict (paragraph 132 of the Judgment);
b) The Commission pointed out in the annual reports on the situation of human rights in Venezuela, adopted between 2003 and 2006, “the lack of investigation into the facts and noticed that, on several occasions, it requested the State the adoption of precautionary measures in order to protect the life, humane integrity and freedom of expression of reporters, cameramen and photographers”. (Paragraph 133 of the Judgment) the emphasized part is mine.
c) It is expressly stated that it has not been proven the speeches analyzed in the judgment show or reveal, per se, the existence of a State's policy. Moreover, it was noted that no sufficient evidence was furnished proving that the actions or omissions carried out by state organs or structures, through which the public power is exercised, have been part of a State's policy [FN17] according to the terms alleged. (Paragraph 150 of the Judgment).

d) It determine that most of the statements made by state authorities are not in line with the State's obligation to ensure the right to humane treatment and the right to freely seek, receive and impart information and therefore, they could have had an intimidating effect on the victims (paragraph 161).

[FN17] In the same line of thought, the report Nº 119/06 of the Commission, of October 26, 2006 in the case of "Luisiana Ríos et al V. Venezuela", para. 180 and 212, pointed out that:
"…omissis… For this reason, the thought and expression of those who do critical reporting of the government enjoys broad protection under the Convention as far as they form part of the political debate of the society. Likewise, the democracy itself needs that the expression of the thought of those who are political figures or followers of the ruling party within the framework of this debate, enjoys equal protection … omissis … the Commission notes that most of the statements attached, in which the President, for example, refers to the private media as, inter alia, "The Four Horsemen of the Apocalypse", "Fascists", who are doing a "terrorist campaign", who are organized against the government of Venezuela, against the People, the laws and the Republic, liars, evil and immoral people, golpistas and terrorists (supra para. 109) though they may have a strong and critical content that may be considered offensive, they constitute legitimate expressions of thoughts and opinions on the particular ways that the mass media may report, which are protected and guaranteed under article 13 of the American Convention and the Commission does not find they constitute a violation of this treaty".
In similar terms, the report on the merits of the Commission in the case of "Gabriela Perozo et al V. Venezuela," para. 176,177,180,181,139, analyzed the same statements in the case at hand:
"… omissis … the Commission notes that most of the statements annexed, though they may have a strong and critical content constitute legitimate expressions of thought and opinions on the special methods that a mass media may use to report, which are protected and guaranteed under article 13 of the American Convention and the commission finds that they do not constitute a violation of that treaty ... omissis … the Commission deems that the importance of the mass media and, in particular, of the work of the reporters do not imply an immunity in relation to possible criticism of the society in general, including those of public officials. On the contrary, as vehicles of social communication, they should be open and set a tolerance margin before the public scrutiny and criticism of the receivers of the information they impart … omissis ,,, Therefore, it is evident that within the framework of the public debate in Venezuela, the issue regarding how the mass media do their job is an issue of public debate and then, the criticism and ratings made in this matter by officials or private individuals must be tolerated as long as they do not directly lead to violence …. Omissis … the Commission deems that the statements of the officials, despite the fact that they may be shocking, strong, offensive or insensitive … omissis … cannot be considered as the State's failure to comply with the duty to respect the right to freedom of expression and opinion, when such right implies exactly its exercise … omissis … though they contribute to create an environment of intense discussion and bias of the mass media … the strong content of the statements cannot be considered a direct cause of the subsequent acts committed to detriment of the employees of Globovisión".

The judgment concludes that there is the possibility that the non contempt[FN18] on the part of the authorities before the aggressive incidents commited by third parties, have led the alleged

victims, employees of Globovisión, to a situation of greater vulnerability to perform their jobs, running the risk of suffering unfavorable consequences for their rights (paragraph 154 to 161).

[FN18] Contrary to what it has been set forth, it is important to transcribe para. 142 of the Report on Merits of the Commission, in the case of "Gabriela Perozo et al V. Venezuela", regarding the same statements that are analyzed in the instant case, it was pointed out:
"…omissis … The Commission took note of the fact that in April 2003, the President of the Republic issued an appeal to respect journalists and treat them with dignity as they deserve".

