INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF LÓPEZ MENDOZA *v.* VENEZUELA

JUDGMENT OF SEPTEMBER 1, 2011
(Merits, Reparations, and Costs)

In the *Case of López Mendoza*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal"), composed of the following judges:

Diego García-Sayán, President;
Manuel E. Ventura Robles, Judge;
Margarette May Macaulay, Judge;
Rhadys Abreu Blondet, Judge;
Alberto Pérez Pérez, Judge, and
Eduardo Vio Grossi, Judge;

also present,

Pablo Saavedra Alessandri, Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 30, 32, 38, and 61 of the Court Rules of Procedure (hereinafter “the Rules of Procedure”), render the following Judgment that is structured in the following order:

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I

INTRODUCTION TO THE CASE AND PURPOSE OF THE DISPUTE

1. On December 14, 2009, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "Inter-American Commission") filed, pursuant to Articles 51 and 61 of the Convention, a petition against the Bolivarian republic of Venezuela (hereinafter "the State" or "Venezuela") in relation to case No. 12.668, *Leopoldo López Mendoza,* which originated by means of the petition received by the Commission on March 4, 2008, and registered under No. 275-08. On July 25, 2008, the Commission issued Admissibility Report No. 67/08.[1] On August 8, 2009, the Commission adopted the Merits Report No. 92/09 and sent it to the State granting it a period of two months to report on the measures adopted to comply with the recommendations of the Commission.[2] After

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[*] Judge Leonardo Franco reported to the Tribunal that for reasons of *force majeure,* he would be unable to be present for the deliberation and signing of this Judgment.

[**] The Deputy Secretary, Emilia Segares Rodríguez, reported to the Court that for reasons of *force majeur,* she would be unable to be present for the deliberation of this Judgment.

[***] Pursuant to that provided in Article 79(1) of the Rules of Procedure of the Inter-American Court that came into force on January 1, 2010, entered into force on June 1, 2010, "[c]ontentious cases submitted to the consideration of the Court before January 1, 2010, will continue to be processed in accordance with the preceding Rules of Procedure until the delivery of a judgment." Consequently, the Court's Rules of Procedure mentioned in this judgment correspond to the instrument approved by the Court at its forty-ninth regular session, held from November 16 to 25, 2000, partially amended at its eighty-second regular session held from January 19 to 31, 2009, and that was in force until March 24, 2009 until January 1, 2010.

[1] In the Admissibility Report No. 67/08 the Commision "[d]eclar[ed] admissible the petition under analysis, in relation to Articles 23, 8, and 25 of the American Convention, in connection to the obligations established in Articles 1(1) and 2 thereof." Admissibility Report (case file of annexes to the application, tome I, appendixes 1 and 2, folio 10).

[2] In the Report on the Merits No. 92/09, the Commission concluded that "the State had incurred in international responsibility for the violation of the right to participate in government [political rights] (Article 23); the right to a fair trail [judicial guarantees] and judicial protection (Articles 8(1) and 25), together with the obligation to respect and guarantee rights and the obligation to adopt domestic effects established in the American Convention (Articles 1(1) and 2, respectively)." The Commission recommended that the State: "[a]dopt the measures necessary to reestablish the political rights of Mr. Leopoldo López Mendoza"; ii) "[a]dopt the domestic legal forum, in particular Article 105 of the Organic Law of the Comptroller General of the Republic and the National Fiscal Oversight System that imposes the disqualification from holding public office won by popular vote, under the provisions of Article 23 of the American Convention," and iii) "[f]ortifying the due process guarantees in the administrative proceeding of the Comptroller General of the Republic pursuant to the standards of Article 8 of the American Convention" (case file of annexes to the application, tome I, appendixes 1 and 2, folio 51).

[2] The right to fair trial [judicial guarantees] and judicial protection (Articles 8(1) and 25), together with the obligations to respect and guaranttee rights and the obligation to adopt domestic legal efffects established in the American Convention (Articles 1(1) and 2, respectively)." The Commission recommended that the State: i) "[a]dopt the measures necessary to reestablish the political rights of Mr. Leopoldo López Mendoza"; ii) "[a]dapt the domestic legal code, in particular Article 105 of the Organic Law of the Comptroller General of the Republic

considering that Venezuela had not adopted the recommendations included in this report, the Commission decided to submit this case to the Court's jurisdiction. The Commission appointed Paulo Sérgio Pinheiro, Commissioner, and Mr. Santiago A. Cantón, Executive Secretary, as Delegates, and Mrs. Elizabeth Abi-Mershed, Deputy Executive Secretary, and Mrs. Karla I. Quintana Osuna, Specialist of the Executive Secretary, as legal advisor.

2. The application is related to the alleged "international responsibility [of the State] for disabling Mr. López Mendoza […] from holding public office through administrative means in [alleged] contravention of the standards found in the Convention[;] for having prohibited him from participating in the regional elections in 2008, as well as for not granting him the relevant judicial guarantees and judicial protection or [...] appropriate reparation." According to the application, "upon adopting the decision of disqualification from holding a position in public office of [Mr.] López Mendoza, the Comptroller [General] of the Republic and, under review, the Political-Administrative Chamber of the [Supreme Tribunal of Justice], did not elaborate further arguments that would support the application of a more severe sanction than [that of the] fine [already imposed], or […] did it offer arguments to grade the charge for the type of illicit conduct and its relation to the imposition of one of the maximum additional sanctions."

3. The Commission requested the Court to declare the State of Venezuela responsible for the violation of Articles 23 (Right to Participate in Government [Political Rights]); 8(1) (Fair Trail [Judicial Guarantees]); 25 (Judicial Protection), together with Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the American Convention, to the detriment of Mr. López Mendoza. Moreover, the Commission requested the Court to order the State to adopt measures of reparation, as well as to reimburse costs and expenses.

4. Legal notice of the application was given to the State and to the representatives of the alleged victim, Mr. Enrique Sánchez Falcón and Mr. José Antonio Maes Aponte (hereinafter "the representatives"), on January 15, 2010.

5. On March 19, 2010, the representatives filed their brief of motions, pleadings, and evidence (hereinafter "the brief of motions and pleadings") before the Court, in the terms of Article 40 of the Rules of Procedure. In this brief, they alluded to the facts noted in the application of the Commission, expanding on specific information therein and specifying their request for a declaration of State responsibility for the violation of Articles 23(1)(b), 23(2), 8(1), 8(4), 24, and 25, in accordance with Articles 1(1) and 2, all of the American Convention. Specifically, the representatives indicated that Mr. López Mendoza's rights to "(i) be elected in genuine periodic elections, carried out through universal and equal suffrage and by secret ballot that guaranteed the free expression of the will of the voters[;] (ii) […] not limit the exercise of political rights, except through a final judgment after a criminal proceeding[;] (iii) […] be heard with due guarantees and within a reasonable time, by a competent, independent,

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and of the National System of Fiscal Oversight that imposed the disqualification for candidacy to a position of popular election, pursuant to the provisions of Article 23 of the American Covention," and iii) "[f]ortifying the guarantees of due process in the administrative proceedings of the Comptroller General of the Republic pursuant to the standards of Article 8 of the American Convention. Report on the Merits No. 92/09 (case file of annexes to the application, tome I, appendixes 1 and 2, folio 51).

and impartial judge or tribunal, previously established by law, for the determination of his rights and obligations[;] (iv) […] be sanctioned for the same facts by which he was previously sanctioned or acquitted by the competent authority[,] and (v) judicial protection" were not recognized. As well, they added that Mr. López Mendoza was a victim of a violation to equality before the law. Finally, they requested various measures of reparation.

6. On June 4, 2010, the State presented its brief of preliminary objections, answer to the application, and comments to the brief of pleadings and motions (hereinafter "the answer to the application"), in the terms of Article 41 of the Rules of Procedure. In said brief, the State filed the preliminary objection it entitled, "Bias in the roles carried out by some of the judges of the Court."[3] Moreover, the State denied its international responsibility for the violation of the rights argued by the other parties. The State appointed Mr. Germán Saltrón Negreti as Agent in this case.

II
PROCEEDINGS BEFORE THE COURT

7. By way of the Order of December 23, 2010,[4] the President (hereinafter "the President") ordered the submission of sworn statements rendered before a notary public (*affidávit*) of a witness proposed by the State and four expert witnesses, two proposed by the Commission, one proposed by the representatives, and the other by the State. Moreover, the President summoned the parties to a public hearing to hear the statements of the alleged victim, proposed by the Commission; of one witness proposed by the State; and of four experts, two proposed by the representatives and two by the State; as well as to hear the final oral arguments of the parties on the merits and possible reparations and costs in this case.

8. On January 25, 2011, the Inter-American Commission reported that Mr. Fabián Aguinaco Bravo, expert witness proposed by it, "regrettably, did not [have] 'the time necessary to draft the [expert report] required" in the Order of December 23, 2010 (*supra* para. 7). Therefore, the Commission "request[ed] the substitution of [Mr.] Aguinaco Bravo with [Mr.] Pedro Salazar Ugarte, […], in order for the latter to make reference to the same points in the expert report." In this regard, by means of a note of the Secretariat on January 31, 2011, it was noted that: i) the Commission filed a list of final declarants on November 8, 2010, wherein it confirmed the proposal for the expert witness, Mr. Aguinaco; ii) legal notice of the summons order to the public hearing was given to the parties on December 23, 2010, and a period of more than one month was granted to present the expert reports; iii) on January

[3] The President in exercise of the Inter-American Court of Human Rights, Judge Alberto Pérez Pérez, issued an Order on September 3, 2010, in relation to preliminary objection filed in the answer to the application. In this order, *inter alia,* he declared that "the allegation of bias in the role of the Judges that make up the Court, presented by the State as a preliminary objection is not of that nature." Similarly, he stated that it corresponds that the Court, as a whole, to continue hearing the case until it is concluded. *Case of López Mendoza V. Venezuela*. Order of the President in exercise of the Inter-American Court of Human Rights of Septemeber 3, 2010. Available at: http://www.corteidh.or.cr/docs/asuntos/López.pdf

[4] Order of the President of the Inter-American Court of Human Rights of December 23, 2010. Available at: http://www.corteidh.or.cr/docs/asuntos/López1.pdf

4, 2011, the Commission requested an extension in order to present the statements before a notary public of the experts summoned in the Order and did not allude to the situation of Mr. Aguinaco—request which was granted, and iv) a clear and specific situation of *force majuere* was not argued to justify the granting of this request. Given the above mentioned, the request for substitution is denied.

9. The public hearing was held on March 1 and 2, 2011, during the 90th Regular Period of Sessions of the Court,[5] carried out at the seat of the Court, in the city of San Jose, Costa Rica.

10. On the other hand, the Court received *amicus curiae* briefs[6] from the Asociación Venezolana de Derecho Constitucional [Venezuelan Association of Constitutional Law][7]; The Human Rights Foundation[8]; Mr. Jorge Castañeda Gutman[9]; Mr. Hugo Mario Wortman Jofre,[10] and The Carter Center.[11] These briefs develop diverse ideas regarding judicial guarantees and political rights.

11. By means of a note from the Secretariat of the Court on March 8, 2011, the parties were requested to, together with their final written arguments, present their supporting arguments and documentation, where applicable, in relation to the various topics concerning this case.[12]

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[5] At the hearing, the following were present: a) for the Inter-American Commission: Paulo Sérgio Pinheiro, Commissioner; Elizabeth Abi-Mershed, Deputy Executive Secretary; Lilly Ching Soto, legal advisor, and Silvia Serrano Guzmán, legal advisor; b) for the representatives: José Antonio Maes, Enrique J. Sánchez Falcón, Carlos Vecchio, Bernardo Pulido Márquez, and Juan Carlos Gutiérrez, and c) for the State: Germán Saltrón Negretti, State Agent for Human Rights; Alexander Elías Pérez Abreu; Luisangela Andarcia, Attorney of the State Agency, and Mónica Gioconda Misticchio Tortorella.

[6] Apart from the amicus curiae, the Court received other briefs that are not of any use in the present case, and as such, are not to be admitted nor mentioned in this Judgment.

[7] The brief was presented on December 20, 2010, by Jesús María Casal, Lolymar Hernández, and José Vicente Haro, President and member of the Board of Directors of the Venezuelan Association of Constitutional Law, respectively.

[8] The brief was presented on February 25, 2011, by Mr. Javier El-Hage, as Executive Director of The Human Rights Foundation.

[9] The brief was presented on March 1, 2011, by Mr. Jorge Castañeda Gutman.

[10] The brief was presented on March 1, 2011, by Mr. Hugo Mario Wortman Jofre.

[11] The brief was presented on March 16, 2011, by Mr. John B. Hardman, in representation of The Carter Center.

[12] For the Inter-American Commission: a) The Commission indicated in the application that a period had passed of 2 years to resolve the petition which had been presented in the contentious-administrative forum and this did not comply with a reasonable period. It requested specification in more detail on the reasons for this excessive delay. b) In its application, the Commission argued that the appeal for annulment of the facts in relation to the donations of PDVSA had not come about in three years since the appeal was filed. From this, violations of the Convention ensued. Nevertheless, in the case file it is evident that the appeal was answered on April 1, 2009, prior to the presentation of the application to the Court. In the opinion of the Commission, are there still violations to the Convention in relation to the appeal for annulment? For the Inter-American

12. On April 1 and 2, 2011, the representatives, the State, and the Inter-American Commission, respectively, submitted their final written arguments. On April 5 and 8, 2011, the representatives and the State, respectively, submitted annexes to their final written arguments. By way of a note from the Secretariat of the Court on April 12, 2011, following instructions from the President of the Court, the parties were informed that they had a period until April 25, 2011, to refer specifically, if deemed appropriate, to the information and annexes submitted by the representatives and by the State, in response to the questions made by the Judges of the Court in the note of the Secretariat of March 8, 2011 (*supra* para. 11). It was specified that any other additional argument would not be considered by the Court. On April 25, 2011, the representatives, the Commission, and the State presented their comments.

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commission, the representatives and the State: c) Taking into account the type of official exchange rate from the American dollar at the time of the facts, how much, in U.S. dollars, is the total sum of the fines imposed on Mr. López Mendoza? Similarly, specifying the official exchange rate into U.S. dollars of the amount of the donations given to the Civil Association Primero Justicia. d) Article 105 of the LOCGRSNCF is adjusted to the standards noted in Articles 29(a) and 30 of the Convention and in the Advisory Opinion OC-6 of 1986? e) Of the case file provided to the Court it is deemed that the Commission and represenatives have argued that, due to the nature of the administrative proceedings, these do not offer guarantees like those in a criminal proceeding. The State expressed otherwise. In this way, the following was requested, why would have a criminal proceeding offered Mr. López Mendoza more guarantees in the present case? Likewise, indicate, which were, in the opinion of the Commission and the representatives, the specific facts that impacted the judicial guarantees? Specifically, what administrative or judicial remedies were not filed? and what aspect of the right to defense was not exercised? f) Which were the specific difficulties faced to prevent the remedies from meeting the standards of due process? g) Comparative law is a source of interpretation in international law. The parties were requested to present their arguments on the norms and practices of other regions, were non-legal spaces exist that permit the use of sanctioning administrative measures that include the disqualification from holding public office or other similar measures. As an example, the following were mentioned: Argentina (Articles 30 and 33 of the Law No. 25.164 of the National Public Labor Law), Colombia (Article 44 of the Disciplinary Code – jurisdiction of the Attorney General's Office of the Nation), Costa Rica (Article 146 of the Electoral Code - Law No.8765), México (Article 13 of the Federal Law of Administrative Responsibility of Public Servants), Perú (Law 28175 of Public Employment and Article 159 of Supreme Decree N° 005-90-PCM Rules of Procedure of the Law of Administrative Career and Remunerations) and Dominican Republic (Article 84 of the Law No. 41-08 of Public Office). In this sense, further elaboration was sought regarding the general interpretation of what this entails in terms of political rights, as one of the elements of interpretation of international law. For the State: h) What is the state of the compliant filed before the Attorney General of the Republic stated regarding the alleged homicide attempts against Mr. López Mendoza? i) Clarification of the bodies that can declare administrative responsibility and those that are able to impose sanctions established in Article 105 LOCGRSNCF j) What is the evidentiary standard used in the investigation stage of administrative responsibility and the declaration of disqualification from holding public office? k) Essential procedural guarantees in the specific proceeding of declaration of disqualification from holding public office. l) What are the differences between the standard of suspension, dismissal and disqualification established in Article 105 of the LOCGRSNCF? m) Is there a norm that states that the Comptroller must await a declaration of responsibility be reaffirmed until the disqualification from holding public office is exercised? n) The Inter-American Convention against Corruption establishes the obligation to codify in the legal code acts of corruption. In this sense, indicate, what is the norm in the Venezuelan legal code that codifies this conduct of which Mr. López Mendoza is accused? In the case that this conduct is a crime, note, why was no criminal action carried out in the present case against Mr. López Mendoza? o) According to the facts of the present case, a fine for one million, two hundred and forty-three thousand two hundred bolivares (Bs. 1,243,200.00) was imposed on Mr. López Mendoza for the facts related to the company PDVSA. For the same facts, in the case file it is evident that he was disqualified for three years. Heading to the standards of proportionality of the punishment, does the State consider a fine imposed for one million, two hundred and forty-three thousand two hundred bolivares (Bs. 1,243,200.00) to be proportional, and at the same time, disqualification for 3 years?

13. On May 10, 2011, the representatives presented "comments" to the comments formulated by the State regarding the information and annexes submitted by the representatives and the Inter-American Commission as a response to the questions of the judges of the Tribunal found in the note of the Secretariat of March 8, 2011 (*supra* paras. 11 and 12). By means of the note of the Secretariat of the Court of May 25, 2011, it was made known that the cited "comments" of the representatives were not requested by this Court nor by its President. However, the Tribunal admits those observations, exclusively on the matters that could help to establish costs and expenses in this case.

III

JURISDICTION

14. The Inter-American Court has jurisdiction, under the terms of Article 62(3) of the Convention, to hear this case, given that Venezuela has been a State Party to the American Convention since August 9, 1977, and recognized the Court's contentious jurisdiction on June 24, 1981.

IV

EVIDENCE

15. Based on that established in Articles 46 and 50 of the Court Rules of Procedure, as well as in its jurisprudence on evidence and its appraisal,[13] the Court will examine and assess the documental evidentiary elements submitted by the parties in the various procedural opportunities, as well as the declarations of the alleged victims, the testimonies, the expert reports rendered by sworn statement before a notary public and in the public hearing before the Court, as well as the evidence to facilitate adjudication requested by the Court. Accordingly, the Court will adhere to the principles of sound judicial discretion, within the appropriate normative framework.[14]

1. Documentary, testimonial, and expert evidence

16. The Court received the sworn statement rendered before a notary public (*affidávit*) of three expert witnesses and one witness:

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[13] *Cf. Case of "White Van" (Paniagua Morales et al) V. Guatemala. Reparations and Costs*. Judgment of May 25, 2001. Series C No. 76, para. 50; *Case of Vera Vera et al. V. Ecuador. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of May 19, 2011. Series C No. 224, para. 19, and *Case of Chocrón Chocrón V. Venezuela. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of July 1, 2011. Series C No. 227, para. 26.

[14] *Cf. Case of "White Van" (Paniagua Morales et al) V. Guatemala*. *Merits.* Judgment of March 8, 1998. Series C No. 37, para. 76; *Case of Vera Vera et al., supra* note 13*,* para. 19, and *Case of Chocrón Chocrón*, *supra note* 13, para. 26.

a) *Humberto Nogueira Alcalá*, expert witness proposed by the Commission, University Professor, who rendered an expert report on: i) the permissible limits and scope of political rights in light of the Inter-American and international standards and ii) "the compatibility of the administrative proceeding exercised by the Comptroller General of the Republic of Venezuela to impose the disqualification from holding public office in light of the rights enshrined in the American Convention";

b) *Jorge Carpizo*, expert witness proposed by the representatives, Professor of the Postgraduate Division of the Law School of the Universidad Nacional Autónoma of México, who rendered his expert report on: i) the standards of Constitutional Comparative Law, particularly in Latin America, in relation to the political rights and acceptable restrictions that may be imposed; ii) the grounds, proceedings, and content of the sanctions, and iii) the importance of the full respect for political rights in a democracy;

c) *Yadira Espinoza Moreno*, expert proposed by the State, former General Technical Director of the Comptroller General of the Republic, who declared on: i) "the work carried out by the State of Venezuela against corruption," and ii) "the normative advances it has effectuated" in this regard, and

d) *Marielba Jaua Milano*, witness proposed by the State, General Director of State and Municipal Oversight of the Comptroller General of the Republic, whom declared on: i) "the proceedings of investigative power and the determination of responsibility carried out by the Comptroller General of the Republic against Mr. López Mendoza" and ii) "the rights and guarantees that were [allegedly] taken into account during said proceedings."

17. In regard to the evidence rendered during the public hearing, the Court heard the statements of the alleged victim, a witness, and four experts:

a) *Leopoldo López Mendoza*, alleged victim proposed by the Commission, who declared on: i) "the disqualification which he underwent that prevented him from holding public office"; ii) "the [alleged] conditions for which he was prevented from participating in the 2008 regional elections," and iii) "[t]he [alleged] proceeding he underwent to contest the disqualification";

b) *Christian Colson*, witness proposed by the State, Attorney representing the Attorney General of the Republic, who declared on: his participation in the defense of the constitutionality of Article 105 of the Organic Law of the Comptroller General of the Republic and the National System of Fiscal Oversight, as well as the purpose, scope, and effect of said Article;

c) *Alberto Arteaga Sánchez*, expert witness proposed by the representatives, Professor of Criminal Law of the Universidad Central of Venezuela, who rendered an expert report on: i) "the system of political disqualifications as additional sanctions in Venezuelan legislation, in light of the Constitution of the Republic [...] of Venezuela, the Penal Code of Venezuela, the

Law against Corruption, and the American Convention on Human Rights" and ii) background and requisites for applicability and admissibility" of the system of disqualifications;

d) *Antonio Canova González*, expert witness proposed by the representatives, Professor of Constitutional Law and Administrative Law of the Universidad Central de Venezuela, Católica Andrés Bello, and Monteavila, who rendered an expert report on: i) "the legal restrictions that are appropriate in regard to political rights"; and, ii) "the scope of political rights in Venezuela in light of the Constitution of [...] Venezuela," and iii) "the jurisprudential standards established by the Constitutional Chamber of the Supreme Tribunal of Justice for said purpose";

e) *Jesús Eduardo Cabrera Romero*, expert witness proposed by the State, director of the magazine, Derecho Probatorio [Evidence Law], undergraduate Professor of the Universidad Católica Andrés Bello, former member of the Legislation and Jurisprudence Commission of the Ministry of Justice, former President of the Commission for the Automation of the Notarization and Registration System of the Ministry of Justice, former Associate Judge of the Civil Cassation Chamber of the Supreme Tribunal of Justice, and former Magistrate of the Supreme Tribunal of Justice, who rendered an expert report on: "the jurisprudential standards, issued by the Constitutional Chamber of the Supreme Tribunal of Justice, related to the difference that exists between the policy of political disqualification and the disqualification from holding public office, as well as the compatibility of the latter with the Constitution of the Bolivarian Republic of Venezuela," and

f) *Alejandro José Soto Villasmil,* expert witness proposed by the State, Judge of the Second Court of Administrative Disputes, who rendered an expert report on: "the administrative proceedings regarding the declarations of administrative responsibility," relevant to this case.

2. Admission of documentary evidence

18. In the present case, as in others,[15] the Court admits the evidentiary value of said documents submitted by the parties at the opportune procedural moment that were neither contradicted, objected, nor their authenticity questioned.

19. In regard to the press releases, this Court has considered that they may be assessed when they entail public and notorious facts or declarations by officals of the State, or when they corroborate issues related to the case.[16] The Court decides to admit said documents that are

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[15] *Cf. Case of Velásquez Rodríguez V. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140; *Case of Vera Vera et al.*, *supra note* 13, para. 22, and *Case of Mejía Idrovo V. Ecuador. Preliminary Objection, Merits, Reparations, and Costs.* Judgment July 5, 2011. Series C No. 228, para. 38.

[16] *Cf. Case of Velásquez Rodríguez*, *supra* note 20, para. 146; *Case of Vélez Loor*, *supra* note 12, para. 76, and *Case of Gomes Lund et al "Guerrilha do Araguaia"*, *supra* note 17, para. 56. *Cf. Case of Velásquez Rodríguez*, *supra note* 15, para. 146; *Case of Abrill Alosilla et al. V. Peru. Merits, Reparations, and Costs*. Judgment of March 4, 2011. Series C No. 223, para. 40, and *Case of Chocrón Chocrón*, *supra* note 13, para. 30.

found to be complete or where, at least, their source can be verified and their date is published, and will assess them within the body of evidence, the comments of the parties, and rules of sound judgment.

20. The Court notes that the State questioned the evidence submitted by the representatives in regard to the alleged violations of Article 24 of the American Convention upon noting that "they based their complaint on alleged declarations rendered before social, printed, and audiovisual means of communication that cannot be considered sufficient evidence of the violation of rights and guarantees, since this involves instruments that express the interpretation that the social media gives to the information provided by the interviewee regarding the matter, which does not indicate with certainty that the information came from where it was said to come from or that it is true"; and that "they can, upon not being a true reflection of the assertions of the declarant, even be considered as evidence." As such, the Court considers that these comments make reference to the merits of the controversy, which the Court will assess in the pertinent part of the Judgment (*infra* paras. 190 to 195), the cited evidence in relation to the proven facts of the case, in conformity with the focus of the litigation, considering the body of evidence as a whole, the observations of the State, and the rules of sound judgment.

21. On the other hand, together with the final written arguments, the representatives and the State submitted various documents as evidence, those which were requested by the Court as established in that provided in Article 58(b) of the Court Rules of Procedure (*supra* paras. 11 and 12), which will therefore be incorporated and assessed where appropriate together with the body of evidence, the comments of the parties, and the rules of sound judgment.

22. Lastly, pursuant to that indicated in the note of the Secretariat of the Court on March 8, 2011, the videos and audio included in a CD labeled "Agresiones a Leopoldo López transmitidas por VTV (Canal Oficial del Estado Venezolano)" [Attacks against Leopoldo López transmitted by VTC (Official Channel of the State of Venezuela], presented by the representative during the public hearing (*supra* paras. 9 and 11) were not incorporated into the case file. The plenary of the Court considered that said videos and audio were not related to the specific legal issues the Court is resolving in this case.

3. Admission of testimonial and evidentiary evidence

23. In regard to the statements rendered before a notary public by three expert witnesses and one witness; and the alleged victim, one witness, and four expert witnesses presented at the public hearing, the Court will admit them and deems them relevant only in what regards the purpose defined by the President of the Court in the Order requesting them, (*supra* para. 7) and the purpose of this case, considering the comments.

24. Pursuant to the jurisprudence of the Court, the declarations rendered by the alleged victims cannot be assessed in isolation but rather together with the body of evidence in the proceeding, given that they are useful in the sense that they can offer more information on the

alleged violations and their consequences.[17] Based on the aforementioned, the Court admits said statements, (*supra* para. 17(a)), without failing to consider that the evidence be assessed under the mentioned criteria (*supra* para. 15 and 23).

V

PROVEN FACTS

A. Prior considerations regarding facts not included in the application

1. Arguments of the parties

25. The representatives of the alleged victim argued that in relation to the various domestic instruments to prosecute corruption "there exists a selective State policy regarding its application" and "instruments of political persecution" that "deprive one [of rights] who acts as a dissident against the government and has clear aspirations and a high probability of winning the election." In this way, for the representatives, the administrative investigations against Mr. López Mendoza were initiated "during an election campaign for mayor." Moreover, they cited a report from the Inter-American Commission regarding Venezuela from 2009, wherein it indicated that:

> [it] ha[d] received allegations stating that mechanisms have been created in Venezuela to limit the chances that opposition candidates who are government dissidents have to hold power. Specifically, in the most recent regional elections held in Venezuela in November 2008, the Commission received information, through both its hearings and in the individual cases presented to it, indicating that around 400 persons had their political rights restricted through administrative resolutions taken by the Office of the Comptroller General of the Republic based on Article 105 of the Organic Law […]. The information reported was that the Comptroller of the Republic had decided to disqualify these persons from running for public office on the grounds that they had engaged in irregularities in the exercise of their time in public office. The information received by the Commission shows that a great majority of the disqualified persons belonged to the political opposition. [18]

26. On its behalf, the State noted that "there is no political persecution," but that "each time a public employee is sanctioned from a political party of the opposition for administrative reasons, one immediately [concludes] that it is political persecution." It added that the sanctions "have been applied to public officials [...] of every political party because the idea is precisely that—to combat corruption."

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[17] *Cf. Case of Loayza TaMayo*. *Merits*. Judgment of September 17th of 1997. Series C No. 33, para. 43; *Case of Vera Vera y otra*, *supra note* 13, para. 23, and *Case of Chocrón*, *supra note* 13, para. 34

[18] Inter-American Commission on Human Rights, Report *"Democracy and Human Rights in Venezuela," of December 2009*. Available at: www.cidh.org/countryrep/Venezuela2009sp/VE09.indice.sp.htm (last visited on September 1, 2011).

2. Considerations of the Court

27. It is the jurisprudence of the Court that the alleged victims, their family members, or representatives in the contentious proceedings before this Court, may invoke the violation of rights different from those included in the Commission's application,[19] so long as they refer to facts already included in the application, which constitutes the factual framework of the proceeding.[20] In turn, given that a contentious case is substantially litigation between a State and a petitioner or alleged victim, the alleged victims[21] or their representatives may refer to facts that explain, contextualize, clarify, or reject those mentioned in the application or even respond to the claims of the State, [22] depending on their arguments and the evidence they provide, without this invalidating the procedural balance or adversarial principle, since the State has the procedural opportunities to respond to the arguments of the Commission and the representatives during each stage of the process. Furthermore, at any stage of the proceedings before the judgment is rendered, the Court may be presented with supervening facts, [23] provided they are tied to the facts of the case. [24] The Court must determine in each case the need to establish the facts as presented by the parties, taking into account other elements of the body of evidence,[25] while respecting the right of defense of the parties and the subject of the *litis.*

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19 *Cf. Case of "Five Pensioners" V. Perú. Merits, Reparations and Costs.* Judgment of February 28, 2003. Series C No. 98, para. 155; *Case of Ibsen Cárdenas, and Ibsen Peña V. Bolivia. Merits, Reparations, and Costs.* Judgment of September 1, 2010. Series C No. 217, para. 228, and *Case of Chocrón*, *supra note* 13, para. 42.

20 *Cf. Case of the "Mapiripan Massacre" V. Colombia*. *Preliminary Objections*. Judgment of March 7, 2005. Series C No. 122, para. 59; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 19, para. 134, and *Case of Chocrón Chocrón*, *supra* note 13, para. 42.

21 *Cf. Case of Manuel Cepeda Vargas V. Colombia. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of May 26, 2010. Series C No. 213, para. 49; *Case of Cabrera García and Montiel Flores V. México. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of November 26, 2010. Series C No. 220, para. 56, and *Case of Chocrón Chocrón*, *supra* note 13, para. 42.

22 *Cf. Case of "Five Pensioners" V. Perú, supra* note 19, para. 153; *Case of Xákmok Kásek Indigenous Community V. Paraguay. Merits, Reparations and Costs.* Judgment of August 24, 2010. Series C No. 214, para. 237, and *Case of Chocrón Chocrón, supra* note 13, para. 42.

23 In a similar sense, *Cf. Case of "Five Pensioners" V. Perú, supra* note 19, para. 154; *Case of Xákmok Kásek Indigenous Community, supra* note 22, para. 224, and *Case of Chocrón Chocrón, supra* note 13, para. 42.

24 *Cf. "Five Pensioners" V. Perú, supra note* 19, para. 155; *Case of Manuel Cepeda Vargas, supra* note 21, para. 49, and *Case of Chocrón Chocrón, supra* note 13, para. 42. *Case of González et al. ("Cotton Fields") V. México. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 16, 2009. Series C No. 205, para. 17, and *Case of Manuel Cepeda Vargas V. Colombia,* para. 49.

25 *Cf. Case of Yvon Neptune V. Haití. Merits, Reparations and Costs.* Judgment of May 6, 2008. Series C No. 180, para. 19; *Case of Ibsen Cárdenas and Ibsen Peña V. Bolivia, supra* note 19, para. 47, and *Case of Chocrón Chocrón, supra* note 13, para. 42.

28. In the present case, the Court finds that notwithstanding the report presented by the Inter-American Commission in 2009, cited by the representatives (*supra* para. 25), said body did not include in its application any specific reference to other disqualified persons - apart from Mr. López Mendoza – and his situation. The Commission also did not include facts related to a context or pattern of alleged political persecution that frames the context of the administrative proceeding held against the alleged victim nor did it specifically mention facts regarding the alleged context of "restrictions on the ability to rise to power of government dissident, opposition candidates."

29. In this regard, even though in prior occasions the Court has ruled on, in the merits of a case, whether to assess the background or context of a case, to carry out a specific analysis, it is necessary for the Commission to have developed specific arguments, something which did not occur in the present matter in regard to the alleged context or pattern in which in the alleged violations against Mr. López Mendoza took place. As such, considering these procedural reasons, the Court considers that it is not appropriate to issue a ruling on the facts alleged by the representatives that were not raised in the application of the Commission.

B. Proven facts related to the sanctions imposed on Mr. López Mendoza

30. On August 4, 2000, Leopoldo López Mendoza was elected by popular vote as Mayor of the Municipality of Chacao and reelected to the same position on October 31, 2004, a position he carried out for eight years, until November 2008. Upon finalizing his term of office, he aspired to run as a candidate for Mayor of the State of Caracas in the respective elections.[26] Nevertheless, he was unable to run as a candidate due to two sanctions of disqualification imposed on him by the Comptroller General of the Republic in the framework of two administrative proceedings. The first investigation to which Mr. López Mendoza was subject is related to the facts that occurred during his tenure at the company Petróleos de Venezuela S.A. [Venezuela Petroleum S.A.] (hereinafter "PDVSA"), before being Mayor (*infra* paras. 40 to 43). The second investigation entails facts that occurred in the framework of his actions during his tenure as Mayor (*infra* paras. 65 to 66). To understand the scope of said investigations, it is necessary to specify the nature of the powers of the Comptroller. Below, the undisputed facts are highlighted which relate to these investigations, specifying, first, the normative framework from which the Comptroller carried out the respective investigations.

1. The Comptroller General of the Republic and the National System of Fiscal Oversight

[26] Chacao´s Municipal Paper Number 5381, November MMIVL: Act of the Special Session held on November 06, 2004, based on the Swearing-in of the Citizen-Mayor Leopoldo López Mendoza, (case file of annexes to the application, tome 98, annex 2).

31. The Comptroller General of the Republic is a constitutional-ranking body that since the Constitution of the Bolivarian Republic of Venezuela of 1999 came into force, went on to form part of the Citizen's Branch [*Poder Ciudadano*, or "Citizens' Power"]. This Branch, which is made up of the Ethics Council [*Consejo Moral Republicano*]**,** is composed of the Ombudsman, the Public Prosecutor's Office, and the Comptroller General of the Republic. Following that established by Constitutional Article 274, the existence of this new branch of Public Power has, among its attributes, the prevention, investigation, and punishment of facts that threaten public ethics and administrative morals. It also safeguards good governance and assures legality in the use of public goods."[27] The Comptroller General of the Republic is elected by a Postulation Evaluation's Committee, of the Citizen Branch, or where applicable, by the National Assembly, by way of a favorable vote from two-thirds of the parties that form it.[28]

32. On the other hand, the Constitution enshrined in its Article 290 of the National System of Fiscal Oversight, which is defined as "the set of bodies, structures, resources, and proceedings that, integrated under the supervision of the Comptroller General of the Republic, interact in coordination to achieve unity in direction of the oversight systems and procedures that help to achieve the general objectives of the various entities and bodies subject to this Law, as well as the proper function of Public Administration."[29]

33. In 2001, the Organic Law of the Comptroller General of the Republic and the National System of Fiscal Oversight (hereinafter LOCGRSNCF). This Law was adopted, unanimously, by all the parties with representation in the General Assembly,[30] and it reformed similar laws adopted in 1975, 1984, and 1995, those of which included the possibility of disqualification from holding public office as a consequence of administrative responsibility.[31] The LOCGRSNF of 2001 specified the government officials and persons that would be subject to

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[27] Article 274 of the Constitution of the Bolivarian Republic of Venezuela, published in the Official Gazette on thursday, December 30, 1999, No. 36.860 (case file of annexes to the application, annex 1, fokio 56).

[28] Article 279 of the Constituiton of the Bolivarian Republic of Venezuela, *supra note* 27.

[29] Article 290 of the Constitution of the Bolivarian Republic of Venezuela, *supra* note 27 and Article 4 of the Organic Law of the Comptroller General of the Republic and the National System of Fiscal Oversight, published in the Official Gazette No. 37.347 of Monday December 17, 2001 (case file of annexes tot he application, annex 1, folio 1419).

[30] The State indicated that the law was approved unanimously by all political sectors in representation at the National Assembly at the time: Primero Justicia; Movimiento V República –MVR-; Acción Democrática –AD-; Proyecto Venezuela; Comité de Organización Política Electoral Independiente –COPEI-, Patria para Todos –PPT-; Movimiento al Socialismo –MAS-; Convergencia; Un Nuevo Tiempo; Causa R; Alianza Bravo Pueblo; Consejo Nacional Indio de Venezuela, Movimiento Independiente Ganamos Todos; Pueblos Unidos Multiétnicos de Amazonas. *Cf.* Brief of final arguments of the State of April 1, 2011 (case file on the merits, tome III, folio 1396). The representatives did not contest this information provided by the State.

[31] The Laws of 1975, 1984, and 1995 allowed for the disqualification of up to 3 years. In these prior laws, the Comptroller maintained "a residual competence" to impose the disqualification when a government official was not in public office. To the contrary, once the administrative responsibility was declared, "it was the chief of the employee declared responsible" who would impose the disqualification. *Cf.* Judgment No. 1266 of the Constitutional Chamber of the Supreme Tribunal of Justice of August 6, 2008 (case file of annexes to the application, tome I, annex 27, folios 584 to 642) and declaration in public hearing of expert witness Jesús Eduardo Cabrera Romero.

the control, vigilance, and investigation of the Comptroller,[32] and provided for the possibility of imposing sanctions for actions, events, or omissions, generators of administrative responsibility.[33] In said law, it is established that administrative responsibility would generate a penalty fine and that the Comptroller may impose sanctions of suspension, dismissal, or disqualification from holding public office:[34]

> Article 105: Upon a declaration of administrative responsibility, pursuant to that enshrined in Articles 91 and 92 of this Law, one will be punished with a fine as set in Article 94, in accordance with the severity of the offense and the type of detriment caused. It so corresponds to the Comptroller General of the Republic, in an exclusive and excluding manner, without other proceedings, to call upon the attention of the entity that committed the illicit act, the suspension of the exercise of said charge without salary benefits for a period of no more than twenty-four (24) months or the dismissal of the person deemed responsible, a punishment whose execution will be the responsibility of those of the highest authority; and to impose, heeding to the severity of the irregularity committed,

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[32] Article 9 of the LOCGRSNCF: The following are subject to the provisions of Law and to control, supervision, and oversight of the Comptroller General of the Republic: 1. The bodies and entities of which the Public-National Power pertains. 2. The bodies and entities of which the State-Public Power is exercised. 3. The bodies and entities to which the Public Power in the Metropolitan District is exercised. 4. The bodies and entities to which the exercise of Municipal-Public Power and the local entities in the Organic Law of the Municipal Regime is exercised. 5. The bodies and entities to which the Public Power of Federal Territories and Federal Dependencies is exercised. 6. The autonomous national, state, district, and municipal institutes are exercised. 7. The Central Bank of Venezuela. 8. The public universities. 9. The other national, state, district, and municipal persons of Public Law. 10. The societies of any nature of which the persons referred to in the previous numerals participate in its social capital, as well as those that constitute that participation. 11. The foundations and civil associations and other institutions created through the use of public funds, or that are directed by persons referred to in the previous numerals or in which the persons designate their authority, or when the budget contributions effectuated in the use of the budget by one or more of the persons referred to in the numerals consisting of fifty percent (50%) or more of the budget. 12. The natural or juridical persons that are contributors or responsible, pursuant to that enshrined in the Tributary Organic Code, or that in any way contract, negotiate, or hold operations with the bodies or entities mentioned in the prior numerals or that receive support, subsidiaries, or other transfers or fiscal incentives, or that in any form intervene in the administration, management, or custody of public remedies. *Cf.* Article 9 of the Organic Law of the Comptroller General of the Republic and the National System of Fiscal Oversight, *supra note* 29, folio 73

[33] Article 93 of the LOCGRSNCF: The sanctioning powers of the oversight bodies will be exercised in accordance with the provisions of the Constitution of the Bolivarian Republic of Venezuela and the Laws, following the procedure laid down in this Act for determining responsibility. This power includes the power to: declare the administrative responsibility of officials, employees and workers providing services in the entities listed in paragraphs 1 to 11 of Article 9 of this Law, as well as individuals who have engaged in acts, events, or omissions of such responsibility; impose fines in cases referred to in Article 94 of this Law; impose the sanctions referred to in Article 105 of this Law. *Cf.* Article 93 of the Organic Law of the Comptroller General of the Republic and the National System of Fiscal Oversight, *supra note* 29, folio 79.

[34] Organic Chapter IV of the LOCGRSNCF, entitled: of the Administrative Proceeding for the Determination of Responsibility. Cf. Law of the Comptroller General of the Republic and the National Fiscal Oversight System, *supra* note 29, folios 79 and 80.

> the disqualification from holding public office for a maximum of fifteen (15) years, case in which the relevant information must be submitted to the agency responsible for administration of human resources of the entity or body where the events took place in order for it to carry out the relevant procedures. In those cases where administrative responsibility is declared of the highest authority, the sanction will be executed by the body charged with appointment, removal, or disqualification. The maximum authorities of the bodies and entities established in the numerals 1 to 11 of Article 9 of this Law, before proceeding with the appointment of any public official, are obligated to consult the registry of those disqualified created and maintained by the Comptroller General of the Republic. Any appointment done outside of this rule will be deemed null.

