



Organization of
American States



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Application to the Inter-American Court of Human Rights
in the case of
Mercedes Chocrón Chocrón
(Case No. 12.556)
against the Bolivarian Republic of Venezuela

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**APPLICATION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS TO THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE BOLIVARIAN REPUBLIC OF VENEZUELA
CASE NO. 12.556
MERCEDES CHOCHRÓN CHOCHRÓN**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "the Commission," or "the IACHR") submits to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") the application in Case No. 12.556, Mercedes Chocrón Chocrón, against the Bolivarian Republic of Venezuela (hereinafter "the State of Venezuela," "the Venezuelan State," "the State," or "Venezuela") for having arbitrarily removed the victim from her position as Judge of First Instance for Criminal Matters in the Metropolitan Caracas Judicial Circuit, without affording her any minimum guarantees of due process and without adequate justification, without giving her the ability to be heard and to exercise her right of defense, and without allowing her any effective judicial recourse against such violations, all as consequence of the absence of guarantees in the Judiciary's transition process.

2. The Inter-American Commission asks the Court to establish the international responsibility of the State of Venezuela, which has failed to meet its international obligations and has violated Article 8 (right to a fair trial) and Article 25 (right to judicial protection) as they relate to the obligations established in Articles 1.1 and 2 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention").

3. The instant case has been processed in accordance with the provisions of the American Convention and is submitted to the Court pursuant to Article 34 of its Rules of Procedure. Copy of Report No. 9/09, prepared pursuant to Article 50 of the Convention is attached as an appendix to this application.¹ The State of Venezuela did not respond within the timeframe granted by the Commission and according to available information, the recommendations have not been implemented to date.

4. The Commission considers submission of the instant case to the Court justified based on the requirement to obtain justice and reparations for the victim. In addition, the Commission feels that this case will allow the Honorable Court to rule on another harmful effect that the lack of guarantees in the Venezuelan Judiciary's transition process has had in terms of the exercise of due process and access to effective remedies. Finally, the Commission emphasizes the continued need to implement non-repetition measures to ensure that the mechanisms for appointing and removing judges in Venezuela are compatible with international standards in the area of due process and judicial independence.

II. PURPOSE OF THE APPLICATION

5. The purpose of this application is to respectfully ask that the Court conclude and declare that

¹ IACHR, Report No. 9/09 (Merits), Case 12.556, *Mercedes Chocrón Chocrón*, March 17, 2009. Appendix 1.

- a) the State of Venezuela is responsible for violating the rights to judicial guarantees and judicial protection established in Articles 8 and 25 of the American Convention on Human Rights as they relate to the general obligations to respect and guarantee rights and to adapt its domestic legal system as enshrined in Articles 1.1 and 2 of the same instrument, to the detriment of Mercedes Chocrón Chocrón.

6. As a consequence of the above, the Inter-American Commission asks that the Court order the Venezuelan State to:

- a) reinstate Mercedes Chocrón Chocrón to the office of Judge of First Instance in Criminal Matters of the Metropolitan Caracas Judicial Circuit or, if not to that position, to another position with equal status within the hierarchy of the Judicial Branch;
- b) pay Mercedes Chocrón Chocrón for salary and labor/social benefits not received from the time of her dismissal until her effective reinstatement;
- c) adopt the measures necessary to provide that domestic regulations and relevant practice adhere to clear criteria and ensure guarantees in the appointment, tenure, and removal of judges, consistent with the provisions established in the American Convention; and
- d) pay legal costs and expenses incurred in processing the instant case before the Inter-American Commission and Court.

III. REPRESENTATION

7. Pursuant to the provisions of Articles 23 and 34 of the Court's Rules of Procedure, the Commission has appointed Commissioner Paulo Sérgio Pinheiro and its Executive Secretary Santiago A. Canton as its delegates in this case. Deputy Executive Secretary Elizabeth Abi-Mershed and the attorney Silvia Serrano Guzmán, a specialist with the Commission's Executive Secretariat, have been appointed to act as legal advisors.

IV. JURISDICTION OF THE COURT

8. In accordance with Article 62(3) of the American Convention, the Inter-American Court is competent to hear any case relating to the interpretation and application of the provisions of the Convention that is submitted to it, provided that the States Parties to the case have recognized or recognize the Court's jurisdiction.

9. The State of Venezuela ratified the American Convention on August 9, 1977 and accepted the contentious jurisdiction of the Court on June 24, 1981. The violations alleged in this application occurred under the jurisdiction of the State of Venezuela after the date the American Convention took effect for that State.

V. PROCESSING BY THE INTER-AMERICAN COMMISSION²

10. On May 15, 2005 the Commission received a petition against the State of Venezuela on behalf of Mrs. Mercedes Chocrón Chocrón. The Commission recorded the petition under number 549-05 and, in accordance with Article 30 of its Rules of Procedure,

² The proceedings mentioned in this section can be found in file on processing of the case before the IACHR. Appendix 3.

forwarded the relevant portions to the State on June 13, 2005, granting it a period of two months to submit the observations it deemed relevant.

11. On August 15, 2005 the State of Venezuela submitted its response, which was forwarded to the petitioner on September 1, 2005.

12. On August 26, 2005 the petitioner submitted the annexes to the petition. The Commission forwarded these to the State and allowed it one month to submit its observations.

13. On September 28, 2005 the Commission asked the parties for information on the specific legal framework governing the appointment and removal of provisional judges, alternate judges, and temporary judges, respectively.

14. On October 12, 2005 the Commission received the petitioner's response to the State's report, which was sent to Venezuela on October 26, 2005.

15. On December 1, 2005 the petitioners submitted additional information, which was forwarded to the State on December 15, 2005.

16. On December 9, 2005 the Venezuelan State requested an extension for the submission of its observations. On December 15, 2005 the Commission granted the State an extension of one month.

17. On December 26 the State requested another extension and was granted an extension of 20 days.

18. On March 10, 2006 the Venezuelan State submitted its response to the petitioners' observations.

19. The Commission declared the petition to be admissible on March 15, 2006 during its 124th regular session through Admissibility Report 38/06.³ On March 23, 2006 the Commission informed the parties of the Admissibility Report and made itself available to them for the purpose of reaching a friendly settlement in accordance with Article 48(1)(f) of the American Convention. The Commission also set a period of two months for the petitioners to submit their observations on the merits of the case.

20. On August 16, 2006 the petitioner indicated its rejection of a friendly settlement process and asked the Commission to adopt a report on the merits. The Commission forwarded that communication to the State on January 31, 2007. On February 22, 2007 the petitioner submitted additional information, which was forwarded to the State on May 29, 2007.

21. On May 22, 2007 the Commission asked both parties for additional information. On May 29, 2007 the communication previously sent to the State was amended due to a material error and the State was granted an additional period of 15 days to respond to the request for information. The State did not respond to this request for information.

³ IACHR, Report No. 38/06, Petition 549-05, Admissibility (Mercedes Chocrón Chocrón), Venezuela, March 15, 2006. Appendix 2.

22. On July 10, 2007 the Commission sent the State the relevant portions of the observations on the merits submitted by the petitioner, granting the State a period of two months to submit its observations in accordance with the provisions of Article 38(1) of the Commission's Rules of Procedure.

23. On August 9, 2007 and January 9, 2009 the Commission received additional information from the petitioner, which was forwarded to the State on August 13, 2007 and January 13, 2009, respectively.

24. The State did not avail itself of the procedural opportunity to submit observations on the merits of the case nor did it respond to the Commission's request for information.

25. In the context of its 134th regular session, on March 17, 2009, the Commission approved report on the merits 9/09, prepared in accordance with Article 50 of the Convention. In that report, the Commission established the following conclusions:

The Venezuelan State violated, to the detriment of Mercedes Chocrón, the right to a fair trial and the right to an effective judicial remedy enshrined in Articles 8(1) and 25(1) of the American Convention, as they relate to the general obligations set forth in Articles 1(1) and 2 thereof.

The Commission considers inadmissible the arguments relating to violation of Article 29(c) of the American Convention.

In light of the available information, the State of Venezuela did not violate Mercedes Chocrón's right to equality before the law and the right to have access, under general conditions of equality, to public service, as contained, respectively, in Article 24 and 23(1)(c) of the American Convention.⁴

26. In the aforementioned report, the Commission recommended that the State of Venezuela

1. Reinstates Mercedes Chocrón Chocrón to the office of Judge of First Instance in Criminal Matters in the Metropolitan Caracas Judicial Circuit, or if not to that position, to a position with equal status within the hierarchy of the Judicial Branch. If the appointment continues to be temporary or provisional, the State must ensure that the respective competitive selection process is conducted as soon as possible and that the victim is allowed to participate under equitable conditions.

2. Adequately compensate the victim for salary and labor/social benefits not received from the time of her dismissal until her effective reinstatement under the terms indicated in the preceding recommendation.

3. Adopt immediate measures for approval of the Code of Ethics of Venezuelan Judges, or other domestic regulations establishing criteria and guarantees for the appointment, tenure, and removal of judges that are consistent with the provisions established in the American Convention.⁵

⁴ IACHR, Report No. 9/09 (Merits), Case 12.556, *Mercedes Chocrón Chocrón*, March 17, 2009, paras. 128-130. Appendix 1.

⁵ IACHR, Report No. 9/09 (Merits), Case 12.556, *Mercedes Chocrón Chocrón*, March 17, 2009, para. 131. Appendix 1.

27. On August 26, 2009 the Commission informed the State of report 9/09 and granted the State a period of two months to report on measures adopted to comply with the recommendations.

28. On the same date, in accordance with the provisions of Article 43(3) of its Rules of Procedure, the Commission informed the petitioners regarding the adoption of the report on the merits and its transmission to the State, asking them to express their position and the victim's position regarding the possibility of submitting the case to the Inter-American Court.

29. On September 29, 2009 the Commission forwarded to the petitioners, on a confidential basis, the relevant sections of the report on the merits. In a communication dated September 25, 2009 the petitioners indicated their intention and that of the victim to have the case referred to the Inter-American Court.

30. From the time the State was notified of the report on the merits 9/09 to date, no communications have been received from the State of Venezuela. After considering the information available indicating that the State has not carried out the recommendations made in its report on the merits, on November 13, 2009 the Commission decided to submit the instant case to the Inter-American Court.

VI. FACTS

1. Background and context

a. Institutional framework

31. During the transition leading up to the adoption of the 1999 Constitution, the National Constituent Assembly undertook a reorganization of the Judicial Branch, which began on August 12, 1999 with enactment of the decree ordering reorganization of all branches of government.⁶ On August 19 of that year, the same National Constituent Assembly declared that the judiciary was in a state of emergency and reorganization. It created an Emergency Judicial Commission composed of nine members: four members of the Constituent Assembly and five persons not members of the Assembly.⁷ The Assembly gave that Commission a number of functions, among them the authority to remove all members of the judicial branch facing corruption proceedings; those guilty of unwarranted judicial delays; those whose decisions had been repeatedly nullified or reversed owing to a manifest disregard or ignorance of the law; those guilty of malfeasance, and those who showed signs of a wealth disproportionate to their salaried income.⁸ It was also decided that any vacancies created as a result of these removals would be filled by alternate or associate

⁶ Annex 1. National Constituent Assembly. Decree Reorganizing All Organs of Government, August 12, 1999, published in Official Gazette No. 36.764 of August 12, 1999. The text of the decree establishes that: "Given the national emergency in the country before this Assembly was convened, reorganization of all organs of government is hereby ordered. The National Constituent Assembly shall decree the measures needed to deal with specific reorganization-related situations and shall order intervention, modification or suspension of organs of government where such action is deemed necessary, until the rule of law, stability and the order necessary to rebuild the Republic on a foundation of democratic values are restored".

⁷ Annex 2. National Constituent Assembly. Decree Reorganizing the Judicial Branch and the Penitentiary System, August 19, 1999, published in Official Gazette No. 36.805 of October 11, 1999. Article 2.

