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Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Luisiana Rios Paiva, Luis Augusto Contreras Alvarado, Eduardo Guillermo Sapene Granier, Javier Garcia Flores, Isnardo Jose Bravo, David Jose Perez Hansen, Wilmer Marcano, Winston Francisco Gutierrez Bastardo, Isabel Cristina Mavarez Marin, Erika Paz, Samuel Sotomayor, Anahis del Carmen Cruz Finol, Herbigio Antonio Henriquez Guevara, Armando Amaya, Antonio Jose Monroy, Laura Cecilia Castellanos Amarista, Argenis Uribe, Pedro Antonio Nikken Garcia, Noe Pernia and Carlos Colmenares v. Venezuela
Doc. Type:	Judgement (Preliminary Objections, Merits, Reparations, and Costs)
Decided by:	President: Cecilia Medina Quiroga; Judges: Sergio Garcia Ramirez; Manuel E. Ventura Robles; Leonardo A. Franco; Margarette May Macaulay; Rhadys Abreu Blondet; Pier Paolo Pasceri Scaramuzza The Judge Diego Garcia-Sayan excused himself from hearing the present case (infra paras. 8 and 30-32).
Dated:	28 January 2009
Citation:	Rios v. Venezuela, Judgement (IACtHR, 28 Jan. 2009)
Represented by:	APPLICANTS: Carlos Ayala Corao, Pedro Nikken, Oswaldo Quintana Cardona and Moirah Sanchez Sanz
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In the case of Ríos et al. v. Venezuela,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court", or "the Tribunal"), pursuant with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and with Articles 29, 31, 56, and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), issues the present Judgment.

I. INTRODUCTION OF THE CASE AND OBJECT OF THE CONTROVERSY

1. On April 20, 2007, pursuant with Articles 51 and 61 of the American Convention, the Inter-American Commission of Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Court an application against the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") in relation to case 12,441, which was originated in petition No. 4109/02, presented at the Secretariat of the Commission on July 23, 2002 by Luisiana Ríos, Luis Augusto Contreras Alvarado, and Eduardo Sapene Granier, acting on their own behalf and in representation of Messrs. Javier García, Isnardo Bravo, David Pérez Hansen, Wilmer Marcano, Winston Gutiérrez, and Isabel Mavárez, all employees of the

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television station Compañía Anónima Radio Caracas Televisión (hereinafter "RCTV). On February 27, 2004 the Commission approved Admissibility Report No. 06/04 and on October 26, 2006 it approved the Report on Merits No. 119/06, in the terms of Article 50 of the Convention, which includes certain recommendations to the State. [FN2] On April 8, 2007 the Commission decided, in the terms of Article 51(1) of the Convention and 44 of its Rules of Procedure, to submit the present case to the jurisdiction of the Court. The Commission appointed Mr. Paulo Sergio Pinheiro, member of the Commission, and Messrs. Santiago A. Chacón, Executive Secretary, and Ignacio J. Álvarez, then Special Rapporteur for the Freedom of Expression, as delegates and Mrs. Elizabeth Abi-Mershed, current Joint Executive Secretary, Débora Benchoam, Lilly Ching Soto, and Silvia Serrano as legal advisors. Mr. Ariel E. Dulitzky and Mrs. Alejandra Gonza, who are no longer employees of the Commission, as legal advisors.

[FN2] In the Report on merits the Commission concluded that Venezuela "is responsible for the violation of the rights to freedom of thought and expression (Article 13), the right to a fair trial (Article 8), to judicial protection (Article 25), and to humane treatment (Article 5), in relation with the obligations of respect and guarantee enshrined in Article 1(1), all of the American Convention, in the terms and with regard to the victims detailed throughout the […] report on merits." Additionally, the Commission made certain recommendations to the State (dossier of appendixes to the application, appendix 1).

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2. The facts presented by the Commission refer to acts and omissions committed by public officials and individuals, which constituted restrictions to the task of seeking, receiving, and imparting information of 20 people, all of them journalists or social communication workers that are or have been linked to RCTV. Specifically, the Commission argues that these people were subject to several threats, acts of harassment, and verbal and physical abuse, including injuries caused by gunshots, and that there were attempts against the installations of the RCTV television station, between the years 2001 and 2004. Additionally, the Commission stated a lack of diligence in the investigation of those incidents and omission of preventive actions by the State.

3. The Commission requested the Court that it declare the State responsible for the violation of the rights acknowledged in Articles 5 (Right to Humane Treatment), 13 (Freedom of Thought and Expression), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, in relation to the general obligations to respect and guarantee human rights established in Article 1(1) of that treaty, in detriment of Luisiana Ríos Paiva, Luis Augusto Contreras Alvarado, Eduardo Guillermo Sapene Granier, Javier García Flores, Isnardo José Bravo, David José Pérez Hansen, Wilmer Marcano, Winston Francisco Gutiérrez Bastardo, Isabel Cristina Mavarez Marin, Erika Paz, Samuel Sotomayor, Anahís del Carmen Cruz Finol, Herbigio Antonio Henríquez Guevara, Armando Amaya, Antonio José Monroy, Laura Cecilia Castellanos Amarista, Argenis Uribe, Pedro Antonio Nikken García, Noé Pernía, and Carlos Colmenares, alleged victims in this case. As a consequence of the aforementioned, the Commission requested that the Court order certain reparation measures to the State and that the costs and expenses be reimbursed.

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4. On July 19, 2007, the representatives of 16 of the 20 alleged victims, Messrs Carlos Ayala Corao, Pedro Nikken, Oswaldo Quintana Cardona, and Moirah Sánchez Sanz, (hereinafter "the representatives"), [FN3] presented the brief of pleadings, motions, and evidence (hereinafter "brief of pleadings and motion"), in the terms of Article 23 of the Rules of Procedure. In this brief they referred to the facts stated in the Commission's application, as well as to a series of "facts supervening" the presentation of the application, among which the decision of the Venezuelan government to "close the open signal of the RCTV station, by not renewing its concession" on May 27, 2007 stands out. [FN4] The representatives hope that said facts help this Tribunal know the historical context in which the facts of the application culminated, since they consider that the closing constitutes the "realization of the threats" that had been occurring since the end of the year 2006. Thus, they asked the Court that besides the violations argued by the Commission, it declare that the State is responsible for the violation of Article 24 (Right to Equal Protection) of the Convention, in relation to Article 13 thereof, based on the differentiated treatment with regard to the freedom of thought received by people linked to "different media that does not support the government". In their final arguments they asked that the Court declare the State responsible for the violation of Articles 5, 13, 8, and 25 of the American Convention "in connection with" Articles 1, 2, and 7(b) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women ("Convention of Belem do Pará"), in detriment of the alleged female victims. Finally, they asked that the Court order the State to adopt certain reparation measures.

[FN3] According to the powers-of-attorney presented, these people have exercised the representation of 16 of the 20 alleged victims. The Commission indicated that the "defense of the interests" of the alleged victims Luis Augusto Contreras, Samuel Sotomayor, Armando Amaya, and Argenis Uribe, who had not appointed a representative for the processing of the case before the Court at the time of the filing of the application, would be "provisionally assumed" by the Commission. Subsequently, Mr. Armando Amaya granted a power-of-attorney to the representatives. However, even though he appears as an alleged victim in the application, the Commission did not explicitly assume the defense of Mr. Wilmer Marcano and the representatives did not mention him within the people they represent nor did they argue that he was an alleged victim in the present case. Therefore, the Court has understood that the Commission assumed the defense of Mr. Marcano in this process, instituted until its end in those terms, "as guarantor of the public interest under the American Convention, in order to avoid [his] defenselessness" (Article 33(3) of the Rules of Procedure). Cf. copies of the Powers-of-Attorney granted in favor of Carlos Ayala Corao, Pedro Nikken, Oswaldo Quintana Cardona, and Moirah Sanchez Sanz (appendix 79 to the application). See also appendixes to the brief of the Inter-American Commission of June 27, 2007 (powers-of-attorney of Noé Pernía and Carlos Colmenares) and appendix to the brief of pleadings and motions of July 20, 2007 (power-of-attorney of Armando Amaya).

[FN4] However, the representatives clarified that they do not wish to litigate, within the present case, the State's decision to close the open signal of RCTV and the execution of that decision on May 27, 2007, since the petitioners, along with other journalists, camera crew, camera assistants, and other employees and directors of RCTV presented a Petition regarding the closing itself of RCTV before the Commission on March 1, 2007.

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5. On September 21, 2007 the State presented its brief of preliminary objections, response to the application, and observations to the brief of pleadings and motions. In this brief, the State presented two preliminary objections, specifically: "partiality in the duties carried out by some of the judges members of the Court" and the "need to exhaust the remedies made available in the Venezuelan legal system, as a cause of admissibility of the applications presented before the Inter-American human rights system." Likewise, it asked the Court to declare the violations to the rights acknowledged in Articles 5, 8, 13, 24, and 25 of the Convention, attributed by the Commission and the alleged victims inadmissible and non-existent. It requested that, as a consequence of the inadmissibility of the claims and the brief of pleadings and motions be declared unfounded, as well as the claims and reparations requested. The State appointed Mr. Germán Saltrón Negretti as its Agent and Mr. Larry Devoe Márquez as its Deputy Agent in the present case. [FN5]

[FN5] Brief of the State of June 12, 2007.

II. JURISDICTION

6. The Court is competent to hear the present case, in the terms of Article 62(3) of the American Convention, given that Venezuela is a State Party to the American Convention since August 9, 1977 and it acknowledged the Court's contentious jurisdiction on June 24, 1981.

III. PROCEEDINGS BEFORE THE COURT

7. With the prior preliminary examination made by the then President of the Court and pursuant with Articles 34 and 35(1) of the Rules of Procedure, on May 22 and 23, 2007 the Secretariat of the Court (hereinafter "the Secretariat") notified the application by fax to the State [FN6] and the representatives, [FN7] respectively. On May 22, 2007 the application was sent to the State and the representatives by courier, along with all the appendixes, which was received by the representatives on May 31, 2007 (T1 f.215 and 225). Due to problems within the courier company hired the application was not received by the State in the estimated time, thus it was resent to the Venezuelan Ministry of Foreign Affairs on June 7, 2007, through the Embassy of Venezuela. On July 9, 2007 the State appointed Mr. Pier Paolo Pasceri Scaramuzza as Judge ad hoc.

[FN6] When the State was notified of the application, it was informed of its right to respond to it in writing and, in its case, present its observations to the brief of pleadings, motions, and evidence presented by the alleged victims or their representatives, within the non-extendable term of four months as of the notification thereof, pursuant with Article 38 of the Rules of Procedure. Similarly, in the terms of Article 35(3) and 21(3) of the Rules of Procedure, the State was requested to appoint, within a 30-day term, an Agent to represent it before the Court and, if considered necessary, a Deputy Agent as well. Finally, the State was informed of the possibility

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to appoint a judge ad hoc, within the 30 days following the notification of the application, to participate in the consideration of the case.
[FN7] Similarly, when the application was notified to the representatives, they were informed of their right to present their brief of pleadings, motions, and evidence, within the non-extendable terms of two months as of the notification of that application, in the terms of Articles 23 and 36(1) of the Rules of Procedure.
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8. Once the State presented its response to the application (supra para. 5), on October 12, 2007, the then President of the Court issued an Agreement through which it decided not to accept the State's request, presented as a preliminary objection, that the judges Cecilia Medina Quiroga and Diego García-Sayán be separated from hearing the case, and submitted the agreement to the Full Corte. On October 18, 2007 the Court issued an order declaring inadmissible the State's mentioned request and accepted the excuse given by Judge García-Sayán.

9. On November 16, 2007 the Commission and the representatives presented their written arguments to the preliminary objections presented by the State.

10. On December 17, 2008 the representatives forwarded documents as evidence and stated that "due to reasons of grave difficulty" they could not be sent along with their brief of pleadings and motions. The Court asked the State and the Commission to forward the observations considered appropriate. On January 18, 2008, after an extension granted, the Commission communicated it did not have any observations to present, while the State did not refer to this matter.

11. On June 11, 2008 the President of the Court ordered the receipt through statements offered before a notary public (affidavit) of twelve testimonies and six expert opinions offered by the Commission, the representatives, and the State, [FN8] regarding which the parties had the opportunity to present observations. Additionally, the President summoned the Commission, the representatives, and the State to a public hearing to receive the statement of a witness proposed by each party, as well as the final oral arguments on a preliminary objection and the possible merits, reparations, and costs. Finally, the President decided to include in the body of evidence of the present case two statements. [FN9]

[FN8] Cf. Order issued by the President of the Inter-American Court of Human Rights on June 11, 2008.
[FN9] We decided to include, in application of the stipulations of Article 45(1) of the Rules of Procedure of the Court, the statements and expert opinion of Ángel Palacios Lascorz, a witness offered by the State and María Alejandra Díaz Marín, expert proposed by the State, offered in the Case of Gabriela Perozo et al. v. Venezuela.
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12. On June 17, 2008 the representatives stated that they had faced difficulties to authenticate some statements and expert opinions required in the previous Order and they also communicated the death of Mr. Javier García Flores, one of the alleged victims of the present case.

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13. On June 20, 2008 the representatives presented "challenges and objections" to an expert opinion included in this case. On that same date, the Commission informed that it did not have "observations to present" in this sense and asked the Court to, pursuant with that stated in Article 45(1) of its Rules of Procedure, include in the present case two expert opinions offered in another case. On June 26, 2008 the State presented a "formal challenge" against four of the experts summoned to offer their opinion. Between July 2 and 7, 2008 the parties and the experts challenged presented their corresponding observations. Additionally, on July 10, 2008 the representatives requested that an additional expert opinion offered in another case be included.

14. On July 22, 2008 the President issued an order in which it dismissed the challenges presented by the representatives and by the State, as well as the Commission's request to include in the present case two expert opinions offered in the case of Perozo et al. v. Venezuela. Similarly, the President decided to include in the body of evidence of the present case, in application of the stipulations of Article 45(1) of the Rules of Procedure, an expert opinion of Mr. Alberto Arteaga, offered in the mentioned case.

15. On August 7, 2008 the public hearing was held during the LXXX Sessions of the Court at its headquarters, which was presided by Judge García Ramírez. [FN10]

[FN10] On August 7, 2008 the Court issued an order in which it decided to appoint Judges García Ramírez, Ventura Robles, Franco, Macaulay, Abreu Blondet and the judge ad hoc Pasceri Scaramuzza, to assist to the hearing summoned. The following appeared at this public hearing: a) for the Inter-American Commission: Paulo Sérgio Pinheiro, Agent, delegate; Santiago Cantón, Executive Secretary, delegate, and Juan Pablo Albán A., advisor; b) for the representatives: Pedro Nikken, Carlos Ayala Corao, Oswaldo Quintana, and Moirah Sánchez; and c) for the State: Germán Saltrón Negretti, Human Rights State Agent of the Ministry of the Popular Power for Foreign Relations; Larry Devoe, Deputy Agent; Alejandro Castillo, Director of the Protection of Fundamental Rights of the Public Prosecutors' Office; Roselyn Daher, Legal Consultant of the National Telecommunications Commission; Carlos Arvelaiz, Juridical Consultant of the Ministry of the Popular Power for Telecommunications and Computer Science; Pedro Maldonado, General Human Rights Director of the Ministry of the Popular Power for Interior Relationships and Justice; and Julián Isaías Rodríguez, Advisor. Similarly, the statements of Carlos Colmenares (proposed by the Commission), Antonio José Monroy (proposed by the representatives), and Andrés Izarra (proposed by the State) were received.

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16. On September 8, 2008 the Commission, the representatives, and the State presented, respectively, their final written arguments in relation to the preliminary objections and the possible merits, reparations, and costs in this case.

17. On October 13, 2008, following instructions of the President and in the terms of Article 45(1) of its Rules of Procedure, the State was required to present a complete and punctual report, issued by the competent authorities, regarding the current state and the actions taken in the investigations and legal proceedings that are either open or were processed in relation to the

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complaints or remedies presented by the alleged victims in the present case, in the measure that said information not be already included in the case file. [FN11] On November 4th of that same year, after an extension granted, the State presented a report of the Solicitor General's Office and other documents. A term was granted to the representatives and to the Commission so they could forward the observations considered appropriate. On November 18, 2008 the Inter-American Commission stated that "the information presented by the State does not correspond to the report requested and therefore, it has no observations to present." The representatives did not forward observations.

[FN11] Specifically, regarding the proceedings of a criminal nature, it was requested that the competent authorities refer to each of the facts denounced in their reports; the legal classification under which these facts would fall; the people that have appeared as aggrieved or affected parties, or the alleged victims, as well as the current status of the investigations. Finally, the State was asked to forward a complete copy of the Venezuelan Organic Code of Criminal Procedures, of the Organic Law of the Public Prosecutors' Office, and of the Organic Law of the Ombudsman in force at the time of the facts of the case as well as in the present.

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18. On October 21, 2008, following instructions of the President and in the terms of Article 45(1) of the Rules of Procedure, the State was required to forward uncertified full and legible copies of that acted in the investigations and legal proceedings opened or processed in relation with complaints or appeals filed by the alleged victims. On December 5, 2008 the State forwarded the mentioned documents in response to the above. The representatives and the Commission were granted a term to forward the observations considered appropriate. On January 5, 2009, after the granting of an extension, the representatives forwarded their observations and they additionally made observations that do not refer strictly to the documents presented by the State (infra para. 89). The Commission did not present observations.

19. On the other hand, the following organizations, entities, and institutions presented briefs in their condition of amicus curiae: on May 15, 2008 the Netherlands Institute for Human Rights-SIM; on May 27, 2008 the Institute for Democracy and Human Rights of the Pontifical University of Peru - IDEHPUC; on June 6, 2008 the Legal Office of the Torcuato Di Tella University and the Association for Civil Rights -ADC; on July 2, 2008, the International Radio Broadcasting Association -AIR-; on July 11, 2008, the Inter-American Media Society; on July 15, 2008 the Association Mondiale des Journaux; on July 29, 2008 the Venezuelan Chamber of the Broadcasting Industry; on July 31, 2008 the National Syndication of Media Employees (STNP); on August 1, 2008 the Bar Association of the City of New York; on August 7, 2008 the World Press Freedom Committee; on August 5, 2008 the "Broadcasting Association of Chile – ARCHI"; on September 2, 2008 the National Union of Employees of the Radio-Television Industry Coraven–RCTV (SINATRAINCORACTEL), and on September 5, 2008 the Center of Studies on Law, Justice, and Society (DeJuSticia).

IV. Provisional Measures

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20. On November 27, 2002 the Commission presented before the Court a request of adoption of provisional measures. On that same day the Court issued an order in which it required that the State adopt provisional measures to protect the life and personal integrity of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos, and Argenis Uribe. [FN12] That request was related to a case being processed before the Commission.

[FN12] Cf. Order issued by the Inter-American Court of Human Rights on November 27, 2002.

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21. On January 24th and February 6, 2003 the Court summoned the parties to a public hearing on the provisional measures at the Court's headquarters, which was held on the 17th day of the same month and year.

22. On February 20, 2003 the Court issued an order in which it decided to "declare that the State has not effectively implemented the provisional measures ordered by the Court" and reiterated to the State the requirement to adopt them. [FN13]

[FN13] Cf. Order issued by the Inter-American Court of Human Rights on February 20, 2003.

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23. On September 29, 2003 the Commission submitted to the Court a request to expand the provisional measures in favor of Messrs. Carlos Colmenares, Noé Pernía, and Pedro Nikken. On October 2, 2003 the President of the Court issued an order expanding the provisional measures, [FN14] which was ratified by the Court on November 21st of the same year. [FN15]

[FN14] Cf. Order issued by the then President of the Inter-American Court of Human Rights on October 2, 2003.

[FN15] Cf. Order issued by the Inter-American Court of Human Rights on November 21, 2003.

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24. On December 2, 2004 the Court issued an order in which it reiterated that the State had not effectively implemented the different provisional measures ordered by the Court in this matter; it declared the State's failure to comply with the duty imposed by Article 68(1) of the Convention; it declared the State's failure to comply with the duty to inform the Tribunal on the implementation of the measures; it decided that, if that situation persisted, it would inform the General Assembly of the Organization of American States of the State's failure to comply with the decisions of this Tribunal and it reiterated to the State the requirement to adopt, without delay, the measures ordered and allow the petitioners to participate in the planning and implementation of the same. [FN16] On May 4, 2004 the Court issued an order in similar terms. [FN17]

[FN16] Cf. Order issued by the Inter-American Court of Human Rights on December 2, 2003.

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[FN17] In this order the Court declared that the State, for having acknowledged its jurisdiction, is compelled to comply with the Tribunal's decisions, which has the ability, inherent to its powers, to supervise compliance of these decisions; it also declared that the State is compelled to implement the provisional measures ordered by the Court and to present, with the periodicity indicated by the latter, the reports required, and that the power of the Court includes evaluating the reports presented and issuing instructions and orders regarding compliance of its decisions; it reiterated, in application of Article 65 of the Convention, that the State failed to comply with the duty to inform the Court of the implementation of the measures; and it reiterated to the State that it must comply with the content of the order of December 2, 2003. Cf. Order issued by the Inter-American Court of Human Rights on May 4, 2004.

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25. On July 9, 2004 the Commission presented a request to expand the measures. On the 27th day of the same month and year the President issued an order expanding them, [FN18] which the Court ratified on September 8, 2004. [FN19]

[FN18] Cf. Order issued by the then President of the Inter-American Court of Human Rights on July 27, 2004.

[FN19] Cf. Order issued by the Inter-American Court of Human Rights on September 8, 2004.

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26. On September 12, 2005 the Court reiterated its orders to the State. [FN20]

[FN20] Cf. Order issued by the Inter-American Court of Human Rights on September 12, 2005.

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27. On January 24, 2007 the Tribunal declared a request filed by the beneficiaries of the provisional measures and their representatives on January 22, 2007 to have the provisional measures ordered expanded inadmissible "because those who file[d] it did not fulfill the requirements of procedural legal standing to do so." [FN21]

[FN21] Cf. Order issued by the Inter-American Court of Human Rights on January 24, 2007.

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28. On May 26, 2007, after the presentation of the application, eight people, seven of whom are alleged victims identified in the application, [FN22] filed a request of expansion of the measures. On the following June 4th, 14 people, alleged victims, se added themselves to the mentioned request for the ordering of measures "due to the imminent danger that grave and irreparable damages occur against [their] human rights, specifically against freedom of expression, resulting from the closing of the broadcasts [of RCTV]." On June 14, 2007 the then President dismissed that request because it considered, inter alia, that the adoption of the measures requested could imply an anticipated judgment through interlocutory proceedings with the subsequent establishment of some of the facts and its corresponding consequences object of

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the main debate of the case presented to the Tribunal. [FN23] Similarly, it required that the State maintain the provisional measures ordered. On June 19, 2007 Mr. Eduardo Sapene and another 180 people, assisted by the representatives, added themselves to the request of May 26, 2007. On July 3, 2007 the Court ratified in all its terms this Order of the President, it dismissed the requests of expansion and it ordered the State to maintain the provisional measures determined in the Orders of November 27, 2002, November 21, 2003, September 8, 2004, and September 12, 2005. [FN24]

[FN22] Mrs. Luisiana Ríos and Isabel Mavarez and Messrs Isnardo Bravo, David Pérez Hansen, Antonio Monroy, Javier García Flores, José Pernalete, and Eduardo Sapene. Mr. José Pernalete is not an alleged victim in the application. In this request they also stated that it is presented by "the other journalists and directors of [RCTV] […,] acting on [their own] behalf and proceeding also on behalf and in representation of the other people, journalists, director, and other employees that work at RCTV".
[FN23] Cf. Order issued by the then President of the Inter-American Court of Human Rights on July 14, 2007.
[FN24] Cf. Order issued by the Inter-American Court of Human Rights on July 3, 2007.

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29. Upon issuing this Judgment, the provisional measures ordered are in force; thus on this date the State has the obligation to:

[…A]dopt, without delay, all necessary measures to protect the life and personal integrity of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Carlos Colmenares, Noé Pernia, and Pedro Nikken, as well as the freedom of expression of the these last three.
[…A]dopt, without delay, all necessary measures to protect the life, personal integrity, and freedom of expression of all journalists, directors, and employees of the social communications firm Radio Caracas Televisión (RCTV), as well as of the people located in the installations of that social communications firm or linked to the journalistic operation of that media (RCTV).
[…A]dopt, without delay, such measures as may be necessary to protect the perimeter of the head offices of the social communications firm Radio Caracas Televisión (RCTV).
[…I]nvestigate the facts that gave rise to these provisional measures and their expansion, in order to identify those responsible and impose upon them the corresponding punishments.
[…A]llow the beneficiaries of the measures or their representatives to participate in the planning and implementation of the protection measures and […], in general, […] maintain [them] informed of the progress of the measures ordered by the Inter-American Court of Human Rights.

V. PRELIMINARY OBJECTIONS.

A) FIRST PRELIMINARY OBJECTION
"Of the prejudice in the role performed by some of the judges members of the Court"

30. In the first preliminary objection the State requested that the Judges Cecilia Medina Quiroga and Diego García-Sayán be "separated from hearing" the present case. As grounds for

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its request, the State referred, inter alia, to the existing relationship between those Judges and a non-governmental organization. The State indicated that one of the attorneys that legally represents the alleged victims in this case is the president of that organization and a member of its board of directors. In the State's opinion, Judges Medina and García-Sayán had issued, along with the rest of the members of that organization, prior opinions of a negative nature and that were discrediting against the State, which "compromises their fairness when proceeding to issue a judgment in the present case."

31. This position was considered in an Agreement of the then President of the Court of October 12, 2007 (supra para. 8), in which it decided, inter alia, and "in light of the elements of judgment it had at that time, […] to not accept […] the exclusion of Judges Cecilia Medina Quiroga and Diego García-Sayán from hearing the Case of Ríos et al. v. Venezuela, and exercise the power to submit the matter to the Full Court, in the terms of Article 19(2) of the Statutes of the Tribunal."

32. The aforementioned was considered by the Court in its Order of October 18, 2007 (supra para. 8), where it decided that the State's request did not constitute a preliminary objection strictly speaking. However, it considered it appropriate to make a decision in this regard as a prior matter in order to continue processing the case. By virtue of the considerations stated in the Order itself, and in the light of the elements of judgment it had, the Court considered the State's mentioned request inadmissible. However, it analyzed a request of self-disqualification presented by Judge García-Sayán, with regard to his interest that "the perception of absolute independence of the Tribunal not be affected in any way and in order to avoid any distraction to the Tribunal's attention on matters that tear it away from hearing the merits of the matters presented to it." The Court considered it reasonable to accept the Judge García-Sayán's request and his self-disqualification. [FN25] Therefore, the arguments presented by the State, which are not a preliminary objection, were already solved by the Court in the mentioned Order. Thus, the first preliminary objection filed by the State is inadmissible.

[FN25] Upon accepting the excuse presented by Judge Diego García-Sayán, the Court also ordered that the present case continue to be heard, up to its conclusion, with the composition of the Tribunal that is currently issuing this Judgment. Cf. Order issued by the Inter-American Court of Human Rights on October 18, 2007.

B) SECOND PRELIMINARY OBJECTION ("Lack of exhaustion of the domestic remedies".)

33. The State argued that even though the alleged victims have used the domestic remedies established by the Venezuelan legal system, by turning to the Public Prosecutors' Office to file the corresponding complaints for the alleged violations to their constitutional rights, those complaints are subject to their processing in different phases, and therefore, in any case it would correspond to the courts of justice of Venezuela to issue, when the time comes, the corresponding decisions. The State argued that the start of the corresponding investigations on the facts on which the commission of the illicit facts has been presumed had been expressly

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ordered in each and every case where the employees of the private company RCTV appear as possible victims. The State acknowledged that it is its duty to indicate the domestic remedies that must be exhausted and in this sense it stated that, pursuant with the stipulations of the Venezuelan Organic Code of Criminal Procedures, the alleged victims of facts that constitute crimes have at their disposal a set of procedural remedies to assert their rights, when they consider that the actions carried out by the Public Prosecutors' Office constitute a violation of their interests or a failure to comply with its constitutional and legal duties. Specifically, the State referred to the remedies and the procedural budgets available to question decisions of dismissal, filing by the prosecutor, and discontinuance of the case, and argued that none of the alleged victims had filed them, thus it considers that the domestic remedies have not been exhausted and it requested that the application be declared inadmissible.

34. Subsequently, in its final written arguments, the State also argued that in the cases of alleged verbal attacks (threats, libel and slander) and damages to the property, given that these are crimes of a private prosecution the alleged victims should have turned directly to the trial court and legally filed a private accusation, since the Public Prosecutors' Office is prevented from investigating these crimes ex officio. Similarly, the State mentioned, regarding the official speeches broadcasted pursuant with Article 192 of the Organic Law of Telecommunications, that the alleged victims had the right to resort to the corresponding jurisdictional bodies to request the nullity of said law, pursuant with the stipulations of Article 112 of the Organic Law of the Supreme Court of Justice and Article 21 of the Organic Law of the Supreme Tribunal of Justice, an appropriate domestic remedy that had not been exhausted. Likewise, with regard to the official letters forwarded by the National Telecommunications Commission (CONATEL) (hereinafter "CONATEL") to RCTV, the State indicated that the alleged victims did not file any action within the domestic legal system.

35. In this regard, the representatives held that the alleged violations included in the Commission's application were denounced in a timely manner and informed of to the Venezuelan Public Prosecutors' Office. The fact that the State admitted that the complaints are being processed implies that it accepts that the case is admissible, since six years have gone by since the first facts denounced had occurred. Likewise, they argued that the exception to the rule of exhaustion of domestic remedies of "unjustified delay" in deciding the mentioned remedies was present in this case, criterion that was adopted and applied in Admissibility Report No. 6/04 of the Inter-American Commission, where the argument that the alleged victims had not presented certain appeals for review was also dismissed. Additionally, they argued that the State's lack of interest was aggravated since its own bodies closed on-going investigations, invoking only its own ineffectiveness to justify the defenselessness of the alleged victims within the domestic jurisdiction. They state that the Public Prosecutors' Office is the only body in charge of public criminal actions in Venezuela and therefore it is responsible of carrying out all the necessary investigation actions and determining the authors of the criminal actions.

36. On its part, the Commission held that in its Admissibility Report No. 6/04 the matter of the exhaustion of the remedies of the domestic jurisdiction was duly clarified. It argued that in this report the Commission considered the applicability of the objection established in Article 46(2)(c) of the American Convention, in light of the elements present in the case file, and therefore a new discussion regarding this matter is inadmissible. The Commission mentioned

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that the State did not argue in its response to the application that this decision was based on erroneous information or that it was the result of a process in which the parties saw their equality or their right to a defense limited. The Commission considered that the content of the decisions on admissibility adopted pursuant with the rules established in the Convention and in the Rules of Procedures of the Commission should not have to be examined again before the Court. Finally, it mentioned that the arguments of the State regarding the effectiveness of the remedies would result impertinent under the concept of a preliminary objection, since any discussion on the unjustified delay and non-conformity of the domestic processes with the conventional obligations that correspond to the State is a matter that must be solved as part of the merits of the case.

37. The Court has developed guidelines to analyze an exception of non-compliance to the rule of exhaustion of domestic remedies. [FN26] To this effect, it is necessary to analyze its formal and material assumptions, established in Article 46 and 47 of the American Convention and in the relevant statutory and regulatory stipulations of the bodies of the Inter-American System, which is helping, subsidiary and complementary to the protection that must be offered by the domestic law of the States Parties. With regard to the formal aspects, in the understanding that this objection is a defense available to the State, matters that are strictly procedural must be verified, namely: the procedural moment when the objection has been filed (if it was argued in a timely manner); the facts regarding which it was filed and if the interested party has mentioned that the admissibility decision was based on erroneous information or on some infringement of their right to a defense. Regarding the material assumptions, if they have been filed and the remedies of the domestic jurisdiction have been exhausted, pursuant with the principles of International Law generally acknowledged will be verified: specifically, if the State that files this objection has indicated the domestic remedies that have not yet been exhausted, and it will be necessary to prove that these remedies were available and adequate, ideal, and effective. Since this is a matter of admissibility of a request before the Inter-American System, the presuppositions of this rule must be verified, as argued even though the analysis of the formal presuppositions prevails over those of a material nature and, in certain occasions, the latter may be related to the merits of the matter. [FN27]

[FN26] 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. Brazil. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161, para. 51, and 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.

[FN27] Specifically, when certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of those remedies or the non-existence of the due process of law, it is not only being argued that the aggrieved party is not compelled to file those remedies, but the State involved is also being accused of a new violation to the obligations assumed in the Convention. Under these circumstances, the issue of domestic remedies is extremely related to the merits of the case. (Cf. Case of Velásquez Rodríguez, supra note 26, 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

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several occasions the Court has analyzed the arguments regarding that preliminary objection along with the other merits of the case (Cf. Case of Velásquez Rodríguez V. Honduras, supra 26, para. 96; Case of Heliodoro Portugal V. Panama. .Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C. No. 186, para. 19; and 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 Velásquez Rodríguez, supra note 26, para. 96; Case of Castillo Petruzzi et al. V. Peru. Preliminary Objections. Judgment of September 4, 1998. Series C. No. 41, para. 53; and Case of Salvador Chiriboga, Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, para. 45).

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38. In the present case, as can be concluded from the dossier from the processing of the petition before the Commission, on September 26, 2002 the Commission forwarded Petition 4109/02 to the State and granted it two months to respond. On October 8, 2003, approximately a year after the forwarding of the original petition and during the admissibility phase of the proceedings, the State sent its response, in which it argued the lack of exhaustion of domestic remedies. The State indicated that the Public Prosecutors' Office was working actively on the 22 criminal cases presented by the petitioners before the prosecutors' offices; that the petitioners had at their disposal extraordinary legal actions, such as constitutional protection, to assert their rights, and that the time invested in the elucidation of the violations denounced was reasonable based on the complexity of the cases and the evidentiary dynamics. Later, on October 15, 2003, the Commission asked the State to inform the first, in a specific and detailed manner, of the actions carried out by the Public Prosecutors' Office with regard to the criminal accusations in process and asked it to clearly indicate the domestic remedies that could be exercised by the petitioners and their effectiveness. There is no evidence that the State responded to this requirement. On February 27, 2004 the admissibility report was issued. [FN28]

[FN28] Cf. Admissibility Report No. 6/04 (dossier of appendixes to the application, appendix 2, folios 83-103).

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39. The Court observes, on one hand, that the State presented its first response to the petition outside of the term granted by the Commission for those effects. Upon declaring the admissibility of the petition, the Commission considered that there was an unjustified delay in the investigations and that the application of the exception stipulated in subparagraph c of Article 46(2) of the American Convention could be applied.

40. On the other hand, the Court considers that a preliminary analysis on the effectiveness of the investigation of the facts of the present case would imply an evaluation of the State's actions in relation to its obligations to guarantee the rights acknowledged in the American Convention whose violation is being argued, specifically through serious and effective investigations, which must be analyzed within the merits of the case. Therefore, this Tribunal considers it appropriate to add the objection presented by the State to the merits of the case and examine the parties' arguments upon deciding if the State is responsible for the violation of Articles of the Convention that are argued as being violated in this case.

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VI. PRIOR CONSIDERATIONS

A) Alleged victims

41. The representatives argued that the next of kin of the alleged victims "shall also be considered victims" and that they have been caused "a considerable non-pecuniary damage," reason for which they requested that several of the next of kin be considered beneficiaries of reparations. Neither the Commission nor the State have issued a ruling in this sense.

42. In relation to the possibility of participation of the alleged victims, their next of kin, or representatives in the cases before this Tribunal, the Court has determined that it is not admissible to allege new facts, different from those presented in the application, without detriment to setting forth those that may explain, clarify or reject the facts that have been mentioned in the application, or be consistent with the claims of the plaintiff. Additionally, facts considered supervening may be forwarded to the Tribunal at any stage of the proceeding before judgment has been delivered. [FN29] Similarly, the alleged victims and their representatives may invoke the violation of rights different to those already included in the application, as long as they refer to the facts included in the latter. [FN30]

[FN29] Cf. Case of the "Five Pensioners" V. Peru. Merits, Reparations, and Costs. Judgment of February 28, 2003. 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. 174, and Case of Heliodoro Portugal V. Panama, supra note 26, para. 228.

[FN30] Cf. Case of the "Five Pensioners" V. Peru, supra note 29, para. 155; Case of Valle Jaramillo et al. V. Colombia, supra note 29, para. 174, and Case of Heliodoro Portugal V. Panama, supra note 27, para. 228.

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43. Regarding the alleged victims of a case, the Court has established that they must be mentioned in the application and in the report issued by the Commission in the terms of Article 50 of the Convention. Additionally, pursuant with Article 33(1) of the Rules of Procedure, it corresponds to the Commission and not to this Tribunal to identify the alleged victims with precision and on the due procedural opportunity. [FN31] Therefore, the Court only considers as alleged victims of the present case the 20 people identified by the Commission as being in that condition.

[FN31] Cf. Case of the Ituango Massacres V. Colombia. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 1, 2006. Series C No. 148, 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 Álvarez and Lapo Íñiguez V. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, para. 224.

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B) Facts and arguments

44. The parties have presented arguments regarding the facts of the present case and the context in which they occurred, as well as other arguments of fact and law directed to invalidating the arguments of the other parties, which are not object of the proceedings before this Tribunal.

45. In consideration of the aforementioned, the Court considers it appropriate to indicate the facts it will take into account in this Judgment.

B.1 Facts presented by the parties

46. In the application before the Court, the Commission defined the factual framework of the present case under the title "Factual Grounds". In that section, the Commission included a sub-section in which it described, in eight paragraphs and in general terms, a political situation an a context of "threats to social communicators" in which the facts of the case occurred. Based on its reports on the human rights situation in Venezuela in 2003, as well as in its Annual Report of 2004, the Commission stated that at the time in which the facts object of the present case occurred, Venezuela "was in a period of institutional and political conflict that caused an extreme polarization of society."

47. Additionally, the Commission stated that on April 9, 2002 a strike summoned by the Workers' Confederation of Venezuela and Fedecámaras started and on April 11th of the same year the opposition organized a march, in which it demanded the resignation of the President of the Republic. The Commission stated that it was in this context that facts of violence that culminated in a high number of deaths and injuries, the attack on the constitutional government through a coup d'etat, and the subsequent return to constitutional order occurred. The prevailing situation in Venezuela generated a climate of attacks and continuous threats against journalists, cameramen, photographers, and other employees of the social communication media.

48. In what refers to this case, the Commission presented approximately 40 facts that occurred between December 2001 and June 2004, consisting in statements of public officials and in attacks, threats, and harassments committed in detriment of the alleged victims. It made reference to fifteen investigations and proceedings in the criminal jurisdiction in relation to these facts. The aforementioned is the grounds for its legal arguments.

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49. The representatives argued that the facts that make up the present case "have been reviewed, argued, and proven" in the application, that they were known of by the parties within the framework of the petition, of the precautionary measures, and of the provisional measures, and they mentioned a series of facts classified as "supervening". These would be directly related with the facts included in the application, which occurred before and after it was filed, that "must be assessed by the Court […] either as part of the 'context' in which the facts occurred […] or as facts that aggravated the [alleged] violations, [which] are also facts attributable to the State and

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that result in its international responsibility." Those facts "have continued and continue occurring, and the attacks and threats have [even been] intensified[, therefore] they are continued facts […] that can be included within the definition offered by the Court for 'supervening' facts." They referred to the following "three types of facts:" those that constitute "the object itself of the litigation" by virtue of having being presented in the application; those that explain, clarify, or reject them; and the supervening ones, which occur after the application has been presented. In their final written arguments, they mentioned that it is "evident that the aggressions keep on occurring […] nowadays."

50. At the same time, the representatives referred to a series of facts, situations, and assessments they want to include as part of the context of the factual framework of the present case and that they consider relevant in proving a context of restrictions and violations to the freedom of expression, and "a pattern of behavior or policies of the State with regard to the exercise of the freedom of expression." Those facts consist in a series of regulations included in domestic legislation and judicial decisions, inter alia; [FN32] punitive administrative proceedings against television stations, namely RCTV; [FN33] and multiple judicial actions seeking to punish the media, including with the suspension of their signal. The representatives state that in the specific case of RCTV 18 judicial actions have been presented; [FN34] and they mentioned the alleged existence of a campaign carried out mainly by the State's media and aimed at discrediting RCTV. [FN35]

[FN32] They referred to the manner in which the Political Constitution of the Bolivarian Republic of Venezuela and several subsequent reforms were approved; the scope of judgment No. 1.013 issued by the Constitutional Chamber of the Supreme Court of Justice on June 12, 2001; judgment No. 1.942 issued by the Constitutional Chamber of the Supreme Court of Justice on July 15, 2003; the scope, content, limitations, punitive regimens, among others, of a new Law on Social Responsibility in Radio and Television; and some reforms to the Venezuelan Criminal Code of 2005.

