

**THE CONSTITUTIONAL JUDGE AND THE LEGAL
REGIME OF PRIVATE PERSONS:
THE CASE OF THE INTERVENTION OF THE NATIONAL
RED CROSS SOCIETY OF VENEZUELA BY THE
CONSTITUTIONAL CHAMBER OF THE SUPREME
TRIBUNAL OF JUSTICE***

Allan R. Brewer-Carías

Emeritus Professor, Central University of Venezuela

Member of the National Academy of Political and Social Sciences

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I. THE INTERVENTION OF THE RED CROSS SOCIETY AND ITS ILLEGITIMACY

1. On August 4, 2023, the Constitutional Chamber of the Venezuelan Supreme Tribunal of Justice issued judgment No. 1057,¹ by which it admitted a complaint filed two days before (on August 2, 2023) by the General Prosecutor of the Republic of Venezuela against the President (Mario Villaroel Lander) and the other members of the Board of Directors of the Venezuelan Red Cross Society. The complaint sought the protection of diffuse and collective rights, arguing the existence of:

"abuses of power against the volunteers and workers of the body of that humanitarian organization, as well as irregular actions in the use of the resources of that organization, to the detriment of the most vulnerable sectors of Venezuelan society that depend on their humanitarian work."

¹ Available at: <http://historico.tsj.gob.ve/decisiones/scon/agosto/327890-1057-4823-2023-23-0802.HTML>. See the comments regarding this decision in Acceso a la Justicia, "La Cruz Roja Venezolana engrosa la lista de organizaciones civiles intervenidas por el TSJ", 5 August 2023. Available at: <https://accesoalajusticia.org/la-cruz-roja-venezolana-engrosa-la-lista-de-organizaciones-civiles-intervenidas-por-el-tsj/>; and José Ignacio Hernández, "La intervención de la Cruz Roja Venezolana por la Sala Constitucional: otro paso más del constitucionalismo autoritario-populista," 5 August 2023. Available at: <https://www.joseignaciohernandezg.com/2023/la-intervencion-de-la-cruz-roja-venezolana-por-la-sala-constitucional-otro-paso-mas-del-constitucionalismo-autoritario-populista/>

2. In the admission ruling No. 1057, the Constitutional Chamber additionally secured a precautionary measure ordering:

First: "the immediate interruption of the President and the members of the Board of Directors of the Venezuelan Red Cross in their positions;"

Second, "a broad and diverse restructuring of the Venezuelan Red Cross with the participation of sectors of Venezuelan society until the merit of the present claim based on collective and diffuse interests is decided;" and

Third, "the establishment of an *Ad Hoc* Restructuring Board chaired by Ricardo Filippo Cusanno," assigning to him, among others, the power to appoint the members of the *Ad Hoc* Restructuring Board of the institution," for it: (i) to convene the internal election of the authorities of the Red Cross, "(iii) to evaluate and proceed to restructure the internal reorganization of the Red Cross within a period of one year, and (iii) to perform all the necessary attributions to guarantee the continuity of the service provided by the Venezuelan Red Cross, being compelled to report to the Constitutional Chamber of the Supreme Tribunal on the fulfillment of its attributions."

3. The complaint brought by the General Prosecutor was filed exclusively based on eight anonymous testimonies given by employees of the Red Cross Society, at his Office, in a criminal investigation that began a few days earlier (July 28, 2023), after the First vice president of the official Venezuelan United Socialist Party, PSUV, Diosdado Cabello, publicly accused Mario Villarroel, President of the Venezuelan Red, in his Radio Program *Con el mazo dando*, broadcasted in July 20, 2023. As was informed in the *El Universal* newspaper:

"On Wednesday [July 19] Diosdado Cabello, first vice president of the United Socialist Party of Venezuela (PSUV), communicated a complaint for "abuse of power" to the Venezuelan Red Cross by the president of the organization Mario Villarroel.

Cabello, publicized this announcement during his program "*Con el Mazo Dando*", broadcasted by VTV, where he pointed out: "They use the institution to accumulate power and personal matters."

The leader of the ruling party added that Mario Villarroel has been "more than 40 years in office without elections without any renewal within the Red Cross, he manipulates many people in the world (...) it is a bad example, and, moreover, it conspires against the Bolivarian Revolution."

In addition, he said that "He has come to control magistrates of the TSJ (Supreme Tribunal of Justice), he goes around the world to speak in the name of the Revolution (...); there are no statutes, those are put by him, and wants to leave his son in office, who has been accused of family violence.

Finally, the vice president of the party insisted that the Board of the Venezuelan Red Cross must have a representative of the Ministries of the Interior, Justice and Peace, of Defense and of Health."²

4. After the public accusation made by the Vice President of the Official party, the Venezuelan Red Cross reacted in a Communiqué published on July 27, 2023, whereas "categorically rejected the statements issued by Diosdado Cabello in the aforementioned programs, for not conforming to the truth both in facts and law."³ In addition, the VicePresident of the International Federation of the Red Cross, Mr. Miguel Ángel Villarroel in a public statements expressed the following:

"With deep concern I have received the news that the government of the Bolivarian Republic of Venezuela intends to intervene the Venezuelan Red Cross in the coming hours and appoint an Ad Hoc Board of Directors. With the greatest respect, I request the President of

² See the News Report "Diosdado Cabello denunció presunto "abuso de poder" en la Cruz Roja. Dio a conocer el anuncio durante su programa "Con el Mazo Dando" donde puntualizó: "Usan la institución para acumular poder y asuntos personales", in *El Universal*, July 20, 2023. Available at: <https://www.eluniversal.com/politica/160083/diosdado-cabello-denuncia-a-la-cruz-roja-venezolana>, In his following Radio Program Cabello, on July 26, 2023, Cabello stated that the issue of the Venezuelan Red Cross was a "State problem." See "Cabello: La Cruz Roja debe cumplir con las leyes y reconocer al Presidente Nicolás Maduro," in *Con el Mazo dando*, July 26 2023; available at: <https://mazo4f.com/cabello-la-cruz-roja-debe-cumplir-con-las-leyes-y-reconocer-al-presidente-nicolas-maduro>

³ See the full text of the Communiqué in the report: "Cruz Roja Venezolana rechaza acusación de "conspiración" hecha por Diosdado Cabello," in *NTN24*, July 28 2023; available at: <https://www.nten24.com/noticias-actualidad/cruz-roja-venezolana-rechaza-acusacion-de-conspiracion-hecha-por-diosdado-cabello-434154>

the Republic, Mr. Nicolás Maduro, in light of the Geneva Conventions signed and ratified by the Bolivarian Republic of Venezuela with the commitment to assume and promote the fundamental principles of the Red Cross and Red Crescent signed by the Venezuelan State, and for the people of our country who benefit from the humanitarian services offered by the Venezuelan Red Cross; I ask [the President] to refrain from issuing such a decision and allow the Venezuelan Red Cross to take the reins for adopting the solutions that benefit the humanitarian work in favor of millions of Venezuelans. I ask [the President] in the most respectful way not to allow an arbitrary action by a State entity that stains the 128 years of life of the institution [...] I urge [the President] to go before the international bodies of the Red Cross and Red Crescent if he or anyone in the government has a concern about the actions of the Venezuelan Red Cross, and that those instances be able to use the internal mechanisms to resolve differences and that the principles of humanity, impartiality, neutrality and independence are preserved as a fundamental basis of the trust of the State of Venezuela and the International Red Cross [...] I ask [the President] with deep respect not to allow the intervention of the largest humanitarian body in the world. Venezuela does not deserve it and you do not deserve to stain humanitarian history.”⁴

5. On the same day July 28, 2023, through his official tweeter account the General Prosecutor announced the beginning of a criminal investigation regarding the “alleged *harassment and mistreatment*” committed against volunteers and workers of the National Red Cross, by its president, Mario Villaroel” further informing about the appointment of a Prosecutor “with national jurisdiction on human rights,” to “investigate and punish the facts recently denounced about the *alleged harassment and mistreatment*

⁴ See the full statement in the Video, in Jessica Herera, *divergentes.news*. Available at: <https://www.tiktok.com/@divergentes.news/video/7263450354837310725>. See the comments of the statement from the Vice President of the International Federation in the news report: “El Tribunal Supremo interviene la Cruz Roja venezolana tras admitir demanda de la Fiscalía General,” in *Associated Press*, 4 August 2023; available at: <https://apnews.com/world-news/general-news-dbbb1926265820ee49a3c26671e81be6>

against volunteers and workers of the Venezuelan Red Cross by Mario Villarroel and members of his team.”⁵

6. In Venezuela there is no legal provision sustaining an administrative or judicial intervention by any State entity over a civil society such as the Venezuelan Red Cross National Society, regardless of the problems they could be faced with and/or any allegations about misconduct of their Directors, including harassment and mistreatments performed by personnel and administrative irregularities. Moreover, their internal conflicts are to be solved only pursuant the provisions of the Civil Code or the Labor Organic Law.

7. This means that after initiating a criminal investigation regarding the Society, the General Prosecutor could have encouraged the employees and volunteers of the Red Cross associates of the Red Cross to file a complaint before the competent Labor Courts, to secure their protection in face of the alleged harassed and mistreated. Or if he thought he has the standing to act in that regard, to file such complaint on behalf of the employees before such Courts.

8. But instead, the General Prosecutor, for the exclusive purpose of seeking the immediate intervention of the Red Cross, choose to fill a complaint before the Constitutional Chamber of the Supreme Tribunal, by-passing the provisions of the applicable law in the case (Civil Code; By-laws of the Society) alleging for the purported protection of diffuse and collective interests - supplanting the powers of the People’s Defendant of the Republic -. And only two days later the Constitutional Chamber issued the aforementioned precautionary measure providing for the intervention of the Venezuelan Red Cross Society.

9. The aforementioned shows, without doubt, that the judicial intervention of the Venezuelan Red Cross Society decided by the Supreme Tribunal was not an isolated event, based on a simple complaint against the leaders of the Society, founded on allegations made by some employees

5 See the references in the report: “Fiscalía de Venezuela abre investigación a presidente de la Cruz Roja nacional por "acoso", in *SWI swissinfo.ch*, 28 julio 2023, available at: https://www.swissinfo.ch/spa/venezuela-cruz-roja_fiscalía-de-venezuela-abre-investigación-a-presidente-de-la-cruz-roja-nacional-por-acoso-/48698206u. See also the News report: “Investigan al presidente de Cruz Roja Venezolana por acoso y maltrato a personal,” in *europapress/internacional*, 29 July 2023, available at: <https://www.europapress.es/internacional/noticia-investigan-presidente-cruz-roja-venezolana-acoso-maltrato-personal-20230729140033.html>

referred to labor rights and administrative irregularities in its management of the Society; but rather, a planned official action directed against a civil association that is not part of Public Administration and not subject to any sort of administrative governmental intervention.

10. This judicial intervention of the Red Cross Society decided by the Constitutional Chamber of the Supreme Tribunal of Justice, is an illegitimate intervention decreed by a State body against a civil society that is not subject to State control, due to the fact that:

a. It was issued in violation of the right to free association guaranteed in article 52 of the Constitution, according to which, civil societies regulated in the Civil Code are not subject to State intervention except when an express provision of law so allows. Consequently, in this case, in addition to be illegal, the intervention of the Society was ordered by an incompetent body of the State.

b. The judicial decision was issued by the Constitutional Chamber of the Supreme Tribunal in a judicial process that could not have been admitted by the Chamber, because the action filed before it did not comply with the conditions established by the same Chamber in its well-established jurisprudence set forth since 2000 regarding the actions for the protection of diffuse and collective rights.

c. The action filed before the Constitutional Chamber was also due to be declared inadmissible, because it was filed before it by the General Prosecutor of the Republic who has no standing at all to file actions for the protection of diffuse and collective rights pursuant to the well-established jurisprudence set forth by the same Constitutional Chamber since 2000 regarding the actions for the protection of diffuse and collective rights.

d. The “preliminary measure” that was issued by the Constitutional Chamber of the Supreme Tribunal, decreeing the intervention of a civil society not subjected to State control, was issued violating the basic provisions of the Civil Procedural Code because “measure” the decreed for the intervention of the Red Cross Society, in fact, was not a “temporal” measure that could eventually be reverted, but a “definitive” judicial decision according to which,

the Society will have a new Board of Directors and new by-laws, as has been ordered,

e, The supposed “preliminary measure” that was issued by the Constitutional Chamber of the Supreme Tribunal, decreeing the intervention of a civil society in any case was issued by the Constitutional Chamber without complying with the conditions established by the same Chamber and other courts in the country in a well-established jurisprudence set forth since 2000, for the purpose of the issuance of “preliminary measures.”

f. The immediate effect of the “preliminary measure” of intervention of the Venezuelan Red Cross decreed by the Constitutional Chamber of the Supreme Tribunal, appointing a new President of the Society with power to appoint the members of an Ad Hoc Board, that must “report” to the Chamber about the fulfillment of their new attributions not established in the by-laws of the Society, is the subjection of the Red Cross to control by a State body violating the legal provisions that govern civil societies in Venezuela.