⁸ Annex 2. National Constituent Assembly. Decree Reorganizing the Judicial Branch and the Penitentiary System, August 19, 1999, published in Official Gazette No. 36.805 of October 11, 1999. Article 7.

judges and that in special situations, the Emergency Judicial Commission could appoint the replacements, provided the latter met the requirements of an interim judge.⁹

32. The decree provided that all judicial posts were to be filled through an open competitive selection process. It eliminated the tenure theretofore guaranteed by law to all sitting judges, and stipulated that judges could participate in the competitions held to fill their posts.¹⁰ It also stipulated that while the competitive selection processes were underway, judges neither suspended nor removed from the bench by the Emergency Judicial Commission would remain in their posts.¹¹

33. The Emergency Commission remained in existence until the new Constitution was enacted.¹² In December 1999, following enactment of the Constitution, the National Constituent Assembly established the "Transitional Government Regime." The regulations to govern the new transitional regime established, *inter alia*, the Commission for the Functioning and Restructuring of the Judicial System (hereinafter "the CFRSJ"). The CFRSJ was to exercise the authorities previously invested in the Emergency Judicial Commission and the Judiciary Council; the latter ceased to exist with this decree. In effect, the CFRSJ had administrative functions and authorities to direct, execute and oversee all activities relating to the evaluation of judges and officials in the Judicial Branch and the competitions to enter the judicial career service and be promoted within it, until such time as the Supreme Tribunal organized the Office of the Executive Director of the Judiciary, an organ provided for in the Constitution to govern and administer the Judicial Branch.¹³ These temporary administrative authorities ceased when the Supreme Tribunal created the Office of the Executive Director of the Judiciary, at which time the CFRSJ's functions became strictly disciplinary in nature, following procedures established in the decree ordering the "Transitional Government Regime".¹⁴

34. As stipulated in the Transitional Government Regime, the CFRSJ will continue to exercise those functions until such time as the National Assembly issues the Code of Ethics of Venezuelan Judges called for in the 1999 Constitution¹⁵. Article 23 of the Rules of Procedure of the CFRSJ establishes the type of punitive measures that this body can impose on judges and other judicial officials, and specifies that the penalties of admonishment, suspension and removal are those provided for in the Judicial Career Service

⁹ Annex 2. National Constituent Assembly. Decree Reorganizing the Judicial Branch and the Penitentiary System, August 29, 1999, published in Official Gazette No. 36.805 of October 11, 1999. Article 8.

¹⁰ Annex 2. National Constituent Assembly. Decree Reorganizing the Judicial Branch and the Penitentiary System, August 19, 1999, published in Official Gazette No. 36.805 of October 11, 1999. Article 12.

¹¹ Annex 2. National Constituent Assembly. Decree Reorganizing the Judicial Branch and the Penitentiary System, August 19, 1999, published in Official Gazette No. 36.805 of October 11, 1999. Article 24.

¹² Annex 2. National Constituent Assembly. Decree Reorganizing the Judicial Branch and the Penitentiary System, August 19, 1999, published in Official Gazette No. 36.805 of October 11, 1999. Article 32.

¹³ Annex 3. National Constituent Assembly. Decree on the Regime for the Transition of Public Power, December 22, 1999, published in Official Gazette No. 36.920 of March 28, 2000. Articles 22 and 23.

¹⁴ Annex 3. National Constituent Assembly Decree on the Regime for the Transition of Public Power, December 22, 1999, published in Official Gazette No. 36.920 of March 28, 2000. Articles 30 et seq.

¹⁵ Annex 3. National Constituent Assembly Decree on the Regime for the Transition of Public Power, December 22, 1999, published in Official Gazette No. 36.920 of March 28, 2000. Article 24.

Act, the Organic Law of the Council of the Judiciary, and other applicable provisions, with the necessary guarantees that those laws specify.¹⁶

35. In exercise of its authorities under Article 267 of the Venezuelan Constitution¹⁷, the Supreme Tribunal, *en banc*, issued the Regulations on the Direction, Governance and Administration of the Judicial Branch (published in Venezuela's Official Gazette No. 37,014, and dated August 15, 2000¹⁸), which created both the Office of the Executive Director of the Judiciary and an auxiliary body, the Judicial Commission.

36. The purpose of the Judicial Commission of the TSJ is to exercise, by delegation from the TSJ, the control and supervisory functions of the Office of the Executive Director of the Judiciary. This Commission, made up of one judge for each chamber, reports directly to the TSJ and performs, also by delegation, all control and supervisory administrative functions not involving jurisdictional functions, which – based on the principle of separation of powers – fall exclusively to the Supreme Tribunal of Justice and the other courts of the Republic.¹⁹

¹⁶ Annex 4. Regulations of the Commission for the Functioning and Restructuring of the Judicial System, published in Official Gazette No. 37.080 of November 17, 2000. Article 23 and Single Paragraph.

¹⁷ Annex 5. Constitution of the Bolivarian Republic of Venezuela, published in Special Official Gazette No. 5.453 of March 24, 2000.

Section Three on the Governance and Administration of the Judicial Branch

Article 267. The Supreme Tribunal shall direct, govern and administer the Judicial Branch, inspect and oversee the courts of the Republic and the Public Defenders Offices. It shall also prepare and execute its own budget and the budget of the Judicial Branch.

Disciplinary jurisdiction shall be the competence of the disciplinary courts that the law establishes.

The disciplinary regime applicable to justices or judges will be based on the Code of Ethics of Venezuelan Judges, which the National Assembly will enact. The disciplinary procedure shall be a public, oral and summary proceeding, conducted with the guarantees of due process and under the terms and conditions that the law establishes.

To exercise these authorities, the Supreme Tribunal, sitting *en banc*, shall create an Office of the Executive Director of the Judiciary and its regional offices.

¹⁸ Annex 6. . Regulations on the Management, Governance, and Administration of the Judicial Branch, issued by the full court of the Supreme Tribunal of Justice, published in Official Gazette No. 37.014 of August 15, 2000. Mediante esta normativa se crean la Dirección Ejecutiva de la Magistratura and la Comisión Judicial, en los siguientes términos:

Article 1.- The Office of the Executive Director of the Judiciary is hereby established as an auxiliary organ of the Supreme Tribunal. By delegation, it shall perform the functions of directing, governing and administering the Judicial Branch.

Article 2.- The Judicial Commission is hereby established as an organ of the Supreme Tribunal whose purpose is to exercise, by delegation, the control and oversight functions of the Office of the Executive Director of the Judiciary and the other functions provided for in these Regulations.

¹⁹ Annex 6. Regulations on the Management, Governance, and Administration of the Judicial Branch, issued by the full court of the Supreme Tribunal of Justice, published in Official Gazette No. 37.014 of August 15, 2000. Chapter IV of these regulations establishes the composition and powers of the Judicial Commission of the Supreme Tribunal of Justice in the following terms:

Article 26.- The Judicial Commission of the Supreme Tribunal is composed of six justices, each representing a different chamber. They shall be elected on the occasion of the election of the Executive Board of the Court and the Executive Board of each chamber. The Presiding Justices of each chamber may not serve on the Judicial Commission, the exception being the Chief Justice of the Supreme Tribunal.

37. The Judicial Commission of the TSJ is responsible for appointing judges named on a provisional or temporary basis in order to fill vacancies in the Judicial Branch and for removing them, when there are no disciplinary grounds, without any proceeding or due process.

Article 27.- Chairing the Judicial Commission shall be the Chief Justice of the Supreme Tribunal, who shall also represent the chamber to which he or she belongs. The Commission shall also have a Vice Chair, designated by the Full Chamber on the occasion of the election of its members.

Article 28.- The Judicial Commission's functions and authorities shall include the following:

- a. To approve the regulations that it is required to prepare for the Office of the Executive Director of the Judiciary.
- b. To propose to the Full Chamber the appointment or removal of the three directors who serve on the Executive Committee of the Office of the Executive Director of the Judiciary.
- c. To appoint and replace the Coordinator of the Executive Committee of the Office of the Executive Director of the Judiciary.
- d. To propose to the Full Chamber the policies that the Office of the Executive Director of the Judiciary should pursue and see that they are carried out.
- e. To present to the Full Chamber for discussion and approval, the Judiciary's proposed budgets for both the ordinary and special courts.
- f. To keep the Full Chamber periodically informed of its business and the business of the Office of the Executive Director of the Judiciary.
- g. To evaluate, at least quarterly, the performance reports that the Executive Committee of the Office of the Executive Director of the Judiciary submits to it.
- h. To propose to the Full Chamber the regulations to govern the organization and operations of the Office of the Inspector General of Courts, the Public Defender Service, and the Judiciary School.
- i. To oversee the Office of the Inspector General of Courts, the Public Defender Service and the Judiciary School.
- j. To propose to the Full Chamber the names of candidates for appointment of the Inspector General of Courts and his or her alternate. It may also propose his or her removal.
- k. To propose to the Full Chamber the names of candidates for the office of Director of the Public Defender Service and his or her alternate. It may also propose his or her removal.
- l. To propose to the Full Chamber the candidates for the post of Director of the Judiciary School. It may also propose his or her removal.

TRANSITORY AND FINAL PROVISIONS

Article 29.- Doubtful cases and those not provided for in these Regulations shall be decided by the Full Chamber, at the Judicial Commission's suggestion.

Article 30.- The Office of the Executive Director of the Judiciary shall begin functioning on the first day of September two thousand.

Pursuant to the provisions of articles 22 and 28 of the Decree on the Transitional Government Regime, enacted by the National Constituent Assembly, the Commission for the Functioning and Restructuring of the Judicial System shall, on the date set for the Office of the Executive Director of the Judiciary to begin operating, cease to perform the functions of the now defunct Council of the Judiciary, in its Full Chamber and in its Administrative Chamber. The Commission for the Functioning and Restructuring of the Judicial System has been performing those functions in keeping with the provisions of that decree.

The Commission for the Functioning and Restructuring of the Judicial System, reorganized as the Supreme Tribunal decides, shall only have disciplinary functions, until the legislation is passed and the corresponding disciplinary courts are created.

Article 31.- In its first round of activity, the Judicial Commission will be composed of the following justices: Chair, Iván Rincón Urdaneta (Constitutional Chamber); Vice-Chair, Levis Ignacio Zerpa (Political-Administrative Chamber); Antonio García García (Electoral Chamber); Alejandro Angulo Fontiveros (Criminal Cassation Chamber); Carlos Oberto Vélez (Civil Cassation Chamber); and Juan Rafael Perdomo (Labor Cassation Chamber).

b. Regulations in force and interpretation of Venezuelan jurisprudence governing the role of provisional, temporary and alternate judges

38. From the information available, the Venezuelan judiciary is currently composed of permanent, provisional, alternate and itinerant judges.²⁰

39. Article 255 of the Venezuelan Constitution states the following with respect to the entry, promotion and removal of judges:

Entry into the judicial career service and promotion of judges shall be by a public competitive selection process, to ensure the capability and excellence of the participants and those selected by the juries of the judicial circuits, in the manner and under the conditions that the law prescribes. [...] ²¹.

40. The Judiciary Career Service Act regulates the conditions for entry, tenure and removal of judges. Some of the relevant articles read as follows:

Article 3. Judges shall enjoy security of tenure in the performance of their functions. They may not be removed or suspended for performing their functions in the cases and by the procedure that the law prescribes. [...]

Article 10. To enter the Judiciary Career Service, a candidate must compete and receive the highest grade and be found fit for the bench through a neuropsychiatric evaluation. [...]

Article 19. The alternates designated in accordance with the preceding article shall replace the principal judge in his or her temporary or permanent absence. When for whatever reason alternates cannot be designated in accordance with Article 18, the Council of the Judiciary shall fill the position with an attorney who meets the qualifications stipulated in Article 10. If there is no such attorney, the Council will provide suitable persons in accordance with the law. Alternates shall serve on the bench until such time as the new judge chosen by a competitive selection process is seated on the bench. That competitive selection process shall be conducted within three months of the date on which the seat on the bench was vacated. The alternate judge may participate in the competition.