[FN33] Punitive administrative proceedings started on June 5, 2002 by the National Telecommunications Commission (CONATEL) against RCTV for the alleged failure to comply with payment of the tax; Administrative control proceedings started on January 31, 2003 by the National Integrated Service of Customs and Tax Administration (SENIAT) for payment of the Added Value Tax; Punitive proceedings started by the former Ministry of Infrastructure against RCTV for violation of the regulations on content of transmissions, whose opening was ordered on March 20, 2003; Punitive administrative proceedings started on November 14, 2004 by the Superintendence for the Promotion and Protection of Free Competition (PROCOMPETENCIA) for alleged Practices contrary to Free Competition; Punitive administrative proceedings notified on March 18, 2004 by the National Integrated Service of Customs and Tax Administration (SENIAT), for the alleged lack of the tax statement corresponding to concepts of Taxes on Successions, Donations, and other related Fields; Multiple administrative controls, Inspections, and Investigations carried out by the CONATEL and the SENIAT.

[FN34] They mention 11 writs of Amparo and 7 actions for the protection of children and teenagers.

[FN35] Specifically, the representatives argued that the State's radio station YVKE Mundial and the state's television channel Venezolana de Televisión would broadcast, on a daily basis,

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programs dedicated exclusively to offending and discrediting journalists and directors of the private media.

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51. In its briefs and interventions, besides referring to the majority of the aspects of fact and law of the present case, the State referred, inter alia, to the role of private social media in Venezuela, which in its opinion have become "firm political subjects in opposition of a legally constituted government;" it opposed the interpretation made by the representatives of some provisions of domestic law and judicial decisions; it referred to certain facts and participants in "a plan to destabilize the government and prepare the coup d'etat of April 2002;" and to resulting "rebellious acts of the officials who took part in the coup at the Altamira plaza, the plans of the business and oil strikes, the guarimbas of 2003, and the annulment referendum of 2004." The State guarantees that during the development of those events, the social communication media "started a strong campaign in the media openly urging the population [to] join the acts of destabilization, […] as well as systematically and permanently urging the realization of acts of destabilization against the peace and public order, [… and] to the disobe[dience] of laws and authorities, [through the broadcasting of] messages of fear, hate, and discrimination against sectors of the population, that sympathize with the government, even though [this is] clearly forbidden by domestic and international legislation." The State argued that the act of proclamation of the government de facto at the Palace of Miraflores enjoyed the participation and attendance of several owners and directors of the country's social media, among which the presence of thr President of RCTV stands out. The State considered that this behavior of the media divests the true mission of informing to which they are compelled pursuant with the Constitution and it implies the development of "media terrorism".

52. The State indicated that the arguments of its counterparties "are oriented to questioning a free and institutional exercise, in compliance with the legal system, of the sovereign powers that the Bolivarian Republic of Venezuela possesses as a free and sovereign State within the international community." It also stated that "when facing the series of accusations, arguments, and questionings made, both by the Commission as well as by the [alleged] victims, in relation to criticizing and questioning the validity and content of the constitutional text of the Bolivarian Republic of Venezuela, as well as the exercise of the jurisdictional function by the maximum court of the Republic; the exercise of the legislative function by the body constitutionally in charge of legislating (National Assembly), and the exercise of the administrative powers of control and supervision by the State of the inexorable compliance of the law; the Venezuelan state can only express its most profound, categorical, and energetic rejection and repudiation, since that type of arguments and questionings are a clear and open interference in the exercise of the sovereign powers the State holds and that have been attributed by the constitution."

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B.2 Facts

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53. The Court has established that the state's responsibility can only be demanded at an international level after the State has had the opportunity to examine and declare it through the remedies of the domestic jurisdiction and to repair the damage caused. The international jurisdiction has a subsidiary, [FN36] contributing, and complementary nature. [FN37]

[FN36] Cf. Case of Acevedo Jaramillo et al. V. Peru. Interpretation of the Judgment of Preliminary Objections, 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.

[FN37] Cf. Preamble to the American Convention on Human Rights. See also The Effects of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 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 Veleasquez Rodríguez V. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 61.

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54. When a case has been submitted to the jurisdiction of the Court so that the latter can determine if the State is responsible for the violations to human rights enshrined in the American Convention or other applicable instruments, the Tribunal shall analyze the facts in light of the applicable stipulations and determine if the people that have requested the intervention of the instances of the Inter-American System are victims of the alleged violations and, in its case, if the State shall adopt determined reparation measures. This is what the Court's jurisdictional function refers to.

55. With regard to the facts of the present case, the application constitutes the factual framework of the proceedings [FN38] and the criteria applicable to the admissibility of new and supervening facts were exposed (supra para. 42).

[FN38] Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations, and Costs. Judgment of September 15, 2005. Series 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 Bayarru V. Argentina. Preliminary Objection, Merits, Reparations, and Costs. Judgment of October 30, 2008. Series C No. 187, para. 30.

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56. Even though the parties can present supervening facts to the Tribunal at any time during the proceedings, prior to the judgment, this does not mean that any situation or event constitutes a supervening fact for the effects of the proceedings. A fact of this nature has to be phonologically related to the facts of the proceedings, thus it is not enough that a specific situation or fact be related to the object of the case for this Tribunal to issue a ruling in this regard. The representatives have not specified what they understand by continued facts nor have they argued why, even in that hypothesis; they would have to be considered supervening. Additionally, the facts and contextual references do not constitute new opportunities for the

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parties to introduce facts different to those that conform the factual framework of the proceedings.

57. With regard to the facts cleared up in the framework of the precautionary measures issued by the Inter-American Commission, this is an autonomous procedure the Commission applies based on its Rules of Procedure, regarding which the Court does not interfere in any way nor does it know of the case file.

58. The Court observes that in the provisional measures proceedings, started in November 2002 based on a request presented by the Commission, the State was ordered to adopt measures to "shelter and protect the life, personal integrity, and freedom of expression of the journalists, directors, and employees of […] RCTV, [and] of the other people within the installations of said media […] or that are directly linked to [that] media's journalistic operation," (emphasis added), as well as "offer protection to the perimeter of the headquarters of the social communication firm RCTV [and i]nvestigate the facts." Therefore, even though the alleged victims of the present case have also been beneficiaries of those measures of protection, the specific or possible group of those beneficiaries is more ample than the one made up be the alleged victims of this case. It is necessary to specify that the proceedings for the provisional measures have occurred in a parallel but autonomous manner to the processing of the case before the Commission and the Court. In short, the object of those proceedings of an incidental, precautionary, and protective nature is different to the object of a case itself, both in its procedural aspects as well as in the assessment of the evidence and the scope of the decisions. Therefore, the arguments, factual grounds, and evidentiary elements cleared within the framework of the provisional measures, even though they may have a very close relationship with the facts of the present case, are not automatically considered as such or as supervening facts. Additionally, the Court has been informed that there is another on-going proceeding before the Commission for a case related to the RCTV television station, [FN39] thus the provisional measures could eventually have some effect on it. Based on all the aforementioned, the actions within the framework of the provisional measures will not be considered in the present case if they were not formally introduced through the appropriate procedural acts.

[FN39] With regard to the non-renewal of the concession to RCTV, the Commission stated, in a footnote in the application, that after the issuing of the report on merits of the Commission, on March 28, 2007, the Ministry of the Popular Power for Telecommunications and Informatics issued an order (Order No. 002 of March 28, 2007), in which it decided not to renew RCTV's concession to broadcast once it expired, on May 27, 2007. The representatives, on their part, argued that the threats of a closing through the non-renewal and/or annulment of RCTV's concession that started in the year 2002 had continued after the report on merits of the Commission had been communicated, and they were made real and consummated with the closing of RCTV, after the presentation of the application. However, the representatives stated that they do not wish to litigate, within the framework of the present case, the State's decision to close RCTV's open signal and the execution of that decision on May 27, 2007, but instead they wish to include them as supervening referential facts for the knowledge of the Court, so that the latter may be aware of the context and scope of the threats of annulment and/or closing of RCTV made by the highest State authorities, which are facts included in the application. The petitioners,

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along with other journalists, cameramen, camera assistants, and other employees and directors of RCTV, filed a Petition regarding the closing itself of RCTV before the Commission on March 1, 2007.

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59. It is appropriate to make reference to that argued by the Commission and the representatives in the merits of the controversy with regard to the effects of the non-compliance of the orders to adopt those measures issued by this Tribunal under Article 63(2) of the Convention. The Court has established that the mentioned stipulation confers a compelling nature to the provisional measures ordered by this Tribunal. These orders imply a special duty to protect the beneficiaries of the measures, while they are in force, and their non-compliance could result in the State's international responsibility. [FN40] However, this does not mean that any fact, event, or happening that affects the beneficiaries during the validity of those measures may be automatically attributable to the State. It is necessary to assess in each case the evidence offered and the circumstances in which that fact occurred, even under the validity of the provisional protective measures.

[FN40] Cf. Case of Hilaire, Constantine, and Benjamin, et al. V. Trinidad and Tobago. Merits, Reparations, an Costs. Judgment of June 21, 2002. Series C No. 94, paras. 196 through 200. See also, 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 number 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, August 29, 1998, May 25, 1999, and August 16, 2000. Series E No. 3, having seen paragraphs 1 and 4; and Order of November 24, 2000. Series E No. 3, having seen paragraph 3; and Matter of the "Mendoza Prisons", Provisional measures, Order of the Court of March 30, 2006. Considering Clause number ten.

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60. The factual framework of this case does not include an important part of the alleged facts, assessment of facts, and contextual references presented by the parties and argued as part of the same. Some of the issues argued by the representatives include controversies that are pending resolution before the domestic authorities of Venezuela and could also be considered part of other cases pending resolution both at a domestic or international level. Those situations, assessments, and arguments presented by the parties regarding facts not included in the factual framework, do not correspond to the controversy of the present case. Therefore, the Court will not issue any specific ruling regarding them. They will only be taken into consideration, in what is relevant, as arguments of the parties and as the context of the disputed facts.

61. The State argued that the private media hurls "constant attacks […] frequently, against the immense majority […] of partisans and supporters of the government led by the President of the Republic[, … who have] been frequently described [… with a] series of expressions of a defamatory content, whose sole purpose is to humiliate, offend, and degrade a group of people for supporting a government that has been legally created and elected." The State mentioned that "this series of insults and defamatory statements tend to create and encourage feelings of rejection and repudiation to the task exercised by certain [private] social communication media

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in the immense majority of people that support the Venezuelan government who logically and with good reason, question the work carried out by these means of communication within Venezuelan society, which results in stressful situations that on certain opportunities may have as a consequence the generation of unfortunate situations of violence […] from the sector of the population that is attacked, as a consequence and direct responsibility of the actions and attitude assumed by some of the media […], and by the feelings of rejection they generate with their activity."

62. The Court reiterates that its function is to determine, in exercise of its contentious jurisdiction as an international human rights court, the State's responsibility under the American Convention for the alleged violations, and not the responsibility of RCTV or other media, or its directors, shareholders, or employees for certain facts or historical events in Venezuela, or its role or performance as a social communication firm. The Court does not make any determination of the rights of RCTV, as a company, corporation, or legal entity. Even if it were true that RCTV or its personnel have committed acts attributed to them by the State, this would not justify the non-compliance of the state's obligations to respect and guarantee human rights. [FN41] Disagreement and differences in opinions and ideas are circumstantial to the pluralism that must exist in a democratic society.

[FN41] Cf. ECHR, Ozgur Gundem v. Turkey, Judgment of March 16, 2000, Reports of Judgments and Decisions 2000-III, para. 45.

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63. In their final written arguments, the representatives presented a series of arguments regarding "the unacceptable retaliation against the [alleged] victims and the human rights defenders of the present case," in reference to expressions and statements of state agents regarding the alleged victims and their representatives and some videos published by a state channel. They argued its purpose was to "discourage and therefore frustrate the right [of the alleged victims] to present petitions before the system's bodies." In this sense, Article 44 of the Convention guarantees people the right to turn to the Inter-American System; therefore, the effective exercise of that right implies that no other type of retaliation can be exercised against them. The States shall guarantee, in compliance of their conventional obligations, that right to petition throughout all the phases of proceedings before international instances.

C) Alleged violations

64. The Commission and the representatives held that the State is responsible for the violation of the liberty to seek, receive, and impart information and ideas (Article 13(1) of the Convention).

65. The Commission argued that the acts described in the application constituted restrictions "of the essential content of the right to freedom of expression, namely, to seek, receive, and impart information freely," in relation with the duty of guarantee included in Article 1(1) thereof, even though it did not specify in detriment of who nor did it individualize the facts that generated the violation, instead it referred generally to the fact that this right was "hindered both by acts or

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omissions of State agents as well as by actions of individuals." It argued in its application that when the facts object of the present case started, Venezuela was in a "period of institutional and political climate that caused an extreme polarization of society that "generated a climate of continuous attacks and threats against journalists, cameramen, photographers, and other related workers of the social communication media." The Commission argued that, in said context, certain speeches or pronouncements of the highest state authorities, among which it mentioned 10 statements or pronouncements of the President of The Republic, contributed in creating an environment of intolerance and social polarization, not compatible with the duty to prevent violations of human rights that corresponds to the State and that constituted "indirect means to the exercise of the right to freedom of thought and expression," which "may result in acts of violence against the people identified as employees of a specific communication firm."

66. Upon observing that individuals committed the majority of the facts indicated in the application, the Commission argued that it is possible to attribute international responsibility to the State for these acts of third parties because it was aware of a situation of actual risk and did not adopt reasonable measures to avoid it. It stated that the vast majority of the facts occurred within the framework of events of high political and institutional interest, or in the coverage of a news story, even at a public protest where "partisans of the ruling party" as well as those of the "opposition" were present. The recurrence of this type of events directed against employees of social communication firms, "generated an evident intimidating effect on their desire to continue with their work in the future," since the alleged victims are intimidated and have a well-founded fear that they may be the object of an attack based on their work relationship with the station. It considered that the State has not acted in a diligent manner with regard to its duty to investigate the facts and that the domestic investigations have taken much longer than could be reasonably expected.

67. The representatives agreed substantially with that argued by the Commission and they insisted that, even though the speeches of public authorities, even the ones with criticizing and insulting content, are covered in principle by the freedom of expression, this is not so when in a clear and imminent manner it promotes attacks against journalists and the media. In these cases, the State results responsible not only for the official violent speech in which RCTV, its journalists, and directors were attacked in a reiterated and systematic manner but for the aggressions caused by groups of individuals executing and following those messages.

68. The Commission and the representatives argued the violation of Article 5 of the Convention, although they differed with regard to the facts, arguments, and reasons that would substantiate the alleged violations.

69. Thus, the Commission indicated four facts that affected three alleged victims. [FN42] It argued that, "for not having offered elements of protection to decrease the risk, since it did not completely and diligently investigate or punish those responsible for the mentioned impacts produced with fire arms," the State is responsible for the violation of the right to physical integrity of Messrs. José Antonio Monroy, Armando Amaya, and Carlos Colmenares, injured with fire arms while the covered public protests. The State had a "special duty of protection" regarding those three people, since they were protected by precautionary measures requested by the Commission as of January and July 2002, and because they were social communicators of

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RCTV and they were in a risky situation, despite which the State did not adopt any protection measure and did not comply with the decisions of the Commission and the Court.

[FN42] Facts of August 15, 2002, November 12, 2002, August 19, 2003, and March 3, 2004.

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70. The representatives coincided with the Commission in alleging that these four facts violate the right to physical integrity and mentioned eight more facts in this sense. [FN43] The representatives argued that the totality of the facts included in the application were a direct consequence of the statements of public officials addressed against journalists and directors of RCTV and, therefore, attributable to the State and that they constitute violations of the state's duty to respect, guarantee, and prevent the violations to the right to personal integrity of the alleged victims. They asked the Court to declare that the State violated that right, 'in its psychic dimension", in detriment of "all the victims in the present case." Finally, they held that the State had violated Articles 5, 13, 8, and 25 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter "Convention of Belem do Pará")

[FN43] Facts of April 10, 2002, March 3, 2004, March 12, 2002, August 15, 2002, April 3, 2002, December 4, 2002, March 3, 2004, and June 3, 2004.

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71. The State denied having incurred in violation of Articles 5 and 13 of the Convention. It stated that the sporadic facts included in the application are not part of the daily professional tasks of the alleged victims and they are attributable to non-identified third parties, as acknowledged and confessed by those and the Commission. The protection of the alleged victims and the control of public order are also not attributable to the State, who has guaranteed the investigation of those facts. It stated that these facts cannot justify a conviction against the State, since the obligation to prevent is of means and not results and "the logical system of responsibility of the States, either patrimonial or for violations to human rights, must respect the basic rules of international order, in the sense that, the State cannot respond for facts of third parties, first of all, when it has applied due diligence to avoid and punish those facts, as in the present case, nor can the State respond for misconducts of the victims themselves, when, as in the present case, it is the claimants themselves who have caused the isolated and exceptional facts they denounce, through the continuous urging to hatred and destabilization."

72. The State indicated that the action of the State's security forces has been proportional, reasonable, necessary, and indispensable, "since there have been very grave alterations to public order, by opposing groups that cause, along with RCTV and other biased media of the opposition, serious attacks against the good performance of the institutions and social peace." It argued that in the present case the authorities have done everything reasonably expected to reduce the risk, and all legal means available have been used to determine the truth, prosecution, capture, and punishment of those responsible for any alteration to the public order or any attack. The Public Prosecutors' Office has opened investigations in relation to each complaint filed by

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the victims, has substantiated them and has requested the collaboration of the latter. The State argued that in many cases it could not establish the type and degree of the injury suffered by the alleged victims, who would not go to a help center to be evaluated.

73. On the other hand, the Commission and the representatives argued that the State failed to comply with its obligation to investigate the facts of the case, prosecute, and punish all those responsible in an exhaustive and effective manner and within a reasonable period of time, pursuant with the stipulations of Articles 8 and 25 of the American Convention, in detriment of all the alleged victims.

74. With regard to the reasonable term of the investigations, the Commission observed that the investigations have extended for almost six years without all those responsible, especially the State's agents, having been prosecuted, which is aggravated by the fact that Venezuelan legislation does not establish a maximum term for the duration of an investigation. None of the facts denounced in the domestic realm have passed the stage of preliminary research and in none of those cases have any charges been presented against any person as the alleged responsible party for the facts, not even in the case where there is an author arrested. The representatives made emphasis on the fact that the investigation phase has been excessively prolonged in deterioration of the right of the victims to access the bodies of administration of criminal justice in a expedite manner and without any unnecessary delays.

75. The State presented an analysis of each of the investigations and concluded that "in the cases where their actions were legally appropriate (crimes of public action) it has started and carried out serious investigations, directed to establishing the responsibilities that result correct." It also stated that Venezuela was submitted to a severe political and social crisis, which implied complexity in the development of the investigations.

76. Since there is a connection between the facts of the application that the Commission and the representatives have alleged are violations to the mentioned provisions of the Convention, the Court considers it appropriate to jointly analyze, in a first chapter on the merits of the case (chapter VIII), those facts and arguments. Specifically, given the characteristics of the present case and due to the reasons presented in a timely manner (infra paras. 281 through 291), the alleged violations to Articles 8 and 25 of the Convention will be analyzed as part of the state's obligation to investigate possible violations to human rights, included in Article 1(1) of the Convention, as a form of guarantee of the other rights that have allegedly been violated.

77. Finally, the Commission and the representatives argued that some of the pronouncements of the President of the Republic, specifically those that referred to the use of the radio-electrical space of state property by RCTV and the concession under which it operated, constituted forms of indirect restriction not compatible with the right to seek for and broadcast information freely, in violation of Articles 13(1) and 13(3) of the Convention. The representatives argued that at least in 11 of the facts the alleged victims were denied access to official sources of information or state installations, which constituted an illegal restriction to their freedom to search for, receive, and impart information, as well as a violation to Article 24 of the Convention, due to discriminatory treatment. At the same time, the Commission and the representatives indicated that the State intervened in the broadcasts of the RCTV station and in the technical means

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necessary to broadcast information, and that CONATEL forwarded official letters to illegitimately control the broadcasting of news stories or information, which constituted an indirect restriction to the right acknowledged in Articles 13(1) and 13(3) of the American Convention. These arguments will be considered in a second chapter on the merits of the controversy (chapter IX).

VII. EVIDENCE

78. Based on the stipulations of Articles 44 and 45 of the Rules of Procedure, as well as the jurisprudence of the Tribunal with regard to evidence and its assessment, [FN44] the Court will proceed to examine and assess the evidentiary elements included in the case file. [FN45]

[FN44] 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. also Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations, and Costs. Judgment of November 25, 2006, Series C No. 160, paras. 183 and 184; Case of Almonacid Arellano et al. V. Chile, supra note 26, paras. 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.
[FN45] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits. Judgment of March 8, 1998. Series C No. 37, para. 76; Case of Valle Jaramillo et al. V. Colombia, supra note 29, para 49, and Case of Bayarri V. Argentina, supra note 38, para. 31.

A) Documentary, testimonial, and expert evidence

79. By agreement of the Presidency of the Court the statements offered before a notary public (affidavit) of the following witnesses and experts were received regarding the matters presented below. The issues regarding their statements will be presented, when appropriate throughout this judgment:

a) Luisiana Ríos Paiva, alleged victims and witness proposed by the Commission, journalist of the RCTV. She testified, inter alia, regarding the facts occurred on December 17, 2001, January 20th, April 18th, May 2nd and 28th, 2002; regarding the complaint filed based on those facts and the consequences they have had on her personal life and professional performance.
b) Pedro Nikken, alleged victim and witness proposed by the Commission and the representatives; he is a journalist and worked at RCTV between 2000 and 2004. He testified, inter alia, regarding the facts that occurred on November 12, 2002, August 19, 2003, and March 3, 2004; regarding the investigation thereof and the consequences they have had on his personal life and professional performance.
c) Eduardo Guillermo Sapene Granier, alleged victims and witness proposed by the Commission and the representatives; he is the Vice-President of Information and Opinion of RCTV. He testified, inter alia, regarding facts occurred between 2001 and 2004 against

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journalists and employees of RCTV and, specifically, those occurred on April 13, 2002 and June 3, 2004 against the headquarters of RCTV. Likewise, with regard to the complaints filed based on those facts and the consequences they have had on his professional performance.

d) Marcel Granier, witness proposed by the representatives; he is the President and General Director of RCTV. He testified, inter alia, regarding attacks suffered by journalists and employees of RCTV, as well as attacks against the headquarters of that television station and the effect of speeches of high State officials in the editorial line of RCTV.

e) Armando Amaya, alleged victim and witness proposed by the representatives; he is a cameraman at RCTV. He testifed, inter alia, regarding facts of November 12, 2002, attacks against him and the consequences they have had on his personal life and professional performance.

f) Anahís del Carmen Cruz Finol, alleged victim and witness proposed by the representatives; she is a reporter at RCTV. She testified, inter alia, regarding the facts of December 8, 2002, January 27, 2003, and March 3, 2004, and the consequences they have had on her personal life and professional performance.

g) Isabel Cristina Mavarez Marín, alleged victim and witness proposed by the representatives; she is a journalist and producer in the news area at RCTV. She testified, inter alia, regarding the facts of April 9, 2002 and their consequences on her personal life and professional performance.

h) David Pérez Hansen, alleged victim and witness proposed by the representatives, who was a RCTV reporter up to 2007 and is currently the Executive Producer of the that station's information management. He testified, inter alia, regarding the facts of March 12th and August 15th, 2002 and the consequences those attacks have had on his personal life and professional performance.

i) Marcos Fidel Hernández Torrolv, witness proposed by the State; he is a journalist. He testified, inter alia, regarding the work of the different private media firms, including RCTV, in recent times.

j) Omar Solórzano García, witness proposed by the State; he is an attorney. He testified, inter alia, regarding the role of the Ombudsman and its interventions in protests; the measures adopted to guarantee the order and safety of people due to those public protests; the special measures adopted in benefit of journalists and the injuries caused despite the measures adopted.

k) Daniel Antonio Hernández López, witness proposed by the State; he an economist, political scientist, and philosopher. He testified, inter alia, regarding the origin and evolution of media in Venezuela and the role assumed by private media, especially RCTV, between 2001 and 2006.

l) Alís Carolina Fariñas Sanguino, witness proposed by the State; she was the Twenty-First Prosecutor at a National Level with Full Competence from January 2001 to April 2008. She testified, inter alia, regarding orders to start investigations issued ex officio at that Prosecutors' Office due to the facts that occurred against the employees of communication firms in the year 2004.

m) Toby Daniel Mendel, expert proposed by the Commission; he is the Senior Director of the Law Program of the NGO "Article 19". He testified, inter alia, regarding freedom of expression as a human right and the restrictions permitted; freedom of expression with regard to public officials and matters of public interest; acts of intimidation, harassment, persecution, and attacks against social communicators and associated personnel committed by state actors and/or individuals, as well as regarding the State's positive obligation to protect RCTV.

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n) Ricardo Uceda, expert proposed by the Commission; he is a journalist. He testified, inter alia, regarding the effect of a constant critical speech against social communicators and associated personnel by the authorities of a country; the effects of acts of intimidation, harassment, persecution, and attacks against them committed by state actors and/or individuals, as well as with regard to the effects these attacks would have on the exercise of freedom of expression in social communication workers.
ñ) Marcelino Bisbal, expert proposed by the representatives; he is a journalist. He testified, inter alia, regarding the effects the attacks on journalists and other employees of social communication in Venezuela would have on the exercise of journalism and the free search and broadcasting of information and ideas, especially during the time to which the facts of the present case refer.
o) Eduardo Ulibarri Bilbao, expert proposed by the representatives; he is a journalist. He testified, inter alia, regarding international standards relevant for freedom of expression and the exercise of journalism, as well as its application to the facts denounced in the present case.
p) Magadalena López de Ibáñez, expert proposed by the representatives; she is a clinical psychologist. She testified, inter alia, regarding the psychological and psychosomatic effects, as well as the bio-psychological damages experimented by the journalists, cameramen, camera assistants, and directors of RCTV, all alleged victims in this case.
q) Pedro Berrizbeitia Maldonado, expert proposed by the representatives; he is an attorney-at-law and professor of Criminal Procedural Law. He testified, inter alia, regarding the role of the Public Prosecutors' Office in the Venezuelan criminal process, the role of the victim in the investigations and the proceedings for crimes of public action, the duration of a criminal investigation, and the ways to initiate a criminal proceeding in Venezuela.

80. With regard to the evidence offered in the public hearing, the Court heard the statements of the following people:

a) Carlos Colmenares, alleged victim and witness proposed by the Commission; he was a cameraman at RCTV. He testified, inter alia, regarding alleged facts occurred on August 19, 2003 and March 3, 2004, where he was injured, as well as with regard to another attack that occurred while he was covering a protest at Chuao and the investigation of those facts. Similarly, he described the consequences they have had on his personal life and the exercise of his profession.
b) Antonio José Monroy Clemente, alleged victim and witness proposed by the representatives; he is a cameraman at RCTV He testified, inter alia, regarding the attacks suffered by him and his reportorial team while covering the news on July 31st and August 15, 2002 at the Supreme Court of Justice, the investigation of those facts, and the consequences they have had on his personal life and the exercise of his profession.
c) Andrés Izarra, witness proposed by the State; he is a television producer who worked at RCTV and is currently the Minister of Telecommunication of Venezuela and Director of the state's station Telesur. He testified inter alia, regarding the participation of the alleged victims, as shareholders, directors, journalists, and employees of RCTV, within the context of the facts of the present case.

B) ASSESSMENT OF THE EVIDENCE

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81. In this case, as in others, [FN46] the Tribunal admits the evidentiary value of the documents presented by the parties in a timely manner that were not contested or objected, and whose authenticity was not questioned.

[FN46] Cf. Case of Velásquez Rodríguez. Merits, supra note 38, para. 140; Case of Valle Jaramillo et al. V. Colombia, supra note 29, para 53, and Case of Bayarri V. Argentina, supra note 38. Judgment of October 30, 2008. Series C No. 187, para. 35.

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82. Along with their brief of pleadings, motions, and evidence, the representatives forwarded, in appendix number 31, statements of eleven alleged victims in simple copies, which were transmitted to the State in a timely manner. Later, on December 17, 2007 the representatives provided documents consisting in statements of the alleged victims authenticated by the General Consulate of the Republic of Costa Rica in the Bolivarian Republic of Venezuela, arguing that "due to reasons of a grave impairment" they could not be offered when the presented their brief of pleadings and arguments. Thus, the representatives, based on Article 44(3) of the Rules of Procedure, requested that said evidence be declared admissible, since they could not be provided earlier due to the refusal of some notary publics to certify them. Regarding the statements forwarded on that second occasion, the format and there are differences between some of the sections of the statements that were sent first and the ones later authenticated.

83. In this sense, the Commission expressed that "as long as [the documentary evidence provided by the representatives on December 17, 2007] consists of duly certified copies of statements that were in fact presented to the Tribunal on the corresponding procedural moment, it has not observations to present."

84. Taking into account the aforementioned considerations, this Tribunal believes that the State's right to defense has not been violated, since the latter had the possibility to object and dispute the content of all those statements. However, the eleven statements that were forwarded by the representatives in the corresponding procedural opportunity, that is, along with the brief of pleadings, motions, and evidence, will be included in the body of evidence, and assessed taking into account the parties' observations. With regard to the statements forwarded on December 17, 2007 by the representatives, elements to determine the veracity of the alleged hindrance have not been presented in the terms of Article 44(3) of the Rules of Procedure. However, they were forwarded to the State, who had the opportunity to present observations. Given that the Tribunal considers that these statements are relevant and useful for the resolution of the present case, it includes them in the body of evidence in the terms of Article 45(1) of the Rules of Procedure.

85. Similarly, the representatives expressed that the Notary Public refused to legally receive the statements of the witnesses and experts required in the Order of the President of the Court of June 11, 2008. The State did not object the aforementioned.

86. The Court considered it wrongful that those who exercise public duties of bearing witness refuse to receive statements of people summoned by an international human rights court. Pursuant with Article 24(1) of the Rules of Procedure, the States Parties in a case have the duty

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to "facilitate [the] execution of orders to appear before the Court of people residing in their territory or in it." Said people were summoned by the Presidency of the Court to offer their statements before a notary public. Therefore, the State shall guarantee, as a projection of the principle of good faith that must govern compliance of conventional obligations, that there are no obstacles in obtaining the evidence. [FN47] However, in the present case the Court does not have sufficient evidence to determine the veracity of the alleged hindrance.

[FN47] The Permanent Arbitration Court established that "[e]ach State shall comply with its conventional obligations bona fide, and if it does not do so it may be punished with the common punishments established in International Law" (translation of this Court). 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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87. In reference to the press documents presented by the parties, which have not been objected, this Tribunal considers that they may be effective as evidence only when they refer to public and notorious facts or statements made by State officials or when they verify aspects related to the case [FN48] and are verified by any other means. [FN49]

[FN48] Cf. Case of Velásquez Rodríguez. Merits, supra note 38, para. 146; Case of the "White Van" (Paniagua Morales et al.). Merits, supra note 45, para. 75; Case of Valle Jaramillo et al. V. Colombia, supra note 29, para. 62, and Case of Ticona Estrada V. Bolivia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, para. 42.

[FN49] Cf. Case of the Rochela Massacre v. Colombia. Merits, Reparations, and Costs. Judgment of May 11, 2007. Series C No. 163, para. 59; Case of Yvon Neptune V. Haiti. Merits, Reparations, and Costs. Judgment of May 6, 2008. Series C No. 180, para. 30, and 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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88. The representatives objected the inclusion of several documents provided by the State in its response to the application because it considered them irrelevant for the object of the present case. [FN50] This Tribunal decides to include them in the body of evidence and assess them taking into account the observations of the representatives and in the totality of the body of evidence. With regard to appendix A.17, its content does not adjust to the object of the case and therefore its inclusion in the body of evidence results irrelevant.

[FN50] Specifically, they requested that the following appendixes of the brief of response to the application be declared inadmissible: newspaper article published in the Venezuelan newspaper of national circulation "El Nacional", dated April 16, 2002, containing the interviews carried out to the directors and representatives of several social communication media firms (appendix marked "A.7"); newspaper article published in the Venezuelan newspaper of national circulation "El Nacional", dated July 12, 2007 (appendix marked "A.8"); transcript of the Program Primer

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Plano transmitted by RCTV on February 23, 2003 (appendix marked "A.10"); newspaper articles published in several Venezuelan newspapers of national circulation (appendix marked "A.11"); copy of the Decision issued by the Superintendence for the Promotion and Protection of Free Competition on February 24, 2005 (appendix marked "A.12"); copy of the Judgment issued by the First Administrative Court on May 11, 2005 (appendix marked "A.13"); DVD, identified as "Messages Transmitted During the Strike of 2002 and 2003," including the different messages transmitted by the private social communication media firm during the months of December, moment at which the "Strike" held by the political sectors opposing the national government occurred (appendix marked "A.16"); CD including the presentation, in a Power Point format, of the work titled "How does Media Manipulate Us?". Prepared by the psychiatrist Heriberto González Méndez (appendix marked "A.17"); DVD, identified as "Attacks to Institutions of the State", including the multiple attacks and offenses against the democratic Venezuelan institutions, hurled during the transmission made by RCTV on December 6, 2002 (appendix marked "A.20"); DVD, identified as "Offenses against the President of the Republic", including the multiple attacks and offenses against the majesty of the President of the Bolivarian Republic of Venezuela, hurled by the journalists of RCTV (appendix marked "A.21").

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89. The Court will assess the statements and expert opinions offered by the witnesses and experts, as long as they adjust to the object defined by the President in the Order of June 11, 2008 and to the object of litigation of the present case, taking into consideration the observations presented by the parties [FN51] and applying the rules of competent analysis. They will be analyzed in the corresponding chapter. By virtue of the fact that the alleged victims have a direct interest in the case, their statements may not be assessed in an isolated manner, but instead within the totality of the evidence of the proceedings, [FN52] even though they are useful in the sense that they can provide more information on the violations and their consequences. [FN53]

[FN51] The representatives objected, in a brief presented on January 5, 2009, the State's observations regarding several statements and expert opinions presented in its final written arguments. Specifically, they argued "the inadmissibility of the State's observations to the testimonial statements," they referred to "the alleged measures of protection adopted by the State" and to "how the State's objections to the expert statement of the psychologist Magdalena López was time-barred." The presentation of observations to the final arguments is not established in the Rules of Procedure within the written proceedings. On the other hand, even though it is true that the State did not forward its observations to several statements and expert opinions in the term granted by the Tribunal to that effect, the Court takes into consideration the State's observations as they were presented in their final arguments in exercise of their right to a defense. Therefore, the Court will assess those evidentiary elements taking into account the observations of the parties, as long as they refer exclusively to those evidentiary elements.

[FN52] Cf. Case of Loayza Tamayo v. Peru. Merits. Judgment of September 17, 1997. Series C No. 33, para. 43; Case of Valle Jaramillo et al. V. Colombia, supra note 29, para. 54, and Case of Ticon Estrada V. Bolivia, supra note 48, para. 37.

[FN53] Cf. Case of the "White Van" (Paniagua Morales et al.), supra note 44, para. 70; Case of García Prieto et al. V. El Salvador. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 22, and Case of Goiburú et al. V.

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Paraguay. Merits, Reparations, and Costs. Judgment of September 22, 2006. Series C No. 153, para. 59.

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90. In application of that stated in Article 45(1) of the Rules of Procedure of the Court, as was decided by the President (supra para. 14), the Tribunal includes in the body of evidence of the present case the statement of Mr. Ángel Palacios Lascorz, the expert opinion of Mrs. María Alejandra Díaz Marín, and the expert opinion of Mr. Alberto Arteaga, all offered in the Case of Perozo et al. v. Venezuela, taking into account the corresponding observations presented by the parties.

91. Additionally, the Court will include in the evidence file of this case the documents presented by the witness and alleged victim Carlos Colmenares during the public hearing; [FN54] by the State [FN55] and by the representatives, [FN56] in the strict measure that they adjust to the object of the present case, in the mentioned terms (supra para. 53 through 63).

[FN54] He handed over a medical report of June 3, 2008 and a document that proves he works at Nueva Televisión del Sur.

[FN55] It sent a book named "Mi Testimonio ante la Historia" published by Mr. Pedro Carmona Estanga

[FN56] They sent a transcript of the demand against Mr. Andrés Izarra. Similarly, they sent a newspaper article named "Colegio Nacional de Periodistas exige investigar agresiones" published in El Universal.com on July 29, 2008, another newspaper article, with the title "SNTP denuncia aumento de atropello a la libertad" published in the newspaper El Universal of August 2, 2008 and a copy of the editorial column of Mrs. Patricia Poleo "Factores de Poder" dated April 16, 2007, April 17, 2002, April 18, 2002, April 22, 2002, April 23, 2002, and April 24, 2002.

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92. The Commission requested in its application that this Tribunal include in the dossier of the present case "a copy of all the actions related to the provisional measures ordered by the Inter-American Court in favor of Luisiana Ríos et al. (RCTV)". The Commission did not justify its request and the State objected it. Additionally, it was stated that the actions related with the on-going proceedings regarding provisional measures are independent to this proceeding, and therefore it is not admissible to issue a favorable decision in this request. However, the Court will assess the statements offered by Mrs. Luisiana Ríos and Mr. Carlos Colmenares during a hearing held within the proceedings for the provisional measures (supra para. 21), offered by the representatives to substantiate facts of the case, considering that on both occasions the State had the opportunity to exercise its right to a defense.

93. With regard to the videos presented by the Commission, the representatives and the State at the different procedural opportunities, which have not been objected and whose authenticity has not been questioned, this Court will assess its content within the context of the body of evidence, taking into account the observations presented by the parties, and applying the rules of competent analysis.

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94. The Commission offered as evidence transcriptions of rulings of high State authorities. In some cases, the Commission referred to the direct electronic link of the transcription cited as evidence. [FN57] The Court has established that if a party provides at least the direct electronic link of the document cited as evidence and it is possible to access it, the legal safety or procedural balance is not affected because it can be located immediately by the Tribunal and by the other parties. [FN58]. In this case, the Court verifies that the Commission presented the mentioned transcriptions as appendixes to its application and there was no objection or observations from the other parties regarding their content and authenticity.

[FN57] The Commission provided the electronic links for the facts of November 9, 2003, January 12, 2004, and May 9, 2004, and also stated that "the content of [the] statements is public and can be found on several official government webpages, for example on http://www.gobiernoenlinea.ve/misc-view/ver_alo.pag."
[FN58] Cf. Case of Escué Zapata V. Colombia. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 165, para. 26, and Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela, supra note 31, para. 17.

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95. On the other hand, the representatives and the State presented documents and videos along with their corresponding briefs of final arguments. In its jurisprudence, the Tribunal has considered that even though proceedings before this Court are less formal and more flexible than the proceedings of domestic law, they do not forget to guarantee the legal certainty and procedural equality of the parties. [FN59] In the terms of Article 44 of the Rules of Procedure, the Court considers that those documents have been presented in a time-barred manner, and therefore they will not be included in the body of evidence of this case.

[FN59] Cf. Case of the "White Van" (Paniagua Morales et al.) V. Guatemala, supra note 44, para. 70; Case of the Gómez Paquiyauri Brothers V. Peru. Merits, Reparations, and Costs. Judgment of July 8, 2004. Series C No. 100, para. 58; and Case of Molina Theissen V. Guatemala. Reparations and Costs. Judgment of July 3, 2004. Series C No. 108, para. 23.

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96. Without detriment to the aforementioned, it is necessary to guarantee that in each case the Tribunal may be able to know the truth of the disputed facts, reason for which it has ample powers to receive the evidence it considers necessary or appropriate, guaranteeing the parties' right to defense. Therefore, in certain cases, it may be exceptionally necessary to hear the parties' arguments with greater amplitude, assess the evidence considered useful, relevant, or essential, and order other actions appropriate for the solution of the disputed facts. The Court observes that, along with its final written arguments, the State presented transcripts of the interviews of several of the alleged victims that had not been previously included, among which we can mention those of Messrs. Armando Amaya, Eduardo Sapene, Winston Gutiérrez, and Mrs. Luisiana Ríos before attorneys of the Public Prosecutors' Office. As indicated, the State presented information and documents regarding the facts of the present case, along with its briefs

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and in response to requests for evidence to facilitate adjudication of the case. Since they were part of those investigations, and since it is considered useful and appropriate to have the maximum number possible of statements of the alleged victims, the Court includes them into the body of evidence, in the terms of Article 45(1) of the Rules of Procedure.

