

CONSTITUTIONAL VANDALISM, ELECTORAL FRAUD AND JUDICIAL NONSENSE: THE CASE OF THE GUBERNATORIAL ELECTION IN THE STATE OF BARINAS (VENEZUELA) ON NOVEMBER 29, 2021

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I

With the inconclusive election process for the Governor of the State of Barinas (Venezuela) that took place last November 21, 2021, occurred what José Ignacio Hernández has described as a great electoral "*fraud*" committed by the National Electoral Council and the Electoral Chamber of the Supreme Tribunal of Justice; ¹ one, of such magnitude that even the Regional Committee of the Communist Party of Venezuela in Barinas considered that: "it constitutes the greatest *political swindle* against the people, unprecedented in contemporary history." ² Therefore, Freddy Gutierrez Trejo considered that everything that happened in Barinas constitutes a:

"crime of aggravated and continuous fraud, and that the direct and immediate victim is the society of Barinas; the people of Barinas with the right to vote freely, universally, directly and secretly for the candidate of their preference. We are witnessing a fraud to the Constitution and the Law that establishes the competences of each

¹ See José Ignacio Hernández, "El fraude del Consejo Nacional Electoral y la Sala Electoral en la elección del Gobernador del Estado Barinas," November 2021. Available in Spanish at: https://www.academia.edu/62990498/EL_FRAUDE_DEL_CONSEJO_NACIONAL_ELECTORAL_AND_THE_ELECTORAL_ROOM_IN_THE_ELECTION_OF_THE_GOVERNOR_OF_BARINAS

² See Communiqué of the Regional Committee of the Communist Party of Venezuela in Barinas; "Rechazamos y condenamos la estafa política al pueblo de Barinas," in *Tribuna Popular*, November 30, 2021. Available at: <https://prensapcv.wordpress.com/2021/11/30/rechazamos-y-condenamos-la-estafa-politica-al-pueblo-de-barinas/>

branch of Government".³

This, apart from the fact that the referred elections, as it was to be expected, did not meet the minimum indispensable conditions for free, fair, reliable, pluralistic, free of advantages and verifiable elections, subject to the control of an impartial body, reason why they were completely questioned by the international delegations of electoral observation that were allowed by the regime to witness them.⁴

The electoral fraud or swindle committed in the State of Barinas was the product of apparently coordinated actions attributed to the National Electoral Council, the Office of the Comptroller General of the Republic and the Electoral Chamber of the Supreme Tribunal of Justice,⁵ with the

³See Freddy Gutierrez Trejo, "Barinas," in *Tal Cual*, December 4, 2021. Available at <https://talcualdigital.com/barinas-por-freddy-gutierrez-trejo/>. ⁴See "Carter Center Expert Mission Issues Preliminary Report on Venezuela's Regional and Municipal Elections," Dec. 3, 2021. Available at <https://www.cartercenter.org/news/pr/2021/venezuela-120321.html#translate>.

⁴ See "Carter Center Expert Mission Issues Preliminary Report on Venezuela's Regional and Municipal Elections," Dec. 3, 2021. Available at: <https://www.cartercenter.org/news/pr/2021/venezuela-120321.html#translate>. See the references made by José Ignacio Hernández regarding what was warned by the Observers of the European Union and the Carter Center "El fraude del Consejo Nacional Electoral y la sala Electoral en la elección del Gobernador del Estado Barinas," November 2021, references made by José Ignacio Hernández, available at: https://www.academia.edu/62990498/EL_FRAUDE_DEL_CONSEJO_NACIONAL_ELECTORAL_Y_LA_SALA_ELECTORAL_EN_LA_ELECCI%C3%93N_DEL_GOBERNADOR_DE_BARINAS; and "Deficiencias estructurales en el sistema electoral venezolano según la Misión de la Unión Europea | Acceso a la Justicia," in Access to Justice, December 2, 2021, Available at: <https://accesoalajusticia.org/deficiencias-estructurales-el-estructurales-en-el-sistema-electoral-venezolano-segun-la-mision-de-la-union-europea/>

