HUMAN RIGHTS IN LATIN AMERICA: ARE WE SERIOUS IN PROTECING THEM?[*]

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I

It is impossible to protect human rights in political systems where the Supreme Court of a country is politically controlled by any one of the other two branches of government, whether the Legislative or the Executive, and where the independence and autonomy of the Judiciary is not assured. Therefore it is not serious to talk about human rights in countries lacking independence of the Judiciary.

And this is precisely the situation in Venezuela, where after a continuous progressive and systematic process of dismantling democracy,[1] no separation of powers principle exists in the Totalitarian State that during the past fifteen years has been assembled, and no independence and autonomy of the Judiciary exists.[2] The consequence is that the current

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

[2] See in *general*, Allan R. Brewer-Carías, "La progresiva y sistemática demolición de la autonomía e independencia del Poder Judicial en Venezuela (1999-2004),"en *XXX Jornadas J.M Dominguez Escovar, Estado de Derecho, Administración de Justicia y Derechos Humanos*, Barquisimeto, Instituto de Estudios Jurídicos del Estado Lara, Barquisimeto 2005, pp. 33-174; Allan R. Brewer-Carías, 2007. El constitucionalismo y la emergencia en Venezuela: entre la emergencia formal y la emergencia anormal del Poder Judicial, Allan R. Brewer-Carías, 2007. *Estudios Sobre el Estado Constitucional (2005-2006)*, Caracas: Editorial Jurídica Venezolana, pp. 245-269; and Allan R. Brewer-Carías 2007. La justicia sometida al poder. La ausencia de independencia y autonomía de los jueces en Venezuela por la interminable emergencia del Poder Judicial (1999-2006), *Cuestiones Internacionales. Anuario Jurídico Villanueva 2007*, Centro Universitario Villanueva, Madrid: Marcial Pons, pp. 25-57; Allan R. Brewer-Carías, "Sobre la ausencia de independencia y autonomía judicial en Venezuela, a los doce años de vigencia de la constitución de 1999 (O sobre la interminable transitoriedad que en fraude continuado a la voluntad popular y a las normas de la Constitución, ha impedido la vigencia de la garantía de la estabilidad de los jueces y el funcionamiento efectivo de una "jurisdicción disciplinaria judicial"), in *Independencia Judicial*, Colección Estado de Derecho, Tomo I, Academia de Ciencias Políticas y Sociales, Acceso a la Justicia org., Fundación de Estudios de Derecho Administrativo (Funeda), Universidad Metropolitana (Unimet), Caracas 2012, pp. 9-103; and The Government of Judges and Democracy. The Tragic Situation of the Venezuelan Judiciary," in Sophie Turenne (Editor.), *Fair Reflection of Society in Judicial Systems. A Comparative St*udy, Ius Comparatum. Global Studies in Comparative Law, Vol 7, Springer 2015, pp. 205-231; also published in the book: *Venezuela. Some Current Legal Issues 2014, Venezuelan National Reports to the 19th International Congress of Comparative Law, International Academy of Comparative Law, Vienna, 20-26 July 2014*, Academia de Ciencias Políticas y Sociales, Caracas 2014, pp. 13-42.

Venezuelan State is not functioning at all as a Rule of Law State, in spite of the very florid constitutional definition of the State, as a Social, decentralized and democratic rule of law State of justice (art. 2).

This situation is well known by all the political analysts in the country, but generally ignored abroad by the public and even by some political leaders. Deliberately or not, conveniently or not, many still consider that democracy is only defined through the prism of electoral processes, without bearing in mind that democracy is much more than elections; and even regarding elections, their focus on democracy but without considering the problems of legitimacy regarding the effective representation and participation of some electoral exercises, thus, being the matter of lack of democracy in Venezuela, generally disregarded.

Notwithstanding we must recognize that some very important exceptions can be identified.