II. THE VENEZUELAN RED CROSS BOTH AS A NATIONAL SOCIETY MEMEBER OF THE INTERNATIONAL ORGANIZATION OF THE RED CROSS

11. As aforementioned, the Venezuelan Red Cross Society is a National Society that with all the others National Societies, is part of the International Red Cross and Red Crescent Movement, together with the International Committee of the Red Cross, and the International Federation of Red Cross and Red Crescent Societies.⁶

12. Since the Geneva Conventions of 1864, the National Societies like the Venezuelan one are also conceived to act as “auxiliary to the public authorities in the humanitarian field.” Thus, in order for them to act as part of the International Movement and in the territory of the respective State, they must have the formal recognition by both the International Committee of the Red Cross, and of the respective State.

⁶ See Article 1, *Rules of Procedure of the International Red Cross and Red Crescent Movement* (adopted by the 25th International Conference of the Red Cross at Geneva in 1986, amended in 1995). Available at: <https://www.icrc.org/en/doc/assets/files/other/rules-of-procedure-int-mvt-rcrc.pdf>

13. In the case of the Venezuelan Red Cross National Society, it was incorporated in 1895, after Venezuela became part to the Geneva Conventions of 1864, once it was approved by the National Congress by means of legislative decree of May 21, 1894. Such approval was ratified a few weeks later by declaration of the Federal Executive of July 9, 1894.⁷ After the incorporation of the National Society, both the by-laws and its character as Society part of the International Organization of the Red Cross were further recognized by the government of Venezuela by means of a Resolution of the Ministry of Internal Affairs, dated July 28, 1895.⁸

14. From the stand point of the International Red Cross and Red Crescent Movement, and as stated in article 3 of the *Rules of Procedure of the International Red Cross and Red Crescent Movement* (adopted by the 25th International Conference of the Red Cross at Geneva in 1986, amended in 1995), these National Red Cross and Red Crescent Societies “form the basic units and constitute a vital force of the Movement,” being in charge of carrying out “their humanitarian activities in conformity with their own statutes and national legislation, in pursuance of the mission of the Movement, and in accordance with its Fundamental Principles.”

15. As for the conditions provided in this *Rules of Procedure*, for the recognition of the National Societies by the International Committee of the Red Cross, as was pointed out by Christophe Lanord, they “have no direct effect on the organization of a National Society” and “no model whatsoever is provided for a Society’s organization,” adding that even, “in particular, they do not include any principle of democratic organization.”⁹

16. In fact, in order to be recognized by the International Committee of the Red Cross, article 2 of the *Rules of Procedure of the*

7 See Aureo Yopez Castillo, *Origen y Desarrollo de la Cruz Roja Venezolana*, 1995, pp. 65-111. See also Ricardo de Sola Ricardo, *La Cruz Roja Venezolana. Historia*, 1995, pp. 31-68; and Pedro Manrique Lander, Leoncio Pérez Magallanes, José Vásquez Zerpa, Nahir Castillo Natera, Katyana Álvarez Rivas, Pedro Zerpa Díaz, “Breve recuento histórico de la Cruz Roja Venezolana,” in *Gaceta Médica de Caracas*, ISSN 0367-4762, v. 114, Mo. 4, Caracas, diciembre 2005. Available at: http://ve.scielo.org/scielo.php?script=sci_arttext&pid=S0367-47622006000400007

8 This is the reason for the wording of the provision of the current By-Laws of the Venezuelan Red Cross Society, stating: “Article 3. The Society has legal personality according to the resolution of the Ministry of Interior Affairs of 26 July 1895. Its domicile and siege is the city of Caracas and its duration is illimited.”

9 See Christophe Lanord, “The legal status of National Red Cross and Red Crescent Societies,” in *International Review of the Red Cross*, No. 840, 31-12-2000; available at: <https://www.icrc.org/en/doc/resources/documents/article/other/57jq9.htm>

International Red Cross and Red Crescent Movement (adopted by the 25th International Conference of the Red Cross at Geneva in 1986, amended in 1995) establishes that the National Societies must be incorporated in each country, according to the following conditions::

“1. Be constituted on the territory of an independent State where the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field is in force.

2. Be the only National Red Cross or Red Crescent Society of the said State and be directed by a central body which shall alone be competent to represent it in its dealings with other components of the Movement.

3. Be duly recognized by the legal government of its country on the basis of the Geneva Conventions and of the national legislation as a voluntary aid society, auxiliary to the public authorities in the humanitarian field.

4. Have an autonomous status which allows it to operate in conformity with the Fundamental Principles of the Movement.

5. Use a name and distinctive emblem in conformity with the Geneva Conventions and their Additional Protocols.

6. Be so organized as to be able to fulfil the tasks defined in its own statutes, including the preparation in peace time for its statutory tasks in case of armed conflict.

7. Extend its activities to the entire territory of the State.

8. Recruit its voluntary members and its staff without consideration of race, sex, class, religion or political opinions.

9. Adhere to the present Statutes, share in the fellowship which unites the components of the Movement and cooperate with them.

10. Respect the Fundamental Principles of the Movement and be guided in its work by the principles of international humanitarian law.”¹⁰

17. Additionally, pursuant to article 3 of the same *Rules of Procedure of the International Red Cross and Red Crescent Movement* (adopted

¹⁰ *Idem*

by the 25th International Conference of the Red Cross at Geneva in 1986, amended in 1995), in each State member, the National Societies, must “support the public authorities in their humanitarian tasks, according to the needs of the people of their respective countries.”

18. Nonetheless, according to the same provision, for such purpose, National Societies within their own countries, are “autonomous national organizations providing an indispensable framework for the activities of their voluntary members and their staff,” being in charge of cooperating “with the public authorities in the prevention of disease, the promotion of health and the mitigation of human suffering by their own programs in such fields as education, health and social welfare, for the benefit of the community.”

19. In addition, the same provision set forth that the National Societies must:

“organize, in liaison with the public authorities, emergency relief operations and other services to assist the victims of armed conflicts as provided in the Geneva Conventions, and the victims of natural disasters and other emergencies for whom help is needed. They disseminate and assist their governments in disseminating international humanitarian law; they take initiatives in this respect. They disseminate the principles and ideals of the Movement and assist those governments which also disseminate them. They also cooperate with their governments to ensure respect for international humanitarian law and to protect the distinctive emblems recognized by the Geneva Conventions and their Additional Protocols.”

20. The National Societies, based on guidelines for their statutes approved in 2000 by the Governing Board of the International Federation of Red Cross and Red Crescent Societies, are compelled to submit any draft amendment to their bylaws to the International Committee of the Red Cross and to the Federation.¹¹

21. Consequently, it is for each National Society to choose, according to its own national legal system, the most convenient legal form to incorporate the National Red Cross Society, in order to guaranty its functioning always following the basic principles of humanity, impartiality, neutrality and independence.

¹¹ Idem.

III. THE LEGAL STATUTE OF THE VENEZUELAN RED CROSS BOTH AS A CIVIL SOCIETY PURSUANT TO VENEZUELAN LAW

22. In the case of the Venezuelan Red Cross Society, according to Venezuelan Law, as mentioned, it was incorporated as a non-profit civil society, that is, as a legal person of private law governed in terms of its internal functioning by the rules applicable to civil societies set forth by the Civil Code (Articles 19, 20; 1649-1684). This has been recognized by multiple national court's rulings.

23. For example, in a judgment dated February 7, 2013, the First Superior Labor Court, based in Coro, hearing a labor lawsuit against the red Cross Society, analyzed the by-laws of the Red Cross Venezuelan Society registered in the Registrar Office of the Federal District in 1957,¹² stating about its legal nature that it is a:

"Non-profit Civil Society, inspired by altruistic purposes, aiming to "contribute in time of war to the health and assistance needs of the National Armed Forces. In peacetime, it will direct its activities towards public health; occur in aid of the competent authorities in the event of national calamities or disasters affecting other countries; and shall seek to foster the spirit of coexistence and cooperation among the men, women and children of the world" [...]

"the Venezuelan Society of the Red Cross, constitutes a legal entity, with its own patrimony and legal personality, that is, it is capable of generating rights and duties. From the analysis of the corporate purpose declared in its Articles of Incorporation, it is clear that the purpose of the defendant is fundamentally health or is directed towards the matter of health, oriented its object by altruistic values at the service of the community, having to provide a service of a social nature."¹³

¹² Acta Constitutiva de la Sociedad Venezolana de la Cruz Roja, registrada ante la Oficina Subalterna de Registro del Segundo Circuito del Municipio Libertador del Distrito Federal, bajo el No. 417, folios 638 y 666, Segundo Trimestre del año 1957

¹³ Available at <https://vlexvenezuela.com/vid/xiomara-rujan-sociedad-roja-seccional-420143922>

24. However, although it is a civil non-profit society of private law, it can be said that the Venezuelan Society of the Red Cross is not a civil society like any other, since, as was observed by the First Superior Labor Court of the State of Mérida in a judgment of February 12, 2009:

"is a civil society that exercises its action in accordance with the international conventions of the Red Cross and inspired by the postulates that make up the Declaration of Principles of the Red Cross"¹⁴

25. This means, of course, that the Red Cross Venezuelan Society is a civil society whose legal regime transcends the norms of the Venezuelan legal system that regulates civil societies, since it also has to act within the framework of the provisions of the International Geneva Convention, in which special measures were agreed to limit the barbarity of war by providing for the care of the wounded in war and for the protection of the relief corps. Consequently, the National Societies of the Red Cross were regulated, as voluntary aid societies in the various countries where they operate; being, as already mentioned, "auxiliary to the public authorities in the humanitarian field."

26. That is why, as we have said, the National Societies of the Red Cross, in addition to being incorporated pursuant to the provisions of the internal legal system of each country, and being recognized as forming part of the Red Cross Organization by the government of the respective States, they must also be recognized as such, by the International Committee of the Red Cross.¹⁵

27. It was precisely taking into account all these aspects about the role of the National Societies of the Red Cross both in the international and in the national fields, that the Superior Labor Court of the Merida State of

¹⁴ Available at: <http://jca.tsj.gob.ve/DECISIONES/2009/ABRIL/1412-15-LP21-R-2009-000012-033.HTML>

¹⁵ According to the *Rules of Procedure of the International Red Cross and Red Crescent Movement* (adopted by the 25th International Conference of the Red Cross at Geneva in 1986, amended in 1995), among the attributions of the International Committee of the Red Cross, is "to recognize any newly established or reconstituted National Society, which fulfils the conditions for recognition set out in Article 4, and to notify other National Societies of such recognition" (art. 5.b). Available at: <https://www.icrc.org/en/doc/assets/files/other/rules-of-procedure-int-mvt-rcrc.pdf>

Venezuela, regarding the Venezuelan Red Cross Society, in a ruling dated April 15, 2009, after explaining that the Geneva Convention has constitutional protection and rank based on articles 22 and 23 of the Constitution, as well as on article 118 referring to “solidarity associations, corporations and cooperatives, in all their forms;” considered that :

“From the international point of view, being the National Society a member of the International Committee of the Red Cross CRC and of the International Federation of Red Cross and Red Crescent Societies, it is considered as an international organization of a private nature, not subject to any specific national law, nor is it governed by public international law, in a legal strict sense, although some provisions of the Geneva Conventions and the Additional Protocols confer rights or impose obligations on its members. Thus, this right is consistent with an international legal order of customary substance, governed by general principles common to the various domestic laws and public international law.

The law of the Red Cross comes from an international agreement between the nations of the world through their respective chancelleries, which are part, since its origin, of the International Conference of the Red Cross, together with the representatives of the Red Cross of each country, this conference being the highest authority of the Institution. The resolutions of this Conference have given rise to a legal order of vague boundaries that has not found a well-defined place in the classical structure of law and certainly never will.

As we can see the complexity of this institution due to its characteristics and legal nature product of its origin and historical evolution, makes it unique in the world and requires much study for its understanding, which adds an additional element to its complexity.

Precisely for this reason, its board members, its volunteers, and other staff must have clarity of the object, its origin and nature, so as not to promote around the Institution situations difficult to resolve. Additionally, the organizations of the State, its judicial and labor institutions, just to mention a few, must possess a broader and deeper

information than the basic or limited, since otherwise they would create problems impossible to solve and in many cases with frank situations of injustice that transform us into a very weak organization legally speaking.”¹⁶

28. The complexity of the legal status of the International Red Cross Movement and in particular of the National Societies, like the Venezuelan Red Cross Society, is confirmed by the principle that they must be duly recognized by the legal government of a given country, on the basis of both the Geneva Conventions, and the national legislation, as voluntary aid societies that are auxiliary to the public authorities in the humanitarian field.

29. Nonetheless, being private law persons, subject to private law in their organization and functioning and despite of such recognition, they are not subject to any sort of specific control by the authorities of the State. And although they are subject to certain provisions of public law, it is basically for the purpose of protecting their character as humanitarian organizations, issued based on the basic principles that must govern the relations between the States and the National Societies.

30. Those principles, as stated in Article 2 of the Statutes of the International Red Cross Movement, are the following:

“1. The States Parties to the Geneva Conventions cooperate with the components of the Movement in accordance with these Conventions, the present Statutes and the resolutions of the International Conference.

