DISMANTLING THE RULE OF LAW BY POLITICALLY CONTROLLING THE JUDICIARY IN VENEZUELA AND ITS HARMFUL PROJECTION ON THE INTER-AMERICAN JUDICIAL SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

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(Sent for publication to the *European Review of Public Law*, oct. 2021)

I. THE CONSTITUENT PURPOSE OF ELIMINATING THE INDEPENDENCE AND AUTONOMY OF THE JUDICIARY SINCE 1999

"An independent and impartial justice system is essential to upholding the rule of law and ensuring the protection of human rights."

This was stated in the *Report of the Independent International Fact-Finding Mission on the Bolivarian Republic* of *Venezuela* submitted on September 16, 2021, before the Human Rights Council of the United Nations, which was almost entirely intended to analyse the situation of the Judiciary in Venezuela.[1]

Precisely for this reason, those who seized power in Venezuela in 1999 by convening a National Constituent Assembly that was not contemplated nor regulated in the Constitution, did so, from within and abusing a democratic instrument, in order to dismantle the rule of law and representative democracy and establish in its place an authoritarian regime with the fallacious cloak of a "participatory democracy."[2]

Consequently, the first political decision adopted by the National Constituent Assembly in August 1999 was to decree the assault and intervention of the Judiciary, overtly dismissing almost all the judges without any guaranty of due process, and appointing provisional and temporary judges subjected to the Assembly's power.[3] In this process of demolishing the independence and autonomy of the Judiciary, the first institutional victim was the former Supreme Court of Justice, and -as its Chief Justice Cecilia Sosa Gómez warned, when raiding and validating the constituent intervention aimed "directly at ignoring the Rule of Law," was merely deciding on its "self-

1 Available at: https://wwwohchr.org/Documents/HRBodies/HRCouncil/FFMV/A.HRC.48.69%20ES.pdf.

2 See Allan R. Brewer-Carías, *Golpe de Estado constituyente y fraude constitucional. Lecciones de la experiencia venezolana con la Asamblea Constituyente de 1999* [*Constituent coup d'état and constitutional fraud. Lessons from the Venezuelan experience with the 1999 Constituent Assembly*] Ed. Olejnik, Buenos Aires, Madrid 2021.

3 See my criticism at the time of the constituent intervention of the Judiciary in Allan R. Brewer-Carías, "*Debate Constituyente (Aportes a la Asamblea Nacional Constituyente)*," [*Constituent Debate (Contributions to the National Constituent Assembly)]*, Tomo I (8 agosto /8 septiembre), Editorial Jurídica Venezolana, 1999, pp. 57-74.

dissolution."[4] For this reason, at that very moment Chief Justice Sosa resigned her chair at the Court and her warnings were confirmed barely four months later, when its justices were dismissed and new justices were appointed by the same National Constituent Assembly to form the new Supreme Tribunal of Justice, controlled by the regime, without even complying with the requirements that the new Constitution of 1999 had just established.[5]

This was the onset of the systematic process of demolition, dismantling or collapse - without pause - of the Judiciary that has been taking place in Venezuela since 1999, whereby its autonomy and independence have been swept away, this being today one of the signs of the institutional deterioration of the country resulting from authoritarianism, there consequently being no rule of law.[6]

That is, the process of eliminating the judicial independence and autonomy in Venezuela is not recent; rather, it has been in motion for more than twenty years, as has been progressively denounced since then,[7] which is why in the same *Report of the*

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4 See my comments then regarding the unfortunate Supreme Court Settlement of August 23, 1999 decision, *Idem*, pp, 141 ss.

5 See my comments of that time on the Constitutional Transition Decree and the flawed appointment of the Justices of the new Supreme Tribunal, in Allan R. Brewer-Carías, *Golpe de Estado y proceso constituyente en Venezuela*, [*Coup d'état and constituent process in Venezuela*], Universidad Nacional Autónoma de México, México 2002, pp. 350 10 10 10.

6 See what I have expressed in my books: Allan R. Brewer-Carías, *The Collapse of the Rule of Law and the Struggle for Democracy in Venezuela. Lectures and Essays (2015-2020)*, Foreword: Asdrúbal Aguiar, Collection Annals, Mezerhane Endowed Chair on Democracy, Rule of Law and Human Rights, Miami Dade College, 2020, 618 pp.; and *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, 986 pp

7 See my comments in: Allan R. Brewer-Carías, "La progresiva y sistemática demolición de la autonomía e independencia del Poder Judicial en Venezuela *(1999-2004)"*, [The progressive and systematic demolition of the autonomy and independence of the Judiciary in Venezuela (1999-2004)]," in *XXX Jornadas J.M Domínguez Escovar, Estado de Derecho, Administración de Justicia y Derechos Humanos*, Instituto de Estudios Jurídicos del Estado Lara, Barquisimeto 2005, pp. 33-174; Allan R. Brewer-Carías, "El constitucionalismo y la emergencia en Venezuela: entre la emergencia formal y la emergencia anormal del Poder Judicial*,"* [Constitutionalism and the Emergency in Venezuela: Between the Formal Emergency and the Abnormal Emergency of the Judiciary], in Allan R. Brewer-Carías, *Estudios Sobre el Estado Constitucional (2005-2006)* [*Studies on the Constitutional State (2005-2006)*], Editorial Jurídica Venezolana, Caracas 2007, pp. 245-269; Allan R. Brewer-Carías "La justicia sometida al poder. La ausencia de independencia y autonomía de los jueces en Venezuela por la interminable emergencia del Poder Judicial (1999-2006)" *["*Justice subjected to power. The absence of independence and autonomy of judges in Venezuela due to the endless emergency of the Judiciary (1999-2006)], in *Cuestiones Internacionales. Anuario Jurídico Villanueva 2007*, Centro Universitario Villanueva, Marcial Pons, Madrid 2007, pp. 25-57; "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") [On the absence of independence and judicial autonomy in Venezuela, twelve years after the enactment of the 1999 Constitution (Or on the endless transition status that, in continued fraud against the popular will and the norms of the Constitution, has prevented the enforcement of the guarantee of the stability of the judges and the effective functionning of a "judicial disciplinary jurisdiction*)*, in *Independencia Judicial*, Colección Estado de Derecho, Tomo I, Academia de Ciencias Políticas y Sociales, Acceso a la Justicia, Fundación de Estudios de Derecho Administrativo (Funeda), Universidad Metropolitana (Unimet), Caracas 2012, pp. 9-10; "The Government of Judges and Democracy. The Tragic Situation of the Venezuelan Judiciary," in Sophie Turenne (Editor.), *Fair*

Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela submitted on September 16, 2021, to the Council of Human Rights of the United Nations Organization, cited above, after appraising that in Venezuela "the erosion of judicial and prosecutorial independence has been accelerated in recent years," concluded its assessment by stating that:

> "the legal and administrative reforms that contributed to the deterioration of the independence of the system of justice took place over several years, at least since the adoption of the 1999 Constitution" (par. 14).[8]

II. THE INTERNATIONAL VERIFICATION OF THE DETERIORATION OF THE AUTONOMY AND INDEPENDENCE OF THE JUDICIARY

This situation of progressive erosion of the autonomy and independence of the Judiciary and, consequently, of the rule of law, democracy and human rights, was not ignored by international bodies in charge of protecting human rights, as was the case, for example, of the Inter-American Commission on Human Rights, which in its *Reports* has progressively warned about the issue over the last twenty years, starting with the report rendered in 2002, in which, considering that an essential aspect "linked to the autonomy and independence of the Judiciary is that pertaining to the provisional nature of judges," it found that:

> "After almost three years of reorganization of the Judiciary, a significant number of judges are provisional, ranging from 60 to 90%, according to different sources. This affects the stability, independence and autonomy that should prevail in the judiciary."

For this reason, already in 2002, the Commission urged that a process be initiated "immediately in accordance with domestic legislation and the international obligations derived from the American Convention, aimed at reversing the provisional nature of most of the judges," which never happened, and has rather worsened.[9]

Furthermore, in the 2003 Special Report on Venezuela, the same Inter-American Commission again expressed its concern about the appointment of provisional judges in Venezuela,[10] noting that these officials:

> "do not enjoy the guarantee of stability in office and may be freely dismissed or suspended, which could imply subjecting the performance of these judges in the

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Reflection of Society in Judicial Systems - A Comparative Study, Ius Comparatum. Global Studies in Comparative Law, Vol 7, Springer 2015, pp. 205-231.

