

**TRANSITION FROM DEMOCRACY TO TYRANNY  
THROUGH THE FRAUDULENT USE OF DEMOCRATIC  
INSTITUTIONS: THE CASE OF VENEZUELA\***

Allan R. Brewer-Carías

*Emeritus Professor, Central University of Venezuela*

I want to begin expressing my thanks to the Municipality of Fylis and in particular to professor Spyros Flogaistis, my very good and loyal friend for many years, for the invitation to participate in this important Conference held on the occasion of the Reunion of the European Public Law Organization that he conducts so efficiently. Many thanks dear friend, also for your unalterable solidarity regarding the cause of democracy in Venezuela.

I also want to thank professors Guerra Martins, Malaret and Malikova for explaining us the peculiarities of the process of transition from tyranny to democracy experienced in their countries. We all have learned a lot, and undoubtedly, when the time comes for Venezuela to follow the same path – and I am sure it will come – we will have to take into account the teachings derived from such cases.

Now, regarding the case of Venezuela, it is clear that I cannot talk about a transition of that kind, which in fact took place many years ago, since 1945 after a long dictatorship – all this is now history - , giving birth to the demo-

---

\* Text of the Presentation at the Conference on: “Transition to Democracy,” *European Public Law Organization*, Municipality of Fyli, Fyli (Athens), 11 September 2017.

cratic system that was consolidated in 1958, and endured 40 years up to 1999, when it began to be demolished.

That is why, what I am going to refer to is to the process of “Transition from Democracy to Tyranny,” which is what has occurred during the past eighteen years in my country, using for such purpose democratic tools. I have renounced many years ago to the “right to be silent” mentioned by Dr. Broz, and instead since 1999, I assumed the duty to speak out denouncing what it happens in my country.

Hearing last week what the Presidents of Greece, Italy and Portugal said at the Opening Ceremony of the EPLO Reunion about the importance of democracy in the European Union construction, I remembered the processes that occurred in Europe before the Second World War in the cases of the Fascist regimes, of transition from democracy to tyranny that were also achieved by using in a populist and fraudulent way the democratic institutions.

Since then, no other experiment of such kind has taken shape in Europe, having played an important role in this, the Democratic Clause included in the 60 year old Treaties of the European Union, which has not only prevented such unwanted sort of transition, but has imposed upon the countries as a condition to be admitted and to remain in the Union, the need for democratization and for having stable democratic institutions.

In any case, seventy years after the Second World War, Europe and Europeans have fortunately gotten used to democracy, not being in general thinkable nowadays, the possibility for a democratic regime to be transformed into a tyranny through democratic means.

And in my opinion, that has been, precisely, the reason that explains how difficult has been for the European people and governments to understand what has exactly happened during the past two decades in some Latin American countries, and in particular, in my country, Venezuela, where the democratic institutions have been unmercifully destroyed and removed, behind a mascaared of a so called participatory or populist democracy.

The fact is that the relatively stable democratic regime that we had in Venezuela for 40 years, from 1958 and up to 1999, has been progressively transformed into a Tyranny, following a process that was conceived and conducted by a former Lieutenant General named Hugo Chávez, who after failing in his attempt to give a military *coup d'état* in 1992, seven years later, in 1999, he began to use democratic tools in order to achieved the same goals.

Using and misusing the electoral tools that democracy provided, he assaulted the State and its institutions, taking over all the branches of government, beginning the process of establishing an authoritarian government in the country.

It all began, as I said, in 1999, through a constitution making process that he lead, based on the convening and election of a Constituent Assembly that was not established in the Constitution, which resulted completely dominated and conducted by the same group of former military that accompanied Chávez in his *coup d'État* attempt, through which they assaulted and eventually militarized the political institutions.

At that time, that Constituent Assembly assumed full and unlimited powers to supposedly transform the institutional framework of the State, imposing the Chávez authoritarian ideas, intervening all the constituted powers and remov-

ing and limiting their authorities; dissolving the Congress, and assuming the legislative function; intervening the provincial and municipal powers, and suspending the municipal elections; removing the Justices of the Supreme Court, the members of the Supreme Electoral Council, the General Comptroller of the State, and in general, intervening the Judiciary and the Public Prosecutor's Office.