⁵ For this reason, Mr. Roberto Rincón, Rector of the National Electoral Council, rightly denounced that in Barinas there was a "conspiracy to disregard popular sovereignty," in other words, "from outside the CNE they conspired from very early to 1) obstruct the receipt of minutes from the most remote areas of the state, 2) prevent the totalization, adjudication and proclamation of the winner by fabricating an unconstitutional political disqualification, 3) hijack attributions of the Electoral Power, annulling the result of the November 21 election, and calling a new election on January 9, 4) hinder the nomination of candidates arbitrarily disqualifying possible opposition candidates at the last minute ." See "Rector Picón: En Barinas hubo una «conspiración para desconocer la soberanía popular» in *Tal cual*, December 7th, 2021. Available at <https://talcualdigital.com/rector-picon-el-caso-barinas-es-un-retroceso-en-recuperacion-del-voto-como-herramienta/> Similarly, see: "Roberto Picón califica de conspiración irregularidades en las elecciones de Barinas," *El Nacional*, December

"announcement" of the issuance of two rulings No. 78 and No. 79 that would have been issued by the Electoral Chamber of the Supreme Tribunal on November 29, 2021.⁶

As of the date on which I am concluding this note (December 7, 2021), one week has passed since the judicial decisions were issued without their publication. The only information that is known about them, apart from the multiple news and comments in the press and social networks referring to them, is the brief information that is available on the aforementioned website of the Supreme Tribunal of Justice.

It remains, of course, to study the text of both rulings, but undoubtedly, the brief information that appears on the official website is sufficient to determine the magnitude of the electoral vandalism that has been committed, based on the most supine ignorance of what is an "amparo" proceeding, giving rise to a set of judicial nonsense that constitute an affront to legal knowledge.

We should not fail to analyze this event, despite the fact that at present the country seems to have already forgotten about the fraud committed, since the attention, led by the media, is perhaps more entertained in determining who will be, at last, after all the internal fights and external electoral traps, both by the Government party and those of the supposed "opposition," the next "candidates" in the election of the Governor of Barinas, which will be, if it is held on January 9, 2022, as it was unconstitutionally ordered, a doubly illegitimate election.

II

In the State of Barinas, indeed, as recognized by the Electoral Chamber of the Supreme Tribunal of Justice by the time it issued decision

7th, 2021. Available at <https://www.elnacional.com/venezuela/roberto-picon-califica-de-conspiracion-irregularidades-en-las-elecciones-de-barinas/>; and "Roberto Picón: Fuera del CNE se conspiró para obstaculizar recepción de actas de Barinas," in *El Carabobeño*, December 7th, 2021. Available at: https://www.el-carabobeno.com/roberto-picon-fuera-del-cne-se-conspiro-para-obstaculizar-recepcion-de-actas-de-barinas/?utm_source=dlvr.it&utm_medium=twitter

⁶ The news about them is the one published on the website of the Supreme Tribunal of Justice. Available at: http://historico.tsj.gob.ve/decisiones/consulta_sala.asp?sala=006&dia=29/11/2021

N. 79 of November 29, 2021, according to information published on the official website of the Supreme Tribunal,

"The projections made by the National Electoral Council give a percentage of votes in favor of the candidate Freddy Superlano, holder of identity card V-12.555.398, of 37.60% with respect to the 37.21% of votes obtained by the candidate Argenis Chavez, holder of identity card V-4.925.031".

That is, that in the State of Barinas, as happened in some other States, the candidate Freddy Superlano, who was not from the Government party and who participated in the elections in "opposition" to it, would have won, beating the Government's candidate and who was the Governor of the entity, Argenis Chávez.⁷

III

At that stage of the electoral process, missing only a few electoral certificates that had been improperly withheld by the military,⁸ according to the information on the website of the Supreme Tribunal of Justice regarding its Electoral Chamber, on November 29, 2021, file No. 2021-0000063 was opened, corresponding to an *action of amparo* filed by:

"The citizen Adolfo Ramon Superlano, holder of identity card No. V-4.262.374, alleging the character of "... candidate for the governorship of the state of Barinas for the Min Unidad Party and others, within the process, assisted by the lawyer Devenish Griffith Jorge Luis, registered in the Inpreabogado under No. 134.679, ..., against the citizen "... Freddy Superlano, Venezuelan, of legal age and holder of identity card No. V-12.555.398".