From the three foregoing paragraphs, the undersigned notes that the causal link existing between the reported damage suffered by the alleged victims in some of the cases and the State's non-compliance of which the State was declared responsible, is weak or nonexistent, considering that it was impossible to determine, specifically, whether the statements placed the employees (reporters, photographers, cameramen, assistants) in that special situation of relative vulnerability [FN19] inasmuch as it exists only the possibility, which implies that it could or could not happened, coupled with that pursuant to the Commission, most of the statements did not constitute a violation of the Convention. In fact, it was mentioned in the judgment that, even when it does not spring from the declarations that the unfortunate facts that occurred have been attributed to the authorities, neither that the self-identification with the editorial line of Globovisión was a conditio sine qua non lead the petitioners to a situation of vulnerability, the State is necessarily held responsible for the non-compliance with the obligation to guarantee the exercise of the right to freely seek, receive and impart information and the right to personal liberty.

[FN19] This concept was first introduced by the Advisory Opinion OC-18/03 of September 17, 2003. Juridical Condition and Rights of the Undocumented Migrants and then judgments in the: Case of the "Maripirán Massacre" V. Colombia. Judgment of September 15, 2005. Para. 174. Case of the Girls Yean and Bosico V. Dominican Republic. Judgment of September 8, 2005

According to the theory of responsibility, the Court pointed out, in the judgment from which I dissent, upon analyzing the influence the alleged victims had on the incidents, that:

"74. The Court recalls that in the instant case, its role is to determine, as an international court of human rights exercising its contentious jurisdiction, the State's responsibility under the American Convention for the alleged violations and not the responsibility of Globovisión, or of its managers, shareholders or employees, in relation to certain facts or historical incidents that occurred in Venezuela, nor even their role or performance as a social media. The Court does not determine the rights of Globovisión, in its capacity as company, corporation or legal entity. Even if it is true that Globovisión or its personnel has committed the acts that the State understands they did, this does not provide a justification for failing to comply with the State's obligation to respect and guarantee human rights. Dissent and different opinions or ideas are consubstantial to the pluralism that must rule in a democratic society.

The questioning regarding the causal link highlighted the need to examine the participation of the victims in the occurrence of the incidents mentioned in the judgment, in order not to try or condemn them, in view of the fact that this Court is not competent to try the civilians of States Parties, but on the contrary, to determine the existence of guilt of the State as well as to determine what lead to that situation of relative vulnerability. It seems appropriate to emphasize that the State produced evidence in this sense and the Court declared it was inadmissible [FN20].

[FN20] See judgment in process (Order) of the President of the Court of March 18, 2008, para. 19 and 28

It does not spring from the State's arguments that the State was holding the alleged victims responsible but, on the contrary, it was invalidating the ground for exemption from liability. Unfortunately, the evidence produced to demonstrate this exemption was not admitted, as has been mentioned; however, I believe that it was one of the answers expected during the trial from the alleged victims or the State, within the framework of the social harmony that should result from all judgment in a society or a nation; therefore, there is no possibility to try this ground for exemption from liability.

The foregoing comments and observations in relation to the judgment from which I dissent, are facts that serve as the basis for the questioning about the service of administration of justice and the Venezuelan judicial system mentioned in the judgment in the subsequent subchapter, which deals with, as this subchapter did, the hindrance or inability of some employees of the media to do their jobs (final part of paragraph 160) corroborated by the lack of due diligence, the procedural inactivity, and the delay in the investigations.