97. Finally, upon forwarding copy of some actions in judicial investigations and proceedings either open or processed at a domestic level, in response to a request of evidence to facilitate adjudication of the case (supra para. 18), the State indicated that "in what refers to the cases that are still in their Preliminary Stage, [the Public Prosecutors' Office] reserves for third parties the investigation records, until that stage ceases, with only the parties having access to the same."

98. The reservation of information from people foreign to the process in the preliminary phase of criminal investigations is established in the different domestic legislations. In this case, the accused State has stated the aforementioned as grounds to not send to the Court the documents requested in relation to several domestic criminal proceedings. The mentioned restriction may result reasonable in the domestic proceedings, since the diffusion of certain information in a preliminary phase of the investigations could obstruct them or cause the people damage. However, for effects of the international jurisdiction of this Tribunal, it is the State who has control of the means necessary to clarify facts occurred in its territory [FN60] and, therefore, its defense cannot lie on the impossibility of the petitioner to present evidence that, in many cases, cannot be obtained without the cooperation of state agents. [FN61] Therefore, the Court considers that the State's refusal to forward some documents cannot result in detriment to the victims, but only in damage to itself. Thus, the Tribunal may consider as established the facts proven only through evidence the State has refused to forward. [FN62]

[FN60] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 38, para. 136; Case of Gómez Palomino V. Peru. Merits, Reparations, and Costs. Judgement of November 22, 2005. Series C No. 136, para. 106, and Case of Yatama V. Nicaragua. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 23, 2005. Series C No. 127, para. 134.
[FN61] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 38, para. 135; Case of Chaparro Álvarez and Lapo Íñiguez, supra note 31, para. 73, and Case of the Gómez Paquiyauri Brothers, supra note 58, para. 154.
[FN62] Cf. mutatis mutando, Case of Gonzalez et al. ("Cotton Field") V. Mexico, Order of the Inter-American Court of Human Rights of January 19, 2009 (request to increase the alleged victims and denial to forward documentary evidence), para. 59.

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99. In relation to a similar controversy, the International Criminal Court for the former Yugoslavia has considered that granting the States, based on reasons of national security, a general right that allows them to refuse to forward documents necessary for the development of the process could make the operation itself of the International Court impossible, and could become an obstacle for it in achieving its purpose. [FN63] On its part, the European Human Rights Court rejected similar arguments presented by a State with the purpose of not sending information from a criminal case file that was open ans had been requested by said Court. In fact,

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the European Court considered it insufficient to argue, inter alia, that the criminal investigation was pending and that the case file contained documents classified as secret. [FN64]

[FN63] The original in English states: "[T]o grant States a blanket right to withhold, for security purposes, documents necessary for trial might jeopardize the very function of the International Tribunal, and defeat its essential object and purpose. […] To admit that a State holding such documents may unilaterally assert national security claims and refuse to surrender those documents could lead to the stultification of international criminal proceedings: those documents might prove crucial for deciding whether the accused is innocent or guilty. The very raison d'être of the International Tribunal would then be undermined." Cf. International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber, "Lašva Valley" (IT-95-14) TIHOMIR BLAŠKIĆ, Judgment on the Request of The Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 October 1997, para. 65.
[FN64] The original in English states: "122.[The State] refused to disclose any documents of substance from the criminal investigation file, invoking a number of reasons for that decision. First, they stated that the investigation was pending; then, that it contained certain documents classified as secret and, finally, referred to Article 161 of the Code of Criminal Procedure, which allegedly precluded the submission of these documents. 123. The Court has on several occasions reminded the Government of the possibility to request the application of Rule 33 § 2 of the Rules of Court, which permits a restriction on the principle of the public character of the documents deposited with the Court for legitimate purposes, such as the protection of national security and the private life of the parties, as well as the interests of justice. No such request has been made in this case. The Court further remarks that the provisions of Article 161 of the Code of Criminal Procedure, to which the Government refer, do not preclude disclosure of the documents from a pending investigation file, but rather set out a procedure for and limits to such disclosure. The Government failed to specify the nature of the documents and the grounds on which they could not be disclosed (see, for similar conclusions, Mikheyev v. Russia, no. 77617/01, § 104, 26 January 2006). […] the Court considers the Government's explanations concerning the disclosure of the case file insufficient to justify the withholding of the key information requested by the Court". Cf. ECHR, Imakayeva v. Russia, Judgment of 9 November 2006, Application no. 7615/02, paras 122 and 123.
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100. Due to the aforementioned, in the cases in which the transcripts of the investigation are under reservation, it corresponds to the State to send the copies requested informing of that situation and of the need, convenience, or relevance of maintaining the due confidentiality of that information, which will be carefully evaluated by the Tribunal, for the effects of including it in the body of evidence of the case, respecting the adversarial principle in whatever corresponds, in the understanding that, as has been indicated by the State, the domestic legislation itself allows the victims and their legal representatives access to the case files on prior investigations. [FN65]

[FN65] Cf. Article 304 of the Organic Code of Criminal Procedures, approved on January 20, 1998, published in Official Gazette No. 5.208 extraordinary, of January 23, 1998, with the partial reform approved on August 25, 1000, and published in Official Gazette No. 37.022 of that same

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date, and the partial reform approved on November 12, 2001, and published in Official Gazette No. 5.558, extraordinary, of November 14, 2001, Article 11 (dossier of evidence, volume XXVI, folio 9319) and Case of Gonzalez et al. ("Cotton Field") V. Mexico. Order of the Inter-American Court of Human Rights of January 19, 2009 (request to increase the alleged victims and refusal to forward documentary evidence), para. 61.

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101. After formally examining the evidentiary elements on record in the dossier of the present case, the Court proceeds to analyze the alleged violations to the American Convention in consideration of the facts the Court has determined were proven, as well as of the legal arguments of the parties. For this, it will obey the principles of competent analysis, within the corresponding legal framework. [FN66] In those terms, international courts have ample powers to appraise and assess the evidence, pursuant with the rules of logic and based on experience, without being subject to rules of evidence assessed. [FN67] Circumstantial evidence, clues, and presumptions may be used as long as conclusions consistent with the facts can be inferred from them. [FN68]

[FN66] Cf. Case of the "White Van" (Paniagua Morales et al.) V. Guatemala. Merits, supra note 45, para. 76; Case of Valle Jaramillos et al. V. Colombia, supra note 29, para. 54, and Case of ticona Estrada V. Bolivia, supra note 48, para. 31.
[FN67] Cf. Case of the "White Van" (Paniagua Morales et al.) V. Guatemala, supra note 44, para. 51; Case of Almonacid Arellano et al. V. Chile, supra note 26, para. 69; and Case of Servellón García et al., supra note 44, para. 35.
[FN68] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 45, para. 130.

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102. The Court will make the corresponding determinations observing if the evidentiary elements, including the statements, are coinciding between themselves, that there are other elements of conviction that support them, and, in general, that the evidence provided is enough, varied, ideal, reliable, and appropriate to prove the facts object of analysis. That is, it shall verify that the premises set forth have been proven, as well as the degree of rational credibility of the conclusion the party that argues them wishes to reach. Thus, each specific hypothesis argued within a determined content shall be supported by evidentiary elements, so it acquires its own level of confirmation based on the evidentiary elements available, which would allow the hypothesis that results most acceptable regarding others to be considered proven, as long as it has a greater level of confirmation or support on the evidence.

VIII. ARTICLE 1(1) (OBLIGATION TO RESPECT THE RIGHTS) OF THE CONVENTION IN RELATION TO ARTICLES 5(1) (RIGHT TO HUMANE TREATMENT) [FN69] AND 13(1) (FREEDOM OF THOUGHT AND EXPRESSION) [FN70] THEREOF

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[FN69] Article 5(1) of the Convention states that: “Every person has the right to have his physical, mental, and moral integrity respected.”
[FN70] Article 13(1) of the Convention states 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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103. Article 5(1) of the Convention enshrines the right to personal, physical, mental, and moral integrity.

104. Article 13 of the Convention acknowledges the rights and freedoms of all people to express their thoughts, to seek, receive, and impart information and ideas of any nature, as well as the right to receive information and know of the expression of foreign thoughts. [FN71]

[FN71] Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism. (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 30-32. See also Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) V. Chile. Merits, Reparations, and Costs. Judgment of February 5, 2001, para. 64; Case of Ivcher Bronstein V. Peru. 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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105. Freedom of expression, especially in matters of public interest “is a cornerstone angular in the existence itself of a democratic society.” [FN72] Not only must it be guaranteed in what refers to the diffusion of information or ideas that are received favorably or that are considered as inoffensive or indifferent, but also in what refers to those that result unpleasant for the State or any sector of the population. These are the demands of pluralism, which imply tolerance and a spirit of openness, without which there cannot be a democratic society. Any condition, restriction, or punishment in this subject must be proportionate to the legal purpose sought. [FN73] Without an effective guarantee for freedom of expression, the democratic system is weakened and pluralism and tolerance suffer losses; the mechanisms of citizen control and complaints may become ineffective and, in short, a fertile ground for them to enroot authoritarian systems is created. [FN74]

[FN72] Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism. (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85, supra note 71, para. 70. See also Case of Herrera Ulloa V. Costa Rica, supra note 71, para 112; Case of Ricardo Canese V. Paraguay, supra note 71, para. 82; Case of Kimel V. Argentina,

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supra note 71, paras. 87 and 88; and Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela, supra note 31, para. 131.
[FN73] This is how the Inter-American Democratic Charter acknowledges 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., also, Case of Ivcher Bronstein V. Peru, supra note 71, para. 152; and Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) V. Chile, supra note 71, para. 69.
[FN74] Cf., in similar terms, Case of Herrera Ulloa V. Costa Rica, supra note 71, para. 116.
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106. Despite all the aforementioned, the freedom of expression is not an absolute right and may be subject to restrictions, [FN75] especially when it interferes with other rights guaranteed by the Convention. [FN76] Given the importance of freedom of expression in a democratic society and the responsibility it implies for social communication media firms and for those who professionally exercise these tasks, the State must minimize the restrictions to information and balance, as much as possible, the participation of the different movements present in the public debate, promoting informative pluralism. The protection of the human rights of whoever faces the power of the media, who must exercise the social task it develops with responsibility, [FN77] and the effort to ensure structural conditions that allow an equal expression of ideas [FN78] can be explained in these terms.

[FN75] Cf. Case of Herrera Ulloa V. Costa Rica, supra note 71, para. 120; Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela, supra note 31, para.131; Case of Kimel V. Argentina, supra note 71, para. 54; Case of Ricardo Canese V. Paraguay, supra note 71, para. 95; Case of Palamara Iribarne V. Chile. Merits, Reparations, and Costs. Judgment of November 22, 2005. Series C No. 135, para. 79.
[FN76] Cf. Case of Kimel V. Argentina, supra note 71, para. 56; and Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela, supra note 31, para. 131.
[FN77] Cf. Case of Herrera Ulloa V. Costa Rica, supra note 71, paras. 117 and 118.
[FN78] Cf. Case of Kimel V. Argentina. Merits, supra note 71, para. 57. The Tribunal has stated that "the plurality of means of communication, the prohibition of any monopoly with regard to them, whichever the form they wish to adopt, is indispensable." Cf. The Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism. OC-5/85, supra note 71, para. 34.
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107. The effective exercise of freedom of expression implies the existence of conditions and social practices that favor it. It is possible that this freedom be illegally restricted by regulatory or administrative acts of the State or due to conditions de facto that place those who exercise it or try to exercise in a direct or indirect situation of risk or greater vulnerability due to acts or omissions of state agents or individuals. Within the framework of its obligations to guarantee the rights acknowledged in the Convention, the State must abstain from acting in such a way that favors, promotes, fosters, or deepens that vulnerability [FN79] and it must adopt, when

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appropriate, the measures necessary and reasonable to prevent or protect the rights of whoever is in that situation, as well as investigate facts that affect them.

[FN79] Cf., inter alia, Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03. Series A No. 18, paras. 112-172; Case of the "Mapiripán Massacre" V. Colombia, supra note 38, paras. 173-189.

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108. In the present case, the Court observes that the majority of the facts claimed in the application as violations to Articles 5 and 13 were have been committed by individuals, in detriment of journalists and members of the reportorial teams, as well as the properties and headquarters of the station RCTV.

109. The Court has indicated that the State's international responsibility can be the result of violating acts committed by third parties, which in principle would not be attributable to it. [FN80] This occurs if the State fails to comply, by action or omission of its agents in a position of guarantors of human rights, the obligations erga omnes included in Articles 1(1) and 2 of the Convention.

[FN80] Cf. Case of the "Mapiripán Massacre" V. Colombia, supra note 38, para. 11a; Case of the Pueblo Bello Massacre V. Colombia. Merits, Reparations, and Costs. Judgment of January 31, 2006. Series C No. 140, para. 113; and Valle Jaramillo et al. V. Colombia, supra note 29, para. 77.

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110. The Court has also indicated that a State is not responsible for any violation of human rights committed by individuals. The erga omnes nature of the conventional obligations to guarantee does not imply an unlimited responsibility of the States with regard to any act of individuals. The specific circumstances of the case and the concretion of those obligations to guarantee must be analyzed, considering the predictability of a real and immediate risk. [FN81]

[FN81] Cf. Case of the Pueblo Bello Massacre V. Colombia, supra note 80, para. 123; and Valle Jaramillo et al. V. Colombia, supra note 29, para. 78.

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111. Based on the aforementioned criteria, the Tribunal shall analyze the facts claimed and the evidence presented, within the context in which they occurred.

A) Context of the facts and speeches of public officials

112. As previously indicated (supra paras. 65, 66, and 69), the Commission considered that having "full knowledge of the situation of risk" and "of the occurrence of acts of violence on the streets and the headquarters of the RCTV station, during which journalists and social

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communication workers of that station were being attacked," the State had a special duty of protection and it failed to comply with the duty to prevent that acts of third parties affect the exercise of the right to freedom of expression.

113. On their part, the representatives argued that the mentioned speeches constituted "threats and moral attacks against the different social communication media firms of the country and expressly against RCTV, its directors and shareholders," whose content would prove "a continuous [S]tate policy of attacks and threats" against them. They presented three types of arguments regarding these pronouncements: a) that they constitute "in themselves, a violation to Venezuela's international obligations" and a violation […] to the personal integrity of the members of the RCTV team;" b) that the physical attacks of which the alleged victims have been object "are the natural consequence of the aggressive and violent speeches of the President of the Republic and other high authorities" since "they have been tolerated, justified, and motivated by the President of the Republic himself;" and c) that the speeches would prove "a state policy made up by threats, attacks, and violations to the freedom of expression by the different bodies of the public power of the State."

114. In its final written arguments, the State reiterated that the evidence presented does not prove the alleged cause-effect relationship.

115. The Court observes that the arguments presented by the Commission in its application coincide with certain scopes and conclusions of its Report on Merits No. 119/06 of October 26, 2006, regarding the content of some statements of high State officials, but is contradicting with regard to others. On one hand, the Commission "considered it fundamental to separate" the statements that referred to threats to annul or not renew the permit or concession of the private communication firms, from the "expressions that constitute the legitimate exercise of the right to freedom of thought and expression by those high State authorities." With regard to the latter, the Commission verified that in said pronouncements "reference has been made [to RCTV] as "horsemen of the Apocalypses", "fascists", who have "set out on a campaign of terrorism", who are caught up in actions against the government of Venezuela, against the people, against the laws, and against the Republic," "liars, perverts, immoral people, rebels, and terrorists," but it made the following considerations:

[…]the majority of the pronouncements enclosed […] even though they may have a strong and critical content that may even be considered offensive, constitute legitimate expressions of though and opinions on the specific ways in which a means of communication can exercise the journalism that is protected and guaranteed under Article 13 of the American Convention and the Commission does not consider that they constitute a violation in any sense of that instrument.
212. The media and social communicators exercise a function that has per se a public nature. The particular exposure to criticism to which those who voluntarily decide to show the public their work is evident. The opinion of those who receive the information produced by the media and its employees promotes the responsible exercise of the duty to inform, especially taking into consideration the importance the credibility achieved through the informative task has for the media and its employees.
213. Therefore, it is evident that in the framework of the public debate in Venezuela the subject of how the media fulfills its tasks is a matter of public discussion and because of that the

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criticism and characterizations made within this framework by officials or individuals must be tolerated as long as they do not lead directly to violence.[…]
214. Additionally, it is not possible to conclude, based on the statements of the Commission in its Report on the Situation of Human Rights in Venezuela, that during the visit in loco it carried out it became aware of actions carried out by the media and that prevented the access to vital information of the Venezuelan society during the tragic events of April 2002 that led to the coup d'etat and the recovery of democracy. In this regard, it stated that even though the editorial decisions motivated by political reasons do not infringe any of the rights guaranteed by the Convention, the best way to contribute to debate is to allow the media to comply scrupulously with their task to inform the population.
215. Based on these considerations, the Commission considers that said statements of the officials, despite the fact that they could be shocking, strong, offensive, or lacking good judgment at a time when Venezuelan history saw its population clearly divided by political positions cannot be considered a non-compliance by the State of the duty to respect to the right to freedom of thought and opinions, when instead it is a clear representation of its exercise [FN82] (emphasis added)

[FN82] IACHR. Report on merits No. 119/06 of October 26, 2006, paras. 211 to 215 (dossier of evidence, volume I, folios 52-54).

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116. On the other hand, upon analyzing the facts under Article 13 of the Convention, in the mentioned Report on Merits, the Commission considered it important to take into account the content of some of those pronouncement, to the effect of determining if the different instances of the State had adopted the measures they could reasonably adopt upon being aware of the risk for the journalists and employees of RCTV. The Commission considered that "even though the strong content of the pronouncements cannot be considered the direct cause of subsequent acts in detriment of the employees of RCTV, […] the continuity of some of the content of the statements from the highest spheres of the State, which mentions the media firm where the victims works, help create an environment with a strong political division and polarization in both society and the media, as well a strong intolerance and fanaticism that may result in acts of violence against the people identified as employees of that media firm and in the will to hinder their journalistic task." The Commission also stated that even though they cannot be considered "in conventional terms as incitements to violence," those pronouncements "can be interpreted as such by eager partisans of one side or another within a context of extreme political polarization such as the Venezuelan one", and thus giving them a periodic continuity is not compatible with the duty to prevent the acts that may affect the exercise of the right to freedom of expression. [FN83]

[FN83] IACHR. Report on merits No. 119/06 of October 26, 2006, paras. 277-281 (dossier of evidence, volume I, folios 67-68).

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117. The Court has reiterated that in order to establish that a there has been a violation to the rights enshrined in the Convention it is not necessary to determine, as happens in domestic criminal law, the guilt of the authors or their intention nor is it necessary to individually identify the agents to which the violating acts are attributed. [FN84] It is enough that the State has failed to comply with an obligation that corresponds to it.

[FN84] Cf. Case of Velasquez Rodríguez V. Honduras. Merits, supra note 38, para. 173; Case of La Cantuta V. Peru. Merits, Reparations, and Costs. Judgment of November29, 2006. Series C No. 162, para. 156; Case of the "Mapiripán Massacre", supra note 38, para. 110.

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118. Additionally, the attribution of international responsibility to a State for acts of state agents or individuals must be determined taking into consideration the specific circumstances of each case, [FN85] as well as the correlative special duties applicable to the same. Even though this power is carried out based on International Law, this legal system cannot define in an exhaustive manner all the hypothesis or situations in which each of the possible actions or omissions of state agents or individuals, or the different forms and modalities that can be assumed by the facts in situations that violate human rights, can be attributed to the State. [FN86]

[FN85] Cf. Case of the "Mapiripán Massacre", supra note 38, para. 113; Valle Jaramillo et al. V. Colombia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, para. 78; and and Case of the Pueblo Bello Massacre, supra note 80, para. 123.
[FN86] Cf. Case of the "Mapiripán Massacre", supra note 38, para. 113; and Case of the Pueblo Bello Massacre, supra note 80, para. 116.

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119. With regard to the terms in which the acts or omissions of high officials may be attributable to the State, it can be said, in general terms, that any damage to the human rights acknowledged in the Convention that may be attributed, pursuant with the rules of International Law, to the action or omission of any public authority, constitutes a fact attributable to the State, since it is a principle of International Law that the state respond for the acts and omissions of its agents carried out under the protection of their official nature, even if they act beyond the limits of their competence. [FN87] That is, international responsibility is generated immediately with the international illegal act attributed to any of its powers or bodies, regardless of their hierarchy. [FN88]

[FN87] Cf. Case of Velásquez Rodríguez. Merits, supra note 38, para. 173; Case of the "White Van" (Case of Paniagua Morales et al.). Merits, supra note 45, para. 91; Case of Yvon Neptune V. Haiti, supra note 49, para. 43; and Case of Cantoral Huamaní and García Santa Cruz V. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 79.
[FN88] Cf. Case of the Constitutional Court V. Peru. Merits, Reparations, and Costs. Judgment of August 18, 2000. Series C No. 69, para. 109; Case of Yvon Neptune V. Haiti, supra note 49,

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para. 43; and Case of Cantoral Huamaní and García Santa Cruz V. Peru, supra note 87, para. 79. See also, Case of La Cantuta V. Peru, supra note 84, para. 156.

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120. The International Court of Justice has understood that the statements of high state officials can be considered not only as an admission of the behavior of the State itself, [FN89] but also generate obligations for the latter. [FN90] Even more so, said statements can be used as evidence of an act that is attributable to the State those officials represent. [FN91] When making these determinations it is important to take into consideration the circumstances and the context in which those statements were made. [FN92]

[FN89] 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.
[FN90] 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 Nuclear Tests.
[FN91] 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.
[FN92] Cf. PCIJ, Legal Status of Eastern Greenland, Judgment of 5 April 1933, Ser. A/B53, page 69. See also, 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. 65.

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121. It is clear that the facts of the present case occurred in contexts and a period of very high political and social polarization and conflict. There has been agreement in this sense among the parties and some witnesses that have referred to certain relevant events that occurred during the period between 2002 and 2004, many of which have been of public knowledge.

122. In its annual reports and reports on the human rights situation in Venezuela, issued between 2003 and 2006, the Commission verified the existence of a climate of aggression and threat against the freedom of expression and, especially, against the personal integrity of journalists, cameramen, photographers, and other workers of social communication firms. Upon identifying the areas of special attention in this matter, the Commission observed the existence of "threats, attacks, and acts of harassment, against social communicators, especially those that work on the street, as well as lack of investigation regarding those threats and attacks." It also referred to the lack of investigation of those acts and it pointed out that on several opportunities it asked the State to adopt precautionary measures in order to protect the life, personal integrity, and freedom of expression of the journalists, cameramen, and photographers attacked. Among the recommendations made by the Commission in its reports, it pointed out "maintaining from the highest instances of Government the public condemnation of the attacks against social communicators, in order to prevent actions that promote" the deprivation of life, attacks, threats, and intimidations upon them. The Commission also received information on attacks to both the media and communicators outside the context of the political and social conflict, an increase in the criminal proceedings against social communicators and acts that could be considered forms of indirect restriction in the exercise of the freedom of expression. The Commission stated its

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concern because these facts could hinder the free exercise of journalism, both of the media perceived as the opposition, as well as of the official media. [FN93]

[FN93] Cf. IACHR. Report on the Situation of Human Rights in Venezuela, OAS/Ser.L/V/II.118doc. 4 rev. 2, December 29, 2003, paragraph 367; Annual Report of the Inter-American Commission of Human Rights 2005, Chapter IV, "Development of Human Rights in the Region". OAS/Ser.L/V/II.124, Doc. 7, February 27, 2006,; Annual Report of the Inter-American Commission of Human Rights 2006, Chapter IV, "Development of Human Rights in the Region" OAS/Ser.L/V/II.127, Doc. 4 rev. 1, March 3, 2007

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123. The Rapporteur for Freedom of Expression of the Inter-American Commission, through its official letters and reports, has made different indications regarding Venezuela's situation and has referred to expressions issued by high officials "that could be considered intimidating for the media and journalists." Similarly, it mentioned that these statements could "contribute to create an environment of intimidation toward the press that does not facilitate public debate and the exchange of opinions and ideas, all necessary for a coexistence in democracy." [FN94]

[FN94] Cf. IACHR. Report of the Rapporteur for the Freedom of Expression in the Annual Report of the Inter-American Commission of Human Rights 2000. OAS/Ser./L/V/II.111, doc. 20 rev. April 16, 2001.

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124. Several situations caused reactions from political bodies of the OAS. For example, the Permanent Council of the Organization, through Order 833, dated December 16, 2002, decided: [FN95]

Urge the Government of Venezuela to guarantee full exercise of the freedom of expression and press and call upon all sectors of the Venezuelan society so it can contribute to the strengthening of peace and tolerance among all Venezuelans and so that all social actors abstain from promoting political confrontation and violence.

[FN95] Cf. Organization of American States, "Support for the Democratic Institutional Structure in Venezuela and the Facilitation Efforts of the General Secretariat of the OAS. OAS/Ser.G. CP/RES. 833 (1348/02). December 16, 2002.

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125. It is appropriate to remember that in the periods in which the facts of the present case occurred, the Court issued several resolutions where it ordered Venezuela to adopt provisional measures of protection in favor of the people linked to the social communication media firms. [FN96] During that time, the Court, on several occasions, verified the non-compliance of the orders on provisional measures. [FN97]

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[FN96] 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 the Newspapers "El Nacional" and "Así es la Noticia" regarding Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of July 6, 2004; and Case of the Television Station “Globovision” regarding Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of September 4, 2004.

[FN97] 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 regarding various matter (Liliana Ortega et al.; Luisiana Ríos et al.; Luis Uzcátegui; Marta Colomina and Liliana Velásquez) regarding Venezuela of May 4, 2004.

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126. It was in that context that the statements of public officials referred to in the Commission’s application were issued, [FN98] and the same consisted of pronouncements on a television program or other public interventions on different dates, as well as events occurred during the years 2002 through 2004 that were transmitted through the media. The State has not objected the issuing of those statements.

[FN98] Additionally, the representatives referred to 10 more statements of the President of the Republic and 11 statements of other public officials, which they argued formed part of the “context” regarding the alleged violations. Even though the representatives may present facts that allow to explain, clarify, or reject those that have been mentioned in the application, this Court considers that those other statements are not explicative of those facts, since they do not refer to the same but they are instead new statements, different to those included therein. Therefore, the Court will not analyze those other statements.

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127. The speeches and pronouncements mentioned, of an essentially political nature, refer to the private social communication media in Venezuela, in general, and to RCTV, its owners and directors, particularly, even though they do not indicate any specific journalists. The evidence provided allows for the verification that those statements include the expressions that have been emphasized by the Commission and the representatives in their arguments. Thus, the social communication firm RCTV, and in some cases its owners and directors, are referred to as “fascists”, [FN99] who “are committed” in [an] unstabilizing action against the government of Venezuela, against its people, against its laws, against the Republic.” [FN100] Additionally, that firm or its owners are identified, expressly or implicitly, as participants in the coup d’etat of 2002; RCTV is included as one of the four private communication firms referred to as “the four horsemen of the Apocalypses;” [FN101] and references are made to RCTV as “an enemy of the

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people of Venezuela" [FN102] and as responding to a "terrorist plan." [FN103] Similarly, the veracity of the information transmitted by RCTV is questioned, calling them "liars and palangristas", and in some statements reference is made to the concession to operate a media firm and to the possibility of canceling it (infra paras. 330 through 339).

[FN99] Transcripts of the Program "Aló Presidente" of December 15, 2002 (dossier of evidence, Volume V, appendix 47, folios 1505-1506) and transcripts of the program "Aló Presidente" of January 12, 2003 (dossier of evidence, volume V, appendix 47, folio 1543).
[FN100] Transcripts of the Program "Aló Presidente" of December 15, 2002 (dossier of evidence, Volume V, appendix 47, folio 1508).
[FN101] Transcripts of the program "Aló Presidente" of January 12, 2003 (dossier of evidence, volume V, appendix 47, folios 1541-1542)
[FN102] Transcripts of the program "Aló Presidente" # 191 f May 9, 2004, available at http://www.gobiernoenlinea.ve/misc-view/sharedfiles/Alo_Presidente_191.pdf, page 11.
[FN103] Transcripts of the program "Aló Presidente" of December 8, 2002 (dossier of evidence, volume V, appendix 47, folio 1628). See also, transcripts of the program "Aló Presidente" of December 8, 2002 (dossier of evidence, volume V, appendix 47, folio 1765), transcripts of the program "Aló Presidente" of January 12, 2003 (dossier of evidence, volume V, appendix 47, folio 1540), and transcripts of the program "Aló Presidente" #191 of May 9, 2004, available at http://www.gobiernoenlinea.ve/misc-view/sharedfiles/Alo_Presidente_191.pdf, page 11.

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128. RCTV was characterized in the Commission's application as "a private television station legally recorded" and as "a means of communication with an editorial line that is critical of the government and one of the four private television stations of Venezuela referred to as active political participants in acts of convulsion such as the coup d'etat of April 2002 and the strike of December of the same year." Similarly, the Commission indicated, "the station has been the object of criticism at a domestic level […] regarding the way they transmit certain information under the arguments that it promotes violence, a lack of respect and honor towards the President of the Republic and broadcasts false and tendentious information." [FN104] This characterization was not objected by the State and in fact it agrees with several of the arguments regarding the political role that station has fulfilled at certain times (supra paras. 51, 52, and 61).

[FN104] Upon making this reference to RCTV, the Commission quoted the following: "Summary and recommendations of the Report of Human Rights Watch: Between two Fires: Freedom of Expression in Venezuela. On the website: http://www.hrw.org/spanish/informes/2003/venezuela_prensa.html"

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129. From the analysis of the facts in the following section (infra paras. 150 through 265), the Court observes that individuals committed them and the majority occurred during the exercise of journalistic tasks of the alleged victims, who described how they had been affected in their professional and personal life. In general, they agreed on the fact that they were afraid to perform their journalistic tasks on the streets, in certain areas, and when covering certain events; they

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referred to safety measures they had to employ in their tasks, the effects on their health, and the consequences on their family and social lives; additionally, some of the people had to move to another municipality or state or they temporarily or definitively resigned from their tasks (infra para. 272 and 273).

130. Similarly, other actions were directed against RCTV. For example, it was proven that on June 3, 2004 the headquarters of the station RCTV were attacked violently by individuals, who hindered the work of the station, they tried to force security doors that grant access to the station by setting fire to a company truck, they fired shots against the building and they wrote insults on the walls (infra para. 264). It was also proven that on August 14, 2003 a numerous group of individuals made violent protests outside the installations of the channel, during which unidentified individuals made paintings with different inscriptions (infra para. 237). Finally, in several of the facts it was verified that vehicles and transmission equipment of the station resulted damaged by unidentified individuals (infra paras. 200, 224, 237, and 264).

131. It is clear that in the mentioned periods of time the people with a work relationship with RCTV, or part of its journalistic operation, faced threatening, intimidating situations that put their rights at risk. In effect, since January 2002 the Commission issued precautionary measures in favor of the employees of RCTV [FN105] and since November 2002 this Tribunal ordered Venezuela to adopt provisional protection measures in favor of the people linked to RCTV (supra paras. 20 through 29). Additionally, as indicated, the State mentioned protection orders issued by domestic Venezuelan bodies. The majority of the facts analyzed were denounced before state authorities, specifically the Public Prosecutors' Office (supra para. 289). This proves that the State was aware of these situations.

[FN105] Through the adoption of those measures, the Commission asked the State that it abstain from carrying out any action that may have an intimidating effect on the professional exercise of the journalists and other employees that worked at the communication firms Globovisión and RCTV, as well as the adoption of the measures necessary to protect the safety of all the employees and the properties of the channels mentioned.

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132. The representatives argued that the physical attacks of which the journalists and other employees of RCTV have been object "are a natural consequence of the aggressive and violent discourse of the President of the Republic and other high authorities," since "it is [not] a coincidence that a few days after a violent verbal attack of the President of the Republic against the media or specifically against RCTV, during the journalistic coverage of the next public event, violent episodes occur against the journalists of RCTV or its property." They stated that another aspect of the pattern of aggression consists "of the internalization of these ideas in Venezuelans who follow and are partisans of the President," who have felt directly or indirectly supported by the State and, therefore, entitled to physically and morally attack the station, its journalists, employees, and directors.

133. In this regard, the Court observes that in its Report on merits the Commission made the following consideration: [FN106]

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262. As has been proven, the acts of harassment, physical and verbal aggressions, and threats received by the alleged victims of the present case […] result from both acts and omissions of State officials, as well as from individual acts. The petitioners argue that the majority of the acts of individuals […] originate in organized groups such as the Bolivarian Circles and "semi-public groups" like the M-28 Movement, the Tupamaro Movement, the Carapacia Movement, and the Bolivarian Liberation Front "openly financed and acknowledged by the Government with State resources […] indoctrinated and supplied with weapons to defend the revolutionary project sought by the President," who act in collaboration and coordination with the government.
263. Despite those arguments, the Commission does not have sufficient elements to be able to make a clear analysis of the legal characteristics of each of these groups, nor can it determine which of the physical and verbal attacks were in fact carried out by each of the organizations or movements previously mentioned or by individuals.
264. The Commission cannot leave out the fact that there are evidentiary elements that indicate that there is a relationship between the Bolivarian Circles and the State. Despite this, there are no attestations in the dossier that lead to the conclusion, in the special circumstances of the present case, that those groups are authorized by the State legislation to exercise the powers of a governmental authority. […]
265. Taking into account the aforementioned, the examination of the attribution of responsibility of the State must be limited to acts committed by individuals in general terms. […]

[FN106] IACHR. Report on merits No. 119/06 of October 26, 2006, paras. 262 to 265 (dossier of evidence, volume I, folios 63-64).

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134. In effect, in the application the Commission did not specifically argue that the State's responsibility be based on the attribution of the facts to people or groups that were part of the so-called "Bolivarian Circles". That circumstance is outside the factual framework of the present case. Even in the hypothesis that this factual supposition argued by the representatives was a complement of that presented by the Commission, it must be pointed out that they have not presented arguments or evidence regarding the creation of these associations, entities, or groups of people, their operation, and, especially, the forms in which they are supported, financed, directed, or, in any way, linked to the government or any state institution or entity. Even in the hypothesis, not proven, that any of the alleged facts were attributable to those groups or people linked to them, specific evidence of that relationship –and of the non-compliance of the state's duties to prevent and protect- would be required in order to attribute the acts of those people to the State.

135. Likewise, the representative did not specify the effects that a relationship of "organized people linked to the government" would have on those facts, nor did they define what they understand as "organized groups of individuals that openly identify themselves as partisans and followers of the Government," or as "supporters and partisans of the ruling party." In fact, the State has also used similar terms in its defense and it also has failed to specify what it is referring to (supra paras. 51, 52, and 61). The Court observes that the mere "liking" or nature of "follower" or "partisan" of a person or group of people toward the government or "ruling party"

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would not be reason enough to attribute, per se, their acts to those of the State. The affinity or even the self-identification of a person with ideas, proposals, or acts of a government, are part of the exercise of their freedom within a democratic society, obviously within the limits established in the relevant national and international regulations.

136. Regarding to that argued by the representatives, in what refers to the fact that the speeches of public officials constituted a "pattern" or "state policy" (supra para. 113), the Court has established that it is not possible to ignore the special seriousness entailed by the fact of attributing to a State Party to the Convention that it has executed or tolerated in its territory a practice of violations to human rights, and that this "obliges the Court to apply an assessment of the evidence that takes this matter into account and that is capable of creating the conviction of the truth of the alleged facts." [FN107]

[FN107] 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 29, para. 97; and Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela, supra note 31, para. 97.

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137. In reference to the aforementioned, the Court has repeatedly stated that the obligation of the States Parties to guarantee the rights acknowledged in the Convention implies its duty to organize the entire governmental apparatus, all the structures through which it exercises public power, in a way such that makes them capable of legally guaranteeing the free and full exercise of human rights. [FN108] At the same time, in several cases regarding arbitrary arrests, tortures, executions, and disappearances, the Court has taken into account the existence of "systematic and massive practices", "patterns", or "state policies" within which the grave facts have occurred, when "the preparation and execution" of the violation of human rights against the victims was perpetrated "with the knowledge or superior orders of high commands and State authorities or with the collaboration, acquiescence, and tolerance, made evident in different actions and omissions carried out in a coordinated or related manner," of members of different structures and state bodies. In those cases, instead of the institutions, mechanisms, and powers of the State acting as a guarantee of prevention and protection of the victims against the criminal actions of its states, an "instrumentalization of state power as a means and resource to commit a violation of the rights they should respect and guarantee" was verified, which was generally favored by generalized situations of impunity of those grave violations, propitiated and tolerated by the absence of judicial guarantees and inefficiency of the judicial institutions to face or contain them. [FN109]

[FN108] Cf. Case of Velásquez Rodríguez et al. V. Honduras. Merits, supra note 45, para. 166; Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C No. 158, para. 92, and Case of Almonacid Arellano et al. v. Chile, supra note 26, para. 110.

[FN109] Cf., among others, Case of Velásquez Rodríguez v. Honduras. Merits, supra note 38; Case of Myrna Mack Chang v. Guatemala. Merits, Reparations, and Costs. Judgment of November 25, 2003. Series C No. 101; Case of the "Mapiripán Massacre" v. Colombia, supra

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note 38; Case of the Pueblo Bello Massacre v. Colombia, supra note 80; Case of the Ituango Massacres v. Colombia, supra note 31; Case of Goiburú et al. v. Paraguay, supra note 53; Case of Almonacid Arellano et. al. V. Chile, supra note 26; Case of the Miguel Castro Castro Prison v. Peru, supra note 44; Case of La Cantuta v. Peru, supra note 84; and Case of the Rochela Massacre v. Colombia, supra note 49.

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138. In this case, the mentioned public officials made use, in exercise of their investiture, of the means provided to them by the State to issue their statements and speeches, and therefore they have an official nature. Even though it is not necessary to know of the totality of the events occurred in Venezuela that affected the media or its employees, or the totality of statements or speeches issued by high state authorities, what is relevant is, for the effects of the present case and the context in which the facts occurred, that the content of those pronouncements was repeated on several occasions during that period. However, it has not been proven that those speeches prove or reveal, themselves, the existence of a State policy. Additionally, having established the object of the present case (supra paras. 53 through 63) sufficient evidentiary elements have not been provided in order to prove acts or omissions of other state bodies or structures, through which the exercise of a public power, corresponding to a State policy, in the argued terms, is manifested.

139. In a democratic society it is not only legitimate, but on occasions it is a duty of state authorities, to issue statements with regard to matters of public interest. However, upon doing so they are submitted to certain limitations since they must verify in a reasonable, but not necessarily exhaustive, manner the facts on which they base their opinions, [FN110] and they should do so with a diligence even greater to the one employed by individuals due to their high investiture, the ample scope and possible effects their expressions may have on certain sectors of the population, and in order to avoid that citizens and other interested people receive a manipulated version of specific facts. [FN111] Additionally, they must take into consideration that as public officials they have a position of guarantor of the fundamental rights of people and, therefore, their statements cannot ignore those rights [FN112] or constitute forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts. This duty of special care is specifically true in situations of greater social conflict, alterations of public order or social or political polarization, precisely because of the set of risks they may imply for certain people or groups at a given time.

[FN110] Cf. Case of Kimel v. Argentina, supra note 71, para. 79; and Case of Apitz Berbera et al. (“First Court of Administrative Disputes”) v. Venezuela, supra note 31, para. 131.
[FN111] Cf. Case of Kimel v. Argentina, supra note 71, para. 79; and Case of Apitz Berbera et al. (“First Court of Administrative Disputes”) v. Venezuela, supra note 31, para. 131.
[FN112] Case of Apitz Berbera et al. (“First Court of Administrative Disputes”) v. Venezuela, supra note 31, para. 131.

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140. The Commission considered that a "reasonable means of protection" of possible erroneous interpretations of the content of the mentioned political speeches, would have been the realization of a clear and evident public condemnation to the possibly threatening acts against the personal integrity of the directors, journalists, and other employees of the station, in order to prevent aggressions against them. In fact, in its Special Report on Venezuela of 2003 the Commission issued a specific recommendation to maintain the public condemnation of the attacks against social communicators, in order to prevent future attacks. [FN113] The Commission also argued that another reasonable means of prevention would have been "an effective compliance of the precautionary measures requested by the Commission and subsequently of the provisional measures ordered by the Court."

[FN113] IACHR. Report on the Human Rights Situation in Venezuela, OAS/Ser.L/V/II.118doc. 4 rev. 2, December 29, 2003, paragraph 391.