⁷ This was ratified by Mr. Roberto Picón, Rector of the National Electoral Council in a communiqué: "Ante la sentencia de la sala Electoral del TSJ que ordena al CNE de realizar nuevas elecciones para gobernador de Barinas para el 09 de enero de 2021," Caracas November 30, 2021. Available in Spanish at: <https://runrun.es/noticias/461863/inhabilitacion-de-superlano-era-desconocida-por-el-cne-at-the-moment-of-his-postulation-and-other-keys-to-roberto-picon-s-communication/>

⁸ See Rocío San Miguel, "El Plan República tiene que cambiar sus autoridades en Barinas" in *el pitazo*, December 5, 2021. Available at: <https://elpitazo.net/entrevistas/roocio-san-miguel-el-plan-republica-tiene-que-cambiar-sus-autoridades-en-barinas/>.

That is to say, that in this case, an *amparo proceeding* of a very personal nature was initiated through an action brought by a citizen as the alleged aggrieved party, Mr. Adolfo Ramon Superlano against another citizen as the alleged offending party, Mr. Freddy Superlano, both identified in the Tribunal's note.

The motive or basis for filing the amparo action was, according to the summary on the Tribunal's official website:

"the alleged violation of the constitutional rights to participation and suffrage, provided for in Articles 62 and 63 of the Constitution of the Bolivarian Republic of Venezuela, *based on the public and notorious facts* related to the climate of tension between the political militant groups in the state of Barinas, as well as the submission by the Regional Electoral Board of the tally sheets to the National Electoral Board of the National Electoral Council.

The constitutional norms that enshrine the constitutional rights that are said to have been violated by Mr. Freddy Superlano are the following:

"Article 62: All citizens have the right to participate freely in public affairs, either directly or through their elected representatives.....

Article 63: Suffrage is a right. It shall be exercised by free, universal, direct and secret voting. The law shall guarantee the principle of personalization of suffrage and proportional representation."

Since these are the only two constitutional rights alleged to have been violated, it is presumed that as grounds for the amparo action, Mr. Adolfo Ramon Superlano should have at least alleged before the Electoral Chamber that Mr. Freddy Superlano, as the alleged offender, had in some way improperly prevented or restricted him from exercising his right to participate politically in public affairs or his right to vote.

In amparo proceeding between two parties, one allegedly aggrieved and the other allegedly offending, the decision could not result in any other ruling than the protection of the constitutional right

of the aggrieved Adolfo Ramon Superlano to political participation and suffrage, after providing evidence that Mr. Freddy Superlano had violated those rights; reestablishing with the decision the infringed legal situation as established in Article 27 of the Constitution that regulates the amparo action.

IV

None of the above elements is reflected in the information available on the website of the Supreme Tribunal of Justice, which only indicates that in case No. 2021-0000063 two rulings were issued: No. 78 and No. 79, the first one granting a precautionary measure that had been requested with the amparo action, and the second one declaring the action protection in a definitive way *in limine litis*.

As for the first decision issued, No. 78, according to the information on the Supreme Tribunal's website, the Electoral Chamber began by declaring itself competent to hear the "amparo action" filed, and to "admit" it purely and simply, without apparently considering whether what was being brought before the Tribunal was really an amparo action, or that if it were, it had an "electoral nature."

According to the Organic Law of the Supreme Tribunal of Justice, the Electoral Chamber in matters of amparo against private persons only has jurisdiction in cases of "constitutional amparo claims of electoral content, other than those attributed to the Constitutional Chamber" (art. 28.3). Therefore, it must be an amparo "of electoral content," which requires the aggrieved party to allege and prove that the offending party has caused a violation or threat to his "electoral rights."

From what is indicated on the Chamber's website, it cannot be deduced in any way that Mr. Freddy Superlano had impeded, injured or threatened in any way Mr. Adolfo Ramón Superlano's exercise of his constitutional rights to participate and to vote. What can rather be deduced from the confusing reference that can be read on the website of the Supreme Tribunal regarding the allegations made by the plaintiff is that what Mr. Adolfo Ramón Superlano was seeking was to inform the Chamber that the electoral authorities had allegedly admitted the nomination as a candidate of a citizen who would have pending

investigations and that supposedly would have been politically disabled.⁹ These circumstances could perhaps have been the basis for a contentious electoral action of annulment (judicial review process) against the acts of the electoral authorities of admission of the nomination and the holding of the elections, but not for an "amparo action" of one citizen against another citizen, and the Electoral Chamber was obliged to warn the plaintiff so that he could correct his "action," and otherwise declare it inadmissible under Article 19 of the Organic Law of Amparo.