First, I must refer to the case of the Inter-American Commission on Human Rights, which in many of its Annual Reports, since 2003, has made references on the situation of the Judiciary in Venezuela. For instance, as far as 2003, after legal reforms were introduced in 2000 to the Law regulating the Supreme Tribunal on matters of the appointment of the Justices of the High Tribunal,[3] the Commission warned about the lack of "the necessary safeguards in order to prevent other branches of government from undermining the Supreme Tribunal's independence and to keep narrow or temporary majorities from determining its composition."[4] The Commission clearly understood the significance of such reforms that have allowed since then, the total control of the Supreme Tribunal by other branches of government.

The Commission also warned since the same year 2003, about the lack of stability of judges in general,[5] highlighting the dismissal of almost all the judges of the country without any due process guaranties, being substituted by provisional or temporal judges. The

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[3] For this reason, in its 2003 *Report on Venezuela*, the Inter-American Commission on Human Rights, observed that the appointment of Judges of the Supreme Court of Justice did not apply to the Constitution, so that "the constitutional reforms introduced in the form of the election of these authorities established as guaranties of independence and impartiality were not used in this case. See Inter-American Commission of Human Rights, 2003 *Report on Venezuela*; paragraph 186.

[4] See IACHR, *2004 Annual Report* (Follow-Up Report on Compliance by the State of Venezuela with the Recommendations made by the IACHR in its Report on the Situation of Human Rights in Venezuela [2003]), para. 174. Available at http://www.cidh.oas.org/annualrep/2004eng/chap.5b.htm

[5] The Inter-American Commission on Human Rights said: "The Commission has been informed that only 250 judges have been appointed by opposition concurrence according to the constitutional text. From a total of 1772 positions of judges in Venezuela, the Supreme Court of Justice reports that only 183 are holders, 1331 are provisional and 258 are temporary", *Informe sobre la Situación de los Derechos Humanos en Venezuela*; OAS/Ser.L/V/II.118. d.C. 4rev. 2; December 29, 2003; paragraph 11. The same Commission also said that "an aspect linked to the autonomy and independence of the Judicial Power is that of the provisional character of the judges in the judicial system of Venezuela. Today, the information provided by the different sources indicates that more than 80% of Venezuelan judges are "provisional". Idem, Paragraph 161.

Commission considered that provisional judges are susceptible to political manipulation, as it has been demonstrated in the case of Venezuela, altering the right of the people to access to justice. In this regard, the Commission reported about the numerous cases of dismissals and substitutions of judges decided in retaliation for decisions taken contrary to the government or to the will of some public officials.[6]

In its *2008 Annual Report*, the Commission again verified the provisional character of the members of the Judiciary qualifying it as an "endemic problem" of the country, particularly because the appointment of judges was made without applying the constitutional provisions on the matter that provide for the incorporation of judges in the judicial carrier only through public competitions tests, thus exposing judges to discretionary dismissal, highlighting then what the Commission called the "permanent state of urgency" in which the appointments of judges were made. [7]

That is why the same Inter-American Commission on Human Rights, also in 2009, after describing "how a large numbers of judges have been removed, or their appointments voided, without any due process of law guaranties on the applicable administrative proceedings," noted "with concern that in some cases, judges were removed almost immediately after adopting judicial decisions in cases with a major political impact." The Commission concluded affirming that "the lack of judicial independence and autonomy vis-à-vis political power is, in the Commission's opinion, one of the weakest points in Venezuelan democracy."[8]

Second, I must also refer to some important decisions adopted by international institutions for the protection of human rights. For instance, the Human Rights Committee of the United Nations, in a recent case related to Venezuela in which a judge was arrested because applying a recommendation of a UN Committee on arbitrary detentions, expressed the need for the States to adopt "specific measures in order to guarantee the independence of the Judicial Power, and to protect judges from any sort of political influence, establishing clear procedures and objective criteria for their appointment, remuneration, mandate, promotion, suspension and dismissal," adding that "any situation in which the functions and attributions of the Judicial Power and of the Executive Power are not clearly distinguishable or in which the latter could control or direct the former is incompatible with the concept of an independent tribunal."[9]

