

THE SENTENCING OF LEOPOLDO LÓPEZ FOR THE “FELONY OF OPINION” Or How the Judges of Horror are Forcing the People into a Citizens’ Rebellion

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I

Leopoldo López, a former Mayor and distinguished leader of Venezuela’s opposition, on September 10 2015 was sentenced to prison by a criminal court of Caracas, for the “felony” of expressing his political opinion against the Venezuelan government, in full exercise of his freedom of expression guaranteed by the Constitution.

To Judge, which is one more of the “judges of horrors” that make up the Venezuelan judiciary that is completely submissive and dependent on the political power wielded by the Executive Power, for the purpose of the conviction constructed the falsehood that López, in the political demonstrations of February 2014 at the occasion of the Youth Day, was a public instigator and the determiner for other citizens to commit the felony of arson and damage to public properties, and furthermore, that for such purpose he was associated with the intention of committing crimes, thus applying against him the “Law against Organized Crime and Terrorism,” but without demonstrating what the association was, or who its members were, or what was the felonious motive of such association.

This judicial atrocity is but one more example of the *de facto* suspension of the Constitution, which is nevertheless invoked by any official who might have a copy, not in order to apply it but to violate it; all as a result of an illegitimate process that began even before the Constitution had come into force in December of 1999, when it was modified behind the people’s back, as part of a set of unconstitutional transitional mandates.¹ Starting with these mandates, there began an unbridled race for consolidating the complete control of the State, carried out by those who had stormed its institutions by means of the National Constituent Assembly of 1999, thus dismantling the separation of powers, and demolishing, from within, the democratic institutions, while using the very mechanisms of democracy to these ends.²

The accomplished result of all this is what is there for all to see, and the sentence against Leopoldo López is one more example of the fact that all the powers of the State have been placed at the service of authoritarianism,³ beginning with the Supreme Tribunal of Justice, and all the Judiciary, and, particularly, on the one hand, the criminal judges who have become agents of the political persecution of dissidents, and on the other hand, the Constitutional Chamber of the Supreme Tribunal, which has become the most diabolical instrument of the Totalitarian State, furthermore, because, even though it is the “guardian of the Constitution,” there is nobody there to control it.⁴

The result has been that after fifteen years, almost all of the Judiciary is now made up of temporary

¹ See the commentaries on the Transition Constitutional Decree of December 20, 1999 in Allan R. Brewer-Carías, *Golpe de Estado y proceso constituyente en Venezuela*, Universidad Nacional Autónoma de México, México 2002.

² See Allan R. Brewer-Carías, *Dismantling Democracy. The Chávez Authoritarian Experiment*, Cambridge University Press, New York 2010; “La demolición del Estado de derecho y la destrucción de la democracia en Venezuela,” in *Revista Trimestral de Derecho Público (RTDP)*, Nº 54, Instituto Paulista de Direito Administrativo (IDAP), Malheiros Editores, Sao Paulo, 2011, pp. 5-34

³ See Allan R. Brewer-Carías, *Authoritarian Government v. The Rule of Law. Lectures and Essays (1999-2014) on the Venezuelan Authoritarian Regime Established in Contempt of the Constitution*, Fundación de Derecho Público, Editorial Jurídica Venezolana, Caracas 2014.

⁴ See Allan R. Brewer-Carías, “El juez constitucional al servicio del autoritarismo y la ilegítima mutación de la Constitución: el caso de la Sala Constitucional del Tribunal Supremo de Justicia de Venezuela (1999-2009)”, in *Revista de Administración Pública*, Nº 180, Madrid 2009, pp. 383-418; *Reforma Constitucional y Fraude a la Constitución (1999-2009)*, Academia de Ciencias Políticas y Sociales, Caracas 2009.

or provisional judges that are therefore dependent on the Executive Power,⁵ as well as the other branches of government that have been subjected and neutralized by it, so that what the country has is a General Comptroller that does not control, a Public Defender that neither protects nor defends, a Public Prosecutor that does nothing but persecute members of the opposition, while letting hundreds of street killings go unpunished; and an Electoral Branch that appears to be the political agent of the Official Political Party's candidates.

But one thing is for certain: the created propaganda that even acting contrary to the Constitution, they are supposedly acting "legally," just because with saying that: "*It is impossible that, in the presence of all the public powers, an illegal act can be committed.*"⁶ This was by the Public Defender in March of 2014, with the intention of justifying the unconstitutional detention and jailing of another opposition Mayor, Vicencio Scarano Spisso, ordered by the Supreme Court without any due process, thus usurping criminal jurisdiction, for the alleged felony of disregarding a writ of mandamus, while at the same time revoking his mandate as an elected official.⁷

That is to say, presumably, that if the Totalitarian State –which is the one that controls the totality of the powers and the lives of the citizens– violates human rights, if it does so *with the participation of the public powers*, including the controlled Judiciary, even though it might be contrary to the Constitution, then it is "legal." This reminds one of the dreadful conclusion reached by a prominent reader of Carlos Armando Figueredo's translation of Ingo Müller's book, *Hitler's Justice: The Courts of the Third Reich*, about the demeanor of judges during the Nazi period,⁸ namely that "the abuses, prisons, torture and even mass exterminations were legally done and adhered to the norm," because they were supported by all the branches of government that were being commanded by an autocrat.

II

In Venezuela, that absolute control that the authoritarian régime wields over the Judiciary is precisely the only thing that explains why, among the innumerable abuses committed against opposition leaders, it is Leopoldo López who has been jailed and sentenced to more than 13 years in prison solely for having been one of the leaders of the street demonstration movement that was convened throughout the country in February of 2014, generating peaceful demonstrations of protest and rejection of the régime.

For that, and for having expressed his political opinion at these demonstrations, the Public

⁵ See Allan R. Brewer-Carías, "Sobre la ausencia de independencia y autonomía judicial en Venezuela, a los doce años de vigencia de la constitución de 1999 (O sobre la interminable transitoriedad que en fraude continuado a la voluntad popular y a las normas de la Constitución, ha impedido la vigencia de la garantía de la estabilidad de los jueces y el funcionamiento efectivo de una "jurisdicción disciplinaria judicial"), in *Independencia Judicial*, Colección Estado de Derecho, Tomo I, Academia de Ciencias Políticas y Sociales, Acceso a la Justicia org., Fundación de Estudios de Derecho Administrativo (Funeda), Universidad Metropolitana (Unimet), Caracas 2012, pp. 9-103; and The Government of Judges and Democracy. The Tragic Situation of the Venezuelan Judiciary," in Sophie Turenne (Editor.), *Fair Reflection of Society in Judicial Systems - A Comparative Study*, Ius Comparatum. Global Studies in Comparative Law, Vol 7, Springer 2015, pp. 205-231; also published in the book: *Venezuela. Some Current Legal Issues 2014, Venezuelan National Reports to the 19th International Congress of Comparative Law, International Academy of Comparative Law, Vienna, 20-26 July 2014*, Academia de Ciencias Políticas y Sociales, Caracas 2014, pp. 13-42.

⁶ See statement by Gabriela Ramírez, Public Defender, in Juan Francisco Alonso, "Con caso Scarano TSJ echó a la basura 12 años de jurisprudencia. Juristas alertan que Sala Constitucional no puede condenar a nadie", in El Universal, Friday 21 March 2014, at <http://www.eluniversal.com/nacional-y-politica/140321/con-caso-scarano-tsj-echo-a-la-basura-12-anos-de-jurisprudencia>

⁷ See Sentencia N° 138 de la Sala Constitucional del Tribunal Supremo de Justicia de 17 de marzo de 2014, at <http://www.tsj.gov.ve/decisiones/scon/marzo/162025-138-17314-2014-14-0205.html> . See the commentaries in Allan R. Brewer-Carías, "La ilegítima e inconstitucional revocación del mandato popular de Alcaldes por la Sala Constitucional del Tribunal Supremo, usurpando competencias de la Jurisdicción penal, mediante un procedimiento "sumario de condena y encarcelamiento. (El caso de los Alcaldes Vicencio Scarano Spisso y Daniel Ceballo)," in *Revista de Derecho Público*, No 138 (Segundo Trimestre 2014, Editorial Jurídica Venezolana, Caracas 2014, pp. 176-213.

⁸ See Ingo Müller, *Hitler's justice: The Courts of the Third Reich*, Cambridge University Press, 1991. German original title: *Furchtbare Juristen: Die unbewältigte Vergangenheit der deutschen Justiz*. Droemer Knauer Verlag, 1989. Spanish translation by Carlos Armando Figueredo: Ingo Müller, *Los Juristas del Horror*, Caracas 2006.