The facts narrated in no way can be used to try to argue a non-existent "electoral nature" in an amparo between individuals, when in fact what it was about was to challenge a nomination and an election; which should be done by the plaintiff through an electoral contentious appeal for annulment (judicial review process) and not through an amparo action.

With Judgment No. 78, the first judicial nonsense committed by the Electoral Chamber became evident, which was, on the one hand, to declare its competence to hear an action brought by one individual against another, which was not an "amparo action" at all, since it did not even indicate how Mr. Freddy Superlano had violated or threatened to violate the right of participation and suffrage of Mr. Ramón Adolfo Superlano, referring only to "*public and notorious facts* related to the climate of tension between the political militancy in the state of Barinas."

⁹ It should be noted that the fact of the disqualification, as reported by Rector Roberto Picón of the National Electoral Council, was not even known to the Council. See "Rector Picón assured that the CNE was unaware of Superlano's disqualification. El rector Roberto Picón dejó constancia que la inhabilitación del ciudadano Freddy Superlano era desconocida para el CNE para el momento de su postulación," in *analítica.com*, November 30, 2021. Available at <https://www.analitica.com/actualidad/actualidad-nacional/rector-picon-aseguro-that-the-cne-unknown-disqualification-to-superlane/>. Rector Rincón also reported that at the time of the Electoral Chamber's decision, the affected Mr. Freddy Superlano was also unaware of his disqualification. He said: "We do not know what actions Freddy Superlano has taken from then until now to make him disqualified. He was also not notified, nor did he know that he was found guilty, nor was he asked to compensate the State for the damages he has allegedly caused." See: "Picón: Votación interna en el CNE negó pasar caso Superlano a Sala Constitucional del TSJ," in *Tal Cual*, December 2nd, 2021. Available at: <https://talcualdigital.com/roberto-picon-inhabilitacion-de-freddy-superlano-llego-en-un-momento-inoportuno/>

And on the other hand, proceeded to admit an alleged "action of amparo" between individuals that not only had no electoral character, but what it apparently sought was to question the performance of the electoral authorities for having accepted the nomination of Mr. Freddy Superlano to run for elections. The truth is that all this obliged the Electoral Chamber to declare inadmissible the "amparo action" attempted, and return the lawsuit to Mr. Ramón Adolfo Superlano so that he could correct it and formulate an electoral contentious action for annulment (judicial review action) against the actions of the electoral authorities.

V

After declaring itself competent to hear the "amparo action", which being an amparo action should be based on the fact that Mr. Freddy Superlano had allegedly committed acts detrimental to the constitutional rights to participate and to vote of Mr. Adolfo Ramón Superlano, and admitting the action, the Electoral Chamber went on to commit a second judicial nonsense, and that was to resolve the request for precautionary measures that had been formulated together with the "amparo action," which had nothing to do with alleged harmful acts or threats by Freddy Superlano against Adolfo Ramón Superlano, but instead referred to the actions of public entities such as the electoral authorities that were not "party" to the amparo proceeding initiated.

The Electoral Chamber, in order to grant precautionary measures, did so by making the following "declaration:"

"that in view of the plaintiff's statement regarding the alleged existence of administrative and criminal proceedings and inquiries against Freddy Superlano, identified in the case file, which are pending before the competent State agencies, it is *hereby noted that the file contains* the Official Letter of referral of Resolution No. 01-00-000334, signed by the Comptroller General of the Republic, by which he resolves to disqualify Freddy Francisco Superlano Salinas, holder of identity card No. V-12.555.398, which will be assessed and evaluated by this Jurisdictional Body when deciding on the merits of the matter".

From these *facts* contained in the "declaration" of the Electoral

Chamber, referring to the existence of alleged investigations against Freddy Superlano and a decision by the Office of the Comptroller General of the Republic to disable him politically, in effect, there is no way whatsoever to deduce or derive any proof that Mr. Freddy Superlano had violated or threatened to violate in any way Mr. Adolfo Ramón Superlano's rights to participate and to vote. Nor can any well-founded fear arise from these same facts that Freddy Superlano could cause serious or difficult to repair injuries to the rights to participate and to vote of Adolfo Ramón Superlano.

That is to say, from the statement in the judgment there is no way to understand how the facts narrated by the Chamber in its decision can pass the evaluation of any precautionary measure which in this case would be the serious presumption of the violation or threat of violation by Mr. Freddy Superlano of the right of the alleged aggrieved party Adolfo Ramón Superlano to participation and suffrage (*fumus boni iuris*) and the need for immediate preservation of his rights because there would be an imminent risk of irreparable harm to Mr. Adolfo Ramón Superlano (*periculum in mora*).