I was a direct witness of that process as an independent elected member of that Constituent Assembly, having opposed to the authoritarian program that marked its activities, which I denounced since those times; reason for which I was eventually persecuted for political reasons, and forced to remain in exile since 2005.

Since that constituent process of 1999, the transition from democracy to tyranny in Venezuela began to take shape in a progressive way, while the world in general, and the European countries in particular, viewed the former Lieutenant with some sort of sympathy, due in part to his illusionist promises, but ignoring his fraudulent use of the democratic institutions. In that context we also have to remember how so many countries profited from his performance as a typical *nouveau riche*, when he dilapidated the country's wealth, even using public money to finance politicians all over the world.

In a simple way, he was considered as somebody that being elected by the people began to sell himself as someone that promise to take care of the poor – falsely pretending that that had never happened before in the then richest State of Latin America –, illegally encouraging corruption in the country and financing political parties in many countries in Latin America and Europe with Venezuelan oil resources.

With all his charisma, and misusing the immense wealth the country had due to the boom of the oil income, after seventeen years of authoritarian government, he and his appointed successor Nicolás Maduro, managed to transform the then very envied Venezuelan democracy, into a dictatorship or tyranny; producing the exceptional miracle of transforming the former most envied and prosperous county and stable democracy in Latin American into the more miserable, violent and corrupt one in the whole world, as it is unfortunately shown in all the known International Indexes.

And the worst of all, is that all those records were achieved violating and distorting the Constitution, with elections that took place now and then, but always controlled by a controlled electoral authority within a centralized power and a militarized Public Administration; that used democratic tools only to destroy the very essence of democracy.

The first task that was assumed by the 1999 Constituent Assembly, besides giving the military deliberative political rights and participation, was to assault the Judiciary, dismissing almost all Judges of the country, substituting them all with provisional and temporal judges, thus, ending with the autonomy and independence of the judicial power.

Within that framework, the Supreme Tribunal was converted into the most ominous instrument for consolidating authoritarianism in the country, having been completely packed with government supporters. That explains why its Constitutional Chamber, instead of being the guardian of the Constitution, has been the main tool of the authoritarian government for the illegitimate mutation of the Constitution, and for the demolition of the rule of law.

Regarding the other branches of government, the assault was completed in 2005 when due to the decision of the opposition to not to participate in the parliamentary election of December of that year, the government took complete control of the National Assembly, finishing the process of packing all the branches of government with government loyalist. That happened with the Electoral Authority, the Public Prosecutor Office and the Audit General Office.

But after sixteen years of authoritarian rule, the deteriorating process of the political, economic and social situation of the country began, caused by the failure of the erroneous economic and social policies that were imposed, and the destruction that was accomplished of the productive framework of the country, provoked a sort of popular rebellion which was expressed through voting in a new parliamentary election held in December 2015. In that election, the government lost control of the National Assembly, and the opposition obtained a qualified majority of representatives, being that fact, without doubt, the most important political setback of the authoritarian regime since 1999.

But the regime was already used to exercise absolute control of power, and therefore, it could not tolerate an autonomous Legislature, so after such election, it began to obstruct the opposition from conducting the legislative agenda, and gradually striped the Legislative body of all its powers and functions; and all that, thanks to an all evil collusion between the Executive Branch and the Supreme Tribunal of Justice.

That happened even before the new elected National Assembly could had its first session on January 5<sup>th</sup> 2016, when the former National Assembly in its final days, *first*, in two days (December 29<sup>th</sup> and 30<sup>th</sup>) enacted more than 30

statutes striping off the new Assembly of its legal powers; and *second*, proceeded to appoint new Supreme Tribunal justices, packing it entirely with members of the governing party.

Once the Tribunal was completely controlled, it immediately began to undermine the possibility for the Assembly to exercise its functions, issuing during the past year and a half more than 60 rulings that have transformed the political system into what I have called, a “Judicial Dictatorship,” characterized by the fact that the Executive has used at his will the subdued Supreme Tribunal as its main instrument to neutralized the National Assembly, eliminating all its functions.