Following this line of thought, it should be mentioned that the second subchapter:

a) Evidences the need to have produced the evidence invoked by the State by which it was determined or not the participation of the victims in the events mentioned or “that they took part of acts related to disorderly conducts” (paragraph 167) inasmuch as the representatives denied that the aggressions suffered by the alleged victims were the consequence of their own behavior (paragraph 165), even when, as it was mentioned, the State raised it as ground for exemption of liability.
b) Surprises me considering that the sentencing majority pointed out that it was not going to rule upon the suitability and effectiveness of the protective measures (paragraph 168); nevertheless, upon analyzing the facts, it examined each one of the judicial proceedings (paragraph 169 and subsequent), individually, as if it was possible to separate into sections the actions of the Venezuelan judicial system; this decision is made after it was mentioned that the mere order to adopt protective measures does not show whether the State has effectively protected the beneficiaries of the measures. (paragraph 167). All this highlights the connection between the facts and the judicial system (and within this, the Venezuelan judicial system) and all the foregoing with the judgment adopted by the majority of the judges.

c) Systematically makes an analysis of each one of the facts, and the sentencing majority determined that third parties not related to the government carried out the activities that hindered the alleged victims from doing their jobs; following this line of thought, it concludes that because of the actions of the third parties, the State is not responsible for the violation of the right to humane treatment. Regardless of this consideration, it is expressly mentioned that in most of the cases, there were actions and omissions attributable to the Venezuelan judicial system [FN21] and the State did not justify it; for example, it was mentioned that: The Court notes an unwarranted procedural delay; or that there is no evidence proving that the State acted with due diligence in the development of the investigations or at the appropriate procedural time; or that the investigation lasted a certain period of time; or that it was ordered the investigation after certain time; or that the first measure was adopted after a certain number of years; or that no proceeding was instituted or no investigation carried out or that there was delay in such proceeding or investigation; or that no medical-legal evaluation was performed in certain cases; or that there were unwarranted delays in the delivery of certain decisions by the authorities in charge of the criminal prosecution, based on the fact that there was no sufficient evidence in the investigation. (See, paragraphs 167, 172, 183, 187, 194, 196, 199, 215, 221, 225, 228, 231, 235, 240, 244, 249, 252, 256, of the judgment).

In light of the foregoing, it would seem evident the unremarkably efficiency and effectiveness of the Venezuelan judicial system and as a result, it would seem appropriate the decision contained in the judgment regarding the non-compliance with the duty to guarantee the rights enshrined in articles 13.1 and 5.1 of the Convention, considering such ineffectiveness. Nevertheless, as shall be analyzed infra, that must not have been a determining factor in the decision.

d) When discussing, in this subchapter, the violation of the mental and moral integrity of the alleged victims, even when the Court disregards the expert examination represented by the psychological evaluation made by Magdalena López, it determines – presumably, based on the experience inasmuch as there is no evidence that would allow to scientifically come to the conclusion of the sentencing majority- that, by virtue of the fact that the alleged victims were subjected to hindrances, aggressions, threats, acts of harassment and intimidation during their jobs, the State is responsible of the obligation to guarantee the right to mental and moral integrity of the victims mentioned. (Paragraph 287). I presume that this decision was made because the State exposed the alleged victims to a situation of relative vulnerability as well as due to the lack of effectiveness of the system and the Venezuelan judiciary. Considering that there is no reasoning for the conclusion that the sentencing majority came to, we must ratify that the causal link is very weak or nonexistent as has been analyzed supra.

[FN21] “Article 253. The power to administer justice derives from the citizens and is enforced on behalf o the Republic as mandated by law.

The bodies of the Judiciary have the responsibility of hearing the cases and matters according to their jurisdiction, by means of the procedures determined by law and they must enforce and carry out their decisions.

The judicial system is formed by the Supreme Tribunal of Justice, the other courts determined by law, the Attorney General of the Republic, the Public Defender, the criminal investigation divisions, the assistants and officers of justice, the penitentiary system, the alternative means of justice, the citizens who participate in th e administration of justice according to the law and the lawyers authorized to practice". The emphasis is mine.