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141. In this regard, the State argued that "the government of the Bolivarian Republic of Venezuela has always been firm and categorical in the condemnation of any act of violence of any nature, and specifically, different institutions, bodies, and authorities of the national government have condemned and repelled any act of violence against journalists and employees of the media, as well as any type of attack on journalistic teams and physical headquarters of the different communication firms." [FN114] At the public hearing the witness Andrés Izarra stated that "[he has] condemned [the acts of aggression against journalists] publicly, both as a journalist and as minister," but that he did not remember dates and circumstances in which he had done it. Additionally, the State indicated during the hearing that "as the Commission itself acknowledged in the case of Perozo et al., the President of the Republic has publicly expressed his most energetic condemnation of the acts of violence against communication workers" and that those pronouncements "have not been limited to the President of the Republic, but instead they have included the Executive Vice-President of the Republic and the Ombudsman, among other high State authorities."

[FN114] It also argued that "we have adopted the measures established in our legal code to try to avoid any type of attack against the social communication media firms and the people who work at them, which can be verified with the series of measures adopted to comply with the precautionary measures agreed on by the Court in the present case, including making several security bodies available for the protection of journalists and other people dedicated to the activity of social communication, as well as of the physical headquarters and offices of the communication firms."

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142. The Court considers that, of the elements provided by the State to prove the previous statements, [FN115], the existence of public callings that prove a "firm and categorical" condemnation of "any act of violence […] against journalists and media employees" cannot be concluded. In the context of the facts of the present case, it is possible to consider that the appropriate behavior of high public authorities with regard to acts of aggression against

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journalists due to their role as communicators in a democratic society, would have been the public manifestation of disapproval of those acts.

[FN115] Cf. video (appendix 61 to the State's final arguments) and press release from the Ombudsman of December 10, 2002 (dossier of evidence, volume XXV, folio 9233).

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143. Besides the aforementioned, even though it is true that there is an intrinsic risk to journalistic activity, the people who work for a specific social communication firm can see the situations of risk they would normally face exacerbated if that firm is the object of an official discourse that may cause, suggest actions, or be interpreted by public officials or sectors of the society as instructions, instigations, or any form of authorization or support for the commission of acts that may put at risk or violate the life, personal safety, or other rights of people who exercise journalistic tasks or whoever exercises that freedom of expression.

144. The Court considers that it cannot be concluded from the content of the mentioned speeches or statements that they in any way authorized, instigated, instructed, or ordered, or promoted acts of aggression or violence against the alleged victims by state bodies, public officials, or groups of people or specific individuals. Likewise, it cannot be concluded from those statements that those officials assumed as their own acts, neither "justified" or "considered legitimate" or supported or congratulated, actions that put at risk or caused damages to the alleged victims, after the attacks against them had occurred. [FN116]

[FN116] In the case of Diplomatic and Consular Staff in Tehran The International Court of Justice observed that Iran's religious leader, Ayatollah Khomeini had made several public declarations inveighing against the United States as responsible for all his country's problems, which could seem as giving utterance to the general resentment felt by supporters of the revolution at the admission of the former Shah by the United States. It also observed that a spokesman for the militants that had occupied the United States Embassy in Tehran had expressly referred to a message issued by the Ayatollah calling upon pupils and students to attack the United States and Israel with all their will so they could return the deposed Shah and stop the conspiracy. However, that Tribunal considered that "it would be going too far to interpret such general declarations of the Ayatollah Khomeini to 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 event, such as those reportedly telephoned to the militants by the Ayatollah Khomeini 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, para. 59.---

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145. However, the fact that in several official speeches of high state officials RCTV, especially its owners and directors, were linked to plans of political destabilization, terrorist activities, or with the coup d'etat of 2002, placed the employees of the specific communication firm in a position of greater vulnerability with regard to the State and certain sectors of society.

146. The self-identification of the alleged victims with the editorial line of RCTV is not a condition sine qua non to consider that a group of people, made up by people linked to that social communication firm, faced, in greater or smaller degree, according to the position they occupied, a same situation of vulnerability. In fact, it is not relevant or necessary for all the employees of RCTV to have a political opinion or position in agreement with the editorial line of the communication firm. The mere perception as the "opposition", "rebel", "terrorist", "uninformed", or "destabilizing" identity, resulting mainly from the content of the mentioned speeches, is enough to consider that group of people, for the mere fact of being identified as employees of that television station and not because of other personal conditions, as submitted to the risk of suffering, to the hands of individuals, consequences that are unfavorable for their rights.

147. Is has not been proven that the individuals involved in acts of aggression against the alleged victims have claimed or stated, in any way, that they had official support or instructions from any state body or official to commit them, even in those cases in which they used specific external symbols (clothes or attire allusive to the government). Additionally, no evidence regarding the identity of these people or their motivation to commit those acts was presented; therefore there are no elements to consider that their actions were not attributable to themselves in their condition of individuals.

148. However, in the contexts in which the facts of the present case occurred (supra paras. 121 through 126), and upon observing the perception state authorities and certain sectors of society have expressed they have of that communication firm, it is possible to consider that those pronouncements of high public officials created, or at least contributed to emphasize or exacerbate, situations of hostility, intolerance, or animosity by sectors of the population towards the people linked to that communication firm. The content of some speeches, due to the high investiture of the person who offers them and their reiteration, implies an omission of the state authorities to their duty to prevent the facts, since it could have been interpreted by individuals and groups of individuals in such a way that they result in acts of violence against the alleged victims, as well as hindrances to their journalistic task.

149. The Court considers that in the situation of actual vulnerability in which the alleged victims found themselves when carrying out their journalistic task, known by state authorities, some content of the mentioned pronouncements is not compatible with the state's obligation to guarantee the rights of those people to personal integrity and the freedom to seek, receive, and impart information, since they could have resulted intimidating for those linked with that communication firm and constitute offenses to the duty to prevent violating situations or situations of risk for the rights of people.

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

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150. Several facts depicted by the Commission and the representatives, which allege that the right to physical integrity of some of the alleged victims, occurred in the context of public protests or marches of social groups.

151. The State indicated that in the cases where responsibility has been attributed to its agents for physical attacks against journalists, no evidence was provided proving that there was a lack of due diligence by the State in trying to prevent the attacks. It indicated, in general terms, that if the alleged victims participated in alterations to the public order and suffered because of its negligence and carelessness, one cannot expect the State to respond for the damages caused, when it has adopted measures to protect them and investigate the facts. The alleged victims have ignored these measures of protection and shown lack of due diligence when starting an activity that is risky due to its own nature.

152. The State argued that "there are innumerable orders and measures of protection issued by the domestic Venezuelan bodies" to try to avoid any type of attack against the social communication media and the people that work at them, as well as of their physical headquarters and offices. It indicated that, this protection has been acknowledged on several occasions by representatives of RCTV and quoted in this sense several statements of alleged victims or employees of that firm. It also indicated that the State, through its security forces, "has offered the diligent measures to protect the alleged victims, not only in the facts they allege and do not prove […] but also in each official or opposing protest, allowing journalists to be included in police cordons so they can carry out their work without putting themselves at risk within any situation of alteration to public order." It indicated that it has taken "measures of custody, protection, special treatment, investigation, escort, and, in short, collaboration of the police and security forces, with Venezuelan journalists, specifically the alleged and so-called victims."

153. The representatives denied that the attacks suffered were a consequence of the behavior of the alleged victims. They occurred during the exercise of their journalistic task on the street. They also denied that they were involved in alterations of the public order. They were always "seeking information" to be broadcasted, in the terms of Article 13 of the Convention. Even though the State indicates it has issued protection measures, it is evident they have an exclusively formal nature and have never produced an actual useful or protective effect. Similarly, the State has not complied with its obligation to investigate the attacks denounced.

154. It is appropriate to clarify that the Court shall not determine or evaluate if the State adopted measures to guarantee the public order and safety of the people before each protest carried out in Venezuela during the period in which the facts object of the present case occurred. If the State indicates it has adopted effective measures of prevention and protection, it corresponded to it to prove the cases and situations in which the alleged victims had acted beyond what state authorities could reasonably prevent and do or in which they had disobeyed its instructions. The State's argument is inconsistent when it states, on one hand, that the alleged victims participated in "grave alterations to public order" and, on the other, that it adopted effective measures of protection in their favor. The State did not prove, with regard to the facts mentioned below, that the alleged victims participated in acts of alteration of the public order or did not obey instructions of the security bodies destined to protect them. With regard to the

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measures of protection ordered by domestic judges, the mere order to adopt those measures does not prove the State has effectively protected the beneficiaries of the order in relation to the facts analyzed.

155. Therefore, the Court will take into consideration that state authorities had ordered protection measures, but it will not issue a ruling on the appropriateness and effectiveness of those measures or about the evidence presented in that sense.

B.i Facts

156. The Commission argued that on December 17, 2001 Mrs. Luisiana Ríos was attacked by individuals "supporters of the ruling party" at an event at the National Cemetery, reason for which she had to leave that location guarded by the Military Police. [FN117] The State referred to the actions carried out by the Public Prosecutors' Office regarding this fact and informed that on January 24, 2007 the dismissal of the case was agreed on.

[FN117] The Commission argued that "[o]n December 17, 2001 supporters of the ruling party attacked the journalist Luisiana Ríos while she was covering a news story related with the act in honor of Simón Bolívar, the Liberator, to be held by the President Hugo Chávez at the National Pantheon. On that opportunity, a woman tried to hit the reporter while she was transmitting the news story and, in that aggressive context, another individual started chasing her with a stick in his hand. Due to the attacks against the reporter, she had to leave the place with the custody of the Military Police."

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157. The Court verified that the statements offered by Mrs. Ríos coincide with the version of the facts provided by the Commission. [FN118]

[FN118] Cf. statement offered before a notary public (affidavit) by Luisiana Rios Paiva on June 25, 2007 (dossier of evidence, volume XVIII, folios 5598-5602) and statement of Luisiana Ríos (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folios 3141-3143).

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158. With regard to the investigations in reference to this fact, on January 31, 2002 Mr. Eduardo Sapene Granier filed a complaint before the Office of Common Crimes. [FN119] On February 18, 2002 the 2° and 74° Public Prosecutors' Office started the corresponding investigations. [FN120] The 50° Public Prosecutors' Office at a National Level with Full Jurisdiction joined this case with others in which the journalist Luisiana Ríos was allegedly a victim. Interviews were performed. [FN121] On January 18, 2006, four years after the first complaint was filed, the Public Prosecutors' Office requested the dismissal of the case regarding this fact, which was ordered on February 21, 2006 by the Fiftieth Court of Control Duties of the Metropolitan Area of Caracas, because the criminal action had expired. [FN122] This Tribunal

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observes that the State did not justify the procedural inactivity in this investigation for more than three years and a half (infra para. 318).

[FN119] Cf. Complaint filed before the Superior Prosecutors' Office of the Judicial District of the Metropolitan Area of Caracas on January 31, 2002 (dossier of evidence, volume V, folios 1475-1480).
[FN120] Cf. Request for discontinuance and dismissal by the 50° National Public Prosecutors' Office with Full Jurisdiction of January 18, 2006 (dossier of evidence, volume XXVII, folios 9450-9468).
[FN121] Cf., inter alia, transcript of the interview with Lusiana Ríos before the 2 and 74 Public Prosecutors' Offices of the Metropolitan Area of Caracas, dated March 11, 2002 (dossier of evidence, volume XXV, folios 9226-9230).
[FN122] Cf. Order of discontinuance of the 50° First Instance Criminal Court in Duty Controls of the Criminal Judicial Circuit of the Judicial District of the Metropolitan Area of Caracas on February 21, 2006 (dossier of evidence, volume XXVII, folios 9470-9476).

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159. The Court considers that based on the body of evidence available is it not possible to deem as proven that Mrs. Ríos was assaulted during the events of that day or other elements of conviction to verify the statement of the alleged victim.

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160. The Commission argued that on January 20, 2002 the journalist Luisiana Ríos, the cameraman Luis Augusto Contreras, and the camera assistant Armando Amaya were hindered in their tasks by individuals "supporters of the ruling party" at the Cajigal Observatorium, reason for which they could not cover the presidential program since they had to leave the place assisted by officials of the Military House of Miraflores. [FN123] The representatives argued this fact as one of the ones that "prevent[ed] or made impossible the access to information or opinions by the journalists" (infra paras. 342 through 351) (p. 90) In its final arguments the State only referred to this fact in the sense of the actions carried our by the public prosecutors' office responsible for the case and it informed that on January 24, 2007 the dismissal of the complaint was ordered.

[FN123] The Commission argued that "[o]n January 20, 2002 the reporter Luisiana Ríos, the cameraman Luis Augusto Contreras, and the camera assistant Armando Amaya were assigned coverage of the Program "Aló Presidente" from the Cajigal Observatory. On that occasion their work was hindered by a group of supporters of the ruling party, who threw themselves on the unit of the program El Observador and, while hurling insults at them, prevented the journalist's entrance to the place where the President of the Republic was going to record the radio program. RCTV's reporter, Luisiana Ríos, had to take off the microphone and the station's identification logo, as well as hide the camera "so she was not identified and could go" through the crowd toward the Observatory. One of the people leading the crowd, upon recognizing Luisiana Ríos as a journalist of RCTV, told her she would not be able to enter the location since she was "a palangrista who did not speak the trust," urging people to scream at them and push them.

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Subsequently, in response to the pressure exercised by those people, the officials of the Military House of Miraflores helped the team leave. Luisiana Ríos, Augusto Contreras, and Armando Amaya could not comply with the coverage assigned by their superiors due to the risk of the possibility that something happen to them."

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161. The Court verified that the statements of Mrs. Ríos, offered by the representatives and given through an affidavit, coincide with that argued by the Commission. In one of those statement Mrs. Ríos mentioned that the person that identified her as a journalist of RCTV and did not let her in is a representative of the so-called "Coordinadora Simón Bolívar de Catia" and that the other attackers were supporters of the Bolivarian Circles. [FN124]

[FN124] Statement offered before a notary public (affidavit) by Luisiana Rios Paiva on June 25, 2007 (dossier of evidence, volume XVIII, folios 5598-5602).

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162. The Commission offered as evidence a testimonial statement given by Mrs. Ríos before the Inter-American Court during a public hearing celebrated within the framework of the provisional measures (supra para. 21). In her statement before the Court, Mrs. Ríos said that upon arriving there she was recognized by the people there, they started screaming at her and her team, they started hitting the window and insulting them. She stated that she tried "to ask the guards for help and they did not let [her] in, while people shouted at her, they hit [her], there were like 50 people." She added that she "begged to the official of the Honor Guard to let her in because if not they were going to kill her there." He then let her in, but the person in charge of security and the guard himself told her that the President was going to be walking by that area and they recommended she leave because they could not protect her. She saw they were hitting the car and she was able to get out of there. [FN125]

[FN125] Cf. testimonial statement offered by Mrs. Luisiana Ríos before the Inter-American Court during the public hearing held on February 17, 2003 with regard to the provisional measures ordered in the matter of Luisiana Ríos et al. (RCTV) (Transcript of the statement on file).

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163. On January 31, 2002 Mr. Eduardo Sapene Granier filed a complaint before the Office of Common Crimes, [FN126] for the alleged attack suffered by Luisiana Ríos and Luis Contreras. On February 18, 2002 the 2° and 74° Public Prosecutors' Offices started the corresponding investigations. [FN127] The 50° Public Prosecutors' Office at a National Level with Full Jurisdiction joined this case with other in which Mrs. Ríos was also the victim. Interviews were carried out in 2002 and 2004. [FN128] On January 18, 2006, four years after the first complaint was filed, the Public Prosecutors' Office requested its dismissal regarding this fact. [FN129] On February 21, 2006 the Fiftieth Court of Control Tasks of the Metropolitan Area of Caracas ordered the dismissal of the case because the criminal action had expired. [FN130] This Tribunal

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observes that the State did not justify the procedural inactivity for more than two years in this investigation, or the delay in issuing the dismissal of the complaint.

[FN126] Cf. Complaint filed before the Superior Public Prosecutors' Office of the Judicial District of the Metropolitan Area of Caracas on January 31, 2002 (dossier of evidence, Volume V, folios 1475-1480).
[FN127] Cf. Request for discontinuance and dismissal by the 50° National Public Prosecutors' Office with Full Jurisdiction of January 18, 2006 (dossier of evidence, volume XXVII, folios 9450-9468).
[FN128] Cf., inter alia, transcripts of the interview with Luisiana Ríos before the 2° and 74° Public Prosecutors of the Metropolitan Area of Caracas on March 11, 2002 (dossier of evidence, volume XXV, folios 9226-9230).
[FN129] Cf. Request for discontinuance and dismissal by the 50° National Public Prosecutors' Office with Full Jurisdiction of January 18, 2006 (dossier of evidence, volume XXVII, folios 9450-9468).
[FN130] Cf. Order of discontinuance of the 50° First Instance Criminal Court in Duty Controls of the Criminal Judicial Circuit of the Judicial District of the Metropolitan Area of Caracas on February 21, 2006 (dossier of evidence, volume XXVII, folios 9470-9476).
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164. The Court considers that sufficient elements have not been provided in order to consider as proven that Luisiana Ríos, Luis Augusto Contreras, and Armando Amaya were attacked by State agents or that they were denied their protection during the events of that day, nor have other reliable elements that corroborate the statement of the alleged victim been presented.

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165. The Commission stated that on March 12, 2002 the reporters Javier García, Isnardo Bravo, and David Pérez Hansen denounced before the Public Prosecutors' Office attacks they had suffered in the surroundings of the Universidad Central of Venezuela (UCV), by people identified as members of a group partisan with the government, while they were covering events related with the presence of people identified as "tomistas" in the Hall of the University Council and during the journalistic coverage of the so-called "Popular Courts". The representatives argued that in those circumstances the State violated the right to humane treatment of Mr. David Pérez Hansen.

166. The Court points out that in a statement offered by the representatives, [FN131] Mr. Pérez Hansen indicated that on that day they were covering the taking over of the Hall of the University Council of the UCV by the M-28 Movement, when a tear gas bomb fell right on the entrance of the Rectorate and there was a lot of confusion; that when he went out to the rectorate's plaza to catch his breath in order to be able to start the broadcast again, an older subject with gray hair grabbed his microphone and threw it on the floor, after insulting him. This was confirmed in his sworn statement forwarded to the Court. [FN132] Additionally, the video offered as evidence by the Commission confirms the version of the facts given by Mr. Hansen. [FN133] On his part, Mr. Isnardo Bravo stated that while in the surroundings of the UCV, a

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group of people who identified themselves as members of the M-28 ("Tomistas") started to attack them, that there were several people injured with rocks, and they tried to burn vehicles of both RCTV and other media firms, and they shouted at them "Damn journalists! We are going to kill you!." [FN134]

[FN131] Cf. statement of the journalist David Pérez Hansen (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folios 3144-3147).
[FN132] Cf. statement offered before notary public (affidavit) by David Perez Hansen on June 25, 2008 (dossier of evidence, volume XVIII, folios 5654-5658)
[FN133] Cf. video (appendix 67 to the application).
[FN134] Cf. statement of Isnardo Bravo (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folio 3127).

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167. With regard to the investigations of these facts, according to the representatives, they were denounced the following day before the Public Prosecutors' Office. [FN135] Almost six years after the filing of this and other complaints, they interviewed the alleged victims. [FN136] The State informed that on July 21, 2008 the 32° Section of the Public Prosecutors' Office of the Judicial District of the Metropolitan Area of Caracas with Full Jurisdiction requested the dismissal of the complaint "because it referred to […] facts that constituted crimes that can only be prosecuted in a private suit," [FN137] reason for which up to this date the corresponding decision is still being awaited. [FN138]

[FN135] Cf. final Arguments of the representatives (dossier on merits, volume VIII, folio 2493).
[FN136] Cf. Request for dismissal of July 21, 2008 of the 32° Public Prosecutors' Office of the Metropolitan Area of Caracas with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9527-9541).
[FN137] Cf. Request for dismissal of July 21, 2008 of the 32° Public Prosecutors' Office of the Metropolitan Area of Caracas with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9527-9541).
[FN138] Cf. Report n˚DFGR-VFGR-DGAP-DPDF-08-PRO-66-10603-08 of October 23, 2008 (dossier of evidence, volume XXVI, folio 9238).

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168. This Tribunal concludes that Messrs. David Pérez Hansen, Javier García, and Isnardo Bravo were hindered by individuals while carrying out their journalistic activities in the described circumstances. Even though it has not been proven that Mr. Pérez Hansen's physical integrity was affected, the Court observes that the State did not justify the reasons for which there was no procedural activity in the investigation for six years (infra para. 318).

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169. The Commission argued that on April 3, 2002 Messrs. Isnardo Bravo, Wilmer Marcano, and Winston Gutiérrez were attacked by strangers at the headquarters of the Social Security

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Institute; additionally unidentified individuals threatened they were going to beat them with chains while they were covering the protest. The representatives argued that in those circumstances the State violated the right to humane treatment of Messrs. Bravo and Gutierrez.

170. In the statement offered by the journalist Isnardo Bravo he indicated that "a group of unidentified citizens" attacked both him and his technical team, they "threw rocks, buckets of water and urine at them" and they threatened to beat them with chains. [FN139] In the video presented as evidence by the Commission it can be observed that in a very small space (an entrance or stairs of a building) there are a lot of people arguing and screaming. At some time it seems that a man tries to hit another person. In another scene you can observe how a liquid falls from the building on top of people gathered on the street. [FN140] Mr. Gutierrez coincided with the above. [FN141]

[FN139] Cf. statement of Isnardo Bravo (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folios 3127-3128).
[FN140] Cf. video titled "RCTV Reporter Isnardo Bravo and his team physically and verbally attacked at the IVSS headquarters, 03.04.2002" (appendix 34 to the brief of pleadings, motions, and evidence).
[FN141] Cf. transcript of the interview with Winston Gutiérrez before the 32° Public Prosecutors' Office of the Metropolitan Area of Caracas on July 9, 2008 (dossier of evidence, volume XXI, folios 6584-6585).

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171. According to the representatives, the fact was denounced on the following day before the Public Prosecutors' Office. [FN142] Approximately six years after filing the complaints the alleged victims were interviewed. [FN143] The State informed that on July 21, 2008 the 32° Section of the Public Prosecutors' Office of the Judicial District of the Metropolitan Area of Caracas with Full Jurisdiction requested the dismissal of this and other complaintsdenuncias "because they referred to […] facts that constituted crimes that can only be prosecuted in a private suit," [FN144] reason why up to this date the corresponding decision is still being awaited. [FN145] In the development of the investigation an unjustified procedural inactivity is observed (infra para. 318)

[FN142] Cf. final arguments of the representatives (dossier of merits, volume VIII, folio 2493).
[FN143] Cf. transcript of the interview with Winston Gutiérrez before the 32° Public Prosecutors' Office of the Metropolitan Area of Caracas on July 9, 2008 (dossier of evidence, volume XXI, folios 6584-6585) and Request for dismissal of July 21, 2008 of the 32° Public Prosecutors' Office of the Metropolitan Area of Caracas with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9527-9541).
[FN144] Cf. request for dismissal of July 21, 2008 of the 32° Public Prosecutors' Office of the Metropolitan Area of Caracas with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9527-9541).
[FN145] Cf. Report n°DFGR-VFGR-DGAP-DPDF-08-PRO-66-10603-08 of October 23, 2008 (dossier of evidence, volume XXVI, folio 9238).

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172. The Court considers that based on the body of evidence it is possible to deem as proven that Messrs. Isnardo Bravo, Wilmer Marcano, and Winston Gutiérrez faced obstacles by individuals in their journalistic activities of that day. However, based on the evidence provided it is not possible to conclude that the physical integrity of Messrs. Isnardo Bravo and Winston Gutiérrez was affected.

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173. The Commission indicated that on April 10, 2002 [FN146] the correspondent Isabel Mavarez was attacked by a non-identified person while she was covering a news story at the headquarters of Petróleos de Venezuela (PDVSA), at Chuao. An object was thrown at her and it hit her in the face, for which she had to receive immediate medical attention. The representatives indicated that this incident occurred one day before that stated and it was a rock what hurt Mrs. Mavarez on the forehead, which required 12 stitches. The State argued that this fact was investigated and it agreed to dismiss the case on May 24, 2007.

[FN146] Regarding the date of the facts, based on the evidence it can be concluded that the fact occurred on April 9, 2002.
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174. The Court observes that in her affidavit [FN147] and in another statement forwarded by the representatives, [FN148] Mrs. Mavarez confirmed the version of the facts presented by the representatives, stating that they occurred on April 9, 2002; that she was hit with a rock on the forehead, that for three months she could not receive sun, which prevented her from covering the news on the street. Additionally, she mentioned that was the last time they sent her to cover news on the street and she was assigned to a different position.

[FN147] Cf. statement offered by Isabel Cristina Mavarez Marín before a notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5660-5661).
[FN148] Cf. statement offered by Isabel Mavarez (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folio 3150).
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175. With regard to the investigations of this fact, on May 9, 2002 the proxies of RCTV filed a complaint before the 2° and 74° Superior Prosecutors' Office of the Judicial District of the Metropolitan Area of Caracas. [FN149] The diligences practiced were: interviews to five people in May 2002, the clinical history was recollected in June 2004, and a legal medical examination where the injuries of Mrs. Mavarez were characterized as mild. In June 2006 a new statement was received from Mrs. Mavarez. On November 20, 2006 the 50° Auxiliary Prosecutors' Office requested the dismissal of the case based on expiration of the criminal action, [FN150] which was ordered by the 26° First Instance Court of Control of Functions of Caracas on May 24, 2007. [FN151]

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[FN149] Cf. complaint filed before the 2° and 74° Sections of the Public Prosecutors' Office of the Judicial District of the Metropolitan Area of Caracas on May 9, 2002 (dossier of evidence, volume IV, folio 1030).
[FN150] Cf. request for discontinuance of November 20, 2006 of the 50° National Public Prosecutors' Office with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9547-9557).
[FN151] Cf. notification slip of May 24, 2007 (dossier of evidence, volume XXVII, folio 9559).

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176. This Tribunal considers as proven that Mrs. Mavarez was injured on April 9, 2002 in the exercise of her journalistic task by a blunt object thrown by a non-identified person and that because of that she could not continue with her work. It was not argued that state agents could protect her in those circumstances and they abstained from doing it.

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177. The Commission argued that on April 18, 2002 the journalist Luisiana Ríos was the object of a verbal attack at the headquarters of the Palace of Miraflores by a captain of the Venezuelan army and that she had informed an immediate military superior at the Guard of Honor of this, which was also spread upon the record. The representatives stated that upon denouncing the fact with the superior at the Guard of Honor, the latter told Mrs. Ríos that these were things of personnel that was "out of control". In its final arguments the State indicated that in January 2007 the dismissal of the complaint was ordered.

178. The Court points out that in her sworn statement Mrs. Ríos coincides with the version of the facts of the Commission. Additionally, she specified that the soldier who allegedly attacked her was a captain of the Army attached to the service of the Military House, who told her that "she could not be at Miraflores because she was a rebel," that he knew where she lived, where she worked, and that she would be prosecuted at a public plaza and executed. [FN152]

[FN152] Statement offered before a notary public (affidavit) by Luisiana Rios Paiva on June 25, 2007 (dossier of evidence, volume XVIII, folios 5598-5602) and statement of Luisiana Ríos (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folios 3141).

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179. However, in another statement offered by the Commission, unlike in the previously mentioned statements, Mrs. Ríos did not mention that the captain referred to her personal information, but instead she said she had concluded that based on the fact that the individual worked at the Intelligence Department of Miraflores, where, she stated, her life history can be found, including information on her and her family. In this statement Mrs. Ríos referred to her attempt to complain to the captain's superior: she indicated that she spoke with the head of security of the Palace of Miraflores, who told her that in fact that was not a policy of the officials

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of the Military House and he recommended "she place the complaint in the press." The Court also takes into account that in a video offered by the Commission the alleged victim can be observed complaining to another person regarding these facts. [FN153]

[FN153] Cf. video labeled Luisiana Ríos (appendix 32 to the brief of pleadings, motions, and evidence).

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180. The representatives stated that on April 18, 2002 the verbal attacks were denounced and two days later the summons of the alleged attacker was requested. The 50° Public Prosecutors' Office at a National Level with Full Competence joined this case with the others in which the journalist Luisiana Ríos was allegedly also a victim. On January 18, 2006, the Public Prosecutors' Office requested the dismissal of the complaint regarding this fact, [FN154] and on February 21, 2006 the 50° Court of Control Tasks of the Metropolitan Area of Caracas ordered the dismissal of the case because the criminal action had expired. [FN155] It has been verified that there was unjustified procedural inactivity in this investigation for more than three years and a half (infra para. 318).

[FN154] Cf. Request for discontinuance and dismissal by the 50° National Public Prosecutors' Office with Full Jurisdiction of January 18, 2006 (dossier of evidence, volume XXVII, folios 9450-9468).

[FN155] Cf. Order of discontinuance of the 50° First Instance Criminal Court in Duty Controls of the Criminal Judicial Circuit of the Judicial District of the Metropolitan Area of Caracas on February 21, 2006 (dossier of evidence, volume XXVII, folios 9470-9476).

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181. The Court considers that sufficient evidentiary elements have not been provided for it to verify that Luisiana Ríos was verbally attacked or intimidated by a soldier in the circumstances described.

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182. The Commission argued that on April 19, 2002 the cameraman Argenis Uribe was beaten and verbally attacked upon identifying himself as part of the personnel of the RCTV television station, when he was detained by personnel of the Brigade of Vigilantes of Expressways (VIVEX) of the Ministry of Infrastructure. The representatives mentioned that he was verbally attacked when he was detained because of a traffic violation.

183. The representatives indicated that this fact was denounced on April 19, 2002 before the 2 and 74 Sections of the Public Prosecutors' Office, because of the physical and verbal attacks against Mr. Uribe. [FN156] Even though the representatives stated that the 50 Public Prosecutors' Office had requested the dismissal of the case, which had been ordered on October 10, 2007 by the 32° First Instance Court of Control Tasks of the Metropolitan Area of Caracas, based on the expiration of the criminal action, [FN157] the State informed that the case is in its

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preliminary stage and that several diligences have been performed. [FN158] This Court has not been able to clearly determine the current procedural situation of the case, or the diligences that have been performed, since the State did not provide greater information or copies of the dossier. In the terms indicated (supra paras. 97 through 100), it is not possible to determine the diligence of the State in this investigation (infra para. 318).

[FN156] According to the representatives it was not possible to obtain a copy of the complaint despite the fact that it was requested to the Public Prosecutors' Office.
[FN157] Cf. final arguments of the representatives (dossier of evidence, volume VIII, folio 2494).
[FN158] Cf. Report n˚DFGR-VFGR-DGAP-DPDF-08-PRO-66-10603-08 of October 23, 2008 (dossier of evidence, volume XXVI, folio 9240).

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184. This Tribunal considers that sufficient elements have not been provided to consider the alleged facts as proven.

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185. The Commission argued that on May 2, 2002 the journalist Luisiana Ríos was threatened by "members and supporter of the ruling party" while she was covering a request made by Mr. Pedro Carmona at the Venezuelan Parliament; that the people who threatened her remained in the surrounding of the Legislative Palace; in fear of her integrity, Mrs. Ríos could not leave the building for more than three hours, since despite having asked the National Guards for help, they refused to get involved and she was finally helped by the Metropolitan Police. The representatives indicated that Mrs. Ríos was verbally attacked and threatened by "members of Bolivarian Circles and other supporters of the ruling party." In its final arguments, the State indicated that the statements offered by Mrs. Ríos were contradictory with regard to the intervention of the members of the National Guard.

186. The Court verified that the statements of Mrs. Rios with regard to this fact, forwarded by the Commission [FN159] and by the representatives, [FN160] coincide with the version of the facts presented by the representatives, as well as with her sworn statement before the Court. [FN161]

[FN159] Cf. statement of Luisiana Ríos of May 28, 2002 (dossier of evidence, volume V, folio 1213).
[FN160] Cf. statement of Luisiana Ríos (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folio 3141).
[FN161] Cf. statement offered before a notary public (affidavit) by Luisiana Rios Paiva on June 25, 2007 (dossier of evidence, volume XVIII, folios 5598-5602)

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187. These facts were denounced on May 28, 2002 by Luisiana Ríos before the Prefecture of the Libertador Municipality, civil head of the parish. The transcript of the complaint was presented before the 74° Public Prosecutor on June 7, 2002. [FN162] On May 24, 2004 the 68° Section of the Public Prosecutors' Office of the Judicial District of the Metropolitan Area of Caracas ordered the start of the investigation regarding this fact and the one on May 28, 2002. The only diligence carried out was an interview with the victim on July 8, 2008. [FN163] On July 21, 2008 the 32° Public Prosecutors' Office of the Metropolitan Area of Caracas with Full Jurisdiction requested the dismissal of the complaint "because the mentioned complaints refer to facts that constitute crimes that can only be prosecuted in a private suit." [FN164] This was ordered on July 28, 2008 by the 51° First Instance Court of Control Tasks of the Criminal Judicial Circuit of the Metropolitan Area of Caracas. [FN165] According to the information provided, the start of the investigation was ordered two years after the complaint was filed and the first diligence was carried out more than six years after the start of the investigation (infra paras. *), which was not justified by the State.

[FN162] Cf. Record of complaint No. 272 of May 28, 2002 and brief of June 7, 2002 (dossier of evidence, volume IV, folios 1045-1047).
[FN163] Cf. Transcript of the interview with Luisiana Rios before the 32° Public Prosecutors' Office of the Metropolitan Area of Caracas, dated July 8, 2008 (dossier of evidence, Volume XXI, folios 6498-6500).
[FN164] Cf. Request for dismissal of July 21, 2008 by the 32° Section of the Public Prosecutors' Office of the Metropolitan Area of Caracas with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9485-9495).
[FN165] Cf. order of dismissal of July 28, 2008 by the 51° First Instance Court of Control Duties of the Criminal Judicial Circuit of the Metropolitan Area of Caracas with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9511-9520).
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188. Therefore, the Court considers it is possible to conclude that in those facts Mrs. Ríos was hindered in the exercise of her journalistic tasks by a group of unidentified individuals. The evidence is not conclusive with regard to the alleged lack of protection by the State's security agents.

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189. The Commission indicated that on May 24, 2002 Mr. Isnardo Bravo was attacked by individuals in the outside of the National Assembly. [FN166]

[FN166] The Commission argued that "[]on May 24, 2002 a group of supporters of the ruling party who were holding protests in the outsides of the National Assembly, verbally attacked RCTV reporter Isnardo Bravo, screaming phrases at him such as "Get out. We are going to lynch you, damn you" and threatening him to be prepared for what was coming."
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190. The Court verified that the Mr. Bravo's statement coincides with that argued. [FN167]

[FN167] Cf. statement of Isnardo Bravo (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folio 3127-3128).

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191. This fact was denounced on June 5, 2002. [FN168] On July 21, 2008 the 32° Section of the Public Prosecutors' Office of the Judicial District of the Metropolitan Area of Caracas with Full Jurisdiction requested the dismissal of the complaint of this and other facts "because the mentioned complaints refer to facts that constitute crimes that can be prosecuted in a private suit." [FN169] Up to this date the corresponding decision is still being awaited. [FN170] Unjustified procedural inactivity is observed in this investigation for more than six years (infra para. 318).

[FN168] Cf. complaint of June 5, 2002 (dossier of evidence, volume IV, folios 1051-1052).
[FN169] Cf. request for dismissal of July 21, 2008 by the 32° Section of the Public Prosecutors' Office of the Metropolitan Area of Caracas with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9527-9541).
[FN170] Cf. Report n°DFGR-VFGR-DGAP-DPDF-08-PRO-66-10603-08 of October 23, 2008 (dossier of evidence, volume XXVI, folio 9241).

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192. This Tribunal considers that sufficient evidentiary elements have not been presented to corroborate the alleged facts.

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193. The Commission indicated that on May 28, 2002 the journalist Luisiana Ríos denounced before the Mayor's Office of the Metropolitan District of Caracas that, due to the exercise of her profession, she received threats in the surroundings of her home, causing her to move away from there because to the contrary her presence would be informed to a local "Bolivarian Circle"; additionally se denounced reiterated damages to her vehicle. In its final arguments, the State indicated a contradiction in the statements of Mrs. Ríos, since before the Public Prosecutors' Office she stated that "it was a domestic problem since [whoever threatened her] parked in [her] space," which does not grant credibility to her statements in the sense that this was what "most terrified her".

194. The Court verified that Mrs. Ríos' statement coincides with the version of the facts argued by the Commission, [FN171] as well as her sworn statement before the Court. [FN172] The apparent contradiction in her statements, mentioned by the State, is not confirmed. [FN173]

[FN171] Cf. statement of Luisiana Ríos (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folio 3141).

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[FN172] Cf. statement offered before a notary public (affidavit) by Luisiana Rios Paiva on June 25, 2007 (dossier of evidence, volume XVIII, folios 5598-5602).
[FN173] Cf. Transcript of the interview with Luisiana Rios before the 32° Public Prosecutors' Office of the Metropolitan Area of Caracas, dated July 8, 2008 (dossier of evidence, Volume XXI, folios 6498-6500).
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195. These facts were denounced by Mrs. Ríos on that date before the Prefecture of the Libertador Municipality, Civil Head of the Parish [FN174] and they followed the same course as the investigation into the alleged facts of May 2, 2002 (supra paras. 185 through 187). The start of the investigation was ordered two years after the complaint was filed and the first diligence was carried out more than six years later (infra para. 318).

[FN174] Cf. Record of complaint No. 272 of May 28, 2002 and brief of June 7, 2002 (dossier of evidence, volume IV, folios 1045-1047).
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196. However, this Tribunal considers that sufficient evidentiary elements that allow the corroboration of the facts alleged by the Commission and the representatives have nor been provided.

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197. The Commission argued that on July 31, 2002 Messrs. Isnardo Bravo, Wilmer Marcano, and Winston Gutiérrez were verbally attacked and threatened while they were covering the news in the surroundings of the Supreme Court Justice. Similarly, there were acts of vandalism against two vehicles belonging to RCTV. [FN175] The representatives added that despite being present at the scene, the police officers had not intervened in order to repel the protestors.

[FN175] The Commission stated in its application that "[o]n July 31, 2002 followers of President Hugo Chávez Frías and members of the opposition were concentrated in front of the doors of the Supreme Court of Justice of Venezuela where the full session to discuss the order, in response of the accusation of the Solicitor General, of the generals and admirals accused of military rebellion would be held. Through a vote of 12 against 8 the mentioned Court objected the order that requested the opening of the trial for military rebellion. […] While covering the news story in the surroundings of the Supreme Court of Justice, unidentified people verbally attacked the journalists Isnardo Bravo, Wilmer Marcano, and Winston Gutiérrez, saying, among other things, that they were going to kill them. Likewise, there were acts of vandalism and while the attackers were insulting the social communicators, two RCTV vehicles parked in the area near the Court were scratched, the windows were broken and the air was taken out of their tires. In the afternoon of that dame 31st of July 2002 a tear gas bomb was thrown inside one of RCTV's vehicles, causing it to catch fire."
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198. This Tribunal observes that Mr. José Monroy indicated, in his statement in the case's public hearing, that the police present at the place of the facts did not intervene to repel the attackers. [FN176] Mr. Bravo did not refer to the material damages to the vehicles nor did it mention which authorities did not intervene; he simply referred to the verbal attacks received. [FN177] In the video presented by the representatives only the damages caused to the vehicles belonging to RCTV are observed. [FN178]

[FN176] Cf. statement offered by Antonio José Monroy Clemente in the public hearing held before the Inter-American Court on August 7, 2008.
[FN177] Cf. statement of Isnardo Bravo (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folios 3127-3128).
[FN178] In the video offered a RCTV van can be seen with smoke coming out of it and firemen trying to control the fire with a fire extinguisher. The commentator states that what started the fire in the van was a Molotov bomb. Two white vans painted with red spray on their right sides can also be seen. The date of the recording cannot be seen. The commentator adds that they are in front of the court. Cf. video titled "Attacks against properties of RCTV" (appendix 35 to the brief of pleadings, motions, and evidence).

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199. On August 14, 2002 this fact was denounced before the 2 and 74 Sections of the Public Prosecutors' Office for involving attacks against the team of the program "El Observador" on that day. [FN179] The State informed that on July 28, 2008 the 32° Public Prosecutors' Office of the Metropolitan Area of Caracas requested the dismissal of the complaint because it referred to facts constituting crimes that can only be prosecuted in a private suit and with regard to which the corresponding decision is still being awaited up to this date. [FN180] Since the State did not inform of any other diligences performed, this Court observed that there was unjustified procedural inactivity in this investigation for more than six years (infra para. 318).

[FN179] Cf. Complaint of August 14, 2002 (dossier of evidence, volume IV, folios 943-951).
[FN180] Cf. Report n°DFGR-VFGR-DGAP-DPDF-08-PRO-66-10603-08 of October 23, 2008 (dossier of evidence, volume XXVI, folios 9241-9242).