Prosecutor, controlled by the Executive Power, accused him of all the crimes imaginable, such as homicide, terrorism, arson and damage to properties, and furthermore, of the felonies of public instigation and association to commit crime,⁹ and thus, immediately upon its request, and without any proof, an arrest warrant was issued against López in that same month of February 2014.¹⁰ For this, it did not matter that several of the felonies cited were in fact being committed by members of the military, agents of the political police or paramilitary extermination groups, as was evidenced in hundreds of videos that circulated through the social networks, which, instead of being accepted as evidence by the Public Prosecutor, what she did was to qualify such networks as being “perverse.” These networks were the only means for providing any existing information about the acts being committed, precisely because of the ironclad control wielded by the State over the communications media, and by the censorship.¹¹

After discarding the absurd criminal indictment based on charges as homicide and terrorism,¹² and once the accusation was formalized, more than a year after the parody conducted under the nomenclature of a “trial,” which began in June of 2014,¹³ a temporal and subordinated Judge (in charge of the Eighteenth Court of First Resort for Trial Functions in the Judicial Circuit of the Caracas Metropolitan Area), through a sentence pronounced on 10 September 2015, condemned Leopoldo López to 13 years, 9 months and 12 hours in prison, in accordance with what was demanded in the accusation, for having been *presumably the determiner of the felonies of arson and damages, and the author of the felonies of public instigation and association to commit crime.*¹⁴ As Amnesty International rightly assessed the matter, the sentence was pronounced “without any credible evidence against him,” which demonstrates the absolute lack of judicial independence and impartiality in Venezuela,” adding that:

“The charges against Leopoldo López were never adequately substantiated and the prison sentence against him has a clearly political motive. His only ‘crime’ is being the leader of an opposition party in Venezuela. He never should have been arrested arbitrarily nor tried in the first place. He is a prisoner of conscience and ought to be released immediately and unconditionally. With this decision, Venezuela is choosing to ignore basic human rights principles, and giving a green light to more abuses.”¹⁵

III

Effectively, the accusation against Leopoldo López, according to its text, was based on the fact that, reportedly, he expressed himself by means of three different communications media, making:

“appeals to violence, cessation of recognition of legitimate authorities, and disobedience of the laws, which precipitated the excessive attack by a group of people who acted individually, but were prompted by the speeches of the person mentioned [López], against the headquarters of the Public Prosecutor, against seven cars, six of which were patrol cars belonging to the Corps of Scientific, Penal and Criminal Investigations. They likewise attacked and destroyed the plaza at *Parque Carabobo*, these being acts of vandalism executed using blunt and incendiary objects.”

All these acts, in the judgment of the accusation:

⁹ See “Fiscalía presentó acusación contra Leopoldo López,” *El Nacional*, Caracas 14 April 2014, at http://www.el-nacional.com/politica/Fiscalia-General-acusacion-Leopoldo-Lopez_0_385161540.html

¹⁰ See “Un tribunal ordena la detención de Leopoldo López,” en *El Tiempo.com.ve*, Puerto la Cruz, 13 February 2014, at <http://eltiempo.com.ve/venezuela/politica/un-tribunal-ordenala-detencion-de-leopoldo-lopez/126105>

¹¹ See Luisa Ortega Díaz: “Las redes sociales se han convertido en un mecanismo perverso,” *Noticiero Digital.com*, 23 March 2014, at <http://www.noticierodigital.com/2014/03/luisa-ortega-diaz-las-redes-sociales-se-han-convertido-en-un-mecanismo-perverso/>

¹² See “desechan cargos por terrorismo y homicidio a Leopoldo López,” in *El Universal*, 20 February 2014, at <http://www.eluniversal.com/nacional-y-politica/140220/desechan-cargos-de-terrorismo-y-homicidio-a-leopoldo-lopez>

¹³ See “Ministerio Público logró pase a juicio de Leopoldo López por hechos de violencia del 12 de febrero,” in *Correo del Orinoco*, 5 June 2014, at <http://www.correodelorinoco.gob.ve/nacionales/ministerio-publico-logro-pase-a-juicio-leopoldo-lopez-por-hechos-violencia-ocurridos-12-febrero/>

¹⁴ See the text of the writ of accusation at http://cdn.eluniversal.com/2014/06/02/ACUSACION_LEOPOLDO.pdf

¹⁵ See statements by Erika Guevara-Rosas, Americas Director at Amnesty International, in: “Venezuela: Sentence against opposition leader shows utter lack of judicial independence,” Amnesty International, 10 September 2015, at <https://www.amnesty.org/en/latest/news/2015/09/venezuela-sentence-against-opposition-leader-shows-utter-lack-of-judicial-independence/>

“were executed as a consequence of the persuasion and inducement performed by Leopoldo Eduardo López Mendoza, who wielded a strong influence not only on their way of thinking, but also on the potential actions of his audiences, who thoroughly acted and carried out the message to go after the heads of the Public Branches and cease to recognize the legitimate authorizes.

The Public Prosecutor concluded by saying that it was:

“evident that the whole apparatus used by Leopoldo Eduardo López Mendoza did not create itself. He necessarily relied on a felonious structure that allowed him to operate, [through] specialists in discourse, Twitter, telephony, financing, among other things, all aimed at being able to develop his criminal plan, which was none other than to persuade and induce a group of people that share his discourse in order to cease recognition of the legitimate authorities and the laws and to propitiate the departure of the President of the Bolivarian Republic of Venezuela.”¹⁶

The accusation was set up in order to prosecute a “felony of opinion,” by dedicating a good portion of the text to quoting from an expert witness report by a linguistics expert (Rosa Amelia Asuaje León),¹⁷ who upon analyzing Leopold López’s “discourse,” was able to affirm –only in a hypothetical way– that “by the findings presented by the analyzed texts, the speeches of Leopoldo López (on the days prior to 12 February of the current year) *could be able to prepare* his followers to have them activate what he called #LaSalida [the departure] for the 12th day of February and on following days. The expert further considered that:

“the speaker (Leopoldo López), upon cultivating anger in his discourse, arguing against the current national government, *could have transferred* this sentiment to his audience (followers) by means of a discourse mechanism he called #LaSalida [the departure], under the argument that he was denouncing the present government (led by President Nicolás Maduro) of having committed a series of offenses, excesses and omissions that *could have exacerbated* those who follow Leopoldo López in order to materialize that departure by a potentially violent means, [...] without explaining that the departure was going to be peaceful, for example, and that such would be protected within the framework of the Constitution...”

The expert witness then went on to refer to Article 350 of the Constitution –which certainly has nothing to do with expertise in linguistics– stating that the article could be “activated if and when the conditions provided for therein were present: if the governmental régime, whatever it may be, were to thwart the democratic values, principles and guarantees or diminish human rights,” adding that:

“Leopoldo López’s speech given on 23 January 2014 argues that the present national government, headed by President Nicolás Maduro, is antidemocratic, among other qualifiers, and that there is no respect for the fundamental rights of Venezuelans, such as life, health, safety, food or work; nonetheless, it does not suffice for the speaker to enunciate them for these to be true.

“It is of consequence, it is important to reiterate, that to propose a departure by any democratic government, outside the framework of the Constitution, and whose scenario would be the streets, does not lead one to think, at any moment and under any logical sense, that this struggle would have non-violence as its purpose. An act of subverting the established order, of the status quo, will always lead to the danger of being violent.”

In other words, always within the realm of these hypotheses, the expert witness in linguistics entered into the consideration of legal matters such as those surrounding the interpretation of Article 350 of the Constitution, arriving at the conclusion that all persons invoking citizens’ rights of civil disobedience and resistance in response to governments considered to be illegitimate, which are guaranteed by the Constitution, under such norm would have a violent purpose.

That analysis was precisely the foundation for the accusation formulated against Leopoldo López for the “felony of opinion,” even when such foundation had been masked by the Public Prosecutor upon its conclusion of the accusation by indicating that:

¹⁶ See the text of the writ of accusation at http://cdn.eluniversal.com/2014/06/02/ACUSACION_LEOPOLDO.pdf

¹⁷ It is noteworthy that this expert in linguistics is a columnist for the website *Aporrea.org*. See <http://www.aporrea.org/autores/rosa.asuaje/>

“the conduct deployed by the indicted Leopoldo Eduardo López Mendoza is subsumed in the felonies of *determiner in the felony of arson*, contemplated and sanctioned in Article 343 in relation with Article 83, both being part of the Criminal Code; *determiner in the felony of damages*, contemplated and sanctioned in Articles 473, Numeral 3rd, and 474 in relation to Article 83, all part of the Criminal Code, *author in the felony of public intimidation*, contemplated and sanctioned in Article 285, of the Criminal Code and *association*, contemplated and sanctioned in Article 37 of the Organic Law Against Organized Crime and Financing of Terrorism, in *real concurrence of felonies*, in accordance with what is determined in Article 88 of the Criminal Code; all of which is maintained in the diverse elements of conviction obtained in an impartial, objective, expedited and scientific investigation, and based on the following arguments.”

In other words, it is not the case that the accused has been the author of the felony of arson or damage, but rather, he was accused of having been the “determiner” or “inducer” of same, in the sense of having caused “the criminal resolution in another person” of committing said felonies, considering the accusation, for such purpose, that his action and his political discourse was the “*sine qua non* condition of the author’s felonious resolution, in such a way that it is not possible to induce a person who was already convinced or had already decided to commit the typically prosecutable act.”

In other words, as the Prosecutor said:

“The person who induces another person into committing a crime is not the one that carries it out, nor the one that collaborates in its execution. A criminal idea is transmitted. As the instigator carries in his mind the same objective that he inculcates in the mind of the person being instigated, they co-participate in the same criminal act.”

By that, the Prosecutor explained that allegedly:

“The strategy established by Leopoldo Eduardo López Mendoza and his structured group was clearly to utilize the conventional and alternative social communications media to give strength to his speeches having violent content, since his only purpose was to make the public tranquility disappear, as he called upon a group of people who were in agreement with his discourse calling for the cessation of recognition of the legitimate authorities and of the laws.”

And the Prosecutor’s conclusion then was that:

“Leopoldo López’s participation did not consist of deploying the felonies of arson and damage to property in a direct manner, but there are elements, such as the *expert evidence in the analysis of the speeches of the indicted Leopoldo López*, sufficient to deem that he did indeed *command and induce demonstrators* to conduct an *attack against the Office of the General Public Prosecutor, and against the property of the Venezuelan State*, which was done publicly, starting some days beforehand, and even on 12 February 2014 itself, in a speech where he incited others to cease to recognize the legitimately constituted authority and to go after the heads of the Public Powers, this being doubtlessly a significant psychological influence for a group of people that acted after *having been instigated by the speeches of Leopoldo López*, and consequently *executed the instructions provided*, resulting first in the attack against the General Public Prosecutor Office. Later other institutions of the State were attacked, also instigated by the call to disobedience and to the attack formulated by this indicted person, *as is evidenced in the expert evidence of discourse analysis*, which brings forth among other particulars ‘...that Leopoldo López possesses a discourse *ethos* that dominates and has an impact on the *ethos* of his audience; consequently everything that the originator or speaker says to his audiences would wield a strong influence not only on their way of thinking but also on the potential actions that the audiences might carry out, consequently acting out thenceforth in a way that whatever he might say or transmit to his audience would in fact be transferred, to such an extent, that his audiences feel compelled to follow, by actions, whatever he might instruct them to do, even though he may not explain it to them clearly...’