The result has been that the Constitutional Chamber of the Supreme Tribunal, acting as constitutional judge, in the past months, *first*, has declared the unconstitutionality of practically all – yes, all – the statutes that up to now have been sanctioned by the National Assembly; *second*, has reformed the *interna copris* of the Assembly in order to subject the exercise of its legislative functions to the prior approval by the Executive Branch; *third*, has eliminated the Assembly’s political power of controlling the government and the Public Administration; *fourth*, has imposed the prior approval by the Executive Vice-President for a Minister to be questioned by the Assembly, only being allowed to pose questions in writing; *fifth*, has eliminated the possibility for the Assembly to disapprove the states of emergency that the Executive has decreed during the past year and a half; *sixth*, has eliminated the possibility for the National Assembly to approve votes of non-confidence against *Ministers*; *seventh*, has resolved that the President should submit its Annual State of the Nation, not before the National Assembly as provided in the Constitution, but

before the Supreme Tribunal itself; *eighth*, has eliminated the legislative participation in the approval of the national budget, thus turning the Budget Law into a mere and unconstitutional executive decree to be submitted by the President of the Republic not before the National Assembly, but before the same Constitutional Chamber of the Supreme Tribunal; *ninth*, has eliminated the Assembly's power to review its own decisions and repeal them, as was the case regarding the unconstitutional appointment of the justices of the Supreme Tribunal made in December 2015; *tenth*, has eliminated the power of the National Assembly to express political opinion as a result of its debates, having annulled all the major political Resolutions and Declarations that it has adopted; and *eleventh*, in a few decisions issued this year based on an alleged contempt of court regarding a ruling by the Electoral Chamber of the same Supreme Tribunal, the Constitutional Chamber has declared null and void all past or future decisions of the National Assembly, leaving even open the possibility for the eventual prosecution of the representatives for contempt, adding to it, the threat to revoke their popular mandate and to imprison them.

But that was not the end. Finally, *twelfth*, in the most recent notorious and shameful decisions of the Constitutional Chamber issued in March this year (No. 155 of March 27, 2017, and No. 156 of March 29, 2017), it simply decreed in an unconstitutional way a state of emergency; eliminated the parliamentary immunity of the representatives; assumed in an arbitrary way all the parliamentary powers of the National Assembly; and delegated legislative powers, without limitation, upon the President of the Republic, even ordering him to reform laws and Codes at his discretion, among them the Criminal Code and the Organic Code of Criminal Procedure.

As a consequence of these scandalous decisions, the Secretary General of the Organization of the American States in one of its Reports filed before the Permanent Council of the Organization in March 2017 concluded that the country violates, not one but all the articles of the Inter-American Democratic Charter of 2001, one of the most important international instruments on democracy.

Of course, after such Report was known, the National Assembly issued a formal political declaration supporting the efforts of the Secretary General of such Organization in favor of the reestablishment of the democratic principles in the country. Now you can imagine which was the reaction of the Supreme Tribunal, no other that to considered this declaration as a crime; yes, a crime of treason or of “betraying the motherland” committed by the members of the Assembly, ordering the criminal prosecution of the representatives that had approved the Resolution..

When we analyze all these decisions against the National Assembly in a retrospective way, the conclusion is that in Venezuela what we have had has been a continued *coup d'État*, which has giving birth to a new model of authoritarian government that did not immediately originate itself in a military coup as has been the tradition in Latin America, but through the manipulation of popular elections, judicial review and other democratic tools, giving the control of the State to the military; and all this, with the purpose of destroying the rule of law and the democratic principles, using for such purpose a very convenient camouflage of “constitutional” and “elective” masks.

The current act or scene of all this institutional tragedy that is now been played, is the unconstitutional convening made by the President of the Repub-

lic, three months ago, on May 1<sup>st</sup> 2017, of a new Constituent Assembly with the purpose, again, of transforming the State and writing a new Constitution, but without the people's participation, in order to insert in it a Socialist, Popular or Communal State framework; a proposal that Chávez made in 2007, and was rejected by the people.

The procedure that was followed for such covenant was absolutely unconstitutional, because according to the express text of the Constitution, only the people as holder of the sovereignty, and in exercise of the original constituent power can convene a Constituent Assembly through a referendum. The President and also to the National Assembly only have the initiative to call for such referendum; but not for directly convene the Assembly.