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200. This Tribunal considers that sufficient evidence has not been provided in order to consider the alleged verbal attacks against the alleged victims as proven. The fact that unidentified individuals damaged the vehicles belonging to RCTV was not contested.

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201. The Commission indicated that on August 13, 2002 the journalist Laura Castellanos was verbally attacked while covering the parliament session at the National Assembly. [FN181]

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[FN181] The Commission argued in its application that on "August 13, 2002 the reporter Laura Castellanos was verbally attacked by supports of President Chávez, members of a partisan party of the ruling party, while covering the parliamentary session of the National Assembly. The attackers were trying to prevent her from carrying out her professional duties."

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202. The Court observes that Mrs. Castellanos, in one of her statements mentioned she was attacked by a woman. [FN182] In that same statement she refers to an attack by two women, while in the other briefs and specifically in the complaint regarding the facts, reference as made to "struggles" with a single person. [FN183] In the video presented by the representatives only one person interviewed by several media firms is observed and none of the attacks described is verified. [FN184]

[FN182] Cf. statement of Laura Castellanos (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folios 3137-3140).
[FN183] Cf. complaint dated August 20, 2002 filed the following day before the Public Prosecutors' Office (dossier of evidence, voume IV, folios 953-958 and volume IX, folios 3610-3615).
[FN184] Cf. video titled "Laura Castellanos" (appendix 36 to the brief of motions, pleadings, and evidence).

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203. On August 21, 2002 the proxies of RCTV denounced the attacks before the 2° Fiscal of the Public Prosecutors' Office. [FN185] On May 24, 2004 the 68° Section of the Public Prosecutors' Office ordered the start of the investigation. Transcripts of the interview of Laura Castellanos on September 12, 2002 [FN186] and July 8, 2008 [FN187] were prepared. On July 21, 2008, [FN188] approximately 6 years after the complaint was filed, the 32° Section of the Public Prosecutors' Office requested the complaint be dismissed because "it referred […] to facts that constitute crimes that can only be prosecuted in a private suit," and the same was ordered on July 25, 2008 by the 18° First Instance Court of Control Duties of the Metropolitan Area of Caracas. [FN189] The Court observes that there was procedural inactivity in this investigation, not justified by the State, for more than five years (infra para. 318).

[FN185] Cf. complaint dated August 20, 2002 filed the following day before the Public Prosecutors' Office (dossier of evidence, voume IV, folios 953-958 and volume IX, folios 3610-3615).
[FN186] Cf. transcript of the interview with Laura Castellanos before the 2° and 74° Sections of the Public Prosecutors' Office of the Metropolitan Area of Caracas of September 12, 2002 (dossier of evidence, volume XXVII, folios 9607-9610).
[FN187] Cf. transcript of the interview with Laura Castellanos before the 32° Section of the Public Prosecutors' Office of the Metropolitan Area of Caracas of July 8, 2008 (dossier of evidence, volume XXVII, folios 9611-9612).

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[FN188] Cf. Request for dismissal of July 21, 2008 by the 32° Section of the Public Prosecutors' Office of the Metropolitan Area of Caracas with Full Jurisdiction presented on the next day (dossier of evidence, volume XXVII, folios 9617-9626).
[FN189] Cf. order of dismissal of July 25, 2008 by the 18° First Instance Court of Control Duties of the Criminal Judicial Circuit of the Metropolitan Area of Caracas with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9640-9645).
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204. However, the Court considers that the evidence provided is not enough to consider the alleged facts as proven.

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205. The Commission indicated that on August 15, 2002 [FN190] the cameraman Antonio José Monroy suffered an injury by firearm on his leg while he was covering a news story, for which he was submitted to surgery and was not able to work for two weeks. [FN191] In its final written arguments, the State indicated that numerous diligences were performed with regard to this facts and that the case was in its intermediate phase, awaiting a preliminary hearing regarding the defendant.

[FN190] Regarding the date of the facts, the parties' main briefs mention they occurred on August 15th, but the State's reports and the investigation briefs prove that the date on which the event occurred was August 14, 2002.
[FN191] The Commission argued in its application that "[o]n August 15, 2002 the RCTV cameraman Antonio José Monroy suffered an injury from a firearm in his leg while he was covering the news story on the results of the Pretrial of Merits held for Soldiers, in the surroundings of the Superior Court of Justice. Mr. Monroy underwent surgery with general anesthesia and subsequently an aluminum splint was implanted and he was given crutches. On September 9, 2002 cameraman Monroy was evaluated by the doctor, who informed him he could go back to work in two weeks."
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206. This Tribunal verifies that in the video presented by the Commission as evidence, one can observe members of the police force next to the Globovision camera, some of them next to individuals, who help carry Mr. Monroy. In the image it can be observed that Mr. Monroy was hurt on his right leg, due to a shot from a firearm and he was being helped by people with vests that read "Defensa Civil - Protección Nacional". Later, Mr. Monroy was transferred to a white automobile while escorted by members of security bodies. [FN192] In a medical report of September 9, 2002 he was diagnosed with a "complicated injury on the right leg, syndrome of mild compartment, fracture of the anterior border without displacement" and it describes in detail the surgical and medical procedures to which he was submitted. [FN193] In a statement of Mr. Monroy offered by the representatives, the interested party corroborated this version of the facts. [FN194] In his statement before the Court, he coincided with that stated and made emphasis on his difficulty to carry out certain physical activities. [FN195]

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[FN192] Cf. video labeled "Injured cameraman (Monroy)" (appendix 69 to the application).
[FN193] Cf. medical report of Mr. Antonio Monroy dated September 9, 2002 (dossier of evidence, volume IV, folio 1057)
[FN194] Cf. statement of Antonio Monroy (dossier of evidence, volume VIII, folio 3148).
[FN195] Cf. statement offered by Antonio José Monroy Clemente at the public hearing held before the Inter-American Court on August 7, 2008.

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207. On August 14, 2002 the National Division Against Homicides of the Body of Criminal Scientific Investigations started an investigation in relation to the bullet impact received by Mr. Monroy on that same day. [FN196] Several investigative diligences [FN197] were performed and on September 18, 2006 an arrest warrant was issued, and it was made effective on July 8, 2008 [FN198]. On the next day, the 32° Public Prosecutors' Office charged the person arrested for the alleged commission of the crime of illegal possession of a firearm, public intimidation, and personal injuries. [FN199] On that same date a hearing was held to hear the defendant. [FN200] On August 18, 2008 the conclusive act of the prosecutor's accusation was filed against that person for the commission of the crimes of illegal possession of a firearm, public intimidation, and serious intentional personal injuries in detriment of Antonio José Clemente Monroy and injuries in detriment of another person and the request for trial was presented. [FN201] The preliminary hearing was set for October 6, 2008, but it could not be held and was postponed for October 27, 2008. [FN202] There is no evidence of ulterior information.

[FN196] Cf. brief of accusation of the 32° Section of the Public Prosecutors' Office of the Metropolitan Area of Caracas (dossier of evidence, volume XXVII, folios 9577-9578).
[FN197] Among others, transcript of Mr. Antonio José Monroy Clemente on September 2, 2002 and medical report of June 9, 2006. Cf. brief of accusation of the 32° Section of the Public Prosecutors' Office of the Metropolitan Area of Caracas (dossier of evidence, volume XXVII, folios 9575-9606) and report n° DFGR-DVFGR-DGAP-DPDF-16-PRO-66-6584 of September 7, 2007 (dossier of evidence, volume X, appendix A.5 to the response to the application, folio 3739).
[FN198] Cf. Report n°DFGR-VFGR-DGAP-DPDF-08-PRO-66-10603-08 of October 23, 2008 (dossier of evidence, volume XXVI, folio 9242-9243).
[FN199] Cf. decision of the 32° section of the Public Prosecutors' Office of the Metropolitan Area of Caracas of July 9, 2008 (dossier of evidence, volume XXVII, folios 9571-9573).
[FN200] Cf. transcript of the oral hearing to receive the accused party held on July 9, 2008 (dossier of evidence, volume XXVII, folios 9561-9570).
[FN201] Cf. brief of accusation of the 32° Section of the Public Prosecutors' Office of the Metropolitan Area of Caracas (dossier of evidence, volume XXVII, folios 9575-9606).
[FN202] Cf. Report n°DFGR-VFGR-DGAP-DPDF-08-PRO-66-10603-08 of October 23, 2008 (dossier of evidence, volume XXVI, folio 9242-9243).

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208. It has been proven that on August 14, 2002 Mr. Monroy suffered an injury as a result of a bullet from a firearm, and therefore damage to his physical integrity, which prevented him from

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continuing with its journalistic task on that opportunity and for two weeks thereafter. However, no evidentiary elements have been presented so that the Court can determine if it was a state agent who fired the shot or if it was an individual with the support or tolerance of state agents.

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209. The Commission mentioned that on August 15, 2002 Mr. Argenis Uribe was attacked and threatened and his camera was stolen.

210. The evidence presented with regard to this fact consists in the complaint before the 32° Public Prosecutors' Office and information provided by the petitioners in the case file of the process before the Commission. [FN203]

[FN203] Cf. complaint dated August 20, 2002 filed the following day before the Public Prosecutors' Office (dossier of evidence, volume IV, folios 953-958 and volume IX, folios 3610-3615).

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211. On August 21, 2002 the proxies of RCTV denounced the facts before the 2° Fiscal of the Public Prosecutors' Office. [FN204] Transcripts were drawn up from the interviews of Mr. Uribe on August 28, 2002 and March 9, 2005 and to another person. [FN205] On April 26, 2007, more than four years and a half after the filing of the complaint, the Public Prosecutors' Office requested the dismissal of the case due to the lack of criminal definition of the behavior and, also, its dismissal because the facts constitute crimes that can only be prosecuted in a private suit." [FN206] According to the State, on July 23, 2008 the 32° First Instance Court of Control Duties of the Metropolitan Area of Caracas ordered the dismissal of the complaint. [FN207] The Court observes that the procedural inactivity for more than two years and a half –between 2002 and 2005- was not justified (infra para. 318).

[FN204] Cf. complaint dated August 20, 2002 filed the following day before the Public Prosecutors' Office (dossier of evidence, voume IV, folios 953-958 and volume IX, folios 3610-3615).
[FN205] Cf. Request for dismissal of April 26, 2007 by the 50° National Section of the Public Prosecutors' Office with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9652-9662).
[FN206] Cf. Request for dismissal of April 26, 2007 by the 50° National Section of the Public Prosecutors' Office with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9652-9662).
[FN207] Cf. Report n˚DFGR-VFGR-DGAP-DPDF-08-PRO-66-10603-08 of October 23, 2008 (dossier of evidence, volume XXVI, folio 9243-9244).

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212. The Court considers that the evidence present in the case file is not enough to prove the alleged facts.

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213. The Commission mentioned that on August 15, 2002 the reporter David Pérez Hansen suffered insults and verbal attacks from "supporters of the President", as well as pushes, knocks, and "body-to-body harassment" with an attempt of robbery while covering statements of the Vice-President of the Republic. [FN208] The representatives argued that they also received death threats and that in those circumstances the State violated the right to the physical integrity of Mr. Pérez Hansen.

[FN208] The Commission, in its application, argued that on "August 15, 2002 reporter Pérez Hansen suffered insults and verbal attacks by supporters of President Chávez, as well as shoves, beatings, and "body-to-body harassment" with an attempted robbery while covering statements offered by the Vice-President. The situation led the National Guard to surround the equipment; however, this action did not prevent the continuance of the attempts to lynch the journalist. This situation was denounced before the Public Prosecutors' Office in charge of investigating the threats to RCTV journalists."

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214. In a statement offered by the representatives, Mr. Hansen indicated that one of the Vice-President's security agents recommended that he stand next to him and mentioned that the Vice-President put his arm over him and tried to calm the protestors. However, he mentioned that the insults and threats continued until the Vice-President was able to lead the reporter out of the Llaguno Bridge. Further on, Mr. Hansen argues that the members of the National Guard present did not offer him protection. [FN209] In his affidavit, Mr. Hansen confirmed the version of the facts argued by the Commission. [FN210]

[FN209] Cf. statement of David Pérez Hansen (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folio 3144).
[FN210] Cf. statement offered before notary public (affidavit) by David Perez Hansen on June 25, 2008 (dossier of evidence, volume XVIII, folios 5655-5658).

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215. This fact was denounced on August 21, 2002. [FN211] Approximately six years after the filing of this and other complaints, the victims were interviewed. [FN212] On July 21, 2008 the 32° Section of the Public Prosecutors' Office of the Judicial District of the Metropolitan Area of Caracas with Full Jurisdiction requested the dismissal of these complaints "because they referred to […] facts that constituted crimes that can only be prosecuted in a private suit." [FN213] Up to this date the corresponding decision is still being awaited. [FN214]

[FN211] Cf. complaint dated August 20, 2002 filed the following day before the Public Prosecutors' Office (dossier of evidence, voume IV, folios 953-958 and volume IX, folios 3610-3615).

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[FN212] Cf. Request for dismissal of July 21, 2008 of the 32° Public Prosecutors' Office of the Metropolitan Area of Caracas with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9527-9541).
[FN213] Cf. Request for dismissal of July 21, 2008 of the 32° Public Prosecutors' Office of the Metropolitan Area of Caracas with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9527-9541).
[FN214] Cf. Report n˚DFGR-VFGR-DGAP-DPDF-08-PRO-66-10603-08 of October 23, 2008 (dossier of evidence, volume XXVI, folio 9238). Likewise, regarding this fact, there is evidence that on May 9, 2006 the 50° National Auxiliary Section of the Public Prosecutors' Office with Full Jurisdiction requested the discontinuance of the cas with regard to the alleged commission of the crime of injuries committed in detriment of Juan Carlos Pereira, who is not al alleged victim in this case. Additionally, it requested the dismissal of the complaint regarding the possible commission of the crime of insults against Juan Carlos Pereira, David Pérez Hansen, and Ronald Alaexander Pérez Pérez "because it refers to facts that constitute crimes that can be prosecuted in private suits." On December 13, 2006 the 19° First Instance Control Court of the Criminal Judicial Circuit of the Metropolitan Area of Caracas ordred the discontinuance and dismissal Cf. Request for dismissal of May 9, 2006 of the 50° National Section of the Public Prosecutors' Office with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9663-9676) and notification slip of December 13, 2006 of the 19° First Instance Control Court of the Criminal Judicial Circuit of the Metropolitan Area of Caracas (dossier of evidence, volume XXVII, folio 9677).
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216. The Court considers that, based on the account of the facts and the evidence offered, it is possible to consider that Mr. Pérez Hansen was hindered by individuals upon performing their journalistic tasks. Some members of the security teams and public officials tried to protect them. From the evidence provided it could not be concluded that Mr. Pérez Hansen's physical integrity was affected. Regarding the investigations, there is an unjustified procedural inactivity that lasted six years (infra para. 318).

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217. The Commission held that on November 12, 2002 Mr. Armando Amaya, camera assistant, was injured with a fire arm in the back part of his right thigh, while he was filming along with his journalistic team. [FN215] The representatives argued, based on a statement of Mr. Amaya, that after the attack he received threatening calls against him and his family. In its final arguments, the State mentioned a case was opened, which was in an investigation phase, and that there were contradictions between the first statements of Mr. Amaya before the Venezuelan authorities and his subsequent statement within the proceedings before the Court.

[FN215] The Commission argued in its application that "[o]n November 12, 2002 camera assistant Armando Amaya, reporter Pedro Nikken, and cameraman Luis Augusto Contreras, were covering violent events perpetrated by the so-called Tomistas Metropolitan Police, who had seized the installations of the Metropolitan Police in opposition to the Metropolitan Mayor. On

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that occasions, Mr. Armando Amaya was injured with a firearm in the back part of the thigh while filming those events."

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218. The Court observes that in an affidavit forwarded to these proceedings, Mr. Amaya confirmed the version of the facts offered by the Commission and also stated that in those circumstances there was a confrontation with stones, "Molotov" bombs, gas tear bombs, and the exchange of gunshots; that he noticed he was attacked by "supporters of the ruling party"; and that he did not receive medical attention at the first hospital where he went, reason for which he had to return to the channel's installations from where he was taken to a clinic. [FN216] In his statement before the 2° and 74° Public Prosecutors' Offices, Mr. Amaya offered the same version of the facts and mentioned that he had not been able to identify the person who shot him nor could he identify the protestors present there. Likewise, he stated that as of that date he received death threats. [FN217] On the other hand, in his sworn statement Mr. Pedro Nikken coincided with this version of the facts, he mentioned that the firemen of the Metropolitan Police carried Mr. Amaya and offered first aid to him and he indicated that they never received direct protection from the State. [FN218]

[FN216] Cft. statement offered by Armando Amaya before a notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5663-5665).
[FN217] Cf. Statement of Armando Amaya before the 2° and 74° Public Prosecutors' Office of the Metropolitan Area of Caracas on January 28, 2003. (dossier of evidence, volume XXI, folios 6494-6495).
[FN218] Cf. statement offered by Pedro Antonio Nikken García before a notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5593-5596)

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219. In a medical report on the injuries suffered by Mr. Amaya details are offered on a "superficial, uncomplicated injury by firearm on the back of his right thigh." [FN219] Finally, a newspaper article presented by the Commission confirms that Mr. Amaya was injured in those circumstances and it mentions that "one of the members of the Tomista forces, who had thrown a mat on the floor blocking the door leading to the parking lot took out his 38 revolver and fired several shots against the picket", where the alleged victim and another person were injured. [FN220]

[FN219] Cf. medical report regarding Mr. Armando Amaya issued on November 19, 2002 by the Medical Director of Administradora Rescarven C.A. (dossier of evidence, volume IV, folio 1066).
[FN220] Cf. newspaper article with the title "Violencia Política. Desalojo de policías tomistas provocó caos y vandalismo. Un muerto y 35 heridos en disturbios" (dossier of evidence, volume VI, folios 1998-1999)

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220. In reference to the investigations surrounding this fact, on November 21, 2002 a complaint was filed before the 2° Public Prosecutor of the Judicial District of the Metropolitan Area of Caracas. [FN221] According to the representatives, different expert opinions were received. [FN222] Additionally, a transcript of the interview with Mr. Amaya was prepared. [FN223] The State informed that on February 22, 2006, the prosecutor appointed to the case requested information regarding these facts from the 11-A Brigade. [FN224] Finally, on July 31, 2007 the prosecutors in charge of the case ordered the prosecutorial filing of the actions, which was notified on September 27, 2007 to Mr. Amaya. [FN225] Given that the State only forwarded a notification of the prosecutorial filing, this Tribunal does not have enough elements to determine if the State acted with due diligence in the development of this investigation (supra paras. 97 through 100).

[FN221] Cf. complaint filed before the 2° Sections of the Public Prosecutors' Office of the Judicial District of the Metropolitan Area of Caracas on November 21, 2002 (dossier of evidence, volume IV, appendix 22 to the application, folios 1060-1064).
[FN222] Cf. brief of pleadings, motions, and evidence (dossier of merits, volume III, folio 609).
[FN223] Cf. Statement of Armando Amaya before the 2° and 74° Public Prosecutors' Office of the Metropolitan Area of Caracas on January 28, 2003. (dossier of evidence, volume XXI, folios 6494-).
[FN224] Cf. Report n˚DFGR-28.031 of May 9, 2006 (dossier of evidence, Volume X, appendix A.6.6 to the response to the application, folio 3774).
[FN225] Cf. Notification Document of September 27, 2007 (dossier of evidence, volume XXVI, folio 9678)

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221. The Court considers as proven that Mr. Amaya was in fact injured with a bullet from a firearm during his journalistic activities and therefore suffered damage to his personal integrity. However, sufficient evidentiary elements have not been provided to determine if it was a state agent who shot him or if, in those circumstances, state agents did not protect the alleged victim, when they could have. That situation prevented Messrs Amaya, Pedro Nikken, and Luis Augusto Contreras from continuing with their journalistic tasks under those circumstances.

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222. The Commission argued that on December 4, 2002 the reporter Erika Paz and the cameraman Samuel Sotomayor suffered death threats, insults, physical attacks, and destruction of equipment by "supporters of the government". [FN226] The representatives stated that the regional police organized a safety cordon between the people who were confronting themselves, but it did nothing to stop the attacks against the journalists and their reportorial equipment. The representatives argued that in said circumstances the State violated the right to humane treatment of Mrs. Erika Paz.

[FN226] The Commission argued in its application that "[o]n December 4, 2002 reporter Erika Paz and cameraman Samuel Sotomayor suffered death threats, insults, physical attacks, and

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destruction of cameras and journalistic materials by individuals that support the government, while they were covering a protest. The regional police organized a security cordon among the people who were confronting each other.

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223. The Court observes that the journalist Erika Paz confirmed in her statement the version of the facts presented by the Commission. [FN227] Likewise, in the video presented as evidence, attacks can be observed against journalists in a public protest. It shows how some people are walking on a street and yelling at the journalists who are filming the march. On two occasions you can see two people trying to physically attack a member of the journalistic team and another person who prevents it. You can later see how the cameraman is attacked and you can hear screams. [FN228]

[FN227] Cf. statement of Erika Paz (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folio 3129).
[FN228] Cf. video titled “Erika Paz” (appendix 37a to the brief of pleadings, motions, and evidence) and video titled “Samuel Soto Mayor” (appendix marked 37b to the brief of pleadings, motions, and evidence).

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224. The representatives argued that the fact was denounced on the following day before the Public Prosecutors’ Office as verbal and physical attacks suffered by Erika Paz and Samuel Sotomayor. [FN229] According to the representatives, the State has not carried out any action and the case is in its investigation phase. [FN230] Since there is no evidence that the Public Prosecutors’ Office took any action, this Court has verified a lack of diligence in the actions of that body.

[FN229] The representatives held it was not possible to obtain a copy of the complaint. Cf. final arguments of the representatives.
[FN230] Cf. Final arguments of the Representatives (dossier of merits, volume VIII, folio 2497).

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225. The Court considers that based on the body of evidence it is possible to have as proven that some individuals hindered the journalistic activity of the reporter Erika Paz and the cameraman Samuel Sotomayor, although it has not been proven that the physical integrity of either of them was affected.

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226. The Commission held that other journalists suffered verbal attacks on several occasions, for example, on December 8, 2002 in detriment of Anahís Cruz and Herbigio Henríquez. [FN231]

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[FN231] The Commission argued in its application that, "on December 8, 2002 when Anahís Cruz and Herbigio Henríquez were verbally attacked by individuals while they were covering a strike at the transportation company 'Tomas Quiara'".

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227. Regarding the alleged verbal attacks against Anahís Cruz and Herbigio Henríquez, there is only the sworn statement of Mrs. Cruz, in which she mentions that individuals identified as members of the so-called "Bolivarian Circles" insulted and threatened them, and that "different police bodies and from the National Guard [did] nothing to stop the attacks." [FN232]

[FN232] Cf. statement offered by Anahís del Carmen Cruz Finol before notary public (affidavit) on June 27, 2008 (dossier of evidence, volume XVIII, folios 5671-5677).

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228. Regarding these facts, the State indicated that several actions were carried out, [FN233] among others, interviews to witnesses and a visual inspection. It mentioned that on October 21, 2008 the 9° Section of the Public Prosecutors' Office of the Judicial District of the State of Aragua had required the discontinuance of the case, by virtue of the lack of a criminal definition of the facts object of investigation and they would wait for the judicial ruling. [FN234]

[FN233] Cf. final arguments of the State (dossier of merits, volume VIII, folios 2690-2691).
[FN234] Cf. Report n°DFGR-VFGR-DGAP-DPDF-08-PRO-66-10603-08 of October 23, 2008 (dossier of evidence, volume XXVI, folio 9246).

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229. The Court considers that sufficient elements have not been provided to consider the alleged fact as proven, or any other evidence that verifies the statement of the alleged victim.

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230. The Commission argued that on January 27, 2003 Mrs. Anahís Cruz suffered a verbal attack at a press conference by an Army Division General at the headquarters of the Paramaconi Barracks in Maracay, State of Aragua, who ordered that the mentioned journalist be taken out of the press conference and her entrance be prevented since "he did not offer statements to rebels." The State, on its part, argued that the journalist Anahís Cruz was never removed from the press conference nor was she prevented from entering; that the statement of Mrs. Cruz is full of contradictions, imprecisions, referential accounts, and opinions, which do not permit her statements to be credible.

231. The statements of Mrs. Cruz coincide with the version of the facts offered by the Commission. [FN235] In the video presented by the representatives, an interview with a high-range soldier is observed and in it he refers to an incident occurred between the journalist Cruz and an army soldier and he asks the journalist to leave. [FN236]

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[FN235] Cf. statement of Anahís Cruz (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folios 3130-3135) and statement offered by Anahís del Carmen Cruz Finol before notary public (affidavit) on June 27, 2008 (dossier of evidence, volume XVIII, folios 5671-5677).
[FN236] Cf. video labeled "Anahís Cruz" appendix 38 to the brief of pleadings, motions, and evidence).

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232. This alleged fact was denounced on February 3, 2003 before the 2 Section of the Public Prosecutors' Office for alleged verbal attacks. [FN237] According to the representatives, the Public Prosecutors' Office limited itself to receiving the victim's statement. [FN238] In this case, the Court observes a lack of diligence in the actions of that body, since the State has not informed of any diligence carried out since the filing of the complaint.

[FN237] According to the representatives it was not possible to obtain a copy of the complaint despite the fact that it was requested to the Public Prosecutors' Office.
[FN238] Cf. final arguments of the representatives (dossier of merits, volume VIII, folio 2497).

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233. However, the Court considers that the evidence provided is not enough to prove that a verbal attack was produced against the journalist nor that she was prevented access to the official sources of information (infra paras. 350 and 351).

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234. The Commission argued that on August 14, 2003 "a numerous group of "supporters of the ruling party" showed up at the RCTV headquarters and they participated in violent protests and they wrote insults on the walls of the façade." The representatives argued that officers of the Metropolitan Police and the National Guard did nothing to avoid the attack. The State, on its part, argued in reference to this and other facts, that it has always proven it as a policy directed to protecting the employees of the social communication media.

235. The evidence presented consists in the complaint itself, the dossier of the process before the Commission and the records of a judicial inspection carried out at the headquarters of RCTV on August 15, 2003. [FN239] The records of the judicial inspection include descriptions of different paintings on the façade and other parts of the building, as well as photographs of the concentration of protestors taken by the station's security cameras.

[FN239] Cf. judicial inspection dated August 15, 2003 carried out by the Sixth First Instance Civil, Mercantile, and Traffic Court of the Judicial District of the Metropolitan Area of Caracas (dossier of evidence, volume IV, folios 1103-1132).

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236. The facts were denounced on August 15, 2003 by the proxies of RCTV before the 2° Fiscal of the Public Prosecutors' Office, [FN240] which, according to the representatives, has not perform any action. [FN241] Since there is no evidence that the Public Prosecutors' Office performed any diligence since that judicial inspection, a lack of diligence in the actions of that body is observed.

[FN240] Cf. complaint filed on August 15, 2003 before the Public Prosecutors' Office (dossier of evidence, volume IV, folios 1095-1100).
[FN241] Cf. final arguments of the representatives (dossier of merits, volume VIII, folio 2498).

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237. The Court considers that based on the evidence available in the case file it is possible to consider proven that individuals held protests outside the installations of RCTV. During these unidentified individuals made paintings with different inscriptions.

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238. The Commission indicated that on August 19, 2003 a reporter and Mr. Carlos Colmenares, cameraman, were covering a protest in a neighborhood in Caracas; during the night there was a firefight against municipal police and Mr. Colmenares was injured on the right arm and leg. [FN242] In its final written arguments the State indicated that the case was in its investigation phase and that Mr. Colmenares offered different versions of the facts in his statement before the Court.

[FN242] The Commission argued in its application that "[o]n August 19, 2003 the informative team of the RCTV's program "El Observador", made up by the reporter Pedro Nikken and the cameraman Carlos Colmenares, were covering a protest in the surroundings of the Urbanization "Las Acacias" of Caracas, named "El Cohetazo". The police of the Mayor's Office of the Libertador Municipality proceeded to suppress and break up the protest with tear gas bombs and pellets. In the night, there was a shoot-out with the municipal police and Mr. Carlos Colmenares was injured on his right arm and leg. This was the second time Mr. Pedro Nikken's journalistic team received impacts from fire arms."

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239. The Court verified that the video presented by the Commission as evidence of these facts presents situations different to those argued by the Commission. [FN243] In his affidavit, Mr. Pedro Nikken stated that "a motorcycle belonging to the Caracas police force stopped in front of them and the [co-pilot] turned around and shot [them] with a long weapon", injuring Mr. Colmenares. [FN244] In his statement before the Court Mr. Colmenares coincided with Mr. Nikken's statement, indicating that he felt "pellets […] in part of his neck, arm, and legs" [FN245] and that the person who shot him, who he could not identify, was 20 or 30 meters away, and he said that this attack had been recorded in a video forwarded to a public prosecutors' office. [FN246] This Tribunal points out that the mentioned video was not presented by any of the parties.

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[FN243] Cf. video labeled “Carlos Colmenarez” (appendix 39 to the brief of pleadings, motions, and evidence).
[FN244] Cf. statement offered by Pedro Antonio Nikken García before notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5593-5596).
[FN245] Cf. statement offered by Carlos Colmenares in the public hearing held before the Inter-American Court on August 7, 2008.
[FN246] Cf. statement offered by Carlos Colmenares in the public hearing held before the Inter-American Court on August 7, 2008.

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240. On August 26, 2003 the proxies of RCTV presented the corresponding complaint before the 2° Public Prosecutors’ Office of the Judicial District of the Metropolitan Area of Caracas. [FN247] Reports presented by the State, indicate that the mentioned injuries were not medically described; that a witness was interviewed; that in April 2006 the Legal Department of RCTV was asked to present a video containing the images taped by the reportorial team in order to carry out the corresponding expert examination; and that the case was in a preliminary phase. [FN248] Given that the State admitted that a legal medical evaluation was not performed despite the complaint filed eight days after the fact occurred and that the State did not justify the reasons for not carrying out that action, this Tribunal considers it did not act with due diligence in the development of the investigation.

[FN247] Cf. Complaint filed by RCTV’s proxies before the 2° Section of the Public Prosecutors’ Office of the Judicial District of the Metropolitan Area of Caracas on August 26, 2003 (dossier of evidence, volume IV, appendix to the application 30, folios 1134-1138).
[FN248] Cf. Report n˚DFGR-20.402 of March 15, 2005 (dossier of evidence, volume X, appendix A.6.10 to the response to the application, folio 3802); report n˚ DFGR-28.031 of May 9, 2006 (dossier of evidence, volume X, appendix A.6.6 to the response to the application A.6.6, folio 3774); report n˚ DFGR-00655 of February 8, 2007 (dossier of evidence, volume X, appendix A.6.3 to the response to the application, folio 3764); report n˚DFGR-DVFGR-DGAP-DPDF-16-PRO-66-6584 of September 7, 2007 (dossier of evidence, volume X, appendix A.5 to the response to the application, folios 3737-3738, and report n˚DFGR-VFGR-DGAP-DPDF-08-PRO-66-10603-08 of October 23, 2008 (dossier of evidence, volume XXVI, folios 9242-9243).

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241. Based on the evidentiary elements provided, the Tribunal considers that it is possible to determine that Mr. Colmenares was injured by pellets. However, sufficient evidentiary elements have not been provided to determine if it was a state agent who shot Mr. Colmenares or that, under such circumstances, state agents did not protect him, even when they had the possibility to do so. That situation prevented Messrs Colmenares and Pedro Nikken from continuing with their journalistic tasks under that circumstance.

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242. The Commission argues that on August 21, 2003 the reporter Noé Pernía was verbally attacked by a leader of the "Bolivarian Circles" while covering a union protest of a group of employees of the Mayor's Office of the Municipality of Libertador. The representatives added he had received threats against his life.

243. In a video presented by the representatives it can be observed that some journalists receive statements from a political leader within the framework of a protest of union members. The taping of the interview shows that the person interviewed and one of the people accompanying her threatened one of the journalists before leaving. [FN249]

[FN249] The video offered proof of an interview carried out by journalists of RCTV and other media within the framework of what seems to be a protest. The person interviewed (presumably Lina Ron), addressed one of the journalists (we do not know exactly which one since there are several microphones) and states his disapproval of the questions asked. One of the journalists asked her if she agreed with the pacific nature of the protest, to which the protester responded that they should not challenge her. The other screams heard cannot be made out while threats can. The women interviewed leaves, while one of the persons who accompanies her points at a journalist. Cf. video marked "Noé Pernía" (appendix 40 to the brief of pleadings, motions, and evidence).

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244. The attacks suffered by Mr. Noe Pernía were denounced by the proxies of RCTV before the 2° Public Prosecutors' Office on August 27, 2003. [FN250] According to the representatives, the Public Prosecutors' Office did not perform any action and requested the dismissal, which was ordered in January 2007. [FN251] The State did not provide any information regarding this fact. Since there is no evidence that the Public Prosecutors' Office carried out any diligence, this Court has verified a lack of diligence in the actions of that body.

[FN250] Cf. Complaint filed on August 27, 2003 before the Public Prosecutors' Office (dossier of evidence, volume IV, folios 1151-1153).
[FN251] Cf. final arguments of the representatives (dossier of merits, volume VIII, folio 2499).

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245. The Court considers that based on the evidence available in the case file it is possible to consider as proven the alleged verbal attacks of an individual against Mr. Noe Pernia.

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246. The Commission argued that on March 3, 2004 the cameraman, Carlos Colmenares, was injured with a firearm in the ankle while covering, with his journalistic team, protests of groups that oppose the government, in Caracas. [FN252] The representatives indicated that Mr. Colmenares was in complete rest for several months. The State argued that Mr. Colmenares' statements are contradictory.

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[FN252] The Commission argued in its application that "[o]n March 3, 2004 RCTV's cameraman, Carlos Colmenares, was injured with a firearm in his ankle while covering the protests held in Caracas by the political opposition against the Government of President Chávez. This was the second time Mr. Colmenares was shot. The facts were assigned to the 21 Public Prosecutors' Office with full jurisdiction at a national level, who ordered the case be filed, even though on a later date the reopening of the case was requested."

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247. The Court observes that Mr. Pedro Nikken, in his affidavit, coincided with the account of the facts presented by the Commission; he mentioned that two "people on a motorcycle" took them out of that location and transported them to an ambulance, because there were no police officers around who could be asked for protection; that the opposition's protest had been going on for several days and that is was "officers in green uniforms belonging to the Venezuelan Armed Forces" who fired shots at them. [FN253] On his part, Mr. Colmenares, in his statement before the Court, coincided with the Comission's version and stated that once the shot stopped a motorized unit of the emergency body belonging to the municipality took him out of that location on a motorcylce, taking him very far away from where the events were taking place and he was later helped by an ambulance found at that location. Mr. Colmenares did not identify who had shot him. [FN254]

[FN253] Cf. statement offered by Pedro Antonio Nikken García before a notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5593-5596).
[FN254] Cf. statement offered by Carlos Colmenares at the public hearing held before the Inter-American Court on August 7, 2008.

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248. On March 3, 2004 the order to start the investigation for the alleged commission of an illicit act in detriment of Mr. Colmenares was ordered. [FN255] Several actions regarding evidence were carried out, such as the victim's statement in March 2004 and technical opinions. The result of the legal medical exam practiced on Mr. Colmenares characertized his injuries as of a mid-seriousness. [FN256] In September 2005 the filing of the actions was ordered since having performed all technical diligences it was not possible to determine those allegedly responsible for the fact, "there were no grounds to request the prosecution of any specific person." [FN257] On March 12, 2007 the Thirty-Sixth First Instance Court of Caracas in Control Functions of the Criminal Judicial Circuit of the Metropolitan Area of Caracas, declared a petition to reopen the investigation inadmissible, considering that it would be irrelevant to order the Public Prosecutors' Office to continue with the investigation because the elements indicated were not enough for the individualization of the attacker, since it is not enough to determine the body of the crime and how it was committed without establishing their cause-effect relationship with the accused party. [FN258]

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[FN255] Cf. order to file of September 12, 2005 by the 21° National Section of the Public Prosecutors' Office with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9802-9803).
[FN256] Cf. order to file of September 12, 2005 by the 21° National Section of the Public Prosecutors' Office with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9802-9803).
[FN257] Official Letter N°FMP-21-NN-0891-2005 of September 14, 2005 addressed to the Comptroller General of the Republic (dossier of evidence, volume XXVII, folio 9804), and order to file of September 12, 2005 by the 21° National Section of the Public Prosecutors' Office with Full Jurisdiction (dossier of evidence, volume XXVII, folios 9802-9803).
[FN258] Cf. decision of the 36° First Instance Court in Control Duties of the Criminal Judicial Circuit of the Metropolitan Area of Caracas of March 12, 2007 (dossier of evidence, volume XXVII, folios 9843-9847).
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249. The Court considers, based on the evidentiary elements available, that Mr. Colmenares was injured with a bullet. However, sufficient evidentiary elements have not been presented to determine if it was a state agent who shot him or if state agents did not protect him, even when they had the possibility to do so. That situation prevented Messrs. Colmenares and Pedro Nikken from continuing with their journalistic tasks under that circumstance.

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250. The Commission stated that on March 3, 2004 a police officer on a motorcycle ran his front tire over one of Mrs. Anahís Cruz's feet, while she was covering a protest of the opposition in the city of Maracay, when a group of individuals "followers of the ruling party" started attacking the protestors of the opposition with stones and other blunt objects. The representatives stated that it was a police officer from Aragua who ran over her. [FN259]

[FN259] In its application, the Commission argued that on March 3, 2004 "Anahís Cruz was covering the opposition's protest in the city of Maracay when a group of individuals supporters of the ruling party started attacking the opposition's protestors with rocks and other blunt objects. Mrs. Anahís Cruz denounced that a police officer driving a motorcycle ran over her front with his front tire."
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251. The Court has verified that in the video provided as evidence by the Commission you can hear the voice of Mrs. Cruz, who is saying that she is reporting from the State of Aragua. In the images, taken at night, you can observe several people running and motorcycles driven by security officers moving close to where the camera is located. Immediately afterwards you can observe the reporter getting close to a group of "people on motorcycles" and stating that the officers were arresting a minor. Upon getting closer, she yells, "the person on the motorcycle is running over me", "he ran over me", and "I saw you, you ran over me", even though it cannot be specifically observed that the motorcycle ran over the reporter. The reporter also mentions that

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the security agents were preventing her reportorial work. [FN260] In other statements Mrs. Cruz referred to this matter in the same sense. [FN261]

[FN260] Video marked "Attacks on Anahís Cruz" (appendix 68 to the application).
[FN261] Cf. statement of Anahís Cruz (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folios 3130-3135) and statement offered by Anahís del Carmen Cruz Finol before notary public (affidavit) on June 27, 2008 (dossier of evidence, volume XVIII, folios 5671-5677).

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252. On March 12, 2004 the 4° Public Prosecutors' Office of the Judicial District of the State of Aragua ordered the start of the investigation and went on to practice an expert assessment consisting in a legal medical examination. [FN262] This fact was also denounced on March 18, 2004 before the 21° National Public Prosecutors' Office with Full Jurisdiction. [FN263] According to the sworn statement offered by Mrs. Alis Carolina Fariñas Sanguino, prosecutor at that time, the order to start the investigation was ordered on March 18, 2004 by virtue of the knowledge obtained by that Public Prosecutors' Office of the alleged fact. [FN264] However, the investigation also continued its process in the Criminal Judicial Circuit of the State of Aragua. In this sense, the State argued that the claimant did not present herself to offer her statement on the facts and submit herself to a forensic medical exam, even after her presence was required on several opportunities through citations. [FN265] Within the case, on March 23, 2006 the Public Prosecutors' Office requested the dismissal of the case based on lack of criminal definition of the action, [FN266] which was ordered by the Court on August 14, 2006. [FN267]

[FN262] Cf. official letter N° 05-F4-401-04 (dossier of evidence, volume XXVII, folios 9681-9682).
[FN263] Cf. complaint filed on March 18, 2004 before the 21° National Section of the Public Prosecutors' Office with Full Jurisdiction (dossier of evidence, volume IX, folios 3659-3667).
[FN264] Cf. statement offered by Alís Carolina Fariñas Sanguino before notary public (affidavit) on June 30, 2008 (dossier of evidence, volume XVIII, folio 5740).
[FN265] Cf. report n°DFGR-VFGR-DGAP-DPDF-08-PRO-66-10603-08 of October 23, 2008 (dossier of evidence, volume XXVI, folio 9238).
[FN266] Cf. request for discontinuance by the 4° Sections of the Public Prosecutors' Office of the Judicial District of the State of Aragua on March 22, 206, fuled on the next day (dossier of evidence, volume XXVII, folios 9693-9695).
[FN267] Cf. order for discontinuance from the 10° First Instance Court of the Criminal Judicial District in Control Duties of the State of Aragua of August 14, 2006 (dossier of evidence, volume XXVII, folio 9697).