8 Available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A.HRC.48.69%20ES.pdf.

9 See "Press Release" of 10-05-2000, *El Universal*, Caracas 11-5-2002

10 "Informe sobre la Situación de los Derechos Humanos en Venezuela" *[Report on the Status of Human Rights in Venezuela]*, OEA/Ser.L/V/II.118, d.C. 4 rev. 2, 29 of December of 2003, Para. 11, p. 3 ("The Commission has been informed that only 250 judges have been appointed by competitive examination in accordance with constitutional regulations. Of a total of 1772 positions of judges in Venezuela, the Supreme Court of Justice reports that only 183 are incumbents, 1331 are provisional and 258 are temporary.").

sense that they cannot feel protected against undue interference or pressure from within or outside the judicial system."[11]

In 2004, the Commission was even emphatic in considering in its *Report to the OAS General Assembly* for that year how the "norms of the Organic Law of the Supreme Court of Justice [of 2004] would have enabled the Executive Branch to manipulate the process of election of justices carried out in 2004."[12]

The Inter-American Court on Human Rights has also ruled - at least on three occasions - against the system of provisional judges appointed and subject to discretionary dismissal by the organs of the Supreme Tribunal in Venezuela. Consequently, it has declared the provisional judge's system to violate the independence of the judiciary as provided in the American Convention on Human Rights. The Court has requested the Venezuelan state to end this system and respect the independence of judges.[13] Nevertheless, Venezuela has not complied with any of these international judgments in open defiance of international law.[14]

III. POLITICAL CONTROL OF THE HEAD OF THE JUDICIARY AND ITS CATASTROPHIC EFFECTS ON THE ENTIRE JUDICIARY

A political control of the Supreme Tribunal by the Executive Branch made evident the latter's control over the entire Judiciary, to the point that in 2006, when the Supreme Court ordered to "convert" temporary, provisional and accidental judges into permanent judges without complying with the public competitive procedures established in the Constitution, [15] this was denounced before the Inter-American Commission on Human Rights as a new attack on the autonomy of the judiciary perpetrated fraudulently against the Constitution.[16]

The Inter-American Commission on Human Rights[17] in its *2008 Annual Report* described this situation of the provisional and temporary nature of judges as an "endemic

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11 *Ibid*., paragraphs 11, 12, 159.

12 CIDH, Informe Annual [*Annual Report] 2004*, *cit.*, par. 180.

13 I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182; I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197; and I/A Court H.R., *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 1, 2011. Series C No. 227.

14 Carlos Ayala Corao, *La "inejecución" de las sentencias internacionales en la jurisprudencia constitucional de Venezuela (1999-2009).* Fundación Manuel García Pelayo. Caracas, 2009.

15 That is why it was even announced publicly, in all cynicism, that "by December 2006, 90% of the judges will be incumbents." See in *El Universal*, Caracas 11-10-2006.

16 See the complaint of Cofavic, Provea, Espacio Público, UCAB Human Rights Center, Unión Afirmativa and other non-governmental organizations before the Inter-American Commission of Human Rights, in Washington. See in *El Universal*, Caracas, 20 October 2006.

17 "Provisional or temporary judges lack stability in the respective positions and therefore, their appointments may be reviewed and annulled at any time, without the requirement to submit them to a prior administrative procedure, nor the obligation to argue the specific and legal reasons that gave rise to the removal, since it is due to purely discretionary reasons" See in: https://vlexvenezuela.com/vid/jose-luis-arocha-colmenarez-651885709.. In 2003, the Inter-American Commission on Human Rights indicated that it had been: "informed that only 250 judges

problem" in the country that exposed the judges to their discretionary dismissal, for which purpose it called attention to the "permanent state of emergency to which judges are subjected."[18]

The same Commission, in its *2009 Annual Report*, ratified its opinion that "in Venezuela judges and prosecutors do not enjoy the guarantee of permanence in office that is necessary to ensure their independence in relation to changes in government policies,"[19] specifically referring in its 2010 Report to the lack of independence and autonomy of the Supreme Tribunal, it emphasised that:

> "the 49 justices elected (17 principal and 32 alternates) would be supporters of the government, including two new justices who were active parliamentarians in the pro-government majority of the National Assembly."[20]

In 2011, the same Commission reiterated the issue and, in the Report admitting the case *Allan R. Brewer-Carías v. Venezuela,* it recommended that Venezuela:

> "Adopt measures to ensure the independence of the judiciary, making reforms in order to strengthen the procedures for the appointment and removal of judges and prosecutors, affirming their stability in office and eliminating the provisional status of the vast majority of judges and prosecutors, in order to ensure the protection and judicial guarantees established in the American Convention."[21]

For this reason, the president of the Inter-American Commission on Human Rights, in his Closing Arguments expressed on September 4, 2013, before the Inter-American Court of Human Rights, in the same case *Allan R. Brewer-Carías v. Venezuela,* set clear his opinion that:

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have been appointed by competitive examination in accordance with constitutional regulations. Of a total of 1772 positions of judges in Venezuela, the Supreme Court of Justice reports that only 183 are incumbents, 1331 are provisional and 258 are temporary." "Informe sobre la situación de Derechos Humanos en Venezuela" [*Report on the status of Human Rights in Venezuela]*; OAS/Ser.LV/II.118. doc.4rev.2; 29-12-2003, paragraph 174, *in* http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm. The Commission also added that "an aspect linked to the autonomy and independence of the Judiciary is that relating to the provisional nature of judges in the Venezuelan judicial system. Currently, the information provided by the different sources indicates that more than 80% of Venezuelan judges are 'provisional.'" *Id.* par. 161.

18 See *Annual Report 200*8 (OEA/Ser.L/V/II.134. Doc. 5 rev. 1. 25/02/2009), par. 39

19 See *Annual Report 2009*, par. 480, in http://www.cidh.oas.org/annualrep/2009eng/Chap.IV.f.eng.htm

20 See IICHR, *Annual Report 2010*, OAS/Ser.L/V/II. Doc. 5 corr. 1, 7-3-2011. See the *Report on Venezuela* at: http://www.cidh.oas.org/annualrep/2010sp/CAP.IV.VENEZUELA.2010.FINAL.doc.

21 See No. 171/11, Case 12.724, Report on the Merits in Admitting the Case: *Allan R. Brewer Carías vs Venezuela*, adopted by the Commission at its meeting No 1891 held on 3 November 2011, OAS/Ser.L/V/II, 143, Doc. 55, 3 November 2011, 143rd regular session). It should be remembered that the decision to admit this case was one of the "reasons" that the government of Venezuela had to denounce the American Convention on Human Rights itself, thereby exerting unacceptable direct pressure on the Court. See the text by the letter of the then Foreign Minister of Chávez, Mr. Nicolás Maduro, dated September 6, 2012, in the report by José Insulza, "Venezuela, Letter of Denunciation of the American Convention on Human Rights, #1 125 of 6 September 2012*"*. Available in: https://www.scribd.com/document/105813775/Carta-de-denuncia-a-la-Convencion-Americana-sobre-Derechos-Humanos-por-parte-de-Venezuela-ante-la-OEA

"Regarding the lack of institutional independence, for more than a decade the Commission has identified various threats to the principle of separation of powers in Venezuela, a significant example, among several others, was the appointment of justices of the Supreme Tribunal of Justice in 2000, which is still in effect, without complying with the respective constitutional safeguards to ensure the independence at the head of the judiciary with respect to the legislative and executive branches. As for the lack of personal independence, its clearest manifestation is the endemic temporary and provisional status in which the judicial authorities and the Public Ministry find themselves in Venezuela, as this Court has already been able to confirm in several cases."[22]

The following year, in March 2014, the *International Commission of Jurists* submitted a report in Geneva specifically referring to the structural problems of the Judiciary in Venezuela, entitled *Strengthening the Rule of Law in Venezuela,* whereby its Secretary General, Wilder Tayler, explained that:

"This report gives an account of the lack of independence of the justice system in Venezuela, starting with the Public Ministry, whose constitutional function in addition to protecting rights is to direct criminal investigations and exercise criminal actions. Failure to comply with the internal regulations themselves has configured a Public Prosecutor's Office without guarantees of independence and impartiality of the other public powers and political actors, with the aggravating factor that prosecutors are almost entirely freely appointed and removed and are therefore vulnerable to external pressures and subject to higher orders.

In the same regard, the Judicial Power has been integrated, starting from the Supreme Tribunal of Justice (TSJ), based on predominantly political criteria for its appointment. Most of the judges are "provisional" and vulnerable to external political pressures, since they are freely appointed and subject to discretionary removal by a Judicial Commission of the TSJ itself, which, in turn, has a marked partisan tendency. [...]."

After noting that "the report also refers to the State's restrictions on the legal profession," Mr. Tayler concluded his Presentation of the Report by categorically stating that:

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[22] See the report in the book: Allan R. Brewer-Carías (Editor): Persecución política y violaciones al debido proceso. Caso CIDH *Allan R. Brewer-Carías v. Venezuela* ante la Comisión Interamericana de Derechos Humanos y ante la Corte Interamericana de Derechos Humanos. 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, *[Political persecution and violations of due process. IACHR case of Allan R. Brewer-Carías v. Venezuela before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. Denunciation, Allegations and Petitions submitted by lawyers Pedro Nikken, Claudio Grossman, Juan Méndez, Helio Bicudo, Douglas Cassel and Héctor Faúndez. With the decisions of the Commission and the Inter-American Court on Human Rights as exhibits] (Coordinador y editor) Colección Opiniones y Alegatos Jurídicos, nº 15*, Editorial Jurídica Venezolana, Caracas 2016.