2. Each State shall promote the establishment on its territory of a National Society and encourage its development.

3. The States, in particular those which have recognized the National Society constituted on their territory, support, whenever possible, the work of the components of the Movement. The same components, in their turn and in accordance with their respective statutes, support as far as possible the humanitarian activities of the States.

¹⁶ Available at: <http://jca.tsj.gob.ve/DECISIONES/2009/ABRIL/1412-15-LP21-R-2009-000012-033.HTML>

4. The States shall at all times respect the adherence by all the components of the Movement to the Fundamental Principles.”

5. The implementation of the present Statutes by the components of the Movement shall not affect the sovereignty of States, with due respect for the provisions of international humanitarian law.”¹⁷

31. One piece of public law issued in Venezuela following these guidelines relations between the State, the International Movement of the Red Cross and the Red Cross National Society, was the *Law on the Protection of the Name and Emblem of the Red Cross* of 2014,¹⁸ enacted with the purpose of regulating the conditions and modalities for the protection of the name and use of the emblems of the Red Cross, as well as the denomination of "Red Cross" and the distinctive signs for the identification of the units and means of international transport duly subscribed and ratified by the Bolivarian Republic of Venezuela” (Art. 1).

32. The Law defines the emblem of the Red Cross, stating that it “shall bear the nomenclature of the *National Society of the Venezuelan Red Cross*” (art. 4) and provides that the Ministry of Defense shall guarantee the use of the protective emblem of the Red Cross among others by *National Society of the Venezuelan Red Cross* (article 6.4), who shall collaborate with the authorities to prevent any transgression or abuse of this Law, as well as may report those who violate the provisions of this Law to the competent authority (Article 11).

33. In any case, the important feature regarding the legal statute of the Venezuela Red Cross National Societies, as it is also the case in many countries, like for instance, in Spain, is that as a non-profit civil society, it is a legal entity of private law, which”

“is not a Public Law Corporation [...]; it is not an Administration nor does it have delegated administrative powers, but privileges and prerogatives in exchange for an effort to cooperate in times of peace and war. It does not fulfill public-administrative functions

¹⁷ Available at: <https://www.ifrc.org/document/statutes-international-red-cross-and-red-crescent-movement> , See the reference in Christophe Lanord, “The legal status of National Red Cross and Red Crescent Societies,” in *International Review of the Red Cross*, No. 840, 31-12-2000, available at: <https://www.icrc.org/en/doc/resources/documents/article/other/57jqt9.htm>

¹⁸ See *Official Gazette*, No. 6207 Extra. Of 28 December 2015. Available at: <https://www.icrc.org/es/document/venezuela-ley-proteccion-nombre-emblema-cruz-roja>

but of general relevance. Its main characteristic is basic voluntariness.”¹⁹

34. Not being subject to control by the State, and not being part of the Public Administration, according to Venezuelan Law, the Red Cross Society is not subject to any sort of intervention. In particular, according to the Civil Code it is not subject to judicial intervention, and according to public law, is not subject to any sort of administrative intervention, as on the contrary, for example, is the case, for instance, of banks and financial institutions, or insurance companies.²⁰

35. Consequently, the Venezuelan Red Cross Society, according to Venezuelan Law, as is the case in general regarding all civil societies, as a matter of principle, is not subject to intervention through decisions issued by administrative bodies of the State, or through judicial decision.

36. As a civil society, according to the Civil Code, as was highlighted by the *ONG Acceso a la Justicia*, “its associates must be the ones who make the decisions that prevent, if necessary, the commission of irregularities, and not through impositions of a board by the Venezuelan State.”²¹

37. That is why, a group of more than three hundred (300) ONGs expressed in a public statement, their:

“rejection of the judicial intervention of the Venezuelan Red Cross Society (hereinafter Red Cross), ordered by the Constitutional Chamber of the Supreme Court of Justice (TSJ), in a decision contrary to the most basic principles of the rule of law and due process. Furthermore, it violates the right to freedom of association in Venezuela, established as a civil and political right, recognized in

¹⁹ See [Rosa Elena Muñoz Blanco](https://dialnet.unirioja.es/servlet/tesis?codigo=18737), *La naturaleza jurídica de la Cruz Roja española*, Tesis, Universidad de Extremadura, 1996. See the reference in: Fundación Dialnet, available at: <https://dialnet.unirioja.es/servlet/tesis?codigo=18737>. The Thesis was also published as a book: Rosa Elena Muñoz Blanco, *Cruz Roja Española: Un Estatuto Jurídico Singular*, Editorial Tecnos, Madrid 1999.

²⁰ See Allan R. Brewer-Carías, *Administrative Law in Venezuela*, Editorial Jurídica Venezolana Third edition 2021, pp. 405 ff. Available at: http://allanbrewercarias.com/wp-content/uploads/2013/08/9789803651992.txt.abc_.admlawven2.con-portada.pdf

²¹ See *Acceso a la Justicia*, “La Cruz Roja Venezolana engrosa la lista de organizaciones civiles intervenidas por el TSJ”, August 5, 2023. Available at: <https://accesoalajusticia.org/la-cruz-roja-venezolana-engrosa-la-lista-de-organizaciones-civiles-intervenidas-por-el-tsj/>

international human rights covenants and whose guarantee is one of the fundamental bases of democratic freedoms.”²²

38. Thus, the precautionary judicial measure issued by the Constitutional Chamber of the Supreme Tribunal through the illegitimate and unorthodox use of an action for the protection of “diffuse and collective rights,” to materialize an intervention of the Red Cross Society, denaturalizing such judicial action due to the fact that was based only on allegations of violations not of diffuse or collective rights but of individual rights of employees and voluntaries and misuse of the goods and assets of the Society, affects the autonomy and independence of a non-profit civil society violating the constitutional right of free association guaranteed in article 52 of the Constitution.

39. That is why the Inter-American Commission on Human Rights and the Special Rapporteur for Liberty of Expression of the Organization of American States in Press Release of August 21, 2023 have rejected recent the “arbitrary” decision of the Supreme Court of Justice (TSJ) of Venezuela intervening the Venezuelan Red Cross because it is “contrary to,” and “violate,” “infringe” and “undermine freedom of association,” adding that the appointment of:

“an "Ad Hoc Restructuring Board" with powers to reorganize it [...] would be contrary to the organization's internal statutes with respect to its governance and would confer powers contrary to the incorporation pact.”²³

²² See the text: “Comunicado conjunto con la intervención judicial de la Sociedad Venezolana de la Cruz Roja se agrava el patrón de violaciones contra la libertad de asociación en Venezuela,” August 8, 2023; available at: <https://www.wola.org/wp-content/uploads/2023/08/COMUNICADO-CONJUNTO-intervencion-Cruz-Rojas-9-de-agostodef-1.pdf>

²³ See “CIDH y RELE rechazan ataques a la libertad de asociación en Venezuela,” August 21, 2023. Available at: <https://www.oas.org/es/CIDH/jsForm/?File=/es/CIDH/prensa/comunicados/2023/189.asp> See also the News Report: ““Es preocupante”: CIDH condena la intervención de la Cruz Roja y del Partido Comunista en Venezuela,” in RYTN24, August 22, 2023, available at: <https://www.ntn24.com/noticias-actualidad/es-preocupante-cidh-condena-la-intervencion-de-la-cruz-roja-y-del-partido-comunista-en-venezuela-438986> . The Venezuelan Government reacted officially against the IACHR report, arguing that on the contrary the decision of the intervention of the Red Cross was a “legal decision issued by the competent courts and bodies” in a “clean action of the Public Powers.” See the text of the Official Communiqué in “Régimen de Maduro califica a la CIDH de "mercenaria" de EEUU,” in *Diario de las Américas*, August 22, 2023; available at:

40. A few days before, in the same sense, the members representing the Professors of the Central University of Venezuela in the University Council, after expressing their "concern about the participation of the academic vice-rector and, unofficially, the administrative vice-rector [of the Central University of Venezuela) in the intervening board of the Venezuelan Society of the Red Cross, ordered by the Constitutional Chamber of the Supreme Court of Justice," they also expressed that:

"the ruling of the Supreme Tribunal of Justice and the structuring of the board is a serious violation of the right to freedom of association, the rule of law, due process and, in addition, is part of a systematic state policy of closing democratic spaces in the country.

"The ruling of the Constitutional Chamber of the Supreme Court of Justice intervenes a legal person of private law, dismisses its board without even listening to them and designates an external person, without any connection with the institution, to constitute an intervening board."²⁴

41. Summarizing, the decision issued by the Constitutional Chamber of the Supreme Tribunal deciding the intervention of the Venezuelan Red Cross Society, violates the right to free association guaranteed in article 52 of the Constitution, according to which, civil societies regulated in the Civil Code are not subject to State intervention except when an express provision of law so allows. In the case of the Red Cross Society no provision of law authorize any sort of control by the State nor possibility of the intervention of the Society by the State.

IV. GENERAL CONDITIONS FOR THE FILING OF JUDICIAL ACTIONS OR COMPLAINTS FOR THE PROTECTION OF DIFFUSE AND COLLECTIVE RIGHTS OR INTERESTS

<https://www.diariolasamericas.com/america-latina/regimen-maduro-califica-la-cidh-mercenaria-eeuu-n5341834>

²⁴ See in Albany Andara Meza, "Profesores de la UCV en desacuerdo con participación de autoridades en junta interventora de la Cruz Roja," August 17, 2023, available at: <https://efectococuyo.com/la-humanidad/profesores-de-la-ucv-en-desacuerdo-con-participacion-de-autoridades-en-junta-interventora-de-la-cruz-roja/> Also available in *El Nacional*, August 18, 2023, at: <https://www.elnacional.com/venezuela/profesores-rechazaron-participacion-de-autoridades-de-la-ucv-en-la-junta-ad-hoc-de-la-cruz-roja/>

42. For the purpose of assuring judicial protection of constitutional rights and guarantees, the Venezuelan Constitution provides not only for the action of *amparo* (article 27), or action for the judicial protection of right, which is an action similar to the Anglo-American civil rights injunctions,²⁵ which must be filed always by the interested party suffering a harm or a violation of its rights; but in addition, as not all constitutional rights are individual rights, the Constitution also expressly recognizes and guaranties the judicial protection of diffuse and collective rights or interests (Article 26).²⁶

43. In fact, some constitutional rights are collective by nature, in the sense that they correspond to a more or less defined group of persons, so that their violations affect not only the personal rights of each of the individuals who enjoy them, but also, the whole group of persons or collectivity to which the individuals belong. Is the case, for instance of the political right that the voters as a whole have, in which case, for instance, the Constitutional Chamber has issued precautionary measures with *erga omnes* effects directed "both to the natural persons and organizations that have requested the constitutional protection and for all the voters as a whole."²⁷ In these cases, then, the action for protection can also be filed by the group or the association of persons representing their associates, even if they do not have the formal character of a legal person.

44. As for the diffuse rights or interests, the Constitutional Chamber of the Supreme Tribunal has considered that "they are those that seek to ensure, in general, an acceptable standard of living, so that by affecting them, the standard of living of the entire community or society is

²⁵ See Allan R. Brewer-Carías, *Constitutional Protection of Human Rights in Latin America. A Comparative Study of the Amparo Proceedings*, Cambridge University Press, New York, 2009, pp. 193 ff.

²⁶ See on this matter Allan R. Brewer-Carías, *Derecho de amparo y Acción de Amparo Constitucional*, Academia de Ciencias Políticas y Sociales, Editorial Jurídica Venezolana, 2021 pp.386-387; 590-593. Available at: <http://allanbrewercarias.com/wp-content/uploads/2021/02/A.R.-BREWER-CARIAS-DERECHO-Y-ACCION-DE-AMPARO-CONSTITUCIONAL.-con-Portada-2-2021.pdf>

²⁷ See judgement of the Constitutional Chamber of the Supreme Tribunal No. 483 of May 29, 2000, Case: "*Queremos Elegir*" y otros, in *Revista de Derecho Público*, N° 82, Editorial Jurídica Venezolana, Caracas 2000, pp. 489-491 (In the same sense judgement of the same Chamber No. 714 of July 13, 2000, Caso: *APRUM*.) Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-82-abril-junio-2000>

harméd, as is the case regarding damages to the environment or to the consumers.²⁸ In other words, as decided by the same Constitutional Chamber, these diffuse rights or interests:

“are those that guarantee the conglomerate (citizenship) in general an acceptable quality of life (basic conditions of existence), [when] the quality of life of the entire community or society in its various aspects is impaired, and an interest arises in each member of that community for the benefit of him and the other components of the community in which such deterioration does not happen, and in which if it has already occurred it is repaired.”²⁹

45. Regarding these diffuse rights or interests in the ruling No 1057, providing for the precautionary measure, the Constitutional Chamber citing a previous decision of 2003, specifically referred to them as follows:

“*Diffuse Rights or Interests*: they refer to a good that concerns everyone (plurality of subjects), that is, to people who, in principle, do not make up an identifiable and individualized population sector, and who without a legal link between them, are injured or threatened with injury. Diffuse rights or interests are based on generic, contingent, accidental or mutating facts that affect an indeterminate number of people and that emanate from subjects who owe a generic or indeterminate benefit, as to the possible beneficiaries of the activity from which such assistance derives, as in the case of positive rights such as the right to health, education or adequate housing, protected by the Constitution and the International Covenant on Economic, Social and Cultural Rights.”³⁰

46. As for collective rights, as the same Constitutional Chamber has decided, are “those referred to a determined (although not quantified) and identifiable population sector, made up of a group of people such as

²⁸ See judgement of the Constitutional Chamber of the Supreme Tribunal No 656 of June 30, 2000, caso *Defensor del Pueblo vs. Comisión Legislativa Nacional*, quoted in ruling No 379 of February 26, 2003, case *Mireya Ripanti et vs. Presidente de Petróleos de Venezuela S.A. (PDVSA)*, in *Revista de Derecho Público*, N° 93-96, Editorial Jurídica Venezolane, Caracas, 2003, pp. 152 ss. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-93-96-enero-diciembre-2003>

²⁹ Idem.