On the occasion of such call for action, with the *full and total conviction that his summons would be heeded by the group*, especially by the students, the indicted Leopoldo López *called on them to go after the heads of the public branches of government and the institutions, for which a group of people, some of them already accused by the Public Prosecutor, went and heeded the*

appeal from Leopoldo López, and charged at the seat of the Institution, with the intention of causing damages, setting fire to said seat, as reflected by the Technical Inspection conducted by the officials assigned to the Crime Unit, with the intention of infringing upon the Fundamental Rights of the Public Prosecutor, the result being that in the area of the Central Library of the Public Prosecutor, as well as the front door, there had been combustion, which was subsequently neutralized by officials assigned to the Security Office of the Institution, all of which presents evidence of the felony of arson,” (our highlights).¹⁸

In other words, on the basis of a political speech of the opposition Leader in which attention was called to the illegitimacy of the government and to the need to have it replaced, but where there was never any mention of, nor was anything said, directly or indirectly, that there was any need to damage or set fire to certain property or buildings, and much less public property, the Prosecutor drawn the conclusion that, solely on the basis of a “linguistic” sleight of hand, Leopoldo López had allegedly imparted instructions to the demonstrators to go do damage and set fire to public properties, inducing them, particularly, to go do damage and set fire to the seat of the Public Prosecutor. As simple and aberrant as that.

For that reason, stemming from that accusation, as emphasized by professor José Ignacio Hernández, what became evident was:

“that the trial against Leopoldo López began as a result of the opinions he had expressed. That is to say, López is not on trial for having destroyed or having set fire to buildings. Those violent acts doubtlessly deserve total rejection and the start of the respective investigations. But the trial against López has nothing to do with that. This criminal trial is basically about judgment being passed upon López’s political opinions.”¹⁹

Hence the conclusion rightly drawn by José Ignacio Hernández himself was that as far as he could tell:

“it has not been reflected upon whether Leopoldo López directly and emphatically called for the burning or destruction of buildings or for disobedience of the Laws. On the contrary, what is being reflected upon is whether his political discourse, upon calling for protests aimed at the Government’s departure, might have degenerated into acts of violence and incitements to violate Laws. That is to say, the criminal trial is based on the interpretation of a political discourse, more than on the discourse itself. The causal relationship is approximate, rather than immediate. Such is the case that, in order to give credence to the felonies for which he was accused, more than two hundred pages were required and even an expert report. In order to be consistent with freedom of expression, a felony of opinion allegedly committed by a politician must not be subjected to such detailed analysis. There can only be a felony of opinion in the case of a politician if his discourse constitutes a felony clearly, directly, expressly, and without any margin of doubt whatsoever. Case in point: freedom of expression must be favored.”²⁰

None of that happened in this case: López did not call upon anybody, nor incite anybody, directly or indirectly, much less intentionally to go do damage or set fire to properties of any kind; consequently, he he could never have been able to be the “determiner” of these felonies; nor did he associate himself with anybody with a criminal intention, for the purpose of having those felonies committed. And in any case, based on the long narration of the text of the sentence, none of that was proved at trial.

IV

But this was not taken into account either by the Public Prosecutor or by the Judge. In the case of Leopoldo López, the government’s objective was to jail him and take him out of the political scene.²¹ The

¹⁸ See the text of the writ of accusation at http://cdn.eluniversal.com/2014/06/02/ACUSACION_LEOPOLDO.pdf

¹⁹ See José Ignacio Hernández, “Todo lo que debe saber para entender por qué se enjuicia a Leopoldo López,” in *Prodavinci*, 16 June 2014, at <http://prodavinci.com/blogs/todo-lo-que-debe-saber-para-entender-por-que-se-enjuicia-a-leopoldo-lopez-por-jose-i-herandez/>

²⁰ See José Ignacio Hernández, “Todo lo que debe saber para entender por qué se enjuicia a Leopoldo López,” in *Prodavinci*, 16 June 2014, at <http://prodavinci.com/blogs/todo-lo-que-debe-saber-para-entender-por-que-se-enjuicia-a-leopoldo-lopez-por-jose-i-herandez/>

²¹ The Public Prosecutor Franklin Nieves, who was the one that filed the accusation against Leopoldo López, said in October 27, 2015, once he left the country, that the Government had planned to incarcerate Leopoldo López, Leader of *Voluntad Popular*, well before February 12, 2014. See the comments in

Comptroller General of the Republic had already tried to do so, doubtlessly on orders from the government, by decreeing his political disqualification, something that is prohibited not only by the Constitution,²² but also by the American Convention on Human Rights, for which reason the Court declared that the State had been responsible for committing this violation.²³

Now there was a need to jail him for what he was saying, for his pro-opposition discourse and for his leadership, and no other thing can be deduced from the text of the prosecutorial accusation against him. In it, it is absurdly argued that in February of 2014, it wasn't so much that, as political leader of the opposition, Leopoldo López had a political party and some followers, but rather "a complete apparatus" that, according to the Prosecutor's accusation, constituted a "felonious structure" that furthermore relied on "specialists in discourse, Twitter, telephony, and financing, among other things," in other words, everything that a political party and political groups have and do in a democratic country, going so far as to state that all of that is not for participating legitimately in the democratic game, but rather "for developing his criminal plan," which was solely "to persuade and induce a group of people who shared his discourse aimed at the cessation of recognition of the legitimate authorities and the laws and propitiating the departure of the President of the Bolivarian Republic of Venezuela."

That is to say that with this accusation anybody who acts in opposition in Venezuela, in other words, accuses the government of being illegitimate, and who advocates its departure from power, runs the risk of being accused and charged of any felony, because any political party seen from this prosecutorial point of view could result in being a "felonious structure" or a "band of criminals."

The consequence of this authoritarian focus, as was expected, and government officials had announced it, was that on 10 September 2015 the Judge in the cause pronounced a condemnatory sentence against Leopoldo López because she deemed that the trial had supposedly lent "credence to his criminal responsibility for having committed the felonies of being the *determiner in the felony of arson*, contemplated and sanctioned in Article 343, first subsection in conjunction with Article 83, both of the Penal Code; of being the *determiner in the felony of damage to property* contemplated and sanctioned in Articles 473.3 and 474 of the Penal Code, in conjunction with Article 83 of the same Code; of being the *author in the felony of public instigation* contemplated and sanctioned in Article 285 of the Penal Code; and *association to commit crime* contemplated and sanctioned in Article 37 of the Organic Law against Organized Crime and Financing of Terrorism" (p. 2).²⁴

<http://www.lapatilla.com/site/2015/10/26/franklin-nieves-el-gobierno-planeaba-encarcelar-a-leopoldo-lopez-antes-del-12f-segundo-video/>

²² Allan R. Brewer-Carías, "The absence of competence on the part of the Comptroller's Administration to dictate administrative acts of political disqualification restricting the right to be elected and hold public office (The protection of the right to be elected, as per the Inter-American Court of Human Rights in 2012, and its violation by the Constitutional Chamber of the Supreme Court when it declared the Inter-American Court's decision to be "non-executable"), in Alejandro Canónico Sarabia (Coord.), *El Control y la responsabilidad en la Administración Pública, IV Congreso Internacional de Derecho Administrativo, Margarita 2012*, Centro de Adiestramiento Jurídico, Editorial Jurídica Venezolana, Caracas 2012, pp. 293-371; and "El derecho político de los ciudadanos a ser electos para cargos de representación popular y el alcance de su exclusión judicial en un régimen democrático (O cómo la Contraloría General de la República de Venezuela incurre en inconstitucionalidad e inconveniencia al imponer sanciones administrativas de inhabilitación política a los ciudadanos)," in *Revista Elementos de Juicio*, Año V, Tomo 17, Bogotá 2011, pp. 65-104.

²³ The decision of the Inter-American Court in the *Leopoldo López vs. Venezuela* case was pronounced on 1 September 2011, but was declared "non-executable" in Venezuela by a decision of Constitutional Chamber No. 1547 dated 17 October 2011 (*Venezuelan State vs. Inter-American Court of Human Rights*, at <http://historico.tsj.gob.ve/decisiones/scon/Octubre/1547-171011-2011-11-1130.html>). Regarding this see Allan R. Brewer-Carías, "El ilegítimo "control de constitucionalidad" de las sentencias de la Corte Interamericana de Derechos Humanos por parte la Sala Constitucional del Tribunal Supremo de Justicia de Venezuela: el caso de la sentencia *Leopoldo López vs. Venezuela, 2011*," in *Constitución y democracia: ayer y hoy. Libro homenaje a Antonio Torres del Moral*. Editorial Universitas, Vol. I, Madrid, 2013, pp. 1.095-1124. Véase también el Comunicado de 37 juristas a favor de Leopoldo López, en *El Universal*, 28 September 2011, at <http://www.eluniversal.com/nacional-y-politica/110928/comunicado-de-37-juristas-a-favor-de-leopoldo-lopez>

²⁴ With some variants, that was what the press was able to report upon pronouncement of the sentence. See "Tribunal sentenció a Leopoldo López 13 años de prisión por responsabilidad en violencia de 2014," at *Venezolana*

The aberrant sentence was not published until 1 October 2015, the lawyers for the defense were unable to get a copy of it until several days after,²⁵ and it was not possible to make it known publicly until almost a month after the sentencing, on 9 October 2015. Concerning the sentence, the lawyer in charge of coordinating Leopoldo López's defense, even before having a copy of the sentence and of the study that he made of its reading in Court, considered that in global terms it was:

“full of errors and that its arguments are weak. It is weak especially from the probative point of view: there was never any credibility assigned to the determiner of damages, there is an absence of evidence relating to felony or to the association to commit felonies. It is based on the testimony of Rosa Amelia Asuaje and Mariano Alí, the experts who analyzed López's discourse and Twitter, but with a pair of tweezers they take out extracts that do not reflect the reality of what was said and they contradict the testimony of other witnesses who clarified that Leopoldo López never called for violence.”²⁶

That is why, as reported by the press, when the judge pronounced the sentence, Leopoldo López himself said to her: “You are more afraid of pronouncing this sentence than I am of hearing it.”