However, based on that single statement by the Electoral Chamber on two facts, first, that there would be investigations and inquiries underway against Freddy Superlano and, second, that he would be politically disqualified, the Tribunal proceeded, not to protect any right of Adolfo Ramón Superlano to participation and suffrage or to prevent Mr. Freddy Superlano from violating them during the course of the trial - that is what a precautionary measure is all about - but to decree precautionary measures aimed at other matters unrelated to the amparo action filed between individuals (Adolfo Ramon Superlano against Freddy Superlano), and specifically, directed against various electoral authorities and their actions, and against the exercise of the right to vote by all voters in the State of Barinas (who were not "parties" in the judicial process). In effect, the Chamber proceeded to declare:

"The request for precautionary measures *is admissible* and, consequently, the National Electoral Council *is ordered to* immediately suspend the procedures and/or processes related to the totalization, adjudication, and proclamation of the National

Electoral Council with respect to the candidates for the office of Governor of the State of Barinas, in the electoral process held on November 21, 2021, in that electoral district, until such time as the merits of the matter are decided."

With that totally unconstitutional precautionary measure, what the Electoral Chamber did was to commit an act of constitutional vandalism by flagrantly violating the constitutional right to participation and suffrage of *all citizens entitled to vote* in the State of Barinas, by suspending the totalization, adjudication and proclamation as a result of the elections of November 21, 2021 in that state, to which they were entitled as voters; and it did so in an "amparo" proceeding in which there were only two "parties," the alleged aggrieved Ramón Adolfo Superlano and an alleged offending party Freddy Superlano.

This new judicial nonsense, on the other hand, is confirmed by the text of the note on the Supreme Tribunal's website, which states that the "precautionary measure" issued should only be notified "to the National Electoral Council, the Office of the Comptroller General of the Republic, the Attorney General of the Republic and the President of the Legislative Council of the State of Barinas, for the appropriate legal purposes," ignoring that in the "amparo process" that had been admitted and initiated there was only one defendant indicated as the alleged offending party, Mr. Freddy Superlano, to whom, however, no notification of the precautionary measure was ordered.

In reality, what the Chamber's action shows is that, against all the logic behind the amparo proceeding, the precautionary measure was not intended to protect the rights to participation and suffrage of the alleged aggrieved plaintiff, Adolfo Ramón Superlano, due to alleged violations or threats of violations by the alleged offender, Freddy Superlano. The objective was different, it was to vandalize the election in the State of Barinas to prevent the proclamation as Governor of a person who had not been the Government's candidate.

VI

However, judicial nonsense did not end there, and on the same day of September 29, 2021, to continue with the constitutional vandalism and take away the right to participate and elect of the entire electoral

population of the State of Barinas, with unusual speed, the Electoral Chamber proceeded to issue a *final judgment* (No. 79) in the amparo trial; identifying in the sentence the same parties according to the information contained in the Supreme Tribunal's website, but this time without identifying the plaintiff Adolfo Ramón Superlano as allegedly acting in "the character of "... candidate for the governorship of the state of Barinas for the Min Unidad Party and others," as had occurred in sentence No. 78.

By means of this judgment No. 79, the *amparo* requested by the alleged aggrieved Adolfo Ramón Superlano against the alleged aggrieved party, Freddy Superlano, was pronounced in a final way, alleging in the judgment to "justify" the speed of the final judgment - issued in a matter of hours - that this was done after declaring the resolution of the constitutional amparo action as "entailing only legal review" supposedly "in accordance with the binding criterion established by the Constitutional Chamber in judgment No. 993 dated July 16, 2013."

This is another judicial nonsense that demonstrates a supreme ignorance of what a constitutional amparo is, whose object is always the violation of a constitutional right, which is committed through facts (including legal acts), by the defendant or alleged offender against the plaintiff or alleged offended party. Even, the same plaintiff Adolfo Ramón Superlano expressly based his amparo action "*on the public and notorious facts* related to the climate of tension between the political militancy that exists in the State of Barinas, as well as the remission by the Regional Electoral Board of the tally sheets to the National Electoral Board of the National Electoral Council," and on the *fact* that Mr. Freddy Superlano was under investigation and had been politically disqualified by the Comptroller's Office. These were the alleged facts.