³⁰ See ruling 1057 of August 4, 2023. Available at: Available at: <http://historico.tsj.gob.ve/decisiones/scon/agosto/327890-1057-4823-2023-23-0802.HTML>

professional groups, neighborhood groups or guilds.”³¹ In other words of the same Constitutional Chamber, they are those that arise when the injury is specifically located in a group, determinable as such, although not quantified or individualized, such as the inhabitants of an area of the country affected by an illegal construction that generates problems of public services in the area.³² These collective interests, said the same Constitutional Chamber, are:

"referred to a determined population sector (although not quantified) and identifiable, although individually, within the group of people there is or may be a legal link that unites them between them. That is the case of injuries to professional groups, neighborhood groups, guilds, inhabitants of a certain area.”³³

47. Regarding these collective rights or interests in the ruling No 1057 of August 4, 2023 issuing the preliminary measures against the red Cross Society, the Constitutional Chamber also citing a previous decision of 2003, specifically referred to them as follows:

“*Collective Rights or Interests*: they refer to a specific population sector (although not quantified) and identifiable, although individually, so that within the group of people there is or may be a legal link that unites them between them. Its harm is located specifically in a group, determinable as such, such as professional groups, neighborhood groups, guilds, inhabitants of a certain area, and so on. Collective

³¹ see judgement of the Constitutional Chamber of the Supreme Tribunal No 656 of June 30, 2000, caso *Defensor del Pueblo vs. Comisión Legislativa Nacional*, quoted in ruling No 379 of February 26, 2003, case *Mireya Ripanti et vs. Presidente de Petróleos de Venezuela S.A. (PDVSA)*, in *Revista de Derecho Público*, N° 93-96, Editorial Jurídica Venezolane, Caracas, 2003, pp. 152 ss. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-93-96-enero-diciembre-2003>

³² See Allan R. Brewer-Carías, *Derecho de amparo y acción de amparo constitucional*, Academia de Ciencias Políticas y Sociales, Caracas 2021, p. 591. Available at: <http://allanbrewercarias.com/wp-content/uploads/2021/02/A.R.-BREWER-CARIAS-DERECHO-Y-ACCION-DE-AMPARO-CONSTITUCIONAL.-con-Portada-2-2021.pdf>

³³ See judgement of the Constitutional Chamber of the Supreme Tribunal No 656 of June 30, 2000, caso *Defensor del Pueblo vs. Comisión Legislativa Nacional*, quoted in ruling No 379 of February 26, 2003, case *Mireya Ripanti et vs. Presidente de Petróleos de Venezuela S.A. (PDVSA)*, in *Revista de Derecho Público*, N° 93-96, Editorial Jurídica Venezolane, Caracas, 2003, pp. 152 ss. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-93-96-enero-diciembre-2003>

rights must be distinguished from the rights of collective persons, since the latter are analogous to individual rights, since they do not refer to a grouping of individuals but to the legal or moral person to whom the rights are attributed. While legal persons act by organization, groups of individuals who have a collective interest act by representation, even if that interest is exercised by a group of persons, since the collective nature of the rights whose protection is invoked always exceeds the interest of the former.”³⁴

48. Summarizing, as was decided by the Constitutional Chamber in a ruling of 2003:

“the beneficiaries of collective rights are a group of subjectively indeterminate individuals who enjoy or can enjoy the satisfaction of a common interest. This means that collective rights obviously imply the existence of collective subjects, such as nations, peoples, joint-stock companies, political parties, trade unions, organized communities, but also ethnic, religious or gender minorities which, despite having an 'organizational, social or cultural structure', may not be legal or moral persons in the sense recognized by positive law.

In turn, diffuse rights or interests are objectively indeterminate, since the legal object of such rights is an indeterminate benefit, as in the case of rights set forth in positive norms, namely the right to health, education or housing, among others..³⁵

49. Based on these definitions, the Constitutional Chamber of the Supreme Tribunal summarized the jurisprudence on the matter in decision No. 1048 of August 17, 2000, stating that:

“The determination of the existence of diffuse or collective rights and interests requires that several factors be combined:

³⁴ Ruling quoted in judgment No 1057 of August 4, 2023. Available at: Available at: <http://historico.tsj.gob.ve/decisiones/scon/agosto/327890-1057-4823-2023-23-0802.HTML>

³⁵ See judgment of the Constitutional Chamber of the Supreme Tribunal of February 6, 2003, Case: *Zoila Martínez de Pacheco y otros vs. Juzgado Superior en lo Civil y Contencioso-Administrativo de la Circunscripción Judicial de la Región Los Andes con sede en Barinas*, in *Revista de Derecho Público*, N° 93-94/ 95-96, Editorial Jurídica Venezolana, Caracas 2003, pp. 149-150. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-93-96-enero-diciembre-2003>

1. That the one who file the action does so based not only on his right or individual interest, but on the basis of the right or common interest or collective impact.

2. That the harmful act produces general damage to the common quality of life of all the inhabitants of the country or sectors of it, since the legal situation of all the components of society or its groups or sectors.

3. That the injured goods is not susceptible of individual appropriation by a subject.

4. That it is an indivisible right or interest that includes the entire population of the country (diffuse) or a sector or group of it (collectives).

5. That there is a link, even if it is not legal, between the person who seeks the protection of the general interest of society or a sector of it (common social interest) and the latter, which arises from the damage or danger in which the community finds itself (as such).

6. That there is a need to satisfy social or collective interests, put before individual ones.

7. That the obligor owes an indeterminate benefit, whose requirement is general.”³⁶

50. Consequently, based on this jurisprudence the Constitutional Chamber has established in its rulings, the principles governing the basis for the filling of this action for the protection of diffuse and collective rights, and regarding the standing to claim, has established the sense and scope of the rights or interest to be protected, rejecting the actions, for instance, when they are not based on generic facts, or when the benefit claimed is not indetermined, that is, the action is based on specific facts or the benefits claimed are determined benefits.

51. As was explained by the Constitutional Chamber regarding another claim:

³⁶ Quoted in judgement of the Constitutional Chamber of the Supreme Tribunal No. [1814](#) of October 2007, Case: *Efraín Antonio Duin De La Rosa y otros*, in *Revista de Derecho Público* No. 112, Editorial Jurídica Venezolana, Caracas 2007, pp. 488-489. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-112-estudios-sobre-la-reforma-constitucional-octubre-diciembre-2007>

“in the case at hand we are not in the presence of a true and proper action for collective interests, since from the facts narrated, without further analysis, can be evidenced the existence of particular interests that fight for the elimination and control of the activities of the commercial premises located in the jurisdiction of the aforementioned Municipality, but not the affectation of collective and diffuse interests, whose presupposition is the uniformity of interests, either of indeterminate subjects, or of specific social groups, in a single direction and with the same purpose, since otherwise, as seems to happen in the case sub judice, there could be a ruling that hurts the legal interest of another sector of society not represented by the plaintiff. The foregoing, in no way means that his claim cannot be satisfied judicially, but through other means that allow the containment of the interested party in the results of the trial and not through an action of this nature.”³⁷

52. In addition, for instance, specifically regarding the internal situation within civil societies, like the Red Cross, the Constitutional Chamber of the Supreme Tribunal has excluded any possibility to file actions for the protection of collective or diffuse rights or interest to resolve society conflicts, stating that:

“Civil societies, as well as commercial companies, are legal persons usually constituted by virtue of the will of a multiplicity of persons. These entities express their will through the deliberation of a body that receives the name of assembly in which the members intervene with voice and vote.

Notwithstanding the collective nature of the decisions of the assembly, insofar as they are taken by a group of individuals, this does not imply that such decisions are the expression of a diffuse or

³⁷ See judgment of the Constitutional Chamber of the Supreme Tribunal No. 279 of February 23, 2007, case: *Guillermo Tadeo Borges Ortega vs. Alcaldía del Municipio Turístico El Morro “Lic. Diego Bautista Urbaneja” del Estado Anzoátegui*, in *Revista de Derecho Público*, No 109, Editorial Jurídica venezolana, Caracas 2007, pp. 94 ss. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-109-enero-marzo-2007> Also judgment of the Constitutional Chamber of the Supreme Tribunal No 1322 of October 16, 2009, Case: *Valeriano González y otros*, in *Revista de Derecho Público*, No. 120, Editorial Jurídica venezolana, Caracas 2009, pp. 97-98. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-120-octubre-diciembre-2009>

collective right or interest, in the terms that this Chamber has conceptualized the expression that is contained in article 26 of the Constitution of the Bolivarian Republic of Venezuela.”³⁸

53. On the other hand, regarding the attribution of the Constitutional Chamber to decide claims for the protection of collective or diffuse rights or interests, according to article 146 of the Organic Law of the Supreme Tribunal of Justice, the claim must have “national significance,” a condition that pursuant to the jurisprudence of the Chamber, is determined:

“i) by the territorial scope, that is, when the constitutional complaint was developed in one or more territories of the Republic, or alternatively in the whole of it (e.g. affectation of the ozone layer, national epidemic, among others) with which there is a real incidence of geographical affectation that exceeds the territorial limits of a certain municipality and

ii) by the material scope, when the constitutional rights denounced as violated are not limited to the protection of a one-dimensional relationship of the constitutional sphere of these (e.g. right to work, right to education) but when these have a multidimensional rank as a consequence of the alleged fact, act or omission which not only has a specific radiatory effect, but can also affect a multidimensional or indeterminate number of suprapersonal rights (e.g. simultaneous affectation of the right to health, the environment, work, safety)”³⁹

54. In the case in which the ruling 1057 of 2023 has been issued, none of the condition for the filling of the actions for protection of diffuse and collective rights set forth by the Constitutional Chamber were satisfied,

³⁸ See judgment of the Constitutional Chamber of the Supreme Tribunal No [1814](https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-112-estudios-sobre-la-reforma-constitucional-octubre-diciembre-2007) of October 8, 2007, Case: *Efraín Antonio Duin De La Rosa y otros*, in *Revista de Derecho Público* No. 112, Editorial Jurídica Venezolana, Caracas 2007, pp. 488-489. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-112-estudios-sobre-la-reforma-constitucional-octubre-diciembre-2007>

³⁹ See judgment of the Constitutional Chamber of the Supreme Tribunal No 946, of February 9, 2018, Case: *Yani Adrian Jaimes Gonzáles*, in *Revista de Derecho Público* No. 153-154, Editorial Jurídica Venezolana, Caracas 2018, pp 326-327. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-153-154-enero-junio-2018>

being such action filed, as aforementioned, against “abuses of power against the volunteers and workers of the body of that humanitarian organization, as well as irregular actions in the use of the resources of that organization, to the detriment of the most vulnerable sectors of Venezuelan society that depend on their humanitarian work.”

V. CONDITIONS FOR HAVING STANDING TO RISE JUDICIAL ACTIONS OR COMPLAINTS FOR THE PROTECTION OF DIFFUSE AND COLLECTIVE RIGHTS OR INTERESTS ASSIGNED TO ANY INDIVIDUAL OR TO THE PEOPLE’S DEFENDANT

55. Regarding the actions for the protection of collective or diffuse rights and interests, the Constitutional Chamber of the Supreme Tribunal as also elaborated a very clear jurisprudential doctrine about the conditions of the standing needed to file them, having stated since 2000 that:

“any individual with legal capacity to bring suit, who is going to impede a damage to the population or parts of it to which he belongs, is entitled to bring to suit grounded in diffuse or collective interests, and where he had suffered personal damages, he can also claim for himself (jointly) the compensation of such.

This interpretation, grounded in Article 26, extends the standing to companies, corporations, foundations, chambers, unions and other collective entities whose object is the defense of the society, as long as they act within the boundaries of their corporate object, aimed at protecting the interests of their members regarding their object. ...

When the damages harm groups of individuals that are legally bound or pertain to the same activity, the action grounded in collective interests, whose purpose is the same as the one of the diffuse interests, shall be brought to suit by the corporations that gather the damaged sectors or groups and even by any member of that sector or group as long as he acts in defense of that social segment ...