34. On July 9, 2007, the Comptroller General issued an official letter addressed to the Mayors of the country regarding the application of sanctions established in Article 105 of the LOCGRSNCF.[35] Pursuant to the official letter, the imposition of the sanctions of suspension, dismissal, or disqualification "require, as the only and exclusive assumption for a declaration of administrative responsibility, that it be the result of a prior, preparatory, and necessary proceeding to allow the application, considering the type and severity of the crime, of the mentioned sanctions." The Comptroller specified that "the sanctions mentioned, apart from the pecuniary nature alluded to in Article 105 *eiusdem,* are acts established as a consequence, once the administrative illicit act is proven and the administrative responsibility is determined." In this context, it noted that:

a) "the sanction of suspension from the exercise of a public charge without paid leave, implies for the recipient, the temporary separation, in the conditions alluded to, from the charge held at the moment of the execution. Once the action is verified, the official may be reincorporated into the exercise of public office to the same conditions that existed prior to the sanction becoming effective.

b) "[r]egardling the dismissal of the person responsible, [...] it involves breaking the link or relationship between the recipient and [the] entity or agency which he or she provides services for at the moment when the measure is applied."

c) "[f]or its part, the disqualification from holding public office for up to fifteen (15) years, results in, as in the case referred to [...] previous[ly], on the one hand, the rupture or dissolution of the employment relationship that may exist for the period the disqualification is sought, and [on] the other hand, the total inability to hold any other public office for the duration of the disqualification."

35. The Comptroller indicated that the noncompliance of the instructions it imparts regarding the execution of these sanctions generates responsibilities for the respective

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[35] Cf. Official letter No. 01-00-00104 of July 9, 2007 issued by the Comptroller General of the Republic and the Mayors of the Bolivarian Republic of Venezuela (case file of annexes to the application, annex 34, folios 1555 to 1558).

government officials and requested information on the consultation to the registry for disqualified persons.[36]

2. Components and phases of the administrative proceeding for the determination of responsibility

36. The administrative proceeding for the determination of responsibility regulated in LOCGRSNCF is preceded by two phases: one is a fiscal oversight phase and the other is an investigative phase.[37]

37. The phase of fiscal oversight is carried out by so-called "Management Agencies" within the Comptroller, which are divided by topics or type of fiscally scrutinized entities. [38] Said phase "stems from the operational or fiscal investigative plans carried out by the Comptroller […] while exercising its powers, or by a complaint or a request brought by any public body[, by means of] account examinations, inspections, or fiscal investigations [and other] measures to determine the alleged facts that may have led to illicit actions of an administrative nature." [39] Subsequently, the respective "findings or […] results […] are notified by way of a preliminary report to the body or entity which has been the subject of the audit, in order for it to […] give its [corresponding] observations," [40] to which the Comptroller will then "analyze and determine, by way of a final report, if the observations made in the investigative action are to be maintained or if attention should be brought to these considerations. Legal notice of this report would then be […] provided to the audited body or entity. [41] Upon completion of this phase, the investigative phase may begin where "unlike the

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[36] The Comptroller noted that "for the best fulfillment of the powers" attributed to the Comptroller regarding the adoption of the sanctions " the execution of these accessory means to administrative responsibility" corresponds "to the office charged with administration of human resources of the entity or body of the official being sanctioned." Likewise, it noted that " both the noncompliance of the instructions made by the [Comptroller], in order for the disciplinary sanctions to be imposed, such as the designation of employees that would have been declared disqualified by the Comptroller […], could constitute facts regarding responsibility for the employee(s) that do not comply with that imposed […]. On the other hand, […] it reported that the Registry of Disqualified Persons must be consulted in the Office for the Determination of Responsibility of the [Comptroller]." Cf. Official letter No. 01-00-00104 of July 9, 2007, issued by the Comptroller General of the Republic to the Mayors of the Bolivarian Republic of Venezuela supra note 35, folios 1555 to 1558.

[37] *Cf.* Articles 77 to 81 of the Organic Law of the Comptroller General of the Republic and National Fiscal Oversight, *supra note* 29, folio 77.

[38] In this regard, the Court notes that in the present case, the Oversight Department of the Industry, Production, and Commerce Sector adjoined to the General Office of Decentralized Administrative Oversight of the Comptroller General and the Office of Municipal Oversight of the General Office of State and Municipal Control forwarded their cases concerning Mr. López Mendoza to the Comptroller. *Cf.* Act of the Office of Industry Oversight of July 11, 2002 (case file of annexes to the answer to the application, tome XX, annex A, folios 7754 and 7755) and final report of the Office of Municipal Oversight of September 9, 2003 (case file of annexes to the answer to the application, tome XXIX, annex D, folios 11252 to 11255).

[39] Statement of expert witness Alejandro José Soto Villasmil in the public hearing held in this case.

[40] Statement of expert witness Alejandro José Soto Villasmil, *supra* note 39.

[41] Statement of expert witness Alejandro José Soto Villasmil, *supra* note 39.

prior phase, it arises necessarily […] when in the facts determined by the Comptroller […] there is evidence to assume the administrative responsibility of some of the government officials in the exercise of their functions." [42]

38. If there is merit, the respective agency begins an investigative phase by way of an order to initiate issued by the competent fiscal oversight authority, wherein it describes, among other elements, the actions, events, or omissions presumably against the law, the amount of damage to the public good, and the evidence gathered during the respective fiscal oversight action. [43] Once the fiscal oversight body has taken all the actions it deems necessary, it shall record them in the so-called Report on Results, "where it decides to [archive the actions because it deems that the arguments were sufficiently debated and clarified […] or, to the contrary, it decides whether the denominated proceeding to determine responsibilities ensues." [44]

39. After the Report on Results, the government official that is in charge of the administrative proceeding is also the Director of Determination of Responsibility.[45] The administrative proceeding for the determination of responsibility[46] consists of three phases: i) one of initiation or commencement, by way of legal notice provided to the defendant of an order[47]; ii) one of contradictions and objections, which extends until the public and oral hearing[48], and iii) the decision with which the domestic oversight body or its delegation will proceed regarding whether to formulate a reparation for the defendant, declare said persons administrative responsibility, impose a fine, absolve said person, or declare a dismissal,

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[42] Statement of expert witness Alejandro José Soto Villasmil, *supra* note 39.

[43] *Cf.* Article 77 of the Organic Law of the General Comptroller of the Republic and the National System of Fiscal Oversight, *supra* note 29, folio 77.

[44] Statement of expert witness Alejandro José Soto Villasmil, *supra* note 39.

[45] In this respect, the Office of Determination of Responsibility carried out a phase of determination in two proceedings against Mr. López Mendoza. *Cf.* Order of initiation of the Office of Determination of Responsibility of July 16, 2004 (case file of annexes to the answer to the application, tome XI, annex A, folios 5529 to 5584) and Order of initiation of the Office of Determination of Responsibility of July 12, 2004 (case file of annexes to the answer to the application, tome XXIV, annex D, folios 8648 to 8682).

[46] *Cf.* Articles 95 to 111 of the Organic Law of the General Comptroller of the Republic and the National System of Fiscal Oversight, *supra note* 29, folios 79 and 80.

[47] The order to open the investigation should be notified to the accused in order to place the accused before the law, within fifteen (15) days as of notification, so as to proceed with pointing out the evidence that will be shown at the public hearing to be set by express order for the next working day following the expiration of the abovementioned period, and through which it will be indicated that on the next fifteenth (15) business day, there will be an oral and public hearing, to be held before the director of the internal oversight or his delegate. *Cf.* Articles 99 and 101 of the Organic Law of the General Comptroller of the Republic and the National System of Fiscal Oversight, *supra note* 29, folio 79.

[48] *Cf.* Article 101 of the Organic Law of the General Comptroller of the Republic and the National System of Fiscal Oversight, *supra note* 29, folio 79.

pursuant to what corresponds.[49] Once one of the sanctions is agreed upon, "the remedial or appeals route is opened, where once exhausted, the administrative action in question is considered final.[50] Upon the establishment of the occurrence of the action, the Comptroller General of the Republic is empowered, in attention to that established in Article 105 of the LOCGRSNCF, to establish the additional sanctions, which may include either suspension, dismissal, or disqualification (*supra* paras. 33 and 34).

3. Administrative proceeding in relation to the activity of Mr. López Mendoza in PDVSA

40. In 1998, Mr. López Mendoza worked as an Analyst of Entorno Nacional [*National Environment*] in the Office of the Chief Economist of PDVSA. [51] At that time, he was also founder of the nonprofit Civil Association Primero Justicia [*First Justice*]."[52]

41. On July 24, 1998, a Memorandum of Understanding between the Inter-American Foundation (IAF) and PDVSA was signed within the so-called Framework for the Development Base (MDB) by which disadvantaged groups organized to achieve their social, cultural, and economic well-being.[53] In the framework of this memorandum of understanding, on December 23, 1998, a donation was made to the benefit of the Civil Association Primero Justicia for the sum of sixty million, sixty thousand Bolivares (Bs 60,060,000.00), which was granted under the Cooperation Agreement between PDVSA and the IAF, in connection with the project entitled "Expansión y consolidación de la justicia de paz en los Estados Monagas, Anzoátegui, Sucre y Delta Amacuro: una oportunidad para la equidad en un contexto de crecimiento económico Regional" [*Expansion and consolidation of justice for peace in the States of Monagas, Anzoátegui, Sucre, and Delta Amacuro: an opportunity for equity in a context of regional economic growth*]. [54] Similarly, a donation was made in the amount of twenty-five million Bolivares (Bs 25.000.000.00) to the benefit of the same association, this

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[49] Said decision should be consignated in writing in the case file within five (5) days following the oral pronouncement. *Cf.* Article 103 of the Organic Law of the General Comptroller of the Republic and the National System of Fiscal Oversight, *supra note* 29, folio 79.

[50] Declaration of the expert witness Alejandro José Soto Villasmil, *supra note* 39.

[51] *Cf.* Work contract for undetermined period between PDVSA and Mr. López Mendoza on October 1, 1992 (case file of annexes to the answer to the application, tome XIX, annex A, folio 7666).

[52] *Cf.* judicial appeal for annulment of the administrative decision of the State filed by Mr. López Mendoza on October 4, 2005, Case file No. 2005-5251 (case file of annexes to the answer to the application, tome XXI, annex B, folio 7967).

[53] *Cf.* Memorandum of understanding between PDVSA and IAF of July 24, 1998 (case file of annexes to the answer to the application, tome XIX, annex A, folios 7540 to 7544).

[54] *Cf.* Act of notary public expedited by Mrs. Antonieta Medoza de López of December 23, 1998 (case file of annexes to the answer to the application, tome XIX, annex A, folio 7595) and Order of initiation of the Office of Determination of Responsibility of the Comptroller General of the Republic of July 15, 2004, Case file No. 08-01-06-04-005 (case file of annexes to the answer to the application, tome XI, annex A, folios 5534 to 5535).

time to support the project entitled "Educando para la Justicia 1998-1999" [*Educating for Justice 1998-1999*], which was delivered on September 11, 1998. [55]

42. At the time of the donation, the mother of Mr. López Mendoza, Antonieta Mendoza de López, played roles as Manager of Public Affairs of the Service Division of PDVSA. [56]

43. The facts related to the activities of Mr. López Mendoza in the company PDVSA led to a proceeding and the corresponding sanctions, of fines and of disqualification. The general accusation against the alleged victim was related to his having engaged in a "conflict of interest" in relation to these donations, given that he served both as an employee of PDVSA as well as a member of the Board of Director of the organization receiving the donations of said company, as well as the fact that his mother was the one who authorized one of the donations. [57]

3.1. Phase of actions of fiscal oversight

44. In May 2000, PDVSA's Corporate Internal Audit Department drafted a report to verify the legality, reasonability, and compliance of the terms agreed to in the Memorandum of Understanding between [IAF and PDVSA], with particular emphasis on the selection of grantee institutions and the results of projects that used the donations during 1998 and 1999.[58]

45. As part of its powers, the Oversight Department of the Industry, Production, and Commerce Sector of the Comptroller General of the Republic (hereinafter the "Department of Industry Oversight") examined the audit report mentioned in the context of the review of the financial contributions from PDVSA under the guise of grants and donations.[59] The study verified the legality, reasonableness and compliance with the agreed upon terms in the Memorandum regarding the provisions of the domestic regulations of the petroleum corporation. In particular, the provision of grants and donations to nongovernmental

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55 *Cf.* Reciept issued by PDVSA of September 11, 1998 (case file of annexes to the answer to the application, tome XIX, annex A, folio 7874) and Order of initiation of the Office of Determination of Responsibility of the Comptroller General of the Republic of July 15, 2004, *supra note* 54, folio 5537.

56 *Cf.* Document of general data of the worker of Mrs. Antonieta Mendoza de López (case file of annexes to the answer to the application, tome XIX, annex A, folio 7661) and Order of initiation of the Office of Determination of Responsibility of the Comptroller General of the Republic of July 15, 2004, *supra note* 54, folios 5534 to 5537.

57 *Cf.* Order of initiation of the Office of Determination of Responsibility of the Comptroller General of the Republic of July 15, 2004, *supra note* 54, folios 5549 and 5553.

58 In this report, the Corporative Office on public matters mentioned the possible existence of a conflict of interest. It noted that "pursuant to that evident from the donation documents, the donation was given to an organization that has a juridical personality different from the one that corresponds to its directors." *Cf.* Audit Report, Evaluation of the memorandum of understanding between the Inter-American Foundation (IAF) and PDVSA-Years 1998-1999. Report No. 2000-006 of May 2000, Case file No. 22/001/2003 (case file of annexes to the answer to the application, tome XIX, annex A, folio 7492 to 7530).

59 *Cf.* Review of results in the report elaborated by the Internal Audit Office of the Oversight Department of the Industry, Production, and Commerce Sector, Case file No. 22/001/2003 (Case file of annexes to the answer to the application, tome XIX, annex A, folios 7458 to 7489).

organizations, foundations, and civil associations was examined for the period between 1998 and 1999, in order to improve the administration of the agreement.[60]

46. On July 11, 2002, government officials of the Comptroller General's Office adjoined to the General Office of Decentralized Administrative Oversight in the Department of Industry Oversight, gathered at the Office of Social Investment adjoined to the Corporate Affairs Office on Public Matters of the PDVSA. These officials indicated the following in the investigation act[61]: i) that they did not locate the approval of the donation granted to the Civil Association Primero Justicia for the amount of sixty million, sixty thousand Bolivares (Bs 60,060,000.00), ii) that they did not locate any documents "related to the adoption, implementation, and monitoring of resources allocated by way of donations," [62] and iii) that they did not find the donation request to PDVSA by the Civil Association, as only the project proposal was found. [63]

3.2. Investigative phase

47. On September 8, 2003, an order was issued to proceed with the start of the investigative phase, documented in the Case File No. 22/001/2003, which began in the framework of the reviews conducted by the Department of Industry Oversight. The record shows, *inter alia*, that: i) on May 14, 1998, Mr. López Mendoza had accepted "the Declaration on Conflict of Interests with the Board of Directors of [PDVSA], wherein he stated he was not the Principal Director, nor substitute nor employee, nor had he taken on executive, director, or administrative positions in any other institution, company, or commercial, industrial, or financial firm" [64] and ii) at the time of the donation, Mr. López Mendoza "was an active employee in PDVSA and formed part of the Board of Directors of the mentioned association." [65] For this reason, the Department of Industry Oversight concluded that "sufficient elements existed to create an administrative file of the case, and it ordered, among other aspects, that

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60 *Cf.* Review of results in the report elaborated by the Internal Audit Office of the Oversight Department of the Industry, Production, and Commerce Sector, *supra note* 59, folios 7458 to 7489.

61 *Cf.* Act of the officials of the Comptroller General of the Republic adjoined to the General Office of Decentralized Administrative Oversight, in the Office of Industry Oversight of July 11, 2002 (case file of annexes to the answer to the application, tome XX, annex A, folio 7754).

62 Act of the officials of the Comptroller General of the Republic adjoined to the General Office of Decentralized Administrative Oversight, in the Office of Industry Oversight, *supra note* 61, folio 7754.

63 In the action, it was stated that the citizens mentioned therein had ten (10) working days to expose, in writing, and before the Comptroller General of the Republic, their observations regarding that mentioned. Act of the officials of the Comptroller General of the Republic adjoined to the General Office of Decentralized Administrative Oversight, in the Office of Industry Oversight, *supra note* 61, folio 7755.

64 Order to proceed of the Office of Industry Oversight of September 8, 2003, Case file No. 22/001/2003 (Case file of annexes to the answer to the application, tome XIX, annex A, folio 7455).

65 Order to proceed of the Office of Industry Oversight of September 8, 2003, *supra note* 64, folio 7456.

legal notice be provided to those persons who were responsible for an action, event, or omission […] and to incorporate the documentary evidence provided by the interested parties into the case file." [66]

48. On September 12, 2003, [67] legal notice was provided to Mr. López Mendoza of said order to initiate, wherein he was informed that the Comptroller "is carrying out an investigation on the contributions made by […] PDVSA for donations and grants during the years 1998, 1999, 2000, and 2001," and a period was set in which to gather the evidence deemed necessary for his defense. [68] Finally, he was informed that "he would be informed of the results of the investigation […], in the corresponding Report on Results, which would remain in Case File No. 22/001/2003." [69]

49. On October 31, 2003, Mr. López Mendoza presented a brief in relation to the investigated facts, wherein he argued "that the fiscal oversight body did not comply with its obligation to inform him 'in a specific and clear manner on the facts of the charges against him.' [70] Nevertheless, […] he formulated the arguments he considered 'were pertinent to the facts narrated in the official notification letter." [71] Moreover, he noted that he had not satisfied any of the circumstances foreseen in the "Conflict of Interest Regulations" given that he did not gain any benefit from the donations nor did he fail in his commitment expressed in the Declaration on Conflict of Interests.[72] Also, he alluded to distinct documents in the administrative case file and recorded those deemed pertinent. [73]

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[66] *Cf.* Order to proceed of the Office of Industry Oversight of September 8, 2003, *supra note* 64, folio 7456.

[67] *Cf.* Official letter No. 06-02-780 of the Office of Industry Oversight of September 12, 2003 (Case file of annexes to the application, tome I, annex 5, folios 252 to 256).

[68] *Cf.* Official letter No. 06-02-780 of the Office of Industry Oversight of September 12, 2003, *supra note* 67, folios 252 to 255.

[69] Official letter No. 06-02-780 of the Office of Industry Oversight of September 12, 2003, *supra note* 67, folio 256.

[70] Brief presented by Mr. López Mendoza of October 31, 2003, Case file No. 08-01-06-04-005 (case file of annexes to the answer to the application, tome XIV, annex A, folio 6363).

[71] In addition to the alleged violation to the right to defense, Mr. López Mendoza argued that: i) "it was not he who […] received [the donations], nor directly nor indirectly," and ii) neither did he "take part or influence in the donations given to the company, nor did he benefit from them in a personal way, nor did he favor a particular relative[, to which] he did not incurr in any of the alleged conflicts of interest." *Cf.* Brief presented by Mr. López Mendoza on October 31, 2003, *supra note* 70, folios 6359 to 6371.

[72] Mr. López Mendoza issued on May 14, 1998, the "Declaration on Conflict of Interest" before the Board of Directors of Petróleos de Venezuela, S.A. wherein he stated he was not the Principal Director, nor Substitute, nor employee, nor did he occupy a director, executive, or administrative position in any instituiton, company, or commercial, industrial or financial firm. *Cf.* Brief presented by Mr. López Mendoza on October 31, 2003, *supra note* 70, folios 6359 to 6371.

50. The result of the investigation phase was the Report on Results of the Department of Industry Oversight.[74] In said report, the following was indicated regarding the investigated facts, events, and omissions regarding three (3) donations made by PDVSA, two (2) of them to the benefit of the Civil Association Primero Justicia. The report noted regarding the first donation made, that[75]: i) the donation was carried out without contractually establishing "the specification of the objectives for which the donation was intended, its use, the purpose or period of the donation, the management of bank accounts, schedule of reimbursements, reports which the recipient (donee) must present, as well as the follow-up activities that the donor would carry out (PDVSA)" [76]; ii) the donation was formalized by [Mrs.] Antonieta Mendoza de López, […], who ordered the request for issuance of the check and the draft of the donation document, despite the existence of "a direct family relationship between her (the mother) and the citizen Leopoldo López Mendoza (the son), […], who at the time of the donation (December 23, 1998), held a position as a member of the Board of Director of the Civil Association (the beneficiary of the donation)", and iii) Mr. López Mendoza "was an active employee of the PDVSA (Analyst of Entorno Nacional [*National Environment*]) where he had signed a conflict of interest.[…] 'the Declaration on Conflict of Interests.'" On its behalf, regarding the third donation, it was noted that: i) the donation was carried out without contractually stipulating the prior mentioned requisites, and ii) Mr. López Mendoza held a position in PDVSA and was a member of the Board of the Association. As such, the report concluded that it would "forward the Report on Results to the Office of the Determination of Responsibility, in order for it to carry out the corresponding assessment."[77]

3.3. Administrative proceeding for the determination of responsibility

51. On July 15, 2004, an administrative proceeding was initiated for the determination of responsibility, established in Article 96 of the LOCGRSNF, as a result of the "occurrence of alleged irregular activity," specifically the following: i) "[a]lleged arrangement with the interested parties, regarding the contract and seeking a determined result," ii) [a]lleged carrying out of contracts by third party," and iii) "[s]imulation." [78] Given the abovementioned, said order to initiate the proceeding specified that regarding the donations to PDVSA and the situation at hand, it could be subsumed under the assumption of administrative responsibility

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73 In particular, Mr. López Mendoza attached to the brief a copy of the proposed donations and contributions of the company PDVSA of 1999. *Cf.* Brief presented by Mr. López Mendoza on October 31, 2003, *supra note* 70, folios 6359 to 6371.

74 *Cf.* Report on results of the Office of Industry Oversight (case file of annexes to the answer to the application, tome XVIII, annex A, folios 7327 to 7449).

75 *Cf.* Report on results of the Office of Industry Oversight, *supra note* 74, folios 7327 to 7449.

76 Report on results of the Office of Industry Oversight, *supra note* 74, folio 7442.

77 Report on results of the Office of Industry Oversight, *supra note* 74, folio 7442.

78 *Cf.* Order of initiation of the Office of Determination of Responsibility of July 15, 2004, *supra note* 54, folios 5529 to 5584.

enshrined in numerals 5 and 7 of Article 113 of the Organic Law of the Comptroller General of the Republic of December 13, 1995, applicable at the time the events occurred.[79]

52. On July 16, legal notice was provided to Mr. López Mendoza and to Mrs. Antonieta Mendoza de López of the Order to Initiate the Administrative Proceeding. [80] In this Order "they are charged with alleged irregular activity, based on the Investigative Power in Case File No. 22-00-2003, and of the documentary evidence that was gathered to that effect." Moreover, it was communicated to him that they counted on a period to present the evidence, as well as to carry out a hearing where legal arguments would be raised. [81] Subsequently, on August 25, 2004, Mr. López Mendoza presented documentary evidence to defend himself form the accusations being made regarding the donations.[82]

53. On October 5, 2004, in the framework of the hearing before the Director of Determination of Responsibility, the representative of Mr. López Mendoza argued, among other things, the "violation of the right to defense based on the investigative phase and requested the revocation of the decision that initiated the […] proceeding, since no clear or specific accusation was made and the right to defense was violated when the notification established in Article 79 of the [LOCGRSNCF] was made, wherein the alleged reason or motive for responsibility was not indicated, nor was it stated that harm was incurred upon the public good, to which it is an act that is thereby both flawed and void." [83] He also noted,

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[79] The reasons for administrative responsbility of which Mr. López Mendoza was charged were established in numerals 5 and 7 of Article 113 of the Organic Law of the Comptroller General of the Republic, in force at the time the events occured. Said numerals of Article 113 stated: "Those facts that are elements of administrative responsibility independent of civil or criminal responsibility, aside from those enshrined in Title IV of the Organic Law of Protection of the Public Good, mentioned below: […] 5. The celebration of contracts, that, filed by an individual or the individuals representative, with the Republic, State, or Municipality, and other legal persons of public law, except the exceptions established in the law. […] 7 Acting in concert with interested parties to carry out a particular result, or the use of maneuvers or means that lead to this result, carried out by an official, by virtue of his office, carrying out a contract, concession, licitation, liquidation of assets or effects of public goods or in providing them." The Report on Results indicated that que Igual previsión, contemplated in Article 91, numeral 4, and 20 of the [LOCGRSNF] in force of 2001". *Cf.* Order of initiation of the Office of Determination of Responsibility de 15 de Julio de 2004, *supra note* 54, folios 5529 a 5584.

[80] *Cf.* Official letter 08-01-1048 issued by the Office of Determination of Responsibility of July 16, 2004 (Case file of annexes to the application, tome I, annex 5, folios 257 and 258).

[81] *Cf.* Official letter 08-01-1048 issued by the Office of Determination of Responsibility, *supra note* 80, folios 257 and 258.

[82] Mr. López Mendoza presented documentary evidence that consisted of: a) original Constitutive Statutes of the Civil Association Primero Justicia and Modification and Consolidation of the Statutes, and b) the "Regulations on Conflicts of Interest" contained in the Manual on Regulations and Administrative Procedures for Personnel of PDVSA, Head Office *Cf.* Brief of Promotion of evidence presented by Mr. López Mendoza on August 25, 2004, Case file No. 08-01-06-04-005 (case file of annexes to the answer to the application, tome XI, annex A, folios 5604 to 5607).

[83] Act of the public hearing carried out by the Office of Determination of Responsibility on October 5, 2004 (case file of annexes to the answer to the application, tome XI, annex A, folio 5828).

similarly, that in the "Report on Results the elements are not set out that establish the elements of the charge." [84]

54. On October 29, 2004, the Deciding Order was made by Office of the Determination of Responsibility of the Comptroller General of the Republic, [85] wherein the following was stated:

> The ADMINISTRATIVE RESPONSIBILITY IS DECLARED of the citizens:
>
> LEOPOLDO LÓPEZ MENDOZA, […], for the mentioned facts herein:
>
> IN CONCERT WITH THE INTERESTED PARTIES IN A CONTRACT SEEKING A PARTICULAR RESULT, [...] regarding the donation to the Project entitled "Expansion and Consolidation of Justice for Peace in the States of Monagas, Anzoategui, Sucre, and Delta Amacuro: an opportunity for equity in a context of Regional economic growth "in the amount of SIXTY MILLION SIXTY THOUSAND BOLIVARES (8s. 60.060.000.00), an act that generated responsibility established in paragraph 7 of Article 113 of the Organic Law of the Comptroller General of the Republic, in force at the time of the occurrence of the events, currently contained in section 20 of Article 91 of the [LOCGRSNCF].
>
> CARRYING OUT OF CONTRACT BY THIRD PARTY, [...] in regard to two (2) donations received by the Civil Association Primero Justicia, that is: 1) for the amount of SIXTY MILLION SIXTY THOUSAND BOLIVARES (Bs 60,060,000.00) in relation the Project entitled "Expansion and Consolidation of the Justice for Peace of the States of Managas, Anzoategui, Sucre, and Delta Amacuro: an opportunity for equity in a context of regional economic growth," and 2) the amount of TWENTY-FIVE MILLION BOLIVARES (25.000,000,00 Bs), related to the project entitled "Educating for Justice (1998-1999)," events which generated administrative responsibility as established in numeral 5 of Article 113 of the derogated Organic Law of the Comptroller General of the Republic, in force at the time of the occurrence of events, enshrined at the moment in numeral 4 of Article 91 of the [LOCGRSNCF]. [86]

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[84] Act of the public hearing carried out by the Office of Determination of Responsibility of October 5, 2004, *supra* note 83, folio 5828.

[85] *Cf.* Deciding order of the Office of Determination of Responsibility of October 29, 2004 (Case file of annexes to the application, tome I, annex 3, folios 117 to 216).

[86] Deciding order of the Office of Determination of Responsibility of October 29, 2004, *supra* note 85, folios 212 to 213.

55. Given this declaration of responsibility, the Order imposed a fine on Mrs. Mendoza López and on Mr. López Mendoza in the amount of one million two hundred forty-three thousand two hundred Bolivares (Bs, 1,243,200.00) each. The fine imposed on Mr. López Mendoza was equivalent, at the time of the events, to U.S$ 647.50 dollars pursuant to the value of the official exchange rate of the Banco Central de Reserva de Venezuela [*Central Bank Reserve of Venezuela*], confirmed by the parties in their final written arguments.

3.4. Motion to Reconsider

56. On November 22, 2004, Mr. López Mendoza filed a motion to reconsider,[87] arguing irregularities in the accusation as well as the irregular denial of certain evidence.

57. On March 28, 2005, the Director of the Office of the Determination of Responsibility of the General Office of Special Procedures dismissed the motion to reconsider and confirmed the October 2004 decision. [88] The administrative body determined that for the declaration of administrative responsibility, a proceeding took place in accordance with the applicable normative law, and that there was a correct evaluation of the facts and of the body of evidence and of the causal relationship between these and the actions of the petitioner. [89]

3.5. Imposition of the sanction of disqualification

58. On August 24, 2005, the Comptroller General issued Resolution No. 01-00-000206[90] as a result of the final decision in the administrative forum of the declaration of administrative responsibility which occurred on March 28 of that year, imposing on Mr. López Mendoza the sanction of disqualification from holding public office for a period of three (3) years in

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87 In this regard, he indicated that in the official letters No. 06-02-776 and 06-02-7809, both of September 12, 2003, "there is no specific or clear accusation against Antonieta Mendoza de López and Leopoldo López Mendoza […]. There is simply the free narration of facts pertaining to various people, from which no charge is clearly and specifically laid out for such people, nor with indication of any of the alleged law from which the complaint stems. "Also violated was the right to defense [...] in the same way that, in an illegal manner, the use of the evidence was denied, put forward by the representation [...]. The same [would have happened], regarding the testimonial evidence promoted in due course and that was never gathered because of the obstacles imposed by this Body, from which it could be inferred that it has no interest in the truth [...] coming to light on this issue." Motion for reconsideration filed on November 22, 2004 by Mr. Leopoldo López Mendoza with the Director of accountability of the General Office of Special Procedures of the Comptroller General of the Republic (case file of annexes to the application, tome V, appendix 3, folios 2620 to 2651).

88 *Cf.* Resolution of the Office of Determination of Responsibility of March 28, 2005 (Case file of annexes to the application, annex 4, folios 218 to 248).

89 *Cf.* Resolution of the Office of Determination of Responsibility of March 28, 2005, *supra note* 88, folios 218 to 248.

90 *Cf.* Resolution N° 01-00-000206 of August 24, 2005 issued by of the Comptroller General of the Republic (Case file of annexes to the application, tome I, annex 14, folios 396 to 400).

accordance with Article 122 of the Organic Law of the Comptroller General of the Republic of 1995-in effect at the time the events occurred,- and Article 105 of the LOCGRSNCF.[91]

3.6. Motion to Reconsider

59. On September 22, 2005, Mr. López Mendoza filed a motion to reconsider[92] against the order imposing his disqualification for 3 (three) years, arguing "the manifest lack of cause or motivation for the action taken, thereby violating the right to defense and making the order null." In this regard, he noted that nowhere in the Resolution is there reference to the reasons of fact or law upon which the Comptroller General of the Republic considered the punishable actions of sufficient severity to apply the sanction of disqualification. Similarly, he argued that cause is not given regarding the reason why the sanction for disqualification is applied for a period of three (3) years, which is the maximum term permitted by Law, and that the requirement was ignored of demonstrating the detriment caused. The latter is required by Article 122 of the Organic Law of the Comptroller General of the Republic of 1995, applicable *rationae temporis*. [93]

60. On January 9, 2006, the Comptroller General's Office issued Resolution No. 01-00-00004 which dismissed the motion to reconsider. [94] According to the resolution, Article 105 of the LOCGRSNCF, in accordance with that established in Article 122 of the derogated Organic Law of the Comptroller General of the Republic of 1995, stated that "it is clear that the imposition of sanctions, which set as unique and exclusive requirements: a) the declaration of administrative responsibility of the entity or person investigated, and b) that this become the final decision in the administrative forum. In this regard, such sanctions are legal consequences that pursuant to the Law, arise from the declaration of responsibility, once it becomes a final decision in the administrative forum." [95]

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91 On September 1, 2005, through Official Letter No. 08-01-881 of August 30, 2005, Mr. López Mendoza was notified of the resolution. Cf. Official letter No. 08-01-881 on August 30, 2005 issued by the General Office of Special Procedures of the Comptroller General's Office (Case file of annexes to the application, tome I, annex 13, folios 388 and 389).

92 *Cf.* Motion to reconsider of September 22, 2005 filed by Mr. Leopoldo López Mendoza (Case file of annexes to the application, tome IV, apéndice 3, folios 2728 to 2737).

93 *Cf.* Motion to reconsider of September 22, 2005 filed by Mr. Leopoldo López Mendoza, *supra note* 92, folios 2728 to 2737.

94 *Cf.* Resolution N° 01-00-00004 of January 9, 2006, issued by the Comptroller General of the Republic (Case file of annexes to the application, tome I, annex 16, folios 407 to 417).

95 In the same sense, the Resolution indicatd that: "applying that provided in the case under analysis, one can assess that the administrative has the foundations or cause that was the basis for the decision rendered, each time that in the act it is noted[…], that the sanctions established in Article 105 of the [LOCGRSNCF], related to Article 122 of the derogatd Organic Law of the Comptroller General of the Republic." "Adding to this, it is held that within the orbit of discretion conferred to the Comptroller General of the Republic and in light of the documentation provided by the Office for the Determination of Responsibility of the Oversight body, there was a ponderation made by the entity of the severity of the irregularities upon which administrative responsibility was declared against the petitioner, which obviously, implied the excercise of an analysis of power, evaluation, and

3.7. *Judicial appeal for annulment of the administrative decision of the State* [Recurso contencioso administrative de nulidad]

61. On October 4, 2005, Mr. López Mendoza, before the Political-Administrative Chamber of the Supreme Tribunal of Justice, filed a judicial appeal for annulment of the administrative decision of the State regarding the Resolution of March 28, 2005, [96] which established as final the declaration of responsibility. In the appeal, he argued: i) that the proceeding was flawed since he was not provided with a clear, specific, and precise charge regarding the actions for which he was being accused, given that only a "vague narration of the facts" was provided without noting the specific law upon which the charges are based;[97] ii) that he was not permitted to appeal certain actions because they were deemed to still be in process,[98] and iii) that the evidence that was requested was not gathered regarding the testimony of persons that had knowledge of the facts under investigation.[99] Subsequently, on May 23, 2006, Mr. López Mendoza presented evidence,[100] which was admitted on June 21, 2006. [101]

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appreciation of the merits of the circumstances (of fact and of law, positive and negative) indicated in the background of the case, and in the magnitud of the conduct assumed to have been carried out by the petitioner in his position as Analyst of ENTORNO NACIONAL [National Environment] in the Office of the Chief Economist of the PDVSA" Moreover, it was indicated that "given Resolution N° 01-00-000004 de 9 de January de 2006 emitida por of the Comptroller General of the Republic, *supra note* 94, folios 412, 415 y 416. By way of Official letter No. 08-01-21 of January 11, 2006, said resolution was notified to Mr. López Mendoza. *Cf.* Official letter No. 08-01-21 of January 11, 2006 (case file of annexes to the application, annex 18, Tome I, folios 433 to 446).

96 *Cf.* Judicial appeal for annulment of the administrative decision of October 4, 2005, presented by Mr. Leopoldo López Mendoza (Case file of annexes to the application, tome I, annex 20, folios 451 to 475). This appeal was filed under Case file N° 2005-5251 and was admitted on February 1, de 2006.

97 "[I]t is clear that the 'specific and clear manner' to report the facts in order to charge a person-even in the "investigative" phase- is to explicitly state what is the assumption based in the law under which the conduct of the person concerned is subsumed, that is, indicating the infringement for which he or she is charged that under the condified elements of the principle of legality of the faults must be pre-determined by law." Judicial appeal for annulment of the administrative decision of October 4, 2005, presented by Mr. Leopoldo López Mendoza, *supra note* 96, folio 460.

98 "The fact that [their] has been debate regarding the legal code on whether prior acts are actionable does not lead to the conclusion that such acts can not affect rights. Indeed, such a possibility has been expressly considered by the legislature, to the point that the Organic Law on Administrative Procedures, considering the processing of actions, contemplated the appealability of the actions that infringed the right to defense (Article 85). Judicial appeal for annulment of the administrative decision of October 4, 2005 presented by Mr. Leopoldo López Mendoza, *supra note* 96, folio 462.

99 They also indicated that "officials of the Comptroller never solicited testimonials from people who had perfect knowledge of the facts under investigation, as evidence in the file itself. They did not even request the testimony of the person who received the donations made by the Association PDVSA to the Civil Association Primero Justicia." Judicial appeal for annulment of the administrative decision of the State of October 4, 2005 presented by Mr. Leopoldo López Mendoza, *supra note* 96, folio 465.

100 Said evidence is: i) "The document denominated 'Social Investment Budget. Results. 1998, drafted in January 1999, which runs to page 1592 and of the brief of the results of the excercise of the investigative power by the C.G.R"; ii) Offer for "Expansion and Consolidation of Justice for Peace in the States of Monagas, Anzoategui, and Delta Amacuro" of 1998, with a follow-up report of October 1999 and other annexes"; iii)

62. On July 12, 2007, the oral reports were presented before the Political-Administrative Chamber of the Supreme Tribunal of Justice.[102] Mr. López Mendoza's representatives and the representation of the Comptroller General of the Republic and of the Public Prosecutor's Office "presented their arguments" and "established their conclusions" regarding the judicial appeal for annulment filled by the alleged victim. Subsequent to the reading of the arguments and conclusions, the Chamber "ordered they be added to the file." [103]

63. On March 31, 2009, the Judgment No. 426 was rendered by the Political-Administrative Chamber of the Supreme Tribunal of Justice, dismissing the judicial appeal for annulment, and as a consequence, reaffirming the decision that declared the administrative responsibility of Mr. López Mendoza.[104] In this regard, in the judgment, the Political-Administrative Chamber addressed the following controversies: i) compliance of the right to defense in the investigation and determination of responsibility phases; ii) "false assumption of law," since it was argued that the facts could not be subsumed under the "legal codification of agreement of interested parties in order to obtain a result," to which a response was given of a detailed description of the facts that proved the classification of the charge,[105] as well as reaffirming that "said agreement […] had nothing to do with the fate of the resources obtained [since] the classification [does not imply] a necessary economic privilege;"[106] iii) "false

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"Minutes of the session of March 29, 200[0], held between the representatives and the Inter-American Foundation, Ron Arms and Vicente Valdes, and the representative of PDVSA"; iv) "Official letter of Mireya Vargas, Director of SOCSAL, addressed to PDVSA to put forward short term work plans and visiting plans to the pending requests, to evaluate and carry out the follow-up on the social projects"; v) "Report on the Internal Corporate Budget of PDVSA, denominated Evaluation of Memorandum of Understanding between the Inter-American Foundation (IAF) and PDVSA 1988-1999"; vi) "Note of Closure of Audit Report of May 22, 2001"; vii) "Authenticated document of donation [of Bs. 60.060.000.00] effectuated by PDVSA"; viii) "original Constitutive Statutes of the Civil Association Primero Justicia […] and Modification and consolidation of said Statutes"; ix) "The 'Regulations of Conflicts of Interest' contained in the Manual on Norms and Administration Procedures of Personnel of PDVSA, Head Office," and x) "simple [c]opy of the judgment N° 940 of June 25, 2003, (Case of Arnaldo León D' Alessandro)". *Cf.* Brief without date of consignation of May 23, 2006, by the defense of Mr. Leopoldo López Mendoza (case file of annexes to the answer, tome XXI, annex B, folios 8053 to 8057).

101 *Cf.* Resolution of June 21, 2006, of the of the Substantiation Court of the Political-Administrative Chamber of the Supreme Tribunal of Justice, Case file 2005-5251 (case file of annexes to the answer to the application, tome XXI, annex B, folios 8059 and 8060).

102 *Cf.* Proof of July 12, 2007, of the Political-Administrative Chamber of the Supreme Tribunal of Justice (case file of annexes to the answer to the application, tome XXI, annex B, folios 8077 to 8170).

103 Proof of July 12, 2007, of the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra note* 102, folios 8077 to 8170.

104 *Cf.* Judgment of March 31, 2009, issued by the Political-Administrative Chamber of the Supreme Tribunal of Justice (Case file of annexes to the brief of pleadings and motions, annex H, Tome x, folios 5322 al 5358).

105 *Cf.* Judgment of March 31, 2009, issued by the the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra note* 104, folios 5346 to 5348.

106 Judgment of March 31, 2009, issued by the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra note* 104, folio 5351.

assumption of law" for the use of the element of "third party," to which the response was that "even though in the file there was no evidence of [Mr.] López Mendoza's specific and formal action in the granting of donations[, it is possible] to conclude that the Civil Association Primero Justicia served as a third party for him in order to obtain the purpose that involved him, that is, that he was expressly interested in forming part of its Board of Directors; which denotes an action contrary to the obligations imposed on him as an employee of […] PDVSA, S.A." [107]; iv) the denial to examine the evidence of witnesses and reports put forward in the administrative proceeding, and iv) the application of pecuniary sanctions.[108]

64. On December 2, 2004, the Comptroller General forwarded the actions in the PDVSA to the Public Prosecutor's Office[109] for the corresponding criminal investigation to take place, given that the administrative offenses could be related to criminal offenses.[110]

4. Proceeding in relation to some of the decisions adopted by Mr. López Mendoza as Mayor of Chacao

65. As mentioned, Mr. López Mendoza served as mayor of the municipality of Chacao (*supra* para. 30). Each year the Municipalities, one being the Municipality of Chacao, that make up the Metropolitan District of Caracas, had to transfer to the Metropolitan District 10% of "their own revenues."[111] On the other hand, the Municipal Councils could approve

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[107] Judgment of March 31, 2009, issued by the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra note* 104, folio 5351.

[108] "As a consequence, this Chamber deems that the Fiscal Oversight body, on imposing the sanction of a fine to the citizens Antonieta Mendoza de López and Leopoldo López Mendoza, considering their role as public officials and the noncompliance of the laws leading to the infractions for which they are accused. For these reasons, the argument must be rejected regarding the legal represention of plaintiffs on the unconstitutionality of that standard." Judgment of March 31, 2009, issued by the Political-Administrative Chamber of the Supreme Tribunal of Justice (case file of annexes to the brief of pleadings and arguments, annex H, Tome h, folio 5356).

[109] *Cf.* Official letter N° 01-00-000772 of December 2, 2004 (Case file on the merits, tome IV, annex C, folios 1665 to 1673).