The same press article further reported that:

“López maintained that the trial against him sought to criminalize words, whereby he was being accused of inciting to commit acts of violence occurring last year in order to give impetus to ‘*La Salida*’...he reiterated that ‘*La Salida*’ was constitutional and enumerated the constitutional mechanisms that, according to him, allowed it; and justified it by giving assurances that the branches of government in Venezuela were violating the Constitution.”²⁷

Concerning this sentencing, José Ignacio Hernández, in synthesis, and rightly so, observed that it is none other than “a grievous case of violation of Human Rights that noticeably affects the democratic system,” considering that Leopoldo López “is a prisoner of conscience,” in other words, “a person who has been tried and convicted for his political opinions.” In this case, Hernández noted, López was “condemned for the State's interpretation of what he had said and not for any true and concrete act,” in “a trial full of political content where, from the beginning, one already knew the outcome.”²⁸

As professor Luis Ugalde, S.J. saw it:

“Without any proof of a crime being committed, Leopoldo López was sentenced to 14 years in jail. Many of us knew that Venezuela was under a not-so-well-disguised dictatorship, but now the world will start to discover that this Régime is the grand impoverisher of the poor, with inflation that has exceeded 200% in two years and shortages that constitute a national calamity, and that there is no rule of law in Venezuela.

“What is the crime committed by Leopoldo López, by Antonio Ledezma and the four convicted students, by the political prisoners, and by those politically disqualified and persecuted? Neither violence nor death; if it were about that, the Government and its judges would be hard at work dealing with the 25,000 homicides that occur each year. *Their “felony” consists of being members of the opposition that have leadership. The Régime, at its pleasure, decides who is to be defamed, submitted to ridicule, incarcerated, exiled or politically disqualified.* That is how it was in Nazi Germany, in the Soviet Union, in China, or in Cuba: *any dissident, any leader that expressed his disagreement is a “criminal.”* Now that the decision has been made, what follows is simply theatrical staging and decoration for the scenery, aimed at justifying the sentencing and the public execution. No felony has

de Televisión, 10 September 2015, at <http://www.vtv.gob.ve/articulos/2015/09/10/tribunal-sentencio-a-leopoldo-lopez-a-mas-de-13-anos-y-9-meses-8551.html>

²⁵ See the report by Edgar López, “Sentencia contra López y los estudiantes es una narración de hechos sin pruebas,” in *El Nacional*, 3 October 2015, at http://www.el-nacional.com/politica/Sentencia-Lopez-estudiantes-narracion-pruebas_0_712729003.html

²⁶ See the report by Álex Vásquez, “Con declaraciones de los propios testigos rebatirán la condena de López,” in *El Nacional*, 5 October 2015, at http://www.el-nacional.com/politica/declaraciones-propios-testigos-rebatiran-Lopez_0_713928718.html

²⁷ See the reports: “Jueza condena a Leopoldo López a casi 14 años de cárcel por hechos del 12F,” in *El Universal*, 10 September 2015, at <http://www.eluniversal.com/nacional-y-politica/150910/jueza-condena-a-leopoldo-lopez-a-casi-14-anos-de-carcel-por-hechos-del>

²⁸ See José Ignacio Hernández, “Sobre el juicio y la condena a Leopoldo López,” in *Prodavinci*, 11 September 2015, at <http://prodavinci.com/blogs/sobre-el-juicio-y-condena-a-leopoldo-lopez-por-jose-ignacio-hernandez/>

been proved against Leopoldo López in order to sentence him to 14 years, but that is what was in the will of the dictatorial power.”²⁹

V

And that is the way it was; in a parody of a trial, Leopoldo López was condemned to prison, not because he has committed any crime, but because the State deemed that his political discourse had to be criminalized, in other words, there was a need to criminalize the exercise of his freedom to express his political ideas; and all, under the fallacious argument that, by the own words of the sentence, he had allegedly been the “determiner” of having other persons, whom he did not even know, who, during the course of a public protest gathering, had allegedly damaged and set fire to public property, even when he never made reference to such actions in his speech, and furthermore, because he allegedly was part of an “association to commit punishable deeds” and that he allegedly had instigated to disobedience of the laws, but without even identifying said “felonious association to commit crime” or the alleged “associated” conspirators.

As it was reminded by the Inter-American Commission on Human Rights when it stated its concern for the failure of Venezuela’s Judiciary to publish, for almost a month, the text of the sentence against López, expressing that it was a process intended to declare Leopoldo López “*guilty of the crimes linked to the exercise of freedom of expression and his political rights*,” thus condemning him for the felonies of “public instigation, damage to property, intentional arson, association to commit crimes,” considering that:

“the abuse by means of vague and ambiguous penal categories, which permit responsibilities to be attributed to those who participate in, or convene a demonstration, generates an intimidating effect on the exercise of the right to protest, which results in it being incompatible with democratic principles.”

The Inter-American Commission, in its Press Release of 25 September 2015, in showing its concern for the failure to publish the sentence, further added that:

“the right to protest includes the right to choose the cause and objective of same; and the non-violent call for a change in the state’s policy or in the government itself is part of the specially protected kinds of speech,” in such a way that, “the responsibility for acts of violence committed during a protest must be attributed in an individual way.”³⁰

VI

These felonies that were attributed to López, with respect to which the Judge ruled that he had supposedly been the “determiner” in their perpetration by others, had in fact been the felonies of “arson” and “damage,” in addition to considering him the “author” of the felonies of “public instigation” and “association for purposes of committing crime.”

According to the text of the sentence, the first of the felonies mentioned, attributed to Leopoldo López, that of having been *the determiner* in the **felony of arson**, which is one of the felonies “against the conservation of public and private interests,” in reference to setting fire to buildings, which is contemplated and sanctioned by Article 343 of the Criminal Code, where it is mandated that:

“**Article 343.** Anyone who has set fire to a building or other construction, crops yet to be harvested or amassed, or combustible material storage areas, will be penalized with three to six years’ imprisonment.

“If the fire has been caused in buildings intended for habitation or in public buildings, or intended for public use, for public utility enterprise or industrial plants, for religious worship, for stores or warehouses for industrial or agricultural use, for merchandise, for flammable raw materials or explosives or materials for mines, railroads, trenches, arsenals or shipyards, the imprisonment shall be

²⁹ See Luis Ugalde, “Leopoldo, dictadura, elecciones,” in *El Nacional*, Caracas, 24 September 2015 at http://www.el-nacional.com/sj-luis_ugalde/Leopoldo-dictadura-elecciones_0_707329426.html

³⁰ Inter-American Commission on Human Rights, “Comunicado de Prensa,” 25 September 2015, in <http://www.oas.org/es/cidh/prensa/comunicados/2015/107.asp>. See the short note in the critique “CIDH pide a Venezuela publicar sentencia contra Leopoldo López,” where it is mentioned that “OAS Secretary General Luis Almagro recently requested that the international community have access to the sentence issued to López, who has received gestures of support and solidarity from Governments, former presidents, non-governmental organizations and artists. See *Noticias Caracol*, 25 September 2015, in <http://www.noticiascaracol.com/mundo/cidh-pide-venezuela-publicar-sentencia-contra-leopoldo-lopez>

for a time of four to eight years.

“Anyone who by other means causes damage to buildings or other industrial or commercial facilities will incur the same penalty.

Anyone who has damaged the means employed for the transmission of electric energy, or gas, or who has caused the interruption of its distribution, shall be penalized with two to six years’ imprisonment.”

The second of the felonies with respect to which the sentence attributes to Leopoldo López for having been *the determiner*, was the **felony of damages**, which is one of the felonies “against property,” provided and sanctioned in Articles 473.3 and 474 of the Criminal Code, where it is mandated that:

“**Article 473.** Anyone who in any way has destroyed, annihilated, damaged or deteriorated real estate or personal property belonging to another, shall be punished, upon petition by the aggrieved party, with imprisonment of one to three months.

“The imprisonment shall be forty-five days to eighteen months, if the act was committed under any one of the following circumstances [...]:

“3. In public buildings or in those intended for some public use, for public utility or for religious worship; or in buildings or works of the kind indicated in Article 349, or in public monuments, cemeteries or their spaces...”

“**Article 474.** When the act contemplated in the preceding article has been committed on the occasion of acts of violence or resistance to authority, or at a meeting of ten or more persons, all of whom have come together to the place of the felony shall be punished in the following manner:

“In the case of the first part, with imprisonment of up to four months and in the cases contemplated in the sole subsection, with imprisonment of one month to two years, the procedure always being *sua sponte*.