Lastly and following the order mentioned, I note in the third subchapter that:

a) The Court, after analyzing the arguments of the State where it was mentioned other actions instituted different from the criminal ones (paragraph 301), concludes that the parties have emphasized the complaints and investigations conducted by the criminal courts, ending with an analysis of the existing remedies available at the criminal courts (paragraph 305).
I ratify the statement made supra regarding the fact there was no consistency between the claims lodged before the Inter-American system for protection and the domestic remedies that should be exhausted in order to have access to that system, insofar as a criminal court, acting with criminal jurisdiction in Venezuela, shall not be able to restore the situation alleged by the victims to be impaired. These actions may be verified by means of administrative actions or remedies stipulated in the Venezuelan set of rules or constitutional measures.
b) By considering that the criminal proceedings were not suitable or sufficient, as has been pointed out supra, the Court only analyzed the efficiency and effectiveness of the criminal proceedings to prove – mistakenly, in my opinion- that if the State's organs acted according to the terms of the COPP (Basic Code of Criminal Procedure) [FN22] the results of this case would be different.
c) The judgment even analysis the lack of action on the part of the State during the criminal proceedings to conclude that such inactivity led to a detrimental act for the victims. In fact, it was mentioned that the Attorney General's Office had to request the dismissal of the complaints in case that after the opening of the investigation, it was determined that the facts of this case constituted a crime that needed to be prosecuted at the request of a party, in accordance with section 301 of the COPP of 2001. It is necessary to emphasize that two sections of that instrument are in conflict with this decision: sections 24 and 25 [FN23] . To base the decision to condemn the State [FN24] on the inactivity of the Attorney General's Office by not having requested the dismissal according to section 301 ejusdem, means not doing a full interpretation of the code in question and not understanding that the private individuals should have, in that situation and according to the two sections mentioned, directly resorted to the judicial authorities.
Moreover, this requirement is also based (paragraph 315 and 316) on the mistaken interpretation of section 75 of the COPP [FN25], by understanding from that, the burden that lies on the State to produce all the measures of evidence necessary and to investigate the complaints with due diligence, concluding that the judicial authorities did not decide on the application of the rules on connection, neither they delivered decisions, except for some cases, that clarified whether the channel chosen was the appropriate one (paragraph 317). The truth is that said section deals with the ancillary jurisdiction for the case in which a same person is held responsible for the commission of a publicly actionable crime and a crime prosecutable at the request of a party, determining that the case shall be heard by the court competent to try the publicly actionable crime and the rules of ordinary procedure shall govern. The rule does not establish the proceeding that the State should institute but the way in which the procedural matter should be resolved if a person is held responsible for the commission of two crimes of different nature.
d) The sentencing majority concludes that the investigations did not constituted an effective means to guarantee the right to humane treatment and the right to seek, receive and impart information of the alleged victims (paragraphs 358 and 359); therefore, it was determined that

the State is responsible for the non-compliance with articles 13.1 and 5.1 in conjunction with article 1.1 of the Convention, in light of the fact that the State led reporters to a situation of relative vulnerability (with a weak or nonexistent causal link as has been emphasized supra), which derived in a hindrance for the reporters to exercise their profession and the omission of State's authorities to carry out the investigations with due diligence (paragraph 362).

[FN22] See para.310 to 312 of the judgment from which I dissent.
[FN23] "Section 24. Exercise. The criminal action must be instituted by the Attorney General's Office ex officio, unless it may be only be instituted by the victim or at the victim's request". The emphasis is mine.
"Section 25. Offenses that can be prosecuted in a private suit. The victim can only institute the actions resulting from crimes that the law establishes as offenses prosecutable in a private suit. Moreover, the prosecution shall be conducted pursuant to the special procedure regulated by this Code.
Nevertheless, for those offenses that can be prosecuted in a private suit as established in Chapters I, II and III, Title VIII, Second Book of the Criminal Code, it would be enough the accusation brought before the Public Prosecutor Office or before the competent police division of criminal investigations, made by the victim or its legal representatives or guardians, if the victim were incompetent, without prejudice to the terms established by special laws".
Where the victim is not able to bring an accusation or suit by itself, due to its age or mental condition, or if the victim has no legal representation, or if such representation is not competent, the Attorney General's Office has the obligation to institute the criminal action. The pardon, dismissal or waiver of the victim shall end the proceeding, unless the victim was a minor (less than 18 years of age).
[FN24] Para. 321 of the judgment from which I dissent.
[FN25] "Section 75. Ancillary Jurisdiction. "If any of the related crimes corresponds to the competence of an ordinary court and other crimes to the competence of special courts, the case shall be heard by the ordinary criminal court".
When a same person is responsible for the commission of a publicly actionable crime and a crime prosecutable at the request of the aggrieved party, the case shall be heard by the court competent to try the publicly actionable crime and the rules of ordinary procedure shall govern".