"A justice system that lacks independence, such as the Venezuelan, is proven to be inefficient for fulfilling its own functions. In this regard, in Venezuela, a country with one of the highest homicide rates in Latin America and no justice for the victims' families, this figure is close to 98% in cases of human rights violations. At the same time, the judiciary, precisely because it is subject to external pressures, does not fulfil its function of protecting people from abuses of power but, on the contrary, in many cases, is used as a mechanism for persecuting opponents and dissidents or mere critics of the political process, including party leaders, human rights defenders, peasant and trade union leaders, and students."[23]

IV. THE ABSENCE OF THE RULE OF LAW AS A RESULT OF POLITICAL CONTROL OVER THE JUDICIARY

The situation continued to be recognized by other international bodies, and for example, two years later, in 2016, the Secretary General of the OAS, Luis Almagro, in the *Report on the Situation in Venezuela in Relation to Compliance with the Inter-American Democratic Charter,* which he presented to the Permanent Council of the Organization on May 30, 2016,[24] in view of the "serious alterations to the democratic order" that had occurred in the country, he stated that:

"There is no clear separation and independence of the public powers in Venezuela, where one of the clearest cases of co-optation of the Judiciary by the Executive Branch is recorded."[25]

In addition, he further denounced:

"The continuity of violations of the Constitution, especially with regard to the balance of powers, functioning and integration of the Judiciary [...].[26]

The Secretary-General went so far as to request:

"a new structure of the Supreme Tribunal of Justice [...] given that the current structure is completely flawed both in the appointment procedure and by the political partiality of practically all its members." [27]

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23 Available at: http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/06/VENEZUELA-Informe-A4-elec.pdf

24 See the letter of the Secretary-General of the OAS of 30 May 2016 with the *Report on the situation in Venezuela in relation to compliance with the Inter-American Democratic Charter*, p. 125. Available at: oas.org/documents/spa/press/OSG-243.es.pdf. See the text in Allan R. Brewer-Carías (Editor), *La crisis de la democracia en Venezuela*, *La OEA y la Carta Democrática Interamericana. Documentos de Luis Almagro (2015-2017) [The Crisis of Democracy in Venezuela*, *The OAS and the Inter-American Democratic Charter. Documents by Luis Almagro (2015-2017)]*, Segunda edición, Iniciativa Democrática de España y las Américas (IDEA), Editorial Jurídica Venezolana International, Miami 2017.

25 *Idem*. p. 73. Available in oas.org/documents/spa/press/OSG-243.es.pdf.

26 *Idem*, p. 128. Available in oas.org/documents/spa/press/OSG-243.es.pdf.

27 *Idem*, p. 127. Available in oas.org/documents/spa/press/OSG-243.es.pdf.

Dr. Almagro himself, on June 23, 2016, when summarizing his *Report,* further expressed before the Permanent Council of the Organization of American States with respect to the situation of the "alteration of the constitutional order," that in Venezuela:

> "The Executive has repeatedly employed unconstitutional interventions against the legislature, with the connivance of the Constitutional Chamber of the Supreme Tribunal of Justice. The evidence is clear [...]
>
> These examples clearly demonstrate the lack of independence of the judiciary. The tripartite system of democracy has failed, and the judiciary has been co-opted by the executive [...]."[28]

Additionally, in September 2019, United Nations High Commissioner for Human Rights Michele Bachelet submitted to the United Nations her *Report on the Situation of Human Rights in the Bolivarian Republic of Venezuela*, with an "overview of the human rights situation" in Venezuela between January 2018 and May 2019,"[29] in which she highlighted what she called: "patterns of violations that directly and indirectly affect all human rights: civil, political, economic, social and cultural" (§ 2);[30] referring in particular to the situation of the judiciary, justice and the citizen's right of access thereto, stating that:

> "For more than a decade, Venezuela has adopted and implemented a series of laws, policies and practices that have *restricted the democratic space, weakened* public institutions and undermined the independence of the judiciary" (§ 76).
>
> "The lack of independence and corruption of the judiciary are also major obstacles faced by victims in their quest for justice and reparation" (§ 56).

For its part, according to the *content of the Report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela* submitted on September 15, 2020, to

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28 See the text of Secretary General Luis Almagro's presentation to the OAS Permanent Council, June 23, 2016, at:http://www.el-nacional.com/politica/PresentacindelSecretarioGeneraldelaOEAante_NACFIL20160623_0001.pdf.

29 See "Report of the United Nations High Commissioner for Human Rights on the status of human rights in the Bolivarian Republic of Venezuela," July 4, 2019, at https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_18_SP.docx. The "comments of the State" ("Comments on factual errors in the Report of the United Nations High Commissioner for Human Rights on the human rights situation in the Bolivarian Republic of Venezuela"), can be found at https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_18_Add.1.docx

30 See on the Report: Allan R. Brewer-Carías, See, "El informe Bachelet: Desahucio al régimen," *[*The Bachelet Report: Eviction of the Regime,]" in *Revista de derecho público*, No. 159-160, July-December 2019, Editorial Jurídica Venezolana. Caracas 2019, pp. 185-202; and in the book "Informes sobre violaciones graves a los derechos humanos en Venezuela" *[Reports on serious human rights violations in Venezuela]* (Editors: Allan R. Brewer-Carías, Asdrúbal Aguiar), Democratic Initiative of Spain and the Americas (IDEA), Editorial Jurídica Venezolana International, Miami 2019, pp. 12-46

the United Nations Human Rights Council, in compliance with Council resolution 42/25 of September 27, 2019,[31] it has been noted how, against the Constitution:

> "One of the elements contributing to specific violations and crimes ... is the lack of independence of the Judiciary" (par. 148, Report), [having] "the Supreme Tribunal ceased to function as control that is independent from the other branches of the State" (par.154), [and] "the Judiciary itself" has become "an instrument of repression" (par.165, Report).[32]

More recently, on 22 June 2021, the International Commission of Jurists again released a new Report entitled *Judges on the Tightrope. Report on the independence and impartiality of the Judiciary in Venezuela,*[33] wherein, exhaustively documenting the matter, she stressed the "control and political influence over the judiciary," as well as the "the role played by the Supreme Tribunal of Justice (TSJ) in breaching the independence of judges throughout the country."

In this regard, the International Commission of Jurists categorically stated that:

> "Venezuela's judiciary has become a tool for the executive branch to politically control the country, rather than being a mechanism for the defence of the rule of law in the country. [...]

It is clear from the Commission's reasoning that:

> "In Venezuela, the right to justice is not guaranteed, to the extent that we do not have a system of independent and impartial judges."[34]

V. EFFECTS OF THE LACK OF JUDICIAL INDEPENDENCE AND THE LACK OF PROTECTION OF HUMAN RIGHTS VIOLATIONS

The outlook described above, observed since the beginning of the authoritarian regime in Venezuela twenty years ago by all international organizations with regard to this matter, as mentioned at the beginning, has been reiterated by *the Report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela* of September 16, 2021, presented to the Human Rights Council of the United Nations.

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31 Report of September 15, 2020, available at: https:// www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11_SP.pdf The Report was accompanied by "Detailed conclusions of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela" (443 pp.). See on Report: Allan R. Brewer-Carías, "Efectos del Informe de la Misión Internacional independiente sobre violaciones a los derechos humanos en Venezuela, en relación con el Estado de derecho y las elecciones" [Effects of the Report of the Independent International Mission on Human Rights Violations in Venezuela, in Relation to the Rule of Law and Elections], in *Revista de Derecho Público*, Nº 163-164, July-December 2020, Editorial Jurídica Venezolana Caracas 2020, pp. 265-274.

32 On this, in particular, the Mission: "... documented cases in which members of the judiciary participated, by act or omission, in the perpetration of serious violations of rights Human....". (par. 164, Report).

33 Available at: https//www.icj.org/es/venezuela-un-poder-judicial-politizado-que-es-una-herramienta-de-represion-mas-que-un-defensor-del-estado-de-derecho/

34 Available at: https//www.icj.org/es/venezuela-un-poder-judicial-politizado-que-es-una-herramienta de-represion-mas-que-un-defensor-del-estado-de-derecho/

That *Report*, for example, when referring to the procedures for the selection of Supreme Tribunal justices and judges, in general, which according to the Constitution ought to be based on principles for ensuring "a transparent, non-political and merit-based selection of officials," highlighted how:

> "[…] the progressive non-compliance with these rules has led to the deterioration of judicial independence, both internal and external, which affects the justice system. In particular, the political interference in the election of Supreme Tribunal justices has led to permanent changes in their ideological alignment. This has extended its effects to all the institutions of the judiciary" (par. 15).[35]

In particular, the *Report* highlighted how:

> "Over the past few decades, the National Assembly has passed laws that circumvent the constitutionally established process and increase the political influence on the selection of the Supreme Tribunal" (par. 16).

In the same vein, the *Report* highlighted:

> "The importance of these designations is evident given the level of almost total control that the Supreme Tribunal of Justice exercises over the other institutions of the Judiciary" (par. 19).