In the sentencing, these felonies are seen as related to what is provided in Article 83 of the same Code that governs the gathering of several people in the same punishable act, and establishes:

“**Article 83.** When several people gather in the execution of a punishable act, each one of the perpetrators and of the immediate cooperators is subject to the penalty applicable to the perpetrated act. The one who has determined that another person commits the act incurs the same penalty.”

The third of the felonies attributed to Leopoldo López, in this case as the *author*, was the **felony of public instigation**, which is one of the felonies “against public order,” which governs instigation to commit crime, and is provided in Article 285 of the Penal Code, thusly:

“**Article 285.** Anyone who instigates to disobedience of the laws or to hatred among its inhabitants or creates an advocacy in favor of acts that the law considers to be felonies, in such a way that public tranquility will be placed in jeopardy, shall be punished with imprisonment of three to six years.”

And the fourth of the felonies, also attributed to Leopoldo López as *author*, was that of **association to commit crime** contemplated in Article 37 of the Organic Law Against Organized Crime and Funding of Terrorism (*Gaceta Oficial* No. 39.912 of 30 April 2012), in both of which it is mandated that the following be included among the “felonies against public order”:

“**Article 37.** Anyone who is part of an organized crime group shall be punished for the sole fact of association with imprisonment of six to ten years.”

As for the definition of what is understood to be “organized crime,” Article 4.9 of the Law defines it as:

“**Article 4.9.** Organized crime: the action or omission by *three or more persons associated for a certain time with the intention of committing the felonies* established in this Law and *directly, or indirectly, obtaining a benefit, economic or of any other kind, for himself or herself or for third parties.* Likewise activity conducted by a sole person acting as an entity of a corporation or association, with the intention of committing the felonies provided by this Law, shall be considered to be organized crime.”

In addressing all these felonies, in order to convict a person, the first thing that the judge would have to clearly demonstrate is that the person being convicted has acted *with malice aforethought*, that is to say, that he has “the intention of carrying out the act” that constitutes a felony (Art. 61, Criminal Code). In this case, the Judge should have proved that Leopoldo López had acted with felonious intent, in other words, that he personally urged several people in particular to set fire to buildings and cause damage to

property, and to those ends he incited with malice aforethought and became associated with others in a permanent way for a definite time by means of some criminal plan to be developed by a criminal organization, made up of individuals who have all resolved to commit crime, that is to say, with malice aforethought; and furthermore, with the intention of gaining some benefit for himself or for herself.

Of course, none of that happened nor could it have been proved by the Judge. As advised by Jesús Ollarves, this alleged “intention to commit felonies” attributed to Leopoldo López, as way to convict him, would have to be proved “on the basis of true evidence and not on simple suggestions by the prosecution and much less on conjecture that emerges at the last moment.”³¹ And in particular, the Judge should have proved that:

“convening and conducting a march constitutes association to commit crime, and the conjunction of activities and intentions by followers of Leopoldo López fit in with a permanent criminal plan.”³²

VII

Of course, as has been stated, none of that could be proved in the trial, in view of the fact that on the occasion of the student demonstrations of February 12, 2014, Leopoldo López did not set fire to anything, nor was he present when something was set on fire, nor was it proved that he damaged anything or with malice of forethought induced anyone to go do damage or set fire to property, much less, the facilities of the General Public Prosecutor, nor did he instigate to disobedience of the laws, nor did he associate himself with anyone in a criminal enterprise, not for a definite time nor for a long time, in order to commit crime, or with the intention of committing felonies, was the part of any criminal organization aiming to execute some criminal plan to damage or set fire to properties.

On the contrary, nonetheless, the Judge in the process, in her sentence, after supposedly analyzing the “evidence” about the actions that occurred on the date of 12 February 2014, concluded that:

“it had been demonstrated that a sizeable group of demonstrators [...] heeded the call executed by Leopoldo López and other leaders of the *Voluntad Popular* political party, for which Leopoldo López, *expressing himself through different communications media*, called out for people to take to the streets, which produced a series of violent acts, the cessation of recognition of the legitimate authorities and disobedience of the law, which set off the disproportionate attack by a group of people that *acted after having been instigated by the speeches of said citizen*, against the seat of the General Public Prosecutor, as well as setting fire to seven cars, six of which were patrol cars belonging to the Corps of Scientific, Penal and Criminal Investigations, these acts of vandalism having been executed using blunt and incendiary objects.” (pp. 257- 258) (Our italics).

Likewise, after analyzing testimony by witnesses, all of them government officials, the Judge deemed that it had been “accredited that a group of persons gathered in the vicinity of the seat of the General Public Prosecutor, and after the speech given by Leopoldo López, once he had retired from the location, they had proceeded to commit a series of violent acts, causing serious damage to said seat, to seven units of the Corps of Criminal and Scientific Investigations, and to Plaza Parque Carabobo,” deeming that the demonstrators “were in the midst of instigating” (pp.258-259) (Our italics).

Likewise, after the statements by the group of witnesses had been analyzed, concerning the veracity of the acts that occurred on 12 February 2014, the Judge concluded that:

“after his speech and *once Leopoldo López had retired from the location*, an irregular situation emerged where serious damage was done to the seat of the General Public Prosecutor, to five units of the Corps of Criminal, Penal and Scientific Investigations, which resulted in these units no longer having any commercial value and damages to Plaza Parque Carabobo,” (p. 261) (Our italics).

VIII

Aside from the aforementioned evidence, the Judge lent credence to the statement by two experts who analyzed Leopoldo López’s speeches.

In the first place, the Judge lent credence to the statement by expert Mariano Alfonso Alí, who had

³¹ See Jesús Ollarves, “La jueza Barreiros está en aprietos,” in *Provea*, 17 September 2015, at <http://www.derechos.org.ve/2015/09/17/jesus-ollarves-la-jueza-barreiros-esta-en-aprietos/> Likewise in *ACN Agencia Carabobeña de Noticias*, at <http://agenciacn.com/opinion/articulo-de-jesus-ollarves-la-jueza-barreiros-esta-en-aprietos/>

³² *Idem.*

analyzed Leopoldo López's discourse, as formulated in his Twitter account @leopoldolopez during three months, between 1 January and 18 March of 2014, referring to the "parameters that a leader must take into account at the moment of issuing his messages and transmitting his speeches," concluding – as quoted in the sentence - that:

"Leopoldo López utilized Twitter as a real power [...] launching messages against the current government, ceasing to recognize its legitimacy," stating, "for example, 'those who remain silent lose' which was re-tweeted, [...] 'La Salida,' 'sos Venezuela' and 'the delinquent State', which was widely disseminated."

In particular, the expert observed that:

"As for the date of 12 February, there was a discrediting of the representatives of the branches of government, and some of the relevant adjectives he stated were: a delinquent, murderous, drug trafficking State, among other things," the expert considering that "those messages had a purpose, which is to reach the listener, by building a basic model of communication that is the sender, the medium (by which the message is transmitted), the message, and the listener, in order to construct an idea around a vision of the country so that it might reach his followers, which at that moment was more than 2 million 700 thousand." (p. 262).

Other characteristics of Leopoldo López's discourse, emphasized by the expert, as quoted in the sentence were that:

"he speaks for all Venezuelan men and women; he does not just speak in the first person, but speaks on behalf of the entire opposition and speaks on behalf of all other Venezuelans who are not part of the opposition [...] affirming that the country is divided in two, and that Venezuelans have allegedly been abducted by a delinquent State and by a President that orders his armed groups to murder Venezuelans, and a small group, and I say small, because he considers them to be a sort of upper echelon that has hijacked the powers of the State. *Such messages cause aggressive behavior in the will of his followers, thus producing in the edification large and evident signs of violence.*" (pp. 262-263).

In any case, based on the aforementioned, one has to observe that the matter over which the expert is right within his opinion, upon which the Judge relied in pronouncing her sentence, is his accurate appreciation of the fact that for the opposition, what really exists in Venezuela is a delinquent State, controlled by a small group that has high jacked all the powers of the State. That is something nobody can deny, such that it would hardly be felony to tell the truth, which, furthermore, everybody knows.³³

But secondly, the Judge, in her sentencing, also gave credence to the testimony of another already mentioned expert, Rosa Amelia Azuaje León,³⁴ who also conducted a "linguistic study" of Leopoldo López's *four speeches*, judging that "through his speeches he sent discrediting messages that set off violent actions and imminent dangers against the seat of the Office of the General Prosecutor and the Investigative Corps," the expert then went on to give advice and rules of behavior over what a political leader may say, and in what way he may say it, indicating among other things that:

"the right thing to do in his position as leader is to call for calm, tranquility, peace, and the utilization of proper mechanisms established by the Law for bringing up his discontent with the current government," (p. 263).

In fact, the expert recognized, according to what is related in the sentencing, that López addressed "a population he knows very well [...] consisting mainly of young people who are restless, who feel indignant, who have legitimate reasons to feel indignant." According to the expert, López addressed these people, bringing up "themes" pertaining to "change of system, change of government," beginning with "a very powerful appeal that is the way of expressing that this system does not work." Nevertheless, despite having stated these affirmations, the expert claimed that she was not offering any political criteria, but only:

"doing work that is descriptive of what Leopoldo López had done, and he might tell me if I am right

³³ See, for example, Carlos Tablante and Marcos Tarre, *Estado delincuente. Cómo actúa la delincuencia organizada en Venezuela* (Prologue by Baltazar Garzón), La Hoja del Norte, Caracas 2013.

³⁴ As already mentioned, Rosa Amelia Azuaje León, expert in linguistics, is a columnist at the website Aporrea.org. See <http://www.aporrea.org/autores/rosa.asuaje/>

or I am wrong, because ultimately it was he who spoke and not I, about this theme of changing the system and changing the government.” (p. 263).