Due to the foregoing, it is not necessary for whoever brings a suit grounded on diffuse or collective interests, if it is a diffuse one, to have a bond previously established with the offender. It is necessary that he acts as a member of the society, or its general categories (consumers, users, etc.), and invokes his right or interest

shared with the citizenship, since he participates with them in the damaged factual situation because of the infringement or detriment of the fundamental rights concerning the collectivity, which generates a common subjective right that despite being indivisible, may be enforced by anyone in the infringed situation, since the legal order acknowledges those rights in Article 26 of the Constitution. ...

Even though it is a general right or interest enjoyed by the plaintiff, which allows various plaintiffs, he himself shall be threatened, shall have *suffered the damage or shall be suffering it as a part of the citizenship*, whereby whoever is not residing in the country, or is not damaged shall lack standing; this situation separates these actions from the popular ones.

Whoever brings suit based on collective rights or interests, shall do it in his condition of member of the group or sector damaged, therefore, *he suffers the damage jointly with others, whereby he assumes an interest of his own and gives him the right to claim the end of the damage for himself and the others*, with whom he shares the right or interest. It shall be a group or sector not individualized, otherwise, it would be a concrete party. In both cases, if the action is admitted, a legal benefit will arise in favor of the plaintiff and his common interest with the society or collectivity of protecting it, maintaining the quality of life. The defense of society's interests is guaranteed. The plaintiff is given the subjective right to react against the damaging act or concrete threat, caused by the offender's violation of the fundamental rights of the society in general. Whoever is entitled to act shall always plea for an actual interest, which does not terminate for the society in one single process. If an individual brings suit grounding his action in diffuse rights or interests, yet the judge considers that it is about them, he shall subpoena the Defender of the People or the entities established by law in particular subjects and shall notify through an edict all the parties in interest, whether there are processes in which the law excludes and grants representation to other individuals. All these legitimate interested parties shall intervene as third party claimants, if the

judge admits them as such taking into consideration the existence of diffuse rights and interests”⁴⁰

56. This is the case, for instance, of the amparo action filed for the protection of electoral rights, in which case, any citizen, invoking the general voters’ rights, can file the action.⁴¹ In other words, and summarizing, the Constitutional Chamber has admitted that: “Any capable person that tends to impede harm to the population or sectors of it to which he appertains, can file actions in defense of diffuse or collective interest,” extending the “standing to the associations, societies, foundations, chambers, trade unions and other collective entities devoted to defend society, provided that they act within the limits of their societal goals referring to the protection of the interests of their members.”⁴²

57. In these cases the Constitutional Chamber has determined the general conditions that the action filed must be based “not only on the personal right or interest of the claimant, but also on a common or

⁴⁰ See judgement of the Constitutional Chamber of the Supreme Tribunal No 656 of June 30, 2000, caso Defensor del Pueblo vs. Comisión Legislativa Nacional, quoted in ruling No 379 of February 26, 2003, case *Mireya Ripanti et vs. Presidente de Petróleos de Venezuela S.A. (PDVSA)*, in *Revista de Derecho Público*, N° 93-96, Editorial Jurídica Venezolana, Caracas, 2003, pp. 152 ss. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-93-96-enero-diciembre-2003>

⁴¹ In these cases, the Chamber has even granted precautionary measures with erga omnes effects “to both individuals and corporations who have brought to suit the constitutional protection, and to all voters as a group.” See decision of the Constitutional Chamber n° 483 of May 29, 2000, case: “*Queremos Elegir*” y otros in *Revista de Derecho Público*, n° 82, 2000, Editorial Jurídica Venezolana, pp. 489-491. In the same sense, see the decision of the same Chamber n° 714 of July 13, 2000, APRUM case, in *Revista de Derecho Público*, n° 83, Editorial Jurídica Venezolana, Caracas, 2000, pp. 319 ff. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-83-julio-septiembre-2000>.

⁴² The Chamber added that: “Those who file actions regarding the defense of diffuse interest do not need to have any previously established relation with the offender, but has to act as a member of society, or of its general categories (consumers, users, etc.) and has to invoke his right or interest shared with the population’s, because he participates with all regarding the harmed factual situation due to the noncompliance of the diminution of fundamental rights of everybody, which gives birth to a communal subjective right, that although indivisible, is actionable by any one place within the infringed situation.” Decision of the Constitutional Chamber of June 30, 2000, Case *Defensoría del Pueblo*. See the reference and comments in Rafael Chavero, *El nuevo régimen del amparo constitucional en Venezuela*, Caracas, 2001, pp. 110-114.

collective right or interest.”⁴³ Consequently, in these cases, a bond or relation must exist, “even if it is not a legal one, between whoever demands in the general interest of the society or a part of it (social common interest), and the damage or danger caused to the collectivity.”⁴⁴

58. Although being of a personal character, even in cases of actions for the protection of collective and diffuse rights, it is generally accepted that some public officers have standing to file amparo actions on behalf of the community or of groups of persons. In Venezuela, before 1999 this traditionally was the case of the General Prosecutors and is now the case of the People’s Defendant

59. In effect, one important innovation of the Venezuelan constitutional system of protection of human rights and particularly regarding the standing to sue for amparo, was the creation by the 1999 Constitution of an specific autonomous constitutional entity called the Defendant of the People (People’s Defendant) with the particular purpose of protecting and seeking for the protection of constitutional rights, particularly of the diffuse and collective constitutional rights; with the particular situation of formally being established as a separate branch of government.⁴⁵

⁴³ That is, the reason of the claim or the action for amparo must be “the general damage to the quality of life of all the inhabitants of the country or parts of it, since the legal situation of all the members of the society or its groups have been damaged when their common quality of life was worsened”; thus the damage “concerns an indivisible right or interest that involves the entire population of the country or a group of it.” See decision n° 1948 of February 17, 2000, case: William O. Ojeda O. vs. Consejo Nacional Electoral case. See the reference in Allan R. Brewer-Carías, *Constitutional Protection of Human Rights in Latin America. The Amparo Proceeding*, Cambridge University Press, New York 2009, p. 197

⁴⁴ See decision n° 1948 of February 17, 2000, case: William O. Ojeda O. vs. Consejo Nacional Electoral case. See the reference in Allan R. Brewer-Carías, *Constitutional Protection of Human Rights in Latin America. The Amparo Proceeding*, Cambridge University Press, New York 2009, p. 197

⁴⁵ The 1999 Venezuelan Constitution, in this regard, establishes a penta separation of powers, distinguishing five branches of government, separating the Legislative, Executive, Judicial, Electoral and Citizens branches; creating the People’s Defendant within the Citizens Power, in addition to the Public Prosecutor Office and the General Comptroller Office (Article 134). The People’s Defendant was created for the promotion, defense and supervision of the rights and guaranties set forth in the Constitution and in the international treaties on human rights, as well as for the citizens’ legitimate, collective and diffuse interests (Article 281). In particular, according to Article 281 of the Constitution, it also has among its functions to watch for the functioning of public services power and to promote and protect the peoples’ legitimate, collective and diffuse rights and interests against arbitrariness or

60. As is the case in many other Latin American countries⁴⁶ the general trend regarding these autonomous constitutional institutions for the protection of human rights, as is the case of the Peoples's Defendant, is the power attributed to such organ to file actions particularly regarding the protection of diffuse and collective constitutional rights, having then the necessary standing to sue. As was decided by the Constitutional Chamber of the Supreme Tribunal:

*"As a matter of law, the Defender has standing to bring to suit actions aimed at enforcing the diffuse and collective rights or interests; not being necessary the requirement of the acquiescence of the society it acts on behalf of, for the exercise of the action. The Defender of the People is given legitimate interest to act in a process defending a right granted to it by the Constitution itself, consisting in protecting the society or groups in it, in the cases of Article 281."*⁴⁷

61. It is the situation, for instance, in cases of the protection of indigenous people's rights, the right to the environment and the citizens' right to political participation,⁴⁸ being the main consequence of the creation

deviation of power in the rendering of such services, being authorized to file the necessary actions to ask for the compensation of the damages caused from the malfunctioning of public services. It also has among its functions, the possibility of filing actions of amparo and habeas corpus. See Allan R. Brewer-Carías, *La Constitución de 1999. Derecho Constitucional Venezolano*, Academia de Ciencias Políticas y Sociales, Caracas 2022, pp. 554-555. Available at: <http://allanbrewercarias.com/wp-content/uploads/2022/08/A.R.-BREWER-CARIAS.-CONSTITUCION-1999.-5a-edic.-2022-2022-port.pdf>

⁴⁶ See Allan R. Brewer-Carías, *Constitutional Protection of Human Rights in Latin America. The Amparo Proceeding*, Cambridge University Press, New York 2009, pp. 202 ff.

⁴⁷ See judgement of the Constitutional Chamber of the Supreme Tribunal No 656 of June 30, 2000, caso *Defensor del Pueblo vs. Comisión Legislativa Nacional*, quoted in ruling No 379 of February 26, 2003, case *Mireya Ripanti et vs. Presidente de Petróleos de Venezuela S.A. (PDVSA)*, in *Revista de Derecho Público*, N° 93-96, Editorial Jurídica Venezolane, Caracas, 2003, pp. 152 ss. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-93-96-enero-diciembre-2003>

⁴⁸ The Constitutional Chamber of the Supreme Tribunal of Venezuela admitted the standing of the Defender of the People to file actions for amparo on behalf of the citizens as a whole, as was the case of the action filed against the Legislative body pretension to appoint the Electoral National Council members without fulfilling the constitutional requirements. In the case, decided on June 6, 2001, the Constitutional Chamber, when analyzing Article 280 of the constitution, pointed out that "the protection of diffuse and collective rights and interests may be raised by the Defender of the People, through the action of amparo," adding the following: "As for the general provision of Article 280 eiusdem, regarding the general defense and

of this autonomous constitutional institution with standing to file amparo actions, is the lack of standing that other States' institutions have in order to initiate the actions for the protection of collective or diffuse rights.⁴⁹

62. In this sense, the Constitutional Chamber of the Supreme Tribunal rejected an actions for the protection of collective or diffuse rights filed by a Governor of one of the federated States, ruling that the States and Municipalities cannot file actions for the protection of diffuse and collective rights and interest except if a statute expressly authorizes them.⁵⁰ This

protection of diffuse and collective interests, this Chamber considers that the Defender of the People is entitled to act to protect those rights and interests, when they correspond in general to the consumers and users (6, Article 281), or to protect the rights of Indian peoples (paragraph 8 of the same Article), since the defense and protection of such categories is one of the faculties granted to said entity by Article 281 of the Constitution in force. It is about a general protection and not a protection of individualities. Within this frame of action, and since the political rights are included in the human rights and guaranties of Title III of the Constitution in force, which have a general projection, among which the ones provided in Article 62 of the Constitution can be found, it must be concluded that the Defender of the People on behalf of the society, legitimated by law, is entitled to bring to suit an action of amparo tending to control the Electoral Power, to the citizen's benefit, in order to enforce Articles 62 and 70 of the Constitution, which were denounced to be breached by the National Legislative Assembly... (right to citizen participation). Due to the difference between diffuse and collective interests, both the Defender of the People, within its attributions, and every individual residing in the country, except for the legal exceptions, are entitled to bring to suit the action (be it of amparo or an specific one) for the protection of the former ones; while the action of the collective interests is given to the Defender of the People and to any member of the group or sector identified as a component of that specific collectivity, and acting defending the collectivity. Both individuals and corporations whose object be the protection of such interests may raise the action, and the standing in all these actions varies according to the nature of the same, that is why law can limit the action in specific individuals or entities. However, in our Constitution, in the provisions of Article 281 the Defender of the People is objectively granted the procedural interest and the capacity to sue." See judgement of the Constitutional Chamber of the Supreme Tribunal No 656 of June 30, 2000, caso *Defensor del Pueblo vs. Comisión Legislativa Nacional*, quoted in ruling No 379 of February 26, 2003, case *Mireya Ripanti et vs. Presidente de Petróleos de Venezuela S.A. (PDVSA)*, in *Revista de Derecho Público*, N° 93-96, Editorial Jurídica Venezolane, Caracas, 2003, pp. 152 ss. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-93-96-enero-diciembre-2003>

⁴⁹ See Allan R. Brewer-Carías, *Constitutional Protection of Human Rights in Latin America. The Amparo Proceeding*, Cambridge University Press, New York 2009, pp. 203.

⁵⁰ Decision of November 21, 2000. The Court ruled that the collective and diffuse rights and interests pursue to maintain an acceptable quality of life in all the population or sectors of it in those matters related to the quality of life that must be rendered by the State or by individuals. They are rights and interests that can coincide with individual rights and interests, but that according to Article 26 of the

doctrine was ratified in another decision issued in 2001 in which the Constitutional Chamber also denied the Governors or Mayors the standing to file collective actions, arguing that “*the Venezuelan State, as such, lacks [such standing], since it has mechanisms and other means to cease the damage caused to those rights and interests, specially through administrative procedures*”; concluding its ruling affirming that:

“Within the structure of the State... *the only one who is able to protect individuals in matters of collective or diffuse interest is the Defender of the People (in any of its scopes: national, state, county or special). The General Prosecutor, the Mayors, or the Municipal auditors lack both such attribution and the action (unless the law grants them both).*⁵¹

63. In the same judgement the Chamber decided that:

“actions in general grounded in diffuse or collective rights and interests may be filed by any Venezuelan person or legal entity, or by foreign persons residing in the country who have access to the judicial system through the exercise of this action...