Finally, in the same month of September 2021, the world witnessed how at the meetings of the UN Human Rights Council in Geneva there was a call for the restoration of the independence of the Judiciary in the country. As expressed by the International Commission of Jurists and the Human Rights Institute of the International Bar Association, in welcoming "the report of the Independent International Fact-Finding Mission":

> "We condemn the continued and undue interference of the Executive Branch and the Legislative on the Judiciary, which is reflected in the appointment and arbitrary dismissal of Supreme Tribunal judges and in the pressure exerted on judges, in general, violating the principle of judicial independence."[36]

Before the same Human Rights Council, there was also heard the cry of the ambassador of the European Union to the Organization, Lotte Knudsen: "We ask Venezuela to restore the independence of the judicial system."[37]

In any case, what is important to retain from all this tragic situation of the Judiciary in Venezuela is that it is not a recent phenomenon, but as stated above, it is the result of

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35 Available at: https://reliefweb.int/sites/reliefweb.int/files/resources/A.HRC_.48.69%20ES.pdf

36 See "UN: ICJ and IBAHRI Highlight Urgent Need for Accountability for Serious Human Rights Violations in Venezuela," September 24, 2021, available at: https://www.icj.org/es/onu-icj-y-ibahri-destacan-la-necesidad-urgente-de-rendicion-de-cuentas-por-las-graves-violaciones-de-derechos-humanos-en-venezuela/

37 See in the report: "Europe denounced the lack of independence of the Venezuelan judicial system before the United Nations, in *El National*, September 24, 2021, available at: https://www.e lnacional.com/mundo/europa-denuncio-falta-de-independencia-del-sistema-judicial-venezolano-ante-las-naciones-unidas/

a systematic and sustained process of destruction of the autonomy and independence of the Judiciary that began to be executed since Hugo Chávez Frías and a group of military who had failed in an attempted military coup d'état in 1992, seized power in 1999, this time through democratic path such as the convening of a Constituent Assembly, -in spite of it not being contemplated in the 1961 Constitution-, to destroy the rule of law and dismantle democracy.[38]

That Assembly set the tone for the permanent political intervention of the Judiciary, which, since then, has been carried out without pause in the country.

Therefore, it is incomprehensible that, in contrast, the authoritarian regime of Venezuela, through the person who acts as Attorney General of the Republic, expressed in 2021, not known whether with cynicism or mockery, that allegedly:

> "Justice is served in Venezuela. There is a justice system, with the limitations of any developing democracy, but with a higher standard than any other country in the Western Hemisphere. "[39]

This, of course, is not believed by anyone, neither inside nor outside the country, particularly after the twenty-year assault on the Judiciary and its political control has been denounced in all instances and levels as the global characteristic of the authoritarian regime in Venezuela, and the most tragic cause of the demolition of the rule of law, which has led to the lack of autonomy and independence of the Judiciary as a whole, which is also the greatest attack committed in the country against democracy, and against the protection of human rights.

Without independent and autonomous justice, there simply cannot be democracy, because there can be no control of the actions of the State, which means that, for example, within the framework of the provisions of the Inter-American Democratic Charter, whose twentieth anniversary is celebrated this year (2021), without judicial control by autonomous and independent judges, respect for human rights and fundamental freedoms simply cannot be guaranteed; neither can access to human rights and fundamental freedoms be guaranteed; nor that power and the exercise thereof will be subject to the rule of law; nor the holding periodic, free, fair elections based on universal and secret suffrage as an expression of the sovereignty of the people; nor the existence of a plural regime of political parties and organizations; nor the separation and independence of public authorities.

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38 I referred to this as early as 2010 in the book: Allan R. Brewer-Carías, *Dismantling Democracy. The Chávez Authoritarian Experiment*, Cambridge University Press, New York 2010, 418 pp

39 See in the report: "The prosecutor of Chavismo said that justice in Venezuela works with "a higher standard than any other country in the Western Hemisphere." Tarek William Saab referred to the opening of an investigation into the judge who acquitted the sergeant who murdered young David Vallenilla during the 2017 protests. *Infobae*, 30 September 2021; available at: https://www.infobae.com/america/venezuela/2021/09/30/el-fiscal-del-chavismo-dijo-que-la-justicia-en-venezuela-funciona-con-un-estandar-superior-a-cualquier-otro-pais-del-hemisferio-occidental/

Furthermore, there is no guarantee of transparency in government activities, nor of probity and responsibility of Governments in public management, nor respect for social rights and freedom of expression and of the press, nor, of course, that the constitutional subordination of all State institutions to the legally constituted civil authority can be ensured, nor respect for the rule of law by all entities and sectors of society.

VI. THE EXTENSION OF THE LONG ARM OF THE AUTHORITARIAN REGIME'S POLITICAL PRESSURES ON THE JUDICIARY INTO INTERNATIONAL JUSTICE

Unfortunately, the long arm of political pressure with which the authoritarian regime in Venezuela has exerted control over judges at a domestic level was also extended by Hugo Chávez to the international arena. This happened, in particular, regarding the Inter-American Court of Human Rights, which was also reached, to the point that - at least in one case that I know well , international justice ceased to be blind, and on the contrary, it saw with eyes wide open the State that Chávez governed, falling under the pressures exerted by him together with his then foreign minister, Nicolás Maduro. On that occasion the Court, decided, contrary to what all international instances had confirmed, that a justice system was fully functioning in Venezuela, to the point of deciding that the victim, who was under political persecution and had been convicted in advance - in violation of his due process right to be presumed innocent -, by all sorts of regime officials, including justices of its Supreme Court, should "confidently" agree to undergo a criminal trial in Venezuela to try to exhaust instances and then, if he did not find justice, resort to the International Court, perhaps from the afterlife.[40]

Indeed, the situation of deterioration of the Judicial Power of Venezuela described above as was explained for two decades by the competent international bodies, was the same that existed during the seven years, between 2007 and 2017, during which the international judicial process before the Inter-American Court in the case *Allan R. Brewer-Carías v. Venezuela* evolved. In particular it brought before the Court the dramatic and crude confirmation of the situation of the Judicial Power in the country confessed by the former Chairman of the Criminal Chamber of the Supreme Tribunal of Justice, Mr. Eladio Aponte Aponte, who after moving to the United States in 2012, publicly expressed, with surprising audacity, various facets of his behaviour as a judge. What he said, -in addition to being in themselves repulsive-, revealed with extraordinary harshness the tragic situation of the subjection of the Judicial Branch to the Executive Branch, highlighting the crushing of the principle of the separation of powers that has occurred in the country under the force of the 1999 Constitution. In addition, he clearly expressed that justice, particularly criminal justice, was dispensed in Venezuela according to the orders received from the Executive Branch and not to what the law provides, since the criterion for "dispensing justice" was to be loyal to the government and to comply with the orders received from it. He basically stated that "justice has no value... justice is like modelling

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[40] I/A Court H.R., *Case of Brewer Carías v. Venezuela*. Preliminary Objections. Judgment of May 26, 2014. Series C No. 278.

clay, I say modelling clay because it can be shaped for or against," concluding that there is no judicial independence.[41]

However, ignoring the case file that was before it, the Inter-American Court of Human Rights on May 26, 2014, in the case of *Allan R. Brewer-Carías v. Venezuela,* issued its wrongful decision No. 277, which was signed by Judges: Humberto Antonio Sierra Porto, President and Rapporteur; Roberto F. Caldas, Diego García-Sayán and Alberto Pérez Pérez, with a very relevant and reasoned *Joint Dissenting Vote* of Judges Manuel E. Ventura Robles and Eduardo Ferrer Mac-Gregor Poisot.[42] With this ruling, the Court, instead of being blind, rather saw very clearly the jaws of authoritarianism and did not dare confront it, and refused to judge the evidence that proved the situation of lack of autonomy and independence of judges in Venezuela, thus denying me (Allan R. Brewer-Carías) the international justice I was claiming, and instead protecting the State that was a predator of the internal judicial institutions.

As highlighted by Professor Antonio Filiu Franco of the University of Oviedo, the most worrying aspect about the decision was the coincidence**:**

> "between the accusations made by the Venezuelan Government in the case of *Allan R. Brewer-Carías v. Venezuela* in the text submitted to the Secretary General of the Organization of American States to denounce the Pact of San Jose [American Convention of Human Rights], and the intention and form of the reasoning made by the Inter-American Court on Human Rights to support its decision to accept the preliminary objection filed by the State regarding the non-exhaustion of domestic remedies and, consequently, to close the case file without analysing the substance of the case.
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> In other words, the majority criterion that determined the meaning of the judgment – which was harshly criticized in the joint dissenting vote of Judges Manuel

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41 In declaration given to journalist Verioska Velasco for a television station in Miami, USA (SoiTV). The text of the declaration is in the transcript made by the SoiTV, published in *El Universal*, Caracas 18 April 2012, available at: http://www.eluniversal.com/nacional-y-politica/120418/historias-secretas-de-un-juez-en-venezuela. The video is available at: http://www.youtube.com/watch?v=uYIbEEGZZ6s. See the transcript of the interview in: Allan R. Brewer-Carías, "El desmantelamiento de la democracia en Venezuela durante la vigencia de la Constitución de 1999" [The dismantling of democracy in Venezuela during the validity of the 1999 Constitution], delivered at the *Reunión de Medio Año de la Sociedad Interamericana de Prensa con ocasión del Bicentenario de la Constitución de Cádiz de 1812*, Palacio de Congresos, Cádiz, 22-25 abril de 2012. Available at: en:http://allanbrewercarias.net/Content/449725d9-f1cb-474b-8ab2-41efb849fea2/Content/I,%201,%201047.%20SIP%20Cadiz%20bis.%20EL%20DESMANTELAMIENTO%20DE%20LA%20DEMOCRACIA%20EN%20VENEZUELA%201999-2012..doc.pdf

42 Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_278_esp.pdf . Judge Eduardo Vio Grossi, on 11 July, 2012, as soon as the case was filed before the Court, very honorably excused himself from participating in it in accordance with Articles 19.2 of the Statute and 21 of the Rules of Procedure of the Court, recalling that in the eighties he had worked as a researcher at the Institute of Public Law of the Central University of Venezuela, when I was Director of the same, specifying that although this had happened quite some time ago, "I do not wish that this fact could provoke, if I participated in this case in question, any doubt, however minimal, about the impartiality" both his "and especially of the Court." The excuse was accepted by the President of the Court on September 7, 2012, after consulting with the other Judges, considering it reasonable to accede to the request.