[110] The State reported of various criminal codifications, enshrined in the Law against Corruption, that could be related to the unlawful administrative acts of which Mr. López Mendoza was declared responsible: Article 70: "The public official that, upon intervening for reasons that involve his position in the handling of a contract or other operation, involves him or herself with the interested parties or intermediares in order to obtain a particular result, or uses an particular ploy or device to obtain this result, will be punished with prision for two (2) to five (5) years. If the crime's objective was to obtain undue money, gifts or monetary gains that were offered or given to him or her or to a third party, shall be punished with two (2) to six (6) years and fines up to one hundred percent of the benefit given or promised. The same punishment applies to those who acts in concert with the officials, and who promises or gives the undue money, gains, or gifts referred to in this Article." Article 72: "The person defined in the codified cases, the public official or person who on their own behalf of by way of another person illegly seeks a use from an act of public administration, shall be punished with one (1) to five (5) years and fined for up to fifty percent (50%) of the use sought." Brief of final arguments of the State, *supra note* 30, folios 1603 y 1605.

[111] *Cf.* Judgment No. 912 of August 6, 2008, of the Political-Administrative Chamber of the Supreme Tribunal of Justice, Case file No. 2005-5124) (Case file of annexes to the application, tome I, annex 23, folios 503 to 535).

additional allocations to the Expenses Budget, at the request of the mayors, and for this, authorization could be declared on the total or partial annulment of certain budget consignations not used in full or those partially used. [112]

66. On October 25, 2002, Mr. López Mendoza declared a partial shortage of some budget appropriations. [113] Subsequently, the Municipal Council of Chacao approved additional financial allocations which were financed with the resources resulting from the aforesaid entry, which had been declared as insufficient. [114] These facts led to a proceeding and the corresponding sanctions, fines, and disqualification against Mr. López Mendoza. The accusations against the alleged victim was that he granted a different purpose to the respective budget consignment than that provided by law.

4.1. Phases of action of fiscal oversight

67. On December 6, 2002, the Office of Municipal Oversight addressed the Municipal Comptroller of the Municipality of Chacao requesting "a detailed report on the use given to the resources destined for the Metropolitan Mayors Office of Caracas, as provided in Article 22 of the Special Law on the Regime of the Caracas Metropolitan District and that the Mayor's Office of the Municipality of Chacao was forced to transfer, in [that] year, that equivalent of 10% of its own revenues collected in the previous fiscal year."[115] On January 23, 2003, the Office of Municipal Oversight reiterated this request to the Office of Municipal Oversight.[116]

68. On September 9, 2003, the Office of Municipal Oversight issued a Final Report pursuant to the Inspection and Fiscalization Program under the Annual Plan of the General Office of State and Municipal Oversight. The report referred to the following findings:

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112 *Cf.* Judgment No. 912 of August 6, 2008 of the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra note* 111, folios 503 to 535.

113 *Cf.* Official letter DA. 3255.10.2002 and DA. 3253.10.2002 signed by Mr. López Mendoza on October 28, 2002 (case file of annexes to the answer to the application, tome XXIV, annex D, folios 8703 and 8705).

114 *Cf.* Agreement of the Municipal Council of Chacao (case file of annexes to the answer to the application, tome XXIV, annex D, folios 8706 and 8707).

115 Official letter No. 07-02-4457 of December 6, 2002, from the Office of Municipal Oversight to the Municipal Comptroller of the Municipality of Chacao (case file of annexes to the answer, tome XXVII, annex D, folio folio 10693).

116 Official letter No. 07-02-169 of January 23, 2003, addressed by the Office of Municipal Oversight to the Municipal Comptroller of the Municipality of Chacao (case file of annexes to the answer, Tome XXVII, annex D, folio 10694).

> The Mayor's Office of the Municipality of Chacao should have transferred to the Metropolitan District of Caracas Bs. 5,571,686,030.00 in 2002 on account of 10% of its own collected revenues [...], however the total amount transferred was Bs. 618,390,427.17 [...]. As such, a budget annulment was determined.[117]

69. Based on these findings, on December 23, 2003, through an Order to Proceed, the Office of Municipal Oversight decided to create the administrative record of case No. 07-02-PI-2003-020 and ordered that legal notice be provided to the people involved in the events being investigated.[118]

4.2. Investigation Phase

70. On February 18, 2004, Mr. López Mendoza was informed that "the Office of Municipal Oversight [...] agreed to initiate an investigation in order to verify the budget modifications made by the Mayor of the Municipality of Chacao in fiscal 2002 year."[119] It was stated that in order to guarantee the right to a defense, a period was granted of 10 working days counted from the date of legal notice of the respective official letters in order for him to put forward all the arguments and evidence in defense of his actions. [120] On March 4, 2004, Mr. López Mendoza provided, by means of his attorney, a brief in relation to the facts under investigation.[121]

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[117] Moreover, it was noted that: in compliance with that provided in the numeral 5 of the Article 22 of the Special Law of the Regime of the Metropolitan District of Caracas, which provides: 'The following are revenues of the Metropolitan District of Caracas: (...) Financial support, in each fiscal year, of the municipalities belonging to the Metropolitan District of Caracas, in proportion equivalent to ten percent (10%) of the indivdiual income actually received by each them in the immediately preceding fiscal year ...,' the budget ordinance of Chacao Municipality of Miranda State, for the fiscal 2002 year, prior to a budget appropriation in the amount of Bs 5,545,000,000.00, to be transferred to the mentioned Metropolitan District. Final report of the the Office of Municipal Oversight of September 9, 2003 (case file of annexes to the answer to the application, tome XXIX, annex D, folios 11252 to 11255).

[118] Report of the Office of Municipal Oversight of December 23, 2003 (case file of annexes to the answer to the application, tome XXIX, annex D, folios 11252 to 11255).

[119] Official letter 07-02-160 of February 10, 2004, issued by the General Office of State and Municipal Oversight of the Comptroller General of the Republic (case file of annexes to the application, Tome VI, folios 3222 to 3231).

[120] *Cf.* Official letter 07-02-160 of 10, issue dby the Office of Municipal Oversight of February 10, 2004, *supra note* 119, folios 3222 to 3231.

[121] In said report it was deemed that the alleged violation to the right of defense, in as much as the facts for which Mr. López Mendoza was being charged were not stated in a clear and express manner. *Cf.* Brief presented by Mr. López Mendoza on March 4, 2004 (case file of annexes to the answer to the application, tome XXX, annex D, folios 11883 to 11887).

71. On April 26, 2004, the Report on Results was issued,[122] wherein the investigated facts, events, and omissions were indicated, those in relation to the "fiscal inspection aimed at verifying the budget modifications effectuated in the Municipal Mayor's Office of Chacao during the fiscal year of 2002."[123] In a particular manner, the following was indicated: i) "the Municipal Mayor of Chacao […] declared a partial annulment in the amount of Bs. 2,743,464,041.57 of the budget allocations to Consignment No. 4.07.02.02.04 'Transfers of Capital to Federal Entities' pertaining to Sector 15 'Costs not classified by sector'"[124]; ii) the partial annulment of the budget allocations assigned to the already identified consignee, financing […] additional allocations […] approved by the Councils of the mentioned Municipality as evident from the minutes of the Chamber's Session"[125]; iii) "the mentioned contributions constitute a legal obligation, enshrined in the aforementioned normative provisions, by which they cannot be used for means distinct from those foreseen, such as the cancelation of commitments to pay, nor for the financing of additional allocations and that according to the law, the amount that should have been transferred is effectively collected in the fiscal year immediately preceding the current one,"[126] and iv) "it corresponds to the Mayor's Office of the Municipality of Chacao to transfer to the Mayor's Office of the Metropolitan District of Caracas, during the 2002 year, the amount of Bs. 5,344,198,335.21 for the 10% of the revenues collected in the prior fiscal year."[127]

4.3 Administrative proceeding for the determination of responsibility

72. On July 12, 2004, the Office of the Determination of Responsibility of the General Office of Special Procedures of the Comptroller General of the Republic issued the Order to Initiate the administrative proceeding for the determination of responsibility of Mr. López Mendoza.[128] In said order, the Office of the Determination of Responsibility specified that "given that elements do arise that […], [may] be sanctioned by the Highest-ranking Oversight Body in relation to that provided in numerals 21 and 22 of Article 91 of the [LOCGRSNCF],

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122 *Cf.* Report on Results of April 26, 2004, issued by the Office of Municipal Oversight (case file of annexes to the answer tome XXX, annex D, folios 11892)

123 *Cf.* Report on Results of April 26, 2004, issued by the Office of Municipal Oversight, *supra note* 122, folio 11892.

124 *Cf.* Report on Results of April 26, 2004, issued by the Office of Municipal Oversight, *supra note* 122, folio 11893.

125 Report on Results of April 26, 2004, issued by the Office of Municipal Oversight, *supra note* 122, folio 11893.

126 Report on Results of April 26, 2004, issued by the Office of Municipal Oversight, *supra note* 122, folio 11901.

127 Report on Results 26 de Abril de 2004 issued by the Office of Municipal Oversight, *supra note* 122, folio 11894.

128 Initiation Order of July 12, 2004, issued by the Office of Determination of Responsibility of the General Office of Special Procedures of the Comptroller General of the Republic (case file of annexes to the answer to the application, tome XXIV, annex D, folios 8648 to 8682).

the initiation of the administrative procedure for the determination of responsibility was established, pursuant to that provided in Article 96" [129] of said law.[130]

4.4. Writ of amparo filed by the representatives of the alleged victim

73. On August 10, 2004, the representatives of Mr. López Mendoza filed a Writ of amparo "in order to protect the [victim] from the alleged flagrant violation of his right to a defense […] due to the actions of the Office of Municipal Oversight of the Office of the Determination of Responsibility, […], which entailed an account of the events that occurred in regard to the budget modifications effectuated by the Mayor of the Municipality of Chacao and approved by members of the Municipal Council of that Municipality during the 2002 fiscal year."[131]

74. On August 25, 2004, the Seventh Superior Court in Administrative Disputes of Caracas declared the writ of amparo inadmissible[132] upon noting that the official letters, reports, and orders issued in the case, to date, [133] were "actions that were rendered in the course of an administrative proceeding, under terms that are not final, that is, that they involve actions regarding the processing or substantiation of the case that are not challengeable [...]. Consequently, since the administrative actions [of] the those who allege a violation of their constitutional rights are not final and are not adjudicatory proceedings but rather proceedings that entail the processing of the case, given that they only facilitate prosecution for the Administration through the open investigation of the actors, it is for this reason that this

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129 Order of initiation of July 12, 2004, issued by the Office of Determination of Responsibility, *supra note* 128, folio 8681.

130 On Augus 9, 2004, Mr. López Mendoza was notified "that by order of July 12, 2004, the initiation of the administrative procedure for Determination of the Responsibility, where he was charged for irregular activities […] based on the results of the Investigative Power […], and the documentary evidence that was gathered. Moreover, he was informed that according to that enshrined in Article 99 of the [LOCGRSNCF] he could, within a period of fifteen (15) working days as of the notification of the […] order, indicate the evidence regarding the public actions referred to in Article 101 *ejusdem*. Upon the lapse of said period, [the] Office would establish, by express order, the fifteenth (15th) day for the interested parties or the legal representatives express, in an oral or public setting, the arguments they deemed pertinent to assist the defense of the interested parties." Official letter 08-01-1011 of July 16, 2004, issued by the General Office of Special Procedures of the Comptroller General of the Republic and was notified on August 9, 2004 (Case file of annexes to the application, tome VI, folios 3236 to 3239).

131 Appeal for Protection of a Constitutional Right [Writ of amparo] of August 10, 2004, filed by Mr. López Mendoza (case file of annexes to the application, tome I, annex 8, folio 325).

132 Order of August 25, 2004, issued by the Seventh Superior Court of the Administrative Contentious Forum of Caracas (Exp. No. 0791-04) (case file of annexes to the application, annex 9, Tome 1, folios 344 to 353).

133 Official letters Nos. 07-02-164, 07-02-166, 07-02-165, 07-02-163 and 07-02-160, dated 10-02-2004 and the Report on Results in the Brief Nro. 07-02-PI-2003-02; as well as the order of initiation dated 12-07-2004, renderd in brief Nro. 08-01-07-04-003, and the official letters of notification dated 16-07-2004, distnguished with Nos. 08-0101010, 08-01-1014, 08-01-1013, 08-01-1012 and 08-010-1011. Decision of August 25, 2004, of the Seventh Superior Court on Administrative Disputes, *supra note* 132, folio 351.

Tribunal deems them as acts in preparation of the final resolution to close the investigation."[134]

4.5. Continuation of the administrative proceeding

75. On August 31, 2004, Mr. López Mendoza, by way of his attorney, noted the documentary evidence that would be brought forward at the hearing.[135] On October 26, 2004, the public hearing was held.[136] In the framework of said hearing, Mr. López Mendoza's defense presented various arguments of fact and law,[137] regarding, among other things, his right to defense, the budget authorizations for each Mayor, the procedures to change the budget consignation, and the fact that "in the present case, there could be a violation of the right to equality before the law, given the declarations of the […] Comptroller […], which were brought on the fifth-day seminar that corresponded to the week of the 15th to the 22nd of October 2004, specifically in the case of FIEM,[138] in which, pursuant to the defense's criteria, he should have received the same treatment." [139]

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[134] Decision of August 25, 2004, of the Seventh Superior Court on Administrative Disputes, *supra note* 132, folio 351.

[135] In said brief, the following was designated as evidence: i) Journal N° 1: Supporters of the Situaiton of the Municipal Treasury of the Mayor's Office of Chacao, corresponding to the 2002 year, issued by the Municipal Treasury of the Office of Planification and Budget of the Office of Tributary Administration of the Mayor of Chacao, and ii), the Transfer Agreement between the East Firefighter Fleet and the Metropolitan Firefighters Fleet." Brief of August 31, 2004, filed by Mr. Leopoldo López Mendoza (case file of annexes to the answer to the application, tome XXV, annex D, folios 9864 to 9867).

[136] Decision of October 26, 2003, in the administrative proceeding for the determination of responsibility (case file of annexes to the answer, tome XXVI, annex D, folios 10700 to 10754).

[137] In particular, the following was argued: i) "in the Investigative Power carried out by the Comptroller General of the Republic, the right to defense was severed […], each time that he was not charged or accused specifically with regard to the evidence found in that phase,"; ii) "this Comptroller showed gross conceptual errors, in relation to the budget modifications, specifically those refered to the declarations of nonsubsistence; iii) "there is an evident lack of knowledge by the Comptroller, of the competencies of the Mayor as chief of the executive branch,"; iv) "in the current moments, before the Supreme Tribunal of Justice in the Constituitonal Chamber, there is an annulment hearing for unconstituitonality of numeral 4 of Artilce 22 of the Special Law on the Regime of the Metropolitan District of Caracas"; v) "in regard to the use of the Funds for differing purposes, […] the established proceedings were met, and the actions were issued by the competent authorities"; vi), and "the decisions adopted by the Council were supported by the opinion of the Municipal Comptroller of Chacao." Minutes of the public hearing of October 26, 2003, *supra note* 136, folio 10702.

[138] "[T]he President of the Republic, given the deficit, (as characterized by the Comptorller General of the Republic in an interview conceded on the Fifth Seminar Day, the week of October 15 to 22, 2004, No. 414, pages 22 and 23) would define as priority, the payment of the bonuses of the active and retired workers, instead of directing the funds used to make those payments, to the Funds Investment for the Macroeconomic Stablization (FIEM)". The specific response of the Comptroller was the following: "With the Funds Investment for the Macroeconomic Stablization (FIEM) there was a cash deficit. I'll state it in an example: the Republic should have honored expenses for Bs. 2 thousand and obtained income for Bs. 1 thousand; it decides if it passes this 1

76. On November 2, 2004, the Office of the Determination of Responsibility of the General Office of Special Procedures of the Comptroller General Republic issued a Deciding Order.[140] This order, after recounting the facts, declared that: i) "in light of the constitutional and legal provisions […], the obligation arises upon the competent public official to carry out the budget, to carry out said activity, heeding to, on the one hand, the budget resources assigned for specific fiscal activities, and on the other hand, the need to make use of State funds for their intended purposes and not for other purposes, even though the latter is related to the inherent activities of the administration itself," [141] and ii) "for the purposes of a possible declaration of administrative responsibility, it would be enough to determine, at first, the change in the consignation of the public funds, and second, that said purpose is different from the one that was originally foreseen, whether by law, regulation, or administrative act. This implies that any violation to the restrictive nature of the budget allocation, in terms of its qualitative nature, is enough cause to declare the administrative responsibility of the government official or individual offender." [142]

77. Taking into account the aforementioned, in said Order it was decided that:

> 1.- Administrative Responsibility is declared for the following citizens: LEOPOLDO LÓPEZ MENDOZA, ANTONIO JIMENEZ CABRERA, NELSON YANEZ VILLAMIZAR, EVA ELIZABETH RAMOS RAMÍREZ, SHULLY ROSENTHAL WAINTRUB AND THIBALDO COROMOTO AULAR BORJAS, […] the first, in his charge as Mayor of the Municipality of Chacao, and the rest as Council members of the Municipal Chamber of said Municipality.[143]

78. As a consequence of this declaration of responsibility, Mr. López Mendoza was fined eight million, one hundred and forty thousand Bolivares (Bs. 8,140,000.00), [144] equivalent to

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mil to FIEM or uses them in for operating costs. The Republic decided the latter." Minutes of the public hearing on October 26, 2003, *supra note* 136, folio 10746.

139 Minutes of the public hearing on October 26, 2003, *supra note* 136, folios 10702 and 10703.

140 *Cf.* Deciding order of November 2, 2004, issued by the Office of the Determination of Responsibility of the General Office of the Special Procedures of the Comptroller General of the Republic (case file of annexes to the application, annex 3, Tome V, folios 3240 to 3359).

141 Deciding order of November 2, 2004 of the Office of Determination of Responsibility, *supra note* 140, folio 3284.

142 Deciding order of November 2, 2004, of the Office of Determination of Responsibility, *supra note* 140, folio 3288.

143 Deciding order of November 2, 2004, issued by the Office of the Determination of Responsibility of the General Office of the Special Procedures, *supra note* 140, folio 3354.

144 Deciding order of November 2, 2004, of the Office of Determination of Responsibility, *supra note* 140, folio 3356.

US$4,239.58, according to the official exchange rate of the Central Reserve Bank of Venezuela in force at the time the fine was imposed, pursuant to the information confirmed by the parties in the final written arguments.

4.6. Motion to Reconsider

79. On November 22, 2004, Mr. López Mendoza filed a Motion to Reconsider.[145] In this motion, he argued the violation of his right, among others, to a defense as well as the principle of "non bis in idem" and the doctrine of exhaustion of the administrative decisions [*globalidad de la decision*]**,** regulated by Article 62 of the Organic Law of Administrative Proceedings, according to which the decisive administrative act should resolve all the issues raised in the proceeding. [146]

80. On March 28, 2005, a Resolution was issued which dismissed the Motion to Reconsider, and as such, reaffirmed the decision of October 26, 2004.[147] According to said resolution: i) the Comptroller acted in conformity with the law, "considering that the alleged elements of responsibility upon which the investigation was brought that could be subsumed for the purpose of establishing possible administrative responsibility, do not constitute a legal requirement for the phase in discussion" [148]; ii) "it is not evident from the actions taken in the case file, that on a prior date [Mr.] López Mendoza, […], under his charge as Mayor of the Municipality of Chacao, was declared administratively responsible for the same irregular activity and investigated during the same period," [149] and iii) "the reaffirmation where the petitioners adduce that the decisive order under analysis, lacks cause, because it does not stem from the same elements that determine punishable acts that could carry civil or criminal elements, which is in any light not in conformity with the prior analysis, thereby demonstrating that the argument is based on the superficial analysis of fiscal oversight matters."[150]

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145 *Cf.* Motion to reconsider of November 22, 2004, filed by Mr. López Mendoza (case file of annexes to the application, Tome V, folios 3360 to 3399).

146 *Cf.* Motion to reconsider of November 22, 2004, filed by Mr. López Mendoza, *supra note* 145, folios 3360 to 3399.

147 *Cfr* Resolution of March 28, 2005, of the Office of Determination of Responsibility, Exp. No. 08-01-07-04-003) (case file of annexes to the application, annex 10, Tome 1, folios 355 to 385)

148 Resolution of March 28, 2005, of the Office of Determination of Responsibility, *supra note* 147, folio 366.

149 Resolution of March 28, 2005, of the Office of Determination of Responsibility, *supra note* 147, folio 370.

150 On April 5, 2005, the resolution was notified to Mr. López Mendoza. Case file of annexes to the application, tome I, annex 10, folios 384 and 385).

4.7. Imposition of the sanction of disqualification[151]

81. On September 26, 2005, the Comptroller General issued a resolution[152] indicating "the severity of the irregular activity committed, punishable through the declaration of administrative responsibility of November 2, 2004, affirmed on March 28, 2005 […], as well as the reoccurrence of the irregular activity that is the subject of the sanction in the aforementioned terms," determining "the imposition on [Mr.] LÓPEZ MENDOZA, […], of the sanction of disqualification from holding public office for a period of six (06) years."[153]

4.8. Motion to Reconsider

82. On November 15, 2005, Mr. López Mendoza filed a Motion to Reconsider,[154] noting "the manifest lack of cause of the contested act, which thereby is in violation of the right to a defense *null ab initio* […]."[155] Moreover, Mr. López Mendoza argued that "nowhere in this Resolution, is there any mention of the reasons of fact or law regarding why the Comptroller General […] considered the punishable act of sufficient severity to apply the sanction of

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151 In this regard, the State reported that the Constitutional Chamber of the Supreme Tribunal of Justice had established that the Comptroller cound not use the additional sanctions of dismissal and suspension in relation to the persons elected by popular vote and has established that a sanction for disqualification can only operate when the respective final mandate has ended. In particular, the Constitutional Chamber stated that "it is not possible by way of an administrative sanction to dismiss an popularly elected public official, [...] notwithstanding, the Comptroller General of the Republic can excercise, in relation to this representative of popular election, any of the other administrative sanctions that do not imply the definitive loss of their investiture. As a consequence, it may impose fines, disqualification […] and suspension […]." Judgment N° 1.056 of May 31, 2005 (Comptroller General of the Republic). Moreover, the Constitutional Chamber has noted that "the sanction imposed can not hinder the functions of the people's representative in the period for which he was elected, [and therefore] said disqualification must begin to take effect upon expiration of the statutory period for the sanctioned official was elected, or upon the effective end of his functions as of the new elections." Judgment No. 174, dated March 8, 2005 issued by the Constitutional Chamber of the Supreme Tribunal of Justice. Case of the Chamber of the Municipality of Sucre of the State of Miranda. Cited in Judgment No. 1266 of August 6, 2008, of the Constitutional Chamber of the Supreme Tribunal of Justice *supra note* 31, folio 639.

152 *Cf.* Resolution 01-00-235 of September 26, 2005, issued by the Comptroller General Republic (case file of annexes to the application, annex 12, tome 1, folios 391 to 394).

153 Resolution 01-00-235 of September 26, 2005, issued by the Comptroller General of the Republic, *supra note* 152, folios 393 and 394. On October 28, 2005, the resolution was notified to Mr. López Mendoza. In the corresponding official letter it was reported that "against said decision, an Motion to reconsider before the Comptroller could be filed, in a period of fifteen (15) working days as of the date of notification, pursuant to that enshrined in Article 94 of the Organic Law of Administrative Procedures." Moreover, it was indicated that "an appeal for annulment could also be filed […] before the Supreme Tribunal of Justice, in the period of six (6) days as of the date of […] notificatio, pursuant to that provided in section 20 of Article 21 of the Organic Law of the Supreme Tribunal of Justice." Official letter No. 08-01-1074 of September 27, 2005 of the Office of Determination of Responsibility (case file of annexes to the application, , Tome VI, folios 3468 to 3471).

154 *Cf.* Motion to reconsider of Mr. López Mendoza presented on November 15, 2005 (case file of annexes to the application, annex 34, Tome IV, folios 3472 to 3492).

155 Resolution N° 01-00-00005 of January 9, 2006, of the Comptroller General of the Republic (Case file of annexes to the application, tome I, annex 16, folio 420).

disqualification, and that the lack of cause is even more so evident because the Resolution ignored the requirement of demonstrating the detriment caused." [156]

83. On January 9, 2006, the Comptroller issued a resolution dismissing the Motion to Reconsider.[157] According to the Comptroller, "the factual basis of the contested Resolution, is based on the citation made in said decision, of the specifics in which the declaration of administrative responsibility is based, and which provide the grounds for the considerations made by the Comptroller [in] order to determine the severity of the irregular activity, as required by Article 105" of the LOCGRSNCF.[158] In regard to the foundations of law, the Comptroller noted that "in the mentioned Resolution, it expressly indicated the circumstances of law that motivated the decision, by indicating the regulation that establishes the alleged sanction imposed. That is, the cited Article."[159]

4.9. Judicial appeal for annulment of the administrative decision of the State [recurso contencioso administrative de nulidad] with the precautionary measure for protection of a constitutional right [medida de amparo cautelar] and suspension of effects

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156 Resolution N° 01-00-00005 of January 9, 2006, of the Comptroller General of the Republic *supra note* 155, folio 422.

157 *Cfr* Resolution N° 01-00-00005 of January 9, 2006 issued by the Office of the Comptroller, *supra note* 155, folios 419 to 432.

158 Moreover, it was noted that "the questioned administrative act contains foundations or motives that served as a basis to dictate the decision, each time that the act alluded to, as has been established, *supra,* that the sanction for disqualification was imposed […], in an exclusive and excluding manner and without other proceedings distinct from the one on determination of responsibility, on the basis of discretional power, according to the gravity of the infraction, that is, said sanction is a legal consequence that, pursuant to the Law stems from the declaration of responsibility of Mr. López Mendoza"[...a]dding that it is in the power of discretion of the Comptroller […] and in the light of the documentation provided by the Office of Determination of Responsibility of the Comptroller Body, there was by the authority, a ponderation of the irregular activities for which the administrative responsibility was declared, which implies the excercise of power of analysis, evaluation, and apreciation of the merit of circumstances (of law and fact, positive and negative) noted in the background of the case, and the magnitud of the conduct assumed by the petitioner in his role as Mayor of the Municipality of Chacao […].Resolution N° 01-00-00005 of January 9, 2006, of the Comptroller General of the Republic, *supra note* 155, folios 429 and 430.

159 Resolution N° 01-00-00005 of January 9, 2006, of the Comptroller General of the Republic, *supra note* 155, folio 429. On the other hand, in an official letter of January 11, 2006, the resolution was notified to Mr. López Mendoza. In that official letter, it was stated that "contrary to Resolution No. 01-00-000005 [...], the relevant appeal for annulment could be brought [...] before the Supreme Court of Justice, in the span of six (6) months as of the date of [the] notification in accordance with paragraph 20 of Article 21 of the Organic Law of the Supreme Tribunal of Justice." *Cf.* Official letter No. 08-01-24 of January 11, 2006, of the Office of Determination of Responsibility (Case file of annexes to the application, tome I, annex 19, folios 448 and 449).

84. On August 4, 2005, Mr. López Mendoza filed, before the Political-Administrative Chamber of the Supreme Tribunal of Justice, a judicial appeal for annulment of the administrative decision together with the precautionary measure for protection of a constitutional right and request for suspension of effects.[160] In said appeal, Mr. López Mendoza noted that: i) his right to defense was violated, because no specific accusation was made[161]; ii) "[f]alse assumption of fact for assuming that the declaration of annulment was a simulated action"[162]; iii) "false assumption of law and violation of the presumption of innocence [...] for assuming [...] the objective responsibility"[163]; iv) "false assumption of law for assuming that the authorization to spend contained in the budget of the Municipality of Chacao [...]was a committed or incurred credit line"[164]; v)"[f]alse assumption of law for assuming that in the budget modification [...] there had been any use of appropriations for purposes other than those intended, "[165] and vi)" violation of the principle of exhaustion of the administrative decisions."[166] Furthermore, by requesting a precautionary measure for protection of a constitutional right, they "required that "the Comptroller not apply [Article 105 of the LOCGRSNCF] during the annulment lawsuit."[167]

85. On March 8, 2006, the Political-Administrative Chamber of the Supreme Tribunal of Justice issued a judgment[168] noting that "upon charging the petitioners with the sanction of disqualification from holding public office, effectively, […] the precautionary measure for protection of a constitutional right lacked cause." [169] In this way, it declared that it

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160 *Cf.* Appeal for annulment of August 4, 2005, filed by Mr. López Mendoza (Case file of annexes to the application, tome III, folios 1560 to 1591).

161 Appeal for annulment of August 4, 2005, filed by Mr. López Mendoza, *supra note* 160, folio 1565.

162 Appeal for annulment of August 4, 2005, filed by Mr. López Mendoza, *supra note* 160, folio 1571.

163 Appeal for annulment of August 4, 2005, filed by Mr. López Mendoza, *supra* note 160, folio 1575.

164 Appeal for annulment of August 4, 2005, filed by Mr. López Mendoza, *supra* note 160, folio 1581.

165 Appeal for annulment of August 4, 2005, filed by Mr. López Mendoza, *supra* note 160, folio 1584.

166 Appeal for annulment of August 4, 2005, filed by Mr. López Mendoza, *supra* note 160, folio 1587.

167 Appeal for annulment of August 4, 2005, filed by Mr. López Mendoza, *supra note* 160, folio 1588. Moreover, on September 29, 2005, the Comptroller General of the Republic forwarded a brief to the President and other Magistrates of the Political-Administrative Chamber of the Supreme Tribunal of Justice in regard tot he appeal filed by Mr. López Mendoza. In said official letter, the Comptroller noted that "for the imposition of the sanctions […] enshrined in [Article 105 of the LOCGRSNCF], there is a requirement that by way of a declaration of administrative responsibility, imposed by the […] Comptroller […], without necessity of a proceeding, such sanction extends as a consequence that assumes there was prior exhaustion of remedies of an administrative proceeding circumscribed within the standards that makeup the rules of dules process." Official letter without number on September 29, 2005, of the Comptroller General of the Republic (Case file of annexes to the application, tome III, folios 1595 to 1606).

168 *Cf.* Judgment of March 8, 2006, of the Political-Administrative Chamber of the Supreme Tribunal of Justice, EXP. N° 2005-5124 (case file of annexes to the application, annex 21, Tome 1, folios 477 to 488).

169 Judgment of 8 de Marzo de 2006 of the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra note* 168, folio 485.

"ADMITTED, without detriment to any verification by the Substantiation Court of the Chamber, in what pertains to the lapse of the legal action, the judicial appeal for annulment of the administrative decision of the State being exercised." It added that, "[being] that the definitive admission is appropriate, the Substantiation Court would order the continuation of the proceeding in conformity with that provided in section II of Article 21 of the Organic Law of the Supreme Tribunal of Justice." Finally, it declared "the precautionary measure for protection of a constitutional right INADMISSABLE" as well as the "measure for temporary suspension of Article 105" of the LOCGRSNCF. [170]

86. On July 27, 2006, Mr. López Mendoza provided evidence[171] and on March 29, 2007, the act for oral reports was carried out.[172]

87. On August 5, 2008, the Political-Administrative Chamber of the Supreme Tribunal of Justice, by way of Judgment No. 912, declared the appeal unfounded.[173] Regarding the facts of the Municipality of Chacao, the Political-Administrative Chamber established the following as legal grounds to dismiss the appeal for annulment[174] given his accusation of a simulated

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[170] Judgment of 8 de Marzo de 2006 of the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra note* 168, folio 487.

[171] The evidence submitted was: i) "Supporting evidence of the processing of the nonsubsistence and additional allocations refered to in the Resolution." ii) "Supporteres of the situation of the Municipal Treasury of the Mayor's Office of Chacao corresponding to the 2002 year, […], which contained a series of documents of 45 pages, from the Municipal Treasurey, of the Office of Planification and Budget of the Office of Tributary Administration of the Mayor's office of Chacao". iii) "Certified Copy of the Sessions Acts of the Ordinary Chamber, No. 0-80, held on November 26, 2002, wherein, in reference to the additional allocations Nos. 45, 46, 47, the council […] explressly, requested evidence of the favorable vote due to the communication of the Municipal Comptroller dated November 18, 2002, read at the same session, 'where it is concluded that the declaration of nonsubsistence ordered by the Mayor is within the law." Iv) "[C]opy certified of the communication No. CMDC/GLI776 dated 18/11/2002, containing the report of the Municipal Comptroller of Chacao, […], evidence of the opinion of said body on the legality of the declaration of nonsubsistene contained in Resolution 148-02 of the Mayor's Office of Chacao". v) "[C]opy of the judgment of that Political-Administrative Chamber distinguished by numbers 5192 of July 27, 2005, and 968 of April 20, 2006, and of the copies of the transactions that arrived at the Mayor's Office of the Municipality of Liberator and the Municipality of Baruta with the Mayor's Office of the Metropolitan District of Caracos, unified by those judgments." Brief of July 27, 2006 filed by Mr. López Mendoza (Case file of annexes to the application, tome III, folios 1662 to 1665). On August 8, 2006, the Court of Substantiation of the Political-Administrative Chamber of the Supreme Tribunal of Justice admitted the documents presented by Mr. López Mendoza. Cf. Resolution of August 8, 2006, issued by the Court or Substantiation of the Political-Administrative Chamber of the Supreme Tribunal of Justice (case file of annexes to the application, Tome III, folios 1678 to 1679).

[172] Official letter without number of date March 27, 2007, issued by the Comptroller General of the Republic (case file of annexes to the application, Tome II, folios 1692 to 1715).

[173] Judgment No. 912 of the Political-Administrative Chamber of the Supreme Tribunal of Justice of August 6, 2008 (EXP. No. 2005-5124) (case file of annexes to the application, annex 23, Tome I, folios 502 to 535).

[174] Judgment No. 912 of the Political-Administrative Chamber of the Supreme Tribunal of Justice on August 6, 2008 *supra note* 111, folios 502 a 535.

legal transaction:[175] i) "[Article 22 of the Special Law of the Regime of the Metropolitan District] establishes "as part of the revenues of the Metropolitan District, ten percent (10%) of the individual revenues of the Municipalities that make up the District that were collected in the immediately preceding fiscal year. Thus, the Municipalities that make up the Metropolitan District- one of which is the Municipality of Chacao–can only provide ninety percent (90%) of its own revenues" [176]; ii) "the contribution of ten percent (10%) of the individual revenues of the Municipalities that make up the Metropolitan District of Caracas, […], constitute one of the revenues established by law in favor of that District to exercise its jurisdiction" and as such "is a monetary obligation […], regarding the individual revenues, and compliance must be demanded by way of an autonomous judicial action" [177]; iii) "the Municipal Councils may approve additional budget allocations to the Expenses Budget, per request of the Mayor, with funding from-among others-the savings from the expenses made or estimated in the fiscal year, to which the Organic Law of the Municipal regime authorizes the declaration of total or partial annulment, only of the budget allocations of programs, subprograms, projects, and consignations that would reflect the savings from the expenses; that is, consignations not used entirely or only partially used[178]; iv) "the Municipalities can approve additional allocations to cover the necessary costs not foreseen or insufficient budget allocations, by way of the declaration of non-subsistence or annulment of a budget consignation in order to direct it to the consignation that corresponds to those expenses […]. [S]aid annulment is not appropriate for those consignations aimed at complying, based on a legal mandate, with a specific purpose," [179] such as that of the 10%; v) the Mayor's Office of the Municipality of Chacao was to transfer the amount for [f]ive [t]housand [f]ive [h]undred and [f]orty-five [m]illion Bolivares (Bs. 5,545,000,000.00) […] to the Metropolitan District of Caracas, during the 2001 fiscal year pursuant to that foreseen in the law. Notwithstanding, the highest authority of the Municipality declared the partial annulment of the budget allocations assigned to Consignment No. 4.07.02.02.04 denominated 'Transfer of Capital to Federal Entities,' for the total amount of [t]wo [t]housand [s]even [h]undred and [f]orty-three [m]illion, [f]our hundred and sixty-four thousand and forty one Bolivares and fifty-seven cents (Bs. 2,743,464,041.57),

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[175] Numeral 21 of Article 91 of the LOCGRSNCF established that "[n]otwithstanding the detriment to the civil or criminal responsibility, and of what is provided in other laws, those acts, events, or ommissions considerd to generate administrative responsibility are: (... omissis .. .) 21. the simulated or fraudulent actions in the administration or carrying out of actions by entities and bodies in the numeral 1 to 11 of Article 9 of this Law...". Article 91 of the Organic Law of the General Comptroller of the Republic and the National System of Fiscal Oversight, *supra note* 29, folio 78.

[176] Judgment No. 912 of August 6, 2008, of the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra note* 111, folio 517.

[177] Judgment No. 912 of August 6, 2008, of the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra* note 111, folio 519.

[178] Judgment No. 912 of August 6, 2008, of the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra* note 111, folio 521.

[179] Judgment No. 912 of August 6, 2008, of the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra* note 111, folios 521 and 522.

[…], by way of Resolution No. 148-02 of October 25, 2002,"[180] and vi) "of the reading of the actions raised in the sessions Nos. 0-73,0-74, EXT.13 and 0-80 of October 31, November 5, 15, and 26, 2002, respectively, it is noted that the Municipal Council of Chacao approved the additional allocations with the funds stemming from the consignation whose annulment was declared by the Mayor of the stated Municipality," [181] thereby employing the public funds for purposes distinct from those established in the Law.

88. On April 5 and 18, 2005, the Comptroller General forwarded the actions undertaken in the case of the Municipality of Chacao to the Public Prosecutor's Office[182] in order for the corresponding criminal investigation to be carried out, since the respective administrative offenses could be related to some criminal offenses.[183]

5. Appeal for annulment together with the request for precautionary measure for protection of a constitutional right

89. On June 21, 2006, Mr. López Mendoza filed, before the Constitutional Chamber of the Supreme Tribunal of Justice, appeal for annulment together with the request for precautionary measure for protection of a constitutional right, arguing the unconstitutionality of Article 105 of the LOCGRSNCF. [184]

90. On August 6, 2008, the Constitutional Chamber of the Supreme Tribunal of Justice declared the appeal by way of judgment No. 1.266 UNFOUNDED. [185] In this judgment a recount of the historical background of Article 105 of the LOCGRSNCF was provided, and an analysis was carried out of the compatibility of this regulation with Articles 42[186] and 65[187] of

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[180] Judgment No. 912 of August 6, 2008, of the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra note* 111, folio 522.

[181] Judgment No. 912 of August 6, 2008, of the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra* note 111, folio 532.

[182] Official letters Nros. 08-01-375 and 08-01-407 of the Comptroller General of the Republic of April 5 and April 18, 2005, (Case file on the merits, tome IV, annex C, folios 1675 to 1679).

[183] The State reported several criminal codifications, enshrined in the Law against Corruption, which could be related to the administrative offenses of which Mr. López Mendoza was found liable, namely: "Article 54. The public official who, unduly, for perosnal benefit or purposes contrary to those stipulated in the laws, regulations, resolutions or orders of service, uses or allows another person to use public property or assets held by a public body or State entity whose administration, possession, or custody has been entrusted to him or her, shall be punished with imprisonment of six (6) months to four (4) years. Article 56. The public official who illegally gives income or funds under his or her charge for a different use other than that budgeted or targeted, even if for the public interest, shall be punished with imprisonment for three months to three years, depending on the severity of the crime." Brief of final arguments of the State, supra note 30, folio 1606.

[184] Constitutionality challenge of June 21, 2006, filed by Mr. López Mendoza (Case files of annexes to the answer to the application, tome XXIII, annex C, folios 8379 and 8408).

[185] Judgment No. 1266 of August 6, 2008 of the Constitutional Chamber of the Supreme Tribunal of Justice *supra* note 31, folios 584 to 642.

the Venezuelan Constitution and subsequently, responses were provided to each one of the arguments of unconstitutionality made regarding the possible violation of the right to defense, the principle of criminal codification, the principle of proportionality, and political rights. [188]

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[186] The Constitutional Chamber noted that "[h]eeding to the content of [Articles 42 and 65 of the Constitution] it is necessary to note that the sanctioning authority of the Comptroller General of the Republic is of the administrative level; that is, it is not a political sanction [...] given that the sanction of disqualification refers to the administrative functions [...]. This disqualification applies to all administrative functions, including those that stem from popularly elected positions, given that the role of the government necesisarily involves the means to excercise public positions. […]It is noted that the criminal sentence alluded to in Articles 42 and 65 of the Constitution of the Bolivarian Republic of Venezuela suspends the exercise of political rights, and that imposed in exchange by the Comptroller General of the Republic disqualifies from the exercise of public functions, [...] and as a result of the disqualification, it restricts the ability to be a public official, as would be the case with the restriction based on majority or of foreigners to hold public office, emphasizing that any public official, even those elected by popular choice, in that the individual being sanctioned can not be an official, and thereby can not be in government. Based on this distinction, and understanding that they are two different disqualifications arising from various constitutional provisions, Articles 42, 65 and 289(3), it corresponds to the organs of public administration not to allow the sanctioned citizens to take on public positions, that is, not to appoint them or allow their candidacy." Judgment No. 1266 of August 6, 2008 of the Constitutional Chamber of the Supreme Tribunal of Justice supra note 31, folios. 635 to 637.

[187] In a similar vein, the Constitutional Court in Judgment No. 1265 stated that "Article 65 of the Constitution of the Bolivarian Republic of Venezuela [...] does not exclude the possibility that such disqualification can be established either by an administrative body in the strict sense or a body with functional autonomy, as in this case, the Comptroller General of the Republic. Note that the regulation, while it states that the prohibition from running for public office arises from a conviction for committing a crime, it does not prevent that such a prohibition may have a different origin; the regulation only raises a hypothesis, does not deny other comparable circumstances." Judgment No. 1265 of August 5, 2008, of the Constitutional Chamber of the Supreme Tribunal of Justice. Answer to the application brief (Case file on the merits, tome I, folio 301) availale at: http://www.tsj.gov.ve/decisiones/scon/Agosto/1265-050808-05-1853.htm (last visited on September 1, 2011).