...but the population in general is entitled to bring them in the way explained in this decision and those can be brought by the Defender of the People, since as stated in Article 280 of the Constitution, the Defendant of the People is in charge of the promotion, defense and guardianship of the legitimate, collective and diffuse interest of the citizens.

Constitution and unless the statute denies the action, can be claimed by any person invoking a right or interest shared with the people in general or a sector of the population and who fears or has suffered a harm in his quality of life, being part of such collectivity. Now, being for the State to maintain the acceptable quality of life conditions, its bodies or entities cannot ask from it to render an activity; thus, within the structure of the State, the only institution that can file such actions is the People’s Defendant, due to the fact that it represents the people and not the State, as well as other public entities when a particular statute gives them such actions. See Case William Dávila. Gobernación Estado Mérida. See the comments in Rafael Chavero, *El nuevo régimen del amparo constitucional en Venezuela*, Caracas, 2001, p. 115.

⁵¹ See judgement of the Constitutional Chamber of the Supreme Tribunal No 656 of June 30, 2000, case *Defensor del Pueblo vs. Comisión Legislativa Nacional*, quoted in ruling No 379 of February 26, 2003, case *Mireya Ripanti et vs. Presidente de Petróleos de Venezuela S.A. (PDVSA)*, in *Revista de Derecho Público*, N° 93-96, Editorial Jurídica Venezolana, Caracas, 2003, pp. 152 ss. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-93-96-enero-diciembre-2003>

According to this Chamber, said provision does not exclude or prohibit the citizens the access to the judicial system in defense of the diffuse and collective rights and interests, since Article 26 of the Constitution in force sets forth the access to the judicial system to every person, whereby individuals are entitled to bring to suit as well unless a law denies them the action.”⁵²

64. Consequently, the States and Municipal authorities (governors and mayors) as well as the General Prosecutor have been denied standing to file actions of amparo seeking the protection of collective constitutional rights, when infringed by national authorities. Having been created the People’s Defendant in the Constitution of 1999 according to the doctrine of the Constitutional Chamber of the Supreme Tribunal, no other public official in its official character, including the Prosecutor General, have standing to file actions for the protection of collective or diffuse rights or interests.

65. Consequently, in the case in which the Constitutional Chamber has issued the decision illegitimately intervening the Red Cross Society, the plaintiff in the case, that is, the General Prosecutor completely lacked the needed standing conditions set forth the same Constitutional Chamber in its well-established jurisprudence to be able to file such action for the purported protection of diffuse and collective rights.

VI. THE ACTION BROUGHT BEFORE THE CONSTITUTIONAL CHAMBER BY THE GENERAL PROSECUTOR AGAINST THE INDIVIDUAL MEMBERS OF THE BOARD OF DIRECTORS OF THE VENEZUELAN RED CROSS SOCIETY

52. See judgement of the Constitutional Chamber of the Supreme Tribunal No 656 of June 30, 2000, Case *Defensor del Pueblo vs. Comisión Legislativa Nacional*, quoted in ruling No 379 of February 26, 2003, case *Mireya Ripanti et vs. Presidente de Petróleos de Venezuela S.A. (PDVSA)*, in *Revista de Derecho Público*, N° 93-96, Editorial Jurídica Venezolane, Caracas, 2003, pp. 152 ss. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-93-96-enero-diciembre-2003>

66. In the case in which the Constitutional Chamber issued the precautionary measure contained in decision No 1057 of 2023, the Chamber admitted an action was filed by “Tarek William Saab, Venezuelan, of legal age, holder of identity card No. 8,459,301, *acting in his capacity as Prosecutor General of the Bolivarian Republic of Venezuela.*” It was not even filed by Tarek William Saab in his personal capacity as member of the Venezuelan society, but in his capacity of public official head of the Public Prosecutor Office, in a way contrary to what has been the jurisprudential doctrine of the same Constitutional Chamber of the Supreme Tribunal.

67. Based on its own jurisprudence, the Constitutional Chamber was obligated to declare inadmissible such action, pursuant the rule established by the same Chamber in judgment No. 1.395 of 21 November 2000 (case: "*William Dávila Barrios and others*"), in which it determined:

“with respect to which individual or collective, public or private, subjects are authorized or empowered in accordance with the constitutional norm to claim the effective protection of collective and diffuse rights and interests, that in the case of public subjects, that is, State organs or entities, *only the Office of the Peoples’s Defendant has the power, based on articles 280 and 281.2 of the Constitution of the Bolivarian Republic of Venezuela, to apply to the Courts of the Republic to request protection and effective protection of the collective rights and interests of persons living or residing in the territory of the Republic, without excluding the possibility of claiming the protection of the collective rights or diffuse interests of Venezuelans living or residing outside the territory of the Republic.*”⁵³

68. Likewise, the Chamber indicated that such representation is not expressly attributed in the current legal system to any other State body or entity, and that the invocation of its defense in jurisdictional headquarters "(...) correspond to a plurality of organizations with legal personality, whose object is intended to act in the sector of life where the activity of the

⁵³ Quoted in judgment of the Constitutional Chamber of the Supreme Tribunal No. 2150 of November 14, 2007, Case: *Lorenzo Emilo Rondón vs. Presidente del Instituto Nacional de Investigaciones y de Ministro del Poder Popular para la Agricultura y Tierras*, in *Revista de Derecho Público*, N° 112, Editorial Jurídica Venezolane, Caracas, 2007, pp. 490-492. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-112-estudios-sobre-la-reforma-constitucional-octubre-diciembre-2007>

collective entity is required, and which, in the opinion of the Court, constitutes a quantitatively important sample of the sector (...)"⁵⁴

69. But contrary to its own doctrine, the Constitutional Chamber admitted the "standing" of the Prosecutor General to file the action for the protection of the supposed "collective and diffuse rights and interests of *the employees and volunteers of the Red Cross*," and admitted the intervention of the Red Cross Society only with incidental reference to right to health, as a consequence of the denounced situation in its functioning.

70. And such admission of the claim was even made without considering what the Chamber has established regarding the general possibility for any citizen to file an action for the protection of collective or diffuse rights in the sense that the claimant:

*"personally must have fear the injury or have suffered it or be suffering it as part of the community in relation to his fundamental rights, exercising such action in his capacity as a member or linked to the injured group or sector, so that anyone who is not domiciled in the country, or cannot be reached by the injury, will lack legitimacy..."*⁵⁵

71. According to the judgment No. 1057 of 2023, in this case, the action was filed by the General Prosecutor, as he himself explained in his complaint, due to:

*"[...] abuses of power against the volunteers and workers of the body of that humanitarian organization, as well as irregular actions in the use of the resources of that organization, to the detriment of the most vulnerable sectors of Venezuelan society that depend on their humanitarian work."*⁵⁶

72. That is, in the own words of the General Prosecutor, he filed an action that was not based on generic facts, related to indeterminate subjects; on the contrary, the action was based on specific facts related to an specific group of persons, the employees and volunteers of the Red Cross,

⁵⁴ *Idem.*

⁵⁵ See judgement of the Constitutional Chamber of the Supreme Tribunal No TSJ-SC No. 1623, of October 29, 2008, Case: *Narciso Antonio Palacios y otros vs. Alcalde del Municipio Chacao del Estado Miranda*, in *Revista de Derecho Público* No 116, Editorial Jurídica Venezolane, Caracas 2008, pp. 106-113. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-116-octubre-diciembre-2008>

⁵⁶ Available at: <http://historico.tsj.gob.ve/decisiones/scon/agosto/327890-1057-4823-2023-23-0802.HTML>.

regarding determined labor benefits, and against the members of the Board of Directors of the Red Cross, in which case, as the Constitutional Chamber said in other case, “there could be a ruling that hurts the legal interest of another sector of society not represented by the plaintiff.” As the same Chamber said: “The foregoing, in no way means that his claim cannot be satisfied judicially, but through other means that allow the containment of the interested party in the results of the trial and not through an action of this nature.”⁵⁷

73. The specific facts related to the *employees and volunteers of the Red Cross*, regarding determined labor benefits, is even expressed in the text of the claim filed by the General Prosecutor as it is transcribed in the ruling No. 1057:

“The plaintiff explain that: “having regard to the complaints and interviews conducted in the investigation carried out by the Thirty-Fourth (34) National Prosecutor's Office Specialized in the Protection of Human Rights of the Public Prosecutor's Office, annexed hereto, which describe *workplace harassment* by the National Board of Directors of the Venezuelan Red Cross, chaired by citizen Mario Villarroel Lander, manifested through *mistreatment, threats and coercion of the working and volunteer personnel* of that humanitarian entity, which becomes the violation of fundamental human rights such as the right to human dignity, health and life, it is clear that the present lawsuit must be processed, since these constitutional violations seriously compromise *the collective rights of workers and volunteer personnel who are being affected by this action.*”

“That: “Equal importance to the *collective interests of workers* is the present *Action for Protection of Collective and Diffuse Interests*, with

⁵⁷ See judgement of the Constitutional Chamber of the Supreme Tribunal No 279 of February 23, 2007. Caso: *Guillermo Tadeo Borges Ortega vs. Alcaldía del Municipio Turístico El Morro “Lic. Diego Bautista Urbaneja” del Estado Anzoátegui*. In *Revista de Derecho Público* No 109, Editorial Jurídica Venezolane, Caracas 2007, pp. 94 ss. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-109-enero-marzo-2007>, See also judgement of the Constitutional Chamber of the Supreme Tribunal No 1322, of October 16,2009, Case: *Valeriano González y otros*, in *Revista de Derecho Público* No. 120, Editorial Jurídica Venezolane, Caracas 2009, pp. 97-98. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-120-octubre-diciembre-2009>

regard to the alleged *fraudulent actions in the elections of the members of the National Board of Directors of the Venezuelan Red Cross, chaired by citizen Mario Villarroel Lander, which has allowed them to remain in said positions for more than 40 years, despite the fact that by statutory mandate elections must be held every two (02) years, this to the detriment of the right to vote and political participation, in the terms established in article 63 of the Constitution of the Bolivarian Republic of Venezuela*".

That: "(...), transcendental importance derives from the complaints related to the National Board of Directors of the Venezuelan Red Cross, chaired by citizen Mario Villarroel Lander, who does not consider the *complaints made internally by the workers, regarding the arbitrariness to which they are subjected, as well as those referring to the irregular use of resources by the National or Regional authorities of the Venezuelan Red Cross; the irregular use of new vehicles that are assigned to some members of the board and used personally 'to go to the beach, restaurants, concerts', the alleged irregularities in the selection of suppliers related to the food of workers and volunteers of the Venezuelan Red Cross, and that the resources assigned to the Venezuelan Red Cross, are used by the Board of Directors "as a petty cash of all its cravings, forcing it through threats to the purchase of goods and payment for services that are not contemplated in the budget lines and coercing the actions and permanence of this office in the country if they do not comply with their requests.*"⁵⁸

74. None of these allegations comply to the strict conditions established by the Constitutional Chamber to admit actions for the protection of collective and diffuse rights, in the sense of not being based on generic facts, related to indeterminate subjects, and on the contrary, based on specific facts attributed to the *Board of Directors* and high officials of the Red Cross (namely, among others, *Mario Villarroel Lander, Miguel Ángel Villarroel and Eester Pernía*), in detriment of an specific group of persons which are the *employees and volunteers of the Red Cross*, which is corroborated in the same text of the complaint filed by the Prosecutor General when referring to the eight (08) written complaints that were received:

⁵⁸ Available at: <http://historico.tsj.gob.ve/decisiones/scon/agosto/327890-1057-4823-2023-23-0802.HTML>.

“at the headquarters of the General Office for Human Rights Protection of the Public Ministry under my charge, referred to alleged *irregularities attributed to the President and the National Board of Directors of the Venezuelan Red Cross, chaired by citizen Mario Villarroel Lander, namely acts of intimidation, threats, coercion and harassment at work to the detriment of the personnel working in this humanitarian association, either as permanent staff or volunteers; concealment of irregular facts, alleged violations of the right to vote, as well as anomalous acts regarding the administration of material resources held by the Venezuelan Red Cross, to the detriment of its workers and the most vulnerable sectors of Venezuelan society to which it must attend, and which directly link their right to health.*”⁵⁹

75. That is why, the Constitutional Chamber declared in its ruling that:

“As can be seen, the aforementioned complaints *involve the action of a manager, which could affect a collective legal good as well as the national interest, since the right to health is involved, in addition to the risk or affectation of rights and dignity of the group of workers of the Venezuelan Red Cross. By denouncing alleged abuses of power, harassment and undignified treatment that would affect volunteers, workers, as well as alleged irregular actions in the performance, use and management of the resources assigned to that agency for the development of its humanitarian work, the fulfillment of the main objective within Venezuelan territory.*”⁶⁰

76. In the text of the complaint filed by the General Prosecutor, and of the Constitutional Chamber decision, these are the only incidental reference that were made for instance to the “right to health” but without any argument whatsoever of how it is affected for the collectivity in general, because in the eight (8) anonymous written complaints that form the basis for the action, all made by employees of the red Cross, in charge of performing the work of the humanitarian organization in favor of the health of all that uses its services, there is no mention whatsoever regarding any sort of malfunctioning of the health services and the

⁵⁹ Available at: <http://historico.tsj.gob.ve/decisiones/scon/agosto/327890-1057-4823-2023-23-0802.HTML>.