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E. Ventura Robles and Eduardo Ferrer Mac-Gregor Poisot – *accepted the position advocated by the State to the detriment of the right of access to an independent and impartial justice claimed by Professor Brewer Carías*, in overt contradiction with the interpretation of the *pro homine* principle mandated by Article 29 of the American Convention on Human Rights (ACHR). *Therefore, one cannot avoid thinking that the Inter-American Court of Human Rights has yielded, with inconsistent reasoning, in face of the sovereign claims of the Venezuelan State.* Undoubtedly, this is an alarming precedent in the jurisdictional actions of one of the main guarantors of Human Rights in Latin America: the Inter-American Court of Human Rights, which, by ordering the shelving of the case, has also factually condemned Professor Dr. Allan R. Brewer Carías to the lacerating punishment of banishment in perpetuity, which, by the way, is expressly prohibited by Article 22.5 ACHR."[43]

The Inter-American Court, in fact, in its judgment did not decide on any of the allegations and evidence of massive violations of my rights and judicial guarantees (to my defence, to being heard, to the presumption of innocence, to be tried by an impartial and independent judge, to the due process of law, to follow a trial in liberty, to judicial protection) sanctioned in Articles 44, 49, 50, 57 and 60 of the Venezuelan Constitution and in Articles 1.1, 2, 7, 8.1, 8.2, 8.2.c, 8.2.f, 11, 13, 22, 24 and 25 of the American Convention on Human Rights, which had occurred in the parodic criminal proceeding initiated against me for the alleged crime of "conspiring to violently change the Constitution" (which was merely a media montage to persecute me politically). And, more notoriously, the Inter-American Court not ruling on the merits of the lack of an autonomous, impartial and independent judiciary, only decided to admit the preliminary objection brought by the State about an alleged lack of exhaustion of domestic remedies (which was not true, since I had exhausted the action for constitutional protection [*amparo*] that was the only one available when the international process began in 2007). The Court, thereby, protected the State, denying my right of access to justice, and shelving the case, it finally, endorsed the flawed Judiciary that existed in the country. In this case the Court further ignored the basic principle of international human rights law: a victim is not requested to exhaust the domestic remedies in accordance with generally recognized principles of international law when:

> "a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

43 See Antonio-Filiu Franco, "Un alarmante cambio en la doctrina de la Corte Interamericana de Derechos Humanos: El Caso *Brewer Carías v. Venezuela*" [An Alarming Change in the Doctrine of the Inter-American Court of Human Rights: The Case of Brewer Carías v. Venezuela], in *Cuadernos Manuel Giménez Abad*, Nº 8, Diciembre 2014, Fundación Manuel Giménez Abad de Estudios parlamentarios y del Estado Autonómico, Madrid, pp. 85-91

b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or

c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies."[44]

That was exactly what the Inter-American Court did in that case by accepting the exception of non-exhaustion of local remedies that did not exist. At the end, what it did was to take for good the rotten Judicial Power that existed, ultimately deciding that the victim should go to the country to surrender to his persecutors to supposedly make the process move forward and, after all his rights were definitively crushed, as I said, perhaps be able to claim international justice from the afterlife.

VII. THE INTER-AMERICAN COURT'S REFUSAL TO JUDGE THE SITUATION OF THE JUDICIARY IN VENEZUELA IN 2014

With that ruling, the Court violated the victim's right of access to international justice, and instead protected the State, failed to perform the conventional obligations it had to judge on the basis of the massive violation of my rights and guarantees, thus abandoning its most traditional and leading jurisprudence established since the case *Velásquez Rodríguez v. Honduras* of 1987.[45] Such jurisprudence imposed on it the obligation to hear the merits of the case when the complaints made against a State were for violations of judicial guarantees, such as violations of the rights to due process, to an independent and impartial judge, to the defence, to the presumption of innocence, and to judicial protection.

In such cases, according to the Court's own case law, the objection of failure to exhaust domestic remedies cannot be decided without determining whether the judiciary is in fact reliable, suitable and effective for judicial protection. Therefore, as Judges Eduardo Ferrer Mac Gregor and Manuel Ventura Robles warned "with concern" in their Joint Dissenting Vote on the judgment, "*for the first time in its history, the Court does not weigh the merits of the litigation and admits a preliminary objection of lack of exhaustion of domestic,* which in this case is related to Articles 8 and 25 of the American Convention on Human Rights."

For all these reasons, in that judgment the Court decided, no more no less, as I said before, that I, as the victim, should return to Venezuela to surrender to my persecutors so that they could deprive me of my freedom and rights and, without any judicial guarantees, attempt to pursue from a prison a judicial process that was flawed from its inception. All this, despite the fact that the Court in its decision admitted - but without judging that situation - that in Venezuela there is "a structural problem that would affect the independence and impartiality of the judiciary and that would be synthesized in the

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44 American Convention on Human Rights, art. 46.2

45 Case *Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of 26 June 1987. C Series No. 1.

subjection of the judiciary to the interests of the power of the executive branch." (par. 103).

Therefore, in my case (*Allan R. Brewer-Carías v. Venezuela*), the rule of prior exhaustion of domestic remedies was not applicable, because there was no due process of law, because I did not have access to any really effective remedy, and because of the unjustified delay in resolving the absolute nullity requested, which was the only available and theoretically effective remedy at the time of the beginning of the intermediate stage; which ultimately derives from the fact that there is no autonomous and independent judiciary in Venezuela.

In the case or persecution against me in Venezuela, not only was I "convicted" in advance by all sorts of officials in violation of the presumption of innocence, but I was prevented from using the remedies that should normally provide my defence within the criminal process, which were arbitrarily disregarded by the prosecution authorities and the judicial system, for the paralysis of the proceedings due to the inaction of the trial judge. As the Inter-American Court had said, in a similar situation, but that was ignored in this case:

> "resorting to these remedies becomes a formality that is meaningless. The exceptions in Article 46.2 would be fully applicable in such situations and would exempt the need to exhaust local remedies which, in practice, cannot achieve their purpose."[46]

This was precisely the conclusion reached by the Inter-American Commission on Human Rights in the case, expressed in the *Closing Remarks* formulated before the Court by Dr. Felipe González at the hearing of September 4, 2013, stating:

> "To date, the State has not provided an argument aimed at distorting the structural elements of this factual situation that has been in effect since the beginning of the criminal process that continues to this date and that has had very specific implications in the criminal prosecution of Mr. Brewer Carías.
>
> [...] the structural deficiencies of the Venezuelan judiciary have not been carried out by the State and that they have had clear implications in Mr. Brewer Carías' criminal proceeding, so the application of the exceptions with regard the exhaustion of domestic remedies is even more justified."

The magnitude of the decay of the Venezuelan Judicial System was set forth before the Inter-American Court by my representatives in the trial, my friends and prominent professors Pedro Nikken, Claudio Grossman, Juan Méndez, Helio Bicudo, Douglas Cassel and Hector Faúndez, who provided evidence of the endemic dependence of the Venezuelan Judicial System, particularly because of its vulnerability with respect to other spheres of power on which their permanence in office depends; having underlined in the

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[46] Inter-American Court of Human Rights, *Velázquez Rodríguez case. Merits*; *cit*., par. 68; Corte IDH, *Godínez Cruz case. Merits*; par. 71.

case before the Court, that all the judges and prosecutors who acted in the case against me in Venezuela were *provisional*. The fear of reprisals against them, as provisional judges, originated, in the first place, in the numerous demonstrations of high officials of the State, which included the heads of the Judiciary and the Public Prosecutor's Office, in which they affirmed my guilt regarding the facts that were fallaciously attributed to me. Such expressions are the proof of many other violations of the presumption of innocence and impartiality that these officials had to observe. And in addition, is also evident that they were intended as messages to the provisional prosecutors and judges, who dared not decide according to Law and to their conscience what they might imagine would be unfavourable to the government, if they wished to continue in their positions.

In any case, as has been noted by Professor Enrique Gimbernat, one of the most prominent specialists in criminal law in Spain, after studying the criminal charge filed against me by Luisa Ortega Díaz the then Venezuelan Public Prosecutor, in that case all my rights and judicial guarantees were "*massively violated,*" especially my rights to the presumption of innocence and to defence. In explaining in detail the reasons for these violations, what professor Gimbernat expressed was his "*bewilderment and perplexity*" after reading the accusation made against me, indicating that he remained "*astonished and bewildered*" not only because the Public Prosecutor's Office attributed to me the participation in a punishable act based on "statements of alleged referential witnesses", failing to identify their source, but because, ultimately, none of such witnesses accused me of anything; but because:

> "*said Public Prosecutor's Office, through an unreasonable and unreasonable discursive, illogical, incoherent process contrary to the rules of human criteria, transforms into inculpatory evidence what is unequivocally exculpatory evidence*."