[188] Under this line of thinking, the Constitutional Chamber referred to the compatibility of Article 105 of the LOCGRSNCF with Article 23 of the American Convention in Judgment No. 1.270, upon noting that "the additional sanction that contemplated Article 105 of the [LOCGRSNCF], and imposed by the Comptroller General of the Republic, does not involve political disqualification that restricts the excercise of the citizens or political rights, but rather said power foreseen in the law of fiscal oversight which consists in a legal limitation – not contrary to the Constituiton nor the […] Pact –for the excercise of a charge or public function. In addition, it can't be forgotten that Article 23[(2) of the American Convention] states the law may "regulate" the rights contained therein; while Articles 30 and 32, numeral 2 invokes the restriction and limitation of the rights by law, The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society, which coincides with the standards of this chamber[…] with the suspension of the citizenry and political rights, refered to in Articles 42 and 65 of the Fundamental text, which exist peacefully, without being contrary to the Constitution or the American Convention […,] the limitations that in the law (in a strict sense) are established for the excercise of public funtions, such as the requirements of age, suitability, attitude, aptitud, experience to perform a public function or for the exercise of public office. From there, it is constitutionally valid that in protecting a higher interest such as the handling and management of public assets, the [LOCGRSNCF] lends to the highest authority of the Comptroller General of the Republic, member of the Citizen Power organ, the power to apply prior to a proceeding [...], the corresponding sanctions and to limit or disqualify the public official from the exercise of public office for a determined period, [...] in any way, the constriction of rights to the citizenry nor the denial of rights. [...] The sanction of "disqualification" from the exercise of public functions, [is] then a valid limitation and not contrary to the Constitution, which in no way undermines the provisions of Articles 42 and 65 of the Constitution or the American Convention on Human Rights (Article 23), when it regulates a situation other than that provided in these regulations and does not imply a lack of knowledge of the political rights of the sanctioned individual linked to citizenship." Judgment No. 1.270 of August 12, 2008, of the Constitutional Chamber of the Supreme Tribunal of Justice. Brief in response to the

6. Facts related to the request to register as a candidate

91. On July 21, 2008, the National Electoral Council (CNE) approved a law to regulate the running of candidates for positions won by popular election in November 2008. Article 9 of said regulation establishes that:

> "[the] following may not run for a position through popular election […] 1.- [t]hose who committed acts enshrined in Article 65 of the Bolivarian Republic of Venezuela and the other laws of the Republic [, and] 2.- [t]hose who are subject to civil interdiction or disqualification."[189]

92. Previously, the CNE had received from the Comptroller General of the Republic a list of approximately four hundred (400) persons disqualified from holding public office due to administrative sanctions imposed by its Office.[190]

93. Article 18 of the mentioned laws on the candidacy, note that the first step in running in an election is to enter, using electronic means, an automatic candidate system of the CNE and to fill out a form.[191] For this, on August 5, 2008, Mr. López Mendoza entered the automatic system of candidates via the web page: www.cne.go.ve of CNE in order to register as a candidate. Pursuant to an annex presented by the Commission, the system indicated on the

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application (Case file on the merits, tome I, folios 306 and 307) and available at: http://www.tsj.gov.ve/decisiones/scon/Agosto/1270-120808-04-0143.htm (last visited on September 1, 2011).

189 Article 9 of the "Regulations governing the registration of candidates for Governor, Legislator or Legislative Council, Mayor of the Metropolitan District of Caracas, the City Council Councillor, and Councillor of the Council of Caracas Metropolitan, Mayor of the District of Alto Apure, Councillor to the District Council of Alto Apure and Mayor of the Municipality for elections held in November 2008 " (Case file de anexos de la demanda, tome I, annex 1) and available at: http://www.cne.gov.ve/web/normativa_electoral/elecciones/2008/regionales/documentos/RESOLUCION_NORMAS_DE_POSTULACIONES_VERSION_FINAL.pdf (last visited on September 1, 2011).

190 On February 26, 2008, the Comptroller checked this list. According to the Comptroller's statements to the media, this verification was carried out in order to "enforce legal mechanisms for the process of nomination of candidates for regional elections on the [23rd] of November [of that year]." Also, the official explained that the list "correspond [ed] with the support that [...] the [Comptroller] set up from 2000 to 2008, by which administrative responsibilities are established." Newspaper clippings that refer to the act by which of the Comptroller General of the Republic verified a list of 400 persons disqualified from the exercise of public functions to the National Electoral Council Recortes periodísticos que se refieren al acto mediante el cual of the Comptroller General of the (Case file of annexes to the brief of pleadings and motions, tome X, annex E, folios 5240 to 5244).

191 Article 18 of the "Regulations for the registration of the candidates for Governor, Legislator, or Legisator of the Legislative Council, Mayor of the Metropolitan District of Caracas, Counil to the Caracas Metropolitan Council, Mayor of the District of Alto Apure, Councillor or District Councillor to the City Council of Alto Apure and Mayor of the municipality for elections to be held in November 2008" (Case file de anexos de la demanda, tome I, annex 1) and available at: http://www.cne.gov.ve/web/normativa_electoral/elecciones/2008/regionales/documentos/RESOLUCION_NORMAS_DE_POSTULACIONES_VERSION_FINAL.pdf (last visited on September 1, 2011).

screen: "López Mendoza Leopoldo Eduardo. This person is politically disqualified (code 8),"[192] while an annex presented by the State showed that the electronic system indicated that he had been "disqualified from holding public office by the Comptroller General of the Republic."[193] Mr. López Mendoza was not able to fill out the respective electronic form, which prevented him from formalizing the registration as a candidate for the position of Mayor of the Metropolitan District of Caracas before the Electoral Board of said district.[194]

94. After the imposition of the disqualification from holding public office, Mr. López Mendoza has: i) participated in the political organization "Movimiento Primero Justicia" (MPJ) [*First Justice Movement*], as a member of the National Board of Directors, since its registration in 2007 where new authorities were appointed[195]; ii) participated in the political organization "Un Nuevo Tiempo Contigo" (UNTC) [*A New Time with You*], as Vice-President for Citizen Participation[196]; iii) exercised his right to vote in the elections of November 28, 2008, and in the consultation regarding the constitutional amendment of February 15, 2009, wherein he was also selected as a polling station member[197]; iv) carried out a position as

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192 The State specified that "the registration of the candidates is carried out automatically by way of a webpage of the electoral body that has a table of ojections, which uses since 1973 objection tables last checked in 2006 [...] and if a disqualified individual attempts to register, the application will be rejected immediately, and code 7 or 8, whichever is appropriate, appears." Cf. copy of the request for candidacy of Mr. López of August 5, 2008. (Case file of annexes to the application, tome I, annex 28, folios 661 and 662).

193 The Court notes that together with the report of the "Automated System for Candidacy, Regional Elections of 2008" forwarded by the State, there is the certification of the General Secretary of the National Electoral Council, and said document "is a true and exact copy of the original." Copy of the result of the "Automated System of Candidacy, Regional Elections of 2008" of the National Electoral Council given the registration of Mr. López Mendoza (Case file on the merits, annex D, folios 1683 and 1684).

194 In the act, it is noted that "[i] light of the message that threw off the automated system designed by the National Electoral Council, according to which [Mr.] López Mendoza was disqualified politically, it was impossible to continue with the steps specified in the legislation to formalize the registration of [his] candidacy [...], for Mayor of the Metropolitan District of Caracas." Act of August 11, 2008, signed at the headquarters of the Metropolitan Board of Elections in which 10 people left proof that Mr. López Mendoza was unable to register his candidacy given the response of the Automated System of the National Electoral Council (Case file of annexes to the application, tome I, annex 29, folios 663 to 669).

195 Copy of the Electoral Gazette of the Boliviarian Republic of Venezeula of August 1, 2003, wherein there is proof of the registration of "Movimiento Primero Justicia" (MPJ) as a political party (case file of annexes to the answer to the application, tome XXXVIII, annex F, folios 13659 to 13660) and communication of March 16, 2009, forwarded by the President of the National Electoral Council to the Comptroller General of the Republic (case file of annexes to the answer to the application, tome XXXVIII, annex F, folios 13653 to 13655).

196 Copy of the Electoral Gazette of the Bolivarian Republic of Venezuela of September 6, 2006, wherein there is proof of the agreement of registration of "Un Nuevo Tiempo Contigo" (UNTC) as a political party (case file of annexes to the answer to the application, tome XXXVIII, annex F, folios 13657 to 13658 and 13661) and copy of the Extraordinary Assembly where the National Consulting Council and the National Organizational Commission of the Political Party "Un Nuevo Tiempo Contigo" were designed. (case file of annexes to the answer to the application, tome XXXVIII, annex F, folios 13661 to 13666).

197 Official letter No. PRES/2007/N° 0241 of March 17, 2009, issued by the President of the National Electoral Council to the Comptroller General of the Republic, with proof of the votes for Mr. López Mendoza's in the regional elections of November 23, 2008, and in the referendum of February 15, 2009, (case file of

National Director of a political organization "Redes Populares" [*Popular Networks*,] where he carried out activities of a political nature[198]; v) presented the electoral proposal "TU Todos Unidos" [*You, All United*] [199], and iv) ran as a part of the Partido Voluntad Popular [Popular Will Party]. [200]

VI

RIGHT TO PARTICIPATE IN GOVERNMENT [POLITICAL RIGHTS], RIGHT TO FAIR TRIAL [JUDICIAL GUARANTEES], JUDICIAL PROTECTION, AND EQUAL PROTECTION BEFORE THE LAWIN RELATION TO THE OBLIGATION TO RESPECT RIGHTS AND DOMESTIC LEGAL EFFECTS

1. Arguments of the parties

95. Regarding the alleged violation of Articles 23[201], 8[202], and 25[203] in relation to Articles 1(1)[204] and 2[205] of the American Convention, the Commission noted that "the purpose of the

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annexes to the answer to the application, tome XXXVIII, annex F, folios 13667 al 13671). See also, copy of the portal to the National Electoral Council, wherein there is proof of Mr. López Mendoza's qualification in the year 2009 (case file of annexes to the answer to the application, tome XXXVIII, annex F, folio 13656).

198 Copy of newspaper articles where there is proof that Mr. López Mendoza acted as Coordinator of the "Redes Populares" (case file of annexes to the answer to the application, tome XXXVIII, annex F, folio 13684).

199 Copy of newspaper articles where there is evidence of the presentation of the electoral offer of "TU Todos Unidos" on behalf of Mr. López Mendoza (case file of annexes to the answer to the application, tome XXXVIII, annex F, folio 13684).

200 Copy of newspaper articles where there is evidence of Mr. López Mendoza's announcment regarding the creation of the Partido Voluntad Popular (case file of annexes to the answer to the application, tome XXXVIII, annex F, folios 13682 to 13683 and 13689 to 13691).

201 Article 23 of the American Convention (Right to Participate in Government [Political Rights]) established that:

> 1. Every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country.
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> 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings

202 Article 8(1) of the American Convention (Right to Fair Trial [Judicial Guarantees]) establishes that:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

203 Article 25(1) of the American Convention (Judicial Protection) establishes that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

present case is centered on the imposition of restrictions to the political right of running for a public office –standing for election - to apply for a position won by popular vote" in the "absence of a founded criminal judgment rendered by a competent judge." It added that "the case also entails the existence of alleged procedural delays and ineffectiveness of the attempted domestic remedies." The Commission noted that "it will not attempt to debate the facts and the assertions and/or the errors in the assessment of the domestic Venezuelan tribunals in determining the declaration of administrative responsibility" of Mr. López Mendoza.

96. The representatives agreed with the Commission but added various arguments regarding the alleged violation of judicial guarantees in the proceedings that led to a finding of administrative responsibility. Moreover, they alluded to the violation of the right to equality before the law. In relation to the irregularities Mr. López Mendoza was charged with regarding some donations issued when he was a public official of PDVSA, they indicated that the Comptroller General "fraudulently fabricated a sanctioning proceeding" and that the facts allegedly related to corruption "were, effectively and satisfactorily executed" in the framework of an agreement between the company PDVSA and a foundation. They indicated that "no proceedings were initiated or carried out against any of the members of the Board of Directors of PDVSA who approved the granting of said funds," that the Comptroller "dismissed any means of providing for a remedy or appeal," and that "there was no patrimonial harm/damage" and that the "funds were used for the legitimate and foreseen means." In relation to the actions that provoked the sanction related to the actions developed as Mayor by Mr. López Mendoza, they indicated that "they do not refer in any way to acts of corruption or appropriation of funds," and it involved "the use of public funds that remained in a budget consignation as a result of the budget of said consignation, reason for which an administrative action was taken to allow for the sending of those funds to the Municipal Treasury, counting on the prior approval of the Municipal Comptroller, for the payment of teachers, firefighters, police, among others, reason for which the legal parameters were met and administrative acts were rendered, and reason for which all possibilities of a simulation were discarded, thereby denoting the fraudulent action and political persecution of the Comptroller." They indicated that the Comptroller "carrying out a false appreciation of the facts and a manipulation of the law fabricated a sanctioning administrative proceeding with the intention of disqualifying from public office."

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[204] Article 1(1) (Obligation to Respect Rights) of the American Convention states that:

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

[205] Article 2 of the American Convention (Domestic Legal Effects) established that:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

97. The State argued that "it acted legitimately and in strict respect for human rights" when it declared, on two occasions, the administrative responsibility" of Mr. López Mendoza and upon "imposing on him, as a consequence, the sanction of disqualification from holding public office for a period of six years." TIV 1618 Moreover, it noted that "the sentence imposed by a competent judge, in a criminal proceeding," "is not the only way in which a person may be limited from exercising political rights" and that it is possible to do so in relation to the "civil capacity of the citizens, that is, their aptitude, their suitability for the exercise of a charge in public office."

2. Considerations of the Court

98. In this regard, the Court specifies that it is not a criminal court or a forum appropriate for analyzing or determining criminal, administrative or disciplinary responsibility of individuals,[206] and that it does not have jurisdiction to do this. As a consequence, the Court will not declare wither Mr. López Mendoza is guilty or innocent regarding the irregular actions for which he was sentenced, given that this is a matter for the Venezuelan jurisdiction.

99. The following will be analyzed: i) the right to be elected; ii) a fair trial [judicial guarantees] in developed administrative procedures; iii) equality before the law, and iv) the obligation to adopt of domestic legal effects.

A. Right to be elected

100. The main point of this case lies in the sanctions of disqualification imposed on Mr. López Mendoza by way of a decision of an administrative body, applying Article 105 of the LOCGRSNCF, which prevented him from registering his candidacy for an elective office. After outlining the arguments of the parties, the Court will determine whether such sanctions and their effects on the alleged victim are compatible with the American Convention.

1. Arguments of the parties

101. The Commission and the representatives argued that the sanction for disqualification from holding public office unduly restricted the political rights of Mr. López Mendoza, given that it was imposed by an administrative proceeding and not by "sentencing by a competent court in criminal proceedings" as indicated in Article 23(2) of the American Convention, in such a way that "only a criminal court in a criminal proceeding can restrict the right" and "any restriction rendered from said proceeding must strictly respect criminal guarantees." He added that "the Comptroller General and its respective agencies are not criminal judges or tribunals

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206 *Cf. Case of Velásquez Rodríguez V. Honduras, supra* note 15, para. 134; *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 19, para. 199, and *Case of Vera Vera et al.*, *supra* note 13, para. 93

in a strict sense and its decisions pertain to the administrative forum." Moreover, it indicated that the alleged victim "is subject to restrictions that prohibit his nomination and appointment to public office, [in such a way that] when he tried to register to participate in elections for mayor of the Metropolitan District of Caracas [...] his disqualification materialized."

102. The representatives added that "Article 105 [of the LOCGRSNCF] has not been able to establish political disqualification to hold public office by public vote, given that pursuant to Article 30 of the American Convention the law can only develop restrictions that are already authorized by the American Convention, and in this case, the only authorized political disqualification is one that a competent court in a criminal proceeding can establish." Moreover, they expressed that "Article 105 is a restriction that is more serious than those foreseen by the Convention" in violation of Article 29 of the American Convention. In the specific case, the representatives argued that the "constitutional provisions [particularly Articles 65 and 42] are clear and compatible with the American Convention upon affirming that the criminal responsibility, due to the management of public funds, as a consequence, generates the disqualification of the convicted person, upon a final judgment."

103. On its behalf, the State expressed that Article 105 of the LOCGRSNCF "must be interpreted pursuant to the parameters established in Article 30 […]of the Convention, which specifies the scope of the permitted restrictions to the enjoyment and exercise of rights and freedoms so recognized, that can be applied pursuant to the laws rendered for reasons attributed to the general interest and for the purpose for which they were established." In this regard, the State noted that "in the unlikely event that there is a contradiction between Article 23(2) [of the Conviction] and the Constitution […] of Venezuela, the prevalence of the international treaty is not absolute or automatic." Therefore, the State argued that "that which is enshrined in Article 23(2) cannot be invoked in isolation, […] against the competence and duties of the National Public Power, as is the Citizen or Moral Power." It further argued that "the sanction of disqualification from public office for a period of time, imposed by the Comptroller General of the Republic, [...] is not a disqualification of a political nature, and therefore, it is totally different from a political disqualification [...] that derives from a criminal conviction, declared by a judge in a final judicial decision, after having gone through a criminal proceeding." Under this argument, the State raised the issue that "a political disqualification suspends the exercise of all political rights of the convicted, which is a circumstance that is radically different from what happens in the course of the sanction of disqualification from public office, [...] which only disables the subject from the exercise of public functions for a given period, regardless of the way such position comes to be held[. T]his [...] can be by appointment, contest, appointment, or popular election, and obviously, as a result of this impediment may not register to qualify for elected office, because that is precisely the mechanism that would allow entry to the exercise of public functions." In support of this argument, the State made an extensive presentation on how its domestic courts have interpreted the laws applied in this case, as well as on legislation enacted by other countries in the fight against corruption. Moreover, the State also argued that the sanction of disqualification imposed by the Comptroller is aimed at fighting corruption and protecting public funds, which serves a compelling governmental interest.

2. Considerations of the Court

104. The Court must determine whether the sanction of disqualification imposed on Mr. López Mendoza by a decision of an administrative body and the subsequent failure to register his candidacy for an elective office is compatible with the American Convention. It is not necessary, however, that the Court rule on the interpretation of Venezuelan domestic law and in particular on the compatibility or incompatibility of Article 105 of the LOCGRSNCF with the Venezuela Constitution. [207] Moreover, the Court also considered that in deciding this case it is not necessary to rule on the arguments of comparative law presented by the State. If in the future, a case appears before the Court in which one of the standards cited by the State is applied, it then follows suit to analyze it in the light from the provisions of the American Convention.[208]

105. Thus, referring specifically to the particular case at hand, the Court understands that this issue should be resolved through the direct application of the provisions of Article 23 of the American Convention, because it involves sanctions that imposed a clear restriction on one of the political rights recognized in paragraph 1 thereof, without complying with the applicable requirements in accordance with paragraph 2 thereof.

106. Article 23(1) of the Convention establishes that every citizen shall enjoy the following rights and opportunities, which must be guaranteed by the State under equal opportunity: i) to take part in public affairs, directly or through freely chosen representatives; ii) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and iii) to have access to the public service of one's country. [209]

107. Article 23(2) of the Convention sets out the various causes that can restrict the rights recognized in Article 23(1) and, where applicable, the requirements that must be met for such a restriction to be applied appropriately. In this case, which is about a restriction imposed by way of a sanction, it should be about a "conviction by a competent court in criminal proceedings." None of these requirements have been fulfilled, given that the body that imposed the sanctions was not a "competent court," there was no "conviction," and the

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[207] La Constitución de la República Bolivariana de Venezuela de 1999 establece en sus artículos 42 y 65 lo siguiente: Artículo 42. Quien pierda o renuncie a la nacionalidad pierde la ciudadanía. El ejercicio de la ciudadanía o de alguno de los derechos políticos sólo puede ser suspendido por sentencia judicial firme en los casos que determine la ley. Artículo 65. No podrán optar a cargo alguno de elección popular quienes hayan sido condenados o condenadas por delitos cometidos durante el ejercicio de sus funciones y otros que afecten el patrimonio público, dentro del tiempo que fije la ley, a partir del cumplimiento de la condena y de acuerdo con la gravedad del delito (énfasis añadido). Artículos 42 y 65 de la Constitución de la República Bolivariana de Venezuela, *supra* note 27, folio 55.

[208] On the other hand, this Court considers that the fight against corruption is of great importance, and it will keep in mind such circumstance when in it is presented with a case wherein it has to rule on such matter.

[209] *Cf. Case of Yatama V. Nicaragua. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of June 23, 2005. Series C No. 127, paras. 195 to 200, and *Case of Castañeda Gutman V. México. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of August 6, 2008. Series C No. 184, para. 144.

sanctions were not applied as a result of a "criminal proceeding," where the judicial guarantees enshrined in Article 8 of the American Convention should have been respected.

108. The Court considers it appropriate to reiterate that "the effective exercise of political rights is an end in itself and, a fundamental means that democratic societies have to ensure that other human rights enshrined in the Convention are guaranteed [210] and that their holders, in other words, citizens, not only enjoy rights, but also "opportunities." The latter term implies the obligation to guarantee with positive measures that anyone who holds formal political rights has a real opportunity to exercise them.[211] In this case, although Mr. López Mendoza was able to exercise his political rights (*supra* para. 94), it is fully proven that he was deprived of passive suffrage, that is, the right to be elected.

109. Under the foregoing, the Court finds that the State violated Articles 23(1)(b) and 23(2) in relation to Article 1(1) of the American Convention, to the detriment of Mr. Leopoldo López Mendoza.

B. Judicial guarantees regarding the administrative proceedings

110. Notwithstanding the foregoing, regarding the right to be elected, the Court shall proceed with an analysis of the controversy between the parties regarding the alleged violation of various guarantees in the administrative proceedings that took place both for the imposition of the fine as well as for the disqualification as a candidate.

111. The Court has stated that all bodies which exercise functions of a judicial nature, whether criminal or not, have a duty to adopt fair decisions based on the full respect for the guarantees of due process established in Article 8 of the American Convention.[212] The Court also recalls that established in its jurisprudence in that the administrative and disciplinary sanctions are, like the criminal ones, an expression of the punitive power of the State and, on occasions, of the same nature. [213]

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210 *Cf. Case of Castañeda Gutman, supra* note 209, para. 143.

211 *Cf. Case of Yatama, supra* note 209, para. 195.

212 *Cf. Case of Ivcher Bronstein V. Perú. Merits, Reparations, and Costs.* Judgment of February 6, 2001. Series C No. 74, para. 104, and *Case of of the Constitutional Court V. Perú. Merits, Reparations, and Costs.* Judgment of January 31, 2001. Series C No. 71, para. 71.

213 *Cf. Case of Baena Ricardo et al. V. Panamá. Merits, Reparations, and Costs.* Judgment of February 2, of 2001. Series C No. 72, para. 106, and *Case of Vélez Loor V. Panamá. Preliminary Objections, Merits, Reparations, and Costs.* Judgment November 23, 2010 Series C No. 218, para. 170.

1. Guarantees in the administrative proceeding that resulted in a fine

112. The Commission did not develop specific arguments regarding the alleged violation of the right to defense and the presumption of innocence in relation to the administrative responsibility proceedings that resulted in sanctions in the form of a fine. Therefore, in the following sections, the controversy between the representatives and the State will be analyzed in respect to these guarantees.

1.1. Right to defense and right to appeal the sanctioning decision

1.1.1. Arguments of the parties

113. The representatives argued that Mr. López Mendoza "was not guarante[ed] the right to be heard within a reasonable period of time" nor "the appropriate time or means to prepare his defense" and was granted only "15 working days to present evidence and defend himself" after the charge against him was filed. Similarly, they also noted that "he was not guaranteed the right to be assisted by counsel provided by the State nor the right to question witnesses." They also indicated that the alleged victim was denied the "right [...] to request the temporary suspension of sanctions during the annulment hearing," that "a corresponding charge was never provided," and that "only a motion to reconsider was possible" before the same official who imposed the sanctions.

114. In this regard, the State indicated that the administrative proceeding, consisting of various procedural phases and stages "offered all the guarantees for the individual to defend his rights and interests." Moreover, it added that the Inter-American System cannot act as a fourth instance in cases brought before its jurisdiction.

1.1.2. Considerations of the Court

115. The Court notes that in the public hearing in this case, Mr. López Mendoza noted that "he never [was given] the opportunity to present [his] arguments." According to the alleged victim, the administrative procedures "led to some fines," without "following the corresponding steps that would allow for the possibility of being heard."[214]

116. According to expert witness Soto Villasmil, "[i]n order to prevent or punish the crimes of an administrative nature," the Venezuelan State has established that the relevant proceedings to determine responsibility are made up of a series of phases in which, from the onset, "assessments of the arguments are gathered as well as [the evidence brought forward] by the legitimate interested parties allegedly responsible [...] in order to contest the presumed actions being alleged." This is brought forward in addition to the subsequent "remedies." [215]

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214 Statement of Mr. Leopoldo López Mendoza in the public hearing heldo in this case.

215 Report or expert witness Alejandro José Soto Villasmil, *supra note* 39.

117. The Tribunal has previously established that the right to defense should be exercised from the point in which a person is a possible perpetrator or participated in a criminal act, and it ends when the proceeding is final.[216] To prevent a person from exercising his or her right of defense is to strengthen the investigative powers of the State at the expense of the fundamental human rights of the person being investigated. The right to defense requires the State to treat the individual at all times as a true subject of the proceeding, in the broadest sense of the concept, and not merely as a subject therein. [217]

118. Thus, the Court notes that at the various phases of the administrative proceedings on responsibility, opportunities and hearings were offered to Mr. López Mendoza for the presentation of arguments and evidence. In fact, the alleged victim actively participated in the proceedings against him, [218] was provided legal notice of the initiation of these proceedings *(supra* paras. 48 and 70), had the opportunity to be represented by counsel, presented testimonial and documentary evidence (*supra* paras. 61, 75, and 86), filed appeals (*supra* paras. 56, 61, 73, 79, and 84), always obtaining responses to his requests.[219] Thus, the Court finds that no violation of the right to the defense of Mr. López Mendoza regarding administrative and judicial authorities that rendered decisions regarding fines in his case.

119. Furthermore, given the questioning of the alleged victim regarding the lack of specification regarding the charges filed against him, the Court notes that the evidence in the record allows one to understand that from the initial phase of investigation there was clarity regarding the type of material irregularities regarding the investigation concerning Mr. López

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216 *Cf. Case of Barreto Leiva V. Venezuela. Merits, Reparations, and Costs.* Judgment of November 17, 2009. Series C No. 206, para. 29. See *mutatis mutandis Case of Suárez Rosero V. Ecuador. Merits.* Judgment November 6, 1997. Series C No. 35, para. 71; *Case of Heliodoro Portugal V. Panamá. Excepciones Preliminares, Merits, Reparations, and Costs.* Judgment of August 12, 2008. Series C No. 186, para. 148, and *Case of Bayarri V. Argentina. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of October 30, 2008. Series C No. 187, para. 105.

217 *Cf. Case of Barreto Leiva*, *supra* note 216, para. 29.

218 For example, by way of a brief presented on July 27, 2006, by the representation of Mr. López Mendoza, evidence was alleged before the the Political-Administrative Chamber of the Supreme Tribunal of Justice. Brief of July 27, 2006, presented by Mr. López Mendoza, *supra note* 171, folios 1662 to 1665.

219 Así, la Corte toma note que the Office of Determination of Responsibility, en su auto decisorio en el Case of relacionado con los hechos de PDVSA, respondió a los alegatos de la defensa señalando que "[e]n relación con la reiterada denuncia sobre violación del derecho a la defensa en la fase de potestad investigativa […] advi[rtió] que no se puede considerar que hubo violación [de la] garantía constitucional de la defensa, en la fase correspondiente a la Potestad Investigativa, porque conforme a lo previsto en el artículo 77 de la Ley que rige [sus] actividades, esta fase tiene por objeto, realizar las actuaciones que sean necesarias a fin de verificar la ocurrencia de actos, hechos u omisiones contrarios a una disposición legal o sublegal, determinar el monto de los daños causados al patrimonio público, si fuere el caso, así como la procedencia de acciones fiscales, todo lo cual evidencia, que en esta fase, el órgano de control aun no ha formado criterio respecto al carácter presuntamente irregular del hecho investigado y de las consecuencias que de él pudieran derivarse, porque sólo, en esa fase, se tiene certeza respecto al hallazgo encontrado durante la auditoría sin que de ella pueda, en esta fase investigativa, determinar las posibles acciones fiscales que eventualmente y previa conclusión de esta fase, se pudieran derivar". Auto decisorio de 29 de Octubre de 2004 de the Office of Determination of Responsibility, *supra note* 85, folio 187.

Mendoza. Thus, from an initial point, he was notified that the Comptroller was to conduct "an investigation into the contributions made by [...] PDVSA, regarding grants and donations during the years 1998, 1999, 2000 and 2001" (*supra* para. 48) and that the Director of Municipal Oversight requested "a detailed report on the use of resources destined for the Metropolitan Mayor's Office of Caracas" in the fiscal 2002 year (*supra* para. 70).[220] The Court noted that, notwithstanding the declaration of the alleged victim in the sense that "there was never any sign of damage to the public good,"[221] he submitted respective discharge briefs and evidence after the respective notifications (*supra* para. 49, and 70), making it possible to conclude that Mr. López Mendoza, reasonably, was clear on the facts of investigation that could possibly be used against him.

120. Furthermore, the Court considers that it is not *per se* contrary to the American Convention that it be established in domestic law of the States that in certain proceedings, certain procedural actions not be subject to objections. Additionally, the Court notes that the representatives did not present sufficient argumentation on the adverse impact that this impossibility to contest the proceeding might have had on Mr. López Mendoza's right to defense. [222] The evidence in the record allows for the conclusion that not challenging the procedural actions did not affect the ability to challenge subsequent actions nor did it prevent, on the whole, the due defense regarding the fines that were imposed on the alleged victim.

121. On the other hand, the Court notes that no specific argumentation was presented to substantiate that the 15 working days to provide evidence *per se* constituted a disproportionate restriction of the right to defense. Thus, in the specific case, the representatives did not show

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220 En el Report on results of the Office of Industry Oversight se señaló que "[r]esulta incierto que en el Order to proceed ofl 8 de septiembre de 2003, no se hayan mencionado los fundamentos de hecho y de derecho por los cuales se inició la investigación, es decir, esta Dirección de Control cumplió con el ejercicio de la potestad investigativa, en los términos a que se contraen los artículos 77 y siguientes de la LOCGRSNCF. Particularmente, fueron claramente narrados los hechos, actos u omisiones detectados en la actuación de control practicada, así como las normas de orden que presuntamente resultaron inobservadas con las referidas conductas". Report on results of the Office of Industry Oversight, *supra note* 74, folio 7380. De otra parte, the Office of Determination of Responsibility señaló que "mal podría alegarse que no se precisó la imputación a los fines de ejercer una correcta defensa, ya que en la fase correspondiente a la Potestad Investigativa, sólo se señalan los hechos o hallazgos obtenidos de la actuación de control fiscal, sin que esté dado, subsumir esos hechos o hallazgos de auditoría en alguno de los supuestos generadores de responsabilidad administrativa contemplado[s] en el artículo 91 de la [LOCGRSNCF], o en cualquier otro supuesto generador de esa responsabilidad que esté contemplado en otro instrumento legal". Auto decisorio de 29 de Octubre de 2004 de the Office of Determination of Responsibility, *supra note* 85, folio 188.

221 Statement of Mr. Leopoldo López Mendoza, *supra note* 214.

222 For example, the Court expressed in regard to the act of initiation rendered by the Office of Determination of Responsibility "that it does not produce a failure of defense, since from its content one can deduce with clarity the facts being charged, who has been urged by the investigative body to present evidence and defend at the public hearing to refute the facts and allegations made. Consequently, for this Court a lack of defense does not exist, notwithstanding that given the inability to promote evidence, have access to the case file, not setting the public hearing, failure to provide notice of any act of investigation or the denial of admission to an administrative proceeding, the extraordinary protection of constitutional right could still proceed." Decision of August 25, 2004, of the Seventh Superior Court of the Administrative Disputes, *supra note* 132, folios 344 to 353.

how that period limited the possibility of an adequate defense, as it has been demonstrated in another case before this Court that proved that a day for counsel to review the entire case file was a violation of the right to defend the accused. [223]

122. Moreover, the Court considers that the arguments of the Venezuelan domestic courts are not unreasonable for not having considered certain witnesses proposed by the alleged victim in the respective proceedings for the determination of responsibility. In any case, the Court notes that the representatives did not make a statement regarding the State's argument on the alleged testimonial evidence indicated by the defense of Mr. López Mendoza that despite the determination of dates to be put forward this evidence, were never submitted.[224] Finally, the Court notes that Mr. López Mendoza had the opportunity to appeal the decision against him and that in response to the appeal for annulment filed there was a judicial assessment of the allegations of the defense in connection with the determination of the facts and the applicable law in connection with administrative offenses and fines imposed. (*supra* paras. 57, 63, 80, and 85).

123. For these reasons, the Court finds that there is no violation in regard to the right to defense and the right to appeal the sanctioning decision against Mr. López Mendoza, in connection with administrative proceedings that ended the determination of responsibility and in the imposition of fines.

1.2. Presumption of innocence

1.2.1. Arguments of the parties

124. The representatives stated that the presumption of innocence involves the "right to prove one's innocence" and, nevertheless, in this case the charges against Mr. López Mendoza are based on an "objective responsibility, [...] that does not [...] require guilt or injury for its imposition, but rather requires a mere transgression of the law regarding the management of public funds." In this sense, the representatives questioned that "it was not of the same interest

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223 *Cf. Case of Castillo Petruzzi et al. V. Perú. Merits, Reparations, and Costs*, Judgment May 30, 1999. Series C No. 52, para. 141

224 The Office of Determination of Responsibility noted that "regarding the testimonial eveidence indicated by the defense, […] it warned that in order to safeguard the constitutional right of the accused [on the 24th and 29th of September, 2004, […] the opportunity was given to receive the information that the representation of the accused sought to provide, nevertheless, at no time did the representation provide said witnesses. As a consequence, the deciding body decided that upon not having produced such testimony, there is no basis for a decision." Deciding order of October 29, 2004, of the Office of Determination of Responsibility, *supra note* 85, folios 199 and 200. Similarly, upon resolving the Motion to reconsider, this criteria was reiterated upon noting that "the petitioners did not present, for review, on the dates set (24th and 29th of September 2004), the witnesses promoted by the Comptroller General, this being an obligation of the interested party, to which the deciding body, deemed in the order […] given that no testimony was rendered, there was no facts upon which to render a decision. From this, the Comptroller General—pursuant to law and in no way—violated the right to defense of the petitoners." Resolution of March 28, 2005, of the Office of Determination of Responsibility, *supra note* 88, folio 278.

to determine the guilt of the defendant as it was to demonstrate the occurrence of the event." Thus, they concluded that "the presumption of innocence was not guaranteed" and that "upon initiating the proceeding and even before the accused was given notice of [the] initiation of a proceeding against him, he had been charged for the same unproven acts and [that] he had not been able to contest them, before the civil and criminal courts."

125. In this regard, the State referred to the decision by the Constitutional Chamber of the Supreme Tribunal of Justice, in judgments of August 6 and 12, 2008, regarding the constitutionality of Article 105 of the LOCGRSNCF. In its final written arguments, in regard to the appeals filed for the actions of the Municipality of Chacao, the State argued that Mr. López Mendoza "claim[ed] in an unfounded manner that the judgment [at issue], took on a regressive stance regarding the right to presumption of innocence upon validating the argument that the alleged administrative responsibility under the LOCGRSNCF and in particular, that relating to the recipient change of the budgetary appropriations, are cases of objective administrative responsibility in which it is not necessary to assess the conduct of the accused." Thus, the State argued the "objective character of the administrative offenses" and noted that the representatives contradict themselves upon "maintaining [...] on the one hand, that the aforementioned responsibility is subjective in nature and, on the other hand, that the same assumption of responsibility is by nature objective."

1.2.2. Considerations of the Court

126. The Court notes that the Constitutional Chamber of the Supreme Tribunal of Justice has ruled on the presumption of innocence in regard to the application of Article 105 of the LOCGRSNCF as follows:

> Its essential content is that throughout the administrative sanctioning or disciplinary proceeding, there should be evidentiary activity designed to establish the guilt of the official, without disclosing any opinion as to the merits of the matter. It is a right that directly involves how the evidentiary phase of the sanctioning proceeding is developed. Thus, the presumption of innocence requires that the act that declares administrative responsibility be the only determination of the culpability of the official under investigation. [225]

127. Subsequently, the Constitutional Chamber of the Supreme Tribunal stated that:

> "... the sanctions contained in Article 105 [...] must be issued after the substantiation of the respective administrative proceeding in which the person under investigation may raise all the arguments and evidence deemed relevant to his or her defense and where, all procedural safeguards are guaranteed, among which is the presumption of innocence, so that from its inception until right before the issuance of administrative responsibility the individual under investigation is presumed innocent and this is the

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[225] Judgment No. 1.266 of August 6, 2008, issued by the Constitutional Chamber of the Supreme Tribunal of Justice, *supra note* 31, folio 633.

> treatment that must be made. However, once the substantiation of the proceedings and instruction in the case has been completed and the administrative responsibility for the commission of an unlawful administrative act has been determined, the presumption of innocence of the investigation is swapped, applying the punitive legal consequences provided for in said Article 105 [...] without this implying a violation of the constitutional guarantee of presumption of innocence, as it has already been asserted in the procedure-guarantee." [226]

128. This Court has noted that the principle of presumption of innocence constitutes a foundation of the right to fair trial [judicial guarantees].[227] The presumption of innocence implies that the defendant must show that he or she committed the crime attributed to him or her, and that the *onus probandi* correspond to the accuser.[228] Thus, the clear evidence of guilt is a prerequisite for criminal punishment, in such a way that the burden of proof falls on the prosecution and not on the accused.[229] Thus, the lack of presentation of convincing evidence of responsibility in a guilty verdict is a violation of the principle of presumption of innocence,[230] which is essential for the effective realization of the right to defense and accompanies the accused throughout the trial proceedings until a final judgment is issued that determines guilt.[231] On the other hand, the presumption of innocence implies that judges do not initiate the proceeding with a preconceived idea that the defendant committed the crime for which he or she is being charged, as the burden of proof falls on the accuser and any doubt

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226 Judgment N° 1.270 of August 12, 2008, of the Constitutional Chamber of the Supreme Tribunal of Justice *supra note* 188, folio 1421.

227 *Cf. Case of Suárez Rosero V. Ecuador. Merits, supra* note 216, para. 77; *Case of Chaparro, Álvarez, and Lapo Íñiguez V. Ecuador. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 21st of 2007. Series C No. 170, para. 14, and *Case of Cabrera García and Montiel Flores*, *supra note* 21, para. 182.

228 *Case of Ricardo Canese V. Paraguay. Merits, Reparations, and Costs.* Judgment of August 31, 2004. Series C No. 111, para. 154 and *Case of Cabrera García and Montiel Flores*, *supra* note 21, para. 182.

229 Similarly, the Human Rights Committee of the United Nations has noted that, "The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused." United Nations. Human Rights Committee. General Comment N° 32, Right to equality before courts and tribunals and to a fair trial (HRI/GEN/1/Rev.9 (vol. I)), para. 30.

230 *Cf. Case of Cantoral Benavides V. Perú. Merits. Judgment August 18th of 2000. Series C No. 69, párr.*121 and *Case of Cabrera García and Montiel Flores*, *supra* note 21, para. 183.

231 *Cf. Case of Ricardo Canese, supra* note 228, *para.* 154 and *Case of Cabrera García and Montiel Flores*, *supra* note 21, para. 183

should be used to benefit the accused. The presumption of innocence is violated if, before the accused is found guilty, a court decision renders that he or she is guilty. [232]

129. Thus, the Court notes that in the phase of performance of fiscal oversight of the administrative proceeding at hand, (*supra* para. 38) the respective oversight bodies conduct account assessments, inspections, and audits to determine the alleged facts that could lead to an unlawful administrative action. Thus, the next phase of investigation (*supra* para. 38) arises only when derived from the previous phase, it is concluded that there is evidence to presume the administrative responsibility of some employees or officials in the exercise of their functions. The results report which concludes this phase also involves the carrying out of proceedings that involve the accused to debate and clarify if it is appropriate to proceed with the proceeding regarding determination of responsibility" that includes a specific phase for objections that extends into the oral or public hearing. (*supra* para. 39).

130. With regard to questions raised by the representatives regarding the viability of the alleged objective administrative responsibility under the LOCGRSNCF, the Court notes that a similar plea was answered by the Political-Administrative Chamber to resolve the appeal filed by the victim (*supra* para. 63 and 85)." The Political-Administrative Chamber of the Supreme Tribunal noted that "in terms of administrative responsibility, injury and guilt are not valued with the same rigor as in criminal law, and the mere establishment of fact enshrined in the law as unlawful or punishable is enough to verify the responsibility of public official." In that sense, although the Chamber appreciates "that from the minutes of the administrative case file the need for justification regarding the approval of additional appropriations was evident, [...] the actions of both the Mayor of Chacao Municipality [...] as well as the Councilors who approved the appropriations with resources that came from Consignment No. 4.07.02.02.04, made them responsible 'objectively' as they were involved in the alleged conduct set out in paragraphs 21 and 22 of Article 91 of the [LOCGRSNCF]." Under the Supreme Tribunal of Justice, "despite the presumed intention of the municipal authorities of covering other expenses of the Municipality with the authorization of additional appropriations, the appellant diverted funds destined for the consignment corresponding to the transfer of funds to the Metropolitan District of Caracas." [233]

131. Moreover, in this case, the Court finds no sufficient evidence that would allow it to consider that the victim has been treated as guilty in the proceeding that resulting in the imposition of fines. Overall, the different levels of oversight, from the start of the proceedings, granted Mr. López Mendoza respect as if he was a person whose disciplinary responsibility was still pending a clear and sufficient determination. In the case of disciplinary conduct, the oversight bodies, through different phases, sought to assess the potential responsibility of Mr. López Mendoza in regard to the alleged administrative offenses.

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[232] *Case of Cabrera García and Montiel Flores*, *supra* note 21, para. 184, citing ECHR, *Case of Barberà, Messegué, and Jabardo v Spain*, Judgment of December 6th of 1988, App. Nos. 10588/83, 10589/83, 10590/83, paras. 77 and 91.

[233] Judgment of August 5, 2008, of the Political-Administrative Chamber of the Supreme Tribunal of Justice (Exp. No. 2005-5124) (case file of annexes to the answer to the application, tome XXXV, folios 12873 and 12874).

132. Thus, the Court finds that there is no evidence that the State violated Article 8(1) of the Convention to the detriment of the victim, in relation to the presumption of innocence in proceedings against him which culminated in the determination of responsibility and fines.