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253. The Court considers, based on the evidentiary elements available, that it is not possible to deem the fact argued by the Commission as proven.

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254. The Commission stated in its application that on March 3, 2004 the journalist Isnardo Bravo was covering a protest of the opposition from the flat roof of a building, when motorized police officers of the Municipality of La California, Sucre, proceeded to disperse the protest and fired shots against the journalistic team. The representatives added that the shots were fired with long weapons by police officers from Sucre, whose Mayor belongs to "the supporters of the ruling party" and is the son of who was at that time the Vice-President of the Republic. The representatives argued that under those circumstances the State violated the right to humane treatment of Mr. Isnardo Bravo.

255. The statement of the journalist Isnardo Bravo, which coincided with the version of the facts offered by the Commission, was provided as evidence. [FN268]

[FN268] Cf. statement of Isnardo Bravo (dossier of evidence, volume VIII, appendix 31 to the brief of pleadings, motions, and evidence, folios 3127-3128).

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256. As stated by Mrs. Alis Carolina Fariña Sanguino, a prosecutor at that time, on March 18, 2004 an order to start the investigation was issued after the filing of the complaint from which the 21° Public National Prosecutors' Office with Full Jurisdiction obtained knowledge of the alleged commission of an illicit act fact against Mr. Bravo. [FN269] The State informed that it had ordered the realization of several diligences, among then summoning the alleged victim to testify, and that the case was in its preparative stage. [FN270] This Court does not have sufficient elements to verify if the State acted with due diligence in the development of that investigation (supra paras. 97 through 100).

[FN269] Cf. statement offered by Alís Carolina Fariñas Sanguino before notary public (affidavit) on June 30, 2008 (dossier of evidence, volume XVIII, folio 5740).
[FN270] Cf. report n°DFGR-VFGR-DGAP-DPDF-08-PRO-66-10603-08 of October 23, 2008 (dossier of evidence, volume XXVI, folio 9247).

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257. The Court considers that sufficient elements have not been provided in order to prove the fact argued by the Commission and the representatives, nor has it been presented other reliable elements that corroborate the statement of the alleged victim.

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258. The Commission argued that on "June 3, 2004 Mr. Noé Pernía was covering a press conference at the Metropolitan Mayor's Office in front of the Plaza Bolívar, when a group of people in favor of the government started walking toward the main entrance of the Mayor's Office and opened fire. That group started moving toward the headquarters of the RCTV station and they proceeded to make violent protests in front of its installations[; …] they tried to force open the security doors that give access to the station by setting fire to a a company truck, they

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fired shots against the facade and they wrote insults on the walls. Said assault was taped by the company's security cameras and verified by employees of the General Sectorial Office of Intelligence and Prevention Services (DISIP) who were parked on a motorcycle a short distance away from RCTV's main entrance. During the attack –which lasted almost an hour- shots were fired against the windows, facade, and even the personnel of RCTV who looked outside."

259. The representatives argued that the attacks suffered by Mr. Noé Pernía at the mayor's office constituted a violation of Article 5 of the Convention. With regard to the facts of the same day at the RCTV headquarters, they added that DSIP officials were parked on a motorcycle a short distance away from RCTV's main entrance, but they did nothing to detain the attackers; and that after an hour had gone by since the attacks started, the National Guard (whose headquarters are located in the surroundings of RCTV) turned up at the location to persuade the attackers to leave, which they did, but not without first threatening that they would be back later.

260. Regarding the alleged attacks suffered by Mr. Pernía, the latter stated that some individuals fired shots against the mayor's office, forcing the journalists who were at the press conference with the mayor to throw themselves on the ground, but he did not mention that anyone had been injured. [FN271]

[FN271] Cf. statement of Noé Pernía (dossier of Evidence, volume IV, folio 1154).

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261. With regard to the alleged attacks at the RCTV headquarters, the sworn statement of Mrs. Castellanos indicates that the "attack" was "mucho stronger than any of the previous ones," that "the level of violence against the station was much greater" and that they even heard shots that broke the windows of the facade. She also mentions that she herself had called members of the parliament "from the ruling party" asking them for help, but they ignored her request. [FN272] Mr. Eduardo Sapene, in his sworn statement, confirmed the Commission's version and indicated that the attack lasted approximately one hour and a half. [FN273]

[FN272] Cf. statement of Laura Castellanos (dossier of evidence, volume IV, folio 1157).
[FN273] Cf. statement offered by Eduardo Guillermo Sapene Granier before notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5585-5591).

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262. The Court points out that two judicial inspections of June 3 and 4, 2004 confirm the attacks against the headquarters of RCTV, the setting on fire of the vehicle at the main entrance, that blunt objects were thrown against the building's facade and that detonations were made and there were damages outside the station. [FN274] Likewise, the judicial inspection of June 3, 2004 verified that officers of the National Guard broke up the crowds of people who were attacking these installations at 14:16 hours. [FN275] The video presented by the Commission confirms the aforementioned statements. Additionally, you can hear that the reporter who is commenting on the images mentions that "it was evidently an isolated and coordinated group" who attacked the installations and that "thanks to the support of the National Guard, of the

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Metropolitan Police, and the firemen of Caracas the group of hostile people was kept in order and later moved away from the surroundings of the station." [FN276]

[FN274] Cf. judicial inspection of June 4, 2004 certifying the damages caused to the building of the station RCTV with the facts occurred on June 3, 2004 (dossier of evidence, volume IV, folios 1162-1163).
[FN275] Cf. judicial inspection of June 3, 2004 certifying the facts occurred in the surroundings of the RCTV station on June 3, 2004 (dossier of evidence, volume IV, folios 1159-1160).
[FN276] Cf. video titled "Attack on RCTV – June 3, 2004" (appendix 41 to the brief of pleadings, motions, and evidence).

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263. The Commission indicated that despite the fact that the appointed Public Prosecutor identified the person who led the attack, the investigation was not concluded. [FN277] The State informed that several diligences were performed, such as the realization of ballistic expert analysis on the "shells" (cases) seized at the site of the event; an audiovisual analysis and of technical coherence of a video; real appraisal of the facade of the company RCTV in order to determine the value of the damages it presents. [FN278] Similarly, seven witnesses were summoned and interviewed, the practice of a survey and a ballistic trajectory was requested to the Body of Scientific and Criminal Investigations; a report was requested from the Body of Metropolitan Firemen regarding its actions at the event that occurred at the headquarters of RCTV and a technical inspection was performed at the site of the event in order to spread upon the record the characteristics of that location, with the case being in its Preliminary Phase. [FN279] According to the State, the 32° Section of the Public Prosecutors' Office of the Metropolitan Area of Caracas ordered the Prosecutorial Filing of the investigation, even though on July 17, 2008 the Public Prosecutors' Office had agreed to reopen the mentioned case, reason for which the investigation would still be in the preparation phase. [FN280]

[FN277] Cf. application of the commission (dossier of merits, volume I, folio 192).
[FN278] Cf. final arguments of the state (dossier of evidence, volume VIII, folios 2694-2699).
[FN279] Cf. report n°DFGR-DVFGR-DGAP-DPDF-16-PRO-66-6584 of September 7, 2007 (dossier of evidence, volume X, appendix A.5 to the response to the application, folios 3471-3742).
[FN280] Cfr report n°DFGR-VFGR-DGAP-DPDF-08-PRO-66-10603-08 of October 23, 2008 (dossier of evidence, volume XXVI, folio 9248).

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264. The Tribunal considers that based on the elements available in the case file it is not possible to prove the alleged attacks on Mr. Pernía. Instead, it is possible to consider as proven the attack of individuals against the installations of RCTV and the hindrances other incidents could hav caused on the alleged victims' tasks.

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265. From the analysis of the alleged facts, the Court concludes that the alleged violation to the right to humane treatment of the alleged victims due to actions of its agents was not proven. On the other hand, in five of the facts proven it has been verified that people or groups of undetermined individuals caused damage to the physical integrity of and hindered the exercise of the journalistic tasks of Antonio José Monroy, Armando Amaya, Carlos Colmenares, and Isabel Cristina Mavarez Marin. Additionally, in 10 of the facts proven it has been verified that people or group of undetermined individuals hindered the exercise of the journalistic activities of David José Pérez Hansen, Erika Paz, Isnardo José Bravo, Javier García Flores, Luis Augusto Contreras Alvarado, Luisiana Ríos Paiva, Noé Pernía, Pedro Antonio Nikken García, Samuel Sotomayor, Wilmer Marcano, and Winston Francisco Gutiérrez Bastardo

B.ii Mental and moral integrity of the alleged victims

266. The representatives requested that the Court, based on the statements of the alleged victims and the expert opinion of the clinical psychologist Magdalena López de Ibáñez, declare that the State violated the right to humane treatment, "in its mental dimension", in detriment of the alleged victims, represented by them, as a consequences of the mentioned speeches of high officials, as well as of "the concretion and repetition during […] the years 2001 through 2004 of [a group of] acts of physical violence, threats to their lives and their physical integrity," which caused a situation of nervousness and stress to the entire RCTV team and, specifically, to the alleged victims.

267. The Commission did not present arguments in this sense.

268. The State mentioned that the alleged violations to mental integrity were not included in the application and that the alleged victims are seeking to create evidence in their favor, since the statements themselves of the alleged victims cannot be considered evidence of the alleged violation. At the same time, it stated that the expert opinion of Mrs. López de Ibáñez "was performed collectively, that is, it includes observations for 15 individuals, generalizing the conclusions and the aspects clinically observed;" and that it was a deficient expert opinion since "it is not observed that the presentation of results occurred in an individualized manner, thus allowing us to observe and specify the alleged disorders that each of the victims presented in a greater or smaller level."

269. The Court observes that the representatives based their argument, inter alia, on the statements of the alleged victims, several of which referred to infringements to their integrity based on different situations in which they were involved, several of which were not related to any specific event. Specifically, they stated that as a result of the attacks suffered in the exercise of their professions they developed "tension", "stress", "fear", "panic", "sadness", "psychological pressure", among other ailments. However, this Tribunal has repeatedly considered that the statements offered by the alleged victims and other people with a direct interest in the case cannot be assessed separately, even though they are useful in the sense that they can offer greater information on the violations and their consequences (supra para. 89).

270. Besides these statements, the only evidence offered in this sense is the mentioned expert opinion of Mrs. Magdalena López de Ibáñez, expert proposed by the representatives. This expert

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opinion consists of a psychological evaluation of 15 alleged victims, through the application of individual interviews, exams, and questionnaires to each of them. [FN281]

[FN281] Cf. expert opinion offered by Magdalena López de Ibañez before notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5641-5647).

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271. The Court considers that an expert opinion must be supported by sufficient information or verifiable facts, based on reliable methods and principles, and must be related to the facts of the case. In the assessment of this expert opinion, the Court finds, first of all, that it is not supported by enough information on the physical and mental state of the alleged victims. The evidence presented regarding the ailments suffered is not enough and does not specify if they received medical treatment. What is relevant is that the expert opinion did not, in many cases, refer specifically to the facts of the case that in fact affected the health of the alleged victims, and it even makes constant reference to fcts that do not correspond to this case. Even though it is useful to determine certain alterations in the health of the alleged victims, it is insufficient to establish a specific relationship between these alterations and the facts of the present case.

272. Despite the aforementioned, it is clear to the Tribunal that the alleged victims were the object of intimidations and hindrances, and in some cases of attacks, threats, and harassments, in the exercise of their journalistic activities in the proven facts (supra para. 265). Some of these people indicated in their statements that they had been affected in their professional and personal lives in different ways. Some stated the fear they had of performing their journalistic tasks on the street [FN282] and they mentioned that during the exercise of their profession it was necessary to use bulletproof vests and anti-gas masks. [FN283] They also informed that the station's internal medical service received a high number of people after April 2002 with stress, hypertension, and digestive problems. [FN284] In fact, some of the alleged victims stated they were afraid to go to certain areas or of covering certain events. [FN285] Likewise, some people had to move from to another municipality or state, [FN286] others preferred to retire temporarily or definitively, from their tasks, [FN287] and others stopped exercising journalistic activities on the street. [FN288] They also informed of the various negative consequences the attacks, insults, and threats they were object of had on their family life, as well as some specific medical consequences.

[FN282] Cf. statement offered by Carlos Colmenares at the public hearing held before the Inter-American Court on August 7, 2008; statement offered by Antonion José Monroy Clemente at the public hearing held before the Inter-American Court on August 7, 2008; statement offered by Pedro Nikken before notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5594); and statement offered before a notary public (affidavit) by Luisiana Rios Paiva on June 25, 2007 (dossier of evidence, volume XVIII, folios 5598-5602).

[FN283] Cf. statement offered by Carlos Colmenares at the public hearing held before the Inter-American Court on August 7, 2008; statement offered by Antonion José Monroy Clemente at the public hearing held before the Inter-American Court on August 7, 2008; statement offered by Pedro Nikken before notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5594). See also, statement offered by Eduardo Guillermo Sapene Granier before

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notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5588); and statement offered by Marcel Granier before notary public (affidavit) on June 29, 2008 (dossier of evidence, volume XVIII, folios 5650).
[FN284] Cf. statement offered by Eduardo Guillermo Sapene Granier before notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5588).
[FN285] Cf. statement offered before notary public (affidavit) by David Perez Hansen on June 25, 2008 (dossier of evidence, volume XVIII, folios 5658)
[FN286] Cf. statement offered by Anahís del Carmen Cruz Finol before notary public (affidavit) on June 27, 2008 (dossier of evidence, volume XVIII, folios 5671); statement offered by Erika Paz before notary public (affidavit on November 1, 2007 (dossier of evidence, volume XIV, folio 5222); statement offered before a notary public (affidavit) by Luisiana Rios Paiva on June 25, 2007 (dossier of evidence, volume XVIII, folios 5598-5602). See also, statement offered by Eduardo Sapene Granier before notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5585).
[FN287] Cf. statement offered by Pedro Nikken before notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5594); and statement offered by Armanda Amaya before notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5665). See also, statement offered by Eduardo Sapene Granier before notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5585); and statement offered by Marcel Granier before notary public (affidavit) on June 29, 2008 (dossier of evidence, volume XVIII, folios 5649).
[FN288] Cf. statement offered before a notary public (affidavit) by Luisiana Rios Paiva on June 25, 2007 (dossier of evidence, volume XVIII, folios 5598-5602); statement offered before a notary public (affidavit) by Isabel Cristina Mavarez Marín on June 25, 2007 (dossier of evidence, volume XVIII, folios 5660); statement offered by Erika Paz before notary public (affidavit) on November 1, 2007 (dossier of evidence, volume XIV, folio 5222); statement offered by Javier García Flores before notary public (affidavit) on November 1, 2007 (dossier of evidence, volume XIV, folio 5232); and statement offered by Armanda Amaya before notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5663). See also, statement offered by Eduardo Sapene Granier before notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5591); and statement offered by Marcel Granier before notary public (affidavit) on June 29, 2008 (dossier of evidence, volume XVIII, folios 5649).
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273. In attention to the consequences of the personal and professional life the alleged victims have stated they suffered as a result of the proven facts, and taking into account the contexts in which they occurred, the Court considers that sufficient evidence has been provided to conclude that the State is responsible for the violation of its obligation to guarantee the right to mental and moral integrity of Carlos Colmenares, Pedro Antonio Nikken García, Javier García Flores, Isnardo José Bravo, David José Pérez Hansen, Erika Paz, Luisiana Ríos Paiva, Armando Amaya, Isabel Cristina Mavarez Marin, and Antonio José Monroy.

B.iii International Convention on the Prevention, Punishment, and Eradication of Violence Against Women

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274. During the public hearing, the representatives argued that "in the present case there are several female journalists that were and are victims of the aggressions and attacks, as well as cases such as the injury caused to the face [of] Isabel Mavares[, t]he case of Laura Castellanos, who while being pregnant was attacked within the National Assembly by organized groups of supporters of the ruling party, suffering very serious consequences on her pregnancy, with a high risk of calcification of the uterus and loss of amniotic fluid." Likewise, they indicated that the State has violated the rights included in Articles 5, 13, 24, 8, and 25 of the American Convention "in connection" with Articles 1, 2, and 7(b) of the Convention of Belem do Pará, in relation to its general obligation to respect and guarantee the human rights of the female journalists identified. These positions were reiterated and complemented by the representatives in their final written arguments.

275. The representatives indicated that the female journalists attacked were Luisiana Ríos, Isabel Mavarez, Erika Paz, Anahís Cruz, and Laura Castellanos, who represent 25% of the people assaulted. They argued that the attacks by individuals and State agents against the alleged female victims are "a characteristic and aggravating circumstance [of] the facts described in the application," since the attacks were also committed tacking into consideration their gender, thus being determined as an attack especially directed against women, that was both reiterated and tolerated by the State.

276. As previously stated (supra para. 42), in the terms of the American Convention and the Rules of Procedure of the Court, during a case before this Tribunal the correct procedural moment for the alleged victims, their next of kin, or representatives to be able to fully exercise their right to appear and act in the proceedings, with the corresponding procedural legal standing, is the brief of pleadings and motions. Even though the representatives have the possibility to present their own pleadings and arguments in the proceedings before this Tribunal, in attention to the adversarial principle and the principles of defense and procedural loyalty, said ability does not free them of presenting them on the first procedural opportunity granted to them for these effects, that is in their brief of pleadings and motions. [FN289] Despite the fact that the representatives did not argue the violation of the mentioned Convention of Belem do Pará at the correct procedural moment; the Court will issue a ruling with regard to this argument.

[FN289] Cf. case of the Pueblo Bello Massacre v. Colombia, supra note 80, para. 225.

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277. In the case of the Castro Castro Prison v. Peru, the Court made reference to part of the scope of Article 5 of the American Convention with regard to the specific aspects of violence against women, considering as a reference of interpretation the relevant stipulations of the Convention of Belem do Pará and the Convention on the Elimination of all Forms of Discrimination against Women, since these instruments complement the international corpus juris when protecting the personal integrity of women, of which the American Convention is part. [FN290] In that case, the Court mentioned that besides the protection granted in Article 5 of the Convention, Article 7 of the Convention of Belem do Pará expressly indicates that the States shall ensure that the authorities and state agents refrain from engaging in any act or practice of violence against women. [FN291]

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[FN290] Cf. case of the Miguel Castro Castro Prison v. Peru, supra note 44, para. 276.
[FN291] Cf. case of the Miguel Castro Castro Prison v. Peru, supra note 44, para.
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278. The Court observes that the representatives have based their position mainly on a quantitative criterion arguing that the acts of aggression occurred "based on the gender" of the alleged victims. In this sense, the Court points out that in their final written arguments the representatives highlighted facts of August 13, 2002, which affected Mrs. Laura Castellanos; facts of December 17, 2001, January 20th and April 18, 2002, which affected Mrs. Luisiana Ríos, and the fact of April 9, 2002, which involved Mrs. Isabel Mavarez. Thus, the representatives argued that the Court must take into account that they were affected by the acts of violence differently and in a greater proportion than the alleged male victims.

279. This Tribunal considers that it is necessary to clarify that not all violations of human rights committed in detriment of a woman necessarily implies a violation of the stipulations of the Convention of Belem do Pará. Even though female journalists were attacked in the facts of this case, in all of the cases they were attacked along with their male colleagues. The representatives did not prove how the attacks were "especially direct[ed] against women," nor did they explain the reasons why women became a greater target of attack "based on their condition [of being women]." What has been established in this case is that the alleged victims faced risky situations and in several cases were physically and verbally attacked by individuals in the exercise of their journalistic activities and not because of any other personal condition (supra paras. 131, 143 through 149). Therefore, it has not been proven that the facts were based on the gender or sex of the alleged victims.

280. Likewise, the Court considers that the representatives did not specify the reasons and the manner in which the State incurred in a behavior "directed or planned" against the alleged female victims, nor did they explain the measure in which the proven facts where they were affected "were aggravated by their female condition." The representatives also failed to specify which facts and how they represent attacks that "affected women in an different [or] disproportional manner." Similarly, they have not based their arguments on the existence of acts that, under Articles 1 and 2 of the Convention of Belém do Pará, can be defined as "violence against women," or which would be "the appropriate measures" that, under Article 7(b) thereof, the State did not adopt in this case "to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women." In short, the Court considers that it is not correct to analyze the facts of the present case under the mentioned stipulations of the Convention of Belém do Pará.

C) Investigation of the facts

281. The Court will refer to an argument presented by the Commission and the representative in order to attribute responsibility to the State for the actions of third parties, related to the fact that it did not effectively investigate the facts nor did it determine, prosecute, and punish those responsible.

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282. The general obligation to guarantee the human rights acknowledged in the Convention, included in Article 1(1) can be fulfilled in different ways, based on the specific right the State must guarantee and the specific needs of protection. [FN292] Therefore, it must be determined if in this case, and in the context in which the alleged facts occurred, the general obligation to guarantee imposed upon the State the duty to effectively investigate those facts as a way of guaranteeing the right to freedom of expression and to humane treatment, and thus avoid that they continue to occur.

[FN292] 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 29, para. 97; and Case of García Prieto et al. v. El Salvador, supra note 53, para. 98.

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283. The investigation of the violation of a specific substantive right may be a way to shelter, protect, or guarantee that right. [FN293] The obligation to investigate "acquires special intensity and importance based on the gravity of the crimes committed and the nature of the rights infringed," [FN294] being able to even reach in some cases the nature of jus cogens. [FN295] In cases of extrajudicial killings, forced disappearances, torture, and other grave violations to human rights, the Tribunal has considered that carrying out an investigation ex officio, without delay and in a serious, fair, and effective manner is a fundamental element that contributes to the protection of certain rights affected by those situations, such as personal freedom, the right to humane treatment, and life. [FN296] It is considered that in those cases impunity will not be eradicated without the determination of the general responsibilities –of the State- and individuals –criminal and of any other nature of its agents or individuals-, which complement each other. [FN297] Due to the nature and gravity of the facts, even more so if there is a context of systematic violation to human rights, the States are compelled to carry out an investigation with the mentioned characteristics, pursuant with the requirements of the due process. Non-compliance generates, in those assumptions, the State's international responsibility. [FN298]

[FN293] Cf. case of the Pueblo Bello Massacre v. Colombia, supra note 80, para. 142; Case of Heliodoro Portugal v. Panama, supra note 27, para. 115; and Case of Zambrano Vélez et al. v. Ecuador, supra note 36, para. 110.

[FN294] Cf. case of La Cantuta v. Peru, supra note 84, para. 157. See also Case of Goiburú et al. v. Paraguay, supra note 53, para. 128.

[FN295] For example, in the case of La Cantuta v. Peru, it was determined that "the prohibition of the forced disappearance of people and the correlative duty to investigate it and punish those responsible have reached a status of jus cogens". Cf. case of La Cantuta v. Peru, supra note 53, para. 157.

[FN296] Cf. case of the Pueblo Bello massacre v. Colombia, supra note 80, para. 145; Case of Heliodoro Portugal v. Panama, supra note 27, para. 115; and Case of La Cantuta v. Peru, supra note 84, para. 110..

[FN297] Cf. Case of Goiburú et al. v. Paraguay, supra note 53, para. 88.

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[FN298] Cf. Case of Velásquez Rodríguez, supra note 38, paras. 166 and 176; Case of Godínez Cruz, supra note 107, para. 175; Case of Cantoral Huamaní and García Santa Cruz v. Peru, supra note 87, para. 102; Case of the Miguel Castro Castro Prison v. Peru, supra note 44, 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 31, para. 297.

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284. The obligation to investigate "not only results from the conventional rules of International Law obligatory for the States Parties, but it also derives from the domestic legislation that refers to the duty to investigate ex officio certain illegal behaviors." [FN299] Thus, it corresponds to the States Parties to establish, pursuant with the procedures and through the bodies established in its Constitution and its laws, [FN300] which illegal behaviors will be investigated ex officio and regulate the regimen of criminal actions within the domestic procedure, as well as the rules that allow the victims or affected parties to file a complaint or exercise a criminal action and, if this is the case, participate in the investigation and the process. In order to prove that a specific resources, such as a criminal investigation, is adequate it will be necessary to verify that it is suitable to protect the juridical situation that has been allegedly violated. [FN301]

[FN299] Case of García Prieto et al. v. El Salvador, supra note 53, para. 104.
[FN300] Cf. The Word "Laws" in Article 30 of the American Convention on Human Rights. Advisory Opinion OC-6/86, supra note 37, para. 32.
[FN301] Cf. Case of Velázquez Rodríguez v. Honduras. Merits, supra note 38, 64.

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285. With regard to the freedom of expression, the appropriateness of criminal proceedings as the adequate and effective resource to guarantee it will depend on the act of omission that violated said right. [FN302] If the freedom of expression of a person has been affected by an act that has also violated other rights, such as personal freedom, personal integrity, or life, the criminal investigation may be an adequate resource to protect that situation. Under other circumstances, it is possible that criminal proceedings are not the necessary means to guarantee the due protection of the freedom of expression. The use of criminal proceedings "shall correspond to the need to protect fundamental juridical rights from situations that imply grave damages to those rights, and it must be proportional to the magnitude of the damage caused." [FN303]

[FN302] The Court has considered that the violations to Article 13 of the Convention could occur under different hypothesis, depending on if they lead to the suppression of the freedom of expression or they only imply a restriction beyond what is legally allowed. 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 71, paras. 53 and 54; and Case of Ricardo Canese v. Paraguay, supra note 71, para. 77.
[FN303] Case of Kimel v. Argentina, supra note 71, para. 77.

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286. The State pointed out that there are other remedies within the Venezuelan legal system that do not imply criminal proceedings that could have been effective in guaranteeing the right to freedom of expression in this case. With regard to the official speeches broadcasted according to Article 192 of the Organic Law of Telecommunications, it mentioned that an appeal for annulment of that law should have been filed, pursuant with Article 112 of the Organic Law of the Supreme Court of Justice and Article 21 of the Organic Law of the Supreme Tribunal of Justice. Likewise, it held that the writ of amparo stipulated in the Organic Law of Amparo for Constitutional Rights and Guarantees constitutes a quick and effective remedy for the questioning of official letters from CONATEL referred to by the Commission and representatives as violating Articles 13(1) and 13(3) of the Convention (infra paras. 352 through 361).

287. A relevant aspect of the controversy the parties have made emphasis on is the complaints and investigations carried out in criminal proceedings. The Commission mentioned in its application the existence of 14 criminal investigations regarding the facts of the present case [FN304] and of four investigations regarding statements made by the President of the Republic. [FN305]

[FN304] Specifically: 1) and investigation based on the complaint filed on January 31, 2002 by Mr. Eduardo Sapene Granier, regarding two facts of alleged threats and violence against reporters who work for RCTV; additionally, the Commission stated that in "the same investigation process started based on that complaint another 16 incidents […] were denounced […];" 2) an investigation based on a complaint filed on May 6, 2002, for the violent protests carried out at RCTV headquarters on April 13, 2002; 3) another investigation regarding a complaint filed on March 12, 2002 for attacks suffered by Javier García, Isnardo Bravo, and David Pérez Hansen; 4) investigation regarding a complaint presented on April 4, 2002 for the facts occurred on April 3, 2002 in detriment of Isnardo Bravo, Wimer Marcano, and Winston Gutiérrez; 5) an investigation based on the complaint presented on May 7, 2002 for the violent facts against Isabel Mavarez; 6) an investigation based on the complaint presented on August 20, 2002 for the attacks suffered between August 13 and 15, 2002 by Laura Castellanos, David Pérez Hansen, and Argenis Uribe; 7) an investigation based on a complaint presented on November 21, 2002, for the infringements suffered by Mr. Armando Amaya; 8) an investigation regarding a complaint filed on August 26, 2003 for injuries suffered on August 19, 2003 by, among others, Carlos Colmenares and for attacks suffered by Noé Pernia on August 21, 2003; 9) an investigation regarding the facts occurred on March 3, 2004 against Carlos Colmenares; 10) an investigation regarding the facts occurred on March 3, 2004 against Isnardo Bravo; 11) an investigation regarding the facts occurred on March 3, 2004 against Anahís Cruz; 12) an investigation regarding the facts occurred on December 8, 2002 in detriment of Anahís Cruz and Herbigio Henríquez; 13) an investigation regarding the facts occurred on August 15, 2002 in detriment of Mr. Antonio Monroy; 14) an investigation regarding the facts occurred on June 3, 2004 against the headquarters of RCTV.

[FN305] Specifically: 1) an investigation with regard to the statements of the President of June 9, 2002, for which on June 19, 2002 the head office of common crimes of the Solicitor General of the Republic was asked to order "the opening of an investigation"; 2) Another with the complaint

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presented by RCTV's proxies on August 27, 2003; 3) a third related to a compliant filed on August 5, 2003; and 4) a fourth based on a complaint filed on August 15, 2003.

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288. The Court observes that the criminal accusations presented before the Public Prosecutors' Office with regard to facts object of the present case, argued as constituting violations to Articles 5 and 13 of the Convention, refer in the majority to alleged physical and verbal attacks against journalists and other employees, as well as damages to installations and properties of RCTV, many of which, as previously analyzed, constituted, in their totality, obstructions to the exercise of the right to seek, receive, and impart information of the alleged victims (supra paras. 264). Similarly, certain speeches of the President of the Republic were denounced before the Public Prosecutors' Office. [FN306]

[FN306] Cf. complaint presented on June 19, 2002 before the Head Office of Common Crimes for the speech of June 9, 2002 on the Program Aló Presidente No. 107 (dossier of Evidence, volume V, folios 1492-1495) and Complaint of August 27, 2003 (dossier of evidence, volume IV, folios 922-934).

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289. Of the 40 facts mentioned in the application, including the statements of public officials, official letters from CONATEL, and interruptions to the signal of the station RCTV (infra paras. 352 through 394), 30 complaints were filed before the Public Prosecutors' Office or their investigation was started ex officio by it. [FN307] None of the criminal accusations presented before the Public Prosecutors' Office refers to the forwarding of official letters by CONATEL to RCTV or the interruptions of the signal of that station. [FN308]

[FN307] Regarding three of the facts – specifically, of April 19, 2002, December 4, 2002, and January 27, 2002 – even though the representatives indicated they presented a complaint they have not provided a copy of the same.

[FN308] Except the fact of April 13, 2002, which was denounced even though regarding everything that happened on that day.

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290. Before a request for evidence to facilitate adjudication of the case (supra para. 18), the State indicated "in what refers to the cases that are still in their Preparation Phase, [the Public Prosecutors' Office] does not reveal the investigation records to third parties until said stage has ended, thus only the parties have access to them." Similarly, the State has informed with regard to some actions, but it has not provided copy of them, and there are other facts it has not even referred to or provided any evidence. The Tribunal may consider as established only those facts that are verifiable through the evidence the State has refused to forward (supra paras. 97 through 100).

291. Given the characteristics of these facts, taking into account that one of the relevant matters of the controversy on which the parties have made emphasis is that the complaints and

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investigations carried out within criminal proceedings, it is necessary to specify under which circumstances the State could be demanded, pursuant with its domestic legislation, to carry out an investigation ex officio in an effective and diligent manner in order to guarantee the affected rights.

C.i The criminal action in Venezuelan legislation and the lack of investigation of some of the facts denounced

292. The State indicated that the Commission left out of the controversy that the claimants themselves acknowledged that many of the facts stated were alleged insults that pursuant with Venezuelan legislation, are crimes punishable only in a private suit. This implies that the alleged victims had the duty to file the corresponding accusations. It also mentioned that the Public Prosecutors' Office has done everything possible in order to clarify the facts that constitute crimes of a public action, even those of which is was informed by the victims or their representatives.

293. The Commission argued that every time a crime that can be prosecuted ex officio is committed, the State has the obligation to promote and impulse the criminal proceedings up to their final consequences and that, in those cases, it constitutes the best way to clarify the facts, prosecute those responsible, and establish the corresponding criminal punishments, besides offering other forms of reparation.

294. The representatives held that the complaints were filed before the Public Prosecutors' Office, who as the "only directing body of the investigation and holder of the public criminal action in Venezuela and director of the investigation, […] is the body competent to order the start of the corresponding criminal investigation." They argued that the majority of the cases deal with criminal acts of public knowledge that were broadcasted by different members of the media while they were happening; therefore they are notorious facts that should have been investigated ex officio by the Public Prosecutors' Office, even when they were not denounced by the alleged victims, by virtue, of the principle of officialdom that governs the exercise of criminal action by the Public Prosecutors' Office. Likewise, they stated that "the different criminal figures object of the complaints in question constitute crimes of a public action, not only according to the Criminal Code, with the exception of the crimes of threats, libel and slander, but also because they are all crimes against human rights, and therefore there investigation and punishment corresponds to the States according to the Constitution."

295. Article 285 of the Political Constitution of the Bolivarian Republic of Venezuela establishes, within the so-called "Peoples' Power" (one of the powers of the State), the attributions of the Public Prosecutors' Office, among which are ordering and directing criminal investigations, as well as "[e]xercise on behalf of the State the criminal action in those cases in which its initiation or continuation does not require any private action by the offended party, except in the exceptions established by law." [FN309] The Organic Code of Criminal Procedures of Venezuela (hereinafter "COPP") states that the State is the executor of criminal actions through the Public Prosecutors' Office, "which is compelled to exercise it, except for in regard to the legal exceptions." [FN310] In Venezuela there are three categories of crimes: pursuable ex

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officio [FN311], prosecutable prior request of the victim, [FN312] and prosecutable only in a private suit. [FN313]

[FN309] Constitution of the Bolivarian Republic of Venezuela, reprinted due to a material error in the Official Gazette No. 5453, extraordinary, of March 24, 2000.

[FN310] Organic Code of Criminal Procedures, approved on January 20, 1998, published in the Official Gazette No. 5208, extraordinary, of January 23, 1998, with the partial reform approved on August 25, 1000, and published in Official Gazette No. 37.022 of that same date, and the partial reform approved on November 12, 2001, and published in Official Gazette No. 5.558, extraordinary, of November 14, 2001, Article 11 (dossier of evidence, volume XXVI, folio 9309).

[FN311] Thus, Venezuelan legislation establishes as a general rule the criminal prosecution ex officio of the punishable acts classified as crimes of public action. The Venezuelan code of criminal procedures states that the ordinary proceedings for crimes of public action may be started ex officio by the Public Prosecutors' Office, by complaint of any person, or by the criminal accusation of the victim. In this sense, Article 283 of the COPP states that "[t]he Public Prosecutors' Office, when it becomes aware through any means of the perpetration of a punishable act of public action, will order the diligences tending to investigate and verify its commission, with all the circumstances that may influence in classification and the responsibility of the authors and other participants, and the guarantee of the active and passive objects related to the perpetration." If the complaint has been presented or the criminal accusation has been received, "the prosecutor from the Public Prosecutors' Office will order, without delay, the start of the investigation and will order that all diligences necessary to verify the circumstances stated in Article 283 be carried out. With this order the Public Prosecutors' Office will start the investigation ex officio." Cf. Organic Code of Criminal Procedures, Articles 24, 283, 285, 292, and 300 (dossier of evidence, volume XXVI, folios 9303 and 9318.

[FN312] This second category of crimes will be processed according to the general rules regarding crimes of public action, even though the party may abandon the action at any state of the process, which will extinguish the corresponding criminal action. Cf. Organic Code of Criminal Procedures, Article 26 (dossier of evidence, vlume XXVI, folio 26).

[FN313] The Criminal Code of Venezuela specifies which crimes are of private action or may be prosecuted only upon request of the party, whose proceedings will be governed by the special proceedings established in the Organic Code of Criminal Procedures, Thus, certain illicit acts that were classified by the State as crimes of a private action, for example the threats, libel and slander, may not be prosecuted if not through an accusation presented by the injured party or their legal representatives. In these cases, the victim's accusation, through a criminal prosecution, before the competent court is necessary for the trial to be carried out. However, the domestic court could order judicial help from the Public Prosecutors' Office to carry out a preliminary investigation or if the accusing party requests in its criminal accusation the diligences tending to identify the accused party, determine his domicile or place of residence or to prove the punishable act. Cf. Criminal Code, published in the Official Gazette Nº 5.494, extraordinary, of October 20, 2000, reformed by the Law of Partial Reform of the Criminal Code of March 3, 2005, published in the Official Gazette No. 5.768, extraordinary of April 13, 2005, Articles 175 in fine and 449 and Organic Code of Criminal Procedures, supra note 310, Articles 25, 400, and 402.

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296. The activity that the State could or was compelled to carry out ex officio, with regard to the behaviors denounced within the domestic realm, is governed by the principle of officialdom regarding the crimes of public action. [FN314] Therefore, once the state authorities have been made aware of the facts that constitute crimes of a public action –as could be certain physical attacks- they should be investigated diligently and effectively by the State and the procedural impulse corresponds to the Public Prosecutors' Office. Other facts argued as violations to the Convention and denounced before the Public Prosecutors' Office are within Venezuelan legislation crimes that may only be prosecuted in a private suit.

[FN314] Organic Code of Criminal Procedures, supra note 310, Articles 24, 25, and 26 (dossier of evidence, volume XXVI, folio 9303 and 9304).

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297. Article 301 of the COPP (2001) regulates the dismissal of the complaints or legal actions by the Public Prosecutors' Office whenever, inter alia, said body has been informed of crimes that must be prosecuted in a private suit. [FN315] Regarding the suppositions in which the facts denounced, which the State argued were crimes requiring a private suit, the Public Prosecutors' Office was in the obligation to request the dismissal of the complaint to the control judge, pursuant with the aforementioned stipulation of the COPP. Thus, the omission of state authorities to issue a timely decision that clarified that the proceedings tried were not correct, either because the means used to inform the authority was not the one established in the domestic legal system or because the body before which the complaint or accusation was presented was not the competent one, would not allow or contribute to the determination of some facts and, in its case, of the corresponding criminal responsibilities. [FN316] The State cannot justify its inactivity to carry out an investigation based on the grounds that the facts were not presented to the competent body through the proceedings stipulated in the domestic legislation, since the Public Prosecutors' Office should at least requested the dismissal of the complaint if "after having started the investigation it determined that the facts object of the process were a crime that can only be prosecuted in a private suit."

[FN315] Thus, the mentioned rule states that "[t]he Public Prosecutors' Office, within the fifteen days following the receipt of the complaint or criminal accusation, will ask the control judge, through a well-founded brief, its dismissal, when the fact does not enjoy a criminal nature or whose action has evidently expired, or there is a legal obstacle for the development of the proceedings. Procedures will be carried out pursuant with the stipulation of this Article if after the investigation has been started it were determined that the facts object of the proceedings constitute a crime that may only be prosecuted upon request of the injured party."
[FN316] Cf., mutatis mutandi, Case of Yvon Neptune v. Haiti, supra note 49, paras. 79 through 81.

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298. Regarding the arguments of the representatives (supra para. 294) the Court considers that the occurrence of a fact in a public location or its transmission by the media does not automatically grant it the nature of "public and notorious" for the effect of the handing down of justice. The body in charge of the criminal prosecution of a State does not necessarily have to act ex officio in those circumstances. It does not correspond to this Tribunal to verify if each of the facts argued by the representatives was broadcasted on the television or assess the criminal relevance or the possible meaning of each fact in order to determine the obligations of the Public Prosecutors' Office to start ex officio the corresponding investigations.

299. There is an additional controversy between the parties regarding the way in which the Public Prosecutors' Office should have proceeded with regard to the complaints covering several facts that would constitute both crimes of a public actions as will as illegal acts to be prosecuted in a private case or upon request of the party.

300. The representatives held that "all the complaints presented before the Public Prosecutors' Office, included both facts with a criminal relevance (of public and private actions) along with the unit or criminal resolution, [in such a way] that by virtue of the connection between both criminal species made evident since the complaint itself and with the objective of achieving the unity of the proceedings, the Public Prosecutors' Office is compelled to investigate their commission." The State, as stated, indicated that the investigations of crimes of private action must be started by an accusation of the injured party, even though it also stated that, "the Public Prosecutors' Office has collaborated with the victims in the investigation of the situations denounced."

301. Venezuelan domestic legislation states that in the event of related crimes, if one of them is a crime of public action and the other of private action, the trying of the case will correspond to the judge competent for the prosecution of the crime of public action and the rules of ordinary proceedings will be followed. [FN317] The authority may try the crime not prosecutable ex officio once the interested party has brought it before him. In these circumstances, the State would be compelled to order all the evidentiary measures necessary and investigate in a diligent manner.