Therefore, resolving a personal amparo of an alleged aggrieved party against an alleged offending party by declaring it to be a case only entailing legal review (*mero derecho*), that is, as if it were a case in which facts such as those that were alleged and motivated the precautionary measure did not have to be considered, but decided on legal basis, is a demonstration of supreme ignorance of the institution of amparo.

As regards the judgment of the Constitutional Chamber (No. 933 of July 16, 2013) cited in decision No. 79 of the Electoral Chamber as a basis for declaring an amparo that only entails legal review, what the said Constitutional Chamber decision established in short was that:

"the procedure for constitutional protection, in the interest of celerity, immediacy, urgency and seriousness of the constitutional right infringed, must be different *when a purely legal point is discussed that does not need to be complemented by any evidentiary means* or require a new allegation to decide the constitutional controversy".

Therefore, the Constitutional Chamber stated in that decision that when "there are merely legal situations *of such obvious constitutional violation* that can be resolved with immediacy and without the need for prior contradictory debate because the infringed legal situation is equally obvious," then the judge must proceed to decide without delay "the *restitution of the infringed constitutional rights*." Therefore, the Constitutional Chamber added, that:

"When the writ of amparo is based on a reliable means of proof constituting a serious presumption of the constitutional violation, the infringed situation must be remedied immediately, definitively, and without delay, without it being necessary to open the contradictory hearing, which, only in case of doubt or disputed facts, will justify the holding of an oral contradictory hearing".¹⁰

In the case decided by the Electoral Chamber, of course, there was no "*purely legal issue*" *under discussion* that would support any allegation of violation of Mr. Adolfo Ramón Superlano's right to participation and suffrage by Mr. Freddy Superlano.

Regarding the alleged violation or threat of violation of a constitutional right of a private individual by another private individual, nothing was argued, and the only thing the Chamber heard was a narrative relating exclusively to "public and notorious *facts* related to the climate of tension between political militants" in the State of Barinas, and to two other specific *facts* (without any legal argumentation) which were,

¹⁰ See the quotation at <https://vlexvenezuela.com/vid/rodolfo-anibal-briceno-gonzalez/653860993>

first, that the alleged offender Freddy Superlano was under investigation and, second, that he was allegedly politically disqualified, without stating or arguing how those facts would have meant violation or threat of violation by the alleged offender Freddy Superlano against the rights of the alleged offender Adolfo Ramón Superlano, nor what the alleged *infringed legal situation* had been, nor how it could be immediately remedied to restore to the alleged offender the right that had been violated by the alleged offender.

The declaration of the process as entailing only mere legal matters, therefore, was nothing but another legal nonsense, to justify the constitutional vandalism committed and to take away the right to political participation and suffrage from all citizens with the right to vote in the State of Barinas.

VII

But after the nonsense of considering a case as "only entailing mere legal matters" when in the case what was raised were facts, the Electoral Chamber, far from resolving the case as of such "only entailing legal matters" that is, supposedly based on a purely legal issue, applying only the law and without any reference to the facts, proceeded to commit another nonsense, which was to "declare admissible" an amparo action filed by Adolfo Ramón Superlano, as the alleged aggrieved plaintiff, which could only be decreed against the only possible subject and identified as the defendant, the alleged offending party that was Freddy Superlano. This, however, was not the case, and the amparo was definitively ruled against the electoral authorities, who had not been a "party" in the "amparo process."

The decision was also adopted in an amparo action brought by Adolfo Ramón Superlano against Freddy Superlano, without summoning or hearing the party indicated as the aggrieved party to inform and argue about the referred facts alleged in the action brought against him for the alleged violation of personal rights that were exclusively those of the aggrieved plaintiff. And this was done by the Electoral Chamber, exclusively:

"based on Resolution No. 01-00-000334, dated August 17, 2021,

issued by the Office of the Comptroller General of the Republic, whereby it resolved to *disqualify from holding* any public office the citizen Freddy Francisco Superlano Salinas, holder of identity card No. V-12.555.398, candidate for the political organization Mesa de la Unidad Democrática, for the office of Governor of the state of Barinas, in the electoral process held on November 21, 2021."