Professor Gimbernat's astonishment, bewilderment and perplexity is summed up in his general assessment that after having studied the imputation, he had been left with:

> "the impression of having entered *an upside-down world* where what are evidentiary elements of discharge become, for the Public Prosecutor's Office and as by magic, evidentiary elements of charge."[47]

All of the foregoing was ignored by the Inter-American Court, which limited itself to saying that "although it is true that in its arguments before this Court, the Inter-American Commission has insisted that 'the problem raised in this case is of a structural nature and results from a factual situation of the Judicial Branch that goes far beyond the abstract regulation of the criminal procedure, " in short, it limited itself to stating that "*it does not have elements" to judge* on the inadmissibility of the exception provided for in Article 46.1.a of the Convention," arguing that:

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[47] See the Legal Opinions given by Professor Enrique Gimbernat in the case in 2005, in his book: Enrique Gimbernat, *Presunción de inocencia, Testigos de referencias y conspiración para delinquir* [*Presumption of Innocence, Reference Witnesses and Conspiracy to Commit a Crime*], Ediciones Olejnik, Buenos Aires, Madrid, 2021.

"the direct application of the exception contained in Article 46.2.a of the Convention cannot be derived from an alleged structural context of provisional status of the judiciary, since this would imply that based on a general argument on the lack of independence or impartiality of the judiciary it would not be necessary to comply with the requirement of the prior exhaustion of internal remedies" (Par. 105).

On this decision, the *Joint Dissenting Vote* of Judges Ferrer Mac Gregor and Ventura Robles was devastating, highlighting, in the first place, that the sentence totally omitted "in the chapter of the 'determination of the pertinent facts' the issue of the provisional status of prosecutors and judges in Venezuela, a central element that had been specifically debated between the parties, there being abundant material in the case file regarding the concrete facts on this matter."

In the second place, the dissenting judges stressed that "*there is no doubt that this problem about the provisional status of judges and prosecutors in this country,* which has already been addressed by the Court in the cases of *Apitz Barbera et al.*,[48] *Reverón Trujillo*[49] *and Chocrón Chocrón*[50] *v. Venezuela*, is intimately linked to the matter of judicial remedies in the domestic jurisdiction," and that the Court had already determined "a series of proven facts in these cases in relation to the main aspects of the process of judicial restructuring in that country." Judges Ferrer Mac Gregor and Ventura Robles rightly concluded that:

"the right thing to do would have been to combine the study of the preliminary objection for the failure to exhaust local remedies with the analysis of the substantive arguments in the present case, as the Court has done on other occasions" (para. 69).

Due to all of the above, and after highlighting in detail all the decisions of the Inter-American Court itself on the matter in the judgments issued in the aforementioned cases (paragraphs 70-75), Judges Ferrer Mac Gregor and Ventura Robles considered that it had been proven:

"clearly that the study of the dispute arisen with respect to the exhaustion of domestic remedies, specifically that related to the exception contained in Article 46.2.a, is intimately linked to the problem of the provisional status of judges and prosecutors in Venezuela, which undoubtedly relates to Article 8.1 of the American Convention - the right to a competent judge or court, independent and impartial - taking into account that the allegations are credible and that, if proven, they could constitute violations of the Pact of San José. For this reason, we consider that the study of this matter cannot be separated from the analysis of the merits of the case and, therefore, *the Court should have analysed the preliminary objection presented by the State*

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48 *Case Apitz Barbera y otros ("Corte Primera de lo Contencioso Administrativo") v. Venezuela*. *Preliminary Objection*, *Merits*, *Reparations and Costs*. Judgment of 5 August 2008. C Series C Nº 182.

49 Inter-American Court of Human Rights. *Case Reverón Trujillo v. Venezuela*. *Preliminary Objection, Merits, Reparations and Costs*. Judgment of 30 June 2009. C Series C Nº 197.

50 *Case Chocrón Chocrón v. Venezuela. Preliminary Objection*, *Merits*, *Reparations and Costs*. Judgment of July 1, 2011. C Series No. 227.

jointly with the substantive arguments presented by the parties in this case, as the Inter-American Court had done according to its historical jurisprudence on the matter." (Par. 75).

However, the most unusual thing about the Inter-American Court's ruling was that in the case *Allan R. Brewer-Carías v. Venezuela*, the State limited itself to pointing out a long list of alleged remedies that were impossible to exhaust, because in this case the judge never issued a judgment that could be subject to an appeal. In particular, the appropriate remedy available at the time was never decided, which was the petition for criminal protection (*amparo penal*) requesting the absolute nullity of the proceedings that I had filed. Therefore, there were no grounds for what the Inter-American Court claimed in its judgment, in the sense that "due to an alleged *"early stage*" at which the process supposedly was, although it did recognize "that various requests for nullity had been filed by the defence Mr. Brewer Carías' defence" (Par. 97).

Without questioning in any way the effectiveness of these nullity petitions, nevertheless, the Court ruled to protect the State by stating that "the remedies that the State set forth as adequate were not filed, namely, the appeal established in Articles 451 to 458 of the Organic Code of Criminal Procedure, the cassation appeal referred to in Articles 459 to 469 of the Organic Code of Criminal Procedure, and the remedy of review set forth in Articles 470 to 477 of the Organic Code of Criminal Procedure" (paragraph 97).

Surely, these appeals were not filed because it was impossible to do so, since there were no judicial acts or decisions against which to file them because the process had not gone beyond the "early stage," in which stage it was according to the Court, due to the fault of the State itself, since the judge had never decided on the attempted appeal for nullity or protection. The Court accepted the State's enumeration of alleged remedies – in which it did not include the attempted petition for absolute nullity (amparo)– without any explanation of how these could have been exhausted, except by handing me over to my political persecutors without any guarantee that the process would move forward in accordance to the due process of law.

As judges Ferrer Mac Gregor and Ventura Robles emphasized in their *Joint Dissenting Opinion*, "regarding the filed remedies for absolute nullity, the State did not say that these were not the adequate and effective remedies that should be exhausted, but, on the contrary, it merely noted the pending remedies that should be exhausted at later stages" (Par. 53), warning the dissenting judges in any case, that:

> "in the proceedings before the Inter-American Commission, in its admissibility stage, the State really did not in fact specify which were effective and appropriate remedies and limited itself to pointing out, in a generic manner, that there is still no first instance judgment that would enable the filing of appeals against the orders, appeal from a final judgment, revocation, cassation, review in criminal matters, amparo and constitutional review. *What the State actually does is to simply mention all the remedies available at the various stages of the proceedings, but it does not refer specifically*

to the remedies for annulment and whether these were the appropriate and effective remedies" (Par. 36).

This allows to conclude that what the State purported was that for any decision to be issued in the process in Venezuela if with any luck it were issued, it demanded that I previously surrender myself to my persecutors and that I abdicate my freedom that protected me from them. It was, to the very least, an irony of bad taste, especially when the State had used the system of international protection in order to gain support for such an abject purpose. And none other resulted from the judgment No. 277 issued by the Inter-American Court of Human Rights, from which it was inferred that in order to seek international justice, I had to surrender to a system in which there was no justice and a lack of independence and autonomy of the judges, which the Inter-American Court, in protecting the State, refused to judge, thus making it impossible for me to obtain the justice sought.

As duly highlighted by Judges Ferrer Mac Gregor and Ventura Robles in their Joint Dissenting Vote on the decision:

> "The interpretation made of Article 7.5 of the American Convention in the Judgment departs from the provisions of Article 29 of the Pact of San José, which establishes that no provision of the Convention may be interpreted as to allow any of the States Parties to *suppress or limit the enjoyment and exercise of the rights and freedoms recognized in the Convention.* The majority criterion does not carry out its analysis of Article 7.5 of the Convention in light of Article 29 thereof, but decides, on the contrary, to make a restrictive and limiting interpretation of that article, leaving aside the *pro homine* nature that such an interpretation must carry in accordance with the aforementioned Article 29 of the Convention and the constant case law of the Court, in the understanding that involves the right to personal freedom. *To purport that Mr. Brewer Carías return to his country to lose his freedom and, under those conditions, personally defend himself in court, constitutes an inconsistent reasoning that restricts the right of access to justice, since the case has not analysed precisely the substantive aspects invoked by today's alleged victim pertaining to various violations of Articles 8 and 25 of the American Convention,* which in a consubstantial manner impose conditions on the interpretative scope of Article 7.5 of the Pact of San José regarding the right to personal liberty" (Par. 114) (our emphasis).