[FN317] The Organic Code of Criminal Procedures states in its Article 75 that: "If any of the related crimes corresponds to the jurisdiction of the ordinary judge and others to that of special cases, the case shall be heard by the ordinary criminal jurisdiction. When a same person is accused of committing crimes of public action and of action upon request of the injured party, the case shall be heard by the judge competent to try the crime of public action and the rules for ordinary proceedings will be followed." Organic Code of Criminal Procedures, supra note 310, Article 75.

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302. It can be concluded from the evidence present in this case that starting with the first complaint filed on January 31, 2002, successive complaints covering a large number of facts of different entity occurred between 2001 and 2004 were accumulated. Additionally, in the different facts denounced nobody has been identified as a suspect of having committed the crime and they

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occurred in different areas and on different days. However, the Court observes that all the complaints have in common that they refer to facts that presumably affected journalists and employees of the social communication firm RCTV. In fact, from the evidence it looks like the majority of the cases regarding social communication media firms, and not only RCTV, were eventually assigned to a same Prosecutors' Office, which decided, given the "complexity of the case and […] the multiple complaints filed, […] to organize the totality of the records that conform it, taking into consideration the incidents and the individuals affected." [FN318]

[FN318] Cf. inter alia, request for discontinuance and dismissal by the 50° National Public Prosecutors' Office with Full Jurisdiction of January 18, 2006 (dossier of evidence, volume XXVII, folios 9451).

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303. It does not correspond to this Tribunal to substitute domestic jurisdiction to determine if the facts denounced as illegal acts were connected or not under the rules of the COPP and if the accumulation of the facts denounced was in order. However, the Court observes that the judicial authorities did not go on record with regard to the applicability of the rules of connection no did it issue, except in some cases, decisions that would have clarified if the proceedings tried were adequate.

304. Regarding the facts of December 4, 2002, January 27, 2003, and August 14, 2003 (supra paras. 224, 232 and 236), there is no evidence that actions were taken despite being denounced before the Public Prosecutors' Office little after they occurred. In reference to the fact of August 21, 2003, the representatives stated that the Public Prosecutors' Office had not carry out any action and requested the dismissal, which was ordered by the 27° First Instance Court of Control Duties on January 31, 2007 (supra para. 244). The State did not provide any information regarding these facts. In reference to the facts that were effectively brought before the Public Prosecutors' Office, the Court considers that it corresponded to this body, as the one in charge of criminal prosecution, to issue a decision ordering the start of the corresponding investigation in a timely manner or request the dismissal of the complaint, whichever corresponds. This did not occur in the present case with regard to these facts.

C.ii Criminal investigations

305. From the documentation provided by the parties it can be concluded that for when this Judgment is issued, the results of the investigations on the 17 facts are the following: several were discontinued (supra paras. 158, 163, 175, 180, and 252), four rejected (supra paras. 187, 195, 203, 211, and 215), two files (supra paras. 220 and 248), and there are several requests for discontinuance by the prosecutor of the case that are pending a judicial decision (supra paras. 167, 171, 191, and 199). In only one of the cases denounced was the alleged responsible individualized and a prosecutor's accusation was presented (supra para. 207). On the other hand, from the claims of which copy of their investigations was not presented, it can be seen that three investigations are still in the preliminary phase (supra para. 240, 256, and 263), in another the discontinuance was requested (supra para. 228), and in another the procedural situation has not been determined (supra para. 183).

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306. The Court was informed of other investigations related to facts not included in the factual framework of the application. [FN319] Therefore, this Tribunal will not analyze them.

[FN319] Thus, in response to a request of evidence to facilitate adjudication of the case (supra para. #), the State informed regarding the investigations carried out with regard to the facts of September 2002 against Luisiana Ríos, September 19, 2002 against Anahis Cruz, and June 15, 2008 against Javier David García Flores (see report n˚DFGR-VFGR-DGAP-DPDF-08-PRO-66-10603-08 of October 23, 2008 and documents presented as evidence to facilitate adjudication of the case.)

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307. The Tribunal will proceed to analyze the diligences and pre-trial investigative procedures carried out regarding the facts denounced and investigated.

C.ii.1 Changes in the assignment of the prosecutors' office in charge of the criminal prosecution

308. As indicated, as of the first complaint filed on January 31, 2002 by the alleged victims before the Office of Common Crimes, [FN320] successive complaints covering a large number of a different nature occurred between 2001 and 2004 were accumulated.

[FN320] Cf. complaint filed before the Superior Public Prosecutors' Office of the Judicial District of the Metropolitan Area of Caracas on January 31, 2002 (dossier of evidence, volume V, folios 1475-1480).

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309. Regarding the initial complaint, on February 18, 2002 the 2º and 74º Sections of the Public Prosecutors' Office of the Judicial District of the Metropolitan Area of Caracas, who had been jointy assigned the hearing of that complaint, ordered that the investigation be started. [FN321] Said case was then transferred to the 68° Section of the Public Prosecutors' Office of the Judicial District of the Metropolitan Area of Caracas.

[FN321] Cf. report n° DFGR-20.402 of March 15, 2005 (dossier of Evidence, volume X, appendix A.6.10 to the response to the application, folio 3801); and request for discontinuance and dismissal by the 50° National Public Prosecutors' Office with Full Jurisdiction of January 18, 2006 (dossier of evidence, volume XXVII, folios 9450-9468).

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310. The State indicated that in March 2005 the cases were lodged to the 50° Section of the National Public Prosecutors' Office with Full Jurisdiction at a National Level, [FN322] which ordered "the organization of the totality of the actions received." In June 2008, the hearing of

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said case had been transferred to the 32° Prosecutors' Office of the Metropolitan Area of Caracas.

[FN322] Cf. report n° DFGR-20.402 of March 15, 2005 (dossier of Evidence, volume X, appendix A.6.10 to the response to the application, folio 3801).

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311. Therefore, this case was successively assigned to different prosecutors' offices. The number and frequency in the changes to the body in charge of the investigation is not favorable for its development and effectiveness. It has not been established that these changes obey to extraordinary motives that justify tem, and they have not been argued in this case.

C.ii.2 Procedural inactivity of the Public Prosecutors' Office in some cases

312. The representatives held that the actions of the Public Prosecutors' Office were negligent throughout the course of the criminal proceedings; that the alleged victims did not only request investigative diligences but they also provided all available evidence; and in most of the cases the Public Prosecutors' Office did not carry out the investigation or it abandoned it after performing the first diligences. They also argued that in order to consider that the State has complied with its obligation to investigate in those cases where a person has not been convicted, the first has the burden of proof in demonstrating that it has carried out an immediate, thorough, and fair investigation.

313. The State held that every complaint had been processed, evidence had been collected, the state investigation apparatus has been put in motion, and there had been the always responsible activity of the Public Prosecutors' Office and the other State agents; therefore it is false that it has not acted with due diligence.

314. With regard to the duration of the preliminary or investigation phase, Article 313 of the COPP states that "the Public Prosecutors' Office will try to conclude the preliminary phase with the diligence required by the case. Six months after the individualization of the accused party, the latter may require that the control judge set a prudential term, of no less than thirty days or more than one hundred and twenty days, for the conclusion of the investigation." [FN323]

[FN323] Organic Code of Criminal Procedures, supra note 310.

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315. The expert Arteaga stated that "Venezuelan criminal proceedings do not have an expressly defined term of duration," and he specified that, "in [his] opinion, it should be a maximum of around six months, depending on the complexity of the case." [FN324] Similarly, the expert Berrizbeitia stated that, "there is no legally pre-established time period in which the investigations must be concluded, but there is the requirement of the legislator to proceed with the diligence and speed the case requires, avoiding undue delays. The Organic Law of the Public Prosecutors' Office imposes upon the prosecutors the duty to exercise their authorities without

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any more formalities than those established in the Constitution and the laws of the Republic, guaranteeing the prevalence of justice through means that imply simplification, effectiveness and speed." [FN325]

[FN324] Cf. expert opinion offered by Alberto Arteaga Sánchez before notary public (affidavit) on April 8, 2008 (dossier of evidence, volume XVI, folios 5510e-5510f).
[FN325] Cf. expert opinion offered by Pedro Berrizbeitia Maldonado before notary public (affidavit) on July 15, 2008 (dossier of evidence, volume XVIII, folios 5709).

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316. This Tribunal points out that Venezuelan legislation on criminal procedures does not establish a specific term for the investigation prior to the individualization of the accused party, but instead it requires that it be carried out "with the diligence the case requires" (supra para. 314). Therefore, the moment at which the Public Prosecutors' Office became aware of the fact, ex officio or through a complaint, is relevant in evaluating if the investigations were carried out diligently.

317. The plurality of the facts denounced jointly could have contributed to making the investigation complex in global terms, even though the investigation of each individual fact did not necessarily imply a greater complexity. Additionally, the majority of the facts occurred in circumstances where it was difficult to identify the alleged perpetrators. With regard to the behavior shown by the interested parties, the facts were denounced diligently, little after they occurred.

318. The Court observes that the investigation of the facts of May 2nd and 28, 2002 was ordered by the Public Prosecutors' Office two years after the complaint was filed and the State took more than six years to perform the first investigative actions, without justifying the delay in the recollection of evidence tending to prove the existence of the fact and the identification of the perpetrators and participants (supra paras. 187 and 195). Regarding some facts in which an investigation was started, procedural inactivity for periods of between two and a half and six years that was not justified by the State was proven (supra paras. 158, 168, 171, 183, 191, 199, 203, 211, and 216). This Tribunal considers that the investigations corresponding to these facts, have not been carried out in a diligent and effective manner.

C.ii.3 Lack of diligence in the performance of a legal medical evaluation

319. This Court has stated that, "the authority in charge of the investigation shall make sure that the required diligences are carried out and, if this does not occur, it shall adopt the appropriate measures pursuant with the domestic legislation." [FN326]

[FN326] Case of García Prieto et al. v. El Salvador, supra note 53, para. 112.

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320. Regarding the fact of August 19, 2003 the legal medical evaluation required to determine the existence of injuries and their seriousness was not performed.

321. In cases of physical attacks the moment at which the medical evaluation is performed is crucial in conclusively determining the existence of the injury and the damage. [FN327] The lack of an evaluation or its delayed execution make it difficult or impossible to determine the seriousness of the facts, especially, in order to legally classify the behavior under the corresponding criminal definition, even more so when there is no additional evidence. The Court considers that the State has the obligation to proceed with the examination and classification of the injuries when the complaint is filed and the injured party is presented, unless the time that has gone by between this and the moment in which the event occurred makes their characterization impossible.

[FN327] Cf. mutatis mutandi, Case of Bayarri v. Argentina, supra note 38, para. 93, and 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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322. In those cases in which the legal medical evaluation was not performed, the complaint was filed a few days later and despite this the diligence was not ordered. The State did not provide enough evidence to prove that the Public Prosecutors' Office had performed the appropriate diligences, which allows us to conclude that thre was a lack of diligence of the body in charge of the criminal prosecution in what refers to its duty to carry out a diligent and effective investigation.

C.ii.4 Decisions of discontinuance and prosecutorial filing in relation to the lack of appeal or the request to reopen by the claimants

323. The State argued that the Venezuelan criminal prosecution system enables the Public Prosecutors' Office to order the filing of the actions when the result of the latter is insufficient to present an accusation and to request discontinuance. In this case, these actions of the Public Prosecutors' Office have been well founded and justified. The alleged victims did not exercise the remedies established in the Venezuelan legal system to question acts of dismissal, filing, and discontinuances, as corresponds, by the Public Prosecutors' Office or the competent jurisdictional body.

324. The representatives argued that the State sought to justify its inertia with the lack of exercise of the relevant remedies and actions by the alleged victims, which is a right and not an obligation of the latter. Their inactivity does not justify the State's inactivity.

325. As stated (supra para. 305), in the investigations of several of the facts discontinuance was ordered based on the expiration of the criminal action or lack of criminal definition of the facts. In another investigation, the Public Prosecutors' Office ordered the prosecutorial filing, without there being evidence that the alleged victims exercised the corresponding rights to request the reopening of the investigation. However, with regard to the investigation of March 3,

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2004, ordering the filing of the actions in September, 2005, the representatives requested the reopening of the investigation on July 26, 2006 and March 9, 2007, but on March 12, 2007 the 36° First Instance Court of Control Duties of the Judicial Circuit of the Metropolitan Area of Caracas declared the petition inadmissible (supra para. 248).

326. Article 120, subparagraph 8, of the COPP states that the person considered a victim may challenge the discontinuance in the criminal proceedings, even when they are not the plaintiff in the case. According to Article 325 of the same code, the victim may present motions of appeal and appeals for annulments against the ruling that declares the discontinuance, even when there is no plaintiff. On the other hand, Articles 315 to 317 of the COPP regulate the procedural precept of prosecutorial filing, "when the result of the investigation is insufficient to present an accusation," and the right of any victim who has participated in the proceedings to request the reopening of the investigation indicating the appropriate diligences and address the control judge requesting that it examine the grounds for the measure.

327. This Court considers that the power to exercise remedies against decisions of the Public Prosecutors' Office or judicial authorities is the victim's right, which represents a positive progress in Venezuelan legislation, [FN328] but that power does not free the State of its obligation to carry out a diligent and effective investigation in those cases in which it must do so. The lack of appeal of a jurisdictional determination or the lack of a request to reopen does not invalidate the fact that the State has failed to comply with some of its duties regarding the development of diligent investigation measures.

[FN328] Article 328 of the COPP (2000) stated that the Public Prosecutors' Office and the victim could file an appeal against the order of discontinuance, however, Article 117, subparagraph 8 of the COPP (2000) conditioned the power to appeal the discontinuance to when the public prosecutor had made the appeal.

C.iii Inactivity of the Ombudsman

328. The representatives argued that "the Ombudsman […] has presented a negligent attitude regarding the attacks committed against journalists, employees, and directors of RCTV, as well as against the installations and equipment of this media firm [… since up to] this date this body has not set forth even one action or investigation related to all the attacks narrated." They also stated that "it was just recently in the year 2007 and [2008] that representatives of that body have come to the headquarters of RCTV 'to discuss the precautionary and/or provisional measures ordered by the Commission and the Inter-American Court, in favor of the employees and journalists of RCTV'." Due to the aforementioned, the concluded that "it is evident that the Ombudsman has failed to comply with its obligation to promote and defend the human rights of Venezuelan citizens by leaving the employees of RCTV unprotected and promoting the impunity of the attacks that have been occurring against them since the year 2001."

329. The Inter-American Commission did not refer in its application to any proceedings initiated before the Venezuelan ombudsman. Additionally, from the briefs and evidence provided

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by the parties it cannot be concluded that the alleged victims turned to that state body to denounce the alleged facts, nor was evidence of any proceedings in this sense provided. Therefore, the Court will not issue a ruling regarding that argued by the representatives.

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330. Upon evaluating if the investigations were a means to guarantee the right to freedom of expression and to humane treatment, as well as to prevent violations to those rights, the Court takes into consideration that the plurality of facts denounced jointly could have contributed to making the investigation complex in global terms, even though the investigation of each individual fact did not necessarily imply any greater complexity.

331. The Court observes that in the majority of the investigations started there is an unjustified procedural inactivity; and that in some investigations not all the diligences necessary to verify the existence of the facts were carried out (supra paras. 318 and 322). Therefore, this Tribunal considers that in these cases the totality of the investigations did not constitute an effective means to guarantee the rights of the alleged victims to humane treatment and to seek, receive, and impart information.

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332. From the analysis of the facts argued and the evidence offered, it was established that the mentioned pronouncements by high public officials placed the alleged victims employed by this specific communication firm and not only its owners, directors, or who determine their editorial line, in a position of greater relative vulnerability regarding the State and specific sectors of society (supra paras. 131 and 143 through 149). Specifically, the reiteration of the content of those pronouncements and speeches during that period could have contributed to emphasize an environment of hostility, intolerance, or rejection by a part of the sectors of the population toward the alleged victims.

333. Thus, the totality of proven facts that affected the alleged victims occurred when they were trying to carry out their journalistic activities. In the majority of the facts proven (supra para. 265), on several opportunities and in specific situations or events, which could have had a public interest or the nature or relevance of a news story that could have eventually been broadcasted, the alleged victims saw their possibilities to seek and receive information limited, restricted, or annulled, since journalistic teams were attacked, intimidated, or threatened by actions carried out by individuals. Likewise, the intimidating or frightening effect those facts, as well as others addressed against the station RCTV, such as the attacks against its headquarters (supra para. 130), could have generated on the people that were present and were employed at that time by said communication firm was clear for the Court.

334. Thus, the Court considers that the totality of the proven facts were forms of obstruction, hindrance, and intimidation to the exercise of the journalistic tasks of the alleged victims, expressed through attacks or situations that put their personal integrity at risk, which in the context of the mentioned pronouncements made by high public officials and of the omission of state authorities in their duty to offer due diligence in the investigations, constituted failures to

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comply with the state's obligations to prevent and investigate the facts. Therefore, the State is responsible for the non-compliance of its obligation enshrined in Article 1(1) of the Convention to guarantee the freedom to seek, receive, and impart information and the right to humane treatment, acknowledged in Articles 13(1) and 5(1) of the American Convention in detriment of Antonio José Monroy, Armando Amaya, Carlos Colmenares, David José Pérez Hansen, Erika Paz, Isabel Cristina Mavarez, Isnardo José Bravo, Javier García Flores, Luisiana Ríos Paiva, and Pedro Antonio Nikken García. Additionally, the State is responsible for the failure to comply with its obligation contained in Article 1(1) of the Convention of guaranteeing the freedom to seek, receive, and spread information acknowledged in Article 13(1) of the American Convention, in detriment of Anahís del Carmen Cruz Finol, Argenis Uribe, Herbigio Antonio Henríquez Guevara, Laura Cecilia Castellanos Amarista, Luis Augusto Contreras Alvarado, Noé Pernía, Samuel Sotomayor, Wilmer Marcano, and Winston Francisco Gutiérrez Bastardo.

IX. ARTICLES 13(1) AND 13(3) (FREEDOM OF THOUGHT AND EXPRESSION) [FN329] AND 24 (RIGHT TO EQUAL PROTECTION) [FN330] IN RELATION TO ARTICLE 1(1) OF THE CONVENTION

[FN329 Article 13. Freedom of Thought and Expression

1. 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.

[…]

3. 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.

[FN330] Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

A) Pronouncement of public officials regarding the concession under which the RCTV station was operating

335. The Commission considered that the aforementioned pronouncements (supra paras. 126 and 127), specifically those that referred to the informative line of the private communication firms in Venezuela, to the use of the state-owned radio-electrical space by RCTV and the intervention channels the State could use could "have the effect of influencing the content, informative lines, and, in general, the ideas and thoughts broadcasted by the communication firm." It held that a strong criticism to the informative line of the communication firm followed by possible consequences for maintaining it, coming from an authority with decisive power over these, on which its actual operative possibilities depend, constitute forms of indirect restriction on the freedom of expression. It asked the Court to declare the State responsible for the violation of Article 13(1) and 13(3) of the Convention, in relation to Article 1(1) of that instrument.

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336. The representatives coincided with the above and stated that as of the year 2002 "private television stations –specifically RCTV- have been threatened with being closed or with the annulment of the concessions, as […] punishment [against] their independent editorial line and criticism of the government," which was made real in this case with the decision adopted on May 27, 2007. They stated that the continuous and reiterated threats to end or annul the concession of RCTV constitute "a clear supposition of deviation of power" and the motivation to do so has nothing to do with the regimen of the concessions for the open television stations or with the interpretation of the applicable administrative law, but instead they seek to silence a media firm whose independence and critical expressions disturb the government's political project. This is unacceptable in a democratic society and not compatible with the Convention, the OAS Charter, and the Inter-American Democratic Charter.

337. The State denied having incurred in a violation of the freedom of expression and held, inter alia, that "the considerations made by the President of the Republic […] are permitted by the Venezuelan constitutional and legal system - both the annulment of a concession […] as well as the non-renewal of a concession -."

338. The representatives argued, as a supervening fact, "the closing of the open signal," of RCTV, which occurred on May 27, 2007, even though they also mentioned that they do not want to fight the State's decision to not renew the concession of the RCTV station and the execution of that decision: The Commission pointed out that "it does not want to, within the framework of the present case, discuss the scope of the State's discretion to act within the framework of concession contracts with private entities." The Court observes that the cancellation or non-renewal of RCTV's concession is the object of another petition presented before the Inter-American Commission and states that it will not analyze this fact because it is not part of the factual framework of the present case.

339. The Commission identified seven statements [FN331] and the representatives four [FN332] in the sense argued. They refer to the concession based on which the communication media firms operation, and some mention the possibility to cancel it. Without detriment to that stated in previous chapters regarding the content of these statements (supra paras. 131 through 149), the Court will observe if they could have been perceived by the alleged victims as threats and it will determine if they shall be analyzed as an indirect method or means to restrict the freedom of expression, which is not compatible with Article 13(3) of the Convention. [FN333]

[FN331] Those statements were made on June 9, 2002 on the Program "Aló Presidente" No. 107 from the State of Zulia; on December 8, 2002 on the Program "Aló Presidente" No. 130; on December 15, 2002 on the Program "Aló Presidente" N°131 from the Palace of Miraflores; on January 12, 2003 on the Program "Aló Presidente" No. 135 from the Marine Customs Office in La Guaira; on November 9, 2003 on the Program "Aló Presidente" from Tinaquillo, State of Cojedes; on January 12, 2004 in an interview published in the newspaper El Universal, and on May 9, 2004 on the Program "Aló Presidente" N°191 from the Maternity and Children's Hospital of Barines. Likewise, the Commission referred to other statements in the footnotes of the application, including some that occurred after the issuing of the Commission's Report on Merits.

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[FN332] Additionally, the representatives referred to 14 pronouncements made by the President and by other public authorities between the years 2006 and 2007 not included in the application, which in their understanding allow to explain the facts described in it and that prove that the threats to annul and/or not renew RCTV's concession continued and were intensified. Even though in principle the facts that explain and clarify the content of the application are admissible (supra paras. 42 and 56), the Court considers that these last statements do not explain the facts since they do not refer to them but instead are new statements, different to and subsequent to those mentioned therein. Due to the aforementioned, the Court will not take into consideration those statements, even though it does make the observation that the content of some of them is similar to those that will be analyzed below.
[FN333] Thus, on November 9, 2003 the President held in reference to four private television stations that "as soon as they step over the line of the law they will be closed in order to ensure the peace in Venezuela, to ensure tranquility in Venezuela." Cf. transcript available on http://www.gobiernoenlinea.ve/misc-view/sharedfiles/Alo_Presidente_171.pdf. Likewise, on January 12, 2004, in an interview with the newspaper El Universal, the President of the Republic stated that "if any of the television stations incite people to another rebellion, [l will] also take away [the frequency, the electromagnetic spectrum]; I have the decree ready, it would be better for me if they did it because they would be militarily occupied with the risk of suffering any consequence. I would give an immediate order that they be taken by surprise and whoever is inside will have to see what they can do, if they have weapons they can defend themselves, but we will go in with force because that is how a country must defend itself." Cf. interview for the newspaper El Universal of January 12, 2004 available at http://www.eluniversal.com/2004/01/12/pol_art_12154A2.shtml.
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340. Article 13(3) of the American Convention states 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 word-for-word interpretation of this stipulation lets us consider that it specifically protects the communication, diffusion, and circulation of ideas and opinions, in such a way that the employment of "indirect methods or means" to restrict them is prohibited. The restrictive method set forth in Article 13(3) is not exhaustive nor does it prevent considering "any other means" or indirect methods of new technologies. Additionally, Article 13(3) of the Convention imposes of the State obligations to guarantee, even in the realm of the relationships between individuals, since it not only covers indirect governmental restrictions, but also "individual…controls" that produce the same result. [FN334] In order for there to be a violation to Article 13(3) of the Convention it is necessary that the method or means effectively restrict, even if indirectly, the communication of ideas and opinions.

[FN334] Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism. (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85, supra note 71, para. 48.
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341. The statements mentioned, examined in the context in which they were produced, include opinions on the alleged actions or participation of RCTV, or of people linked to it, in events developed under circumstances of high political polarization and social conflicts in Venezuela, which is not included in the object of the present case (supra paras. 60 through 62). Regardless of the situation or motivation that these statements generated, in a State of Law conflictive situations must be dealt with through the methods established in the domestic legal system and pursuant with the applicable international standards. In the context of vulnerability faced by the alleged victims (supra para. 127 through 149) certain expressions included in the statements sub examine could have been perceived as threats and cause an intimidating effect, and even self-censorship, in the alleged victims, based on their relationship with the mentioned communication firm. However, the Tribunal considers that, based on the criteria mentioned in the previous paragraph, those other effects of said pronouncements were already analyzed supra, under Article 1(1) of the Convention, in relation to Article 13(1) thereof.

B) Hindrances on the access to official sources of information or state installations

342. The representatives argued that the alleged victims could not access official sources of information or State installations, which constituted an illegal restriction on the freedom to seek, receive, and impart information, as well as discriminatory treatment, in violation of Articles 13(1) and 24 of the Convention. The State should have permitted access of the journalists of RCTV to all official acts, based on the fact that they are of a public nature. The right to access sources of information is related to the principle of transparency and publicity of the acts of government. An unequal and discriminatory treatment was produced based on RCTV's informative line.

343. The Commission did not argue that access of the journalistic teams of RCTV was prevented access to official sources of information or the violation of Article 24 of the Convention.

344. The State made emphasis on the fact that the Commission had not presented this argument and that the representatives did not prove their arguments. Additionally, it mentioned the fact that certain television stations could have entered more equipment to cover a specific event does not necessarily imply the violation of any right; and not all the acts that occur in a state office have a public nature. Likewise, it argued that it only correspond to the Ministry of Popular Power for Communication and Information and to the Ministry of Popular Power of the President's Office to define the nature of official acts and the scope of its broadcast, as well as the events that are of a public nature. The State shall, through its communication policy, decide if it invites certain social communication firms. In Venezuela there are other ways of controlling the transparency in public administration, which are not linked to the obligatory attendance of the communication firms to all of the state's bodies' actions.

345. The representatives stated that in eleven cases there were hindrances on the access to official sources of information or that journalists had to leave the location without covering the news story or the protect, due to individual actions or lack of an adequate action by security officials and they argued interferences in RCTV's programming either with "presidential nationwide broadcast" or interruptions to the station's signal.

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346. In order to avoid arbitrariness in the exercise of public power, the restrictions in this sense must be previously established in laws subordinate to general interest and be applied with the objective for which they have been established. [FN335] With regard to the accreditations or authorizations for the written media to participate in official events, which imply a possible restriction on the exercise of the freedom to seek, receive, and impart information and ideas of any nature, it must be proven that their application is legal, it seeks a legitimate objective, and it is necessary and proportional in relation to the objective sought within a democratic society. The requirements for the accreditation must be clear, objective, and reasonable, and their application must be transparent. [FN336] It corresponds to the State to prove that it has complied with the aforementioned requirements upon establishing requirements to access the information under its control. [FN337]

[FN335] Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism. (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85, supra note 71, paras. 40, 45, and 46; Case of Rimel v. Argentina, supra note 71, paras. 63 and 82; Case of Claude Reyes et al. v. Chile. Merits, Reparations, and Costs. Judgment of September 19, 2006. Series C No. 151, paras. 89 and 91; Case of Palamara Iribarne v. Chile, supra note 75, para. 85; Case of Ricardo Canese v. Paraguay, supra note 71, para. 96; and Case of Herrera Ulloa v. Costa Rica, supra note 71, paras. 120, 121 and 123.
[FN336] 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).
[FN337] Cf. Case of Claude Reyes et al. v. Chile, supra note 335, para. 93.

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347. In this case, the representatives have not invoked that the alleged lack of access to the official sources was the result of a rule or regulation issued by the State. Therefore, the facts argued refer to alleged restrictions de facto o hindrances through methods de facto, and therefore proving that the State restricted the access of the alleged victims to certain official sources of information would fall upon the representatives. Once the person who argues the restrictions has proven them, the State shall offer the reasons and circumstances that motivated them and, if necessary, justify the criteria on which they based the decision to grant access to the journalists of some of the media firms and to deny it to others.

348. The Court has stated that, "Article 1(1) of the Convention, which is a rule of a general nature whose content extended to all the stipulations of the treaty, establishes the obligation of the States Parties to respect and guarantee the full and free exercise of the rights and freedoms acknowledged therein 'without any discrimination'. That is, whichever the origin or the form it takes on, any treatment that may be considered discriminatory regarding the exercise of any of the rights guaranteed in the Convention is per se incompatible with the latter." [FN338] Article 24 of the Convention "forbids all discriminatory treatment of a legal origin. Therefore, the prohibition of discrimination amply included in Article 1(1) regarding those rights and guarantees established in the Convention extends to the domestic legislation of the State Parties, thus it is possible to conclude that, based on those stipulations, these have promised, by virtue of

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the Convention, to not introduce in their legal systems discriminatory regulations regarding the protection of the law." [FN339]

[FN338] Cf. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 53. See also Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra note 31, para. 209.
[FN339] Cf. Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 54. See also Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra note 31, para. 209.

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349. It is possible that a person be discriminated based on the perception others have of their relationship with a group or social sector, regardless of the fact that this corresponds or not to reality or the victim's self-identification. Taking into account the statements in the previous chapter (supra paras. 127 through 149), it is possible that the people linked to RCTV be included in the category of "political opinions" included in Article 1(1) of the Convention and be discriminated in certain situations. Therefore, the alleged discriminations de facto must be analyzed under the general obligation of non-discrimination included in Article 1(1) of the Convention, [FN340] in relation to Article 13(1) of the Convention.

[FN340] The difference between both articles lies on the fact that if a State discriminates in the respect or guarantee of a conventional right, it would violate Article 1(1) and the substantive right in question. If on the contrary the discrimination refers to an unequal protection before the domestic legislation, it would violate the stipulations of Article 24 thereof. Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra note 31, para. 209. See also, Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84, supra note 338, paras. 53 and 54.

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350. Taking into account that several of the facts mentioned were analyzed in the previous chapter, or in this one, under the appropriate concepts, the only fact that would have to be analyzed in this section is the alleged order given by a Division General of the Army to have the journalist Anahís Cruz removed from the press conference and prevent her entrance to the headquarters of the Paramaconi Barracks in Maracay, State of Aragua. In this sense, the Court already considered that the evidence provided does not prove that there was a verbal attack against the journalist or a hindrance of access to the official sources of information (supra paras. 230 through 233). Additionally, it cannot be concluded from the evidence provided that the alleged victims had challenged the lack of access to the official sources of information (supra paras. 288 and 289).

351. Based on the aforementioned, this Tribunal considers that the existence of systematic hindrances on access to official sources of information was not proven in this case, nor was a

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discriminatory treatment by state authorities towards the alleged victims, with a violation to the freedom to seek, receive, and impart information, in the terms of Articles 1(1) and 13(1) of the Convention, in this sense.

C) Official letters issued by CONATEL regarding the content of a program broadcasted by RCTV

352. Both the Commission and the representatives argued that during the period between January and the beginning of April of the year 2002, and within a context of threats and harassment against the station and its journalists, the directors of RCTV received official letters issued by CONATEL regarding the content of an informative and opinion program called "La Entrevista en El Observador", on which some of the alleged victims of the present case worked, and to an alleged non-compliance by RCTV of the legal regulations in force in Venezuela.

353. According to the Commission, the content of the programs that caused the sending of the official letters referred to an informative program where they transmitted images and information related to confrontations between several people and acts of violence that occurred on the street, as well as attacks on social communication workers. Even though those official letters were formally well founded on the Partial Regulations on Television Broadcasts, Decree 2,625 and on the alleged non-compliance by RCTV of the legal regulations in force in Venezuela regarding violent content during classified time frames for the broadcasting of programs, the objective of those letters was to pressure the directors regarding the content of the information imparted by this station and the alleged victims. The State should have allowed RCTV to impart, pursuant with the law, the programs selected by those who manage the station and the information its journalists were preparing for the informative television programs and abstain from exercising pressures regarding the content of the news and guarantee their ample circulation.

354. The State indicated that upon sending the official letters between January and the beginning of April 2002, CONATEL assumed "its undeniable duty to protect its children and its youth from the devastating psychological effects that could result from tolerating images of violence in time frames where the majority of the television audience are underage." It argued that the mentioned official letters do not, in any way, violate the freedom of expression and information since: a) it does not interfere with the content of the media firm's editorial line, being able the latter to discuss and inform whatever it considers appropriate; instead they simply request that, while doing so, and while within the children's time frame it abstain from showing images of violence or at least it diffuse the image during the harshest scenes that could psychologically damage the children that watch it; b) they were sent in exercise of a legitimate competence of the State enshrined in a pre-existing legislation; c) they do not directly apply any sanction against the station, limiting its action to requesting the non-repetition of similar situations, but reserving for itself other actions also established in the law, as is its duty. The State pointed out that this Court cannot indicate if RCTV violated or not Venezuela's Organic Law on Telecommunications, but instead it shall limit its actions to verifying if the decisions were issued by a competent authority, if it acted pursuant with the law and in attention of the juridical right protected. The State indicated that the official letters questions are limited to compliance of the state's obligation to protect boys, girls, and teenagers from violent messages, not adequate for their comprehensive development, as further proven by the fact that during that

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same period CONATEL sent other official letters or exhorts to RCTV that did not refer to informative or opinion based programs, but that obeyed the same purpose. The State mentioned that none of the official letters prohibits the broadcasting of the program, instead they suggest that it be broadcasted in a timeframe adequate for a mature audience. [FN341]

[FN341] Specifically, it presented an official letter of January 28, 2002 with regard to the program "Lo que callan mujeres" broadcasted on January 7, 2002, an official letter of February 15, 2002 with regard to the program "La Jungla" transmitted on January 10, 2002, an official letter of February 15, 2002 with regard to the program "Rescate en el barrio chino" issued on January 11, 2002, an official letter of February 15, 2002 with regard to the programs "El Rescate" and "La Última Misión" of January 13, 2002, an official letter of February 15, 2002 with regard to the programs "Duro de Matar III", "Juegos Sexuales", and "Amenazas Submarina II" transmitted on January 13, 2002, and an official letter of March 12, 2002 with regard to the recreational program "Lo que Callan las Mujeres" broadcasted on February 19, 2002. Cf. (dossier of evidence, volume XXI, folios 6544-6559).

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355. The Court observes that the Commission forwarded as evidence, in the appendixes to the application, 26 official letters sent by CONATEL to RCTV regarding the journalistic program "La Entrevista en el Observador". [FN342] The Commission and the representatives only argued that three of the official letters, issued on January 28, 2002, constituted a violation of Article 13(1) and 13(3) of the Convention, namely, official letters number 578, 580, and 581 issued in relation to programs broadcasted on the 7, 9, and 10th days of that same month and year titled: "Los Periodistas Dicen Ya Basta"; "¿El Gobierno Propicia la Violencia con los Medios?"; and "Círculos Bolivarianos, ¿Provocan Conflicto?". [FN343]

[FN342] See Appendix 56 to the application (dossier of evidence, volume VI, folios 1845 through 1900).

[FN343] The Commission did not specify the numbers and dates of the official letters and only stated that in January and February 2002 CONATEL sent three official letters to the president of RCTV. From the documents forwarded by the Commission, the Court observes that it presented four official letters of January 28, 2002 numbered 578, 579, 580, 581 and an official letter of February 14, 2002 numbered 1105. Likewise, the representatives did not specify the numbers of the official letters, even though they did mention the dates on which they were received, they especially mentioned two official letters of January 28 and one of February 14, 2002. Since the Commission and the representatives referred to the issues dealt with in the programs questioned by the official letters, the Court understands that the three official letters argued as a violation to Article 13(1) and 13(3) of the Convention are the ones stated.

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356. From the official letters provided by the Commission it can be concluded that CONATEL considered that the program "La Entrevista en el Observador", broadcasted on the mentioned dates, had violated the legal regulations in force in Venezuela since it included scenes with a high content of violence during a time frame reserved for the Adult Orientation (OA) Rated

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transmission. [FN344] The official letters state that by transmitting the images of violence, RCTV violated Article 6 of the Partial Regulations on Television Broadcasts, Decree N.2.625, which states that "the OA Rated Transmissions shall not include the aspects stated in subparagraphs b) through j) of Article 4 of these regulations." Article 4, subparagraph "c" of said article refers to "violence translated into attacks that mutilate or tear up the human body," and subparagraph "h" to "Excessive levels of physical or psychological aggression." Based on the aforementioned, CONATEL exhorted the directors of the communication firm RCTV, through the mentioned official letters, to impart scenes such as those transmitted on the program "La Entrevista en el Observador" only after 21:00 hours, time frame assigned to Adult (R) Rated programs, [FN345] and they were reminded that they had not complied with their commitment to adapt the content of the programs to the time frame during which they were broadcasted. Likewise, RCTV was exhorted to not present images or sounds that would allow the identification of children or teenagers victims of illegal acts. Finally, CONATEL stated that, if it did not follow the recommendation, "it [would] reserve the right to proceed with the corresponding legal actions."

[FN344] The Partial Regulations on Television Broadcasts, Decree 2,625, states in its Article 10, subparagraph "b" that "The OA rated transmissions may be broadcasted only between one and three post-meridian and between 8:00 post-meridian and nine ante-meridian of the next day."
[FN345] The Partial Regulations on Television Broadcasts, Decree n. 2.625, states in Article 10, subparagraph "c" that "The R rated transmissions may only be broadcasted between nine post-meridian and five ante-meridian of the following day."

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357. The Court observes that CONATEL, upon issuing the mentioned official letters, did so based on the Partial Regulations on Television Broadcasts, whose objective was to order and regulate television broadcasts [FN346] and it established a reserved time frame in which transmissions should not include scenes with a high content of violence. The Court points out that it is a normal practice of States to establish systems and regulations of time frames and classified elements for television broadcasts, which can restrict certain liberties and implies the observance of the legitimacy criteria mentioned (supra paras. 115 through 118). However, the Commission and the representatives have not questioned the regulations that serve as grounds for the official letters issued by CONATEL themselves, or the legality of those acts, and they have not provided evidence to invalidate their content. Therefore, the Court shall determine if the three official letters sent by CONATEL constituted, per se, a direct or indirect method or means or restriction to the freedom of the alleged victims to seek for, receive, and spread information.

[FN346] Cf. statement offered by María Alejandra Díaz Marín before notary public (affidavit) on April 9, 2008 (dossier of evidence, volume XVI, folio 5395).

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358. Under the mentioned criteria regarding Article 13(3) of the Convention (supra para. 340), this Tribunal has verified that the indicated official letters issued by CONATEL do not prohibit the transmission of the program, but instead they suggest that it be broadcasted at an hour

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adequate for the mature public. Likewise, from the official letters and the evidence provided it could not be concluded that CONATEL has started the legal actions it refers to in its official letters with any consequence on the transmission of the mentioned program.

359. In this same sense, the Tribunal observes that the Commission in its Report on merits concluded the following: [FN347]

205. In this regard, the Commission points out that there is no evidence in the dossier that refers to the legal actions mentioned in the official letters and the direct consequences they had on the broadcasting of said program, which would allow us to understand and analyze them as ulterior responsibilities for the alleged abusive exercise of the right to freedom of thought and expression through the broadcasting of that program within the framework of Article 13(2) of the Convention. In the dossier there are only several letters forwarded by the president of RCTV to CONATEL indicated that the objective of the program in question was to inform the public of facts verified on a daily basis within the Venezuelan Society.

[FN347] IACHR. Report on merits No. 119/06 of October 26, 2006, paras. 211 to 215 (dossier of evidence, volume I, folio 51).

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360. In what refers to the purpose sought by these official letters, in the sense of indirectly affecting and pressuring the directors regarding the content of the information broadcasted, the Tribunal points out that the Commission and the representatives have not provided evidence or elements that prove that the issuing of the official letters has affected the right of the alleged victims to seek, receive, and impart information. Likewise, they have not presented evidence that would invalidate the content of the official letters, issued in accordance with a regulation in force in Venezuela.

361. Based on the aforementioned, the Court considers that it has not been proven that the issuing of the official letters by CONATEL constituted an indirect or illegal restriction to the alleged victims' right to seek, receive, and impart information, which would be a violation to Articles 13(1) and 13(3) of the Convention in this sense.

D) Interventions to the broadcasts of RCTV

362. The Commission stated that Mr. Eduardo Sapene Granier had to allow the transmission of multiple interventions by different officials, state entities, and organizations who used the station's signal during April 8 and 9, 2002, during the national strike and days before the coup d'etat occurred in Venezuela. Likewise, it argued that on April 13, 2002 a group of soldiers of the Military House showed up at the station's installations and made Mr. Sapene Granier close RCTV' signal so that the State's station could transmit through RCTV's signal. It argued that soldiers of the Military House, agents of the DISIP, and the Army had carried out other interventions directly at the antennas located in the sector of Mecedores, from where the RCTV signal is issued. The Commission stated that these interventions are not compatible with the

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Convention, added to the fact that officials of the Venezuelan government of different ranks used the station's signal.