On the other hand, the Inter American Court on Human Rights has also condemned the Venezuelan State in three occasions because the lack of guaranties of the stability of the Judiciary,[10] declaring that a court integrated by provisional judges that can be discretionally

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6 See *Informe sobre la Situación de Derechos Humanos en Venezuela*; OAS/Ser.L/V/II.118. doc.4rev.2; December 29, 2003, Paragraphs 161, 174, available at http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm.

7 See *Annual Report 20*08 (OEA/Ser.L/V/II.134. Doc. 5 rev. 1. 25 febrero 2009), paragraph 39.

8 See in ICHR, *Annual Report 2009*, paragraph 483, available at http://www.cidh.oas.org/annualrep/2009eng/Chap.IV.f.eng.htm .

9 CDH (4 de diciembre de 2012) *Eligio Cedeño vs. Venezuela,* Comunicación N° 1940/2010, párr. 7.3. See the *Observación general Nº 32 (2007) del Comité sobre el derecho a un juicio imparcial y a la igualdad ante los tribunales y cortes de justicia* .

10 CorteIDH, *Caso Apitz Barbera y otros* ("Corte Primera de lo Contencioso Administrativo") Vs. Venezuela, Excepciones Preliminares, Fondo, Reparaciones y Costas, Serie C Nro. 182, párr.

removed, is non consistent with the independence of the Judiciary. In this regard, the Court in a case decided in 2009, after affirming that "the stability of provisional judges is closely linked to the guaranty against external pressures," affirmed that in Venezuela "since august 1999 until now, provisional judges have not stability in their post, are appointed in a discretionary way and can be removed without any sort of pre-established procedure" recognizing at that time that 80% of judges of the Republic were appointed in a provisional way; concluding then that they were exposed to "external pressure," affecting in a very high way their judicial independence.[11]**.**

Third, I also want to mention, the important public comments and warnings expressed during 2015 by a very important group of former Latin American Presidents, gathered through the *Iniciativa Democratica España América*. In its First Declaration issued in Panama about the political situation of the country, thirty three former Latin American Presidents expressed that:

> "Democracy and its effective exercise, base of the solidarity among States, consists on the respect and guaranty of human rights, the exercise of power according to the rule of law, the separation and independence of powers, political pluralism, free and just elections, freedom of expression and press, probity and government transparency, among other standards, as it is stated in the declaration of Santiago de Chile of the Organization of American States of 1959, later extended and developed by the Inter American Democratic Charter of 2001.
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> Notwithstanding, the government of Venezuela as denounced the American Convention of Human Rights, and support a policy of not recognizing or accepting the decisions and expression of the international and Inter American organs of protection of human rights, gravely affecting the right of international protection of rights declared in the Constitution of said State in benefit of all persons.
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> In particular, the absence of Independence of the Judiciary is manifest, as well as it is the judicial persecution of all those that manifest and politically express dissidence regarding the government; the reiterative presence of torture acts by public officials of the State; the existence of armed para-State groups that support the same government, in a situation of total impunity, reason by which it is requested the immediate liberation of the political prisoners, among them, the democratic leaders Leopoldo López and the mayors Antonio Ledezma and Daniel Ceballos."[12]

Fourth, I also must remember the direct public expressions, made through Open Letter by the Secretary General of the Organization of American States, Dr. Luis Almagro,

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253; CorteIDH, *Caso Maria Cristina Reverón Vs. Venezuela*, Excepciones Preliminares, Fondo, Reparaciones y Costas, Serie C Nro. 197, párr. 190; CorteIDH, *Caso Mercedes Chocrón Chocrón Vs. Venezuela*, Excepciones Preliminares, Fondo, Reparaciones y Costas, Serie C Nro. 227.