Nonetheless, without hearing the people, the President of the Republic, convened the Constituent Assembly, establishing in addition for such purpose an unconstitutional *ad hoc* electoral system contrary to the universal and direct suffrage guaranteed in the Constitution. The system was based on a municipal vote that distorted the peoples' representation, mixed with a corporate or fascist vote established by sectors of the society, allowing discrimination or exclusions forbidden in the Constitution,.

All what I have summarized shows the fact that Venezuela currently is governed by a military dictatorship covered with the mask of a civilian oligarchy for which the Constitution has no importance at all; a fact that was confirmed by the Constitutional Chamber of the Supreme Tribunal, when it decided a few weeks ago, responding to the challenge of the presidential decree on the Constitutional Convention, simply decided (decision No. 378 of May 31, 2017), without any motivation, that in order to convene a Constituent As-

sembly there was no need at all for the people to be heard through a referendum, because it was not establish in an express way. That means according to the Tribunal, that in order to change a “comma” or a phrase in an article of the Constitution through amendments or reforms, a referendum must take place, but in order to change the whole Constitution and to reform the whole State, creating a wholly new legal order, it is not necessary to request the people’s approval. As simple as that: eight individuals (the President and seven justices of the Tribunal) can impose their will to the people without limits.

Based on such unconstitutional decision, the members of the Constituent Assembly were finally elected on the 30<sup>th</sup> of July 2017, integrated in it’s entirely with members of the official government party, which explains why all its decisions are adopted with a unanimous vote.

The first decision of the Assembly, issued in its first session one month ago, was one declaring itself as an original constituent power, with absolute, sovereign and supra-constitutional powers, proceeding immediately to dismiss the Prosecutor Attorney General of the Republic. The cause of such decision was that although being for a long decade a very close collaborator of the regime, persecuting political dissidents – including myself -, that high public official belatedly dare to publicly recognized that in Venezuela the democratic and constitutional order of the country had been broken among other, by the issuing of all the referred Supreme Tribunal decisions. This, of course could not be tolerated by the government, so that after her dismissal, a request for her detention was issued, She managed to escaped a few days ago and is now in exile, publicly announcing that she has proofs in order to persecute the high officials of the government, including Maduro, for violations of human rights,

namely torture, illegal detention and assassinations by repressive forces, and for corruption and narco-money laundry crimes.

In any case, the fraudulent Constituent Assembly in order to assume total power, last month issued a Decree subjecting all the branches of government to its rule, and in particular the Legislative body, assuming all the parliamentary powers of the National Assembly.

In addition, the Constituent Assembly created what has been called a “Commission of the Truth,” regarding the recent violent protests and demonstration against the government in which almost one hundred people were assassinated by military repressive forces and more than one thousand people were incarcerated; but not in order to determine the responsible for such actions, but only to persecute the political leaders that have promoted and participated in the protests. In any case it is enough to read its functions, in order to conclude that what has been created is no other than a sort of Caribbean reincarnation of the 1792 *Comité de Salut Public* of the Terror Regime in revolutionary France, established in order to persecute any dissidence.

And this has been precisely what has occurred. Last week, after the refusal of the elected members of the National Assembly to be subjected to the unconstitutional Constituent Assembly, the latter declared all members of the National Assembly and political leaders of the opposition that have had meetings with Senators and officials of the United States prior to the recent enactment of financial sanctions against the Maduro regime, - again - ,as traitors to the motherland.

This means that without any sort of judicial process, violating all due process of law principles, the opposition leaders in Venezuela have been already

condemned by a non judicial body for having committed a very grave crime, pending only for the Supreme Tribunal to give their names.

Now we can imagine what could happen to the President and Vice President of the National Assembly who have been last week here in Europe, meeting with the heads of State or governments of France, Spain and Germany, who have recognized the legitimacy of the elected National Assembly; considering the fraudulent Constituent Assembly an illegitimate body; in the same sense already expressed by the President of the European Parliament.

In contrast, Mr. Maduro, nowadays is not welcomed in any democratic country in the world, and that is why he is today in Astana, Kazakhstan, attending the Summit of the Organization of Islamic Cooperation of Science and Technology; at the same time that in Geneva, also today, the United Nations' Human Rights Council in its 36<sup>th</sup> Session, is considering the horrible situation of human rights in Venezuela, having the UN High Commissioner said that Venezuelan security forces may have committed crimes against humanity against protesters calling for international investigation.