133. Now, once the arguments have been assessed regarding the controversies that relate to the imposition of fines, the Court will consider the allegations made by the parties regarding the alleged violation of judicial guarantees in the early stages of the proceedings that ended in the sanctions of disqualification from public office.

2. Right to be heard, obligation to establish cause, and right to defense in relation to the restriction on the right to passive suffrage [stand in an election]

2.1. Arguments of the parties

134. The Commission argued that Mr. López Mendoza "was subjected, without legal notice, to the discretionary decision of an administrative authority [that] was empowered to impose at the moment it so decided, and without an established time limit, the [additional] sanctions as serious as political disqualification, without establishing the cause for such a decision [with additional arguments that support the implementation of a more onerous punishment than that of a fine and without defining the standards used for grading the sanction pursuant to the gravity of the behavior], in breach of his right to defense. It added that "the type of defense and promotion of evidence, among others, introduced by the victim would be materially different from that which could be developed in the face of an administrative sanction that imposes an economic fine." Moreover, the Commission indicated that "the absence of a proceeding prevented Mr. López Mendoza from exercising his right to be heard regarding the appropriateness and proportionality of the sanction of disqualification."

135. The representatives indicated that there was no proceeding to "determine the severity of the offense and the type of damage caused, which were actually not existent." In particular, the representatives argued that Mr. López Mendoza was "never provided with legal notice" of the "possibility of being subject [to] a disqualification" and that "there was no opportunity" to "defend [or contest] the seriousness of the facts and extent of the damage." Moreover, they also noted that it was "impossible" for "a person who is not provided legal notice of the possible implementation" of additional sanctions "to be able to defend oneself in the substantiation of the administrative proceedings to determine responsibility, since it is impossible for the accused to know the extent of the damage and the severity of the crime when both have not yet been determined." Thus, for the representatives "it is absolutely unsustainable" that "the procedures that led to the declaration of administrative responsibility and imposition of fines […] also represent the administrative proceedings for the sanction of disqualification," as they had distinct purposes, cause, elements, and moreover, occurred much later. Thus, they questioned that the imposition of the additional sanction "does not require a different substantiation to that already previously issued by the Comptroller upon declaring the administrative responsibility."

136. Meanwhile, the State indicated that "for the imposition of the sanction of disqualification," "there is no need to carry out a different proceeding than that in which administrative responsibility is declared" because "the proceeding is one of its kind" and "is of a complex nature." It added that the alleged victim "exhausted, in the administrative and judicial forums, his constitutional right to plead and prove all that was necessary against the aforementioned sanction." Regarding the alleged lack of correspondence between the principle sanction and the additional sanctions, the State indicated that the imposition of the sanction "understood as a whole, is that it should be externalized or motivated from the relationship that exists between the unlawful act and the sanction to be imposed."

2.2 Considerations of the Court

137. Of the arguments made by the parties, the Court considers it necessary to analyze: i) the alleged lack of notice of the possible imposition of disqualification; ii) the alleged need to expose independent arguments and evidence in order to ensure the right to defense, and iii) the Comptroller's duty to establish cause when imposing the disqualification.

138. Regarding the alleged lack of notice of the possible imposition of an additional sanction, the expert Cabrera Romero noted that it was not necessary to provide notice that, as a result of a declaration of administrative responsibility, a sanction of disqualification was to be imposed, as that is "a matter of law, because the legislation so provides in Article 105 [of LOCGRSNCF]." [234] In this regard, the Court notes that Article 105 of the LOCGRSNCF is clear in pointing out the possibility that the Comptroller impose any of the additional sanctions - suspension, removal, and disqualification,- once the declaration is final of administrative responsibility of the public official, to which, in principle, the official that has been found responsible can foresee that any such sanction could be imposed. Thus, in an initial analysis, the specific notice of the situation in question does not seem necessary, provided that the person has had the procedural opportunity to present arguments and specific evidence related to the possible sanctions and that the administrative decision that has been imposed had proper cause.

139. Now, in regard to the procedural opportunity to present arguments and specific evidence related to the possible sanctions, Article 105 of the LOCGRSNCF states that "the Comptroller shall [...] in an exclusive and excluding manner, without there being any other proceeding" impose additional sanctions. In this regard, the Constitutional Chamber of the Supreme Tribunal has noted that this implies that the imposition of sanctions shall be done as a result of a "complex proceeding" in the following terms:

> "The tagline: 'without there being any other proceeding,' as in the previous laws, refers to the power to declare the administrative responsibility of an official through a process of a complex nature, given that the power to declare the administrative responsibility comes from the power to impose sanctions that result from such declaration. [Thus], the establishment of administrative responsibility does not require a new proceeding, as it entails establishing the sanction derived from

[234] report or expert witness Jesús Eduardo Cabrera Romero, *supra note* 31.

> administrative responsibility declared by the Comptroller General of the Republic, as stipulated in the previous proceeding established by the law. [...] Thus, it is the manifestation of two administrative acts of the same sanctioning power, making up what the doctrine calls "a complex process.
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> [...]
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> [T]he complex proceeding establishes the manifestation of the power to impose sanctions in two interrelated phases, in which the declaration of administrative responsibility is a necessary requirement for imposition of the sanction of suspension, removal, or disqualification; all processed in a single proceeding [...] because each of these phases are independently and effectively satisfied before bodies that, as a whole, form part of the National Fiscal Oversight System. [Thus,] the Chamber considers that [...] there is no violation to the constitutional right to due process, which necessarily must be met to establish the administrative responsibility. The sanctions that correspond to the designation of administrative responsibility do not merit a new proceeding because these are consequences of the declaration of administrative responsibility."[235]

140. In this regard, the Court stresses that there is an important difference between the sanction of a fine and the additional sanction of disqualification, which, as noted, implies a limitation to stand for election (*supra* para. 108). Now, although the Court notes that Mr. López Mendoza did not have a procedural period between the declaration of responsibility and the imposition of the disqualification in any of the administrative proceedings that were carried out against him in which he could present arguments and specific evidence regarding the possible additional sanctions that could be imposed, the foregoing does not imply a violation of his right to defense by that fact alone, since Mr. López Mendoza had the opportunity to challenge the magnitude of the administrative failures or of the seriousness of the irregularities in subsequent appeals. Therefore, in the specific circumstances of this case, the Court considers that it was unnecessary for there to be an independent procedural stage, in which Mr. López Mendoza could have had the opportunity to present arguments or evidence to satisfy his right to defense against the possible imposition of additional sanctions.

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[235] Judgment No. 1.266 of August 6, 2008, of the Constitutional Chamber of the Supreme Tribunal of Justice *supra note* 31, folios 623 and 624. Moreover, in a prior judgment, said Chamber indicated that "the establishment […] of a distinct proceeding is not necessary for the application of the additional sanction, given that the principle sanction as well as the additional sanction arise from the same unlawful act demonstrated during the proceeding of the declaration of responsibility and the sanctioning entity is always the Comptroller General of the Republic. The situation would be different if the sanctioning entity invoked a distinct unlawful action to sustain or apply the additional sanction, given that in this case the installation of a new proceeding would result indispensible for the sanctioning body, one in which the the official under investigation is guaranteed his right to due process and a defense." Judgment No. 1.265 of August 5, 2008, of the Constitutional Chamber of the Supreme Tribunal of Justice *supra note* 187, folio 5279. Some of these standards were reitereated in the decision rendered by the Constitutional Chamber of the Supreme Tribunal of Justice on August 12, 2008. *Cf.* Judgment N° 1.270 of August 12, 2008, of the Constitutional Chamber of the Supreme Tribunal of Justice *supra note* 188, folio 1421.

141. Concerning the requirement that there be cause established by the Comptroller, the Court reiterates that the cause is "the reasoned justification that permits a conclusion to be made." [236] The obligation to provide cause in the resolutions is a guarantee associated with the proper administration of justice, which protects the right of citizens to be tried for the reasons that the law provides, and grants credibility to the legal decisions within the framework of a democratic society. [237] Therefore, decisions adopted by domestic bodies that could affect human rights should be properly grounded, otherwise they would be arbitrary decisions.[238] In this sense, the argumentation of a ruling and of certain administrative actions should allow one to know what the facts, reasons and regulations are on which it bases the decision-making authority, to therefore rule out any hint of arbitrariness. [239] Moreover, it must also show that it has duly taken into account the arguments of the parties and that the evidence has been analyzed. Therefore, the duty of cause is one of the "due guarantees" included in Article 8(1) to safeguard the right to due process.

142. Venezuelan domestic law also recognizes the obligation to establish cause for administrative actions. In this regard, the Venezuelan Organic Law of Administrative Procedures (*infra* para. 201) states:

> Article 9.- The administrative actions of a particular nature must be motivated, with the exception of those of simple processing or unless the law expressly provided for this exception. They must refer to the facts and legal basis for the action.
>
> Article 12 .- Even when a legal or regulatory provision leaves a measure or action to the judgment of a competent authority, such measure or action shall maintain due proportionality and suitability with the alleged facts and the purposes of the regulation, and satisfy the processing measures, requirements, and formalities for its validity and effectiveness."

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236 *Case of Chaparro Álvarez and Lapo Íñiguez*, *supra* note 227, para. 107*; Case of Escher et al. V. Brasil. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of July 6, 2009. Series C No. 200, para. 208, and *Case of Chocrón Chocrón*, *supra* note 13, para. 118.

237 *Cf. Case of Apitz Barbera et al. (*"First Court of Administrative Disputes") *V. Venezuela. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of August 5th of 2008. Series C No. 182, para. 77; *Case of Escher y et al.*, *supra* note 236, para. 208, and *Case of Chocrón Chocrón*, *supra* note 13, para. 118. Similarly, the European Court has established in the Case of Suominen: "[T]he Court then reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based." *Cf. Suominen v. Finland*, no. 37801/97, para. 34, 1 July 2003

238 *Cf. Case of Yatama V. Nicaragua, supra* note 209, párrs. 152 y 153; *Case of Escher et al.*, *supra* note 236, para. 139, and *Case of Chocrón Chocrón*, *supra* note 13, para. 118. Likewise, the European Court has point out that the Judges should clearly state the reasons on which their decisions are based. *Cf.* ECHR, Hadjianastassiou v. Greece, Judgment December 16, 1992, Series A no. 252, para. 23.

239 *Cf. Case of Claude Reyes et al. V. Chile. Merits, Reparations, and Costs.* Judgment of September 19th of 2006. Series C No. 151, para. 122; *Case of Apitz Barbera et al. ("First Court of Administrative Dispute")*, *supra note* 237, para. 78, and *Case of Chocrón Chocrón*, *supra* note 13, para. 118.

143. In this case, the Court noted that through Resolution No. 01-00-000206 (*supra* para. 58), the Comptroller outlined the following considerations to impose disqualification for three years on Mr. López Mendoza due to the facts related with the company PDVSA:

> That by way of the decision dated October 29, 2004, the administrative responsibility [was] declared, among others, of [Mr.] López Mendoza, [...] in his capacity as National Environmental Analyst in the Office of the Chief Economist of Petróleos de Venezuela S.A. [Venezuela Petroleum S.A.] (PDVSA), for the following facts:
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> A) for having acted in concert with the Mrs. Antonieta Mendoza de López [...] with whom there is a blood relationship of first-degree (mother) who served as Public Affairs Manager of the Services Division of PDVSA [...] that as of December 23, 1998, the company represented by her [...] made a donation in the amount of sixty million sixty thousand Bolivares (Bs. 60,060,000.00) in favor of the Primero Justicia Civil Association, where [Mr.] López Mendoza, on the date of the donation was serving simultaneously as an officer of PDVSA. [...] The conduct that once verified was subsumed in the assumption of administrative responsibility provided for in paragraph 7 of Article 113 of the Organic Law of the Comptroller [...], in force at the time of occurrence of the irregular activity, which maintains said nature in numeral 20 of Article 91 of the current [LOCGRSNCF].
>
> B) for having acted in concert with a third party, where on September 11 and December 23, 1998, dates where the donations were formalized in the amounts of twenty-five million Bolivares (Bs. 25,000,000, 00) and sixty million sixty thousand Bolivares (Bs. 60,060,000.00) both in favor of Civil Association Primero Justicia, [Mr.] López Mendoza, served simultaneously as a member of the Board of Directors of the beneficiary of the donations (Civil Association Primero Justicia) and as the National Environmental Analyst in the Office of the Chief Economist of PDVSA, in violation of the "Guidelines on Conflicts of Interest," [...] Conduct that once verified was subsumed in the assumption of administrative responsibility provided for in paragraph 5 Article 113 of the Organic Law of the Comptroller [...], in force at the time of the occurrence of the irregularities, fact which remains valid in numeral 4 of Article 91 of the current [LOCGRSNCF].
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> […]
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> Considering: the severity of the irregular activities, which were the subject of sanction according to the decision dated October 29, 2004. [240]

144. As such, the considerations presented by the Comptroller by way of Resolution 01-00-235 (*supra* para. 81) to impose the sanction for disqualification for six years on Mr. López Mendoza regarding the facts of the Municipality of Chacao, were:

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[240] Resolution N° 01-00-000206 of August 24, 2005, issued by the Comptroller General of the Republic, *supra note* 90, folios 397 to 399.

> That by way of the decision dated November 2, 2004, the administrative responsibility [was] declared, among others, of [Mr.] López Mendoza, [...] in his capacity as Mayor of the Municipality of Chacao of the State of Miranda, for following fact: For having declared, by way of Resolution No. 148-02 dated October 25, 2002, [...] a partial annulment of the total amount of two thousand seven hundred forty-three million, four hundred and sixty-four thousand and forty-one bolívares and fifty-seven cents (2,743,464,041.57 Bs) of the budget allocations assigned to Consignment No. 4.07.02.02.04 "Transfer of Capital to Federal Entities," which could not be legally provided, since it corresponded to the compulsory contributions for the city of Caracas for the fiscal year 2001. This situation is in violation of the provisions of numeral 5 of Article 22 of the Special Law on the Regime of the Metropolitan District.
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> […]
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> The severity of the irregular activity committed, sanctioned by way of the decision of administrative responsibility dated November 2, 2004, […] as well as the reoccurrence of irregular activities have been the subject of sanctions in the terms mentioned prior. [241]

145. Moreover, the Court considers that in response to the motions for reconsideration that Mr. López Mendoza filed against the resolutions that imposed the respective disqualification, he was answered with the following in both cases:

> […] of the reading given to the text of Articles [105 and 122 of the LOCGRSNCF], it is clear that the imposition of sanctions established therein, require as the sole and exclusive criterion: a) the declaration of administrative responsibility of the person investigated; and b) that this decision be final in the administrative forum. In this sense, the sanctions, are legal consequences of the Law, derived from the declaration of responsibility, once it has become final in the administrative forum.[242]
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> […] that the cause for the administrative actions, requires the compliance of the following specifications:
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> a) that the factual and legal foundations of the administrative action be expressly indicated, which includes pointing out the facts and law, inherent in the particular case. These circumstances refer to the specifics indicated: i) reference to the legal elements in the record supporting the decision and, ii) the analysis of the allegations made by the individual, and iii) the regulatory basis that establishes the decision.

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[241] Resolution 01-00-235 of September 26, 2005, issued by the Comptroller General of the Republic, *supra* note 152, folios 392 and 393.

[242] Resolution N° 01-00-00004 of January 9, 2006, issued by the Comptroller General of the Republic, *supra* note 94, folio 412.

b) that, in general, from text of the decision, the reasons behind the issuance of an administrative act are evident, regarding which there is no need for a comprehensive or detailed exposition of the non-essential aspects or specifications regarding the reason or legal basis of the action.[243]

146. In this regard, the Court notes that the two resolutions of the Comptroller for disqualification focused on highlighting the facts from which Mr. López Mendoza was found responsible by the Director of the Office of the Determination of Responsibility (*supra* paras. 60 and 83). While the Court believes that the duty to provide cause does not require a detailed response to each and every one of the arguments of the parties, [244] the Court finds that the Comptroller General was to respond and independently support its reasons, and not merely to refer to previous declarations of responsibility. Indeed, from a reading of those decisions, the Court finds no concrete analysis of the relationship between the severity of the facts and the effect on the collectivity, on public ethics, and on administrative morals.

147. Although the State argues "the high degree of involvement that [the] conduct of [Mr. López Mendoza] had on the values of public ethics and administrative morals, as well as the negative impact that his behavior as a public official had on the community," (*supra* para. 103), the Court notes that the domestic decisions did not establish these aspects with sufficient accuracy. The Court considers that given the scope of the restriction on the right to stand in an election involved in a disqualification to run as a candidate, the Comptroller had a obligation to provide explicit cause for the decision, both qualitatively and quantitatively. The Comptroller was to develop specific reasons and grounds regarding the seriousness and magnitude of the fault allegedly committed by Mr. López Mendoza and the proportionality of the sanction imposed. Moreover, the Court also considers that a proper reason for imposing the disqualification provides assurance that the Comptroller has made a specific and independent evaluation, without referring to that determined by the Office of the Determination of Responsibility with respect to the allegations and evidence that led to the declaration of responsibility. Without providing appropriate and autonomous cause, the sanction for disqualification operates almost automatically, by way of a procedural issue that ends up being merely procedural.

148. Finally, the Court has already indicated that Mr. López Mendoza had the opportunity to contest the considerations of the Comptroller through subsequent appeals that rejected the arguments about the magnitude of the administrative failures and the severity of the

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243 Resolution N° 01-00-00005 of January 9, 2006, issued by the Comptroller General of the Republic, *supra* note 155, folios 428 and 429.

244 The European Court has noted that: "The Court reiterates that Article 6 para. 1 (art. 6-1) obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument (see the Van de Hurk v. the Netherlands judgment of 19 April 1994, Series A no. 288, p. 20, para. 61). The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, inter alia, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 (art. 6) of the Convention, can only be determined in the light of the circumstances of the case. *Cf.* ECHR, *Case Hiro Balani v. Spain*, Judgment of December 9th of 1994, Series A no. 303-B, p. 8, § 27.

irregularities (*supra* para. 118). However, the Court considers that the problems in regard to cause to impose the sanction of disqualification had a negative impact on the right to defense. The lack of cause prevented an in-depth review of the arguments or evidence directly related to the additional sanctions, as is obvious and this case demonstrates, may be significantly more onerous than the principle sanction. Regarding this point, the Court reiterates that the motivation demonstrates to the parties that they have been heard and, in cases where decisions may be appealed, it provides the possibility to contest the resolution and make a new examination of the matter before higher authorities. [245]

149. Consequently, the State is responsible for the violation of the obligation to establish motivation and the right to defense in administrative proceedings that resulted in the imposition of sanctions for disqualification set out in Article 8(1), in relation with Article 1(1) of the American Convention on Human Rights, to the detriment of Mr. López Mendoza.

3. Reasonable period

150. The Commission and the representatives argued that the contentious-administrative remedies for annulment and the constitutional challenge filed by Mr. López Mendoza were not resolved in a reasonable period.

151. The State noted that "the time in which the Supreme Tribunal of Justice […]delayed in resolving the appeals for annulment mentioned […], it adjusted to a reasonable period, considering the complexity of the case; the procedural activity of the interested parties, as well as the actions of the judicial authorities."

152. Considering the arguments of the parties, the Court notes that the alleged violation of Article 25 of the Convention in the present case involves the following remedies filed by the alleged victim: i) motion to reconsider and a judicial appeal for annulment of the State's administrative decision regarding the resolutions that declared the administrative responsibility of Mr. López Mendoza for the actions of PDVSA and the Municipality of Chacao and against the subsequent declarations of disqualification from holding public office, and ii) the constitutional challenge against Article 105 of the LOCGRSNCF, together with the precautionary measure for protection of a constitutional right before the Constitutional Chamber of the Supreme Tribunal of Justice.

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[245] *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Dispute")*, *supra* note 237, para. 78; *Case of Tristán Donoso V. Panamá. Preliminary Objection , Merits, Reparations, and Costs.* Judgment of January 27, 2009 Series C No. 193, para. 153, and *Case of Chocrón Chocrón*, *supra* note 13, para. 118. For its part, the Human Rights Committee considered that the absence of a written reasoned judgment of the Court of Appeal is likely to prevent the author from successfully asking for an authorization to appeal before a Superior Court, stopping him from using an additional remedy. United Nations, Human Rights Committee, Hamilton v. Jamaica, Communication No. 333/1988, CCPR/C/50/D/333/1988, March 23, 1994

3.1 Regarding the judicial appeal for annulment of the administrative decicion against the State

3.1.1. Arguments of the parties

153. The Commission emphasized that the appeal for annulment filed by Mr. López Mendoza on October 4, 2005, in relation to the administrative action that declared his responsibility for the facts of PDVSA "at the time of presenting the arguments on the merits," on July 2008, "had not been rendered." According to the Commission, although "there is no express provision that indicates the period to decide on the admission of this remedy or on the final decision, the Inter-American bodies have understood that due diligence includes the obligation to undertake all necessary actions within a reasonable time." It noted that "the State did not indicate that the appeal for annulment was particularly complex. There is no evidence that the [alleged] victim or his representative had done something that provoked an undue delay in the handling of the proceeding." Finally, for the Commission, "the State also [did] not show that the processing requirements justified the delay in the proceeding." In this regard, the Commission concluded that "[i]t is evident that an action that has not been resolved three years from the date it was filed is not effective, which leads to helplessness to the detriment of petitioner." "[N]otwithstanding that there was a ruling on this remedy in April 2009, the criteria that led the Commission to conclude that there was an infringement regarding reasonable time stands because the State has not justified the length of the proceeding."

154. Regarding the appeal for annulment filed by Mr. López Mendoza on August 4, 2005, before the Political-Administrative Chamber of the STJ given the facts regarding the Municipality of Chacao, the Commission highlighted that it was decided "three years after it was filed." As such, it "noted that the State did not indicate, in a specific manner, the complexity involved in resolving the appeal […]." On the other hand, according to the Commission, "the State did not make reference to the conduct of the petitioner, and regarding the actions taken by the competent authorities, it only provided a list of actions of the STJ without providing a legal argument." Specifically, regarding the State's argument related to the joinder of July 13, 2006, by another person to the action, the Commission "considered that the delay of more than two years of such joinder and three years since it was filed to resolve the appeal for annulment, is excessive."

155. Regarding the judicial appeal for annulment of the administrative decision against the State for the resolution of responsibility in the case of the donations of PDVSA, the representatives noted that the period of three (3) years, five (5) months and twenty-eight (28) days to render a decision "was excessive, and therefore, not reasonable" mainly because "the matter at hand was not […] complex." Moreover, for the representatives, "there also does not exist, in this judicial appeal for annulment of the administrative decision against the State, any circumstances that evince actions to delay or that are negligent on the part of the petitioner that are the cause of delays in the proceeding. Yet, nevertheless, the Tribunal took more [than]

three (3) years to admit the petition for processing (10-04-2005 to 02-01-2006); and, more than one (1) year and six (6) months, since the case file was pending, that is, when it was declared as "Having Seen" until the corresponding final judgment was rendered. (10-03-2007 to 04-01-2009)."

156. The representatives indicated, in regard to the appeal for annulment filed for the facts related to the Municipality of Chacao, that "it is obvious that this is a non-complex matter. Analyzing [a] municipal resolution did not require more than a determination on whether the elements of subjectivity, objectivity, were satisfied for its rendering as well as their necessity." On the other hand, for the representatives, "there does not exist […] a single circumstance that evinces delays or negligence by the plaintiff and that are the cause of delays in the proceeding. Nevertheless, the Court took: more than seven (7) months to admit the petition for processing (08-04-2005 to 03-08-2006); and, more than one (1) year and two (2) months, since the case file was pending, that is, since it was declared as "Having Seen," (that is, the substantiation finalized) until it rendered the corresponding final judgment (05-25-2007 to 08-06-2008). In addition, the representatives noted that "for this moment, the first sanction of disqualification had been effectuated […] rendered by the Comptroller […], [to which] there was sufficient evidence of the threat that implied the duration of the administrative act of administrative responsibility, which generated, sufficient arguments for the suspension of [Mr. López Mendoza] or for the non-application of Article 105 of the LOCGR[SNCF]."

157. For its part, the State indicated, in what pertains to the judicial appeal for annulment of the administrative decision regarding the responsibility for the facts of PDVSA, dealing "with a very complex remedy given the irregularities committed by two public officials […], by a judge […], given that between these two officials there exists a first-grade blood relationship." Moreover, according to the State, in the "processing of the appeal in question there was much procedural activity by the interested parties and diligence by the judicial body."

158. Moreover, the State mentioned that the alleged delay in the decision regarding the appeal filed by Mr. López Mendoza for the facts regarding the Municipality of Chacao, "stem[med from the fact that the appeal] was not only filed jointly with the precautionary measure for protection of a constitutional right, which implied as well, a prior ruling, but rather there was also a request for joinder formulated on July 13, 2006, by [a person], as legal representative [of] Council […], who requested precautionary measures, which merited a new proceeding by the Chamber, which was not assessed by the [Inter-American] Commission, who did not take into consideration the procedural activity in the case, which was never at a standstill but rather in continuous movement."

3.1.2 Considerations of the Court

159. The Court notes that regarding the resolutions that declared the administrative responsibility of Mr. López Mendoza for the facts of the PDVSA and the Municipality of Chacao, he filed the respective Motion to Reconsider on November 22, 2004 (*supra* paras. 56 and 79). Said remedies were declared **'**unfounded by the Director of the Office of the Determination of Responsibility of the General Office of Special Procedures on March 28, 2005, that is, 4 months after it was filed (*supra* paras. 57 and 80). Thus, Mr. López Mendoza

filed a judicial appeal for annulment of the administrative decision of the State before the Political-Administrative Chamber of the Supreme Tribunal of Justice on October 4 and August 5, 2005, respectively (*supra* paras. 61 and 84). On March 31, 2009, and on August 5, 2008, respectively, the Political-Administrative Chamber of the Supreme Tribunal of Justice declared the mentioned appeals for annulment unfounded (*supra* paras. 63, and 87), that is, after 3 years and 6 months in the first case and 3 years in the second.

160. Likewise, the Court takes into account that regarding the resolutions that declared the sanction for disqualification of Mr. López Mendoza from holding public office for 3 to 6 years, the alleged victim filed a Motion to Reconsider on September 22 and November 15, 2005, respectively (*supra* paras. 59 and 82). On January 9, 2006, the Comptroller General declared the appeals unfounded (*supra* paras. 60 and 83), that is, 3 months and a half and almost 2 months after they were filed. Thus, on June 21, 2006, Mr. López Mendoza filed, before the Constitutional Chamber of the Supreme Tribunal of Justice, the corresponding appeal for annulment together with the request for precautionary measure for protection of a constitutional right (*supra* para. 89). Said remedies were declared 'unfounded' on August 6, 2008 (*supra* para. 90), namely, 1 year and 2 months after being filed.

161. The Court notes that the parties did not present arguments on the alleged violation of the reasonable period regarding the precautionary measure for protection of a constitutional right with a request for suspension of the effects filed by Mr. López Mendoza jointly with the judicial appeal for annulment of the administrative decision for the facts of the Mayor's Office of Chacao, resolved 7 months after by the Political-Administrative Chamber of the Supreme Tribunal of Justice (*supra* paras. 84 and 85). Thus, the Tribunal noted that the parties have developed arguments on the alleged violation of the reasonable period only in what concerns the judicial appeal for annulment of the administrative decision filed by the alleged victim regarding the declarations of administrative responsibility issued by the Office of the Determination of Responsibility for the cases regarding the PDVSA and the Municipality of Chacao.

162. As established prior, the remedies for annulment filed by the alleged victim regarding the declarations of responsibility for the facts of PDVSA and of the Municipality of Chacao were decided after 3 years and 6 months and 3 years, respectively. In order to determine if this is a reasonable period to consider these remedies effective, the Court, pursuant to its jurisprudence, will consider: i) the complexity of the matter, ii) the procedural actions of the interested parties; iii) the conduct of the judicial authorities, [246] and iv) the harm generated in the legal situation of the person involved in the process. [247] In this sense, it corresponds to Venezuela to justify –with the standards mentioned- the reasons it has required the indicated

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[246] *Cf. Case of Genie Lacayo V. Nicaragua. Merits, Reparations, and Costs.* Judgment of January 29 of 1997. Series C No. 30, para. 77; *Case of Xákmok Kásek Indigenous Community, supra* note 22, para. 133, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brasil. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 24, 2010 Series C No. 219, para. 219.

[247] *Cf. Case of Valle Jaramillo et al. V. Colombia. Merits, Reparations, and Costs.* Judgment of November 27, 2008. Series C No. 192, para. 155; *Case of Xákmok Kásek Indigenous Community*, *supra* note 22, para. 133, and *Case of Gomes Lund et al. (Guerrilha do Araguaia)*, *supra* note 246, para. 219.

time to handle the case. If it fails to demonstrate this, the Court has the broad power to render its own estimation in this respect. [248]

i. Complexity

163. The State noted that said remedies implied irregular facts committed by public officials, and in the specific case regarding the facts of PDVSA, the analysis of the blood relationship in the first degree between those implicated and the analysis of the implementation of the agreement pertained to a judge. (*supra* paras. 40 to 43). Moreover, the State noted that one of the appeals was filed jointly with a precautionary measure for protection of a constitutional right that implied prior rulings[249] and that given the declaration of responsibility for the facts of the Municipality of Chacao there was a request for joinder that merited a new ruling by the Political-Administrative Chamber.[250] The Court considers that these aspects involved technical debates on matters regarding the budget and implementation of agreements, which allows one to infer the complexity of the matters to be resolved.

ii. Procedural actions of the interested parties

164. In addition to that indicated by the State, in regard to the complexity of the case, it is not clear from the case file that Mr. López Mendoza had provoked an undue delay through his actions in the processing of the case. As a consequence, the Court understands that there was no delay provoked by the alleged victim.

iii. Actions of the judicial authorities

165. The State limited itself to noting that the judicial body charged with resolving the matter acted diligently. (*supra* para. 157). Of the evidence in the case file, the Court finds that in the context of said appeals, the authorities analyzed and admitted the evidence put forward by Mr. López Mendoza[251] and heard the respective oral reports. [252] On this matter, the Court

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[248] *Cf. Case of Anzualdo Castro V. Perú. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of September 22, 2009. Series C No. 202, para. 156, and *Case of Radilla Pacheco V. México. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 23, 2009. Series C No. 209, para. 244.

[249] Appeal for annulment of August 4, 2005, filed by Mr. López Mendoza, *supra* note 160, folios 1562 to 1591.

[250] Brief presented by Mr. Antonio Jímenez, wherein he expressed "having interest in the appeal for annulment underway" of July 13, 2006 (Case file of annexes to the application, tome III, folios 1648 to 1655) and Decision of October 24, 2006, of the Political-Administrative Chamber (Case file of annexes to the application, tome III, folios 1683 to 1689).

[251] *Cf.* Brief of July 27, 2006, presented by Mr. López Mendoza offering evidence before the Court of Substantiation of the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra* note 171, folios 1662 to 1665. See also Resolution of August 8, 2006, issued by the Substantiation Court of the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra* note 171, folios 1676 to 1677. See also, brief without date consigned by the defense of Mr. Leopoldo López Mendoza on May 23, 2006, *supra* note 100, folios

highlights that while the representatives argued that "according to the Organic Law of the Supreme Tribunal of Justice, the decision on the merits should approximately take 10 and a half months," Article 19 of the Law does not establish a specific period in which said tribunal must resolve the appeals filed.

166. In fact, Article 19 of the Organic Law of the Supreme Tribunal of Justice only mentions the period for, *inter alia:* i) the Substantiation Court to decide on the admission or inadmissibility of the petition or appeal; ii) the interested party to appeal the resolution on inadmissibility; iii) the relation to the claim is initiated; iv) the parties present their reports orally; v) the second stage of the relation to the claim is developed; vi) the possible answer to the appeal; vii) the Supreme Tribunal of Justice or the Chambers resolve the appeals; viii) evidence to be provided; ix) the reports to be brought, and x) appeals of the facts to be filed. Also, said Article established that "[t]he instance ends by law regarding the claims that have been at a standstill for more than (1) year, prior to the presentation of the reports." [253]

167. In this way, still assuming that on average the periods prescribed in the Organic Law allow for the conclusion that an appeal filed before the Supreme Tribunal of Justice must be resolved in 10 and a half months, the Court considers that the period of 3 years and 6 months and of 3 years are reasonable given the complexity of the matter at hand (*supra* para. 163). Moreover, the Court finds that the Supreme Tribunal of Justice diligently handled the actions put forward by the parties.

iv. Effect generated by the legal situation of the person involved in the proceeding

168. The Court recalls that if the passage of time affects, in a relevant manner, the legal situation of an individual, it is necessary that the proceeding run with more diligence in order for the case to be resolved in as brief a manner as possible. [254] The Court notes that while, in this case, Mr. López Mendoza had a special interest in the swiftness of the decision regarding the appeal for annulment in order to establish his candidacy in the election of November 2008, in the circumstances of this case, it is not clear that the lack of a quick decision is what affected the rights of the victim.

8053 to 8057. See also Resolution of June 21, 2006 of the Substantiation Court of the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra* note 101, folios 8059 to 8060.

252 Official letter without number, dated on March 29, 2007, of the Comptroller General of the Republic addressed to the President and other Magistrates of the Political-Administrative Chamber of the Supreme Tribunal of Justice (Case file of annexes to the application, annex 34, tome III, folios 1692 to 1715). See also, evidence of July 12, 2007, of the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra* note 102, folio 8081.

253 The Organic Law of the Supreme Tribunal of Justice of the Bolivarian Republic of Venezuela, published in the Official Gazette N° 37.942 on May 20, 2004. Cited int he final written arguments of the representatives (Case file on the merits, tome III, folio 1209) and available at: http://www.tsj.gov.ve/legislacion/nuevaleytsj.htm (last visited on September 1, 2011).

254 *Cf. Case of Valle Jaramillo et al.*, *supra note* 247, para. 155; *Case of Garibaldi V. Brasil. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of September 23, 2009. Series C No. 203, para. 138, and *Case of Xákmok Kásek Indigenous Community*, *supra* note 22, para. 136.

169. For the foregoing, the Court considered that the State has been able to justify that the time that the Supreme Tribunal of Justice delayed in resolving the appeals for annulment filed by the alleged victim is in conformity with the principle of reasonable time.

3.2. Regarding the constitutional challenge

3.2.1. Arguments of the parties

170. While the Commission "considered it reasonable that the Constitutional Chamber of the STJ had delayed 2 years in resolving the appeal […] given the complexity of the matter and the accumulation of claims in the same proceeding," it highlighted "that the petitioner attempted, opportunely, various remedies in attempts to challenge or request the suspension of the effects of the law that prevented him from exercising his political rights to run in a popular election; this is all in consideration of his intention to [be] a candidate in the November 2008 elections and considering that the process for registering for said election was August 5 to 14, 2008." Thus, for the Commission, "the time that passed for jointly resolving the appeals is not reasonable. This situation is even more relevant if one considers the nature of the rights and interests at play." In this way, "the possibility of registering, in August 2008, the candidacy of [Mr.] López Mendoza for the November 2008 elections was related to the timely and effective decision of the judicial bodies of his country and the compatibility of Article 105 of the LOCGRSNCF with the Constitution and with the American Convention."

171. On their behalf, the representatives noted that "there was a series of precautionary decisions on the constitutional challenge of said Article as of 4 years ago, [but that] the Supreme Tribunal […] ignored [them], […] permitting their arbitrary application and ratif[ying] their compatibility with the Constitution […] and with Article 23(2) of the American Convention." In this regard, they considered it "of great importance to highlight that, after more than 2 years since the filing of the appeal for annulment of Article 105 of the Organic Law of the Comptroller […] and of the actions that […] put in place the political disqualification, without obtaining a ruling by the Constitutional Chamber […],[…he] was informed unofficially that he was to appear at a hearing to listen to the parties […], namely, an untimely summons." Subsequently, "three working days after having celebrated the hearing, the judgment 1266 of August 6, 2008, was rendered, where the final violation of [Mr. López Mendoza's] rights was materialized, where the magistrates had to modify years of jurisprudence and pacific constitutional doctrine."

172. In regard to the motion for annulment and the constitutional challenge of Article 105 of the LOCGRSNCF, the State noted the following: i) "[i]n regards to the complexity of the case, […] it was necessary to take into consideration factors such as the high level of difficulty associated with the resolution of a particularly complicated claim, not only because of the nature of the case, but also because of the amount of petitions filed against the mentioned Article that were joined into one." Moreover, "it corresponded to the Constitutional Chamber […], to decide on the constitutionality of Article 105 of the LOCGRSNCF, a task that is even more complex in the case of public officials in popular elections, as is the case of [Mr.] López Mendoza," ii) "[i]n regard to the procedural activity of the interested parties, it was noted that while these were met in a timely manner, the procedural burdens throughout the *procedural*

iter, it is clear from the actions in the respective case file, that others sought to intervene in the proceeding, or that due to the nature of the matter at hand, the judicial body ordered joinder of claims, which no doubt led to its justified lengthening," and iii) as it pertains to the activity of the authorities, it noted that it "maintained a diligent attitude regarding [the] processing of the case, staying active at all times, especially taking into consideration the fact that these were cases that were in constant motion, to the point that from one procedural action to another not much time passed."

173. In this way, the State concluded that "while there were some delays in the processing of the appeal filed by [Mr.]López Mendoza, this is fully justified, not only due to the joinder of those interested parties that filed before the court, but also due to the great activity carried out for the resolution."

3.2.2. Considerations of the Court

174. As was established in the pleadings of the parties, the constitutional challenge brought by the alleged victim of Article 105 of the LOCGRSNCF was resolved after 2 years and 2 months. In order to determine whether this is a reasonable time, the Court will again, pursuant to its jurisprudence, take into account i) the complexity of the case, ii) the procedural actions of the interested parties; iii) the conduct of the judicial authorities, and iv) the effect generated on the legal status of the person involved in the proceeding (*supra* para. 162).

i. Complexity

175. The State indicated that it involves a "case that is particularly difficulty," "due to the nature of the case"; "due to the number of claims filed [and joined in a single case]," and because it was a case involving "officials elected by the people "(*supra* para. 172). The Court finds that indeed the constitutionality challenge filed by Mr. López Mendoza on August 4, 2005, was joined into the record of Nidia Gutierrez de Asencio of April 4, 2006.[255] Moreover, the Court also notes that: i) on July 27, 2006, Mr. Juan Bautista Carrero Marrero sought to intervene as a third party in the case ii) on November 7, 2007, joinder was ordered to join the case file with the claim of Mrs. Rosalba Gil Pacheco iii) on December 19, 2007, joinder was ordered to join the case file with the claim of Humberto Bello Bernay, iv) on June 4, 2008, joinder was ordered to join the case file with the claim of Mrs. Sandra Carolina Alfaro Salazar, and v) on July 8, 2008, joinder was ordered to join the case file with the claim of Mrs. Maria Trinidad Ramirez Egañez. [256]

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[255] *Cf.* Judgment No. 912 of August 6, 2008, of the Political-Administrative Chamber of the Supreme Tribunal of Justice, *supra* note 111, folios 502 to 535.

[256] Description of Case file No. 2006-945 of the Constitutional Chamber of the Supreme Tribunal of Justice: Petiton for annulment for unconstitutionality of Article 105 of the Organic Law of the Comptroller General of the Republic and the National System of Fiscal Oversight, as well as the Resolutions in virtue of the disqualification fromt he excercise of public office. Petitioner: Leopoldo López, Eva Ramos, et al. Joined to the case file 2006-494, petitioner Nidia de Atencio (Case file of annexes to the application, tome III, folios 1320 to 1324).

176. Moreover, the Court considers that the fact that the motion filed by Mr. López Mendoza sought a declaration of unconstitutionality of an Article of a Law with general effects is a determining factor to characterize the cases complexity.

ii. Procedural activity of the interested parties

177. The State indicated that the interested parties "met, in a timely manner, their procedural burdens throughout the *procedural iter*." In this regard, the Court finds that the record does not show that Mr. López Mendoza carried out activities that provoked undue delay in the processing of the case. Accordingly, the Court finds that if there was no delaying actions in the case provoked by the alleged victim. With regard to the subsequent claims and corresponding joinders, the Court has considered this in the previous section (supra para. 175).

iii. Actions of the judicial authorities

178. The State limited itself to noting that the authorities maintained a diligent attitude regarding the handling of the case, "developing, at all times, much activity." (*supra* para. 172). From the evidence in the case file, the Court finds that in the course of that appeal, the Supreme Tribunal had to resolve, in parallel manner, the claims for precautionary protection of a constitutional right filed jointly with the constitutional challenges in addition to that of Mr. López Mendoza's. As such, the Court also notes that the Constitutional Chamber issued the corresponding placement cards**;** made a series of notifications to the people involved in the case, and convened and conducted the public hearing. [257] Moreover, the Court notes that Article 19 of the Organic Law of the Supreme Tribunal does not set a specific period for which it is subject to rule on the constitutionality challenges brought before it (*supra* para. 165).

iv. Effect generated by the legal situation of the person involved in the proceeding

179. The Court notes that while in the present case Mr. López Mendoza had a special interest in the swiftness of the issuance of the decision to be able to run in the November 2008 election, the situation itself would not be enough to justify the judicial authorities sacrificing the proper development of the proceeding and the determination of constitutionality of the standard which, in short, had general effects that go beyond the particular interests of the alleged victim. Thus, the Court notes that "the interests of the person concerned, regarding that a decision be issued soon as possible, must be balanced against the need for a careful examination of the case and an appropriate execution of the procedures."[258]

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[257] Description of Case file No. 2006-945 of the Constitutional Chamber of the Supreme Tribunal of Justice *supra* note 256, folios 1320 to 1324.

[258] *Cf.* ECHR. Judgment of 8 de julio de 1987, H v. the United Kingdom, paras. 71-86; Judgment of 31 de marzo de 1992, X v. France, para. 32; Judgment of 23 de marzo de 1994, Silva Pontes, para. 39.

180. Given the foregoing, the Court considers that the State has justified that the time the Constitutional Chamber of the Supreme Tribunal of Justice took to resolve the constitutionality challenge filed by the victim is in conformity with the principle of reasonable time.

4. Judicial Protection and Effectiveness of the remedy

4.1. Arguments of the parties

181. The Commission found that the appeals filed by the victim in the domestic jurisdiction, "in practice, were ineffective" given that the decisions reached by the various courts, "repeatedly dismissing claims related to the compatibility of Article 105 the LOCGRSNCF, for purely procedural grounds or on the basis that it is historically enshrined in Venezuelan law [,] confirm the ineffectiveness of providing a remedy for a violation" of Article 23 of the American Convention. The Commission added that "both the Political-Administrative Chamber and the Constitutional Chamber of the Supreme Tribunal of Justice, dismissed the appeals without providing an effective response regarding the use of administrative means to prevent the victim from exercising his political rights."