Of course López’s defense counsel correctly alleged that the expert was wrong, but of course that had no importance for the Judge, despite the exception made by the expert.

In any case, according to the expert, those changes of system Leopoldo López’s speech would allegedly take place by way of what he called “*la salida* [the departure],” which the expert considered to be a “negative program” that advocated “changing the current system for another system that would be more democratic [...], where there is justice for all and not just for one group.” (p. 263).

Another one of the “themes” the expert analyzed in López’s political speeches, was his having made political reference to Rómulo Betancourt’s name, which apparently leads to the absurdity of thinking that in the mind of the expert that would be a felony. Nevertheless, after recognizing that it was difficult to find that the figure of Betancourt could have an impact on “a young listener,” the expert stated – as quoted in the sentence - that López’s having compared two “historic moments in Venezuela’s history,” namely “23 January 1958 with 23 January 2014,” was not an innocent act, since she considered that “there is no innocent discourse here and I do not want to say that I am criminalizing it, but all discourse is constructed by way of some determined purposes and that is a social practice.” Such that after saying “may the defense correct me if I am wrong,” and clarifying that she (the expert) was not going to “meddle with the truth, as truths are much too evasive for me to touch upon them,” she judged that the reference to Betancourt had been in order to turn to his “*auctoritas*,” (p. 264).

From there, the expert went on to analyze another one of the “themes” in López’s speeches, which was “the very clear distinction between the people and the government” which she deduced from the speeches, in the sense that “the people are good, but not the government, the people are being humiliated, the people are being subjected to violations of their human rights, but not the government,” and the expert even added a digression on another “theme,” which was that “furthermore, the people consider it lawful to cease to recognize an illegitimate government,” and she added that:

“If one were to delegitimize the government and clearly say that this is an illegitimate government, since going out on the street to gain democracy by constitutional means, in this day and age, is very complicated constitutionally, in other words, discursively, it is a titanic task,” (p. 265).

In her sentence, the Judge, continued to shield the expert by judging that credence had been given to the fact that Leopoldo López, in a press conference he held on 23 January 2014, “intensified his discourse and began an aggressive public campaign” against the President of the Republic, Nicolás Maduro and the State’s institutions, stating “that the current Government has ties to drug trafficking,” in addition “to being corrupt, oppressive, anti-democratic, and that it was necessary to step out to win democracy, and that for this change, or the departure, it was going to be possible only with the people out on the street,” (pp. 265-266). For this, the expert surmised that López had prepared a speech, recalling the defeat of Pérez Jiménez, based on the expression “We have to step out to win democracy,” which, in her judgment, meant that:

“His purpose was none other than to plant the idea in his followers’ minds that only the street could generate a change, inviting them to be protagonists, with the aim of ceasing recognition of the legitimacy of the National Executive, as well as that of the heads of the Public Prosecutor, (these were words that he emphasized during an interview conducted before the *CNN en Español* channel, on the 11th day of February of the year 2014,” (p. 266).

From all of that, the expert deduced that the strategy established by Leopoldo López and his “structured group” was clear:

“to utilize the conventional and alternative social communications media to give strength to his speeches having violent content, since his only purpose was to make public tranquility disappear, in calling upon a group of people who agreed with his allocution, in order to cease recognition of the legitimate authorities and the Laws,” (p. 266).

The expert then went into legal arguments as she analyzed López’s proposal that the people stay out on the streets “until such time as when the President of the Republic ‘would leave,’” and the expert considered that this “was impossible constitutionally,” given that the President had been elected by the people for the period 2014 to 2019.

Whereupon – as quoted in the sentence - the expert went on to refer to another speech, “violent in

form,” by López, delivered on 12 February 2014, in which he established “as a slogan ‘#LaSalida - #LaCalle’ [the departure – the street]” the expert deducing from this that his purpose was:

“to accomplish a total and profound change of those who administer the National Branches of government, with the intention of removing them from office and replacing them,” thus reinforcing “again his intention of ceasing recognition of the legitimate authorities,” (p. 266).

The expert furthermore made reference to the claim that upon López’s arrival at the seat of the General Public Prosecutor, the intention being to demand the release of the students being detained in the State of Táchira, after not having been received by the General Prosecutor, the protesters:

“were shouting slogans directed against the institution and its highest authority; not to mention the aggressive speech, all of this always under the gaze of their leader and spokesman Leopoldo López, *who then decided to retire from the location,*” (p. 267). (Our italics).

IX

The text of the sentence continued by affirming, and here one does not know whether or not the text was paraphrasing the expert, that other citizens “assumed a violent attitude, with uncontrolled anger, and began to charge at the seat of the General Public Prosecutor, directly throwing rocks, blunt objects, Molotov cocktails, causing great damage to the building’s façade” [...], instigating other citizens, as well as the rest of the protesters, to disobey the laws, thus placing public tranquility in danger, while large and conspicuous symbols alluding to violence were appearing on the building [...] they threw Molotov cocktails into the interior of the building [...] causing combustion,” (p. 267). The text of the sentence likewise described in detail the expert analysis conducted on the texts of all the graffiti, drawings and annotations formulated by the protesters against the government (p. 268), from which the Judge deduced “that the people who went to the seat of the Office of the General Public Prosecutor were followers of Leopoldo López,” judging from the “pamphlets alluding to the *Voluntad Popular* party, as well as messages alluding” to *La Salida* [...] “demanding the resignation of the President of the Republic, as well as transcriptions of words said by Leopoldo López,” (p. 268).

Drawing from the aforementioned, in her sentence the Judge deemed that:

“it is clearly determined that Leopoldo López *did not utilize appropriate means established in the Constitution*, in order to have his demands tended to, *but rather utilized the art of the word*, in order to make his followers believe that there was an alleged constitutional departure, when the conditions he sought were not present, such as the resignation of the President of the Republic, as the recall referendum could only be scheduled in the year 2016, his objective as a political leader, ***despite his appeals for peace and tranquility***, was to accomplish the departure of the current government by way of *appeals to go out onto the streets, disobedience of the law, and the cessation of recognition of the Public Powers of the State, all legitimately constituted,*” (p. 269).

In other words, according to the Judge, Leopoldo López did not utilize the appropriate means for his political discourse, and without telling him what the appropriate ones were, she definitely condemned him for a felony of omission, in other words, for not having done what the Judge considered to be what was appropriate, but without saying what it was. For this reason, the conclusion of the sentence was that despite the fact that the Constitution guarantees the right to free expression of thought (Art. 57) and the right to protest peacefully (Art. 68), Leopoldo López nevertheless, “sent *an inappropriate message to his followers*, who were mostly young people, beckoning them onto the streets for an alleged *constitutional and democratic departure, when he should have done so through the constitutional means, by activating those mechanisms,*” (p. 270). In other words, again, the sentence was for not having acted in an “appropriate” way, according to the Judge’s criterion, deciding then that:

“credibility was established that Leopoldo Eduardo López Mendoza is criminally responsible in the felonies of determiner in the felony of arson, provided and sanctioned in Article 343, first subsection in relation to Article 83, both of the Criminal Code; determiner of the felony of damages, provided and sanctioned in Articles 473, Numeral 3 and 474 in relation to Article 83, all of the Criminal Code, Author of the felony of public instigation, provided and sanctioned in Article 285 of the Criminal Code and Association to Commit Crime, provided and sanctioned in Article 37 of the Organic Law Against Organized Crime and Funding of Terrorism,” (p. 270) (Italics in the original text).

X

After this categorical affirmation, expressed as a result of her having “appraised” the evidence, the

Judge went on to expound upon the “*de facto* and *de jure* fundamentals” of her sentence (Chapter IV), analyzing the various norms in the Criminal Code upon which she based the sentencing.

Concerning Article 285 of the Criminal Code, which refers to *public instigation to commit crime*, the Judge was precise in recognizing that the felonious category entails:

“leading another person to do something “intentionally; it is not merely proposing that it be committed, but rather promoting this in a certain coercive way, taking advantage of people’s state of excitement, of the instincts of the person being instigated [...] The instigator wants the act to happen, but wants it done by someone else, he wants to persist on that action by way of the other person’s try [sic], instigating in the latter the resolution to execute it” (p. 273).

That is to say, in the case of Leopoldo López, in order to sentence him for this felony of public instigation to commit crime, the Judge must have had to consider as proved that, with malice aforethought, Leopoldo López had wanted Damián Daniel Martín García, Ángel de Jesús González and Christian René Holdack Hernández, specifically, to set fire to the General Public Prosecutor’s building in particular and cause damage to public property located there, thus inducing them to do so. In other words, she had to have proved in the words of the sentencing itself, that the alleged instigator [Leopoldo López] wanted the act [arson and damage to public property], but wanted it done by others [Damián Martín, Ángel González and Christian Holdack], that he wanted to persist in this action through the “psychiatry” of others, thus determining in them the resolution to execute it.

Of course, that is not proved in any way in the court record, given that the Judge had limited herself to making the false generic statement, far removed from the felonious category, namely that what “was demonstrated” was that these persons:

“acting, determined [sic] by Leopoldo López, they instigated to disobedience of the laws, for purposes of generating violence and in this way creating chaos and perturbing the peace and tranquility of the citizenry, as in fact did occur on the 12th day of February of 2014, since both defendants were at the location of the acts, together with the rest of the protesters who were causing destruction,” (p. 273).