Article 24. Whenever a competitive selection process fails to find a suitable designee, the Council of the Judiciary shall hold a second competition; if that competition also fails to produce a designee the Council will fill the post with an interim judge who meets the conditions required in Article 10 until such time as the appointment can be made by competition. That competition is to be convoked within six months, all without prejudice to the provisions of Article 20, insofar as it applies.

Article 31. The Judiciary Council shall evaluate judges' performance on an annual basis or as deemed advisable.

Article 32. [...]

If having been evaluated a judge's performance is deemed unsatisfactory, the Judiciary Council shall take immediate measures to separate him or her from the

²⁰ It should be noted that both the State and the courts in their decisions have, on occasion, used the terms provisional or temporary without making any distinction between them.

²¹ Annex 5. Constitution of the Bolivarian Republic of Venezuela, published in Special Official Gazette No. 5.453 of March 24, 2000.

Judicial Career Service and shall call the competition to fill the vacancy thereby created, unless there are circumstances that might clearly explain the reasons or facts that could account for the poor performance.

Article 40. Notwithstanding any criminal or civil liabilities there may be, judges shall be dismissed from their posts following due process [...].²²

41. The Commission has repeated that the handling of issues related to the appointment, tenure or term of office and removal of judges in Venezuela has not been very transparent, despite the provisions of Venezuela's Constitution and its laws that ensure to judges their independence and autonomy.²³ These issues have become even more pronounced with the various categories of judges who are either granted or precluded from the constitutional guarantees based on the Supreme Tribunal's interpretations over time.

42. Thus, for example, on February 20, 1997 the Political-Administrative Chamber of the now defunct Supreme Court interpreted the guarantees established in those provisions when it decided an appeal filed by two provisional judges. The appeal was seeking nullification of administrative decisions whereby the Council of the Judiciary invited the plaintiffs to compete in the process whereby posts for category "A" judges in the Capital Region were being filled; the judges' seats were among those being filled. The appeal seeking nullification was granted. The operative part of the ruling cited the following jurisprudence:

Provisional judges are not career judges, except for judges who have tenure in civil courts and serve as provisional judges in other courts of any kind; this has been the jurisprudence of this Chamber, as articulated in repeated rulings delivered in proceedings challenging decisions of the Council of the Judiciary in which judges in this category have been removed or dismissed.

(...)

Provisional judges are not career judges but nonetheless enjoy the rights of security of tenure, independence and permanence that the Constitution guarantees to judges of the Republic. Thus, in order for a provisional judge to be suspended or removed, the legally prescribed procedures must be followed, i.e., through sanctions that are the outcome of a disciplinary proceeding, or removal from the bench because the seat in question is being made permanent and the provisional judge –if he or she competes– is the leading candidate but is not ultimately selected.

(...)

The provisions cited above guarantee the independence and autonomy of judges for the administration of justice and the tenure that judges enjoy, whether they be career judges, provisional judges or alternate judges; the case law of this Supreme Court has

²² Annex 7. Judicial Career Act of September 11, 1998, which entered into effect on January 23, 1999.

²³ Annex 8. IACHR, Report on the Situation of Human Rights in Venezuela, Chapter I: The Administration of Justice and Human Rights. OEA/Ser.L/V/II.118, Doc. 4 Rev. 1, October 24, 2003; Annex 9. IACHR, Annual Report 2004. Chapter V: Follow-up Report on Compliance by the State of Venezuela with the Recommendations Made by the IACHR in its Report on the Situation of Human Rights in Venezuela (2003). OEA/Ser.L/V/II.122, Doc. 5 Rev. 1, February 23, 2005; Annex 10. IACHR, Annual Report 2005. Chapter IV: Venezuela, Section II, The Administration of Justice. OEA/Ser.L/V/II.124, Doc. 7, February 27, 2006; Annex 11. IACHR, Annual Report 2006, Chapter IV: Venezuela, Section IV. Administration of Justice and Impunity for Violations of the Rights to Life and Human Treatment. OEA/Ser.L/V/II.127, Doc. 4 Rev. 1, March 3, 2007; and Annex 12. IACHR, Annual Report 2007, Chapter IV: Venezuela, Section VII: Institutionality and the Administration of Justice. OEA/Ser.L/V/II.130, Doc. 22 Rev. 1, December 29, 2007.

protected these constitutional rights. The Court relies on that same jurisprudence here.²⁴

43. Similarly, with respect to the guarantees of due process that provisional and temporary judges enjoy in the event of removal, on August 2, 2007 the Political-Administrative Chamber of the Supreme Tribunal upheld an administrative appeal filed by Yolanda del Carmen Vivas Guerrero seeking nullification of a decision by the Judicial Commission of the Supreme Tribunal that rescinded the plaintiff's appointment to the post of Temporary Judge on the bench of the Juvenile Court of First Instance for the Mérida State Judicial District, on the basis of "*comments presented to [that] Office.*" In deciding the appeal, the Tribunal held that the Judicial Commission had violated the provisional judge's right of defense by not having afforded her any hearing or any explanation when removing her from her seat. It also held that the comments for which the plaintiff was removed had a punitive effect.²⁵ In that ruling the Political-Administrative Chamber of the Supreme Tribunal reasoned as follows:

[...]

What this case needs to establish is whether the Judicial Commission acted lawfully when "*rescinding [plaintiff's] appointment on the basis of 'comments presented to [that] Office,'* comments that plaintiff alleges were never shown to her and which she was never given an opportunity to refute.

In ruling No. 01798 of October 19, 2004, when establishing the Judicial Commission's authorities vis-à-vis the admission and tenure of judges, this Chamber wrote that:

(...) where it is most far-reaching, i.e., with respect to permanent judges who have achieved security of tenure by virtue of having won the respective competitive selection process and provisional judges, the disciplinary function is today the exclusive purview of the Commission for the Functioning and Restructuring of the Judicial System, which was created as a transitional body until the disciplinary courts are established.

However, where no disciplinary case is involved, the authority to remove provisional or temporary judges belongs to the Judicial Commission of the Supreme Tribunal, by express delegation of the Full Chamber. In other words, the Judicial Commission has as much authority to appoint provisional judges as to end their appointments, when the majority of the Commission's members so decide, and provided no disciplinary case is involved, which would necessitate the involvement of the body charged with imposing sanctions.

Three conclusions with respect to provisional judges can be drawn from the above citations: 1) By delegation of the Full Chamber, the Judicial Commission has the authority to appoint provisional judges and to rescind their appointments; 2) This authority cannot be exercised if a disciplinary case is pending; 3) The disciplinary function is the competence of the Commission for the Functioning and Restructuring of the Judicial System.

[...]

²⁴ Annex 13. Supreme Court of Justice (defunct). Political-Administrative Chamber. Decision of February 20, 1997. This finding ruled on an appeal for nullification in the case of two provisional judges.

²⁵ Annex 14. Supreme Tribunal of Justice. Political-Administrative Chamber. Decision of August 2, 2007.

[...] The Judicial Commission relied on the alleged existence of "*comments submitted to the Office*" in its administrative decision to "*rescind the appointment*" of the plaintiff as a Provisional Judge. This means that the connotation that it gave to its decision can only be construed as punitive in nature, which implies the commission of some wrongdoing. Therefore, it is the judgment of this Supreme Tribunal that the repeated allusion to the "*comments*" is relevant for purposes of determining whether the administrative action was lawful.

It is worth noting that the file on the administrative case does not reveal any comment made by the Judicial Commission that would constitute a negative assessment of plaintiff's performance in the post, whereas there are a number of positive assessments of plaintiff's performance in the annual reports filed by the Juvenile Court of the Mérida State Judicial District: from August to December 2000, and for 2001, 2002, 2003 and 2004..

The Chamber notes further that the administrative decision neither describes nor even mentions the comments said to have been filed with the Judicial Commission and that were used as the basis for its decision.

Given the lack of evidence and the absolute absence of any hearing –as there is no record of plaintiff's notification or participation in same-, this Chamber concludes that the administrative decision is flawed not just because it is based on a false premise, but also because plaintiff's right to defend herself was violated. Nullification is therefore proper and is so ordered.
[...]

If the Judicial Commission works from the premise that an officer of the court, with many years of service, has committed some wrongdoing, the lawful course of action is to refer the matter to the Commission for the Functioning and Restructuring of the Judicial System. With an indictment from the Office of the Inspector General of Courts, the Commission would then prosecute that person, while all the time observing his or her rights under the Constitution.

It has been established that in this case, plaintiff's appointment was rescinded for unspecified "*comments,*" which plaintiff was not permitted to refute, thereby violating her right to participate in the competitive selection process for judgeships to which she legitimately aspired, as she had kept a clean record through a number of years of service on the bench. This was a violation of her right to be treated on an equal basis with other judges in her region. As in her case, the Judicial Commission cancelled their appointments, leaving them in the same predicament as plaintiff. In their case, however, they were restored to their posts by administrative decisions delivered on each one's appeal for reconsideration. With that, they were able to participate in the competitive selection process and get permanent appointments. Their treatment was not the treatment that plaintiff received.

For the foregoing reasons, plaintiff should be reinstated as a judge, given the opportunity to take part in a competitive selection process, have the administrative decision removing her expunged from her record, and be paid the basic salaries she ceased to receive for the period from the date of her removal to the date of publication of this judgment.²⁶

44. While these decisions reaffirm the principle of stability in judicial office and guarantees of due process for provisional and temporary judges, the jurisprudence is not consistent. Indeed, other rulings of the Supreme Tribunal have held that provisional and temporary judges do not have a right to stability in office or to due process when a decision

²⁶ Annex 14. Supreme Tribunal of Justice. Political-Administrative Chamber. Decision of August 2, 2007.

is made to remove them from the bench. Judgment No. 2,414 of December 20, 2007, delivered by the same Political-Administrative Chamber, states the following:

There is undoubtedly a distinction between career judges and provisional judges. The career judges acquire tenure when they win a competitive selection process; provisional judges, by contrast, are discretionary appointments, made after examining their credentials. Career judges enjoy stability in office and can only be penalized or removed from their posts if, in a public, oral proceeding conducted with all the necessary guarantees of defense and in accordance with the Regulations of the Commission for the Functioning and Restructuring of the Judicial System (published in Official Gazette No. 38, 317 of November 18, 2005) they have been involved in the disciplinary wrongdoings provided for in the Organic Law of the Council of the Judiciary and the Judicial Career Service Act. **But the same is not true of provisional judges, who can be removed from their positions in the same way they were appointed to them: by discretionary authority.** (Emphasis added).²⁷

45. In another decision, dated June 17, 2008, the Political-Administrative Chamber of the Supreme Tribunal dismissed an appeal filed by a temporary judge, challenging a decision of the Judicial Commission of the TSJ that decided to nullify her appointment on the basis of the comments made to that Commission. In that ruling, the Court held that:

[...]

Having viewed the records in the case, the Tribunal finds that at the time the plaintiff's appointment was nullified, she was a temporary judge, not a tenured judge, as she was appointed by the Judicial Commission of this Supreme Tribunal on September 7, 2004, without taking part in a competitive selection process.

At the time, the Judicial Commission of the Supreme Tribunal had the authority to effect direct appointments, without the respective competitive selection process. By the same token, it also has the authority to revoke its appointments; no administrative proceeding beforehand is required, nor are explanations of the specific and legal reasons for the removal. This is because the judge was not removed on disciplinary grounds and her tenure in office would always be contingent upon her competing for and winning tenure.

Here, this Chamber must consider the criterion established by the Constitutional Chamber, according to which the authority of the Judicial Commission of the Supreme Tribunal to remove officials with provisional appointments from seats on the bench is strictly discretionary. [...].²⁸

46. At the time of the events in this case and by virtue of the Judiciary's transition and reorganization regime, more than 80% of the judges were provisional, temporary or alternates with vague guarantees of stability and with no clear set of rules to regulate the procedures to be followed for their removal. In ruling on the regulations established for the transition regime, the Supreme Tribunal seems to have adopted varying interpretations. Its most recent rulings hold that any provisional, temporary or alternate judge is a discretionary appointment and can be removed until he or she joins the judicial career service through the competitive selection process. It has also held that as temporary

²⁷ Annex 15. Supreme Tribunal of Justice. Political-Administrative Chamber. Decision of April 1, 2008. Quoting: Decision number 2414 of the Political-Administrative Chamber of December 20, 2007.