That is to say, to declare the amparo action filed by Adolfo Ramón Superlano against Freddy Superlano because the latter had allegedly violated his rights to participation and suffrage (which could have happened, for example, if Mr. Freddy Superlano had prevented Mr. Adolfo Ramón Superlano, through any means, from voting, being a candidate or participating in the political life of the state), the Electoral Chamber did so solely and exclusively on the basis of an official letter of the General Comptroller Office that, according to the website of the Supreme Tribunal, was not even published in the *Official Gazette*, and that was supposedly signed by the Comptroller General of the Republic, but whose content in reality affected the alleged offender Freddy Superlano in his constitutional right to passive suffrage, and not any right of the alleged offended Adolfo Ramón Superlano.

It is incomprehensible how an alleged aggrieved person, who accuses another alleged offending person of violating his or her right to participation and suffrage, what bring as evidence of the alleged violation before the Tribunal is a document that evidences a presumed violation not of his right as an aggrieved party, but of the right of the alleged offending party; and that with this, the Tribunal irresponsibly proceeds to injure the entire electorate of the State of Barinas with its decision. Greater ignorance and judicial nonsense, in addition to the violation of due process, is inconceivable.

VIII

But the judicial absurdities of the Electoral Chamber of the Supreme Tribunal of Justice did not stop there, but also, in a judicial process developed only *between two "parties" that were precisely identified*: a plaintiff as alleged aggrieved, Mr. Adolfo Ramón Superlano, and a defendant as alleged offending of the rights of the first one, Mr. Freddy Superlano, ended up deciding an "amparo," against the National

Electoral Council, which was not "party" of the process, whose representatives did not intervene in the process nor were they cited or heard; and as if it had been an electoral litigation process against acts of electoral authorities - which it was not - in the decision it was ordered:

"To render ineffective all procedures and acts held in accordance with the Electoral Schedule, in the process carried out in the State of Barinas, with respect to the election of the office of Governor of the state, on November 21, 2021, as of the submission of nominations, inclusive, in order to guarantee the collective rights of the citizens of the territorial entity."

"To render ineffective all electoral procedures and acts [...] as of the presentation of the nominations, inclusive," carried out on the occasion of the gubernatorial elections in the State of Barinas, is nothing more - without expressly saying it - than to consider them nonexistent, without any value or effect, as if it were a judgment that had been handed down in a contentious electoral nullity proceeding (judicial review), annulling certain electoral procedures and acts.

This, in addition to demonstrating ignorance, is another judicial nonsense since it is well known that the autonomous action of amparo cannot have annulling effects. Furthermore, it is extremely unconstitutional to condemn a public entity and annul its decisions without having summoned it, without having heard it, without having guaranteed its right to a defense, to make judicial allegations and to prove what is necessary, all contrary to the provisions of Article 49 of the Constitution.

As Freddy Gutierrez recalled, in the case decided by the Electoral Chamber, simply:

"No one was summoned, no plea was heard, there was no controversy. Mercilessly, and by this time, in an conspiratorial action, they ran over the norms that inform due process, set forth in our National Constitution and in international treaties freely subscribed to by the Republic." ¹¹

¹¹ See Freddy Gutierrez Trejo, "Barinas," in *Tal Cual*, December 4, 2021. Available at <https://talcualdigital.com/barinas-por-freddy-gutierrez-trejo/>

On the other hand, the amparo decision, in essence, in the case of violations of constitutional rights, is restitutory in nature, that is to say, its purpose is to restore to the alleged victim the legal situation that was infringed, that means, the right that was violated. In this case, the alleged aggrieved party, Mr. Adolfo Ramón Superlano, alleged violation of his right to participation and suffrage by Mr. Freddy Superlano, so that if any injury to them had been proven, the judgment in this trial could not but restore Mr. Adolfo Ramón Superlano's right to participate and to suffrage (to vote and to be elected) if it had been violated. It is incomprehensible that in order to do so (if that were the case), it would have been necessary to violate the right of all voters in the State of Barinas to elect the Governor of the entity.

IX

To the above judicial nonsense resulting from the condemnation of a public entity such as the National Electoral Council, in a process of amparo between two citizens, by "leaving without effect" all the procedures and legal acts that it had carried out in exercise of its constitutional and legal powers in relation to the process of the election of the Governor of the State of Barinas, another judicial nonsense was added, which was the order that the Electoral Chamber also addressed to the National Electoral Council, an entity that did not take part of the judicial process, nor an offending party, to carry out certain legal acts that are of its exclusive competence according to the Constitution and the laws, such as calling elections. This order is without doubts, an usurpation of authority that Article 138 of the Constitution declares as ineffective, which affects the validity of this decision.