The foregoing conclusion makes us think about the responsibility of the State for the delivery of public services, including the Venezuelan judicial system and in this way, validate the conclusion at which the majority of the judges arrived. Thus, in short, it is the public judicial system what is being analyzed by this Court and it is this issue on which the fundamental reasoning of this judgment was based. Ultimately, the judicial system in Venezuela is required to have a very high, general and uniform standard.

The first thing that must be taken into account, in my opinion, is the nature of the service under question, the improvements and the difficulties entailed and what is needed for its development. Once the foregoing has been verified, it is possible to establish whether the system works poorly or with delay or if it simply did not work at all. The judgment made no analysis in that respect.

Likewise, regarding the requirements for the admissibility of the state responsibility, it is important to emphasize the requirement related to the damage.

It is necessary to mention, with accountability, that as to the damage, the instant case did not represent a special or abnormal damage.

It is not special because the omissions and delays determined by the Court are not addressed at the alleged victims only, inasmuch as, unfortunately, the delay and other judicial deficiencies are common to all the members of the Venezuelan community. The State has made efforts to solve the problems of the judicial system and, in some cases, it had successfully remedied the situation. In fact, there are satisfactory results as to the labor reform with the entry into force of the Organic Law of Labor Procedure of the year 2002; nevertheless, as to the criminal matters are involved, in spite of the entry into force of the Organic Code of Procedure in the year 1998 (together with the subsequent reforms), the results have not been so successful, maybe because it is the jurisdiction that had historically tried more cases in the country.

Consequently, the damage under analysis in this case is neither abnormal, inasmuch as it does not have more than the usual problems inherent to the functioning of a public service, as is the Venezuelan justice or the limitations imposed on the collective life. Definitely, it does not exceed the obstacles typical of the service.

These comments are not intended to justify the way in which the Venezuelan judicial system works and the consequences it had in the instant case. Though this is not my intention, I have to mention insofar as were at the presence of human rights. It must be observed that these points were not taken into account to base the decision made in the judgment, let alone to catalogue what a reasonable term or due diligence means in relation to the investigation, inasmuch as it was established that the State failed to comply with the obligation to ensure the exercise of the right to seek, receive and impart information and the right to humane integrity because the investigations did not contribute to or constitute an effective means to guarantee the right to humane treatment and the right to seek, receive and impart information of the alleged victims.

In other words, it is mostly because of the defects of the judicial system (at the criminal jurisdiction, considering that, as has been established at the beginning of this dissenting opinion, the victims did not exhaust other remedies, from which it cannot be inferred the same) that the Venezuelan State is held responsible and this responsibility is attributed to it without having analyzed the necessary grounds to establish the State's responsibility for the system and the judicial service.

Furthermore, it is necessary to emphasize, as mentioned in the judgment, the high level of conflict that existed in Venezuela at the moment of the occurrence of the unfortunate and repudiable facts reported, all of which minimizes the State's responsibility or makes more real the possibility of putting forward the exemption from liability due to the existence of force majeure in the delivery of public utilities.

The undersigned does not wish to conclude with this dissenting opinion without pointing out that the violence that existed in Venezuela during the occurrence of the facts analyzed in the case was

deplorable; but it has been proven in the foregoing paragraphs that the domestic courts did not have the opportunity to try to find a solution to the conflict brought to the Court's attention, using its standards, virtues and defects. Only after proving that the proceedings of the State were unsatisfactory or showing that the domestic remedies were not suitable to satisfy the claims is that this matter could have been brought to the jurisdiction of the Inter-American system of protection. Doing the opposite would mean to empty the Venezuelan system of justice.
Based on the foregoing, I feel I have the duty and obligation to dissent from the judgment and I hereby present my opinion with the utmost respect for those who have a different point of view.

It is expressed, in this way, my reasoning to support my dissenting opinion in this case. Date ut supra.

Pier Paolo Pasceri
Judge ad hoc

Pablo Saavedra Alessandri
Secretary