²⁸ Annex 16. Supreme Tribunal of Justice. Political-Administrative Chamber. Decision of June 17, 2008.

or provisional judges, they do not have the guarantees of due process when their removal is not for disciplinary reasons.

47. Under this most recent system and jurisprudence, the Judicial Commission of the Supreme Tribunal decided to remove Mercedes Chocrón as described below.

2. Facts related to the situation of Mercedes Chocrón

a. Appointment of Mercedes Chocrón to positions within the Judicial Branch

48. No one is disputing the information to the effect that Mercedes Chocrón served in various capacities in the Judicial Branch between 1982 and her dismissal on February 3, 2003. According to the evidence in the Commission's case file, Mercedes Chocrón entered the Venezuelan Judicial Branch in 1982, and has since served in various positions.

49. On February 15, 1982, Mercedes Chocrón served as Judge Rapporteur [an officer of the court who prepares the draft version of the judgment] for the Ninth Criminal Court of First Instance of the Federal District and Miranda State Circuit Court.²⁹ From May 13 to June 28, 1991, she sat in for the Permanent Judge, as Associate Judge of the Nineteenth Criminal Superior Court for the Federal District and Miranda State Circuit Court.³⁰ In the periods from September 19 to October 4, 1994, December 12, 1994 to January 23, 1995, February 12 to 29, 1996, March 27 to June 20, 1996, and February 17 to May 14, 1997, Mercedes Chocrón served as Temporary Judge, in her capacity as First Associate Judge of the Sixteenth Court of First Instance for Criminal Law and Protection of Public Assets of the Metropolitan Caracas Judicial Circuit.³¹ As second alternate of the Thirty-second Criminal Court of First Instance of the Metropolitan Caracas Judicial Circuit, Mercedes Chocrón was named temporary judge for the period from June 25 to September 30, 1996, and as provisional judge for the period from September 15 to October 3, 1997.³² She served as second associate judge of the Thirty-seventh Criminal Court of the Metropolitan Caracas Judicial Circuit from October 26 to November 10, 1998, and then from December 21, 1998 to February 2, 1999.³³

50. On July 16, 1999, in exercise of the authorities given in Article 19 of the Judicial Career Service Act, the Council of the Judiciary, sitting as Administrative Chamber, issued a resolution appointing a number of judges to appellate courts and courts of first instance. It reasoned that with creation of the criminal law circuits provided for in Article 515 of the Organic Procedural Code, judges needed to be appointed to the newly created appellate courts and courts of first instance. Mercedes Chocrón was among those named,

²⁹ Annex 17. Statement issued on October 25, 1982 by the Ninth Criminal Court of First Instance of the Federal District and Miranda State Judicial Circuit.

³⁰ Annex 18. Statement issued on July 25, 1991 by the Nineteen Criminal Superior Court of the Federal Department and Miranda State Judicial Circuit.

³¹ Annex 19. Statement issued on December 22, 1998 by the Sixteenth Criminal Court of First Instance for Criminal Matters and Protection of Public Assets of the Metropolitan Caracas Judicial Circuit.

³² Annex 20. Statement issued on July 23, 1999 by the Thirty-Second Criminal Court of First Instance of the Metropolitan Caracas Judicial Circuit.

³³ Annex 21. Statement issued on July 16, 1999 by the Thirty-Seventh Criminal Court of the Metropolitan Caracas Judicial Circuit.

and was appointed First Associate Judge of the Twelfth Criminal Court of First Instance of the Metropolitan Caracas Judicial Circuit, where she served until April 2001.³⁴

51. On October 28, 2002, in exercise of the authorities conferred under Article 167 of the Constitution and pursuant to Article 255 thereof, the Judicial Commission of the Supreme Tribunal adopted Resolution No. 2002-1162 in which it decided to appoint Mercedes Chocrón as a temporary judge in the Criminal Court of First Instance of the Metropolitan Caracas Judicial Circuit, given the resignation of Judge Norma Elisa Sandoval Moreno. The resolution read as follows:

In exercise of the authorities given it under Article 267 of the Constitution of the Bolivarian Republic of Venezuela, this Supreme Tribunal of Justice, through the Judicial Commission created under the Regulations on the Direction, Governance and Administration of the Judicial Branch, approved by the Plenary Chamber on August 2, 2002 and published in Official Gazette No. 37,014, of August 15, 2002, in application of the provisions of Article 56 of the Organic Law of the Supreme Tribunal, considering the process and procedures for selecting and appointing the country's judges in accordance with Article 255 of the Constitution, and given the urgent need to fill the vacancies that open up on the benches of the various courts to keep judicial proceedings moving forward and after examining the candidates' credentials,

RESOLVES:

SINGLE PARAGRAPH: Given the resignation of Judge Norma Elisa Sandoval Moreno, Attorney MERCEDES CHOCHRÓN, C.I. No.4.081.953, is hereby given a temporary appointment as Judge of the Criminal Court of First Instance of the Metropolitan Caracas Judicial Circuit.³⁵

52. The letter notifying the alleged victim of her appointment and requesting whether she accepts it, also states that "the appointment notification process to determine whether there are any objections to your appointment has not yet been completed."³⁶ None of the provisions cited in the document appointing Mercedes Chocrón governs or defines the period or the nature of her appointment as a temporary judge.

53. On November 5, 2002, Mercedes Chocrón sent a letter in which she accepted the aforementioned post.³⁷ It is uncontested fact that on November 11, 2002, Mercedes Chocrón, in her capacity as designated temporary judge, demonstrated her acceptance of the appointment to the bench by taking possession of its respective records, consisting of 234 cases, as well as the keys to the courtroom.³⁸ Another uncontested fact

³⁴ Annex 22. Resolution No. 75 of July 16, 1999, published in Special Official Gazette No. 5.370; and Annex 23. Statement of April 2001 from the Office of the Executive Director of the Judiciary. This statement indicates that Mercedes Chocrón "renders services in this body as a Regular First Instance Judge of the Transitional Procedural Regime from the entry date of 07/30/1999 to the present [...]".

³⁵ Annex 24. Resolution No. 2002-1162 dated October 28, 2002 from the Judicial Commission of the Supreme Tribunal of Justice.

³⁶ Annex 25. Official Letter No. TPE-02-1901 dated October 30, 2002 from the Full Court of the Supreme Tribunal of Justice. By means of this official letter, the Supreme Tribunal of Justice sends a communication to Mercedes Chocrón to inform her that on October 28, 2002 the Judicial Commission had appointed her as a temporary judge of the Criminal Court of First Instance of the Metropolitan Caracas Judicial District "to fill the vacancy created by the resignation of Norma Elisa Sandoval Moreno. The present notification is urgent, so that should you accept the appointment, kindly acknowledge receipt of same and come to the office of the President of the respective Criminal Court Circuit to be sworn in, as the law requires. However, the appointment notification process to determine whether there are any objections to your appointment has not yet been completed."

³⁷ Annex 26. Letter dated November 5, 2002 from Mercedes Chocrón to the Chief Justice and other Justices on the Supreme Tribunal of Justice.

is that eight days after publication of her appointment (the period prescribed to receive objections or complaints), she was still serving in her post.³⁹

54. Mercedes Chocrón served as temporary judge of the Criminal Court of First Instance of the Metropolitan Caracas Judicial Circuit from November 11, 2002 to the date of her removal on February 3, 2003.

b. The removal process

55. It is uncontested that on February 3, 2003, Mercedes Chocrón was removed from her position as temporary judge of the Criminal Court of First Instance of the Metropolitan Caracas Judicial Circuit. She was removed by a decision of the Judicial Commission of the Supreme Tribunal of Justice. Notification was by Memorandum No. TPE-03-0152, which cited as grounds “comments made to [that] office.”⁴⁰

56. The IACHR has in its files a copy of the minutes of the Judicial Commission’s meeting, which reads as follows:

[...] Today, February 3, 2003, Justices Iván Rincón Urdaneta, Carlos Oberto Vélez, Juan Rafael Perdomo and Luís Enrique Martínez Hernández, Chair, Vice Chair and members of the Judicial Commission, met in the sessions hall for the Full Chamber. Justices Rafael Pérez Perdomo and Hadel Mostaza Paolini were unable to attend.
[...]

Additional points: consideration of comments submitted by magistrates in connection with the appointment of Mercedes Chocrón [...] in the post of Judge of the Court of First Instance of the Metropolitan Caracas Criminal Court Circuit. Those present observed that her appointment as a Temporary Judge had been on the condition that no objections would be forthcoming. The views of the magistrates have to be considered. In any event, temporary judges can be replaced, as their appointment is by the authority of the Supreme Tribunal and lasts until the vacancies can be filled through the appropriate competitive selection process. Therefore, having studied the comments sent to this office, the decision was to nullify the appointment of citizen Mercedes Chocrón as Temporary Judge of the Court of First Instance of the Metropolitan Caracas Criminal Court Circuit, decided at the session of October 28, 2002.⁴¹

57. By Document No. 009 of February 3, 2003, issued by the Fortieth Court of First Instance with Oversight over the Metropolitan Caracas Criminal Court Circuit, the order for an office for Mercedes Chocrón was canceled upon receipt of Memorandum No. TPE-03-

³⁸ Annex 27. Document No. 008-02 dated November 11, 2002 from the Fortieth Court of First Instance Overseeing the Metropolitan Caracas Criminal Judicial Circuit.

³⁹ Annex 28. Published on November 25, 2002 by the Office of the Executive Director of the Judiciary in the newspaper *El Universal* regarding the appointment of various judicial officials. This document indicates that on November 25, 2002 the Office of the Director of the Judiciary published a list of applicants appointed to various positions, among them Mercedes Chocrón, who was appointed to the position of Temporary Judges for the Court of First Instance of the Metropolitan Caracas Criminal Judicial Circuit, and that that publication issued an invitation to “all citizens to submit objections and/or complaints regarding any of the pre-selected applicants within eight (8) days of this publication to the Office of the Executive Director of the Judiciary [...]”. The appointment of Mercedes Chocrón was made public in a newspaper with national circulation.

⁴⁰ Annex 29. Official Letter No. TPE-03-0152 dated February 3, 2003 signed by the Chief Justice of the Supreme Tribunal of Justice sitting as the Full Court.

⁴¹ Annex 30. Minutes from the meeting of the Judicial Commission of the Supreme Tribunal of Justice of February 3, 2003.

0152 in which that court was informed of the decision taken by the Judicial Commission of the Supreme Tribunal to rescind the appointment of Chocrón to that court, based on comments made to the Judicial Commission.⁴²

58. In the February 25, 2003 issue of a newspaper with nationwide circulation, the Office of the Executive Director of the Judiciary of the Supreme Tribunal announced that the appointment of Mercedes Chocrón as a Temporary Judge was being annulled and another temporary judge was being designated to fill the vacancy.⁴³ Based on the information available, at the time of Chocrón's removal from the office of judge of the Criminal Court of First Instance no competitive selection process had been conducted, and she was therefore replaced with another temporary judge.

59. At the time when the events that are the subject of this case occurred, the competitive selection process was suspended. They were reinstated in November 2005, in other words, two years after the October 19, 2003 decision that confirmed the measure taken by the Judicial Commission that removed Chocrón from her position as a temporary judge.

c. Administrative and judicial remedies

60. On February 26, 2003, Mercedes Chocrón filed an administrative motion with the Commission seeking reconsideration of the decision that nullified her appointment as a temporary judge with the Court of First Instance of the Metropolitan Caracas Criminal Court Circuit. The petition for reconsideration was based on the fact that the decision to rescind her appointment as a provisional judge, due to comments made to the Judicial Commission, i.e., comments regarding the victim: "affects my job stability and my economic situation, as I have been serving as a Judge of First Instance in the Metropolitan Caracas Criminal Court Circuit since 1999 and thus far have no negative record on file nor any administrative inquiry and my growth in my position is as it should be for a judge operating within the law and with a sense of ethics and morals."⁴⁴

61. On June 16, 2003, the Judicial Commission dismissed Chocrón's motion for reconsideration. It wrote that:

As her status as a "temporary judge" suggests, plaintiff's appointment was necessitated by a pressing need to fill the vacancy left by the judge who held that seat on the bench, and because of the absence or non-existence of alternate judges selected by competition. This appointment was done as a means to ensure the continuity of the administration of justice and because of a vacuum in the natural ways in which the vacancy would otherwise be filled.