The "order" addressed to the National Electoral Council, which configured such usurpation of authority, is stated as follows:

"It is ordered that a new electoral process take place in the State of Barinas for the election of the Governor, in order to guarantee the right to active and passive participation of those who participated in the electoral event to elect the Governor of the State of Barinas.

It should be noted that this order has nothing to do with the

demanded protection of the constitutional right to political participation and suffrage of Mr. Adolfo Ramón Superlano, proceeding the Electoral Chamber to convert, as if by magic, a very personal "amparo action" filed by a citizen against another citizen (who are the only two "parties" in the "process"), in an amparo action ostensibly for the protection of collective or diffuse rights and interests. This seems to be deduced from a sentence in the text published on the official website of the Supreme Tribunal, in which the Electoral Chamber:

"considers that the condition of ineligibility of candidate Freddy Superlano, already identified, in accordance with Resution No. 01- 00-000334 dated August 17, 2021 issued by the Office of the Comptroller General of the Republic, violates the principles of equality, equity and transparency in the participation of candidates in the electoral bid, as well as of voters in the exercise of active suffrage."

In the event that such condition of ineligibility of Mr. Freddy Superlano had been legally and judicially proven -which it was not, since there was no process, no litigation, no discussion or allegations, and furthermore, as indicated, it was unknown by the National Electoral Council itself, according to one of its Rectors-, in an amparo lawsuit filed by Adolfo Ramón Superlano against Freddy Superlano, the least that would have been necessary would have been for Adolfo Ramón Superlano to have alleged and proved that he had actually voted for Freddy Superlano, and that he considered that his right to elect had been violated because he had voted for a supposedly ineligible candidate, for having been disqualified. But that, of course, would be to enter more deeply into the world of the incomprehensible and the absurd.

X

As if the judicial absurdities were not enough, product of an unusual constitutional vandalism and a nameless electoral fraud, the Electoral Chamber of the Supreme Tribunal of Justice concluded its ruling with another usurpation of authority, in this case even more obvious, by proceeding to "order" the National Electoral Council to exercise a competence that is exclusive to it, autonomously, according to the Constitution and the Organic Law of Electoral Processes, as is to convene

elections and set dates for them.

The Chamber, in effect, concluded its Judgment No. 79 by deciding that:

"The National Electoral Council *is ordered to CONVENE* for January 9, 2022, the elections for Governor of the State of Barinas, guaranteeing conditions of equality in the participation of those entitled to vote in the federal entity, in accordance with what is ordered in paragraph 3 of this ruling".

This decision, in the same terms of the aforementioned article 138 of the Constitution, is a usurpation of authority and should be considered null and void.

XI

Finally, the Electoral Chamber forgot, when deciding *in limine* the constitutional amparo action, that it was one that had been attempted by Mr. Adolfo Ramón Superlano against Freddy Superlano allegedly requesting protection of his right to participation and suffrage, and ended its ruling by ordering the decision to be only notified "to the National Electoral Council, the Comptroller General of the Republic, the Attorney General of the Republic and the President of the Legislative Council of the State of Barinas, for the appropriate legal purposes," without indicating that the same should first be notified to the allegedly "convicted" in the amparo ruling, who could not be other than Mr. Freddy Superlano. One more example of ignorance and judicial nonsense.

The text of these two rulings No. 78 and 79 of November 29, 2021 of the Electoral Chamber issued when deciding an amparo action filed by one citizen against another, of a very personal nature, has such an accumulation of errors and judicial nonsense that it seems to be the result of a "legal practice" class developed in some Law School in which the students would have been asked to prepare two draft rulings with the greatest possible accumulation of errors and nonsense.

What is serious is that, in this case, they were written in real time, by magistrates of the Supreme Tribunal of Justice controlled by the

Executive Branch, as has been the case since 1999,¹² deliberately to vandalize constitutionally the election of a State Governor, who was not endorsed by the Government and his party, and to prevent him from taking office at all costs.

New York, December 7, 2021

¹² See Allan R. Brewer-Carías, *La demolición de la autonomía e independencia del Poder Judicial en Venezuela 1999-2021*, Editorial Jurídica Venezolana, Caracas 2021. Available at: <http://allanbrewercarias.com/wp-content/uploads/2021/11/Brewer-Carias.-Demolicion-del-Poder-Judicial-1999-2021.-portada.pdf>.