In this affirmation there is no reference at all to an alleged induction coming from López to specifically set fire to or damage determined properties by these determined persons; for which reason it is but a judicial aberration “to deduce” that Leopoldo López “was the determiner in the felony of public instigation,” (p. 274). In order to arrive at this outrageous conclusion the Judge based her decision solely on what she considered to be López’s “speeches of violent content,” whose allegedly “sole purpose was to make public tranquility disappear,” by leading a march toward the General Prosecutor’s Office “with the purpose of delivering an alleged document petitioning for the release of some students,” advocating “a total and profound change of those who administer the National Public Power, with the intention of having them replaced and removed from their charges,” which in the opinion of the Judge, “again reinforces his intention of ceasing to recognize the legitimate authorities.” The Judge also made reference to the fact that the protesters:

“were shouting slogans directed against the institution and its highest authority; not to mention the aggressive speech, all of this always under the gaze of their leader and spokesman Leopoldo López, who then decided to retire from the location,” (pp. 274-275)

Furthermore, in the sentencing, the Judge recalled that the “violent acts” in fact began to occur after López *had retired from the location of same*, but without explaining, according to her own definition of instigation to commit crime, how Leopoldo López could then “lead” the other defendants “to intentionally” set fire to or damage something; in other words, how could Leopoldo López “promote in a certain coercive way” setting fire to or damaging determined property belonging to the Public Prosecutor Office; in short, how was it that Leopoldo López, as instigator, could have wanted “the act, but wanted it done by someone else,” how is it that he could want “to persist in that act [arson and damage to determined property of the Public Ministry] through the psychiatry [sic] of others, thus determining in these persons the resolution to execute it,” (p. 273).

XI

The Judge then went on to analyze the *felony of damages* provided in Article 473 of the Criminal Code, for which the other persons were sentenced, explaining that it suggests the destruction or deterioration of real estate or other property perpetrated by the other persons convicted, who in the

specific case caused “a series of serious damages to the seat of the Public Prosecutor and to *Plaza Parque Carabobo*,” thus affirming, pure and simple, that these persons had been “determined [sic] by Leopoldo López,” (p. 277); but without defining how, in what form, or when.

The same thing happens in the sentencing with respect to the felony of *arson*, contemplated and sanctioned in Article 343 of the Criminal Code, for which other people were convicted, the Judge having explained that in order to apply the norm a person has to try “to cause a large fire to make something burn that was not supposed to burn, thus causing danger to the public,” (p. 277), affirming, also pure and simple, that the same act had been “determined by Leopoldo López,” (p. 277); but without saying how, in what form, or when Leopoldo López could have determined that the ones who were supposed to commit those felonies were these specific persons.

XII

The sentence also made mention of the *felony of association to commit crime* contemplated and sanctioned in Article 37 of the Organic Law Against Organized Crime and Financing of Terrorism (2012), explaining that this has to do with “an autonomous penal category that sanctions the simple association” such that the norm “punishes the mere criminal intention,” what professor Alberto Arteaga rightly considers to be an “absurdity” as neither thoughts nor simple intentions can commit a crime.³⁵ Nevertheless, the Judge considered it to be that way, adding that the norm pursues “the direct malice aforethought (the intention of committing the characterized objective and the will to do it),” thereby punishing, “without requiring even the beginning of the execution of the felonious ends, nor of course, a damage to the judicial good for which there was an intention to offend, all of which means, *as the conspiracy that it is*, an obvious anticipation of the limit of the punishment that is normally presented by the commencement of the execution.” (pp. 277-278).

From there the Judge maintained that the subjective requirement for being able to apply the felonious category is “constituted by the criminal objective consistent with the purpose of committing one or more felonies,” all of which:

“requires malice of forethought *ab initio*, for which reason the agents need to have associated in order to commit crime, in such a way and form that there is no felony in cases where an ordinary association is constituted, with a legitimate purpose, different from the specifically criminal objective demanded by the construct, which does not cause the nature of the organization to change from lawful to unlawful,” (p. 278). (Our italics).

That is to say, according to the Judge, this felonious category requires that “a criminal enterprise” exists and is constituted, thus there a consummation of felony that “by the sole reason of being part of the association, regardless of the felonies that that group may ultimately commit.”

For that reason, in order to make this felony applicable to Leopoldo López, in the case decided, in the Judge’s own words, it had to have been proved in the court record that he was associated with a “criminal enterprise,” that had malice aforethought from the beginning, given that the people in the association must have associated in order to commit crime; the association had to have been “constituted with a criminal objective,” in other words, with a specific objective, which together with its associates had to have “malice aforethought from the beginning,” which is that of committing a determined crime (p. 278).

Nevertheless, none of that existed, and of course, none of that could be considered as proved in the aberrant sentence, given that the Judge limited herself to explaining that in the case of Leopoldo López, he supposedly had “a structured group made up of other political leaders, among them María Corina Machado and Gaby Arellano, who were not part of the criminal proceedings nor were they being tried, and they had been in front of the seat of the General Public Prosecutor’s Office together with thousands of protesters, all of whom, based on what has been seen, could also be considered to be part of the alleged and false “criminal enterprise.”

In other words, what that means is that the Judge’s aberrance, by her sentence, in trying to say that

³⁵ About this, Alberto Arteaga is of the opinion that the text of the sentence “makes an out of place remark giving assurances that this has to do with a felony of danger for which the criminal intention as such is punished. Thoughts do not commit felonies, and simple intentions do not commit felonies. Sustaining the opposite, as is done by Judge Barrieros on page 277 of the text of the sentence, is an absurdity.” See critique by Edgar López, “Sentencia contra López amenaza a todos los líderes de oposición,” in *El Nacional*, Caracas 9 October 2015, at http://www.el-nacional.com/politica/Sentencia-Lopez-amenaza-lideres-oposicion_0_716328542.html

there were *three persons* in the “criminal enterprise” that her mind imagined, which is what is required by the felonious category in Articles 37 and 4.9 of the Organic Law Against Organized Crime and Financing of Terrorism, for which purposes she included, in an imprudent way, María Corina Machado and Gaby Arellano in the “association to commit crime,” as well as a multitude of persons who were at the demonstration, all of whom supposedly were also part of the “criminal association” for which the Judge convicted Leopoldo López.

This judicial aberration is complemented by the Judge’s affirmation, created out of nothingness, that it had supposedly been demonstrated that Leopoldo López “is part of a felonious association,” simply because his purpose was allegedly “to initiate a public and aggressive campaign” against the President of the Republic and the institutions of the State, “making it known to the audience, cohorts, and in general people with affinity toward his speech, that the current Government has ties to drug trafficking,” further stating that the government was “corrupt, oppressive, anti-democratic, and that, furthermore, it was necessary to go out to win democracy,” which was going “to be possible” only “with the people out on the street [...] without taking into account that his appeal is not the appeal coming from the ordinary citizen, but rather from someone who moves the masses,” (p. 279).

And thus, without explaining how or when the alleged criminal enterprise or association made up of three or more persons had allegedly been formed or defined, even for purposes of profit, or with which persons, or what was the felony that had been intentionally agreed upon to be committed in common, or when they were going to commit it, or in what way was there evidence of the malice aforethought in the intention of committing crime; the Judge ended her sentencing by convicting all of the defendants, and in particular Leopoldo López for allegedly being *a determiner in the felony of arson*, (4 to 8 years in prison); *a determiner in the felony of damages*, (one month to two years in prison); *an author in the felony of public instigation*, (3 to 6 years in prison) and *association to commit crime* (6 to 10 years in prison) “*the definitive penalty to be imposed being thirteen (13) years, nine (9) months, seven (7) days and twelve (12) hours in prison.*”

XIII

When this sentence is read, what stands out as evidence is its servitude character with respect to the Public Prosecutor and the Totalitarian State’s apparatus for persecution and repression, given that the provisional Judge who pronounced such sentence proceeded to blindly follow what doubtlessly had been “ordered” by the prosecutors at the Public Ministry, without even bothering to try to argue the contradiction into which she fell by applying diverse felonious categories in order to convict Leopoldo López, by means of what she herself described in the sentence in order that they could be applied.

About the felony of public instigation, the Judge said that it could only be applied to anyone who has intentionally led someone else to commit a particular felony, which the author wanted to be committed by the other person, by imposing upon the latter the resolution to execute the felony (p. 273); but nothing appears in the record stating that Leopoldo López, with malice aforethought, had specifically wanted to have Damián Daniel Martín García, Ángel de Jesús González and Christian René Holdack Hernández set fire to or damage something, or that he had induced them to do so. Leopoldo López was not even at the place where the acts took place when a fire occurred and property was damaged, and it is possible that he did not even know personally those who had caused it, such that it was impossible for it to have been proved that he had intentionally ordered them, specifically, to set fire to or damage a specific property. It is, therefore, simply impossible for the Judge to have irresponsibly arrived at the conviction that Leopoldo López had been the “determiner” of the felonies of damages and arson allegedly committed by the other convicted students, without establishing how, in what form, or when Leopoldo López could have ordered that they, precisely those specific citizens, were the ones who were expected to commit those specific felonies.³⁶

Likewise, it is an inexcusable aberration, the source of the Judge’s individual responsibility, for her to have sentenced Leopoldo López, for none other than the felony of association to commit crime,

³⁶ On the unjust sentencing of the student Ángel de Jesús González, see Allan R. Brewer-Carías, “El desprecio a la libertad de los estudiantes. O de cómo los jueces del horror, en el juicio contra Leopoldo López, condenaron arbitrariamente al estudiante Ángel González Suárez por un delito que no cometió,”. 13 octubre 2015, en <http://www.allanbrewercarias.com/Content.aspx?id=449725d9-f1cb-474b-8ab2-41efb849fea3>

provided and sanctioned in a Law such as the Organic Law Against Organized Crime and Financing of Terrorism, just for having expressed his political opinion, as political leader of the opposition, against the government, precisely through speeches before a multitude of people. The same Judge explained in the sentence that in order to apply this kind of felonious category, she had to prove that López was part of a criminal association or enterprise, consisting of more than three persons, with malice aforethought from the beginning in the intention of committing a specific felony.