182. On their behalf, the representatives indicated that the proceedings were "not appropriate judicial remedies, given that in the respective decisions, the Supreme Tribunal of Justice not only failed to observe constitutional regulations, but also misapplied the provisions of Article 23(2) of the American Convention," showing "a clear denial of justice." In addition, according to the representatives, "none of the judicial remedies" were able to "protect against acts that violate his political rights, as they excessively delayed a decision thereon; they ignored the 'control of conformity with the Convention'" and "rejected that control with the argument of the rule of law based on sovereignty."

183. The State did not present specific arguments about the effectiveness of judicial remedies. However, it argued that "the principle of a reasonable period of time could not be considered breached, to which it could not be said that the Venezuelan State violated the right to an expedited appeal under Article 25 of the American Convention."

4.2. Considerations of the Court

184. The Court has held that for there to be an effective remedy, it is not sufficient that it be provided by the Constitution or the law or that it be formally recognized, but rather that it be truly effective in order to establish whether there has been a violation of human rights and to provide that which is necessary to remedy the situation.[259] Moreover, upon evaluating the effectiveness of the action before the national contentious-administrative jurisdiction,[260] the

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259 *Cf. Judicial Guarantees in State of Emergency (Arts. 27(2), 25, and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9*, para. 24; *Case of Abrill Alosilla et al.*, *supra* note 16, para.75, *and Case of Mejía Idrovo*, *supra* note 15, para. 94.

260 *Cf. Case of "Mapiripán Massacre" V. Colombia. Merits, Reparations, and Costs.* Judgment of September 15, 2005. Series C No. 134, para. 210; *Case of "Rochela Massacre" V. Colombia. Merits,*

Court has considered whether the decisions taken there contributed effectively to end the violation of rights, to ensure the non-repetition of the wrongful acts, and to ensure the free and full exercise of rights protected by the Convention.[261] The Court will not assess the effectiveness of the appeals filed in regard to a possible resolution favorable to the interests of the alleged victim.

185. In this regard, the Court notes that the judicial appeals filed by Mr. López Mendoza failed in providing an effective and suitable answer to protect his right to be elected (*supra* para. 109) and that would safeguard the minimum requirements of the duty to establish cause in the proceedings that led to the sanctions of disqualification (*supra* para. 149), which is why it violated the right to judicial protection enshrined in Article 25(1), in relation with Articles 1(1), 8(1), 23(1)(b), and 23(2) of the American Convention, to the detriment of Mr. López Mendoza.

C. Equal protection before the law

1. Arguments of the parties

186. The Commission noted that "in its brief on the merits of the matter, Mr. López Mendoza argued, for the first time, the violation of Article 24 of the American Convention[262] in virtue of considering that he had received discriminatory treatment regarding other persons who, in the past, were able to run for public office despite [the fact that] an administrative sanction of disqualification had been applied to their right to hold public office." In this regard, the Commission specified that "it concluded in its Report on the Merits that said extreme had not been duly founded in this particular case and that it did not have sufficient elements to consider that the alleged facts amounted to that established" in the Article.

187. The representatives argued the alleged violation of equal protection before the law in the case of Mr. López Mendoza. In this sense, they noted two alleged facts that demonstrate that Mr. López Mendoza was a victim of discriminatory treatment: i) because before the release of budgetary resources to meet labor obligations for purposes of employees of the Mayor's Office (firefighters, teachers, and retirees, among others), he was [not] given the same treatment as the Comptroller, [when] the use by the President of the Republic and the Minister of Finance was public and notorious of budget resources originally intended to contribute to the Investment Fund for Macroeconomic Stabilization." According to the

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Reparations, and Costs. Judgment of May 11, 2007. Series C No. 163, para. 217, and *Case of Manuel Cepeda Vargas*, *supra* note 21, para. 139.

261 *Cf. Case of "Mapiripán Massacre". Merits, Reparations, and Costs*, *supra* note 260, para. 214; *Case of "Rochela Massacre" V. Colombia*, *supra* note 260, para. 219, and *Case of Manuel Cepeda Vargas*, *supra* note 21, para. 139.

262 Article 24 of the American Convention (Right to Equal Protection) establishes that:

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

representatives, "nothing was said about it, validating in this way a flagrant violation of that principle of equal protection of citizens before the law" and ii) because "the National Electoral Council allowed the registration, application, and announced citizens who were in the same situation as disqualified politicians."

188. On its behalf, the State noted that the arguments of the representatives were based on the declarations of some persons made before means of communication, which "could not be considered sufficient evidence of the violation." [263] The State noted that Mr. López Mendoza "referenced candidates that applied to the polls carried out in October 2004, and December 2005, [that] were not disqualified from public office, because the administrative actions were in the administrative forum before the Comptroller General of the Republic, pending interposition or decision of the corresponding administrative resources; or because the sanctions were imposed on dates subsequent to the dates of the polls; or because the National Electoral Council was not given notice of the sanctions imposed or that the people that ran were no longer disqualified from holding public office because the period had passed for the sanctions of disqualification." As a consequence, "at the time the polls were held […], the National Electoral Council impeded the registration of those aspiring for a position through popular vote, on the basis of facts or situations unknown to it as the reasons were not established in the administrative forum." Thus, for the State, "[t]he difference in the cases noted is objective and reasonable given that the difference in reported cases is objective and reasonable regarding the factual circumstances, since at the time of the nomination of [Mr. López Mendoza] the sanction for disqualification from holding public office imposed was final."

189. In short, the State said that "discriminatory treatment would mean that the National Electoral Council allowed the candidacy for the elections held in November 2008, of people who were on equal footing with [Mr.] López Mendoza; this did not happen because the electoral body rejected nominations for elected office not only of [Mr. López Mendoza] but of all the people who were disqualified from holding public office."

2. Considerations of the Court

190. Considering that the violation of Article 24 was not argued by the Inter-American Commission (*supra* para. 186), the Court reiterates that the alleged victim and its representatives can invoke the violation of other rights distinct from those already stated in the application so long as this heads to the facts already contained in the application (*supra* para. 27) and is done at the appropriate procedural moment –in the brief of pleadings and motions-, which occurred in this case. This possibility is meant to make effective the procedural power

[263] The State noted that the respective argument was based on: i) the Statement of Mr. Oscar Pérez of May 13, 2008, issued by a television medium; ii) "a public interview on June 16, 2008, in a newspaper of national circulation, where it had been affirmed, that despite the disqualification, the National Electoral Council, permitted his candidcy for the 2004 elections," and that of Messers. Régulo Hernández, Gleen Rivas, Cruz Ortiz, Cándido Rodríguez, Tirso Colmenares, Oswaldo Díaz, and Justo Hernández, and iii) the interview of Chief Chancellor of the National Electoral Council, Vicente Díaz, on May 12, 2008, "in a newspapaer of national circulation," wherein it stated that "the registration and candidacy of [Messers.] Jenny Cedeño, Gleen Rivas, and Antonio Barreto Sira, was allowed for the elections [of] 2004, despite their disqualification." *Cf.* Brief of final arguments of the State, *supra* note 30, folio 1481.

of *locus standi in judicio* that is recognized in the Court's Rules of Procedure, without detracting from the limits of the Convention on the participation and the exercise of the jurisdiction of the Court, nor diminishing or infringing upon the right of defense of the State, which has the procedural opportunity to respond to the arguments of the Commission and representatives at all procedural stages. In this way, the Court must ultimately decide each case based on the admissibility of arguments of such nature in order to safeguard the procedural equality of the parties.[264]

191. In the present case, the Court notes that in its admissibility report, the Commission "declared the application admissible […] in relation to the rights enshrined in Articles 23, 8, and 25 of the American Convention, in relation to the obligations established in Articles 1(1) and 2 therein." [265] Subsequently, in its report on the merits, the Commission outlined explicitly that "in its arguments [...] the petitioner alleged violations of Article 24 of the Convention due to the application of a discriminatory standard." According to the Commission, at that time, the representatives "[b]ased their argument on the basis of statements issued in the media by Mr. Oscar Perez, [...], and that those same operational circumstances involved Mr. Regulus Hernandez, Glenn Rivas, Cruz Ortiz, Candido Rodriguez, Tirso Colmenares, Oswaldo Diaz, Justo Hernandez [and] Jenny Cedeño." Nevertheless, the Commission did not find the State's responsibility for the alleged violation of Article 24 of the Convention. [266] Consequently, in its application –which establishes the factual basis of the case—the Commission did not mention the mentioned facts and the alleged violation involved (*supra* para. 2 and 3).

192. Moreover, the Court notes that in the brief of pleadings and motions, Mr. López Mendoza argued the alleged violation of equal protection before the law indicating that the National Electoral Council allowed certain persons to participate as candidates in the electoral processes of 2004 and 2005 who were sanctioned by disqualification from holding public office (*supra* para. 187). Moreover, the Court takes into consideration that the State indicated that these persons "were not disqualified from holding public office," justifying this affirmation with 4 reasons, that is: i) because the administrative actions were in the administrative forum before the Comptroller General of the Republic, pending the interposition or decision of the corresponding administrative remedies; ii) because the sanctions were imposed on dates subsequent to the polls; iii) because the National Electoral Council was not given notice of the sanctions imposed, or iv) because the persons that ran for office were no longer disqualified from holding public office given that the period of the sanction had lapsed. (*supra* para. 188).

193. In this regard, the Tribunal highlighted that the State presented evidence aimed at establishing that the mentioned persons, allegedly disqualified from holding public office, were not disqualified at the time of the election of 2004 and 2005, to which their cases involved one of the 4 reasons explained by the State (*supra* para. 188 and 192). In this sense,

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264 *Cf. Case of "Mapiripán Massacre" V. Colombia. Merits, Reparations, and Costs*, *supra* note 260, para. 58; *Case of Vélez Loor*, *supra* note 213, para. 43, and *Case of Chocrón Chocrón*, *supra* note 13, para. 134.

265 Admissibility Report No. 67/08, *supra* note 1, folio 10.

266 Report on the Merits No. 92/09, *supra* note 2, folios 12 to 52.

in the case file, *inter alia,* the order of November 22, 2004, issued by the Comptroller General of the Republic of the President of the National Electoral Council (CNE) where a list was provided of 118 persons where the sanction was imposed for disqualification from holding public office. [267] Moreover, the State rendered a copy of the order of June 12, 2006, sent by the Comptroller General of the Republic to the President Chancellor of the National electoral council (CNE) where there is a list of 54 persons who also had sanctions of disqualification or dismissal imposed on them. [268]

194. The Court understands that the 118 people in the first list and the 54 of the second list were under the sanction of disqualification from public office. However, the Court has no jurisdiction to decide whether in each of these cases the impediment to run in the elections in Venezuela in 2004 and 2005 was appropriate. Indeed, the Court has no power to decide whether such persons should be prevented from registering and running in those elections, because of the administrative and judicial procedures against each of them. Additionally, the Court notes that the representatives did not submit its written pleadings and sufficient evidence that would allow for the clarification of the alleged discrimination in relation to persons who, in the same alleged circumstances as Mr. López Mendoza, received differential treatment by the National Electoral Council in the elections of 2004 and 2005. Thus, it is not possible to affirm that the right enshrined in Article 24 of the Convention would grant Mr. López Mendoza the authority to require the same response from the National Electoral Council in his case.

195. In conclusion, the State is not responsible for a violation of the right of equal protection before the law enshrined in Article 24 of the American Convention to the detriment of Mr. López Mendoza.

D. Duty to adopt domestic legal effects

1. Arguments of the parties

196. The Commission argued that "the causes for the sanction and the grade of the sanctions have not been previously defined" in a “detailed and precise manner, which contravenes the principle of criminal codification” and “affects the possibility of arguing about the appropriateness and proportionality of the sanction in adversarial proceedings." It summarized that "the lack of definition allows for the Comptroller General to exert its own discretion in imposing the sanction and affects the possibility to undergo review by independent courts." Moreover, the Commission argued that "after the declaration of administrative responsibility and the imposition of the fine, notice of the possibility that the punitive process may continue was not expected," and that "domestic law does not set a

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[267] *Cf.* Official letter No. 01-00-000730 of November 22, 2004, rendered by the Comptroller General of the Republic to the President of the National Electoral Council (CNE) (Case file of annexes to the answer to the application, annex H, tome XXXIX, folios 13814 to 13830).

[268] *Cf.* Official letter No. 01-00-000386 of June 12, 2006, forwarded by the Comptroller General of the Republic to the President Chancellor of the National Electoral Council (CNE) (Case file of annexes to the answer to the application, annex H, tome XXXIX, folios 13807 to 13813).

timeframe for the Comptroller to exercise its power of discretion to politically disqualify" generating "uncertainty that has serious repercussions regarding the exercise of due process."

197. The representatives stated that the disqualification is imposed "without a legal framework that establishes the grade of the punishment," and "without existing definitions of the criteria for the assessment of the penalty according to the gravity of behavior." They indicated that the concepts of severity and elements of the violation "are interpreted and used subjectively, given that in the administrative acts of disqualification [against Mr. López Mendoza], the reasons and the mechanism through which the continuance was determined was not explained, much less supported in the body of evidence whatsoever." They specified that the "exercise of the *ius puniendi"* headed by the Comptroller "is unlimited, since it can impose administrative sanctions when it so deems and even after years pass." They added that the Comptroller "may maintain in limbo the application of additional sanctions, thereby constituting legal uncertainty, arbitrariness, and lack of transparency."

198. The State argued that Article 105 "establishes in an express manner both the administrative infractions" as well as the "sanctions" and, moreover, provides that these be applied heeding to the makeup of the violation and the severity of the irregularity. It added that "the legality of the sanction of disqualification […] is not nor may not be subject to the fact that it is found in the same administrative act that declares the administrative responsibility," given that "both proceedings are brought by distinct officials, to which they cannot be brought in one same and unique action" and only "proceeds after the declaration of administrative responsibility." It added that "given that the administrative responsibilities" of Mr. López Mendoza "were declared by the Director of the Office of the Determination of Responsibility of the Comptroller General of the Republic," the same declarative act of responsibility "could not be imposed by another official on the alleged victim the sanction of disqualification without incurring in a manifest lack of jurisdiction, since it only had a specific delegation, where the aforementioned sanction of disqualification was the exclusive power of the Comptroller General." The State added that "given the absence of an express period for the Comptroller General [...] to impose the additional sanctions," "it has been considered appropriate" to apply "the general period of statute of limitations" identified in Article 114 of the LOCGRSNCF.

2. Considerations of the Court

199. The Court finds that under the framework of due process laid down in Article 8(1) of the American Convention, legal certainty must safeguarded regarding the period in time in which a sanction may be imposed. In this regard, the European Court has held that the law should be: i) adequately accessible, [269] ii) with sufficient precision, [270] and iii) foreseeable. [271]

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[269] "The law should be both adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct. ECHR, *Case Hasan and Chaush v. Bulgaria*, Judgment of 26 October 2000, para. 84. Likewise, in Case of Malone v. The United Kingdom, the Court established that "[t]he law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case". ECHR, *Case Malone v. The United Kingdom*, Judgment of 2 August 1984, Series A no. 82, para. 66.

Under this line of thinking, the European Court used the so-called "foreseeability analysis," which takes into account three standards for determining whether a regulation is sufficiently foreseeable, namely[272]: i) the context of the regulation under review; ii) the forum of application for which the regulation was created, and iii) the status of the persons which the regulation addresses.

200. In this regard, the Court notes that the Constitutional Chamber of the Supreme Tribunal of Venezuela has analyzed compliance with the principle of legality in relation to the sanctions provided for in Article 105 of the LOCGRSNCF. Said Tribunal has held that:

> The principle of criminal codification requires a *lex certa* that provides legal certainty to the public about the serious consequences of the administrative offense However, during the term in force of *ius puniendi* of the State in the sanctioning administrative law, ethical standards of conduct have been accepted that channel the verification of the administrative offense by way of the normative description of events, facts, or omissions that generate administrative responsibility; in no way could be they be likened to what criminal law calls "white criminal laws." [...] The fact is that in the administrative forum, the implementation of what the doctrine called "indeterminate legal concepts" is not banned; rather, they are used to verify the gradient level of the sanction of the penalty, but not the offense itself. This is therefore an approach that gives the sanctioning body discretion that does not conflict with the principle of criminal codification, as it should be satisfied through a thorough and specific analysis of the facts and classification from the values involved in the standard to the maximum required to justify why the sanction is to be imposed. What is important to not incurr a violation of the principle of criminal codification is that the crime or offense be clearly defined, as well as the sanction. [...] In the case of Article 105 of the [LOCGRSNCF], it states that the declaration of administrative responsibility shall be punished by a fine under Article 94 of the Law, pursuant to the severity of the offense and the type of damages caused by following the provisions of Article 66 et seq of the Rules of Procedure of the Law

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270 "The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail". ECHR, *Case Maestri v. Italy*, Judgment of 17 February 2004, para. 30. Likewise, in Case of Malone v. The United Kingdom, the Court established that "a norm cannot be regarded as 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail". ECHR, *Case Malone*, *supra note* 269, para. 66. See also, ECHR, *Case Silver and others v. The United Kingdom*, Judgment of 25 March 1983, Series A no. 61, para 88.

271 "[T]he Court reiterates that a rule is 'foreseeable' if it is formulated with sufficient precision to enable any individual – if need be with appropriate advice – to regulate his conduct". ECHR, *Case of Landvreugd v. The Netherlands*, Judgment of 4 June 2002, para. 59.

272 Hasan and Chaush v. Bulgaria (Judgment of October 26, 2000) The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed. También, Maestri v. Italy

> [...] and that the Comptroller shall impose the sanction of suspension without pay for a period not exceeding twenty-four (24) months or dismissal of the responsible heading to the type of illicit crime committed; and disqualification from public office for a maximum of fifteen (15) years depending on the seriousness of the irregularity. The indeterminate legal concepts stated offer a margin of discretionary fiscal control to the governing body for the gradation levels of sanctions in response to the type of infraction and its effects. [273]

201. Moreover, the parties argued that the degree of discretion that can be exercised by the Comptroller at the time of imposing the disqualification is disproportionate and that this is due to the alleged lack of a regulatory framework for grading the principle sanctions and additional sanctions. In this regard, the Court notes that the Constitutional Chamber of the Supreme Tribunal stated the following with regard to the principle of criminal codification of the administrative sanctions:

> However, this discretionary power, to be legal and legitimate is necessarily partial, given that the legal mechanism (in this case [LOCGRSNCF]), must establish some conditions or requirements for its exercise, leaving the other to the discretion of the competent body [...]In that regard, Article 12 of the Organic Law on Administrative Procedures, requires that the measure or ruling in the opinion of the competent authority must maintain proportionality and suitability due to the assumption made and under the purposes of the regulation, which is controllable by the contentious-administrative court; what is unacceptable is to seek a declaration of annulment of a general regulation based on the simple fact that it holds discretionary power. Judicial review of a discretionary act could involve the annulment of the discretionary act, if incompetence is highlighted of the entity that deems it, factual inconsistency (false assumption of fact), teleological incongruity (deviation of power), or formal incongruence (procedural error). [...][U]pon being properly codified in the [LOCGRSNCF], both the unlawful acts (Articles 91 and 92), as well as the administrative penalties (Articles 93, 94, and 105); the discretional power of the auditing body is not "blank law" because the parameters must be explicitly set forth in the Organic Law. [274]

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[273] Judgment No. 1.266 of August 6, 2008, issued by the Constitutional Chamber of the Supreme Tribunal of Justice, *supra* note 31, folio 633.

[274] Moreover, "it highlighted that even in this case, wherein the Administration acts with certain discretion, this does not imply , "this does not mean that it can act arbitrarily, since its actions are always committed to the principles of proportionality and appropriateness under the Article 12 of the Organic Law on Administrative Procedures, which can be protected by the courts [...]." In this regard, it specified that "In regard to sanctioning administrative law, what is prohibited is that the legislation establish what the doctrine has defined as blank criminal regulations; that is, those cases where the judicial norm allows that the Administration be who defines the administrative infraction or who enshrine the sanctions that may be imposed." The Constitutional Chamber added that the doctrine has noted that "the rigourous and perfect description of the infraction is, under some exception, practically impossible. The detail of the definition has its limits. The maximum requirements only allow, in the mean time, for the regulatory paralysis or of the annulment, in a good part, of the sanctionatory provisions that exist or that were to be rendered." Judgment N° 1.270 of August 12, 2008, of the Constitutional Chamber of the Supreme Tribunal of Justice, *supra* note 188, folio 1421

202. In this regard, the Court considers that the problems regarding uncertainty do not generate *per se* a violation of the Convention, namely, that the fact that a regulation grant some form of discretion is not inconsistent with the degree of forseeability that the regulation should bear, provided that the scope of discretion and the manner in which it should be exercised is indicated with sufficient clarity so as to provide adequate protection from arbitrary interference. [275] The Court finds that there are standards that the Comptroller General must follow in deciding to impose any of the three sanctions contained in Article 105 of the LOCGRSNCF (*supra* para. 33) and that there are parameters that limit the discretion granted by the regulation to the Comptroller.

203. Moreover, the parties presented arguments concerning the nonexistence of a regulation that establishes the period of time that the Comptroller has to impose additional sanctions, once the administrative responsibility of a public official has been declared and the appropriate fine imposed. However, the Court finds that the Political-Administrative Chamber of the Supreme Tribunal of Justice, taking into account the general regulation on the statute of limitations of the sanctioning administrative actions (established in the LOCGRSNCF), in jurisprudence subsequent to the facts of this case, has established a maximum period of five years for the sanction of disqualification to be adopted. That Chamber found that "due to the absence of an express period for the Comptroller General of the Republic to impose an additional sanction," "a general statute of limitations that is analogous should be applied." [276]

204. In this case, the imposition of the disqualification against Mr. López Mendoza for the facts relating to PDVSA occurred about five months after the declaration of administrative responsibility was final[277] (*supra* para. 57 and 58), while the disqualification for the facts

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[275] "A law which confers a discretion is not in itself inconsistent with the requirement of foreseeability, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference". ECHR, *Case Olsson v. Sweden*, Judgment of 24 March 1988, Series A no. 130. para. 61 y *Case Gillow v. The United Kingdom*, Judgment of 24 November 1986, Series A no. 109, para. 51.

[276] Article 114 of the LOCGRSNCF establishes that "[t]he administrative sanctioning or recovery actions derived from this law, are prescribed for a period of 5 (years), unless in special Laws different periods are established. Said term will begin to run as of the date that the events, actions, or ommissions from which administrative responsibility took place, the imposition of fines or reparation; neverthless, when the infractor is a pubic official, the perspcription will begin to run as of the date of cessation of the charge for the period of the occurrence of the irregularity. […]" Judgment No. 01516 of October 20, 2009 (Exp. Nº 2005-5270) issued by the Accidental Chamber of the Supreme Tribunal of Justice and available at: http://www.tsj.gov.ve/decisiones/spa/Octubre/01516-211009-2009-2005-5270.hctml (last visited on September 1, 2011) and Judgment No. 00782 of July 27, 2010 (Exp. Nº 2008-0871) issued by the Political-Administrative Chamber of the Supreme Tribunal of Justice and available at: http://www.tsj.gov.ve/decisiones/spa/Julio/00782-28710-2010-2008-0871.html (last visited on September 1, 2011). Cited in the brief of final arguments of the State, *supra* note 30, folio 1459.

[277] On March 28, 2005, the Motion to reconsider was resolved that was resolved that set as final the declaration of administrative responsibility for the facts related to PDVSA and on August 24, 2005, of the Comptroller General of the Republic issued on Resolution N° 01-00-000206 that set the sanction for disqualification for 3 years, *supra* notas 88 and 90.

related to the Municipality of Chacao was imposed about six months after the final resolution of the declaration of responsibility. [278] (*supra* para .80 and 81).

205. In this regard, although the time that passed in this case between the declaration of responsibility and the imposition of the disqualification itself was not excessive, it is proven that the domestic regulation did not establish a period or fixed term for the Comptroller to exercise such power. The decision of the Political-Administrative Chamber in which it attempted to fill this regulatory gap with the statute of limitations of administrative actions does not meet the standard of predictability or certainty of the regulation. Indeed, the "foreseeability test" implies proving that the regulation delineate the scope of discretion that can be exercised by the authority and define the circumstances in which it can be exercised in order to establish appropriate safeguards to prevent abuse. [279] The Court considers that the uncertainty regarding the period within which it could impose the additional sanctions established in Article 105 of the LOCGRSNCF is contrary to the legal certainty which must be had in a sanctioning proceeding. Moreover, a period of five years is not reasonable to ensure foreeseability in the imposition of the restriction. It is a period that is too prolonged and, therefore, is incompatible with the requirement that a sanctioning proceeding be concluded at the time the corresponding responsibility is determined, in such a way that the accused does not wait for a period that is too broad to determine the type of sanction that will be imposed for responsibility that has already been determined. Furthermore, the lack of a fixed, foreseeable, and reasonable period of time may lead to the arbitrary exercise of discretion by imposing sanctions applied in a totally unexpected moment for the person who has been previously found responsible.

206. Consequently, by not complying with the requirement of forseeability, and also, taking into account that specified in regard to how Article 105 of the LOCGRSNCF allows a restriction on the right to be elected by an authority that is not a criminal court as required Article 23(2) (*supra* para. 107 and 108), the Court concludes that in this case, the State violated Articles 8(1), 23(1)(b) and 23(2), in relation with Articles 1(1) and 2 of the American Convention.

VII
REPARATIONS
(APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)

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[278] On March 28, 2005, the Motion to reconsider was resolved that set as final the declaration of administrative responsibility for the facts related to the Mayor's Office of Chacao and on September 26, 2005, of the Comptroller General of the Republic issued Resolution No. 01-00-235 that set the sanction of disqualification for 6 years, *supra* notas 147 and 152.

[279] In this regard, the European Court has established that "a law which confers a discretion must indicate the scope of that discretion […]. The degree of precision required of the "law" in this connection will depend upon the particular subject-matter. […] Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference". ECHR, *Case Malone*, *supra note* 269, para. 67 and *Case Olsson*, *supra note* 275, para. 61.

207. On the basis of Article 63(1) of the American Convention,[280] the Court has indicated that any violation of an international obligation that has caused damage triggers the duty to provide a proper reparation,[281] and that this provision "reflects a customary law which is one of the fundamental principles of contemporary international law on State responsibility."[282]

208. In the present case, the State requested –in a general manner- that "the application filed by the Inter-American Commission be deemed unfounded […], as well as the requests for reparations and costs, contained therein." Nevertheless, in consideration of the violations of the American Convention declared in the prior sections, the Court will analyze the pretensions presented by the Commission and the representatives, as well as the positions of the State *ad cautela*, in light of the standards established in the jurisprudence of the Court in relation to the nature and scope of the obligation to repair, in order to provide the measures necessary to repair the harm caused to the victim.

209. The reparation of the damage caused by a violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum),* which consists in restoring the situation that existed before the violation occurred. When this is not possible, as in the majority of the cases, among them the present one, it is the task of the Tribunal to order the adoption of a series of measures that, besides guaranteeing respect for the rights violated, will ensure that the damage resulting from the infractions is repaired, as well as establish payment of an indemnity as compensation for the harm caused. [283] Therefore, the Court has considered the need to provide for different remedies, in order to compensate the damages in a comprehensive manner, to which, in addition to financial compensation, measures of restitution, satisfaction and guarantees of non-repetition are especially relevant for the damage caused. [284]

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[280] This Article provides that "when the Court finds a violation of a right or freedom protected by [the] Convention, the Court shall rule that the injured party be guaranteed his or her right or freedom that was violated. It shall also, if appropriate, order reparation for the consequences of the measure or situation that constituted the breach of such rights and the payment of just compensation to the injured party. "

[281] *Cf. Case of Velásquez Rodríguez V. Honduras. Reparations and Costs.* Judgment of July 21, 1989. Series C No. 7, para. 25; *Case of Chocrón Chocrón*, *supra* note 13, para. 143, and *Case of Mejía Idrovo*, *supra* note 15, para. 126..

[282] *Case of the "Street Children" (Villagrán Morales et al) V. Guatemala. Reparations and Costs.* Judgment of May 26, 2001. Series C No. 77, para. 62; *Case of Salvador Chiriboga V. Ecuador,* para. 32, and *Case of Abrill Alosilla et al. V. Perú,* para. 86. Series C No. 77, para. 62; *Case of Chocrón Chocrón*, *supra* note 13, para. 143, and *Case of Mejía Idrovo*, *supra* note 15, para. 126.

[283] *Cf. Case of Velásquez Rodríguez V. Honduras. Reparations and Costs*, *supra* note 281, para. 26; *Case of Chocrón Chocrón*, *supra* note 13, para. 145, and *Case of Mejía Idrovo*, *supra* note 15, para. 128.

[284] *Cf. Case of "Mapiripán Massacre" V. Colombia. Preliminary Objections*, *supra* note 20, para. 294; *Case of "Dos Erres Massacre" V. Guatemala. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Chocrón Chocrón*, *supra* note 13, para. 145.

210. This Court has established that the reparations must have a causal connection with the facts of the case, the violations declared, the harm proven, as well as with the measures requested to repair the damage. Therefore, the Court must observe this in order to rule properly and pursuant to the law. [285]

A. Injured Party

211. The Court reiterates that it considers an injured party, in the terms of Article 63(1) of the American Convention, a person declared a victim of the violation of the rights established therein. [286] The victim in the present case is Mr. López Mendoza, to which he is the beneficiary of the reparations that the Court orders below.

B. Measures of comprehensive reparation: restitution, satisfaction, and guarantees of non-repetition

212. The Court will determine the measures that seek to repair the non-pecuniary damage and that are not pecuniary, and will order measures of a public scope and impact.[287]

213. International jurisprudence and in particular jurisprudence of the Court, has repeatedly held that the judgment is *per se* a form of reparation. [288] However, considering the circumstances of the case *sub judice*, given the damage to Mr. López Mendoza and consequences of a pecuniary or non-pecuniary nature suffered as a result of violations of Articles 8, 23, and 25 of the American Convention, declared to the detriment of the victim, the Court considers it appropriate to establish the following measures.

1. Restitution

214. The Commission requested the Court to order the State "[t]o adopt the necessary measures to reestablish the political rights of Mr. Leopoldo López Mendoza."

215. For its part, the representatives requested the "[f]ull restitution in the exercise of the political rights of [Mr. López Mendoza] to be elected, according to Article 23 of

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285 *Cf. Case of Baldeón García V. Perú. Merits, Reparations, and Costs.* Judgment of April 6, 2006. Series C No. 183; *Case of Chocrón Chocrón*, *supra* note 13, para. 146, and *Case of Mejía Idrovo*, *supra* note 15, para. 129.

286 *Cf. Case of Bayarri V. Argentina*, *supra* note 216, para. 126*; Case of Chocrón Chocrón*, *supra* note 13, para. 147, and *Case of Mejía Idrovo*, *supra* note 15, para. 130.

287 *Cf. Case of the "Street Children" (Villagrán Morales et al) V. Guatemala. Reparations and Costs.* Judgment of May 26, 2001. *Supra* note 282, para. 84; *Case of Chocrón Chocrón*, *supra* note 13, para. 148, and *Case of Mejía Idrovo*, *supra* note 15, para. 132.

288 *Cf. Case of Neira Alegría et al V. Perú. Reparations and Costs*, Judgment of September 19, 1996. Series C No. 29, para. 56; *Case of Chocrón Chocrón*, *supra* note 13, para. 149, and *Case of Mejía Idrovo*, *supra* note 15, para. 134.

the Convention [...] in order for him to run as a candidate in elections held in the Bolivarian Republic of Venezuela." In that sense, they requested that "the decisions for disqualification issued by the Comptroller be dismissed, [...] as well as those decisions made by the different branches of the National Public Power regarding the political-administrative disqualifications." In the same vein, they requested the Court to "require the State that the National Electoral Council allow the electoral registration and application of [Mr.] López [Mendoza] for any electoral process to be held in the Bolivarian Republic of Venezuela."

216. In this regard, the Court notes that in the public hearing in this case, Mr. López Mendoza said that "pursuant to [the] Comptroller General of the Republic" his political rights would be restored "in the year 2014." He added that in that sense, he had hoped to be "release[ed] from [the] restriction [on these] rights [and to] have the ability to freely participate in [the] elections in [his] country." [289]

217. The Court has noted that, given the specific circumstances in the present case, Articles 23(1)(b), 23(2), and 8(1) were violated, in relation to Articles 1(1) and 2 of the American Convention (*supra* paras. 109, 149, 205, and 206). Accordingly, the Court finds that the State, through its competent bodies, particularly the National Electoral Council (CNE), must ensure that the sanction of disqualification is not an impediment to Mr. López Mendoza in the election in which he wishes to register as a candidate held after the rendering of this Judgment.

218. Moreover, the Court also finds that the State must set aside Resolutions Nos. 01-00-000206 of August 24, 2005, and 01-00-000235 of September 26, 2005, issued by the Comptroller General of the Republic (*supra* paras. 58 and 81), wherein the disqualification from public office was declared against Mr. López Mendoza for a period of 3 and 6 years, respectively.

2. Satisfaction

219. The Commission did not request the Court to order any measures of satisfaction from the State.

220. The representatives requested that the State recognize its international responsibility in the present case.

221. The Court finds that the action requested by the representatives usually, though not exclusively, is ordered in order to redress violations of the rights to life, integrity, and personal liberty, [290] and in that sense, the Court considers that this measure is not necessary to remedy the violation found in this case.

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289 Statement of Mr. Leopoldo López Mendoza, *supra* note 214.

290 Cf. *Case of Castañeda Gutman*, *supra* note 209, para. 239.

222. On the other hand, the Court finds, as it has in other cases,[291] that the State must publish, within six months from the date of notification of this Judgment:

a. the official summary of the present Judgment drafted by the Court, once, in the Official Gazette;

b. the official summary of the present Judgment drafted by the Court, once, in a newspaper of wide national circulation, and

c. the present Judgment in its entirety, available for a period of one year, on an official website.

3. Guarantees of non-repetition

223. The Commission requested the Court to order the State to "adjust its domestic legal code, in particular Article 105 of the [LOCGRSNCF] that imposes disqualification from running for a position of popular election, to the provisions of Article 23 of the American Convention." Moreover, that it order "the strengthening of the guarantees of due process in the administrative proceedings of the Comptroller […] pursuant to the standards of Article 8 of the American Convention."

224. In the same sense, the representatives requested that "the State of Venezuela be required to suppress or modify Article 105 of the [LOCGRSNCF and to]immediately cease the imposition of political disqualifications by the Comptroller General of the Republic."

225. Given that the Court found violations of political rights and judicial guarantees (*supra* paras. 109 and 149), the Court considers that, as a guarantee of non-repetition, the State shall, within a reasonable time, adapt Article 105 of the LOCGRSNCF to that noted in paragraphs 199, 205, and 206 of this Judgment.

226. Notwithstanding the foregoing, as set forth in its prior jurisprudence, the Court recalls that it is aware that the domestic authorities are subject to the rule of law and, therefore, are obligated to apply the existing provisions in the legal system.[292] But, when a State is a Party to an international treaty such as the American Convention, all its bodies, including the judges and other bodies related to the administration of justice, are also subject to it, which obligates them to ensure that the effects of the provisions of the Convention are not affected by the application of regulations that are contrary to its object and purpose. Judges and bodies related to the administration of justice at all levels are obligated *ex officio* to exercise "control of conformity with the Convention" between the domestic rules and the American Convention, within the framework of their powers and the corresponding procedural regulations. In this

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291 *Cf. Case of Barrios Altos V. Perú. Reparations and Costs*. Judgment of November 30, 2001. Series C No. 87, Operative Paragraph 5(d)); *Case of Chocrón Chocrón*, *supra* note 13, para. 158, and *Case of Mejía Idrovo*, *supra* note 15, para. 141.

292 *Cf. Case of Almonacid Arellano et al. V. Chile*. *Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 124; *Case of Cabrera García and Montiel Flores*, *supra* note 21, para. 225, and *Case of Chocrón Chocrón*, *supra* note 13, para. 194.

task, judges and bodies related to the administration of justice must take into account not only the treaty, but also the interpretation thereof made by the Inter-American Court, the ultimate interpreter of the American Convention. [293]

227. For example, the courts of the highest hierarchical level in the region, such as the Constitutional Chamber of the Supreme Court of Costa Rica,[294] The Constitutional Tribunal of Bolivia,[295] the Supreme Court of the Dominican Republic,[296] the Constitutional Tribunal of Peru, [297] the Supreme Court of Justice of the Nation of Argentina,[298] and the Constitutional Court of Colombia,[299] have referred to and applied the control of conformity with the Convention considering interpretations made by the Inter-American Court.

228. In conclusion, regardless of the legal reforms that the State must adopt (*supra* para. 225), based on the control of conformity with the Convention, it is necessary for the judicial and administrative interpretations and judicial guarantees be applied, adapting themselves to the principles established in the jurisprudence of this Court that have been reiterated in this case.

4. Other measures of reparation requested

229. The representatives "request[ed] that a general [m]easure of reparation and non-repetition be agreed upon, in order to safeguard and protect the large number of Venezuelans who are in the same factual and legal situation [approximately 575 people], in order for the restoration of their political rights and the State undertake to not tolerate, accept, and adopt new tools to prosecute and limit these rights."

230. Regarding this request, the Court finds that the issuance of this Judgment and the reparations ordered in this chapter are sufficient and appropriate to remedy the violations

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293 *Cf. Case of Almonacid Arellano*, *supra* note 292, para. 124; *Case of Cabrera García and Montiel Flores*, *supra note* 21, para. 225, and *Case of Chocrón Chocrón*, *supra* note 13, para. 164.

294 *Cf.* Judgment of May 9, 1995, issued by the Constitutional Chamber of the Supreme Court of Justice of Costa Rica. Unconstitutionality Action. Opinion 2313-95 (Case file 0421-S-90), consideranding clause VII.

295 Resolution issued on May 10, 2010, by the Constitutional Tribunal of Bolivia (Case file No. 2006-13381-27-RAC), section III.3.on "El Sistema Interamericano de Derechos Humanos. Fundamentos y efectos de las Sentencias emanadas de la Corte Interamericana de Derechos Humanos" [The Inter-American System on Human Rights. Grounds and effects of the Judgment issued by the Inter-American Court of Human Rights."

296 Resolution No. 1920-2003 issed on November 13, 2003, by the Supreme Court of Justice of the Dominican Republic.

297 Judgment issued on July 21, 2006, for the Constitutional Tribunal of Peru (Case file No. 2730-2006-PA/TC), ground 12 and judgment 00007-2007-PI/TC issued on June 19, 2007, for the full Constitutional Tribunal of Peru (Attorney Bar of Callao c. Congress of the Republic), ground 26.

298 Judgment issued on December 23, 2004, by the Supreme Court of Justice of the Nation, Argentine Republic (Case file 224. XXXIX), "Espósito, Miguel Angel s/ incident of perspcription of the criminal action pushed in his defense," considering clause 6 and Judgment of the Supreme Court of Justice of the Nation of Argentina, Mazzeo, Julio Lilo et al., cassation and unconstitutionality appeal. M. 2333. XLII. Et al. of July 13, 2007, para. 20.

299 Judgment C-010/00 issued on January 19, 2000, by the Constitutional Court of Colombia, para. 6.

suffered by the victim.[300] Moreover, the Court held that the alleged context of persecution and impediments to the members of political parties of the opposition in Venezuela through the application of administrative sanctions such as disqualification from public office posed by the representatives was not included by the Commission in its application (*supra* para. 28), reason for which, for procedural reasons, they were not assessed during the merits of the matter. Thus, the Court reiterates that the reparations must have a causal connection with the facts of the case and the violations found (supra para. 210). Therefore, the Court will not render a decision regarding the request for reparation.

C. Compensatory damages for pecuniary and non-pecuniary damage

231. The Court has developed in its jurisprudence the concepts of pecuniary[301] and non-pecuniary damages[302] and the reasons for compensation.

232. The Commission "consider[ed] it relevant to redress the consequences of the violations committed against the victim by providing compensation for the [material and moral] damage caused in the case."

233. The representatives did not request the Court to order the State to pay a specific amount for pecuniary and non-pecuniary damage.

234. The Court notes that there is no evidence on the pecuniary damage suffered by Mr. López Mendoza and that the only evidence regarding moral damage in the case file is related to the declaration of the victim in the public hearing. Mr. López Mendoza noted that "he cannot carry out any public function before the Venezuelan State, at the local, regional, and national level [and that] he was totally excluded from participating as a public servant [and] from excercising [his] political rights and to run as a candidate in a popular election." He added that "his political career is [his] life [and that] being disqualified as a politician, as a public servant, is like taking wood away from a carpenter […] or taking the possibility away from those who dedicate themselves to justice […] from evaluating a case." According to Mr.

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300 *Cf. Case of Radilla Pacheco V. México*, *supra* note 248, para. 359; *Case of Rosendo Cantú et al. V. México. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of August 31, 2010. Series C No. 216, para. 267, and *Case of Cabrera García and Montiel Flores*, *supra* note 21, para. 247.

301 This Court has established that the pecuniary damage is "loss or detriment to the income of the victims, the costs incurred due to the facts and the pecuniary consequences that have a causal relationship with the facts of the case." *Cf. Case of Bámaca Velásquez V. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 43; *Case of Chocrón Chocrón*, *supra* note 13, para. 177, and *Case of Mejía Idrovo*, *supra* note 15, para. 150.

302 Court has established that non-pecuniary damages "may include the suffering and distress caused to the direct victim's relatives, the erosion of values that are very meaningful to people, and the non-pecuniary changes in living conditions of the victim or his family." Case of the "Street Children" *(Villagrán Morales et al) V. Guatemala.* Reparations and Costs, *supra* note 282, para. 84; *Case of Chocrón Chocrón V. Venezuela. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of July 1, 2011. Series C No. 227, *supra* note 13, para. 185, and *Case of Mejía Idrovo*, *supra* note 15, para. 150.