[...]

⁴² Annex 31. Document No. 009 of February 5, 2003 from the Fortieth Court of First Instance Overseeing the Metropolitan Caracas Judicial Circuit.

⁴³ Annex 32. Published on February 25, 2003 by the Office of the Executive Director of the Judiciary in the newspaper *El Nacional* rescinding the appointment of Mercedes Chocrón and replacing her with another temporary judge.

⁴⁴ Annex 33. Petition for reconsideration submitted on February 26, 2003 by Mercedes Chocrón to the President and other members of the Judicial Commission of the Supreme Tribunal of Justice.

Two elements essential to the resolution of this case follow from the facts described above: first, the plaintiff's appointment was done in exercise of the Judicial Commission's eminently discretionary authority [...] and plaintiff joined the Judicial Branch but not via the only avenue that the Constitution requires to enter the judicial career service, which is the competitive selection process required under Article 255 of the Constitution.

As plaintiff did not become part of the *judicial career service*, she does not enjoy the benefits that the career service affords, one of the principal benefits being tenure in the exercise of her functions.

[...]

Because plaintiff does not enjoy tenure in office, it is clear that the body authorized to appoint her could use that same authority to nullify the appointment, which implies broad, discretionary and virtually unlimited authority; the argument of a judicial official's job stability does not stand up to that kind of authority.

[...]

Of course, the competent body always retains its authority vis-à-vis any discretionary decision that it issues, which allows it to review that decision at any time and decide to revoke it if it so deems; the authority to revoke the appointment does not require fault or blame on the temporary judge's part.⁴⁵

62. On May 5, 2003, Mercedes Chocrón filed an appeal [*recurso de nulidad*] with the Political-Administrative Chamber of the Supreme Tribunal, and a request seeking a precautionary measure, both challenging the decision to remove her as a temporary judge. In her appeal, Chocrón alleged: 1) a lack of competence on the part of the Judicial Commission of the Supreme Court, which had taken on disciplinary functions that were the province of the Commission for the Functioning and Restructuring of the Judicial System, as stipulated in the Transitional Government Regime published in Official Gazette No. 36859 of December 29, 1999; 2) that no proceedings were conducted prior to issuing the administrative decision; 3) that the removal was effected in violation of due process, as it was without foundation because there was never any explanation of the facts and the laws that supported the comments presented to the Judicial Commission that decided to remove Chocrón.

63. On October 19, 2004, the Political-Administrative Chamber of the Supreme Tribunal of Justice dismissed the appeal seeking nullification of the decision. From the text of Judgment No. 01798, the Supreme Tribunal's considerations in dismissing the appeal were the following:

[...] to establish the boundaries of authority, particularly as regards removal of an official from the Judicial Branch, a distinction must be made between dismissal on disciplinary grounds and, conversely, removal by a decision that nullifies the appointment. Where it is most far-reaching, i.e., with respect to permanent judges who have achieved security of tenure by virtue of having won the respective competitive selection process and provisional judges, the disciplinary function is today the exclusive purview of the Commission for the Functioning and Restructuring of the Judicial System, created as a transitional body until the disciplinary courts are established. However, where no disciplinary case is involved, the authority to remove provisional or temporary judges belongs to the Judicial Commission of the Supreme Tribunal, by express delegation of the Full Chamber. In other words, the

⁴⁵ Annex 34. Decision of June 16, 2003 of the Judicial Commission of the Supreme Tribunal of Justice.

Judicial Commission has as much authority to appoint provisional judges as to terminate their appointments, when the majority of the Commission's members so decide, and provided no disciplinary case is involved in which case the body charged with imposing sanctions would have to intervene. Hence, based on this reasoning, for the Political-Administrative Chamber there is no question that the Judicial Commission of the Supreme Tribunal has the authority to take action, within established boundaries, to appoint and remove judges with provisional appointments. It is so decided.

[...]

It is a well known fact that any disciplinary measure allowed under the Judicial Career Service Act must be preceded by an administrative hearing, whether the officer is a member of the career service or one appointed and removed by discretionary authority. On the other hand, when the judge to be removed has a provisional appointment, the administrative decision ordering separation from the post need not be conditional upon a prior hearing. It is the guarantee of tenure in office and, if necessary, the right to a hearing that a judge earns by winning a competitive selection process. The Constitution now prescribes that competitive selection process as a condition *sine qua non* to become a tenured or career judge. [...] Plaintiff joined the Judicial Branch as a temporary; her tenure was contingent upon the respective competitive selection process. Given the circumstances, the claims that attorney Mercedes Chocrón is making have no tenable basis in the law: while she was given the opportunity to be appointed by the Judicial Commission to the post of Judge of First Instance in the Metropolitan Caracas Criminal Court Circuit, that opportunity had to be viewed as temporary. This Chamber therefore considers that just as the Judicial Commission then had the authority to appoint her to the post directly, without an intervening competitive selection process, it also has the same authority to terminate that appointment, without the requirement of a prior hearing and without having to explain the specific and legal reasons for her removal. Plaintiff would only achieve security of tenure by competing for a tenured seat on the bench. She has not shown that to be the case; hence the outcome is what it is.⁴⁶

VII. LEGAL CONSIDERATIONS

1. The right to judicial guarantees and judicial protection (Articles 8(1), 25(1), and 1(1) of the American Convention)

64. Article 8 of the American Convention provides the following in subparagraphs 1 and 2:

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

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

[...];

⁴⁶ Annex 35. Decision No. 01798 of October 19, 2004 of the Political-Administrative Chamber of the Supreme Tribunal of Justice.

- b. prior notification in detail to the accused of the charges against him;
- c. adequate time and means for the preparation of his defense;
- d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

[...]

65. Article 25(1) of the American Convention provides that:

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.

66. Article 1(1) of the American Convention states that:

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.

67. The instant case involves the arbitrary removal of a judge in the absence of due process guarantees and without any effective judicial remedy for challenging such violations. Given that the violations of the American Convention that the Commission alleges in this application occurred in an already known context in which there are no guarantees or clear guidelines in the area of appointing and removing judges in Venezuela, the legal arguments will be presented in the following order: a) Provisional status and judicial independence; and b) Due process guarantees and access to an effective remedy.

a. Provisional status and judicial independence

68. One of the problems surrounding the appointment of temporary or provisional judges whose term of office is not defined by law is that the position of the judge from which he or she makes decision based on the law and thus guarantees the independent administration of justice becomes uncertain and vulnerable to external pressures intended to influence his or her decisions. As will be developed further in this section, the jurisprudence of the Inter-American Court⁴⁷ and the European Court⁴⁸ as well as the United Nations Basic Principles on the Independence of the Judiciary⁴⁹ all affirm the importance of ensuring clear

⁴⁷ I/A Court H.R. *Case of the Constitutional Court (Aguirre Roca, Rey Ferry and Revoredo Marsano v. Peru)*, Judgment of June 26, 1987. Series C, No. 71, para. 73; and *Judicial Guarantees in States 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.

⁴⁸ ECHR, *Campbell and Fell*, Judgment of June 28, 1984, series A, No. 80, para. 80; and ECHR, *Engel et al.* Judge Series A, No. 22, para. 68.

⁴⁹ As regards the right of judges to tenure in their position, which implies that they may not be removed or have job security, the United Nations Basic Principles on the Independence of the Judiciary (hereinafter "the Basic Principles") establish:

processes for appointment and removing judges and strict respect for the guarantee of tenure, as a corollary to judicial independence.

69. The Inter-American Court has held that one of the principal purposes of the separation of powers is to guarantee the independence of judges and, for such purposes, different political systems have conceived strict procedures for both their appointment and removal.⁵⁰ In addition, citing the European Court, the Inter-American Court has established that the independence of any judge assumes that there is a suitable appointment process,⁵¹ with a fixed term of office,⁵² and a guarantee against external pressures.⁵³

70. On the term of office requirement, the European Court has established that the inability to remove judges during their term of office must be considered, at least in general terms, as a corollary to the judicial independence enshrined in Article 6.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁵⁴ This subject is also included in the Basic Principles on the Independence of the Judiciary.⁵⁵

71. Those principles contain specific guidelines that must be taken into account in procedures for the removal of judges. Principles 12 and 18 indicate as follows:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

[...]

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age or retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists (UN, Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan, August 26 to September 6, 1985, Doc. A/CONF.121/22/Rev.1 p. 59 (1985).

⁵⁰ I/A Court H.R., *Case of the Constitutional Court*. Judgment of January 31, 2001. Series C, No. 71, para. 73.

⁵¹ ECHR, Langborger, Judgment of January 27, 1989, Series A, No. 155, para. 32; and ECHR, Campbell and Fell, Judgment of June 28, 1984, Series A, No. 80, para. 78.

⁵² ECHR, Langborger, Judgment of January 27, 1989, Series A, No. 155, para. 32; ECHR, Campbell and Fell, Judgment of June 28, 1984, Series A, No. 80, para. 78; and ECHR, Le Compte, Van Leuven and De Meyere, Judgment of June 23, 1981, Series A, no. 43, para. 55.

⁵³ ECHR, Langborger, Judgment of January 27, 1989, Series A, No. 155, para. 32; ECHR, Campbell and Fell, Judgment of June 28, 1984, Series A, No. 80, para. 78; and ECHR, Piersack, Judgment of October 1, 1982, Series A, No. 53, para. 27.

⁵⁴ ECHR, Campbell and Fell, Judgment of June 28, 1984, Series A, No. 80, para. 80; and ECHR, Engel et al., Judgment, Series A, No. 22, para. 68.

⁵⁵ Principles 1, 11, and 12 of the United Nations Basic Principles on the Independence of the Judiciary. In addition, the Recommendations of the Council of Europe on the Independence, Efficiency and Role of Judges indicate: Principle I. General Principles on the Independence of Judges: (...) 2. a) The independence of judges should be guaranteed pursuant to the provisions of the Convention and constitutional principles, for example by inserting specific provisions in the constitutions or other legislation or incorporating the provisions of this recommendation in internal law. Subject to the legal traditions of each state, such rules may provide, for instance, the following: (...) the terms of office of judges and their remuneration should be guaranteed by law. See. Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges (adopted by the Committee of Ministers on October 13, 1994 at the 58th meeting of Deputy Ministers).

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties⁵⁶.

72. Based on the above, the Commission holds that, unlike other public offices, where there may be some sort of free appointment and removal, in the case of judges the guarantee of stability in the performance of the office must be heightened, arising from the need to establish mechanisms to ensure their independence from the other branches of government.

73. The Commission emphasizes that these criteria make no distinction between persons appointed on a provisional, temporary, or permanent basis. In effect, the Commission believes that the State's duty to ensure the above guarantees with respect to judges is independent of whether their appointment is temporary or permanent, since the aim is to protect the judicial function itself by providing stability.

74. The Commission believes that the concept of a provisional and/or temporary judge is not necessarily contrary to international standards for the protection of human rights when there are clear regulations in terms of rights and guarantees with respect to appointment, tenure, and removal. In effect, the Commission believes that provisional or temporary judges, by exercising a role identical to that of judges who attained their office through competitive selection procedures or some other legally established mechanism, must have a term or defined condition for tenure in office since, otherwise, the State would be failing to meet its international obligations in the area of judicial independence.

75. In addition, such judges may not be removed from their position except for having completed that term or condition, or as a result of their disqualification for the performance of a judicial role. Secondly, in accordance with relevant international standards,⁵⁷ and the Venezuelan Constitution and law,⁵⁸ the guarantees of due process must be provided.