VIII. THE FLAGRANT POLITICAL PRESSURE EXERTED BY THE GOVERNMENT OF VENEZUELA AGAINST THE INTER-AMERICAN COURT

For all this incomprehensible situation and the incomprehensible decision of the Inter-American Court of Human Rights issued in the case *of Allan Brewer-Carías v. Venezuela,* with all the allegations submitted by my lawyers, as well as in multiple *amicus curiae,* being ignored by the Inter-American Commission, in my opinion there is no other explanation than the *regrettable and illegitimate extension of the long arm of political pressure over the judges exercised by Venezuela's authoritarian regime, which has unfortunately reached beyond borders to the Inter-American Court of Human Rights.*

These pressures were expressly made public when the then Minister of Foreign Affairs of the Venezuelan regime, Mr. Nicolás Maduro, addressed to the Secretary General of the Organization of American States in a letter formally denouncing the American Convention on Human Rights, referring to an alleged smear campaign against Venezuela by the Inter-American Commission on Human Rights and by the Inter-American Court of Human Rights,[51] and all this, indicating as part of the smear campaign, none less than a case then pending before the Court, which had not yet been decided, and was precisely the case *Allan R. Brewer-Carías v. Venezuela,* thus exerting an inadmissible direct pressure before the Court, a fact that was even denounced by my lawyers.[52]

In that letter, the government of Venezuela directly accused the Inter-American Commission and the Inter-American Court of being institutions "kidnapped by a small group of unscrupulous bureaucrats" that had prevented the necessary reforms to the "so-called" Inter-American System, and that had become "a political missile aimed at undermining the stability" of the country, "adopting an interventionist line of action against the internal affairs" of the government, which, the Foreign Minister affirmed, were unaware of the content and provisions of the Convention that he was denouncing, particularly the requirement that in order for the actions by these agencies to be admissible, it was necessary "to exhaust the State's domestic remedies," which, in the Opinion of the State, constituted "contempt for the domestic institutional and legal order of each of the States." All this, for the Foreign Minister, had been made by the Commission and the Court "as an exercise of flagrant and systematic violation" of the Convention, which he indicated, was evidenced "in the cases that we set forth in detail attached to this Note" (including the case of *Brewer-Carías v. Venezuela)* deemed to be instruments for "underpinning the international smear campaign" against Venezuela.[53]

Specifically, regarding the case *Allan R. Brewer-Carías v. Venezuela*, Foreign Minister Maduro explained to the Secretary General of the OAS that it had been "admitted by the Commission without the complainant having exhausted domestic remedies, violating the

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51 This decision, as highlighted by Carlos Ayala Corao, was not only made in bad faith in the face of international law, but in open violation of the express norms of the 1999 Constitution. See in Carlos Ayala Corao, "Inconstitucionalidad de la denuncia de la Convención Americana sobre Derechos Humanos por Venezuela" [Unconstitutionality of the Denunciation of the American Convention on Human Rights by Venezuela], in *Anuario de Derecho Constitucional Latinoamericano 2013.*

52 See the arguments expressed at the trial in: Allan R. Brewer-Carías (Editor): "Persecución política y violaciones al debido proceso. Caso CIDH *Allan R. Brewer-Carías v. Venezuela* ante la Comisión Interamericana de Derechos Humanos y ante la Corte Interamericana de Derechos Humanos" *[Political persecution and violations of due process. IACHR case of Allan R. Brewer-Carías v. Venezuela before]*,. 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, Colección Opiniones y Alegatos Jurídicos *[Complaint, Allegations and Requests presented by lawyers Pedro Nikken, Claudio Grossman, Juan Méndez, Helio Pointy, Douglas Cassel and Héctor Faúndez. With the decisions of the Commission and the Inter-American Court of Human Rights as Appendices, (Coordinator and editor) Collection of Opinions and Legal Allegations]*, nº 15, Editorial Jurídica Venezolana, Caracas 2015

53 *Idem*.

provisions of Article 46.1 of the Convention and urging the Venezuelan State to adopt measures to ensure the independence of the judiciary." The Foreign Minister added in his communication that this:

> "*irregular behaviour of the Commission, unjustifiably favourable to Brewer-Carías, in fact produced, as of the mere admission of the cause, the underpinning of the international smear campaign against the Bolivarian Republic of Venezuela, by accusing it of political persecution.*"[54]

All this irregular pressure was accurately summarized by Professor Antonio Filiu Franco, when analysing the decision, in his work on "*An alarming change in the doctrine of the Inter-American Court of Human Rights*," when highlighting the communication of the then Foreign Minister Maduro that**:**

> "The text in question – an authentic memorial of the alleged grievances on Venezuela as a result of the presidential mandate of Hugo Chávez – accuses both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights of having become:
>
> > (...) a political missile aimed at undermining the stability of certain governments, and especially that of our country, by adopting an interventionist line of action against the internal affairs of our government, violating and ignoring basic and essential principles widely enshrined in international law, such as the principle of respect for the sovereignty of States and the principle of self-determination of peoples, going so far as to ignore the very content and provisions of the Inter-American Commission on Human Rights, (...), such as the necessary exhaustion of the State Party's domestic remedies in the Convention, which implies a lack of knowledge of the domestic institutional and legal order of each of the States that are parties to said International Treaty, and therefore, also another disrespect of their sovereignty; (...). -Cf. *Ibid.,* p. 2-
>
> To this he adds the no less serious accusation that the aforementioned bodies that guarantee Human Rights in Latin America have offered coverage to call on and defame Venezuela "for reasons of a political nature, through unfounded denunciations lacking evidentiary substrate, coming from political sectors linked to actions that are contrary to the laws and the Constitution"; that is, it considers that the denunciations or claims for the violation of any of the rights enshrined in the ACHR presented to the IACHR against the Venezuelan State after 1999 are "clearly politicized and biased cases" that are tended to with suspicious speed, in his opinion *(Cf. Ibid.,* p. 4).

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54 See in José Insulza, "Venezuela, Carta de denuncia de la Convención Americana de Derechos Humanos, nº 125 de 6 September 2012." Available at: https://www.scribd.com/document/105813775/Carta-de-denuncia-a-la-Convencion-Americana-sobre-Derechos-Humanos-por-parte-de-Venezuela-ante-la-OEA

As it could not be otherwise, within the inventory of grievances that is listed in the text under analysis there appears the case *Brewer Carías v. Venezuela*, stating that it was admitted by the IACHR "without the complainant having exhausted the domestic remedies," thus violating the provisions of Article 46.1 of the ACHR, while urging the Venezuelan State to adopt measures to guarantee judicial independence, "despite the fact that the criminal trial instituted against him for the crime of conspiracy to violently change the Constitution has not been able to be held whereas the accused is a fugitive from justice and Venezuelan criminal procedure legislation prevents him from being tried in absentia." For these reasons, the Commission's behaviour is said to be "irregular," and the Government of the Bolivarian Republic of Venezuela stands as the judge of the actions of the aforementioned IACHR, considering it "unjustifiably in favour of Brewer Carías," while proclaiming its *presumption of guilt* with respect to Dr. Brewer, regarding whom he categorically affirms – despite the fact that he previously admits that he has not yet been tried – that "he participated in the authorship of the text of the decree of dismissal of the public powers, which was proclaimed by the de facto authorities that assaulted power after the coup d'état of April 11, 2002 in Venezuela." *Such an overwhelming affirmation clearly evidences the little value given by the Government that endorses these words to the right to the presumption of innocence recognized* in Article 8.2 ACHR. Even so, it does not fail to consider in this case that the "irregular behaviour of the Commission (...), produced in fact, from the mere admission of the cause, the underpinning of the smear campaign against the Bolivarian Republic of Venezuela, accusing it of political persecution." (Cf. *Ibid.*, p. 6)."

From, the above, professor Filiu Franco concluded his remarks on this political pressure exerted against the Inter- American Court, stating that:

"We are therefore facing an unequivocal text condemning not only the tutelary action of the IACHR and the Inter-American Court, but also, what is worse, of people who resorted to these supranational bodies in search of protection for considering that some of the rights recognized by the ACHR had been violated, as was the case of Professor Brewer Carías. This and other cases characterized in the text as "shameful examples," are the grounds on which the Venezuelan State bases its sovereign decision to denounce the Pact of San José."[55]

A greater direct pressure on the judges of the Inter-American Court could not be conceived, for those who already were incumbent and those newly appointed in June of that same year and who would begin to exercise their functions three months later, in January 2013, especially when the pressure referred to a case that was already before the Court, and not yet decided, and the mere admission of which, according to the

55 See Antonio-Filiu Franco, "Un alarmante cambio en la doctrina de la Corte Interamericana de Derechos Humanos: El *Caso Brewer Carías v. Venezuela*" [An Alarming Change in the Doctrine of the Inter-American Court of Human Rights: The Case of Brewer Carías v. Venezuela], in *Cuadernos Manuel Giménez Abad*, Nº 8, Diciembre 2014, Fundación Manuel Giménez Abad de Estudios parlamentarios y del Estado Autonómico, Madrid, pp. 85-91.

Venezuelan government, would have been the "buttressing" of the alleged "international smear campaign" against Venezuela.