But in the record nothing appears in such respect, for which, in the sentence, the only thing the Judge irresponsibly identified as having any relation to some “association” was the fact that when López gave his speech on the 12th day of February of 2014 in front of the building that is the seat of the Public Prosecutor, he had “a structured group consisting of other political leaders, among them Citizens María Corina Machado and Gaby Arellano,” and a multitude of people. For this reason, Jesús Ollarves made a comment about the sentence stating that it has not only brought in the “risk of going to jail for publicly expressing an opinion that is critical of the authorities of the organs of the public power,” but also that:

“On this occasion, a judge dares to do something even more serious: that is, to rule that any political organization of the opposition, in and of itself, is an association to commit crime. By stating without any proof whatsoever that former Assemblywoman María Corina Machado and *Voluntad Popular* leader Gaby Arellano are part of an organized crime group, political parties and any expression by civil society become criminalized.”³⁷

There is no way to assess this sentence, other than affirming that it has to do with an insult to the law and to intelligence, and a clear example of how the totalitarian régime despises the Law. Therefore, for that reason, José Miguel Vivancos of Human Rights Watch stated that decisions such as this one:

“are made at the Presidential Palace and not at the Judiciary. I have no greater hope but that courts higher than the Judiciary can reverse a sentence that constitutes an act of arbitrariness. Leopoldo López had been sentenced without any evidence. We have had access to his court record and there is no evidence whatsoever that would even justify an arrest warrant.”³⁸

Therefore, the only thing worthy of being read in this sentence is actually the recognition and the advocacy made therein by the Judge concerning the excellent accomplishment of Leopoldo López’s political leadership in the country, as a leader of the opposition, which definitely is what explains its issuance, as an order that was given to the Judge in order to silence him.

The “felony” for which Leopoldo López was sentenced, definitely, as becomes evident from the analysis of the text of the sentence, was none other than “the felony of opinion,” which meant that he was convicted for his discourse, such that what was pursued was the “felony” of having publicly stated his opinion, as a successful leader of the opposition,³⁹ against the totalitarian government that Venezuelans suffer, and of having denounced all the corruption that affects the Régime, by advocating the need that this government be removed from the exercise of power.

³⁷ Ollarves added: “The sentence does not specify how López, Machado and Arellano had assembled together to execute felonious acts nor does it demonstrate the permanent character of the organization from its creation up until the moment of the punishable acts, in this case the acts of vandalism that occurred during the outcome of the opposition’s march of 12 February 2014.” See critique by Edgar López, “Sentencia contra López amenaza a todos los líderes de oposición,” in *El Nacional*, Caracas 9 October 2015, at http://www.el-nacional.com/politica/Sentencia-Lopez-amenaza-lideres-oposicion_0_716328542.html

³⁸ See critique in “HRW: Los jueces en Venezuela son soldados de la causa chavista,” in *El Nacional*, Caracas 9 October 2015, at http://www.el-nacional.com/politica/HRW-jueces-Venezuela-soldados-chavista_0_716928318.html

³⁹ For that reason, and rightly so, Alberto Arteaga has stated, concerning the sentence, that “López was sentenced solely for having been a political leader of the opposition;” and Luis Ollarves has stated that the sentence creates “a very broad and illegitimate interpretation about the nature of the message of political leaders against the government,” having therefore “as an objective criminalizing and intimidating dissidence, and it violates freedom of expression.” See the critique by Edgar López, “Sentencia contra López amenaza a todos los líderes de oposición,” in *El Nacional*, Caracas 9 October 2015, in http://www.el-nacional.com/politica/Sentencia-Lopez-amenaza-lideres-oposicion_0_716328542.html

XIV

The absurdity and aberration of the criminal conviction of Leopoldo López and other persons (students) of the non-existing “felonies” of “opinion” and of “public protest” (basically masked under the category of “instigation to commit crime”), was evidenced just a few weeks after their sentencing, by the Prosecutor in the case, himself, Franklin Nieves, in a statements he made shortly after fleeing the country on October 24, 015, which were disseminated through the news media. In it, in addition to justifying his leaving the country in order not to go on with lending a hand to the continuation of “*the farce [...] that was fabricated*” against the defendants, he referred to the “*pressure*” wielded over him:

“by the National Executive and my hierarchical superiors so that I would continue to defend the false evidence with which Citizen Leopoldo López had been convicted.”

The Prosecutor further stated – of course rather belatedly as the damage had already been done – that he did not want “to go on with that farce of a trial, unjustly violating the rights of these individuals,” and he invited judges and prosecutors in Venezuela “to tell the truth,” to “stop being afraid,” and:

“to speak out and *express your discontent resulting from the pressure wielded by our superiors, threatening us with removing us from office, with sending us to jail, and that string of absurd arguments they always impose upon us, in order to threaten us and have us act out the whims of all those individuals,*”⁴⁰

These statements, which produced as much repugnance as those issued in the past by former judges of the Supreme Court (for example, those by Eladio Aponte Aponte), who after being accomplices in the destruction of the Judiciary have also fled the country, in any case, imply that the conviction issued against López and the others is null, because false evidence had been fabricated, for which reason it must be nullified and the persons convicted set free.

The statements, furthermore, dispel any doubt that may be held in the democratic world about the gravity of the deterioration or ruination of democracy in Venezuela.

Also, for example, such statements should have compelled the countries members of the UN to reject the proposal to elect Venezuela as a member of its Commission on Human Rights. It is no more than a ridicule directed at the Organization’s principles, to incorporate in a Commission for the defense of human rights, a representative of an authoritarian government that has the characteristics of a Totalitarian State, which has crushed human rights in a way as evidenced in the case of Leopoldo López.

The aforementioned statements should also compel the judges of the Inter-American Court of Human Rights to admit the error they incurred, and the damage they caused to the Inter-American system for the protection of human rights, by refusing to try and appraise the proven

⁴⁰ Listen to the audio of those statements in the video at <https://www.youtube.com/watch?v=gfbJ8CUOiuo> and at https://www.youtube.com/watch?v=GQeC7DCV7_s. Concerning his statements, see the following notes in the media: “Fiscal del caso López huyó de Venezuela: Querían que siguiera defendiendo pruebas falsas,” where it is stated that: “Venezuelan prosecutor Franklin Nieves stated in a video recording that he left the country because of pressure from the Government of Venezuela. Pressure from government would be related to the defense of false evidence used to convict political opposition leader Leopoldo López,” in *cooperativa.cl*, 24 October 2015, at <http://www.cooperativa.cl/noticias/mundo/venezuela/politica/fiscal-del-%20caso-lopez-huyo-de-venezuela-querian-que-siguiera-defendiendo-pruebas-falsas/2015-10-24/100801.html>. About that, Juan Carlos Gutiérrez, López’s defense attorney, rightly stated that “The Prosecutor, yet one more time, presents evidence, of the illegality of his conviction, which is the result of a procedural fraud” and that “The trial against López is rife with errors having absolutely null validity. The sentence needs to be revoked and he should be released immediately.” See in “López’s trial was a farce, says the prosecutor who accused him.” “Franklin Nieves, Prosecutor 41 from Venezuela and one of two who presented the accusation against Venezuelan opposition leader, fled the country and says in a video that the prison sentence against López was pronounced using false evidence,” in *La Prensa* 35, 24 October 2015, at http://imprensa.prensa.com/panorama/Juicio-Lopez-farsa-fiscal-acuso_0_4330816885.html.

total absence of autonomy and independence of judges and prosecutors, and instead proceed to protect the State, endorsing the performance of Venezuela's Judiciary.⁴¹ The confession of the Prosecutor Nieves in the case of Leopoldo López, regarding the submissiveness of courts and prosecutors to the Executive are enough to justify the revision of such judgement.

New York, October 2015

⁴¹ This is what happened, for instance, when they decided to shelve the case of *Allan R. Brewer-Carías vs. Venezuela* (2014) thus protecting the State, in denial of the justice it required. The decision was handed down by Judges **Humberto Sierra Porto** (Colombia); **Diego García Sayán** (Peru); **Roberto de Figueredo Caldas** (Brazil); and Alberto Pérez Pérez (Uruguay), with the important Joint Dissident Vote by Judges **Eduardo Ferrer Mac-Gregor** (Mexico), and **Manuel Ventura Robles** (Costa Rica). Read the text of the sentence at http://www.corteidh.or.cr/docs/casos/articulos/se-riec_278_esp.pdf; and in: Allan R. Brewer-Carías, *El caso Allan R. Brewer-Carías vs. Venezuela ante la Corte Interamericana de Derechos Humanos. Estudio del caso y análisis crítico de la errada sentencia de la Corte Interamericana de Derechos Humanos No 277 of 26 May 2014*, Colección Opiniones y Alegatos Jurídicos, No 14, Editorial Jurídica Venezolana, Caracas 2014. See: about the evidence, judicial opinions and *amicus curiae* arguing the catastrophic situation of Venezuela's Judiciary, ignored by the judges in: Allan R. Brewer-Carías (Coordinator and editor), *Persecución política y violaciones al debido proceso. Caso CIDH Allan R. Brewer-Carías vs. Venezuela ante la Comisión Interamericana de Derechos Humanos y ante la Corte Interamericana de Derechos Humanos*. TOMO I: Denuncia, Alegatos y Solicitudes presentados por los abogados Pedro Nikken, Claudio Grossman, Juan Méndez, Helio Bicudo, Douglas Cassel y Héctor Faúndez. Con las decisiones de la Comisión y de la Corte Interamericana de Derechos Humanos como Apéndices, Editorial Jurídica Venezolana, Caracas 2015; TOMO II: Dictámenes, Estudios Jurídicos y Amicus Curiae, Editorial Jurídica Venezolana, Caracas 2015.