76. Along these same lines, the Inter-American Court has maintained that,

States are bound to ensure that provisional judges be independent and therefore must grant them some sort of stability and permanence in office, for to be provisional is not equivalent to being discretionally removable from office. In fact, the United Nations Human Rights Committee has expressed that dismissal of judges by the executive, before the expiry of the term for which they had been appointed, without any specific reasons given to them and without effective judicial protection being

⁵⁶ United Nations Basic Principles on the Independence of the Judiciary.

⁵⁷ Principles 1, 11 and 12. United Nations Basic Principles on the Independence of the Judiciary.

⁵⁸ According to Article 49 of the Venezuelan Constitution: All judicial and administrative actions shall be subject to due process, therefore:

[...]

5) Every person has the right to be heard in proceedings of any kind, with all due guarantees and within such reasonable time limit as may be legally determined, by a competent, independent and impartial court established in advance. Anyone who does not speak Spanish or is unable to communicate verbally is entitled to an interpreter.

[...]

available to contest the dismissal, is incompatible with the independence of the judiciary.⁵⁹ Along the same lines, the Court considers that the fact that appointments are provisional should not modify in any manner the safeguards instituted to guarantee the good performance of the judges and to ultimately benefit the parties to a case. Also, such provisional appointments must not extend indefinitely in time, and must be subject to a condition subsequent, such as a predetermined deadline or the holding and completion of a public competitive selection process based on ability and qualifications, or of a public competitive examination, whereby a permanent replacement for the provisional judge is appointed.⁶⁰ Provisional appointments must be an exceptional situation, rather than the rule. Thus, when provisional judges act for a long time, or the fact is that most judges are provisional, material hindrances to the independence of the judiciary are generated. Such vulnerable situation of the Judiciary is compounded if no removal from office procedures respectful of the international duties of the States are in place either.⁶¹

77. Based on the above, the Commission is of the opinion that in the light of the guarantee of judicial independence enshrined in Article 8(1) of the Convention, States must ensure that all persons exercising judicial roles have heightened guarantees of stability in office, with the understanding that, except when serious disciplinary offenses are committed, stability in office must be respected for the time and under the condition established in the appointment, without making any distinction between career judges and judges performing judicial roles on a temporary or provisional basis. The temporary or provisional nature of their appointment must in any case be defined by a specific period or condition for performance in the judiciary, so as to guarantee that these judges will not be removed based on the rulings they adopt or based on arbitrary decisions made by administrative or judicial entities.

78. The Commission holds that the appointment of temporary judges without a term or condition for their appointment must in itself be considered inconsistent with a State's international obligations in the area of judicial independence and cannot be used as an excuse for not granting due process guarantees in a decision to remove a judge.

79. As submitted in the section on factual considerations, it has been demonstrated that the document announcing the temporary appointment of Mercedes Chocrón did not establish any term of office for the position, a fact that the Political-Administrative Chamber of the Supreme Tribunal of Justice used to reject the claims made by the victim and legitimize the discretionary powers of the Judicial Commission of the Supreme Tribunal of Justice in the appointment and removal of temporary or provisional judges, which it categorized as freely appointed and removed.

80. According to the international standards noted above, this fact in itself constitutes a failure to recognize the State's obligation to ensure the independence of judicial officials in the light of Article 8(1) of the American Convention. In addition, the Commission believes that the appointment of Mercedes Chocrón as a temporary judge without any term or condition for the performance of the position, does not constitute an

⁵⁹ I/A Court H.R., *Case of Apitz Barbera et al.* ("First Court of Administrative Disputes"). Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C, No. 182, para. 43 citing the United Nations, Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, August 23, 2007, para. 20.

⁶⁰ I/A Court H.R., *Case of Apitz Barbera et al.* ("First Court of Administrative Disputes"). Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C, No. 182, para. 43.

⁶¹ I/A Court H.R., *Case of Apitz Barbera et al.* ("First Court of Administrative Disputes"). Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C, No. 182, para. 43.

acceptable reason why the Venezuelan State did not respect the guarantee of stability that accrued to her based on the judicial nature of the position and did not grant her due process guarantees before removing her. By proceeding in this fashion, the Venezuelan State acted in violation of the principle of judicial independence established in Article 8(1) of the American Convention.

81. The Commission presents below the arguments regarding the due process violations committed against the victim in the removal process.

b. Guarantee of due process and access to an effective remedy

82. In its jurisprudence, the Inter-American Court has been developing the reach of the guarantees of due process and the scope of their application. The Court's interpretation has been that such guarantees are not limited to judicial remedies *sensu stricto* "but rather the procedural requirements that should be observed...so that a person may defend himself adequately in the face of any type of act of the State that affects his rights."⁶² As the Court has emphasized, States also grant administrative authorities, whether individuals or panels, the role of adopting decisions to determine rights.⁶³

83. Specifically, when such acts are disciplinary in nature, the Court has indicated that the procedural guarantees provided in Articles 8.1 and 8.2 of the American Convention are applicable.⁶⁴ In this regard, the Inter-American Court⁶⁵ has taken into consideration the jurisprudence of the European Court indicating that:

the principles set out in paragraph 2 (Art. 6-2) and 3 (that is to say, subparagraphs a, b and d) [... of the European Convention on Human Rights], are applicable *mutatis mutandis* to disciplinary proceedings subject to paragraph 1 (Art. 6-1) in the same way as in the case of a person charged with a criminal offense.⁶⁶

84. The Court has also established that in accordance with Article 8.1 of the Convention, when determining the individual's criminal, civil, labor, fiscal, or any other rights and obligations, "due guarantees" must be observed to ensure the right to due process, according to the proceeding involved.⁶⁷ Failure to provide any of these guarantees leads to a violation of this provision of the Convention.⁶⁸

⁶² I/A Court H.R. *Case of the Constitutional Court*. Judgment of January 31, 2001. Series C, No. 71, para. 69; and *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25 and 8 of the American Convention). Advisory Opinion OC-9/87 of October 6, 1987. Series A, No. 9, para. 27.

⁶³ I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C, No. 151, para. 118.

⁶⁴ I/A Court H.R., *Case of Baena Ricardo et al.* Judgment of February 2, 2001. Series C, No. 72, para. 124.

⁶⁵ I/A Court H.R., *Case of Baena Ricardo et al.* Judgment of February 2, 2001. Series C, No. 72, para. 128.

⁶⁶ ECHR, *Albert and Le Compte*, Judgment of February 10, 1983, Series A, No. 58, para. 39.

⁶⁷ I/A Court H.R. *Yatama Case*. Judgment of June 23, 2005. Series C, No. 127, paras. 148-164; and *Case of Baena Ricardo et al.* Judgment of February 2, 2001. Series C, No. 72 paras. 127-134.

⁶⁸ I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C, No. 151, para. 117.

85. The Court has also maintained that an individual has the right to expect that decisions adopted by internal bodies that could affect that individual's rights or interests will be well-founded since they would otherwise be arbitrary decisions.⁶⁹ The Court has established that this obligation also extends to the administrative agencies of the State when the direct consequences of their decisions could affect the rights of individuals.⁷⁰

86. In a recent case, the Inter-American Court maintained that grounds are the external expression of the sound reasoning that makes it possible to reach a conclusion⁷¹ and reiterated that grounds shows the parties that they have been heard and, in those cases where decisions can be appealed, it provides them with the ability to criticize the decision and achieve a reconsideration of the issue by a higher court. For all these reasons, the duty to state grounds is one of the "due guarantees" included in Article 8.1 intended to safeguard the right to due process.⁷²

87. The Commission holds that there are various reasons why Mercedes Chocrón should have had access to a series of due process guarantees as provided Article 8 of the American Convention. The first reason is based on what was stated in the preceding section, considering the State's special obligations with respect to the independence of judges. The second reason is based on the fact that the nature of the removal, although not carried out in a formal disciplinary process, could be likened to a sanction, based on the very nature of the result as well it's being based on "comments" received. The third reason refers to the fact that, even admitting for purposes of discussion the State's thesis that the removal was not in the nature of a sanction, the decision of the Judicial Commission of the Supreme Tribunal of Justice did make determinations affecting the rights and interests of the victim.

88. The facts of the case indicate that Mercedes Chocrón was removed from her position as a temporary judge on February 3, 2003 based on "comments" from judges that were received by the Judicial Commission of the Supreme Tribunal of Justice, although the victim was unable to learn the content of those comments. It is also known that according to the rules applicable at the time of Mercedes Chocrón's removal, the discretionary powers assigned to the Judicial Commission as an administrative entity, without a disciplinary function, were to appoint and remove temporary and provisional judges for the purpose of filling vacancies within the Judicial Branch.

⁶⁹ I/A Court H.R., *Yatama Case*. Judgment of June 23, 2005. Series C, No. 127, para. 144. On this point, the Inter-American Court bases its views on the following cases heard by the European Court: *García Ruiz v. Spain* [GC], No. 30544/96, § 26, ECHR 1999-I; and *H. v. Belgium*, Judgment of 30 November 1987, Series A, No. 127-B, para. 53. In addition, the European Court has held that judges must indicate with sufficient clarity the reasons that formed the basis for their decisions. See. ECHR, *Hadjianastassiou v. Greece*, Judgment of 16 December 1992.

⁷⁰ I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C, No. 151, paras. 116 and 120; *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C, No. 135, para. 216; and *Yatama Case*. Judgment of June 23, 2005. Series C, No. 127, para. 152.

⁷¹ I/A Court H.R., *Case of Chaparro Álvarez and Lapo Íñiguez*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C, No. 170, para. 107.

⁷² I/A Court H.R., *Case of Apitz Barbera et al.* ("First Court of Administrative Disputes"). Preliminary Objections, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C, No. 182, paras. 77 and 78. The Human Rights Committee held that the appeals court's failure to set forth the reasons for its decision in writing limited the accused's chances of success should he seek authorization to appeal to a higher court, preventing him from making use of an additional remedy. United Nations, Human Rights Committee, *Hamilton v. Jamaica*, Communication No. 333/1988, CCPR/C/50/D/333/1988, 23 March 1994.

89. The Venezuelan State denied Mercedes Chocrón a series of guarantees considered in Article 8 of the American Convention by not informing her of the comments made to the Judicial Commission of the Supreme Tribunal of Justice and by not allowing her the opportunity to exercise her defense in an opposing action. This implies that Mercedes Chocrón did not have the opportunity to present evidence to contradict the reasons for which she was removed; she was not granted any time at all to prepare her defense or at least exercise it; and she did not know whether there was a file on her or, if so, the contents of that file.

90. In addition, the decision of the Judicial Commission of the Supreme Tribunal of Justice, by not explaining the basis for her removal, specifically the comments on which it was based, violated the guarantee of proper substantiation provided in Article 8(1) of the American Convention, and set up an obstacle to the victim's ability to adequately exercise judicial remedies against the administrative action.

91. Regarding the scope of the right enshrined in Article 25 of the Convention, the Inter-American Court stated that:

Article 25(1) of the Convention has established, in broad terms, the obligation of the States to provide to all persons within their jurisdiction, an effective judicial remedy to violations of their fundamental rights. It provides, moreover, for the application of the guarantee recognized therein not only to the rights contained in the Convention, but also to those recognized by the Constitution and laws.⁷³

92. In addition, the Court has held that in order for an effective remedy to exist it is not enough that such remedy be provided by the Constitution or the law or that it be formally admissible. Rather, the remedy must be truly appropriate for establishing whether a human rights violation has been committed.⁷⁴

93. The Court has established that domestic remedies must be available to the interested party, must effectively and soundly resolve the issue raised, and must potentially provide appropriate compensation.⁷⁵ In addition, it has been indicated that the process must tend to afford concrete protection for the right recognized in the judicial ruling, through the proper application of that ruling.⁷⁶ The Inter-American Court has also repeatedly established that the guarantee of an effective judicial remedy is a basic pillar, not only of the American Convention, "but also of the rule of law in a democratic society, in the sense of the Convention."⁷⁷ The judicial remedy need not be decided in favor of the party alleging the

⁷³ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C, No. 158, para. 122; *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C, No. 151, para. 128; and *Yatama Case*. Judgment of June 23, 2005. Series C, No. 127, para. 167.