But the political pressure of the government of Venezuela on the judges of the Inter-American Court would also be exercised directly by the control that it then had over the majority of the votes in the OAS General Assembly,[56] which appoints those judges. Regarding this fact, the former foreign minister of Peru Luis Gonzalo Posada, *two months before the judgment was issued* in the case *Allan R. Brewer-Carías v. Venezuela,* in March 2014, expressed regarding the Inter-American Court, that it was "*an institution controlled through oil influence*" and the "sponsorship" of countries that protected the "authoritarian political model," in which no "substantive matter for the American countries" could be "considered if you do not have the acquiescence of Venezuela, which is the country that has controlled this institution for many years."[57]

This also coincided with a moment in the functioning of the Inter-American Court in which, in particular, the personal political interests of some judges began to become known, such as the announced candidacy of Judge Diego García Sayán to the General Secretariat of the Organization of American States, to which he aspired since 2013, since before the decision had been handed down in my case; so, undoubtedly, during all that time, *had required that he court the electors to seek their votes, the "electors" being precisely the States that the judges were called to judge, among them, Venezuela.* His candidacy, being active judge, was authorized, behind the Court's back, by Judge Humberto Antonio Sierra Porto, President of the Court, and this caused Judges Eduardo Vio Grossi and Manuel Ventura to record and publish on August 21, 2014, a "Certificate of Dissent" questioning the decision of President Judge Sierra Porto, and demanding that *while Judge García Sayán was a candidate* to the OAS General Secretariat he not be allowed to participate in the deliberation *on judgments*.[58]

The picture of the moment was pathetic, since the President of Colombia, Juan Manuel Santos, under whom Judge Sierra had served as a consultant before being appointed to the Court as a judge after having obtained the support of the Government

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[56] See Allan R. Brewer-Carías, "Los efectos de las presiones políticas de los Estados en las decisiones de la Corte Interamericana de Derechos Humanos. Un caso de denegación de justicia internacional y de desprecio al derecho" [The effects of the political pressures of the States on the decisions of the Inter-American Court of Human Rights. A case of denial of international justice and contempt for the law], in *Revista Ars Boni Et Aequi* (año 12 n°2), Universidad Bernardo O'Higgins, Santiago de Chile 2016, pp. 51-86

[57] "Hoy se ha consumado un golpe de Estado chavista en la OEA. El ex canciller Luis Gonzales Posada aseveró que el organismo interamericano defiende los intereses del régimen venezolano")," [Today a Chavista coup d'état has been consummated in the OAS. Former chancellor Luis Gonzales Posada affirmed that the Inter-American Organization defends the interests of the Venezuelan regime], in *Diario El Comercio*: Lima, 21 March 2014. Available at: http://elcomercio.pe/politica/internacional/hoy-se-ha-consumado-golpe-estado-chavista-oea-noticia-1717550

[58] See on this: Juan Alonso: "Aspiraciones de un juez a la OEA dividen a la Corte IDH" [*Aspirations of a judge to the OAS divide the Inter-American Court*"], in: *El Universal*: Caracas. Available at: http://www.eluniversal.com/noticias/politica/aspiraciones-juez-oea-dividen-corte-idh_164737.

of Venezuela therefor, had declared Chávez since 2010 as "his new best friend,"[59] making him an ally to the peace process in Colombia that he was in course. Under those circumstance, it was simply inconceivable that they would tolerate any decision condemning the Venezuelan State, and much less in a case in which Allan R. Brewer-Carías was the plaintiff.

For all these reasons, the votes of Sierra Porto and Garcia Sayán were joined by those of judges Alberto Pérez Pérez and Roberto F. Caldas, from Uruguay and Brazil, two countries whose governments at the moment were part of the then political coalition led by Venezuela. Those were the four votes that approved the infamous sentence in my case, regarding which Judge Ventura addressed a letter to President Sierra in a letter of August 20, 2014, stating that considering that "the situation in which Judge García Sayán finds himself, due to being a candidate to the OAS General Secretariat, posed a matter of clear incompatibility with the position of Judge of the Inter-American Court,"[60] which compromised the impartiality and image of the Court, adding that:

> "it was not necessary to wait long for the suspicion and the facts to be confirmed, when there was issued on May 26, 2014, precisely: "the sentence in the case *Allan R. Brewer Carías v. Venezuela,* in which it was made evident that the same group of four judges who had voted in favour of the case Mémoli v. Argentina, *they formed a majority so that Venezuela would not be condemned in the aforementioned case.* Judges Manuel E. Ventura Robles and Eduardo Ferrer Mac-Gregor had voted against and cast a dissenting vote against the decision issued by the Court. Judge Vio Grossi excused himself from hearing the case because he had worked as an exile in Venezuela at the Central University of Caracas under the direction of Professor Brewer Carías."[61]

Due to this entire situation, evidenced by the attitude of the four judges mentioned, as I expressed in 2016 regarding my case,

> "due to the pressure that Venezuela had been exerting before the Court itself, it was evident that it was difficult to be able to expect justice in that case, which was evidenced by the judgment itself, issued in the case a few months before those events, and during the time in which Judge García Sayán's aspirations as candidate to the Secretary General of the OAS was already well known."[62]

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59 See "Mi nuevo mejor amigo', llamó Juan Manuel Santos a Hugo Chávez," ["My new best friend" Hugo Chavez was called by Juan Manuel Santos] in *El Tiempo*, Bogotá, 7 November 2010, available at: https://www.eltiempo.com/archivo/documento/CMS-8302260

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60 See Manuel Ventura, "La legitimidad de los jueces de la Corte Interamericana de Derechos Humanos" [*The legitimacy of the judges of the Inter-American Court of Human Rights*], Lecture given at the Austral University of Buenos Aires 2016. Available at: http://www.allanbrewercarias.com/Content.aspx?id=449725d9-f1cb-474b-8ab2-41efb849fec2.

61 *Idem.*

62 See Allan R. Brewer-Carías, "Los efectos de las presiones políticas de los Estados en las decisiones de la Corte Interamericana de Derechos Humanos. Un caso de denegación de justicia internacional y de desprecio al derecho"

In my opinion, only that undue political pressure that the autocratic government of Venezuela openly exerted on the Inter-American Court at the time, may explain why said majority of judges in the Court would not have dared to judge the Judicial Power of the country, whose situation of lack of independence and autonomy was already very well known, having been denounced by all the relevant international organizations, and having been more than alleged and proven in the sense that it was particularly made up in its large majority by provisional judges. Even the Inter-American Court itself already knew about it, and had decided it condemning the State of Venezuela, as it occurred in the mentioned cases of: *Apitz Barbera et al.*,[63] *María Cristina Reverón Trujillo,* [64] and *Mercedes Chocrón Chocrón*.[65]

However, in the *case Allan Brewer-Carías v. Venezuela*, it was that same Judicial Branch which the same Court did not dare judge but rather decided to endorsed, in succumbing to the political pressure exerted against it by who then had become, unfortunately, the "great elector" of the judges. And decided it in a sentence that lacked any reasoning, considering that such politically controlled Judiciary could actually arrive at correcting the massive violations committed in a criminal procedure that was tainted to its roots, and whose aim was in addition, that of political persecution.

On the judgment of the Inter-American Court of Human Rights, my remembered friend, Professor Héctor Fix Zamudio, who in the past was a prominent judge of the same, wrote in 2016 that:

> "*the petitions for annulment brought by Professor Brewer-Carías before the Court were filed on November 4 and 8, 2005, that is, many years ago, and they were not heard and, much less, decided by that court, there existing, therefore an excessive delay in the formalization of the case, which was not taken into account by the majority of the judges of the Inter-American Court, who considered that this delay was not attributable to the State*;"

adding:

> "That is why it pains me that the Inter-American Court *has been unable to do justice* to one of our most distinguished jurists, whom an arbitrary and authoritarian government has unjustly persecuted and forced to precariously defend his rights in exile.**66**

[*The effects of the political pressures of the States on the decisions of the Inter-American Court of Human Rights. A case of denial of international justice and contempt for the law*,] in *Revista Ars Boni Et Aequi* (año 12 n°2), Universidad Bernardo O'Higgins, Santiago de Chile 2016, pp. 51-86.

63 See in the Inter-American Court of Human Rights, *Case Apitz Barbera and others* v. *Venezuela* (2008, C Series #1 182).

64 See in the Inter-American Court of Human Rights, *Reverón Trujillo Case* v. *Venezuela* (2009, Serie C No 197).

65 Inter-American Court of Human Rights, *Case Chocrón Chocrón v. Venezuela* (2011, Serie C No 227).

66 See Hector Fix-Zamudio, *Universitario de vida completa. Memorias académicas y recuerdos personales [A college student for life. Academic memories and personal remembrances]*, Editorial Porrúa, Universidad Nacional Autónoma de México, México 2016, pp. 371- 373

On this, Judge Eduardo Ferrer Mac Gregor himself, in an event that took place at the *Círculo de Bellas Artes* in Madrid on November 13, 2019, on the occasion of my 80th birthday, closed his comments by stating, that:

> "I do not do this as president of the Inter-American Court, but perhaps as the judge who authored the dissenting vote in the judgment in the case *of Allan R. Brewer-Carías v. Venezuela,* that Professor Allan Brewer-Carías *is an undeclared victim* by the Inter-American Court of Human Rights. *Victims are victims, whether or not they are declared in the sentence.* I saved my vote; but I wanted to say, yes, that he *is a victim;* and that, as a victim, I express my greatest respects to him and share his anguish for all that he has suffered outside his beloved country."[67]

New York, October 2021

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[67] See Eduardo Ferrer Mac Gregor, "Palabras de Presentación" [*Introductory Words*] in the book: Luciano Parejo Alfonso y León Henrique Cottin (editors), *Allan R. Brewer-Carías. Proyección de su obra en Iberoamérica*. *Jornada Académica celebrada en el Círculo de Bellas Artes de Madrid*, *[Allan R. Brewer-Carías. Projection of his work in Latin America. Academic Conference held at the Círculo de Bellas Artes in Madrid,], 13 de noviembre 2019, Cátedra de Estudios Jurídicos Iberoamericanos de la Universidad Carlos III de Madrid*, Editorial Jurídica Venezolana International, Caracas / Nueva York / Madrid 2020, p. 24.