My friends and colleagues, all this is not science fiction. All what I have said is actually happening in my country, which I have tried to explain just only through some samples of the last actions of an authoritarian regime that for years has been playing a masquerade pretending to a democracy.

But now we can say that the truth has surfaced and the democratic veil that has been used to transform democracy into tyranny has completely disappeared, allowing the democratic governments of the world to begin to understand the nature of the Chávez-Maduro regime and the democratic and material needs of the Venezuelan people. At this point, we need to overcome the

narco-military-dictatorship that has taken over the country, and for such purpose we know that need not only a very firm international comprehension of the situation, but also a determined multilateral aid.

That is why the solidarity that nowadays we are finding in the governments of Latin America and Europe regarding the Venezuelan tragedy is so important.

Don't forget, as we don't have forgotten, that if there is something that we really need to be exported from Europe to our countries, is democracy, and the democratic principles.

Fylis (Athens), September 11<sup>th</sup>, 2017

### **Bibliography:**

All what I have expressed in this paper, has been extensively studied and explained in the following books:

Brewer-Carías, Allan R. 2002. *Golpe de Estado y proceso constituyente en Venezuela*, México: Universidad Nacional Autónoma de México.

Brewer-Carías, Allan R. 2002. *La crisis de la democracia venezolana. La Carta Democrática Interamericana y los sucesos de abril de 2002*, Caracas: Ediciones El Nacional

Brewer-Carías, Allan R. . 2007. *Crónica sobre la “in” justicia constitucional. La Sala Constitucional y el autoritarismo en Venezuela*, Caracas: Colección Instituto de Derecho Público / Universidad Central de Venezuela.

Brewer-Carías, Allan R. 2009. *Dismantling Democracy. The Chávez's Authoritarian Experiment*, New York: Cambridge University Press;

- Brewer-Carías, Allan 2012: *Práctica y distorsión de la Justicia Constitucional en Venezuela (2008-2012)*, Acceso a la Justicia, Academia de Ciencias Políticas y Sociales, Universidad Metropolitana, Editorial Jurídica Venezolana.
- Brewer-Carías, Allan R. 2014: *Authoritarian Government v. The Rule of Law*, Caracas / New York: Editorial Jurídica Venezolana.
- Brewer-Carías, Allan R. 2014/ 2015: *El golpe a la democracia dado por la Sala Constitucional*, Caracas, Editorial Jurídica Venezolana,
- Brewer-Carías, Allan R. 2014: *La patología de la Justicia Constitucional*, San José / Caracas, Investigaciones Jurídicas, Editorial Jurídica Venezolana.
- Brewer-Carías, Allan R., 2014/2015: *Estado Totalitario y desprecio a la Ley. La desconstitucionalización, desjuridificación, desjudicialización y desdemocratización de Venezuela*, Caracas / New York, Editorial Jurídica Venezolana.
- Brewer-Carías, Allan R., 2015. *La mentira como política de Estado. Crónica de una crisis política permanente. Venezuela 1999-2015*, Caracas / New York, Editorial Jurídica Venezolana.
- Brewer-Carías, Allan R., 2015, *La ruina de la democracia. Algunas consecuencias. Venezuela 2015*, Caracas / New York, Editorial Jurídica Venezolana.
- Brewer-Carías, Allan R., 2016 / 2017, *Dictadura judicial y perversión del Estado de derecho. La Sala Constitucional y la destrucción de la democracia en Venezuela*, Caracas / Madrid, Editorial Jurídica Venezolana International.
- Brewer-Carías, Allan R., 2017, *La consolidación de la tiranía judicial. El Juez Constitucional controlado por el Poder Ejecutivo asumiendo el Poder Absoluto*, Caracas / New York, Editorial Jurídica Venezolana International.
- Brewer-Carías, Allan R., 2017, *La inconstitucional convocatoria de una Asamblea Nacional Constituyente en fraude a la voluntad popular*, Caracas / New York, Editorial Jurídica Venezolana International.