⁷⁴ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C, No. 158, para. 125; *Case of the Yakye Axa Indigenous Community*. Judgment of July 17, 2005. Series C, No. 125, para. 61; and the "*Five Pensioners*" Case. Judgment of February 28, 2003. Series C, No. 98, para. 136.

⁷⁵ I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C, No. 158, para. 126.

⁷⁶ I/A Court H.R., *Case of Acevedo Jaramillo et al.* Judgment of February 7, 2006. Series C, No. 144, para. 217.

violation of their rights in order for it to be considered “effective.” However, effectiveness does imply that the judicial body has evaluated the merits of the complaint.⁷⁸ Thus, the Court has established in its case law that the remedies available for achieving the judicial clarification of human rights violations must not only formally exist, but they must also be suitable and effective in the task of supporting the right to justice of persons under the jurisdiction of the State.⁷⁹

94. The Commission emphasizes that the Political-Administrative Chamber of the Supreme Tribunal of Justice, when it became aware of the case because of the appeal [*recurso de nulidad*] filed by the victim, rejected all arguments relating to the illegality of the discretionary action and the absence of due process guarantees in the process that removed Mercedes Chocrón. In that respect, the Political-Administrative Chamber maintained that, given the victim’s status as a temporary judge, her position was subject to free appointment and removal and, accordingly, she was not entitled to any guarantee since there were no disciplinary grounds involved in her dismissal, but rather an issue of convenience.⁸⁰

95. It is clear from the decision of the TSJ in response to the appeal filed by Mercedes Chocrón against the decision to remove her from the bench that the TSJ did not express the grounds that led to her removal, and limited itself to confirming the authority of the body that removed her, affirming that judges with her status are not entitled judicial guarantees. In that instance, Mercedes Chocrón was again unable to learn about or dispute the grounds for the decision to remove her from the bench.

96. In this respect, the appeal filed by the victim not only did not constitute an effective remedy to guarantee the rights violated by means of her removal by the Judicial Commission, it also perpetuated that violation by keeping Mercedes Chocrón totally in the dark regarding the reasons that led to her removal.

97. Based on the preceding considerations, the Inter-American Commission asks the Court to conclude and declare that the State of Venezuela violated the rights to judicial guarantees and judicial protection enshrined in Articles 8 and 25 of the American Convention, respectively.

98. Finally, the Commission also believes that the State has failed to honor its obligations to respect and guarantee rights, as established in Article 1(1) of the American Convention, pursuant to which the State must ensure the exercise of the rights and freedoms recognized in the Convention with respect to persons under its jurisdiction. This obligation involves the duty to organize the governmental apparatus and generally all structures through which the exercise of governmental power is manifested in such a way that the free and full exercise of human rights is legally ensured.⁸¹

⁷⁷ *Case of Baena Ricardo et al.* Jurisdiction. Judgment of November 28, 2003. Series C, No. 104, para. 90.

⁷⁸ IACHR, Report No. 30/97, Case 10.087, Gustavo Carranza (Argentina), September 30, 1997, para. 74.

⁷⁹ I/A Court H.R., “*Five Pensioners*” Case”. Judgment of February 28, 2003. Series C, No. 98, para. 126; *Cantos Case*. Judgment of November 28, 2002. Series C, No. 97, para. 52; *Case of the Mayagna (Sumo) Awá Tz’ikni Community*. Judgment of August 31, 2001. Series C, No. 79, para. 112; *Case of Bámaca Velásquez*. Judgment of November 25, 2000. Series C, No. 70, para. 191; and *Barrios Altos Case*. Judgment of March 14, 2001. Series C, No. 75, para. 43.

⁸⁰ Annex 35. Judgment No. 01798 of October 19, 2004 of the Political-Administrative Chamber of the Supreme Tribunal of Justice.

⁸¹ I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 2, 1988, Series C, No. 4, para. 166.

2. The duty to adopt provisions of domestic law (Article 2 of the American Convention)

99. Article 2 of the Convention establishes the obligation to make domestic laws or other provisions conform to the international law of human rights:

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.

100. Throughout this application, the Commission has argued that the absence of guarantees in the transitory system of the Judicial Branch with respect to the appointment, time in office, and removal of temporary judges without access to judicial guarantees had an effect on the rights of the victim.

101. The effectiveness of rights and freedoms in a democratic system requires a clear and defined legal and institutional order in which laws prevail over the will of those in government, and in which there is judicial oversight of the constitutionality and legality of the actions of government, which means to say that this presupposes respect for the rule of law. Notable among the key standards for the full operation of the rule of law are the standards intended to ensure the proper functioning of the Judicial Branch, which includes rules for the appointment, tenure, and removal of judges.

102. The Commission believes that in the instant case the branches of government have failed to adopt the legislative measures necessary to guarantee rules compatible with international standards in the area of the appointment, tenure, and removal of judges.

103. The available information indicates that no suitable and effective measures have been adopted to safeguard the independence of the Judicial Branch with respect to the rights and guarantees that, in accordance with inter-American jurisprudence and international principles on the subject of judicial independence, should govern the appointment and removal of regular, temporary, or provisional judges.

104. In the specific case, the transitory regulations applied to the victim (concentrated in the powers granted to the Judicial Commission of the TSJ) do not satisfy international standards in the area of judicial independence and guarantees of due process.

105. The Inter-American Commission asks the Inter-American Court to conclude and declare that the absence of clear rules for the appointment, tenure, and removal of judges regardless of the nature of their appointment, coupled with the effect of a transitory regime, constitutes a violation of Article 2 of the American Convention. As indicated in the section on reparations, the Commission feels that based on that article, it is the responsibility of the State to adapt its rules and practices so as to make them compatible with the international standards that are binding on the State.

VIII. REPARATIONS AND COSTS

106. Based on the facts alleged in this application and the continuing case law of the Inter-American Court establishing that "it is a principle of international law that any violation of an international obligation that has caused damages triggers the duty to make

adequate amends,"⁸² the Commission submits to the Court its views regarding the reparations and costs that the State of Venezuela should grant as a consequence of its responsibility for the human rights violations committed to the detriment of the victim.

107. Bearing in mind the Rules of Procedure of the Court, which grant autonomous representation to the individual, the Commission merely outlines below the general guidelines and aspirations with respect to reparations and costs that it believes the Court should apply in the instant case. The Commission understands that it falls to the victim and her representatives to substantiate their claims in greater detail, in accordance with Article 63 of the American Convention and Article 24 and other provisions of the Court's Rules of Procedure. However, in the event that the victim's representatives do not make use of this right, the Court is asked to grant the Inter-American Commission a procedural opportunity to quantify the relevant claims. In addition, the Commission will inform the Court in due course if it has any observations regarding the amounts sought by the victim's representatives.

1. Obligation to make reparations

108. In the instant case, the Inter-American Commission has asked the Honorable Court to conclude and declare that the State of Venezuela has incurred international liability for violation of the rights to judicial guarantees and judicial protection, as established in Articles 8 and 25 of the American Convention, as they relate to the general obligations to respect and guarantee rights and to adopt provisions of domestic law, enshrined in Articles 1(1) and 2 of the same instrument, to the detriment of Mercedes Chocrón Chocrón.

109. Article 63.1 of the American Convention establishes that

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

110. As the Court has consistently maintained in its jurisprudence, "Article 63(1) of the American Convention embodies an accepted tenet that is a fundamental principle of the contemporary international law on the responsibility of States. The occurrence of a wrongful act that is attributable to a State gives rise the State's international liability, and its resulting duty to make reparation for and remove the consequences of the violation."⁸³

111. A respondent State may not invoke domestic legal provisions to modify or avoid complying with its obligations to make reparations, which are governed in all aspects (scope, nature, methods, and determination of beneficiaries) by international law.⁸⁴

⁸² I/A Court H.R.. *Case of Cantoral Huamaní and García Santacruz*. Judgment of July 10, 2007. Series C, No. 167, para. 156; I/A Court H.R.. *Case of Zambrano Vélez et al.*. Judgment of July 4, 2007. Series C, No. 166, para. 103; and I/A Court H.R.. *Case of Escué Zapata*. Judgment of July 4, 2007. Series C, No. 165, para. 126.

⁸³ I/A Court H.R., *La Cantuta Case*. Judgment of November 29, 2006. Series C, No. 162, para. 200; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C, No. 160, para. 414; I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C, No. 150, para. 116.

⁸⁴ I/A Court H.R.. *Case of Cantoral Huamaní and García Santacruz*. Judgment of July 10, 2007. Series C, No. 167, para. 190; I/A Court H.R.. *Case of Zambrano Vélez et al.* Judgment of July 4, 2007. Series C, No. 166, para. 148; I/A Court H.R., *La Cantuta Case*. Judgment on the merits, reparations and costs. Judgment of

2. Beneficiary

112. Article 63(1) of the American Convention requires redress of the consequences of a violation and the payment of fair compensation. Given the nature of the instant case, the beneficiary of any reparations the Court may order the Venezuela State to make is the victim already mentioned in this application, Mercedes Chocrón Chocrón.

3. Reparation measures in the instant case

113. Reparations are crucial in ensuring that justice is done in a given case, and are the mechanism whereby the Court's decisions move beyond the realm of mere moral condemnation. Reparations are those measures that tend to eliminate the effects of violations that have been committed.⁸⁵ Such measures include the various ways in which a State may address its international responsibility, which in accordance with international law consist of restitution, compensation, rehabilitation, satisfaction and non-repetition measures.⁸⁶

114. Reparation of a harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of restoring the situation that existed prior to the violation.

115. In the instant case, the Commission asks the Court to order the State to reinstate Mercedes Chocrón to the position of Judge of First Instance in Criminal Matters in the Metropolitan Caracas Judicial Circuit or, if not to that position, to a position with equal status within the hierarchy of the Judicial Branch. Similar to what the Court ordered in the Reverón Trujillo case,⁸⁷ the Commission asks the Court to order the State to reinstate the victim with the same compensation, social benefits and rank to which she would be entitled today had she not been removed.

116. As a compensation measure, the Commission considers it appropriate that the consequences produced by the victim's removal in violation of her rights as established under the American Convention be repaired through payment of an adequate compensation. In terms of material damage, the Court's case law on reparations has consistently established that material damages include consequential damages and lost earnings.⁸⁸

November 29, 2006 Series C, No. 162, para. 200; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C, No. 160, para. 415.

⁸⁵ I/A Court H.R. *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 190; *Case of the 19 Merchants*, *supra*, para. 223; *Case of Myrna Mack Chang*, *supra*, para. 237; *Cantos Case*, *supra*, para. 108; and the *Caracazo Case. Reparations* (Art. 63.1 of the American Convention on Human Rights). Judgment of August 19, 2002. Series C, No. 95, para. 78.

⁸⁶ See United Nations, *Final report submitted by Theo Van Boven, Special Rapporteur for Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights*, E/CN.4/Sub2/1990/10, July 26, 1990. See also I/A Court H.R., *Blake Case. Reparations* (Art. 63.1 of the American Convention on Human Rights). Judgment of January 22, 1999. Series C, No. 48, para. 31; *Suárez Rosero Case, Reparations (Art. 63.1 of the American Convention on Human Rights)*, Judgment of January 20, 1999. Series C, No. 44, para. 41, and I/A Court H.R., *Castillo Páez Case. Reparations* (Art. 63.1 of the American Convention on Human Rights). Judgment of November 27, 1998. Series C, No. 43.

⁸⁷ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C, No. 197, para. 163.

⁸⁸ I/A Court H.R. *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 205 citing *Case of Maritza Urrutia*, *supra* 5, para. 155; *Case of Myrna Mack Chang*, *supra*, para. 250; and *Case of Juan Humberto Sánchez*, *supra*, para. 162.