⁶⁰ Available at: <http://historico.tsj.gob.ve/decisiones/scon/agosto/327890-1057-4823-2023-23-0802.HTML>.

attention to the general public. The employees that signed the anonymous complaints in fact only asked for a change in the Red Cross Society (*“un cambio en la Cruz Roja Venezolana”*).

77. Consequently, in the case in which the Constitutional Chamber has issued the decision to intervening the Red Cross Society, the purported action for the protection of diffused and collective rights filed by the General Prosecutor, in addition to his lack of the due standing, did not comply with the conditions set forth by the same Constitutional Chamber in its well-established jurisprudence for the filing of such actions.

VII. THE INTERVENTION OF THE RED CROSS SOCIETY BY THE CONSTITUTIONAL CHAMBER WITHOUT RESPECTING THE BASIC PROCEDURAL RULES REGARDING THE ISSUANCE OF “PRELIMINARY MEASURES.”

78. However, the Constitutional Chamber decided to admit the action filed by the General Prosecutor, ignoring its own doctrine established in the sense that in general terms, the General Prosecutor lacks the needed standing to file for actions for the protection of collective and diffuse right; and also ignoring that in any case, in order to file an action of this sort for the protection of collective and diffuse rights, also according to its own doctrine, the plaintiff, in addition of claiming that he personally has suffered harm in his right in addition to the general harm caused to the rights of the whole society, he must allege only generic facts referred to collective rights related to indeterminate subjects, and not, as in this case, alleging specific facts attributed to the Board of Directors of the Red Cross Society, related to an specific group of persons formed by the employees and volunteers of the Red Cross.

79. Thus, ignoring its own doctrine, the Constitutional Chamber considered that:

“any member of society, with capacity to act in court, can -in principle- act in protection of them, as these rights are related with the common good, which is why, from that perspective, in the opinion of this Constitutional Chamber, the plaintiff [the General Prosecutor] is entitled to exercise the present action, since he acts as the highest representative of the Public Ministry, not only in order to guarantee the protection of the criminal investigation in progress but to file the action in exercise of its duty to ensure the general interest and

guarantee public order to protect and preserve the full *exercise of constitutional rights and guarantees of both volunteers and workers belonging to the Venezuelan Red Cross and the community in general, especially those in vulnerable situations to whom the health services and other benefits of this important organization are directed.*"⁶¹

80. Based on the foregoing, but without any arguments to sustain the assertion, the Constitutional Chamber in its decision affirmed that the matter considered was of "national importance," and ordered the "precautionary measure" of intervention of the Red Cross Society, ceasing in a definitive way in their position and bypassing its bylaws, all the members of the Board of Directors of the Society. As a consequence of this definitive decision, the Chamber decided the appointment of an Ad-Hoc Board of the Red Cross Society, designating its President, to supplant the Board of Directors:

"not only in order to guarantee its effective functioning in accordance with the Constitution and the Law, but also to prevent the current National Board of Directors of that humanitarian entity *from continuing to violate dignity as a fundamental human right, given the level of mistreatment, harassment at work, threats and coercion that they exert on the persons in their care, or obstructs the investigation in the criminal field carried out by the Public Prosecutor's Office.*"⁶²

81. This decision, from the standpoint of Venezuelan procedural law, was issued as a "*medida cautelar*" or "precautionary measure" but in violation of the essence rules governing the issue of such temporal, preliminary or provisional procedural measure established in the Venezuelan Civil Procedural Code, particularly the indispensable temporal nature.

82. First, because for the issuing of "*medidas cautelares*," it was compelled to consider, following what is provided in article 585 of the Civil Procedural Code⁶³ as has been applied by the jurisprudence, first, "the

⁶¹ Available at: <http://historico.tsj.gob.ve/decisiones/scon/agosto/327890-1057-4823-2023-23-0802.HTML>.

⁶² Available at: <http://historico.tsj.gob.ve/decisiones/scon/agosto/327890-1057-4823-2023-23-0802.HTML>.

⁶³ "Article 585. The preventive measures established in this Title shall be decreed by the Judge, only when there is a manifest risk that the execution of the judgment will

apparent existence of a “good right” (*buen derecho*); second, the existence of a “situation of danger caused by the delay” (*periculum in mora*) to decide; and third, “the adequacy of the petition to guaranty the efficacy of the claim” (*periculum in dammi*).

83. For instance, in the Contentious Administrative Jurisdiction, these conditions were defined since 2000 by the First Court on Contentious Jurisdiction, as follows::

“First, the need for “the appearance of the existence of a good right” (*fumus boni juris*), that is, the need for the petitioner to prove the existence of his constitutional right or guaranty as being violated or threatened.

Second, the “danger because of the delay” (*periculum in mora*), that is, the need to prove that the delay in granting the preliminary protection will make the harm irreparable.

Third, the “danger of the harm” (*periculum in dammi*”), that is the need to prove the imminence of the harm that can be caused.

And a fourth condition can be mentioned in order for the courts to issue preliminary measures, which is the need to balance the collective and particular interest involved in the case.”⁶⁴

84. These conditions were also established since 2000 by the Political Administrative Chamber of the Supreme Tribunal, being applicable to its Constitutional Chamber, considering that:

“In order for an anticipated protective measure to be granted, due to its preliminary content it is necessary to examine the existence of three essential elements, always balancing the collective or individual interest; such conditions are:

1. *Fumus Boni Iuris*, that is, the reasonable appearance of the existence of a “good right” in the hands of the petitioner alleging its

be illusory and provided that a means of proof is accompanied that constitutes a serious presumption of this circumstance and of the right that is claimed.”

⁶⁴ As for instance has been decided in ruling of March 1, 2001 by the Venezuelan First Court on Administrative Jurisdiction, *Video & Juegos Costa Verde, C.A. vs. Prefecto del Municipio Maracaibo del Estado Zulia* case, in *Revista de Derecho Público*, n^o 85-88, Editorial Jurídica Venezolana, Caracas, 2001, p. 291. Available at <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-85-88-enero-diciembre-2001>

violation, an appearance that must derive from the written evidences (documents) attached to the petition.

2. *Periculum in mora*, that is, the danger that the definitive ruling could be illusory, due to the delay in resolving the incident of the suspension.

3. *Periculum in Damni*, that is, the imminence of the harm caused by the presumptive violation of the fundamental rights of the petitioner and its irreparability. These elements are those that basically allow one to seek the necessary anticipatory protection of the constitutional rights and guaranties.⁶⁵

85. All these general conditions for the issuance of the preliminary protective measures in Venezuela are very similar to those prerequisites needed to be tested by the United States' courts when issuing the preliminary injunctions, which are: 1) a probability of prevailing on the merits; 2) an irreparable injury if the relief is delayed; 3) a balance of hardship favoring the plaintiff; 4) and a showing that the injunction would not be adverse to the public interest; all of which must be proven by the plaintiff.⁶⁶

86. Nonetheless, in this case of the intervention of the Red Cross Society, none of these indispensable conditions were considered in the decision, which led Professor Alí Daniels to express that:

"the case of the judicial intervention of the Venezuelan Red Cross is very serious, because the highest court not only did not consider respect for the autonomy and freedom of this organization, but also violated due process by agreeing to a disproportionate precautionary measure without any constitutional guarantees."

87. The facts denounced by the Prosecutor's Office, considers Daniels, "did not merit a measure as invasive and dangerous for an essential human right as freedom of association."⁶⁷

⁶⁵ See the Politico Administrative Chamber decision No 488 dated March 3, 2000, issued in the case *Constructora Pedeca, C.A. vs. Gobernación del Estado Anzoátegui* case, in *Revista de Derecho Público*, n° 81, Editorial Jurídica Venezolana, Caracas, 2000, p. 459. Available at: <https://revistadederechopublico.com/archivos/revistas/revista-de-derecho-publico-director-no-81-enero-marzo-2000>

⁶⁶ See Allan R. Brewer-Carías, *Constitutional Protection of Constitutional Rights in Latin America. The Amparo Proceeding*, Cambridge University Press 2009, pp 3t4, See also William M. Tabb and Elaine W. Shoben, *Remedies*, Thomson West, 2005, p. 63.

⁶⁷ See Alí Daniels, "Con la intervención judicial de la Sociedad Venezolana de la Cruz Roja se agrava el patrón de violaciones contra la libertad de asociación en

88. And second, the other violation of the most essential rules governing the issuance of interlocutory, preliminary and temporal order as are the “*medidas cautelates*,” is that in the case of the intervention of the Red Cross, in fact, what was issued was a definitive measure, that in fact due to its effects, would not be possible to revert.

89. It was issued contrary to Venezuelan Procedural Law, that regulates the “*medidas cautelares*” as interlocutory, preliminary and temporal judicial measures (contrary to definitive decisions) issued pending the procedure, similar the “preliminary injunctions” issued by courts in the United States which are also issued as interlocutory and temporal relief or protection orders pending trial.⁶⁸

90. That means that these temporal or protective measures or orders can essentially be reversed if the action filed is eventually dismissed. In such an event, in the case of the decision issue ordering the intervention of the Red Cross and the removal of its existing Board of directors, the decision is in fact a definitive one, tending to the definitive (not temporal) election of a new Board of Directors.

91. As Professor José Ignacio Hernández has pointed out,

“The precautionary measure issued violates procedural principles, since it is not a temporary and reversible measure. In reality, the precautionary measure issued resolves the substance of the dispute, since it definitively decided the intervention of the Red Cross. This intervention was dictated without consultation, outside due process.

...the Constitutional Chamber abuses its precautionary power, to agree to the intervention of the Venezuelan Red Cross, which is an organization that is not integrated into the public sector.”⁶⁹

92. In the same sense, professor Alí Daniels has considered that:

Venezuela,” in Acceso a la Justicia, August 10, 2023, available at: <https://accesoalajusticia.org/con-intervencion-judicial-sociedad-venezolana-cruz-roja-agrava-patron-violaciones-contralibertad-asociacion-venezuela/>

⁶⁸ See Allan R. Brewer-Carías, *Constitutional Protection of Constitutional Rights in Latin America. The Amparo Proceeding*, Cambridge University Press 2009, pp 366-367; and John Bourdeau et al, “Injunctions”, in Kevin Schoder, John Glenn and Maureen Placilla, *Corpus Juris Secundum*, Volume 43A, Thomson West, 2004, pp. 24 ff.

⁶⁹ See Jose ignacio Hernández, “La intervención de la Cruz Roja Venezolana por la Sala Constitucional: otro paso más del constitucionalismo autoritario-populista,” August 5, 2023; available at: <https://www.joseignaciohernandezg.com/2023/la-intervencion-de-la-cruz-roja-venezolana-por-la-sala-constitucional-otro-paso-mas-del-constitucionalismo-autoritario-populista/>

“Based on complaints and anonymous testimonies, the Supreme Tribunal of Justice has issued a precautionary measure that, in reality, constitutes an anticipated judgment on the merits, and that generates irreversible changes in the Red Cross, in violation of the right to defense, due process, the presumption of innocence and freedom of association.”

“... National legislation establishes solutions when an association has internal problems or irregularities in its management: in the case of crimes, those responsible must be duly charged and judged with respect for their human rights. And if there are administrative irregularities, the members, in their free and sovereign determination, must decide what the corrective measures are and apply them. In the case of the Red Cross, neither of these two solutions was used. On the contrary, an intervention was imposed by the State, through an individual, ignoring the will of the legitimate subjects of rights to make decisions on behalf of the intervened entity, violating its statutes in the National Convention of the Red Cross (article 15).”⁷⁰

93. Consequently, in the case in which the Constitutional Chamber has issued the decision to intervening the Red Cross Society, the purported “preliminary measure” that decreed it, not only was not a “preliminary” measure, but in fact was a “definitive” one – non reversible – that eliminated the Board of Directors of the Red Cross, but did not comply with the conditions established in the Civil Procedural Code for the issuance of preliminary measures according to a well-established jurisprudence.

VIII. THE INTERVENCION OF THE RED CROSS SOCIETY AND THE RISK FOR THE SOCIETY OF LOSING ITS INDEPENDENCE VIS-À-VIS THE GOVERNMENT

94. The decision of intervention of the Red Cross Society, issued by the Constitutional Chamber, on the other hand, confirms that the action

⁷⁰ See Alí Daniels, “Con la intervención judicial de la Sociedad Venezolana de la Cruz Roja se agrava el patrón de violaciones contra la libertad de asociación en Venezuela,” in *Acceso a la Justicia*, August 10, 2023, available at: <https://accesoalajusticia.org/con-intervencion-judicial-sociedad-venezolana-cruz-roja-agrava-patron-violaciones-contra-libertad-asociacion-venezuela/>

filled by the General Prosecutor was not in fact an action for the protection of collective and diffuse rights in the terms defined by the Constitutional Chamber itself, but a specific action filed by an incompetent public official because lacking the needed standing, without complaining with the essential conditions for its issuance according to Venezuelan Procedural Law, for the exclusive purpose of intervening it. The purpose was to eliminate and substitute the Board of Directors of the Venezuelan Red Cross Society, by appointing a new Ad-Hoc Board, without any reference whatsoever to any sort of protection of generic rights of the collectivity, and with the factual excuse of the protection of individual labor rights of the employees and volunteers of the Red Cross, all covered by an alleged action for the protection of collective and diffuse rights.