López Mendoza, "a political disqualification [implies] removing him completely from [his] profession, [his] vocation, of working with people, of working with citizens, of building hope through the possibility granted to people through their votes." Finally, he specified that "as of 2008, […] he has not been able to serve as a public servant within the structure of the Venezuelan State [and that, nevertheless, he] has remained […] with the community, […] organizing the hope of a people who want an option for change." [303]

235. Considering that international jurisprudence has consistently reiterated that the Judgment may be *per se* a form of reparation[304] (*infra* para. **) and, taking into account that in the circumstances of the case *sub judice* the Court has no other additional element to assess in addition to the declaration of the victim and the victim's representatives did not make a specific request for pecuniary and non-pecuniary damage, the Court does not deem a measure of pecuniary in this regard.

D. Costs and expenses

236. As the Court has stated on previous occasions, costs and expenses are included in the reparations provided for in Article 63(1) of the American Convention.[305]

237. The Commission requested that the State "pay the costs arising at the national level in the processing of the judicial proceedings of the victim or their representatives in the domestic forum, as well as those incurred at the international level in the handling of the case before the Commission and those incurred as a result of the processing of the [...] application before the Court which are properly proven by the representatives."

238. The representatives "request[ed] that [payment be made for] the costs and expenses incurred by [Mr. López Mendoza] due to the efforts related to the processing of case before the justice system, in both domestic and international forums." According to Mr. López Mendoza, he "had to incur substantial expenses, primarily related to costs of reasonable attorney fees that in both the administrative and judicial proceedings, as well as in the proceedings before the Inter-American Commission and [the] Inter-American Court." This, plus the "additional costs" in which he had to incur, "such summons cards, certified copies, notice expenses, cost of express shipping, international calls, calls to mobile phones, among others."

239. Thus, in regard to the "administrative and legal domestic proceedings," the representatives indicated that the victim had incurred costs from: i) Bs. 7,500.00 equivalent to US$ 1,744.18 for attorneys fees in two administrative proceedings before the Comptroller

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303 Statement of Mr. Leopoldo López Mendoza, *supra note* 214.

304 Cf.*Case of Neira Alegría et al. V. Perú. Reparaciones y Costas*, *supra* note 288, para. 56; *Case of Chocrón Chocrón*, *supra* note 13, para. 149, and *Case of Mejía Idrovo*, *supra* note 15, para. 134

305 *Cf. Case of Garrido and Baigorria V. Argentina. Reparations and Costs.* Judgment of August 27, 1998. Series C. No. 39, para. 79; *Case of Chocrón Chocrón*, *supra* note 13, para. 192, and *Case of Mejía Idrovo*, *supra* note 15, para. 157.

General of the Republic[306]; ii) Bs. 5,000.00 equivalent to US$ 1,162.79 for attorney fees corresponding to four judicial proceedings involved in the case (an amparo, two judicial appeals for administrative decisions and a constitutional challenge); and iii) Bs. 1,000.00 equivalent to US$ 232.55 corresponding to "[p]rocedural expenses in the indicated motions." In regard to the "proceedings before the Commission and Court," the representatives noted that the victim had incurred expenses from: i) Bs. 150,500.00 equivalent to US$35,000 for attorneys fees,[307] and ii) approximately Bs. 79,980.00 equivalent to US$ 15,000 for procedural expenses. Said quantities represent a total amount of US$ 53,139.52. Lastly, the Court requested that "based on the amounts mentioned, the State recognize, in equity, the amounts for costs and expenses incurred in the defense of the rights of [Mr. López Mendoza]."

240. The State only noted that "the airplane costs [receipt No. 026709] that corresponds to [Mr.] José Maes, Antonio Canova, Bernardo Pulido, and Moisés Alberto Arteaga Sánchez were acquired by the Sociedad Anónima Técnica de Conservación Ambiental (SATECA)[Techincal Society for Environmental Conservation] […] that currently holds concessions for the Municipality of Chacao, municipality where [Mr.] López [Mendoza] held public office as Mayor." In this regard, the representatives noted that "there is nothing extraordinary about an individual receiving donations from other individuals, regardless of whether they are individuals or entities, especially considering that it can be costly to take a case before the Inter-American System." In addition, they stated that "it is not true that the SATECA gave concessions to the Mayor of Chacao [at the time in which] Mr. Leopoldo López was Mayor, [that is] until 2008, [but rather] that SATECA provided concessions to said municipality only from 2010 on and after complying with all of the legal requisites and having been selected in the public bidding."

241. Regarding the reimbursement of the legal costs and expenses, it is for the Tribunal to assess their scope prudently. This reimbursement includes the costs arising before the domestic authorities, as well as those arising during the proceedings before the Inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment must be made on an equitable basis and taking into account the expenses incurred by the parties, provided their *quantum* is reasonable. [308]

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[306] Agreement of professional services of February 16, 2009, for US$35.000 (Case file of annexes to the brief of pleadings and motions, annex K, folios 5366 and 5367). For the administrative proceeding (Exp. No.22/001/2003): Agreement for professional services of October 3, 2003 for Bs.6.000.000, which "if the preliminary decision is postponed for a period of four months as of the moment of the first appearance of the client at the Comptroller, he will pay two million bolivares (Bs. 2,000,000.00) upon four months passing." (case file of annexes to the brief of pleadings and motions , Annex I, folio 5360, and 5361). For the administrative proceeding (Exp. No.07-02-PI-2003-020): Agreement for professional services of February 16, 2004 for Bs.1,500,000.00 (one million and five hundred thousand bolivares) (case file of annexes to the brief of pleadings and motions, Annex J, folio 5363, and 5364).

[307] Agreement of professional services of February 2009, for US$35,000 (Case file of annexes to the brief of pleadings and motions, annex K, folios 5366 and 5367).

[308] *Cf. Case of Garrido and Baigorria, supra* note 305, para. 82; *Case of Chocrón Chocrón*, *supra* note 13, para. 196, and *Case of Mejía Idrovo*, *supra* note 15, para. 161.

242. In the present case, the Court notes that in regard to the domestic administrative and legal proceedings, the representatives only provided evidence of the expenses for attorney's fees regarding the two administrative proceedings before the Comptroller General of the Republic, amounting to US$ 1,744.18. That is, the record does not provide evidentiary proof regarding the amounts that the victim incurred regarding the cited judicial proceedings and for the concept of procedural expenses. Nevertheless, the Court considers that it is reasonable to assume that during these proceedings the victim made economic expenditures. On the other hand, in regard to the proceeding before the Inter-American System, the Court notes that Mr. López Mendoza and the representatives incurred several expenses related to fees, transport, communication services, travel, photocopies, among other expenses.[309] While the amounts have not been duly proven in their totality,[310] the Court can infer that before the Inter-American System, the victim and the representatives incurred expenses totaling approximately US$ 11,557.52. Moreover, US$ 35,000 have been requested for fees. Nevertheless, the representatives did not present specific arguments that allow for an analysis of reasonability and scope of the request for fees.

243. Taking into account the arguments and comments of the parties and the evidence submitted, the Court determines --in equity-- that the State must pay the amount of US$12,000.00 (twelve thousand dollars of the United States of America) to the victim, for costs and expenses. This amount must be paid within one year of notification of this Judgment. Mr. López Mendoza will deliver, in turn, the amount considered appropriate to his representatives in the domestic forum and in the process before the Inter-American System. The Court also states that in the process of monitoring compliance with this Judgment, it may provide for the reimbursement to the victim or his representatives, by the State, of reasonable expenses incurred in this stage of the proceedings.

E. Method of compliance with the reimbursement of costs and expenses

244. The State must pay the reimbursement of costs and expenses directly to the victim, within one year of legal notice of this Judgment, under the terms of the following paragraphs.

245. The State must comply with its obligations by payment in dollars of the United States of America or the equivalent amount in Venezuelan money, using the exchange rate in force in the New York exchange, United States of America, the day before the payment to make the respective calculation.

246. If, for reasons that can be attributed to the beneficiary of the reimbursement, it is not possible to pay the amounts established within the time indicated, the State shall deposit the

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309 Costs for flight Caracas-Washington-Caracas for Messers. Enrique Sánchez and Leopoldo López Mendoza; flights for Caracas-Costa Rica-Caracas for the representatives of Mr. López Mendoza, him and the declarants required for the public hearing in this case; on the ground transportation in San José, Costa Rica; food in hotel; national and international telephone service, and photocopies (case file on the merits, annex A, folios 1378 to 1390 and case file of annexes to the brief of pleadings and motions, Annexes L, folios 5369).

310 Lodging for Mr. Enrique Sánchez, Mr. José A. Maes, and Mr. Alberto Arteaga is not evident in the receipts (case file on the merits, Annex A, folio 1379).

amount in his favor in an account or a deposit certificate in a solvent Venezuelan financial institute in dollars of the United States of America and in the most favorable financial conditions permitted by law and banking practice. If, after 10 years, the reimbursement has not been claimed, the amounts shall revert to the State with the accrued interest.

247. The amounts allocated in this Judgment as reimbursement of costs and expenses must be delivered to the persons indicated in an integral manner, as established in this Judgment, without any deduction arising from possible taxes or charges.

248. If the State should fall into arrears, it shall pay interest on the amount owed, corresponding to the banking interest on arrears in Venezuela.

VIII
OPERATIVE PARAGRAPHS

249. Therefore,

THE COURT

DECLARES:

Unanimously, that:

1. The State is responsible for the violation of the right to be elected, established in Articles 23(1)(b) and 23(2), in relation to the obligation to respect and guarantee rights set forth in Article 1(1) of the American Convention on Human Rights, to the detriment of Mr. López Mendoza, in terms of paragraph 109 of this Judgment.

2. The State is responsible for the violation of obligation to establish cause and the right to defense in the administrative proceedings that resulted in the imposition of sanctions of disqualification, established in Article 8(1), in relation to the obligation to respect and guarantee rights, established in Article 1(1) of the American Convention on Human Rights, to the detriment of Mr. López Mendoza, in terms of paragraph 149 of this Judgment.

3. The State is responsible for the violation of the right to judicial protection established in Article 25(1), in relation to the obligation to respect and guarantee rights, the right to a fair trial [judicial guarantees], and the right to be elected as set out in Articles 1(1) , 8(1), 23(1)(b), and 23(2) of the American Convention on Human Rights, to the detriment of Mr. López Mendoza, in terms of paragraph 185 of this Judgment.

4. The State has breached its obligation to adapt its domestic law to the American Convention on Human Rights, established in Article 2, in relation to the obligation to respect and guarantee rights, the right to a fair trial [judicial guarantees], and the right to be elected, established in Articles 1(1), 8(1), 23(1)(b), and 23(2) thereof, pursuant to paragraph 206 of this Judgment.

5. The State did not violate the right to defense and the right to appeal a ruling in the administrative proceedings that ended in the determination of responsibility and fines, recognized in Article 8(1), in relation to the obligation to respect and guarantee rights set forth in Article 1(1) of the American Convention on Human Rights, to the detriment of Mr. López Mendoza, in terms of paragraph 123 of this Judgment.

6. The State did not violate the reasonable period of time in the resolution of Judicial appeal for annulment of the administrative decision of the State filed against the declarations of responsibility and fines, the and appeal of unconstitutionality against Article 105 of the Organic Law of the Comptroller General of the Republic and the National System of Fiscal Oversight, recognized in Article 8(1), in relation to the obligation to respect and guarantee rights set forth in Article 1(1) of the American Convention on Human Rights against Mr. López Mendoza, in terms of paragraphs 169 and 180 of this Judgment.

7. The State did not violate the presumption of innocence in the proceedings that led to the determination of responsibility and fines, recognized in Article 8(1), in relation to the obligation to respect and guarantee rights set forth in Article 1(1) of the American Convention on Human Rights, to the detriment of Mr. López Mendoza, in terms of paragraph 132 of this Judgment.

8. The State did not violate the right to equality before the law, established in Article 24, in relation to the obligation to respect and guarantee rights, established in Article 1(1) of the American Convention on Human Rights, to the detriment of Mr. López Mendoza, pursuant to that established in paragraph 195 of this Judgment.

AND DECIDES:

Unanimously, that:

1. This Judgment constitutes *per se* a form of reparation.

2. The State, by way of its competent bodies, and specifically the National Electoral Council, (CNE), must assure that the sanctions for disqualification do not prevent Mr. López Mendoza from running as a candidate if he so chooses in elections that are to be held after the issuance of this Judgment, pursuant to that established in paragraph 217 of this ruling.

3. The State must set aside Resolutions 01-00-000206 of August 24, 2005, and 01-00-000235 of September 26, 2005, issued by the Comptroller General of the Republic, pursuant to that established in paragraph 218 of this Judgment.

4. The State must carry out, in a period of six months as of legal notice of this Judgment, the publications provided for in paragraph 222 of this ruling.

5. The State must, within a reasonable perdio, adapt Article 105 of the Organic Law of the Comptroller General of the Republic and the National System of Fiscal Oversight, pursuant to that established in paragraph 225 of this Judgment.

6. The State must pay, within a period of one year as of legal notice of this Judgment, the amounts established in paragraph 243, for compensation of costs and expenses, in conformity with paragraphs 244 to 248 of this Judgment.

7. The State must provide, within a period of one year as of legal notice of this Judgment, a brief regarding the measures adopted to satisfy compliance.

8. Pursuant to its attributes and in compliance with that established in the American Convention, the Court will monitor the full compliance with this Judgment and will conclude the case once the State has entirely satisfied said provisions.

Judges Diego García-Sayán and Eduardo Vio Grossi made their Concurring Opinions known to the Court, those of which accompany this Judgment.

Written in Spanish and in English, the Spanish text being authentic, in Bogota, Colombia on September 1, 2010.

Diego García-Sayán
President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE DIEGO GARCÍA-SAYÁN
JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF *LÓPEZ MENDOZA V. VENEZUELA*
OF SEPTEMBER 1, 2011

1. The case decided by the Court refers to an individual victim, Mr. Leopoldo López Mendoza, and a legal situation and matter, wherein the "main point" is identified by the Court as:

> *100. The main point of this case lies in the sanctions of disqualification imposed on Mr. Lopez Mendoza by way of a decision of an administrative body, applying Article 105 of the LOCGRSNCF, which prevented him from registering his candidacy for an elective office.*

2. Given this central point, the Court has established the international responsibility of Venezuela for affecting, *inter alia,* the right established in Article 23(2) of the American Convention on Human Rights, which states: *"[t] he law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings."*

3. As the main theme in this case is the right of Mr. Lopez Mendoza to register hi candidacy for elective office and because the Court declared a violation of the right to be elected, turning to, among others, that established in Article 23(2) of the Convention, it so corresponds to compliment the interpretation of this Tribunal regarding said provision and the effects delimited in this case. The matter faced by the Court in this case is also related to the sanctioning power of the administration and its limits in regard to passive suffrage.

4. For the reasons presented in the Judgment, the Court has concluded that in this case Article 23(2) of the American Convention was violated. However, sustaining said conclusion exclusively based upon a literal interpretation of the regulation and not complimenting it with an explanation and further reasoning, as with other tools for interpretation, it could lead to incorrect conclusions if taken beyond the scope of the case and used for other situations that affect political rights. Which, specifically, could be interpreted in a manner that weakens the State's institutional powers when faced with scourges of corruption.

5. From a, not only literal but also systematic and evolutionary interpretation of Article 23(2), that, also, incorporates the working papers [travaux preparatoire] of the Convention as complimentary criteria, this concurring opinion provides an alternative perspective. But, it should not lead to the conclusion that Mr. López Mendoza's right to be elected was not violated.

<u>Comprehensive interpretations of Article 23(2)</u>

6. An additional analysis of the wording "*only"* and "*sentencing by a competent court in criminal proceedings"* of Article 23(2) of the Convention is convenient. In particular, it is relevant to determine if this wording entirely excludes the possibility of imposing limitations on holding public office through legal means other than by way of criminal proceedings or through administrative or disciplinary proceedings. A systematic evolutionary**,** and teleological interpretation, as well as an instrumental complimentary one of the working papers of the American Convention leads us to different conclusions.

7. The Court has carried out, in a different case,
8. [1] a determination of the term "*only,"* and it established that it must be interpreted in a systematic manner with Article 23(1) and the other provisions of the Convention and the basic principles that form it**.** In particular, it established that the reasons enshrined in this Article are not restrictive, but rather can be regulated by taking into account factors such as the historic, political, social, and cultural necessities of a society.

> *166. The inter-American system [does not] impose a specific electoral system or a specific means of exercising the rights to vote and to be elected. The American Convention establishes general guidelines that determine a minimum content of political rights and allows the States to regulate those rights, within the parameters established in the Convention, according to their historical, political, social and cultural needs, which may vary from one country to another and even within one country, at different historical moments.*

9. The systematic analysis, taking into account the elements of this case, leads, first, to an analysis of this regulation of the American Convention in relation to other international, universal, and regional instruments, that regulate restrictions on political rights. In addition, it is necessary to consider the scope and repercussion of international instruments adopted in the framework of the fight against corruption, all of which came into effect after the American Convention in 1969.

10. In this order of analysis, it is noteworthy to mention that in the other international legal systems for the protection of human rights there is no specific reference to means or mechanisms that regulate the right to stand in an election or to passive suffrage. The universal system and other regional systems have also not stipulated a regulation that establishes that States can only restrict passive suffrage by way of "*sentencing by a competent court in criminal proceedings*."

11. In the universal forum, Article 25 of the International Covenant on Civil and Political Rights[2] does not include possible reasons to restrict or regulate political rights similar to Article

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[1] *Case of Castañeda Gutman V. México. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 6, 2008. Series C No. 184.

[2] Article 25 of the International Covenant on Civil and Political Rights establishes that, "[e]very citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To

23(2) of the Convention. It does establish that these rights may not be limited by "*unreasonable restrictions***.**" The European Convention, in Article 3 of Protocol 1,[3] only establishes the obligation to guarantee "*free elections."* In some cases, the European Court has established that States Parties may establish requirements for a candidates registration in an election, and that in this regard, more stringent requirements may be imposed than those established for the right to vote.[4] Lastly, in the African Charter on Human and People's Rights there is no regulation similar to that of Article 23(2) of the American Convention.

12. The conceptual and normative framework of the international obligations in the fight against corruption, for their part, points to certain guidelines that govern State conduct in the implementation of the United Nations Convention Against Corruption[5] and of the Inter-American Convention Against Corruption. [6]These instruments have specified obligations that are not limited to criminal proceedings to combat conduct related to the phenomenon of corruption[7].

13. In regard to the evolutionary interpretation, this approximation has been constant in as much as the Inter-American Court as well as the European Court has established that human right treatises are living instruments, whose interpretation must accompany the evolution of the

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vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country."

[3] Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (right to free elections) states that "[t]he High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

[4] "States enjoy considerable latitude in establishing criteria governing eligibility to stand for election, and in general, they may impose stricter requirements in that context than in the context of eligibility to vote". ECHR, *Case of Paksas v. Lithuania*, Judgment of 6 January 2001, para. 96, *Case Ždanoka v. Latvia,* Judgment, of 16 March 2006, para. 115; *Case Ādamsons v. Latvia,* Judgment of 24 June 2008, para 111; Case *Tănase v. Moldova*, Judgment of 27 April 2010, para. 156, y *Case Yumak y Sadak v. Turkey,* Judgment of 30 January 2007, para. 109.

[5] Article 30(8) of the United Nations Convention Against Corruption notes that criminal action "shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants."

[6] In the Final Report on Venezuela, on March 25, 2010, drafted by the Inter-American Convention against Corruption and the Follow-Up Mechanism for its Implementation (MESICIC), recommendations were provided for adjusting criminal norms based on the legislation that restricts political rights in non-criminal forums. *Cf.* Recommendation 1.2.2. of the Final Report of March 25, 2010, related to the implementation of the Bolivarian Republic of Venezuela of the Convention, drafted by the Expert Committee of the the Inter-American Convention against Corruption and the Follow-Up Mechanism for its Implementation. Sixteenth Reunion of the Committee of Experts. March 22-26, 2010. Washington, DC (OEA /Ser.L. SG/MESICIC/doc.248/09 rev. 4).

[7] For example, Article 8(6) of the United Nations Convention against Corruption (Codes of Conduct for Public Officials) states: "[e]ach State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article."

times and current living conditions.[8] This Court has used comparative national law when considering domestic[9] regulations or jurisprudence of domestic tribunals[10] to analyze controversies in contentious cases. The European Court has also used comparative law as a mechanism to assess a State's subsequent practice.[11]

14. From the information at hand in the case file, it appears that in the region there are different systems regarding the disqualification of public officials that result in restrictions on passive suffrage: i) political system, that consists of a political trial carried out by a legislative body, generally against high-ranking officials syndicated for faults or crimes[12];ii) judicial system by way of a criminal proceeding,[13] and iii) administrative, system, disciplinary or entrusted to

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[8] *Cf. Case of the Mapiripan Massacre V. Colombia. Merits, Reparations and Costs.* Judgment of September 15, 2005. Series C No. 134, para. 106. See also, ECHR, *Case Tyrer v. The United Kingdom*, Judgment of 25 April 1978, Series A no. 26, para. 31.

[9] In the Case of Kawas Fernández regarding Honduras, the Court considered in its analysis "considerable number of States Parties to the American Convention have adopted constitutional provisions which expressly recognize the right to a healthy environment." *Case of Kawas Fernández V. Honduras. Merits, Reparations and Costs.* Judgment of April 3, 2009, Serie C No. 196, para. 148.

[10] In the case of Heliodoro Portugal and Tiu Tojín, the Court considered judgments from tribunals in Bolivia, Colombia, México, Panamá, Perú, and Venezuela regarding the nonexistence of a statute of limitations for permanent crimes such as enforced disappearance. *Cf. Case of Heliodoro Portugal V. Panamá. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 12, 2008. Series C No. 186, para. 111 and Case of Tiu Tojín V. Guatemala. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 87. Moreover, in the Case of Anzualdo Castro, the Tribunal used rulings of constitutional courts in American states to support the delimitation it has established for enforced disappearance. *Cf. Case of Anzualdo Castro V. Perú. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 22, 2009. Series C No. 202, para. 61. Moreover, in the case of Gomes Lund et al. and Gelman, the Court took into account the rulings of the high courts of the region regarding the prohibition of amnesties in the case of gross human rights violations and the prohibition of referendums that limit access to justice of victims in these cases of grave violations. *Cf. Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 24, 2010. Serie C No. 219, paras. 163 to 169, and *Case of Gelman V. Uruguay. Merits and Reparaciones.* Judgment of February 24, 2011 Serie C No. 221, paras. 215 to 223.

[11] For example, in the case TV Vest As & Rogoland Pensionistparti against Norway, the European Court took into account a document of the "European Platform of Regulatory Authorities" wherein a comparison was carried out of 31 countries of ther egion, in order to determine in which countries paid political publicity was allowed and in which this sort of publicity was free. *Cf. Case TV Vest As & Rogoland Pensionistparti v. Norway*, Judgment of 11 December 2008, para. 24. Similarly, in the case of Hirst against the United Kingdom, the Court considered "the legislation and practices of State Parties" to determine which countries restricted to right of those convicted of a crime from voting; the legslation of 48 countries was analyzed. *Cf. Hirst v. United Kingdom*, Judgment of 6 October 2005, paras. 33 to 39.

[12] Examples of the foregoing are Articles 59 and 60 of the National Constitution of the Republic of Argentina, Article 110 of the Political Constitution of the United Mexican States. *Cf.* Brief of final arguments of the representatives of the victim (case file on the Merits, tome III, folios 1361 and 1362).

[13] For example, Article 43 of the Criminal Code of Colombia, Articles 260 and 264 of the Criminal Code of Argentina or Article 24 of the Federal Criminal Code of Mexico, cited in the Carpizo's expert report. *Cf.* Expert report rendered by public notary (*affidavit)* by expert witness Jorge Carpizo McGregor on January 20, 2011 (case file on the Merits, tome III, folios 872, 873, and 878).

the judicial electoral authority.[14] From this examination, it can be concluded that the use of one system does not exclude another system.[15] By observing this context of comparative law, it can be said that these judicial and institutional practices of the States Parties are related to the international obligations at hand regarding the principles and instruments of anti-corruption previously mentioned.

15. The teleological interpretation takes into account the purpose established in the various standards that regulate political rights. In Article 23(2) of the Convention, possible reasons are stipulated for the restriction or regulation of political rights, and it clearly seeks that it not be left to the will or discretion of the ruling authority**,** in attempts to safeguard that the political opposition may exercise its rights without undue restrictions. That is the clear purpose of the regulation. The restrictive mechanism of rights, thus, must offer sufficient guarantees to comply with the purpose of protecting rights and liberties of persons, democratic systems, and the political opposition. It must be understood, therefore, that the judgment of must be the strictest possible, regardless of the means used to effectuate the restriction.

16. In what regards the working papers of the Convention, as supplemental standards for interpretation, no debate nor basis is found in these papers on the terms "*only […] sentencing by a competent court in a criminal proceeding."* This standard was included only in the last discussion of the Article on political rights, due to a proposal from the Brazilian delegate.[16]The Colombian delegate and the member of the Commission on Human Rights presented objections.[17] Nevertheless, the amendment was approved and it was added to the final text of Article 23. However, the reason or motivation for which the amendment was presented was not presented and the debate regarding it is unknown. Thus, it is not possible to conclude, with absolute clarity, the intent of the States with regard to the incorporation of said term in Article 23 of the American Convention.

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[14] Pursuant to that information, that is the case of Brazil, Colombia, Costa Rica, México, Perú, and the Dominican Republic.

[15] It is, for example, the case of México. A normative analysis in Mexico, allows for evidence of the establishment of a political trial (Article 110 of the Constitution), in the criminal process (Article 24 of the Federal Criminal Code of Mexico) and the administrative or disciplinary sanction (Article 13 of the Federal Law on Responsibility of Public Officials).

[16] "The delegate of Brazil (Carlos A. Dunshee de Abranches) proposed that the end of paragraph 2, 'as appropriate,' be deleted, and that 'or sentencing [,] by a competent court [,] in a criminal proceeding'" be added. Minutes and Documents of the Inter-American Specialized Conference on Human Rights. Minutes of the Thirteenth Session of the Commission "I", Doc 54, November 18, 1969, San Jose, Costa Rica, pg. 254.

[17] "The DELEGATE OF COLOMBIA (Mr. Pedro Pablo Camargo) felt that if 'in criminal proceedings' was added, all political matters would to be subject to criminal prosecution and this would deny all other rights contained in section 2. A Member of the Human Rights Commission (Mr. Justino Jiménez de Arechaga) not[ed] that the variation between the text of the Project and the Working Group's proposal would raise sensitive issues with which care must be taken." Minutes and Documents of the Inter-American Specialized Conference on Human Rights. Minutes of the Thirteenth Session of the Commission "I", Doc 54, November 18, 1969, San Jose, Costa Rica, pg. 254.

17. From the means of interpretation referred to in the preceding paragraphs, it can be concluded that the term "*only"* of Article 23(2) of the Convention does not provide a restrictive list of possible reasons for a restriction or regulation of political rights. Similarly, the term "*sentencing by a competent court in a criminal proceeding"* does not necessarily assume that this may be the only type of proceeding that may be used to impose a restriction. Other judicial forums (such as the judicial electoral authority, for example) may have, in this way, legitimacy to act. What is clear and fundamental is that whatever the means used, it must be carried out with full respect to the guarantees established in the Convention, and moreover, be proportional and foreseeable.

18. In light of a evolutionary and systematic interpretation of Article 23(2) and heeding to the living nature of the Convention, whose interpretation must accompany the evolution of the times and current conditions of institutional development, what is important is that the authority be of a judicial nature, in a broad sense, and not restricted to a criminal court. In this case, the sanction was not imposed by a judicial authority.

Proportionality and foreseability of the sanction imposed

19. Notwithstanding that the sanction of disqualification was not imposed by a judicial authority, in this case, the Court has also established the State's responsibility for the violation to the obligation to provide cause, the right to defense, and the right to judicial protection that all stemmed from the imposition of the sanction of disqualification (paras. 149, 150, and 185). Specific arguments were not provided on the relevance of the facts, the level of responsibility, and the harm to the public good, all of which would have provided cause in a qualitative and quantitative manner to justify the magnitude of the sanction of disqualification and length of the sanction as the one imposed. Moreover, and considering the interpretation already stated of Article 23(2), it is, in my opinion, important to determine if in the exercise of its sanctioning power, the State heeded to the principles of proportionality and foreseeability.

20. In regard to the issue of proportionality of the sanction imposed by the Comptroller General to the detriment of Mr. Lopez Mendoza, what should first be noted is that given this involves a restriction on the right to passive suffrage, that is, the right to register as a candidate for an elective office, the paths used must be more strict and narrow**.** Among other reasons because in these cases it is not only the person who seeks to run for office, but also the collective interest of the voters that is affected. It is not therefore a situation, equal to that of appointed officials, regardless of the path (free appointment or competition).

21. As I have emphasized some lines above, it is fundamental that the State have efficient and effective administrative mechanisms to combat and punish acts of corruption. It is also noteworthy that in this case –wherein Mr. Lopez Mendoza's hand in a crime was not proven criminally –the "additional" sanction was notoriously more severe than the "principle" sanction (a fine). Particularly when this involves a person, Mr. López Mendoza, who has made his participation in electoral life his life project. The high impact of the sanction in regard to Mr. Lopez Mendoza's political rights, prevented him from running as a candidate for Metropolitan Mayor of Caracas, and eventually, other elective offices.

22. In light of the facts of this case, we must ask if the exercise of the sanctioning power of the administration may affect the right to passive suffrage. In other words, if by way of that forum, a citizen may be prevented from participating as a candidate in an electoral race. I share and agree with that established by the Court in that the exercise of the sanctioning power of the State cannot affect the right to passive suffrage and that this power lies only in the hands of a judicial authority taking into account the scope of the affected right.

23. Nevertheless, from my point of view and going beyond this case, this type of restriction does not need to be exclusively reserved to a criminal court, but rather it may extend to other judicial authorities that has been previously established in the respective legal systems who comply with the obligation to respect and assure the guarantees established to this effect.

24. Regarding the same topic, proportionality, from what is found in the case file, it follows that the conduct attributed to Mr. Lopez Mendoza were not the most severe. The Organic Law of the Comptroller General of the Republic and the National System of Fiscal Oversight (hereinafter, LOCGRSNCF) established that the amount of the fine was determined based on the severity of the fine and the type of detriment.[18]While the State argued that the sanctions were not accumulated and that recidivism existed, the protruding lack of gravity in the conduct being attributed to Mr. Lopez Mendoza is evident in the fact that the fines imposed were not the most severe fines legally available. The fine applied for the "facts of the PDVSA" was of the lowest of the applicable fines.[19] The fine applied in relation to the "facts of the Mayor's Office" is a fine that ranks at an intermediary level of the applicable fines.[20]

25. It must also be considered that these facts did not lead to the initiation of a criminal proceeding. The inexistence of a criminal prosecution allows us to infer, specifically, that Mr. Lopez Mendoza's actions could not be associated with more severe conduct, those of which may justify a sanction such as a restriction on political rights.

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[18] Article 94 of the LOCGRSNCF states that those found responsible may be punished "according to the seriousness of the offense and the type of damage caused, with fine[s] of one hundred (100) to [...] one thousand (1,000) tax units to be imposed by supervisory bodies referred to in [the] Law." Organic Law of the Comptroller General of the Republic and the National System of Fiscal Oversight, published in the Official Gazette No. 37.347 on Monday, December 17, 2001 (case file of attachments to the application, appendix 1, page 1419).

[19] According to the deciding order of the Office of Determination of Responsibility on October 29, 2004, the fine imposed on Mr. Lopez Mendoza was of one million two hundred forty-two thousand bolivares (Bs, 1,243,200.00), that is, equivalent to 168 tax units (UT). Indeed, according to the order, the value of the current Tax Unit was seven thousand four hundredbolivars (Bs. 7400.00). Cf. Deciding Order of the Office of Determination of Responsibility of the Office of Special Procedures of the Comptroller General of the Republic of October 29, 2004 (case file of annexes to the application, Annex 34, Volume V, pages 2614-2616).

[20] According to the deciding order of the Office for the Determination of Responsibility of November 2, 2004, the fine imposed on Mr. Lopez Mendoza was of eight million, one hundred and forty thousand bolivares (Bs. 8,140,000.00), that is, equivalent to 550 tax units (TU). According to that order, the value of the current Tax Unit was fourteen thousand eight hundredbolivars (Bs. 14,800.00). *Cf.* Deciding Order of November 2, 2004 issued by the Office of Determination of Responsibility of the Office of Special Procedures of the Comptroller General of the Republic (case file of annexes to the application, attachment 34, tome VI, folios 3356).

26. As such, the disproportion between the sanction imposed as the "principle" sanction and the one imposed as the "additional" sanction (disqualification from running as a candidate) is irrational. While it is alleged that in the domestic legislation there is no relationship between the fine and disqualification, [21] given the circumstances of the case – wherein, as established in the Judgment, sufficient cause is not provided for the sanction of disqualification – the difference is manifestly unreasonable between the fines imposed as principle sanction against Mr. López Mendoza (for U.S. $ 1000 and $ 4000) and the sanction of disqualification that he also underwent, which implies a restriction from running as a candidate for 6 years. The high impact of the sanction on the political rights of Mr. Lopez Mendoza barred him from running as candidate for mayor of Caracas or other elected office.

27. Political rights and the use of them serve to strengthen democracy and political pluralism. As the Court has stated, "*[r]epresentative democracy is the determining factor throughout the system of which the Convention is a part,"* and it constitutes "*a 'principle' reaffirmed by the American States in the OAS Charter, the basic instrument of the Inter-American System.*" [22] In the Inter-American System, the relationship between human rights, representative democracy and political rights in particular, is reflected in the Inter-American Democratic Charter. [23] In this Inter-American instrument it is stipulated that among other essential elements of a representative democracy is the access to power and its exercise, which is subject to the rule of law and the holding of periodic, free, and fair elections based on universal suffrage and secret balloting as an expression of the sovereignty of the people.

28. In analyzing the strict proportionality of the sanction, we must consider that not only are the rights of those seeking to run affected, but the collective interests of the voters is also harmed. This requires that the restriction be analyzed in a stricter manner when it comes to elected officials as opposed to appointed officials, in which case there is no involvement of citizens in the selection of these officials. This leads us to conclude therefore that, in regard to persons elected by popular vote or who intend to run, restrictions on passive suffrage can be exercised only to the extent strictly necessary to protect the fundamental legal rights from the most serious attacks that place them in harm or dangers way.

29. Another aspect to consider is the foreseeability of the sanction of disqualification being imposed. The parties presented arguments concerning the temporal period used by the Comptroller to impose additional sanctions, once the administrative responsibility is declared

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[21] The Constitutional Chamber of the Supreme Court of Venezuela has stated in its Judgement No. 1266 of August 6, 2008 that: "it is not valid to [affirm] that proportionality was violated because there is no correspondence between the main sanction andthe additional sanction." Judgement No. 1266 of the Constitutional Chamber of the Supreme Court of Justice of August 6, 2008 (case file of appendix to the application, volume I, annex 27, pages 584 to 642). According to this reasoning, the sanctions of disqualification are a consequence of the declaration of administrative responsibility and do not depend on the other sanctions.

[22] 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. 34.

[23] Organization of American States. *Inter-American Charter.* Approved on the first full session of the General Assembly of the OAS, held on September 11, 2001, during the twenty-eight Extraordinary Period of Sessions, Article 3.

and imposed for the corresponding fine. The Political-Administrative Chamber of the Supreme Tribunal of Justice, taking into account the general rule on statute of limitations of punitive administrative actions (under Article 114 of the LOCGRSNCF), in the jurisprudence that arose after the facts of this case, has set a maximum term of five years for the sanction of disqualification to be adopted. [24]

30. Mr. Lopez Mendoza disqualification due to the events related to PDVSA occurred approximately five months after the declaration of administrative responsibility was final (para. 204), [25] while the disqualification for the events surrounding the Mayor's Office of Chacao was imposed about six months after the resolution that established declaration of responsibility was final (para. 204). [26] While the time between the declaration of responsibility and the imposition of the disqualification itself was not excessive, it has been held (para. 205) that the domestic legislation does not establish a fixed period or time for the Comptroller to exercise this power.

31. The decision of the Political-Administrative Chamber, designed to work around this regulatory gap with the statute of limitations of the administrative action, does not meet the standard of foreseeability or legal certainty of the legislation. As was set out in paragraph 205 of the Judgment, the "foreseeability test" involves proving that the legislation clearly delineate the scope of discretion that may be exercised by the authority and define the circumstances in which it may be exercised in order to establish appropriate safeguards to prevent abuse. [27] The uncertainty regarding the period within which it could impose a restriction on the right to be elected is not compatible with the legal certainty in a sanctioning proceeding that restricts such rights. Furthermore, a period of five years is not reasonable to ensure predictability in the enforcement of the restriction because it is too long a period and, therefore, incompatible with

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[24] Article 114 of the LOCGRSNCF establishes that "[t]he administrative sanctioning or recovery actions derived from this law, are prescribed for a period of 5 (years), unless in special Laws different periods are established. Said term will begin to run as of the date that the events, actions, or ommissions from which administrative responsibility took place, the imposition of fines or reparation; neverthless, when the infractor is a pubic official, the perspcription will begin to run as of the date of cessation of the charge for the period of the occurrence of the irregularity. […]" Judgment No. 01516 of October 20, 2009 (Exp. Nº 2005-5270) issued by the Accidental Chamber of the Supreme Tribunal of Justice and judgment No. 00782 of July 27, 2010 (Exp. No. 2008-0871) issued by the Political-Administrative Chamber of the Supreme Tribunal of Justice. Cited in the final written brief of the State (case file on the Merits, tome III, folio 1459).

[25] On March 28, 2005, the motion for reconsideration was decided, which finalized the declaration of administrative responsibility for the facts related to PDVSA, and on August 24, 2005, the Comptroller General of the Republic issued Resolution No. 01-00-000206, which imposed the sanction of disqualification for 3 years.

[26] On March 28, 2005, the motion for reconsideration was decided, which finalized the declaration of administrative responsibility for the facts related to Chacao Mayor's Office, and on September 26, 2005, the Comptroller General of the Republic issued the Resolution No. 01-00 -235, which imposed the sanction of disqualification for 6 years.

[27] In this regard, the European Court has established that "a law which confers a discretion must indicate the scope of that discretion […]. The degree of precision required of the "law" in this connection will depend upon the particular subject-matter. […] Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference." ECHR, *Case Malone v. The United Kingdom*, Judgment of 2 August 1984, Series A no. 82, para. 67 y *Case Olsson v. Sweden*, Judgment of 24 March 1988, Series A no. 130. para. 61.

the requirement that a sanctioning proceeding conclude when the appropriate liability is established, in order that the accused does not wait for a long time in the setting of a sanction established as punishment for his responsibility. Moreover, the lack of a fixed, predictable, and reasonable period may lead to an arbitrary exercise of discretion over sanctions at an unexpected time for the sanctioned person (para. 205).

32. Therefore, taking into account the comprehensive interpretation of the norm established in Article 23(2) of the Convention, upon assessing the right to be elected of a citizen and the failure to meet the requirements of foreseeability and proportionality, the restrictions determined by the administrative authority was not justified nor consistent with the Convention.

Diego García-Sayán
Judge

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI
CASE OF LÓPEZ MENDOZA *v.* VENEZUELA,
JUDGMENT OF SEPTEMBER 1, 2011
(MERITS, REPARATIONS, AND COSTS)

Introduction.

I render this concurring opinion with that decided in Judgment stated in the title, hereinafter the Judgment, and in particular Declarative Paragraph, N°1 and in Deciding Paragraph N°s 2, 3, and 5, all of the Judgment's Operative Paragraphs,[1] in order to highlight, first, that from its mere reading, it is evident that Article 23(2) of the American Convention on Human Rights, hereinafter the Convention,[2] is clear, simple, and categorical, specifically in what in regards orders, namely, that "*the exercise of the rights and opportunities referred*" in numeral 1 of said Article, particularly that which refers to the right to "be elected*(…),"*[3] can be regulated "*only*" by, among others, *"sentencing by a competent court in criminal proceedings."*

Second, with this concurring vote, it is my attempt to call attention to that strictly pertaining to the law, specifically, Public International Law,[4] which is the nature of this Judgment, considering that the result confronted[5] by that provided in Article 23(2) of the Convention both with the Resolutions of the Comptroller General of the Bolivarian Republic of Venezuela, hereinafter the State,[6] which imposed upon Mr. Lopez Mendoza the sanction of disqualification from holding public office, as well as that enshrined in Article 105 of the Organic Law of the Comptroller General of the Republic and the National System of Fiscal

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[1] See paragraph 249 of this Judgment..

[2] *"The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings."*

[3] "*Every citizen shall enjoy the following rights and opportunities: a). to take part in the conduct of public affairs, directly or through freely chosen representatives; b). to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c). to have access, under general conditions of equality, to the public service of his country."*

[4] Article 3 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission (ILC) of the United Nations (UN)**: "***The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law."*

[5] *"The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement."*

[6] See paragraphs 58 and 81 of this Judgment.

Oversight, hereinafter the LOCGRSNCF, of the State,[7] and the amparo to which these rendered decisions, was achieved by applying objective and teleological methods of interpretation referred to in the Vienna Convention on the Law of Treaties, hereinafter the Vienna Convention, namely, the rules relating to good faith, the terms of the treaty, the context of those terms, and the object and purpose.[8]

1.- Good faith.

The "*bona fides*" applies from the assumption that States Parties to the Convention intended to use it and, in what pertains to said kind, include in it Article 23(2). In that sense, what the Judgment does is discover or scrutinize what they, as the creators of the regulation, in this regard actually agreed upon, deeming that this agreement leads to, according to the principle "*pacta sunt servanda,"*[9] the obligation to comply with that being agreed upon, even with primacy to what the respective national or domestic laws provide. [10]

It is for this reason that it did not proceed to invoke in orders, domestic legislation and jurisprudence of the State concerned nor of other States also Parties to the Convention, let alone an assumed primacy of national law over International law,[11] as background to argue the compatibility with Article 23(2),[12] because the intention was precisely to determine whether these laws are consistent and conform to the requirements of the latter.

2.- The terms.

That agreed upon by the States Parties to the Convention is stated, moreover, in the terms used in Article 23(2), namely, the wording, "*only*" and "*sentencing by a competent court in criminal proceedings,"* without providing, however, "*a special meaning*"[13], but rather, to the contrary, an "*ordinary*" meaning, with the purpose of expressing what is regularly or normally intended by them.

It turns out that the word "*only*" means, pursuant to the Spanish Language Dictionary,[14] "that which excludes or has the force and virtue to exclude" or "*exclusive, single, excluding*

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[7] See paragraph 33 of this Judgment.