117. Consequential damages have been understood as the direct and immediate effects that the facts have on assets. This concept considers effects on assets arising immediately and directly from the facts in terms of expenses incurred by victims and their relatives.⁸⁹ In addition, lost earnings is understood to mean the loss of income or benefits not received due to a specific fact and that can be quantified based on certain measurable and objective indicators.⁹⁰

118. Based on the above, the Commission asks that the Court order the State to pay salary and social and/or labor benefits that were not received from the moment of the victim's removal until her effective reinstatement.

119. Without prejudice to any claims the victim may submit at the proper procedural moment, the Commission asks that the Court establish an equitable amount for compensation pursuant to its broad powers in this area.

120. In addition to the above, the Commission considers it important in the instant case for the Court to order the satisfaction measures it deems appropriate, bearing in mind the nature of the violations alleged in this application.

121. As a guarantee of non-repetition and considering that the violations alleged in this application were generated by the belief that temporary and provisional judges in Venezuela can be freely appointed and removed, the Commission asks that the Honorable Court reiterate to the State the order it issued in the Reverón Trujillo case regarding amendment of rules and practices that reflect that belief.⁹¹

4. Costs and expenses

122. In accordance with the Court's ongoing case law, costs and expenses should be understood to be included in the concept of reparations enshrined in Article 63(1) of the American Convention, given that the actions taken by the victim, her beneficiaries, or her representatives to gain access to international justice involve outlays and commitments of a financial nature that should be compensated.⁹²

123. In the instant case, the Commission asks that the Court, once it has heard the victim's representatives, order the State of Venezuela to pay for costs and expenses that have been incurred and continue to be incurred to process the instant case within Venezuela and before the inter-American human rights system.

⁸⁹ I/A Court H.R., *Case of Loayza Tamayo. Reparations* (Art. 63.1 of the American Convention on Human Rights). Judgment of November 27, 1998. Series C, No. 42, para. 147; *Case of Aloeboetoe et al. Reparations* (Art. 63.1 of the American Convention on Human Rights). Judgment of September 10, 1993. Series C, No. 15, para. 50.

⁹⁰ *Ibidem*.

⁹¹ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C, No. 197, para. 193.

⁹² I/A Court H.R., *La Cantuta Case*. Judgment on the merits, reparations and costs. Judgment of November 29, 2006, Series C, No. 162, para. 243; I/A Court H.R., *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C, No. 160, para. 455; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*. Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C, No. 158, para. 152.

IX. PETITION

124. Based on the factual and legal considerations presented herein, the Inter-American Commission on Human Rights asks the Court to conclude and declare that:

- a) The State of Venezuela is responsible for violating the rights to judicial guarantees and judicial protection established in Articles 8 and 25 of the American Convention on Human Rights, as they relate to the general obligations to respect and guarantee rights and to adapt its domestic legal system, enshrined in Articles 1.1 and 2 of the same instrument, to the detriment of Mercedes Chocrón Chocrón.

and consequently, to order the State

- a) To reinstate Mercedes Chocrón Chocrón to the office of Judge of First Instance for Criminal Matters of the Metropolitan Caracas Judicial Circuit or, if not to that office, to another office of equal status within the hierarchy of the Judicial Branch;
- b) To pay Mercedes Chocrón Chocrón salary and labor and/or social benefits not received from the moment she was removed until her effective reinstatement;
- c) To adopt the measures necessary so that domestic regulations and relevant practice adhere to clear criteria and ensure guarantees in the appointment, tenure, and removal of judges, in accordance with the provisions established in the American Convention; and
- d) To pay the legal costs and expenses incurred in processing the instant case before the Inter-American Commission and Court.

X. SUPPORTING EVIDENCE

1. Documentary evidence

125. A list of currently available documentary evidence is provided below:

- Appendix 1.** IACHR, Report No. 9/09 (Merits), Case 12.556, *Mercedes Chocrón Chocrón*. Venezuela, March 17, 2009.
- Appendix 2.** IACHR, Report No. 38/06 (Admissibility), Petition 549-05, *Mercedes Chocrón Chocrón*, Venezuela, March 16, 2006.
- Appendix 3.** Case file from processing by the Inter-American Commission on Human Rights.
- Annex 1.** National Constituent Assembly. Decree Reorganizing all Organs of Government, August 12, 1999, published in Official Gazette No. 36.764 of August 12, 1999.
- Annex 2.** National Constituent Assembly. Decree Reorganizing the Judicial Branch and the Penitentiary System, August 19, 1999, published in Official Gazette No. 36.805 of October 11, 1999.
- Annex 3.** National Constituent Assembly. Decree on the Regime for the Transition of Public Power, December 22, 1999, published in Official Gazette No. 36.920 of March 28, 2000.

- Annex 4.** Regulations of the Commission for the Functioning and Restructuring of the Judicial System, published in Official Gazette No. 37.080 of November 17, 2000.
- Annex 5.** Constitution of the Bolivarian Republic of Venezuela, published in Special Gazette No. 5.453 of March 24, 2000.
- Annex 6.** Regulations on the Management, Governance, and Administration of the Judicial Branch, issued by the full court of the Supreme Tribunal of Justice, published in Official Gazette No. 37.014 of August 15, 2000.
- Annex 7.** Judicial Career Act of September 11, 1998, which entered into effect on January 23, 1999.
- Annex 8.** IACHR, Report on the Situation of Human Rights in Venezuela, Chapter I: The Administration of Justice and Human Rights. OEA/Ser.L/V/II.118, Doc. 4 Rev. 1, October 24, 2003.
- Annex 9.** IACHR, Annual Report 2004. Chapter V: Follow-up Report on Compliance by the State of Venezuela with the Recommendations Made by the IACHR in its Report on the Situation of Human Rights in Venezuela (2003). OEA/Ser.L/V/II.122, Doc. 5 Rev. 1, February 23, 2005.
- Annex 10.** IACHR, Annual Report 2005. Chapter IV: Venezuela, Section II, The Administration of Justice. OEA/Ser.L/V/II.124, Doc. 7, February 27, 2006.
- Annex 11.** IACHR, Annual Report 2006, Chapter IV: Venezuela, Section IV. Administration of Justice and Impunity for Violations of the Rights to Life and Human Treatment. OEA/Ser.L/V/II.127, Doc. 4 Rev. 1, March 3, 2007.
- Annex 12.** IACHR, Annual Report 2007, Chapter IV: Venezuela, Section VII: Institutionalality and the Administration of Justice. OEA/Ser.L/V/II.130, Doc. 22 Rev. 1, December 29, 2007.
- Annex 13.** Supreme Court of Justice (defunct). Political-Administrative Chamber. Decision of February 20, 1997.
- Annex 14.** Supreme Tribunal of Justice. Political-Administrative Chamber. Decision of August 2, 2007.
- Annex 15.** Supreme Tribunal of Justice. Political-Administrative Chamber. Decision of April 1, 2008.
- Annex 16.** Supreme Tribunal of Justice. Political-Administrative Chamber. Decision of June 17, 2008.
- Annex 17.** Statement issued on October 25, 1982 by the Ninth Criminal Court of First Instance of the Federal District and Miranda State Judicial Circuit.
- Annex 18.** Statement issued on July 25, 1991 by the Nineteen Criminal Superior Court of the Federal Department and Miranda State Judicial Circuit.

- Annex 19.** Statement issued on December 22, 1998 by the Sixteenth Criminal Court of First Instance for Criminal Matters and Protection of Public Assets of the Metropolitan Caracas Judicial Circuit.
- Annex 20.** Statement issued on July 23, 1999 by the Thirty-Second Criminal Court of First Instance of the Metropolitan Caracas Judicial Circuit.
- Annex 21.** Statement issued on July 16, 1999 by the Thirty-Seventh Criminal Court of the Metropolitan Caracas Judicial Circuit.
- Annex 22.** Resolution No. 75 of July 16, 1999, published in Special Official Gazette No. 5.370.
- Annex 23.** Statement of April 2001 from the Office of the Executive Director of the Judiciary.
- Annex 24.** Resolution No. 2002-1162 dated October 28, 2002 from the Judicial Commission of the Supreme Tribunal of Justice.
- Annex 25.** Official Letter No. TPE-02-1901 dated October 30, 2002 from the Full Court of the Supreme Tribunal of Justice.
- Annex 26.** Letter dated November 5, 2002 from Mercedes Chocrón to the Chief Justice and other Justices on the Supreme Tribunal of Justice.
- Annex 27.** Document No. 008-02 dated November 11, 2002 from the Fortieth Court of First Instance Overseeing the Metropolitan Caracas Criminal Judicial Circuit.
- Annex 28.** Published on November 25, 2002 by the Office of the Executive Director of the Judiciary in the newspaper *El Universal* regarding the appointment of various judicial officials.
- Annex 29.** Official Letter No. TPE-03-0152 dated February 3, 2003 signed by the Chief Justice of the Supreme Tribunal of Justice sitting as the Full Court.
- Annex 30.** Minutes from the meeting of the Judicial Commission of the Supreme Tribunal of Justice of February 3, 2003.
- Annex 31.** Document No. 009 of February 5, 2003 from the Fortieth Court of First Instance Overseeing the Metropolitan Caracas Judicial Circuit.
- Annex 32.** Published on February 25, 2003 by the Office of the Executive Director of the Judiciary in the newspaper *El Nacional* rescinding the appointment of Mercedes Chocrón and replacing her with another temporary judge.
- Annex 33.** Petition for reconsideration submitted on February 26, 2003 by Mercedes Chocrón to the President and other members of the Judicial Commission of the Supreme Tribunal of Justice.
- Annex 34.** Decision of June 16, 2003 of the Judicial Commission of the Supreme Tribunal of Justice.

Annex 35. Decision No. 01798 of October 19, 2004 of the Political-Administrative Chamber of the Supreme Tribunal of Justice.

Annex 36. Powers of attorney.

Annex 37. *Curriculum vitae* of Leandro Despouy, expert called by the Commission.

Annex 38. *Curriculum vitae* of Antonio Canova González, expert called by the Commission.

126. The Commission notes that the copies of the documents it is submitting as annexes are the best it has and has been able to obtain to date.

2. Witness testimony

127. The Commission asks the Court to accept the statement made by the victim:

- Mercedes Chocrón Chocrón, who will make a statement regarding the circumstances surrounding her removal from the Judicial Branch, regarding the judicial actions attempted, and regarding the resulting damage.

3. Expert testimony

128. The Commission asks the Court to accept the opinion of the following experts:

- Leandro Despouy, former Special United Nations Rapporteur on the Independence of Judges and Attorneys, who will offer his expertise regarding the guarantees that judges should have in a state of law in order to ensure the independence of the Judicial Branch and the separation of powers, their relationship with the existence of temporary or provisional judges and the minimum guarantees that should exist in the procedures for appointing and removing said judges, among other aspects of the present application.
- Antonio Canova González, who will offer his expertise regarding domestic Venezuelan law with respect to the operations of the Judicial Branch, the rules on the appointment and removal of judges, the situation of temporary judges, the powers of the Judicial Commission of the Supreme Tribunal of Justice in the context of the process of the transition of the Judicial Branch, and the effectiveness of the judicial remedies available in cases of arbitrary removals or dismissals, among other aspects of the present application.

129. In addition, the Commission asks the Court to incorporate in the case file the following expert evidence in that it relates to the subject of the instant case: expert testimony from Messrs. Param Kumaraswamy and Román Duque Corredor, provided in the case of *Apitz Barbera et al. v. Venezuela*; and expert testimony from Mr. José Zeitune, provided in the case of *María Cristina Reverón Trujillo v. Venezuela*.

XI. INFORMATION ON THE REPRESENTATIVES OF THE VICTIM

130. In accordance with the provisions of the Court's Rules of Procedure, the Inter-American Commission submits the following information: the victim has appointed

Carlos Ayala Corao, Rafael Chavero Gazdik, and Marianella Villegas Salazar as her representatives in the judicial processing stage, as indicated in the attached documents.⁹³

131. The information on the representatives of the victim is as follows:

Address: [REDACTED]

Telephone: (58 212) [REDACTED]

Fax: (58 212) [REDACTED].

Washington, D.C.
November 25, 2009

⁹³ Annex 36. Powers of attorney.