363. The Commission and the representatives concluded that these interventions constituted an indirect restriction since they affected the content of the information that on that opportunity could have been transmitted by Mr. Eduardo Sapene Granier, as Vice-President in charge of the information of the television station RCTV, and the social communication employees that work at that station, individualized as alleged victims, upon imposing on them certain content or preventing that other information that wanted to be imparted be transmitted.

364. In order to determine if the State is responsible for the alleged violations, the Court will divide its analysis in i) abusive use of nationwide government broadcasts; and ii) interruptions of RCTV's signal.

D.i. Abusive use of "nationwide government broadcasts" on April 8 and 9 2002

365. The Commission argued that on April 8 and 9, 2002 RCTV had to transmit the interventions and speeches made in nationwide government broadcasts and in an interspersed manner by different officials and governmental entities, such as the Mayor of the Municipality Libertador of the Capital District, the Minister of Labor, the General in Chief of the Armed Forces, the Minster of Defense, the Minister of Education, the President of Petróleos de Venezuela S.A. (PDVSA), the Governor of the State of Cojedes, the President of FEDEPETROL and representatives of different unions related with the transportation industry, who in use of the prerogative contemplated in Article 192 of the Organic Law on Telecommunications, made those transmissions in nationwide government broadcasts through the different television and radio stations between April 8 and 9, 2002, starting at approximately 14:30 hours, in an uninterrupted and interspersed manner. The Commission also stated the notorious fact of the calling to a strike or general stoppage summoned by the Labor Confederation of Venezuela (C.T.V.), which was publicly supported by Federation of the Chamber of Commerce of Venezuela (Fedecámaras).

366. The representatives stated that RCTV's schedule was subject to interruptions by the State with its continuous and repetitive "nationwide broadcasts", ordered in a fragrant violation of the regulations that established the limits to the exercise of that power.

367. With regard to the use of the administrative power called "nationwide government broadcasts", the State argued that the obligatory transmission of certain information or speeches, which is duly established in the Venezuelan legal codes, cannot threaten or in any way affect the properties belonging to RCTV, since it in no way affects its equipment or installations. Additionally, the State mentioned the need there was to transmit to the population messages that would help avoid the degeneration of the protests into violent events, such as the ones that occurred in April 2002, reason for which it stated that it could not limit the number of hours of the speeches of the President of the Republic or other State officials, but that instead it should be analyzed considering the situation of general interest that had to be presented to the population. The use of these powers, employing all social communication media firms does not constitute, per se a violation of rights, not even when the obligatory transmissions lasted many hours, provided that the circumstances required it.

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368. The Court observes that the interventions to the broadcasts of RCTV occurred the day before and during the coup d'etat of April 2002. Regarding the fact argued, an order of April 9th of the Sixth First Instance Civil, Mercantil, and Traffic Court of the Judicial District of the Metropolitan Area of Caracas [FN348] was presented as evidence. The latter referred to a request from the proxy of the mercantile corporation RCTV so that the court could spread upon the record the number and duration of the interruptions to RCTV's schedule with the transmissions announced by the Minister of the Secretariat of the Presidency of the Republic along with the national television and radio network and the people intervening in each of the joint transmissions. In that order, the court rules that "the stated facts enjyed such notoriety that no evidence was necessary to consider them as proven," by virtue of which it denied the request for a visual inspection.

[FN348] Cf. order of April 9th of the Sixth First Instance Civil, Mercantile, and Traffic Court of the Judicial District of the Metropolitan Area of Caracas (dossier of evidence, volume VI, folios 1912-1940).

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369. It is appropriate to point out that Article 192 of the Organic Law on Telecommunications attributes to the Presidency of the Republic the power to order the transmission of official messages or speeches. [FN349]

[FN349] In the following terms: "Without detriment of the legal stipulations in security and defense issues, the President of the Republic may, directly or through the National Telecommunication Commission, order the operators who offer television services by subscription, through the information channel to their clients, and the radio and open television companies to transmit, without cost, official messages and speeches of the Presidency or Vice-Presidency of the Republic or the Ministers. The modalities, limitations, and other characteristics of those broadcasts and transmissions will be determined through the corresponding bylaws. All advertising of public entities will not be subject to the obligation established in this article."

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370. The State mentioned that whoever considers that this power threatens any right may question that regulation through the filing of the corresponding appeal for annulment of the Organic Law on Telecommunications established in Article 112 of the Organic Law of the Supreme Court of Justice and Article 21 of the Organic Law of the Supreme Tribunal of Justice. Likewise, it forwarded an order issued in a domestic proceeding originated on an appeal filed by Mr. Marcel Granier and the attorney Oswaldo Quintana, of RCTV, on March 2, 2006 before the Constitutional Chamber of the Supreme Tribunal of Justice, where the rule indicated was questioned.

371. In the present case the Commission and the representatives have ot objected Article 192 of the Law on Telecommunications, nor have they questioned or presented elements regarding its bylaws.

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372. The Court takes into consideration that the domestic court considered as proven that between April 8 and 9, 2002 several speeches given by public officials and representatives of unions were transmitted through nationwide "government broadcasts", which constitute joint transmissions that must be made by the entire radio and television network at a national level. The transmission of those nationwide government broadcasts was based on the previously mentioned regulation and among the speeches broadcasted there are interventions of officials and people who, according to the law, were not expressly authorized to do it. Videos with the messages broadcasted or the official letters through which the transmission of those nationwide government broadcasts was ordered have not been presented.

373. Taking into consideration the prevailing situation in Venezuela at that time, the Court considers that it does not have sufficient elements to determine if the number and content of the messages and speeches transmitted constituted a legitimate or abusive use of the mentioned state power that affected the exercise of the rights acknowledged in Articles 13(1) and 13(3) of the Convention by the alleged victims.

D.ii. Interruptions to RCTV's signal

D.ii.1 Fact of April 10, 2002

374. The Commission and the representatives argued that on April 10, 2002 agents of the DISIP and the Military House showed up at the transmission installations of RCTV, "Los Mecedores" station, with the "order that if they saw a divided screen during a presidential nationwide broadcast they would knock out the signal." Given this situation, RCTV's proxy requested that two visual inspections, a judicial one and an extrajudicial one, be carried out in order to spread upon the record that state of the antennas and of other installations belonging to RCTV at that station. It argued that neither of those inspections could be carried out since the members of the security forces located at the Los Mecedores Station did not allow the inspectors in.

375. Additionally, the representatives stated that it did not obey to the exercise of any legal authority, but methods de facto that would be decided and executed "manu militari" directly by those officials of the security and defense forces.

376. The State indicated that the exercise of the administrative powers of supervision was justified, since on the following day the coup d'etat occurred. (TIV f.1067)

377. Regarding this fact, evidence of a judicial inspection of the Fourth Municipal Court of the Judicial District of the Metropolitan Area of Caracas of April 10, 2002 and of an extrajudicial ocular inspection carried out by the Third Public Notary of the Municipality of Chacao was presented, [FN350] as well as the testimonial statements of two transmission operators.

[FN350] Cf. judicial Inspection of the Fourth Municipal Court of the Judicial District of the Metropolitan Area of Caracas of April 10, 2002 and extra-judicial visual inspection carried out

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by the Third Notary Public of the Municipality of Chacao. (dossier of evidence, Volume V, folios 1268-1445; in folios 1406, 1412, 1440).
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378. The transmission operators stated that very early on April 10, 2002 four people belonging to the DISIP showed up in a vehicle and sad that they would "knock down' the station's signal if the presidential nationwide broadcast was transmitted with a divided screen, and that later approximately ten more people showed up, all identified as CONATEL personnel, but who they later found out was personnel of the Military House. The State held that these statements are insufficient to consider that argued as proven, since an RCTV employee offered them; that they cannot generate any effect since the alleged witness has an ample interest in the results of the statement. The Court observes that these people are not alleged victims in this case. However, because of their relationship with the RCTV station, it is necessary to assess their statement within the totality of the evidence offered.

379. The judge in charge of the judicial inspection stated that it could not be carried out, since by order of the National Guard access to the area of the antennas of the "Los Mecedores" station was denied to everyone. (TV evidence, appendix 44, folio 1412/1436) The Third Notary Public of the Municipality of Chacao stated that it could not carry out the extrajudicial inspection since she was prevented from entering the installations because of orders of the National Guard. Additionally, the person who controlled the entrance was interviewed by said Notary and he stated that only technical personnel on guard for the different television station had been allowed access, that the transmission of the different television stations was normal, that they had not received orders to affect the transmissions of the stations, and that his presence there obeyed to the problems that had occurred on April 9, 2002. Later, the person who had given the order to prevent access to the "Los Mecedores" station indicated to the Notary that access to the mentioned installations would not be permitted until the country's situation did not return to normal.

380. As has been stated, (supra para. 340) this Tribunal considers that for there to be a violation to Article 13(3) of the Convention it is necessary that the method or means effectively restrict, even in an indirect manner, the communication and movement of ideas and opinions.

381. The Court observes that even though the presence and statements of the agents of the DISIP or the Military House at the "Los Mecedores" station, where RCTV's transmission antennas were located, could have been perceived as threats and provoke in the alleged victims an intimidating effect, the Tribunal does not have enough evidence to prove that the threat to intervene in the station's signal was transformed into specific acts that would affect the rights of the alleged victims to receive and impart information, in the terms of Article 13 of the Convention.

D.ii.2 Fact of April 11, 2002

382. According to the Commission, on April 11, 2002 the transmission signal of the private television stations was interrupted, while the signal of the state's station was being broadcasted.

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There is a judicial inspection that spread upon the record that on channel 2 of RCTV "there was no image or sound."

383. The State indicated that the alleged interruption of the signal on April 11th, due to the insertion in all transmissions of the signal of the station "Venezolana de Televisión", could not threaten the properties of a television plant. It pointed out that once the nationwide government broadcast, during which several communication firms in fact divided the screen in disobedience to the legal code in force, had ceased the private stations reestablished their transmission without any equipment having been affected.

384. From the body of evidence it can be concluded that the transmission of a nationwide broadcast had been ordered at 14:30 hours of that day. [FN351] A judicial inspection carried out by the Fourth Judge of the Municipality of the Judicial District of the Metropolitan Area of Caracas on April 11, 2002 at 17:16 hours, in response to a request of RCTV's proxy in order to verify that the national television stations were transmitting their signal was presented. This court verified that at 17:30 hours "no image or sound appear[ed]" on the channel RCTV. The same was verified with regard to channels 5 (Vale TV), 10 (Televen), 33 (Globovisión), and 51 (CMT). On channels 8 (Venezolana de Televisión) and 4 (Venevisión) an image with sound was seen on the screen. [FN352]

[FN351] Copy of CONATEL's official letter received by RCTV on April 11, 2002 (dossier of evidence, Volume VI, folio 1841)
[FN352] Cf. judicial inspection performed by the Fourth Municipal Judge of the Judicial District of the Metropolitan Area of Caracas on April 11, 2002 (dosser of evidence, volume V, folio 1401).

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385. Even though there was an interruption in RCTV's signal and transmission, this Court considers that sufficient elements have not been provided to determine, in the situation and context prevailing in Venezuela on April 11, 2002, the reasons why there was no image or sound on the RCTV screen at 17:30 hours, or the form in which that interruption could have affected the freedom of the alleged victims whose violation is argued. In that context of very serious alteration of the public order, it has not been proven that state authorities ordered that interruption to the signal or that, if ordered, that instruction would violate the applicable domestic legislation or illegitimately restrict the freedom of expression of the alleged victims.

D.ii.3 Fact of April 13, 2002

386. The Commission stated that on April 13, 2002, at around 20:00 hours, a group of soldiers from the Military House with long weapons showed up at the station's headquarters. Two of the officers asked to meet with the executives in charge of the station. Upon doing so, they requested "that a live interview with them be broadcasted." The Commission argued that Mr. Eduardo Sapene Granier had to close RCTV's signal and transmit the state's channel.

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387. The representatives specified that on that day "at 7:50 p.m. a Major [of the Army] arrived at RCTV's installations, in command of about fifteen (15) soldiers of the Military House, armed with long weapons. The official requested he be allowed into the station unarmed and along with two Members of Parliament of the MVR, with a representation of the Ombudsman in order to meet with the executives in charge, for which he was allowed access. The officials were received by Lic. Eduardo Sapene, Lic. Pablo Mendoza, and the Eng. Edgardo Mosca. Major […] requested that a live interview with him and the Members of Parliament and/or a telephone message with the Minister of Defense Dr. José Vicente Rangel be broadcasted live." They were informed that it was impossible to satisfy their request given the lack of technical personnel at the studio and that it would only be possible to transmit the signal of the State's channel, as was done given the military official's insistence.

388. The State argued that it cannot be held responsible for the actions of individuals on the mentioned date, by virtue of "the omission of the station RCTV to transmit the totality of the information in a truthful manner, as well as the open and notorious participation of some of its directors in support of the coup d'etat." Likewise, it pointed out that the arguments presented by the parties at no time refer to any damage that could generate a restriction to the right to freedom of expression. Similarly, the State argued that the statement offered before a Notary Public by Mr. Sapene Granier is contradictory to his statement before the Public Prosecutors' Office in regard to if it was a request or a demand to transmit the state's signal on that day. Additionally, the State questioned if that transmission constituted a condition to withdraw the protestors that were in front of the RCTV headquarters or a contribution to spreading the news on the President's return.

389. Regarding this fact, a video made at the RCTV station, [FN253] a brief containing a complaint of May 6, 2002, [FN354]and the written statement offered by Mr. Eduardo Sapene Granier on May 27, 2002 [FN355] were provided. This last statement does not refer to this fact. In the body of evidence there are another two statements offered by Mr. Sapene Granier, one of them given before a notary public [FN356] and another before the Public Prosecutors' Office. [FN357] The Court considers that it was not presented sufficient conclusive evidence that proves the statements offered by Mr. Sapene Granier, in the sense that RCTV had to transmit the signal of the state's channel of April 13, 2002 at the mentioned time or that proves the nature, motive, or reason for that transmission, if it occurred. Likewise, the way in which that interruption would have affected the alleged victims' freedom to seek, receive, and impart information has not been proven either.

[FN353] Video titled "Hooligans at RCTV Headquarters on 04/13/02" (appendix 70 to the application).

[FN354] Brief of the complaint of May 6, 2002 (dossier of evidence, volume V, folios 1485-1495).

[FN355] Written statement offered by Mr. Eduardo Sapene on May 27, 2002 (dossier of evidence, volume V, folios 1211-1224)

[FN356] Cf. statement offered by Eduardo Guillermo Sapene Granier before notary public (affidavit) on June 25, 2008 (dossier of evidence, volume XVIII, folios 5585-5591).

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[FN357] Cf. statement offered before the 68° Section of the Public Prosecutors' Office of the Metropolitan Area of Caracas by Eduardo Guillermo Sapene Granier on June 7, 2004 (dossier of evidence, volume XXI, folio 6502-6508).

D.ii.4 Fact of July 5, 2002

390. The Commission and the representatives argued that "on July 5, 2003 a contingent of the Army seized the television broadcasting station location in the "Los Mecedores" station preventing the access to that station of the technical personnel that worked there, since the National Army feared any hindrance to the television signal of origin[; that a]t that time the commemorative acts of the celebration of the signing of the Declaration of Independence from the Paseo Los Próceres would be transmitted in a Nationwide Governmental Broadcast[; and that i]n those circumstances the 32 Public Prosecutors' Office at a National Level and the 126 Public Prosecutors' Office of the Metropolitan Area made themselves present and drew up an official document spreading upon the record the violations to the precautionary measures ordered."

391. The evidence offered consists in a brief of the proxies of RCTV on July 9, 2003 before the 2° and 74° Sections of the Public Prosecutors' Office of the District of the Metropolitan Area of Caracas [FN358] and a certificate of July 5, 2003 issued by the 32° Public Prosecutors' Office at a National Level and the 126° Public Prosecutors' Office of the Metropolitan Area of Caracas. [FN359]

[FN358] Cf. brief presented on July 9, 2003 before the 2° and 74° Sections of the Public Prosecutors' Office of the Metropolitan Area of Caracas (dossier of evidence, volume IV, folios 966-975).

[FN359] Cf. records of July 5, 2003 issued by the 32° Section of the National Public Prosecutors' Office and the 126° Section of the Public Prosecutors' Office of the Metropolitan Area of Caracas (dossier of evidence, volume IV, folios 1084-1089).

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392. From the mentioned certificate it can be concluded that, in effect, on July 5, 2003 there were State agents present at the "Los Mecedores" station, where there were transmission antennas of several television stations. However, the drawing up of the official document offered as evidence was requested by the legal consultant of the channel "Globovisión", based on the fact that this company was the beneficiary of a precautionary measure that protected its real estate and other property, and that document proves that the agents did not allow the installation of a microwave antenna, which resulted in "Globovisión" not being able to broadcast live. That is, the official document does not refer to facts occurred to RCTV or its personnel. It was based on what occurred at "Globovisión" that RCTV's proxies requested the mentioned sections of the Public Prosecutors' Office that the "content of the Precautionary Measures of Protection on the Transmission and Retransmission Antennas of RCTV [ordered by a domestic court] be officially communicated in writing to the General Commander of the National Guard so that he may immediately make that protection effective." [FN360]

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[FN360] Cf. brief presented on July 9, 2003 before the 2° and 74° Sections of the Public Prosecutors' Office of the Metropolitan Area of Caracas (dossier of evidence, volume IV, folios 966-975).

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393. The Court observes that even though the presence of the Army agents at the "Los Mecedores" station, where there were RCTV transmission antennas, on that date was proven, evidence proving that the signal of RCTV was intervened or that the mentioned situation affected the rights of the alleged victims to receive and impart information, in the terms of Article 13 of the Convention, was not presented.

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394. In short, it has not been proven before the Court that the three official letters issued by CONATEL regarding the content of a program transmitted by RCTV and the interventions to their broadcasts constituted illegal and indirect restrictions to the right of the alleged victims to seek, receive, and impart information, which would be considered a violation to Articles 13(1) and 13(3) of the American Convention in their detriment.

X. REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION) [FN361]

[FN361] Article 63(1) of the Convention states 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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395. It is a principle of international law that any violation of an international obligation that has caused damage entails the obligation to repair it adequately. [FN362] That obligation is regulated by International Law. [FN363] The Court has adopted decisions in this regard based on Article 63(1) of the American Convention.

[FN362] 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 29, para. 198; and Case of Bayarri, supra note 38, para. 119.
[FN363] 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 29; and Case of Bayarri, supra note 38, para. 120.

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396. The reparations for the violations to human rights have been determined by the Tribunal based on the evidence provided, its jurisprudence, and the arguments of the parties, according to the corresponding circumstances and details, both in what refers to pecuniary damages [FN364] and non-pecuniary damages. [FN365] The damages of this last category can be compensated through reparations determined by the Tribunal in a reasonable application of judicial discretion and in equity, [FN366] as well as through other forms of reparation, such as measures of satisfaction and guarantees of non-repetition of the facts. In the cases in which the Tribunal has ordered the payment of compensations of a pecuniary nature, it has established that the State may comply with its obligations through a payment in dollars of the United States of America or an equal amount in the national currency, which applies based on the exchange rate between both currencies in force in the international market, [FN367] having only to satisfy the need to preserve the value of the amounts set in the concept of reparation, in relation to the time required for the processing of the case as well as the time that may go by until the payment ordered is actually made.

[FN364] This Tribunal has established that pecuniary damage entails "the loss or impairment of the victim's income, the expenses incurred in connection with the facts of the case and such pecuniary consequences as may have a causal link to the facts of the instant case." Cf. Case of Bámaca Velásquez v. Guatemala, supra note 44.

[FN365] Non-pecuniary damages may include the suffering and affliction caused to the direct victim and their next of kin, as well as the detriment to very significant personal values, as well as non-pecuniary alterations in the conditions of existence of the victim or their next of kin. Since it is not possible to assign a precise monetary equivalent to non-pecuniary damages, it can only be the object of compensation through payment of an amount of money or the delivery of goods or services that may be valued in monetary terms, which the Tribunal will establish […] in terms of equity, as well as through the realization of acts or works that are public in their scope or effects, which result in the acknowledgment of the victim's dignity and avoid the repetition of violations to human rights. 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.

[FN366] Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs, supra note 365, para. 84; Case of Ticona Estrad v. Bolivia, supra note 48, para. 130; and Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra note 31, para. 242.

[FN367] 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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397. Once the non-compliance of the State's obligations to guarantee (Article 1(1)) the rights enshrined in Articles 5(1) and 13(1) of the Convention has been established, and based on the criteria determined in the jurisprudence of the Tribunal on the nature and scope of the obligation to repair, [FN368] the Court will consider the claims of the Commission and the representatives and the State's arguments.

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[FN368] Cf. Case of Velásquez Rodríguez, supra note 362, paras. 25-27; Case of Garrido and Baigorria. Reparations and Costs. Judgment of August 27, 1998. Series C No. 39, para. 43; and Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 25, 2001. Series C No. 76, paras. 76 to 79.

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398. The Commission stated that the alleged victims made important economic efforts in trying to achieve justice at a domestic level and overcome the physical, moral, and professional consequences that facts of the present case caused them. It also indicated that "they have experimented psychological suffering, anguish, uncertainty, and alterations to their life caused by the fact that they cannot carry out their work assignments and by virtue of their submission to acts of persecution, harassment, and physical and moral attacks; the consequences, both personal and professional, of those acts," for which it asked the Court to order payment of a compensation for non-pecuniary damages.

399. At the same time, the Commission asked the Court to order the State:

a) to adopt measures to cease the violations, including all those necessary to avoid illegal restrictions or direct or indirect hindrances on the exercise of the right to freedom of expression analyzed in this case from continuing or being repeated. Venezuela must adopt reasonable measures to prevent individuals from illegitimately interfering with the exercise of freedom of expression. In this sense, the Sate shall punish all illegitimate actions that seek to silence expression.
b) to carry out a fair and exhaustive investigation in order to prosecute and punish all the perpetrators and instigators of the facts object of the present case and make the result of those investigations public.
c) to grant the victims, employees of RCTV access to official sources of information and allow them to cover news stories, that is, the exercise of the right to freedom of expression. Additionally […] that the State adopt measures destined to the moral and professional rehabilitation of the victims, in that sense, the Commission requests that the Court order, among others, the publication of the judgment eventually issued by the Tribunal in a newspaper with national circulation; and to make a public acknowledgment of the state's responsibility for the damage caused and the violations occurred;
d) to adopt, as a priority, the legislative, administrative, and any other measure necessary to avoid acts of both the State and individuals that could hinder the search, receipt, and imparting of information by social communicators and any associated personnel.
e) to repair the pecuniary and non-pecuniary damages that the behavior of the State's bodies have caused to the victims; and
f) to pay the costs and expenses incurred in by the victims and their representatives in the processing of the case both at a national level and those originated in the processing of the present case before the Inter-American System.

400. The representatives did not present arguments on pecuniary damages. With regard to the non-pecuniary damages they mentioned that the alleged victims had to suffer the constant satire

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and public despise to which they were submitted by public authorities and the "supporters and partisans of the ruling party," as well as the lack of a serious, diligent, and effective investigation by state authorities to determine what had happened and identify and punish those responsible, which has resulted in considerable infringements. Therefore, they asked that the Court order the compensation in equity for the non-pecuniary damages caused.

401. Additionally, the representatives asked the Court to Order the State to:

a) Adopt the appropriate measures necessary to cease and prevent the acts of State officials and representatives, as well as from individuals, which may hinder the search, access, demonstration, and diffusion of information by social communicators and the media, in this case RCTV; thus guaranteeing full exercise of the freedom of expression in the Venezuelan society and the victims of the present case;
b) Cease the governmental measures that imply an indirect restriction to the right to freedom of expression verified in the Application, such as: the speeches made by public officials exposing social communicatoris to attacks and threats from individual partisans of the government; the interventions in the broadcasts of RCTV; and the threats to annul or not renew RCTV's concession, based on the independent editorial line and criticism of the government adopted by RCTV;
c) Adopt appropriate measures that can cease and prevent acts that, in the task of searching, accessing, expressing, and diffusing information, affect the personal integrity of the victims in the present case; and to solve them in a timely and effective manner in those situations in which acts of State officials and representatives and individuals may affect personal integrity;
d) Adopt the measures necessary to carry out a serious, exhaustive, and complete investigation to identify those responsible for the violations object of the present proceedings, and once the alleged responsible parties have been identified submit them to a due process in order to establish their legal responsibilities;
e) Make the results of the investigations referred to in the previous paragraph public and have the Venezuelan State publicly acknowledge its international responsibility by publishing the judgment issued n the present case in a newspaper of national circulation;
f) […]through its highest instance, make a categorical public condemnation of the attacks to which the victims of the present case have been object due to the facts denounced, and that it adopt a behavior that promotes respect for the freedom of expression, to tolerance, and to different opinions and positions;
g) […] publish the most relevant extracts of the judgment on merits determined by the Court in a newspaper of national circulation during the time period that Court considers appropriate; and that the complete text of the judgment by published in the State's official newspaper;
h) […] offer the adequate treatment required by the victims of the present case without cost, through the national health service, with the prior express consent of these victims for these effects and for the time considered necessary, including the supply of medication;
i) Guarantee an equal, fair, and non-discriminatory access to information and news stories, without discretional and arbitrary conditions;
j) […] adopt the legislative and other measures necessary to guarantee the full exercise of the freedom of expression and information; and
k) Pay the victims identified in the present case the corresponding compensations for the pecuniary and non-pecuniary damages caused to them.

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402. The State indicated that no illegitimate damage has been caused to the alleged victims and far from it an obligation to repair, for which it asked the Court, in general terms, to declare each of the reparations requested inadmissible.

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403. The Court considers, pursuant with its reiterated international jurisprudence, [FN369] that this Judgment constitutes per se a form of reparation.

[FN369] Cf. Case of Neira Alegría et al. v. Peru. Reparations and Costs. Judgment of September 19, 1996. Series C No. 29, para. 56; Case of Valle Jaramillo et al. v. Colombia, supra note 29, para. 224; Case of Ticona Estrada v. Bolivia, supra note 48, para. 130.

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404. Additionally, the State shall effectively carry out the investigations and criminal proceedings in process and those opened in the future to determine the corresponding responsibilities for the facts of this case and apply the consequences established by law.

405. As has been stated in other cases, [FN370] the State shall publish for a single time and within a six-month term as of the notification of this judgment, paragraphs 1 through 5, 103 through 155, 265 through 273, 288 through 290, 305, 306, 318, 330 through 334, 395 through 397, and 403 through 406 and the operative paragraphs of the present Judgment, without footnotes. A six-month term, as of the notification of the present Judgment, is set for this.

[FN370] Cf. Case of Cantoral Benavides v. Peru. Reparations and Costs. Judgment of December 3, 2001. Series C No. 88, para. 79; Case of Ticona Estrada v. Bolivia, supra note 48, para. 130, para. 160; and Case of Tiu Tojín v. Guatemala, supra note 38, para. 106.

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406. Having verified that the victims of the present case were in a situation of vulnerability, reflected in acts of physical and verbal attacks by individuals, this Tribunal considers it appropriate to issue as a guarantee of non-repetition that the State adopt the measures necessary to avoid illegal restrictions and direct or indirect hindrances on the exercise of the freedom to seek, receive, and impart information of the alleged victims.

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407. As stated by this Court on previous opportunities, the costs and expenses are included within the concept of reparation enshrined in Article 63(1) of the American Convention. [FN371]

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[FN371] Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs, supra note 368, para. 82; Case of Valle Jaramillo et al. v. Colombia, supra note 29, para. 243; and Case of Ticona Estrada v. Bolivia, supra note 48, para. 177.

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408. The Inter-American Commission asked the Tribunal to, once it had heard the victims' representatives, order the State to pay the costs and legal expenses incurred in during the processing of the case, both at a national level and before the Inter-American system. In their brief of pleadings and motions, the representatives asked the Court to order the State to pay the expenses related to the processing of the present case before the domestic and international instances during the 2001-2007 period and they stated that these expenses had "affected the budget and assets of RCTV and therefore the budget and assets of its shareholders."

409. Taking into account the previous considerations and the evidence provided, the Court determines in equity that the State shall pay the amount of US$ 10.000,00 (ten thousand dollars of the United States of America) in the concept of costs and expenses.

410. The reimbursement of costs and expenses established in the present judgment will be made directly to the victims or the person appointed by them so it may cover the appropriate amount to those who offered legal assistance, pursuant with the assessment made by the victims or their representative or pursuant with the agreement reached between them and their legal assistants, within a six-month term computed as of the notification of the present judgment.

411. If, for reasons attributable to the beneficiaries it is not possible for them to receive the reimbursement of costs and expenses within the indicated period, the State shall deposit the amount in favor of the beneficiary in an account or a deposit certificate in a solvent Venezuelan financial institution and in the most favorable financial conditions permitted by law and banking practice. If, after ten years, the amount assigned to costs and expenses has not been claimed, it shall revert to the State with the accrued interest.

412. The State shall comply with the monetary obligations through payment in dollars of the United States of America or in an equal amount in the Venezuelan currency (supra para. 396), using for its corresponding calculation the exchange rate between both currencies valid in the plaza of New York, United States of America, the day before the payment.

413. Thos amounts may not be affected or conditioned for current or future tax reasons. Therefore, it must be delivered to the beneficiaries integrally as established in this judgment.

414. If the State falls into arrears, it shall pay interest on the amount owed, corresponding to banking interest on arrears in Venezuela.

415. In keeping with its consistent practice, the Court reserves the right inherent in its attributes and derived from Article 65 of the American Convention to monitor compliance with all the terms of this judgment. The case will be closed when the State has fully complied with that stated in the present judgment. Within one year as of notification of this judgment, the State shall provide the Court with a report on the measures adopted to comply with it.

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XI. OPERATIVE PARAGRAPHS

416. Therefore,

THE COURT

DECIDES:

Unanimously,

1. To dismiss the first preliminary objection filed by the State, in the terms of paragraphs 30 to 32 of the present Judgment.

By six votes against one,

2. To dismiss the second preliminary objection filed by the State, in the terms of paragraphs 37 through 40 of the present judgments.

The Judge ad hoc Pasceri Scaramuzza disagrees.

DECLARES:

By six votes against one, that:

3. The State is responsible for failing to comply with its obligation included in Article 1(1) of the American Convention on Human Rights to guarantee the exercise of the freedom to seek, receive, and impart information and the right to humane treatment, acknowledged in Articles 13(1) and 5(1) of the same treaty, in detriment of Antonio José Monroy, Armando Amaya, Carlos Colmenares, David José Pérez Hansen, Erika Paz, Isabel Cristina Mavarez, Isnardo José Bravo, Javier García Flores, Luisiana Ríos Paiva, and Pedro Antonio Nikken García, in the terms and for the reasons presented in paragraphs 112 through 334 of the present Judgment. Likewise, the State is responsible for failing to comply with its obligation include in Article 1(1) of the Convention to guarantee the exercise of the freedom to seek, receive, and impart information and the right to humane treatment, acknowledged in Articles 13(1) of the American Convention, in detriment of Anahís del Carmen Cruz Finol, Argenis Uribe, Herbigio Antonio Henríquez Guevara, Laura Cecilia Castellanos Amarista, Luis Augusto Contreras Alvarado, Noé Pernía, Samuel Sotomayor, Wilmer Marcano, and Winston Francisco Gutiérrez Bastardo, in the terms and for the reasons presented in paragraphs 112 through 334 of the present Judgment.

4. It has not been established that the State violated the right to equal protection, acknowledged in Article 24 of the American Convention on Human Rights, for the reasons stated in paragraphs 342 through 351 of the present Judgment.

5. It has not been established that the State violated the right to seek, receive, and impart information, in the terms of Article 13(3) of the American Convention on Human Rights, for the reasons stated in paragraphs 335 through 394 of the present Judgment.

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6. The facts of the present case shall not be analyzed under Articles 1, 2, and 7(b) of the Inter-American Convention for the Prevention, Punishment, and Eradication of Violence against Women ("Convention of Belem do Pará") for the reasons stated in paragraphs 274 through 280 of the present Judgment.

The Judge ad hoc Pasceri Scaramuzza disagrees regarding the operative parts.

AND ORDERS:

By six votes against one, that:

7. This judgment constitutes, per se, a form of reparation.
8. The State shall carry out, effectively and within a reasonable term, the investigations and criminal proceedings opened at a domestic level that are still in process, as well as those opened in the future, all in order to determine the responsibilities for the facts of this case and apply the consequences established by law, in the terms of paragraph 404 of the present Judgment.
9. The State shall publish in the Official Newspaper and in another of ample national circulation, for a single time, 1 through 5, 103 through 155, 265 through 273, 288 through 290, 305, 306, 318, 330 through 334, 395 through 397, and 403 through 406 and the operative paragraphs of the present Judgment, without the corresponding footnotes, all within in a six-month term computed as of the notification of the present judgment, in the terms of paragraph 405 thereof.
10. The State shall adopt the necessary measures to avoid illegal restrictions and direct or indirect hindrances on the exercise of the freedom to seek, receive, and impart information of the people that appear as victims in the present case, in the terms of paragraph 406 thereof.
11. The State must pay the amount set in paragraph 409 of the present Judgment, as reimbursement of costs and expenses, within a one-year term, computed as of the notification of the present judgment, in the terms of paragraphs 410 through 414 thereof.
12. It will monitor full compliance with this judgment and will consider the case closed when the State has complied fully its provisions. Within one year from the notification of this judgment, the State must provide the Court with a report on the measures taken to comply with this judgment.

The Judge ad hoc Pasceri Scaramuzza dissents with regard to the operative paragraphs.

The Judge ad hoc Pasceri Scaramuzza presented before the Court his Partially Dissenting Opinion, which is enclosed with this Judgment.

Done in Spanish and English, the Spanish being authentic, in San José, Costa Rica, on January 28, 2009.

Cecilia Medina Quiroga
President

Sergio García Ramírez
Manuel E. Ventura Robles

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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 Ríos 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 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] 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
Article 29. Decisions.
1. The judgments and orders for discontinuance of a case shall be rendered exclusively by the Court.

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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.
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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.

In early stages of this case, it was alleged by the Commission (and reiterated befote this Court), the existence of domestic remedies. Therefore, in folio 394 of the file of evidences, volume 2, brief presented by the Venezuelan State Agent for Human Rights, which pointed that:

"…Exhausted as there are the first legal resources of the cases pointed previously, the petitioners will have a second resource to which they can resort, also to a series of extraordinary resources as Casación, Constitutional Amparo: Autonomous, Sobrevenido, Joint, Habeas Data or Habeas Corpus, Invalidation, Constitutional Revision, Nullity resource; which they have not exhausted yet…"

Even when who undersignes affirms that the legal actions do not result coherent or sufficiente to satisfy the pretensions of this Court as analyzed infra, it should be remembered that the same State Agent pointed in said brief that: "On the other hand, points who undersignes, from the several facts denounced to the Public Ministry, consisting on verbal agressions, difamation, insult, which are not facts that should have been denounced to said organ, as the petitioners did; because when responding to such illicit private acts, the legal remedie is to present it to the legal court competent by territory, which they have not even done – as a legal domestic resource--".

From the above said, it is evident that from the beginning, the exhaustion of domestic remedies constituted a defense of the State in which they pointed that, not only have not been exhausted all domestic remedies, but it added that there were other legal resources; this defense was in its opportunity dismissed by the Commission and was again alleged before this Court, and as recorded on the order I dissent, it was dismissed again. In this sense, the judgment I dissent pronounces anticipatedlly on matter that should be decided by Venezuelan jurisdictional organs. Therefore, the request presented before this Court should have been declared inadmissible from the beginning, or before declaring on the Merits of the case, and consequently declare it closed.
The foregoing consideration is based on the following reasons:

1.1. On Consistency

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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 to the judicial guarantees and judicial protection (Articles 8(1) and 25 of the American Convention) in relation to the obligation to respect and guarantee human rights, enshrined in Article 1(1) thereof.
- Violation (regarding José Antonio Monroy, Armando Amaya y Carlos Colmenares), of the right to personal integrity enshrined in Article 5 of the American Convention, in relation to the obligation to respect and guarantee human rights, enshrined in Article 1(1) thereof.

[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

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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 guarantee (regarding Luisiana Ríos, Luis Augusto Contreras Alvarado, Eduardo Sapene Granier, Javier García, Isnardo Bravo, David Pérez Hansen, Wilmer Marcano, Winston Gutiérrez, Isabel Mavarez, Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía and Carlos Colmenares) the exercise of the right to freedom of thought and expression, particularly in the exercise of their work.
- Must repair the pecuniary and non-pecuniary damages caused to the victims (a los señores Luisiana Ríos; Luis Augusto Contreras Alvarado; Eduardo Sapene Granier; Javier García; Isnardo Bravo; David Pérez Hansen; Wilmer Marcano; Winston Gutiérrez, Isabel

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Mavarez, Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía and Carlos Colmenares) by the acts of State authorities; and

- Must 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.

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 Article 46 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 .

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[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 652, of the measures of full reparation requested by the victims that were included in numeral 11), 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

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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.

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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] Cf. 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] Cf. 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]

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[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 to desestimate this preliminary objection is represented by the estimation the Court makes that the preliminary analysis on the effectiveness of the investigations on the facts presented in this case will implicate an evaluation on the acting of the State in relation to its obligation to guarantee the acknowledged rights in the American Convention, which violation is alleged, in particular through serious and effective investigations, matter that should be analyzed deeply in the controversy for which it considered pertinent to accumulate the exception requested by the State, and examine the arguments of the parties, when determining if the State is responsible for the violation of the Articles of the Convention allegedly violated.

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

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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,

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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] Cf. 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] Cf. 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

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criteria exposed in the judgment of the case of Velásquez Rodríguez, Preliminary Objections. Judgment of June 26, 1987.
[FN15] Cf. 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:

"On the other hand, the Court estimates that a preliminary analysis on the effectiveness of the investigations on the facts presented in this case will implicate an evaluation on the acting of the State in relation to its obligation to guarantee the acknowledged rights in the American Convention, which violation is alleged, in particular through serious and effective investigations, matter that should be analyzed deeply in the controversy for which it considered pertinent to accumulate the exception requested by the State, and examine the arguments of the parties, when determining if the State is responsible for the violation of the Articles of the Convention allegedly violated."

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

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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)

4. 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.

5. 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.

6. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

7. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.

8. 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 121 of the Judgment);

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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 122 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 138 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 149).

[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

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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 142 to 149).

[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:

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“62. 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 RCTV, 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 RCTV, in its capacity as company, corporation or legal entity. Even if it is true that RCTV 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] Cf. 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 154) inasmuch as the representatives denied that the aggressions suffered by the alleged victims were the consequence of their own behavior (paragraph 153), even when, as it was mentioned, the State raised it as ground for exemption of liability.

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b) It is surprising to whom dissents, that even when the reason to accumulate the preliminary objection of exhaustion of domestic remedies, was that the analysis of the effectiveness of the investigations done by the State will implicate an evaluation of the defendant in relation to its obligation on the Convention (para. 40), later it is pointed out that the Court will not pronounce regarding the suitability and effectiveness of the measures of protection (para. 155), this declaration is done after I pointed that the order to adopt measures of protection does not show that the State has protected effectively the beneficiaries of these measures (para. 154). This sets evidence on the connection between the facts, the justice system (and inside this one the Venezuelan justice service), and all the above with judgment aproved by the majority.

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, 191, 195, 199, 215, 220, 224, 228, 232, 236, 240, 244, 248, 252, 256, and 263 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 273). 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.

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[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) It highlights to whom dissent, that the Court after analyzing the arguments of the State where other existing legal actions where referred (para. 286) concluyes that the parties have emphasized in the controversy taken to this Court in the denounces and investigations, resulting in an analysis regarding the existing resources inside the legal grounds (in paragraph 291), to a point of trying to assume that the control of the actions of Comisión Nacional de Telecomunicaciones (CONATEL) had to be done before the Public Ministry.
I ratify what is said supra regarding the non existence of congruency between the pretentions brought before the Inter-American System of protection and the domestic remedies that had to be exhausted in order to access it; for a judge acting in legal competence in Venezuela cannot pronounce in the regard that if CONATEL denounced actions violated or not the freedom of expression, and declare the victims as injured. These actions are up for revision through the actions and administrative contentious resources in the Venezuelan juridical order or through constitutional actions.
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 analyzes 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 301 and 302) on the mistaken interpretation of section 75 of the COPP, [FN25] by understanding from that, the burden that lies on the State

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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 303). 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 330 and 331); 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 334).

[FN22] Cf. para. 310 to 312 of the judgment from which I dissent.

[FN23] "Article 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. 304 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".

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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,

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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