[8] Art.31(1*):"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."*

[9] Article 26 of the Vienna Convention: *"Every treaty in force is binding upon the parties to it and must be performed by them in good faith."*

[10] Article 27 of the same Convention: *"A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."*

[11] See paragraph 103 of this Judgment.

[12] See paragraph 105 of this Judgment.

[13] Art.31(4) of the Vienna Convention: "*A special meaning shall be given to a term if it is established that the parties so intended.*"

[14] Real Academia Española, Vigésima segunda edición, Madrid: Espasa Calpe, 2001. (definition does not pertain to English translation).

any other" from which it follows that the grounds or reasons for the Law to regulate the exercise of political rights are solely those set out in that Article, wherein "*"sentencing by a competent court in criminal proceedings,"* is stated.

Certainly, if the States Parties to the Convention had wanted to enshrine in Article 23(2) the specific grounds for regulating the rights and opportunities referred to in Article 23(1) therein or allow sentencing by another court or other judicial body distinct from a criminal court or in proceedings similar to criminal ones, they would have said so expressly or directly or would have used different terminology, for example, "*such as*" or "*among others.*" But they did not do so. On the other hand, there is no indication in the record indicating that upon establishing Article 23(2), the intent or aim was to include other types of proceedings or courts that are not criminal.

3.- The context of the terms.

It is also not in the record that there was an agreement between the States Parties to the Convention related or linked to Article 23(2) or made in regard to this,[15] or subsequently, interpreting it, [16] nor is there evidence of an ulterior motive for which said agreement stands [17] and that would support a different interpretation to that provided in the Judgment.

It is important to note, in this regard, that the fact that in the legislations of some States Parties to the Convention, they provide that a noncriminal body may impose the sanction of disqualification from being elected, [18] in this way reflecting that it is a practice that "*establishes the agreement of the parties regarding its interpretation*." First, because it involves the legislation of only some of the States Parties to the Convention, and therefore, insufficient to assume a widespread practice in the field. Second, because it does not provide anything to suggest that, in dictating those laws, the purpose was to comply with that provided in the Convention. And third, since, pursuant to the Law of Treaties, practice does not imply the modification of a treaty. [19]

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[15] Art. 31(2). of the Vienna Convention: *"The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty."*

[16] Art. 31(3)(a) of the same Convention: "*There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;"*

[17] Art. 31(3)(b) "*There shall be taken into account, together with the context …(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;"*

[18] See paragraph 103 of this Judgment.

[19] Note that draft article 38 of the Vienna Convention, which provided "*A treaty may be modified by subsequent practice in the application of the treaty when ... it denotes the agreement of the parties to amend the provisions of the treaty*" was suppressed by a majority of the States participating in the Conference which adopted the Vienna Convention.

It follows to note that it is not appropriate to invoke[20] what has been done in the record of the Inter-American Convention Against Corruption,[21] to argue that it is possible to interpret Article 23(2) of the Convention in such a way that it allow the regulation of the exercise of political rights through a sentence imposed by an administrative authority. This is because what is that instrument provides for the obligation of States Parties to it to criminalize acts of corruption and even refers to criminal jurisdiction, [22] and nowhere has or contemplates that the penalty for that offense may be imposed by an administrative body, whence it follows that, in any way, is directly or indirectly, an amendment or interpretation of the provisions of the Convention, but precisely the opposite.

4.- Object and purpose.

Finally, if one considers the "object and purpose" of the Convention, namely the commitments of due respect and protection of human rights which States parties undertake, [23] one can not but conclude that what is intended by Article 23(2) is, therefore, to restrict or regulate as little as possible the rights and opportunities set forth in Article 23(1), including the right to be elected or the right of passive suffrage,[24] and it is for this reason that, under this perspective, the same conclusion is made as in the Judgment that, incidentally, agrees with the principle of *pro homine* established in Article 29 of the Convention,[25] which requires interpretation in favor of broader respect for human rights.

5.- Supplementary means.

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[20] Art. 31(3)(c) of the Vienna Convention:"*There shall be taken into account, together with the context …(c) "any relevant rules of international law applicable in the relations between the parties.."*

[21] See paragraph 103 of this Judgment.

[22] Article V: "*Jurisdiction. 1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense in question is committed in its territory. 2. Each State Party may adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense is committed by one of its nationals or by a person who habitually resides in its territory.3. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the alleged criminal is present in its territory and it does not extradite such person to another country on the ground of the nationality of the alleged criminal. 4. This Convention does not preclude the application of any other rule of criminal jurisdiction established by a State Party under its domestic law."*

[23] Art. 1(1) of the Convention: *"The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.*"

[24] See paragraph 107 of the Judgment.

[25] *"No provision of this Convention shall be interpreted as: a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein."*

Now, considering the foresaid, and also, that neither are the supplementary means mentioned in the record, but neither are grounds provided to obtain them, there is no reference regarding the supplementary means of interpretation under the Vienna Convention[26] that could alter the conclusion which the Judgment has so provided.

Conclusion.

Thus, in the latter, Article 23(2) has been interpreted and applied, as provided in Article 63(1) of the Convention, [27] concluding that both Article 105 of the LOCGRSNCF as well as that stated in protection of this by the Comptroller General of the Republic of State, imposing the aforementioned sanctions, is contrary to the Convention and, therefore, has generated international responsibility. [28]

The mentioned ruling conforms, therefore, to the nature of the jurisprudence,[29] without attempting to generate, in practice, a new regulation, different and contradictory to that provided in Article 23(2) of the Convention, namely, the Judgment has proceeded by establishing the direction and scope of the latter according to the only possible alternative application.

The Judgment for which I render this opinion is, therefore and simply, the expression of the realization, in a specific case submitted before the Court,[30] of the judicial function that has been conferred upon the Court, for which it does not have the authority to change that

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[26] Art. 32: "*Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable."*

[27] **"***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***."**

[28] Art. 12 of the the *draft articles* to *responsibility* of *States for internationally* wrongful *acts* preparted by the ILC of the UN "*There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.."*

[29] *Art.* 38(1)(b) of the Statute of the International Court of Justice: **"** The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: b. international custom, as evidence of a general practice accepted as law…. subject to the provisions of Article 59… as subsidiary means for the determination of rules of law."

Art. 59 of the same text*:* **"**The decision of the Court has no binding force except between the parties and in respect of that particular case**.."**

[30] See note Nº 29.

provided in the Convention, a role that is assigned specifically to the States Parties, [31] in keeping, moreover, with the provisions of General International Law[32] and that, without doubt, must be carried out pursuant to standards that are more broad than those that refer exclusively to the Administration of Justice.

EVG.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

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[31] Art. 76(1): *"Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary Gener."*

Art. 77(1): *"In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection."*

[32] Art. 39, first phrase, of the Vienna Convention: "*A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except insofar as the treaty may otherwise provide"*

CONCURRING OPINION OF JUDGE DIEGO GARCÍA-SAYÁN
JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF *LÓPEZ MENDOZA V. VENEZUELA*
OF SEPTEMBER 1, 2011

33. The case decided by the Court refers to an individual victim, Mr. Leopoldo López Mendoza, and a legal situation and matter, wherein the "main point" is identified by the Court as:

> *100. The main point of this case lies in the sanctions of disqualification imposed on Mr. Lopez Mendoza by way of a decision of an administrative body, applying Article 105 of the LOCGRSNCF, which prevented him from registering his candidacy for an elective office.*

34. Given this central point, the Court has established the international responsibility of Venezuela for affecting, *inter alia,* the right established in Article 23(2) of the American Convention on Human Rights, which states: *"[t] he law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings."*

35. As the main theme in this case is the right of Mr. Lopez Mendoza to register hi candidacy for elective office and because the Court declared a violation of the right to be elected, turning to, among others, that established in Article 23(2) of the Convention, it so corresponds to compliment the interpretation of this Tribunal regarding said provision and the effects delimited in this case. The matter faced by the Court in this case is also related to the sanctioning power of the administration and its limits in regard to passive suffrage.

36. For the reasons presented in the Judgment, the Court has concluded that in this case Article 23(2) of the American Convention was violated. However, sustaining said conclusion exclusively based upon a literal interpretation of the regulation and not complimenting it with an explanation and further reasoning, as with other tools for interpretation, it could lead to incorrect conclusions if taken beyond the scope of the case and used for other situations that affect political rights. Which, specifically, could be interpreted in a manner that weakens the State's institutional powers when faced with scourges of corruption.

37. From a, not only literal but also systematic and evolutionary interpretation of Article 23(2), that, also, incorporates the working papers [travaux preparatoire] of the Convention as complimentary criteria, this concurring opinion provides an alternative perspective. But, it should not lead to the conclusion that Mr. López Mendoza's right to be elected was not violated.

Comprehensive interpretations of Article 23(2)

38. An additional analysis of the wording "*only"* and "*sentencing by a competent court in criminal proceedings"* of Article 23(2) of the Convention is convenient. In particular, it is relevant to determine if this wording entirely excludes the possibility of imposing limitations on holding public office through legal means other than by way of criminal proceedings or through administrative or disciplinary proceedings. A systematic evolutionary**,** and teleological interpretation, as well as an instrumental complimentary one of the working papers of the American Convention leads us to different conclusions.

39. The Court has carried out, in a different case,[33] a determination of the term "*only,"* and it established that it must be interpreted in a systematic manner with Article 23(1) and the other provisions of the Convention and the basic principles that form it**.** In particular, it established that the reasons enshrined in this Article are not restrictive, but rather can be regulated by taking into account factors such as the historic, political, social, and cultural necessities of a society.

> *166. The inter-American system [does not] impose a specific electoral system or a specific means of exercising the rights to vote and to be elected. The American Convention establishes general guidelines that determine a minimum content of political rights and allows the States to regulate those rights, within the parameters established in the Convention, according to their historical, political, social and cultural needs, which may vary from one country to another and even within one country, at different historical moments.*

40. The systematic analysis, taking into account the elements of this case, leads, first, to an analysis of this regulation of the American Convention in relation to other international, universal, and regional instruments, that regulate restrictions on political rights. In addition, it is necessary to consider the scope and repercussion of international instruments adopted in the framework of the fight against corruption, all of which came into effect after the American Convention in 1969.

41. In this order of analysis, it is noteworthy to mention that in the other international legal systems for the protection of human rights there is no specific reference to means or mechanisms that regulate the right to stand in an election or to passive suffrage. The universal system and other regional systems have also not stipulated a regulation that establishes that States can only restrict passive suffrage by way of "*sentencing by a competent court in criminal proceedings*."

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[33] *Case of Castañeda Gutman V. México. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 6, 2008. Series C No. 184.

42. In the universal forum, Article 25 of the International Covenant on Civil and Political Rights[34] does not include possible reasons to restrict or regulate political rights similar to Article 23(2) of the Convention. It does establish that these rights may not be limited by "*unreasonable restrictions*." The European Convention, in Article 3 of Protocol 1,[35] only establishes the obligation to guarantee "*free elections."* In some cases, the European Court has established that States Parties may establish requirements for a candidates registration in an election, and that in this regard, more stringent requirements may be imposed than those established for the right to vote.[36] Lastly, in the African Charter on Human and People's Rights there is no regulation similar to that of Article 23(2) of the American Convention.

43. The conceptual and normative framework of the international obligations in the fight against corruption, for their part, points to certain guidelines that govern State conduct in the implementation of the United Nations Convention Against Corruption[37] and of the Inter-American Convention Against Corruption. [38]These instruments have specified obligations that are not limited to criminal proceedings to combat conduct related to the phenomenon of corruption. [39]

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[34] Article 25 of the International Covenant on Civil and Political Rights establishes that, "[e]very citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country."

[35] Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (right to free elections) states that "[t]he High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

[36] "States enjoy considerable latitude in establishing criteria governing eligibility to stand for election, and in general, they may impose stricter requirements in that context than in the context of eligibility to vote". ECHR, *Case of Paksas v. Lithuania*, Judgment of 6 January 2001, para. 96, *Case Ždanoka v. Latvia,* Judgment, of 16 March 2006, para. 115; *Case Ādamsons v. Latvia,* Judgment of 24 June 2008, para 111; Case *Tănase v. Moldova*, Judgment of 27 April 2010, para. 156, y *Case Yumak y Sadak v. Turkey,* Judgment of 30 January 2007, para. 109.

[37] Article 30(8) of the United Nations Convention Against Corruption notes that criminal action "shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants."

[38] In the Final Report on Venezuela, on March 25, 2010, drafted by the Inter-American Convention against Corruption and the Follow-Up Mechanism for its Implementation (MESICIC), recommendations were provided for adjusting criminal norms based on the legislation that restricts political rights in non-criminal forums. *Cf.* Recommendation 1.2.2. of the Final Report of March 25, 2010, related to the implementation of the Bolivarian Republic of Venezuela of the Convention, drafted by the Expert Committee of the the Inter-American Convention against Corruption and the Follow-Up Mechanism for its Implementation. Sixteenth Reunion of the Committee of Experts. March 22-26, 2010. Washington, DC (OEA /Ser.L. SG/MESICIC/doc.248/09 rev. 4).

[39] For example, Article 8(6) of the United Nations Convention against Corruption (Codes of Conduct for Public Officials) states: "[e]ach State Party shall consider taking, in accordance with the fundamental

44. In regard to the evolutionary interpretation, this approximation has been constant in as much as the Inter-American Court as well as the European Court has established that human right treatises are living instruments, whose interpretation must accompany the evolution of the times and current living conditions.[40] This Court has used comparative national law when considering domestic[41] regulations or jurisprudence of domestic tribunals[42] to analyze controversies in contentious cases. The European Court has also used comparative law as a mechanism to assess a State's subsequent practice.[43]

45. From the information at hand in the case file, it appears that in the region there are different systems regarding the disqualification of public officials that result in restrictions on passive suffrage: i) political system, that consists of a political trial carried out by a legislative body, generally against high-ranking officials syndicated for faults or

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principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article."

[40] *Cf. Case of the Mapiripan Massacre V. Colombia. Merits, Reparations and Costs.* Judgment of September 15, 2005. Series C No. 134, para. 106. See also, ECHR, *Case Tyrer v. The United Kingdom*, Judgment of 25 April 1978, Series A no. 26, para. 31.

[41] In the Case of Kawas Fernández regarding Honduras, the Court considered in its analysis "considerable number of States Parties to the American Convention have adopted constitutional provisions which expressly recognize the right to a healthy environment." *Case of Kawas Fernández V. Honduras. Merits, Reparations and Costs.* Judgment of April 3, 2009, Serie C No. 196, para. 148.

[42] In the case of Heliodoro Portugal and Tiu Tojín, the Court considered judgments from tribunals in Bolivia, Colombia, México, Panamá, Perú, and Venezuela regarding the nonexistence of a statute of limitations for permanent crimes such as enforced disappearance. *Cf. Case of Heliodoro Portugal V. Panamá. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 12, 2008. Series C No. 186, para. 111 and Case of Tiu Tojín V. Guatemala. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 87. Moreover, in the Case of Anzualdo Castro, the Tribunal used rulings of constitutional courts in American states to support the delimitation it has established for enforced disappearance. *Cf. Case of Anzualdo Castro V. Perú. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 22, 2009. Series C No. 202, para. 61. Moreover, in the case of Gomes Lund et al. and Gelman, the Court took into account the rulings of the high courts of the region regarding the prohibition of amnesties in the case of gross human rights violations and the prohibition of referendums that limit access to justice of victims in these cases of grave violations. *Cf. Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 24, 2010. Serie C No. 219, paras. 163 to 169, and *Case of Gelman V. Uruguay. Merits and Reparaciones.* Judgment of February 24, 2011 Serie C No. 221, paras. 215 to 223.

[43] For example, in the case TV Vest As & Rogoland Pensionistparti against Norway, the European Court took into account a document of the "European Platform of Regulatory Authorities" wherein a comparison was carried out of 31 countries of ther egion, in order to determine in which countries paid political publicity was allowed and in which this sort of publicity was free. *Cf. Case TV Vest As & Rogoland Pensionistparti v. Norway*, Judgment of 11 December 2008, para. 24. Similarly, in the case of Hirst against the United Kingdom, the Court considered "the legislation and practices of State Parties" to determine which countries restricted to right of those convicted of a crime from voting; the legslation of 48 countries was analyzed. *Cf. Hirst v. United Kingdom*, Judgment of 6 October 2005, paras. 33 to 39.

crimes[44];ii) judicial system by way of a criminal proceeding,[45] and iii) administrative, system, disciplinary or entrusted to the judicial electoral authority.[46] From this examination, it can be concluded that the use of one system does not exclude another system.[47] By observing this context of comparative law, it can be said that these judicial and institutional practices of the States Parties are related to the international obligations at hand regarding the principles and instruments of anti-corruption previously mentioned.

46. The teleological interpretation takes into account the purpose established in the various standards that regulate political rights. In Article 23(2) of the Convention, possible reasons are stipulated for the restriction or regulation of political rights, and it clearly seeks that it not be left to the will or discretion of the ruling authority**,** in attempts to safeguard that the political opposition may exercise its rights without undue restrictions. That is the clear purpose of the regulation. The restrictive mechanism of rights, thus, must offer sufficient guarantees to comply with the purpose of protecting rights and liberties of persons, democratic systems, and the political opposition. It must be understood, therefore, that the judgment of must be the strictest possible, regardless of the means used to effectuate the restriction.

47. In what regards the working papers of the Convention, as supplemental standards for interpretation, no debate nor basis is found in these papers on the terms "*only […] sentencing by a competent court in a criminal proceeding."* This standard was included only in the last discussion of the Article on political rights, due to a proposal from the Brazilian delegate.[48]The Colombian delegate and the member of the Commission on Human Rights presented objections.[49] Nevertheless, the amendment was approved and it

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[44] Examples of the foregoing are Articles 59 and 60 of the National Constitution of the Republic of Argentina, Article 110 of the Political Constitution of the United Mexican States. *Cf.* Brief of final arguments of the representatives of the victim (case file on the Merits, tome III, folios 1361 and 1362).

[45] For example, Article 43 of the Criminal Code of Colombia, Articles 260 and 264 of the Criminal Code of Argentina or Article 24 of the Federal Criminal Code of Mexico, cited in the Carpizo's expert report. *Cf.* Expert report rendered by public notary (*affidavit)* by expert witness Jorge Carpizo McGregor on January 20, 2011 (case file on the Merits, tome III, folios 872, 873, and 878).

[46] Pursuant to that information, that is the case of Brazil, Colombia, Costa Rica, México, Perú, and the Dominican Republic.

[47] It is, for example, the case of México. A normative analysis in Mexico, allows for evidence of the establishment of a political trial (Article 110 of the Constitution), in the criminal process (Article 24 of the Federal Criminal Code of Mexico) and the administrative or disciplinary sanction (Article 13 of the Federal Law on Responsibility of Public Officials).

[48] "The delegate of Brazil (Carlos A. Dunshee de Abranches) proposed that the end of paragraph 2, 'as appropriate,' be deleted, and that 'or sentencing [,] by a competent court [,] in a criminal proceeding'" be added. Minutes and Documents of the Inter-American Specialized Conference on Human Rights. Minutes of the Thirteenth Session of the Commission "I", Doc 54, November 18, 1969, San Jose, Costa Rica, pg. 254.

[49] "The DELEGATE OF COLOMBIA (Mr. Pedro Pablo Camargo) felt that if 'in criminal proceedings' was added, all political matters would to be subject to criminal prosecution and this would deny all other rights contained in section 2. A Member of the Human Rights Commission (Mr. Justino Jiménez de Arechaga) not[ed] that the variation between the text of the Project and the Working Group's proposal would

was added to the final text of Article 23. However, the reason or motivation for which the amendment was presented was not presented and the debate regarding it is unknown. Thus, it is not possible to conclude, with absolute clarity, the intent of the States with regard to the incorporation of said term in Article 23 of the American Convention.

48. From the means of interpretation referred to in the preceding paragraphs, it can be concluded that the term "*only"* of Article 23(2) of the Convention does not provide a restrictive list of possible reasons for a restriction or regulation of political rights. Similarly, the term "*sentencing by a competent court in a criminal proceeding"* does not necessarily assume that this may be the only type of proceeding that may be used to impose a restriction. Other judicial forums (such as the judicial electoral authority, for example) may have, in this way, legitimacy to act. What is clear and fundamental is that whatever the means used, it must be carried out with full respect to the guarantees established in the Convention, and moreover, be proportional and foreseeable.

49. In light of a evolutionary and systematic interpretation of Article 23(2) and heeding to the living nature of the Convention, whose interpretation must accompany the evolution of the times and current conditions of institutional development, what is important is that the authority be of a judicial nature, in a broad sense, and not restricted to a criminal court. In this case, the sanction was not imposed by a judicial authority.

Proportionality and foreseability of the sanction imposed

50. Notwithstanding that the sanction of disqualification was not imposed by a judicial authority, in this case, the Court has also established the State's responsibility for the violation to the obligation to provide cause, the right to defense, and the right to judicial protection that all stemmed from the imposition of the sanction of disqualification (paras. 149, 150, and 185). Specific arguments were not provided on the relevance of the facts, the level of responsibility, and the harm to the public good, all of which would have provided cause in a qualitative and quantitative manner to justify the magnitude of the sanction of disqualification and length of the sanction as the one imposed. Moreover, and considering the interpretation already stated of Article 23(2), it is, in my opinion, important to determine if in the exercise of its sanctioning power, the State heeded to the principles of proportionality and foreseeability.

51. In regard to the issue of proportionality of the sanction imposed by the Comptroller General to the detriment of Mr. Lopez Mendoza, what should first be noted is that given this involves a restriction on the right to passive suffrage, that is, the right to register as a candidate for an elective office, the paths used must be more strict and narrow**.** Among other reasons because in these cases it is not only the person who seeks to run for office, but also the collective interest of the voters that is affected. It is not therefore a situation,

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raise sensitive issues with which care must be taken." Minutes and Documents of the Inter-American Specialized Conference on Human Rights. Minutes of the Thirteenth Session of the Commission "I", Doc 54, November 18, 1969, San Jose, Costa Rica, pg. 254.

equal to that of appointed officials, regardless of the path (free appointment or competition).

52. As I have emphasized some lines above, it is fundamental that the State have efficient and effective administrative mechanisms to combat and punish acts of corruption. It is also noteworthy that in this case –wherein Mr. Lopez Mendoza's hand in a crime was not proven criminally –the "additional" sanction was notoriously more severe than the "principle" sanction (a fine). Particularly when this involves a person, Mr. López Mendoza, who has made his participation in electoral life his life project. The high impact of the sanction in regard to Mr. Lopez Mendoza's political rights, prevented him from running as a candidate for Metropolitan Mayor of Caracas, and eventually, other elective offices.

53. In light of the facts of this case, we must ask if the exercise of the sanctioning power of the administration may affect the right to passive suffrage. In other words, if by way of that forum, a citizen may be prevented from participating as a candidate in an electoral race. I share and agree with that established by the Court in that the exercise of the sanctioning power of the State cannot affect the right to passive suffrage and that this power lies only in the hands of a judicial authority taking into account the scope of the affected right.

54. Nevertheless, from my point of view and going beyond this case, this type of restriction does not need to be exclusively reserved to a criminal court, but rather it may extend to other judicial authorities that has been previously established in the respective legal systems who comply with the obligation to respect and assure the guarantees established to this effect.

55. Regarding the same topic, proportionality, from what is found in the case file, it follows that the conduct attributed to Mr. Lopez Mendoza were not the most severe. The Organic Law of the Comptroller General of the Republic and the National System of Fiscal Oversight (hereinafter, LOCGRSNCF) established that the amount of the fine was determined based on the severity of the fine and the type of detriment.[50]While the State argued that the sanctions were not accumulated and that recidivism existed, the protruding lack of gravity in the conduct being attributed to Mr. Lopez Mendoza is evident in the fact that the fines imposed were not the most severe fines legally available. The fine applied for the "facts of the PDVSA" was of the lowest of the applicable fines.[51] The fine applied in

[50] Article 94 of the LOCGRSNCF states that those found responsible may be punished "according to the seriousness of the offense and the type of damage caused, with fine[s] of one hundred (100) to [...] one thousand (1,000) tax units to be imposed by supervisory bodies referred to in [the] Law." Organic Law of the Comptroller General of the Republic and the National System of Fiscal Oversight, published in the Official Gazette No. 37.347 on Monday, December 17, 2001 (case file of attachments to the application, appendix 1, page 1419).

[51] According to the deciding order of the Office of Determination of Responsibility on October 29, 2004, the fine imposed on Mr. Lopez Mendoza was of one million two hundred forty-two thousand bolivares (Bs, 1,243,200.00), that is, equivalent to 168 tax units (UT). Indeed, according to the order, the value of the current Tax Unit was seven thousand four hundredbolivars (Bs. 7400.00). Cf. Deciding Order of the Office of Determination of Responsibility of the Office of Special Procedures of the Comptroller General of the

relation to the "facts of the Mayor's Office" is a fine that ranks at an intermediary level of the applicable fines.[52]

56. It must also be considered that these facts did not lead to the initiation of a criminal proceeding. The inexistence of a criminal prosecution allows us to infer, specifically, that Mr. Lopez Mendoza's actions could not be associated with more severe conduct, those of which may justify a sanction such as a restriction on political rights.

57. As such, the disproportion between the sanction imposed as the "principle" sanction and the one imposed as the "additional" sanction (disqualification from running as a candidate) is irrational. While it is alleged that in the domestic legislation there is no relationship between the fine and disqualification, [53] given the circumstances of the case – wherein, as established in the Judgment, sufficient cause is not provided for the sanction of disqualification – the difference is manifestly unreasonable between the fines imposed as principle sanction against Mr. López Mendoza (for U.S. $ 1000 and $ 4000) and the sanction of disqualification that he also underwent, which implies a restriction from running as a candidate for 6 years. The high impact of the sanction on the political rights of Mr. Lopez Mendoza barred him from running as candidate for mayor of Caracas or other elected office.

58. Political rights and the use of them serve to strengthen democracy and political pluralism. As the Court has stated, "*[r]epresentative democracy is the determining factor throughout the system of which the Convention is a part,"* and it constitutes "*a 'principle' reaffirmed by the American States in the OAS Charter, the basic instrument of the Inter-American System.*" [54] In the Inter-American System, the relationship between human rights, representative democracy and political rights in particular, is reflected in the Inter-

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Republic of October 29, 2004 (case file of annexes to the application, Annex 34, Volume V, pages 2614-2616).

[52] According to the deciding order of the Office for the Determination of Responsibility of November 2, 2004, the fine imposed on Mr. Lopez Mendoza was of eight million, one hundred and forty thousand bolivares (Bs. 8,140,000.00), that is, equivalent to 550 tax units (TU). According to that order, the value of the current Tax Unit was fourteen thousand eight hundredbolivars (Bs. 14,800.00). *Cf.* Deciding Order of November 2, 2004 issued by the Office of Determination of Responsibility of the Office of Special Procedures of the Comptroller General of the Republic (case file of annexes to the application, attachment 34, tome VI, folios 3356).

[53] The Constitutional Chamber of the Supreme Court of Venezuela has stated in its Judgement No. 1266 of August 6, 2008 that: "it is not valid to [affirm] that proportionality was violated because there is no correspondence between the main sanction andthe additional sanction." Judgement No. 1266 of the Constitutional Chamber of the Supreme Court of Justice of August 6, 2008 (case file of appendix to the application, volume I, annex 27, pages 584 to 642). According to this reasoning, the sanctions of disqualification are a consequence of the declaration of administrative responsibility and do not depend on the other sanctions.

[54] 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. 34.

American Democratic Charter. [55] In this Inter-American instrument it is stipulated that among other essential elements of a representative democracy is the access to power and its exercise, which is subject to the rule of law and the holding of periodic, free, and fair elections based on universal suffrage and secret balloting as an expression of the sovereignty of the people.

59. In analyzing the strict proportionality of the sanction, we must consider that not only are the rights of those seeking to run affected, but the collective interests of the voters is also harmed. This requires that the restriction be analyzed in a stricter manner when it comes to elected officials as opposed to appointed officials, in which case there is no involvement of citizens in the selection of these officials. This leads us to conclude therefore that, in regard to persons elected by popular vote or who intend to run, restrictions on passive suffrage can be exercised only to the extent strictly necessary to protect the fundamental legal rights from the most serious attacks that place them in harm or dangers way.

60. Another aspect to consider is the foreseeability of the sanction of disqualification being imposed. The parties presented arguments concerning the temporal period used by the Comptroller to impose additional sanctions, once the administrative responsibility is declared and imposed for the corresponding fine. The Political-Administrative Chamber of the Supreme Tribunal of Justice, taking into account the general rule on statute of limitations of punitive administrative actions (under Article 114 of the LOCGRSNCF), in the jurisprudence that arose after the facts of this case, has set a maximum term of five years for the sanction of disqualification to be adopted. [56]

61. Mr. Lopez Mendoza disqualification due to the events related to PDVSA occurred approximately five months after the declaration of administrative responsibility was final (para. 204), [57] while the disqualification for the events surrounding the Mayor's Office of Chacao was imposed about six months after the resolution that established declaration of

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[55] Organization of American States. *Inter-American Charter.* Approved on the first full session of the General Assembly of the OAS, held on September 11, 2001, during the twenty-eight Extraordinary Period of Sessions, Article 3.

[56] Article 114 of the LOCGRSNCF establishes that "[t]he administrative sanctioning or recovery actions derived from this law, are prescribed for a period of 5 (years), unless in special Laws different periods are established. Said term will begin to run as of the date that the events, actions, or ommissions from which administrative responsibility took place, the imposition of fines or reparation; neverthless, when the infractor is a pubic official, the perspcription will begin to run as of the date of cessation of the charge for the period of the occurrence of the irregularity. […]" Judgment No. 01516 of October 20, 2009 (Exp. Nº 2005-5270) issued by the Accidental Chamber of the Supreme Tribunal of Justice and judgment No. 00782 of July 27, 2010 (Exp. No. 2008-0871) issued by the Political-Administrative Chamber of the Supreme Tribunal of Justice. Cited in the final written brief of the State (case file on the Merits, tome III, folio 1459).

[57] On March 28, 2005, the motion for reconsideration was decided, which finalized the declaration of administrative responsibility for the facts related to PDVSA, and on August 24, 2005, the Comptroller General of the Republic issued Resolution No. 01-00-000206, which imposed the sanction of disqualification for 3 years.

responsibility was final (para. 204). [58] While the time between the declaration of responsibility and the imposition of the disqualification itself was not excessive, it has been held (para. 205) that the domestic legislation does not establish a fixed period or time for the Comptroller to exercise this power.

62. The decision of the Political-Administrative Chamber, designed to work around this regulatory gap with the statute of limitations of the administrative action, does not meet the standard of foreseeability or legal certainty of the legislation. As was set out in paragraph 205 of the Judgment, the "foreseeability test" involves proving that the legislation clearly delineate the scope of discretion that may be exercised by the authority and define the circumstances in which it may be exercised in order to establish appropriate safeguards to prevent abuse. [59] The uncertainty regarding the period within which it could impose a restriction on the right to be elected is not compatible with the legal certainty in a sanctioning proceeding that restricts such rights. Furthermore, a period of five years is not reasonable to ensure predictability in the enforcement of the restriction because it is too long a period and, therefore, incompatible with the requirement that a sanctioning proceeding conclude when the appropriate liability is established, in order that the accused does not wait for a long time in the setting of a sanction established as punishment for his responsibility. Moreover, the lack of a fixed, predictable, and reasonable period may lead to an arbitrary exercise of discretion over sanctions at an unexpected time for the sanctioned person (para. 205).

63. Therefore, taking into account the comprehensive interpretation of the norm established in Article 23(2) of the Convention, upon assessing the right to be elected of a citizen and the failure to meet the requirements of foreseeability and proportionality, the restrictions determined by the administrative authority was not justified nor consistent with the Convention.

Diego García-Sayán
Judge

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[58] On March 28, 2005, the motion for reconsideration was decided, which finalized the declaration of administrative responsibility for the facts related to Chacao Mayor's Office, and on September 26, 2005, the Comptroller General of the Republic issued the Resolution No. 01-00 -235, which imposed the sanction of disqualification for 6 years.

[59] In this regard, the European Court has established that "a law which confers a discretion must indicate the scope of that discretion […]. The degree of precision required of the "law" in this connection will depend upon the particular subject-matter. […] Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference." ECHR, *Case Malone v. The United Kingdom*, Judgment of 2 August 1984, Series A no. 82, para. 67 y *Case Olsson v. Sweden*, Judgment of 24 March 1988, Series A no. 130. para. 61.

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI
CASE OF LÓPEZ MENDOZA *V.* VENEZUELA,
JUDGMENT OF SEPTEMBER 1, 2011
(MERITS, REPARATIONS, AND COSTS)

Introduction.

I render this concurring opinion with that decided in Judgment stated in the title, hereinafter the Judgment, and in particular Declarative Paragraph, N°1 and in Deciding Paragraph N°s 2, 3, and 5, all of the Judgment's Operative Paragraphs,[60] in order to highlight, first, that from its mere reading, it is evident that Article 23(2) of the American Convention on Human Rights, hereinafter the Convention,[61] is clear, simple, and categorical, specifically in what in regards orders, namely, that "*the exercise of the rights and opportunities referred*" in numeral 1 of said Article, particularly that which refers to the right to "be elected*(...),"*[62] can be regulated "*only*" by, among others, *"sentencing by a competent court in criminal proceedings."*

Second, with this concurring vote, it is my attempt to call attention to that strictly pertaining to the law, specifically, Public International Law,[63] which is the nature of this Judgment, considering that the result confronted[64] by that provided in Article 23(2) of the Convention both with the Resolutions of the Comptroller General of the Bolivarian Republic of Venezuela, hereinafter the State,[65] which imposed upon Mr. Lopez Mendoza the sanction of disqualification from holding public office, as well as that enshrined in Article 105 of the Organic Law of the Comptroller General of the Republic and the National System of Fiscal Oversight, hereinafter the LOCGRSNCF, of the State,[66] and the amparo to which these

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[60] See paragraph 249 of this Judgment..

[61] *"The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings."*

[62] "*Every citizen shall enjoy the following rights and opportunities: a). to take part in the conduct of public affairs, directly or through freely chosen representatives; b). to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c). to have access, under general conditions of equality, to the public service of his country."*

[63] Article 3 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission (ILC) of the United Nations (UN)**: "***The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law."*

[64] *"The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement."*

[65] See paragraphs 58 and 81 of this Judgment.

[66] See paragraph 33 of this Judgment.

rendered decisions, was achieved by applying objective and teleological methods of interpretation referred to in the Vienna Convention on the Law of Treaties, hereinafter the Vienna Convention, namely, the rules relating to good faith, the terms of the treaty, the context of those terms, and the object and purpose.[67]

1.- Good faith.

The "*bona fides*" applies from the assumption that States Parties to the Convention intended to use it and, in what pertains to said kind, include in it Article 23(2). In that sense, what the Judgment does is discover or scrutinize what they, as the creators of the regulation, in this regard actually agreed upon, deeming that this agreement leads to, according to the principle "*pacta sunt servanda,"*[68] the obligation to comply with that being agreed upon, even with primacy to what the respective national or domestic laws provide. [69]

It is for this reason that it did not proceed to invoke in orders, domestic legislation and jurisprudence of the State concerned nor of other States also Parties to the Convention, let alone an assumed primacy of national law over International law,[70] as background to argue the compatibility with Article 23(2),[71] because the intention was precisely to determine whether these laws are consistent and conform to the requirements of the latter.

2.- The terms.

That agreed upon by the States Parties to the Convention is stated, moreover, in the terms used in Article 23(2), namely, the wording, "*only*" and "*sentencing by a competent court in criminal proceedings,"* without providing, however, "*a special meaning*"[72], but rather, to the contrary, an "*ordinary*" meaning, with the purpose of expressing what is regularly or normally intended by them.

It turns out that the word "*only*" means, pursuant to the Spanish Language Dictionary,[73] "that which excludes or has the force and virtue to exclude" or "*exclusive, single, excluding any other*" from which it follows that the grounds or reasons for the Law to regulate the

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[67] Art.31(1*):"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."*

[68] Article 26 of the Vienna Convention: *"Every treaty in force is binding upon the parties to it and must be performed by them in good faith."*

[69] Article 27 of the same Convention: *"A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."*

[70] See paragraph 103 of this Judgment.

[71] See paragraph 105 of this Judgment.

[72] Art.31(4) of the Vienna Convention: "*A special meaning shall be given to a term if it is established that the parties so intended.*"

[73] Real Academia Española, Vigésima segunda edición, Madrid: Espasa Calpe, 2001. (definition does not pertain to English translation).

exercise of political rights are solely those set out in that Article, wherein ""*sentencing by a competent court in criminal proceedings,"* is stated.

Certainly, if the States Parties to the Convention had wanted to enshrine in Article 23(2) the specific grounds for regulating the rights and opportunities referred to in Article 23(1) therein or allow sentencing by another court or other judicial body distinct from a criminal court or in proceedings similar to criminal ones, they would have said so expressly or directly or would have used different terminology, for example, "*such as*" or "*among others.*" But they did not do so. On the other hand, there is no indication in the record indicating that upon establishing Article 23(2), the intent or aim was to include other types of proceedings or courts that are not criminal.

3.- <u>The context of the terms.</u>

It is also not in the record that there was an agreement between the States Parties to the Convention related or linked to Article 23(2) or made in regard to this,[74] or subsequently, interpreting it, [75] nor is there evidence of an ulterior motive for which said agreement stands [76] and that would support a different interpretation to that provided in the Judgment.

It is important to note, in this regard, that the fact that in the legislations of some States Parties to the Convention, they provide that a noncriminal body may impose the sanction of disqualification from being elected, [77] in this way reflecting that it is a practice that "*establishes the agreement of the parties regarding its interpretation*." First, because it involves the legislation of only some of the States Parties to the Convention, and therefore, insufficient to assume a widespread practice in the field. Second, because it does not provide anything to suggest that, in dictating those laws, the purpose was to comply with that provided in the Convention. And third, since, pursuant to the Law of Treaties, practice does not imply the modification of a treaty. [78]

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[74] Art. 31(2). of the Vienna Convention: *"The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty."*

[75] Art. 31(3)(a) of the same Convention: "*There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;"*

[76] Art. 31(3)(b) "*There shall be taken into account, together with the context …(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;"*

[77] See paragraph 103 of this Judgment.

[78] Note that draft article 38 of the Vienna Convention, which provided "*A treaty may be modified by subsequent practice in the application of the treaty when ... it denotes the agreement of the parties to amend the provisions of the treaty*" was suppressed by a majority of the States participating in the Conference which adopted the Vienna Convention.

It follows to note that it is not appropriate to invoke[79] what has been done in the record of the Inter-American Convention Against Corruption,[80] to argue that it is possible to interpret Article 23(2) of the Convention in such a way that it allow the regulation of the exercise of political rights through a sentence imposed by an administrative authority. This is because what is that instrument provides for the obligation of States Parties to it to criminalize acts of corruption and even refers to criminal jurisdiction, [81] and nowhere has or contemplates that the penalty for that offense may be imposed by an administrative body, whence it follows that, in any way, is directly or indirectly, an amendment or interpretation of the provisions of the Convention, but precisely the opposite.

4.- Object and purpose.

Finally, if one considers the "object and purpose" of the Convention, namely the commitments of due respect and protection of human rights which States parties undertake, [82] one can not but conclude that what is intended by Article 23(2) is, therefore, to restrict or regulate as little as possible the rights and opportunities set forth in Article 23(1), including the right to be elected or the right of passive suffrage,[83] and it is for this reason that, under this perspective, the same conclusion is made as in the Judgment that, incidentally, agrees with the principle of *pro homine* established in Article 29 of the Convention,[84] which requires interpretation in favor of broader respect for human rights.

5.- Supplementary means.

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[79] Art. 31(3)(c) of the Vienna Convention:"*There shall be taken into account, together with the context …(c) "any relevant rules of international law applicable in the relations between the parties.."*

[80] See paragraph 103 of this Judgment.

[81] Article V: "*Jurisdiction. 1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense in question is committed in its territory. 2. Each State Party may adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense is committed by one of its nationals or by a person who habitually resides in its territory.3. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the alleged criminal is present in its territory and it does not extradite such person to another country on the ground of the nationality of the alleged criminal. 4. This Convention does not preclude the application of any other rule of criminal jurisdiction established by a State Party under its domestic law."*

[82] Art. 1(1) of the Convention: *"The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.*"

[83] See paragraph 107 of the Judgment.

[84] *"No provision of this Convention shall be interpreted as: a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein."*

Now, considering the foresaid, and also, that neither are the supplementary means mentioned in the record, but neither are grounds provided to obtain them, there is no reference regarding the supplementary means of interpretation under the Vienna Convention[85] that could alter the conclusion which the Judgment has so provided.

Conclusion.

Thus, in the latter, Article 23(2) has been interpreted and applied, as provided in Article 63(1) of the Convention, [86] concluding that both Article 105 of the LOCGRSNCF as well as that stated in protection of this by the Comptroller General of the Republic of State, imposing the aforementioned sanctions, is contrary to the Convention and, therefore, has generated international responsibility. [87]

The mentioned ruling conforms, therefore, to the nature of the jurisprudence,[88] without attempting to generate, in practice, a new regulation, different and contradictory to that provided in Article 23(2) of the Convention, namely, the Judgment has proceeded by establishing the direction and scope of the latter according to the only possible alternative application.

The Judgment for which I render this opinion is, therefore and simply, the expression of the realization, in a specific case submitted before the Court,[89] of the judicial function that has been conferred upon the Court, for which it does not have the authority to change that

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[85] Art. 32: "*Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable."*

[86] **"***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***."**

[87] Art. 12 of the the *draft articles* to *responsibility* of *States for internationally* wrongful *acts* preparted by the ILC of the UN "*There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.."*

[88] *Art.* 38(1)(b) of the Statute of the International Court of Justice: **"** The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: b. international custom, as evidence of a general practice accepted as law…. subject to the provisions of Article 59… as subsidiary means for the determination of rules of law."

Art. 59 of the same text*:* **"**The decision of the Court has no binding force except between the parties and in respect of that particular case**.."**

[89] See note Nº 29.

provided in the Convention, a role that is assigned specifically to the States Parties, [90] in keeping, moreover, with the provisions of General International Law[91] and that, without doubt, must be carried out pursuant to standards that are more broad than those that refer exclusively to the Administration of Justice.

EVG.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

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[90] Art. 76(1): *"Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary Gener."*

Art. 77(1): *"In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection."*

[91] Art. 39, first phrase, of the Vienna Convention: "*A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except insofar as the treaty may otherwise provide"*