95. On the contrary, as expressed by Professor José Ignacio Hernández, the action for the protection of diffuse and collective rights:

“the Constitutional Chamber has used this remedy for the alleged protection of certain labor rights that would have been violated, according to complaints filed with the Prosecutor's Office.

These alleged labor complaints were not channeled through ordinary mechanisms, nor have they given rise to procedures in which the right to defense of the persons denounced is guaranteed. Hence, these complaints are clearly insufficient to substantiate an action for the protection of diffuse and collective rights.”⁷¹

96. This intervention of the Venezuelan Red Cross Society, on the other hand, was also decided ignoring the principles that govern the International Movement of the Red Cross and Red Crescent, in particular the principle of independence of National Societies vis-a-vis the Governments. That is why, for instance The International Federation of Red Cross and Red Crescent Societies (IFRC) expressed concern about the case of Venezuela noting that:

“Any State intervention in our National Red Cross and Red Crescent Societies raises serious concerns regarding their independence and principle-based humanitarian work of National Societies and will be

⁷¹ See José Ignacio Hernández, “La intervención de la Cruz Roja Venezolana por la Sala Constitucional: otro paso más del constitucionalismo autoritario-populista,” 5 August 2023. Available at: <https://www.joseignaciohernandezg.com/2023/la-intervencion-de-la-cruz-roja-venezolana-por-la-sala-constitucional-otro-paso-mas-del-constitucionalismo-autoritario-populista/>

treated with the utmost importance. IFRC has its own mechanisms to address situations when a member National Society might be considered breaching our fundamental principles and we encourage governments to facilitate the IFRC's own internal mechanism to address such situations."⁷²

97. In the case considered, as it was already mentioned, the Constitutional Chamber in its "preliminary" and supposedly "temporal" precautionary order, established "an *Ad Hoc* Restructuring Board chaired by Ricardo Filippo Cusanno," and assigned to him, among others, the power to appoint the other members of the *Ad Hoc* Restructuring Board of the institution. This *Ad Hoc*, according to the decision of the Chamber, must: (i) "convene the internal election of the authorities of the Red Cross" and (ii) "evaluate and proceed to restructure the internal reorganization of the Red Cross within a period of one year," and must also (iii) "perform all the necessary attributions to guarantee the continuity of the service provided by the Venezuelan Red Cross." The *Ad Hoc* Board, nonetheless, is compelled "to report to the Constitutional Chamber of the Supreme Tribunal on the fulfillment of its attributions." The latter meaning, in fact, the subjection of the Board of the Society to control of the State to be performed by an organ of the Venezuelan State, as it is the Constitutional Chamber of the Supreme Tribunal.

98. The President of the *Ad Hoc* Board, announced the members of the new *Ad-Hoc* Board,⁷³ and in a Communiqué dated August 7, 2023, signed by all its members they expressed their intention to "to ask the International Federation of Red Cross and Red Crescent Societies (IFRC) and the International Committee of the Red Cross (ICRC) to accompany the process" hoping to "have the participation of these bodies for the updating of statutes, the creation of transparency mechanisms, the integrity of volunteers and the holding of democratic elections within 12 months."⁷⁴

⁷² See IFRC, "Update on the Venezuelan Red Cross." August 9, 2023. Available at: <https://www.ifrc.org/article/update-venezuelan-red-cross>

⁷³ It must be noted that perhaps because it is a non-profit civil society, the appointments made by Mr. Cusanno of the new members of the *Ad Hoc* Board, although without direct relation with the volunteer activities of the Red Cross, were all persons with distinguished carriers.

⁷⁴ See Associated Press (Fiorella T.), "Cruz Roja Venezolana: ¿quiénes son los integrantes de la nueva junta tras su intervención? A través de sus redes sociales, el organismo internacional informó a la opinión pública cómo quedó compuesta la organización," August 7, 2023, in *El diario*, 18 Agosto 2023, available

99. Such accompany of the Federation in any case is of course necessary, among other reasons, because according to the Rules of the International Movement of the Red Cross and Red Crescent, as was aforementioned, the change of the statutes or bylaws in the National Societies must be approved by the Federation. In this process, as was expressed by Christophe Lanord, it is expected that the so-called "true Red Cross approach" will prevail, which is "the policy not to exclude any Society but instead to maintain a constructive dialogue [which] is better than ostracism."⁷⁵

100. In the near future, the International Federation of the Red Cross will really realize which, in fact, is going to be the impact and the extent of the State's intervention of the Red Cross, as well as the level of engagement of the Government regarding the Society. Currently we have to rely on what the International Federation expressed on August 9, 2023 about the intervention and "Supreme Court decision regarding the reorganization of the Venezuelan Red Cross' leadership and board, and related actions," when informing that:

"The IFRC was dispatching senior officials to Caracas this week to join its permanent delegation in the country to deal with the ongoing developments; this will continue with the goal to better understand the scope of risks and ability to continue providing principle-based humanitarian services, and the level of government involvement, if any, going forward.

Our priority is to protect the critical role of the Venezuelan Red Cross and its volunteers and staff in the country: their neutral, impartial, and independent humanitarian action has been essential in saving lives.

at: <https://eldiario.com/2023/08/07/cruz-roja-venezolana-integrantes-de-la-nueva-junta/> See also in Alberto news, August 7, 2023 available at: <https://albertonews.com/principales/cruz-roja-venezolana-confirma-los-nuevos-miembros-de-la-junta-reestructuradora-de-institucion-sepa-quienes-son-detalles/>

⁷⁵ See Christophe Lanord, "The legal status of National Red Cross and Red Crescent Societies," in *International Review of the Red Cross*, No. 840, 31-12-2000; available at: <https://www.icrc.org/en/doc/resources/documents/article/other/57jqt9.htm>

We are currently closely monitoring the situation, assessing the best way forward, and we will inform on our next steps based on that analysis.”⁷⁶

101. The Federation was emphatical stating that:

“Any State intervention in our National Red Cross and Red Crescent Societies raises serious concerns regarding their independence and principle-based humanitarian work of National Societies and will be treated with the utmost importance. IFRC has its own mechanisms to address situations when a member National Society might be considered breaching our fundamental principles and we encourage governments to facilitate the IFRC’s own internal mechanism to address such situations.”⁷⁷

102. In light of the aforementioned, thus, one of the main issues that needed to be dilucidated and resolve, due to the intervention of the National Society made by a State body ignoring and by-passing what is provided in its bylaws, is in particular the extent of control set forth in the ruing, by imposing the Ad Hoc Board of the Society appointed the duty to “report to the Constitutional Chamber of the Supreme Tribunal on the fulfillment of its attributions.” This will be, without doubt, the main question regarding the effective neutrality, impartiality, and independence of the National Society, a concern that has already being discussed.

103. In this sense, for instance, Professor José Ignacio Hernández has expressed his opinion in the sense that:

“The decision of the Constitutional Chamber violates that status and fundamental humanitarian principles. Specifically, the decision violates the principles of impartiality and neutrality, since the action of the Red Cross is now controlled by an organ of the Venezuelan State, such as the Constitutional Chamber. For all the above, under the conditions established in decision No. 1,057, the Venezuelan Red

⁷⁶ See “IFRC, “Update on the Venezuelan Red Cross,”09/08/2023, available at: <https://www.ifrc.org/article/update-venezuelan-red-cross> . See also “Federación Internacional de la Cruz Roja preocupada por intervención de Cruz Roja Venezolana”, August 9,, 2023, available at: <https://morfema.press/destacada/federacion-internacional-de-la-cruz-roja-preocupada-por-intervencion-de-cruz-roja-venezolana/>

⁷⁷ *Idem.*

Cross is unable to comply with the humanitarian mandate of the International Red Cross and Red Crescent Movement, becoming, in fact, one more instrumentality of the regime of Nicolás Maduro.”⁷⁸

104. In addition, the appointment as members of the Ad Hoc Board of the Red Cross Association made by its President, pursuant to the decision of the intervention of the Society, of some professors of the Central University of Venezuela that are part of the governing body of the University, were rejected by members of the same University body, because being made in violation of the Statute governing the Autonomous Universities.⁷⁹ In the opinion of the ONG *Acceso a la Justicia*, the appointment was contrary to two of the principles governing the activities of National Red Cross Societies, their “neutrality and independence,” reinforcing:

“doubts about the charitable organization's ability to carry out its mission from now on in accordance with its fundamental principles of independence and neutrality.”⁸⁰

105. And in fact, it can be considered that the immediate effect of intervention of the Red Cross Society decreed through a “preliminary measure” issued by the Constitutional Chamber of the Supreme Tribunal, appointing a new President of the Society with power to appoint the members of an Ad Hoc Board, that must “report” to the Chamber about the accomplishment of their new attributions not established in the by-laws of

⁷⁸ See José Ignacio Hernández, “La intervención de la Cruz Roja Venezolana por la Sala Constitucional: otro paso más del constitucionalismo autoritario-populista,” 5 August 2023. Available at: <https://www.joseignaciohernandezg.com/2023/la-intervencion-de-la-cruz-roja-venezolana-por-la-sala-constitucional-otro-paso-mas-del-constitucionalismo-autoritario-populista/>

⁷⁹ See in Albany Andara Meza, “Profesores de la UCV en desacuerdo con participación de autoridades en junta interventora de la Cruz Roja,” August 17, 2023, available at: <https://efectococuyo.com/la-humanidad/profesores-de-la-ucv-en-desacuerdo-con-participacion-de-autoridades-en-junta-interventora-de-la-cruz-roja/> Also available in *El Nacional*, August 18, 2023, at: <https://www.elnacional.com/venezuela/profesores-rechazaron-participacion-de-autoridades-de-la-ucv-en-la-junta-ad-hoc-de-la-cruz-roja/>

⁸⁰ See *Acceso a la Justicia*, “Dudas sobre la legalidad de la incorporación de la vicerrectora de la UCV a la junta ad hoc de la Cruz Roja Venezolana,” August 23, 2023; available at: <https://accesoalajusticia.org/dudas-legalidad-incorporacion-vice-rectora-ucv-junta-ad-hoc-cruz-roja-venezolana/>

the Society, is the subjection of the Red Cross to control by a State body violating the legal provisions that govern civil societies in Venezuela.

SOME CONCLUSION

106. Summarizing all the aforementioned, as was already said in the First part (**Paragraph 10**), this judicial intervention of the Venezuelan Red Cross Society decided by the Constitutional Chamber of the Supreme Tribunal of Justice, is an illegitimate intervention decreed by a State body against a civil society not subjected to State control, because:

a. It was issued in violation of the right to free association guaranteed in article 52 of the Constitution, according to which civil societies regulated in the Civil Code are not subject to State intervention or control except when an express provision of law so allows. Consequently the intervention of the Red Cross Society was ordered by an incompetent body of the State, in violation of the Civil Code provisions regulating civil societies.

b. The judicial decision was issued by the Constitutional Chamber of the Supreme Tribunal in a process that could not have been admitted by the Chamber, because the action filed before it did not comply with the conditions established by the same Chamber in its well-established jurisprudence set forth since 2000, regarding the actions for the protection of diffuse and collective rights, that cannot be based in particular claims regarding particular individuals.

c. In addition, the action filed before the Constitutional Chamber by the General prosecutor was also due to be declared inadmissible, because it was filed before it by a public official lacking of standing to file this sort of actions for the protection of diffuse and collective rights, pursuant to the well-established jurisprudence established by the same Chamber since 2000..

d. The “preliminary measure” that was issued by the Constitutional Chamber of the Supreme Tribunal, decreeing the intervention of a civil society like the Red Cross Society that is not subject to State control, was issued violating the basic provisions of the Civil Procedural Code regarding “preliminary measures” because the “measure” decreed of intervention of the Red Cross Society, in

fact, is not a “temporal” measure that could eventually be reverted, but a “definitive” judicial decision according to which, the Society will have a new Board of Directors and a new by-laws, as was been ordered,

e, The supposed “preliminary” measure that was issued by the Constitutional Chamber of the Supreme Tribunal, decreeing the intervention of a civil society, in any case was issued by the Constitutional Chamber without complying with the conditions established by the same Chamber and other courts in the country, in a well-established jurisprudence set forth since 2000, for the purpose of the issuance of “preliminary measures.”

f. The immediate effect of the “preliminary measure” of intervention of the Venezuelan Red Cross decreed by the Constitutional Chamber of the Supreme Tribunal, appointing a new President of the Society with power to appoint the members of an Ad Hoc Board, that must “report” to the Chamber about the fulfillment of their new attributions not established in the by-laws of the Society, is the subjection of the Red Cross to control by a State body violating the legal provisions that govern civil societies in Venezuela.

New York, 23 August 2023