11 Corte Interamericana de Derechos Humanos, *Caso Reverón Trujillo vs. Venezuela*, Sentencia de 30 de Junio de 2009, *(*Excepción Preliminar, Fondo, Reparaciones y Costas*).*

12 See IDEA, "Declaración de Panama," 9 de bril de 2015, available in http://static1.squarespace.com/static/5526d0eee4b040480263ea62/t/5591aa83e4b046b88ece6976/1435609731706/ESPECIAL+CUMBRE+AMERICAFINALWEB.pdf.

directed to Nicolás Maduro, President of the Republic dated 12 of January 2016, in which he said that:

> "Unfortunately your Government decided to integrate public institution according to a partisan policy, as the National Electoral Council, the Supreme Tribunal of Justice and all organs of control. This means that the decisions adopted by such organs, not only have no legal content but in addition other of political content. The political carrier of the public officials is incompatible with the impartiality and objectivity needed to exercise justice. The rule of law State lost credibility with a judicial system perceived as partial.
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> When a branch of government, confer to itself conditions in order to control, to affect, to decide, to annul or to manipulate the attributions and other branches of government, the situation is more that being worrisome, puting at risk the equilibrium of the powers of the State." [13]

Fifth, I must also remember the few but very important expressions made during the past years by various Legislative bodies in Latin America, expressing worry about the situation of democracy in Venezuelan, as has been the case of the Senates in Colombia, Paraguay, Brasil, Uruguay and México. Nonetheless, we have to recognized that in some cases, the Legislators of those countries have reacted more motivated by the public opinion or the visits made by the wives and other family members of the political prisoners, that because any official State reaction facing the serious general political situation of Venezuela.

And *sixth*, I must also mention the astonishing and very important reaction during 2015, undoubtedly without precedent in Latin America, not of one, but of three important Latin American Supreme Courts, regarding the situation of the Judiciary in Venezuela, denouncing in a direct, clear and unambiguous way the absence of judicial guaranties in the country, in particular on matters of the protection of human rights. It was the case, not only of the Supreme Court of Chile, but also, even before, in similar sense, the cases of decisions issued by the Supreme Court of Costa Rica and the Supreme Federal Court of Brazil.[14]

II

In all these cases, the Supreme Courts' decisions have also dealt with the matter of the lack of judicial guaranties and minimal conditions for the protection of human rights in Venezuela, due to the lack of independence of the Judiciary.

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[13] Available at http://www.oas.org/documents/spa/press/CARTA.A.PRESIDENTE.MADURO.12.01.16.pdf.

[14] See Allan R. Brewer-Carías, "Las Cortes Supremas de *Costa Rica, Brasil y Chile* condenan la falta de garantías judiciales en venezuela. De cómo, ante la ceguera de los gobiernos de la región y la abstención de la Corte Interamericana de Derechos Humanos, han sido las Cortes Supremas de estos países las que con base en la jurisdicción universal de protección de los derechos humanos, hay comenzado a juzgar la falta de autonomía e independencia del Poder Judicial en Venezuela, dictando medidas de protección a favor de ciudadanos venezolanos contra el Estado venezolano," Noviembre 2015, available at http://www.allanbrewercarias.com/Content/449725d9-f1cb-474b-8ab2-41efb849fea3/Content/Brewer.%20CORTES%20SUPREMAS%20DE%20COSTA%20RICA,%20BRASIL%20Y%20CHILE%20%20Poder%20judicial%202015.pdf

The first case was a decision of the very important Constitutional Chamber of the Supreme Court of Justice of Costa Rica, issued on July 31, 2015,[15] granting an *habeas corpus* in order to protect a Venezuelan citizen that was imprisoned in Costa Rica, pending an extradition request from the Venezuelan Government, because considering that the prisoner could not have a fair trial in his country.

In order to grant the constitutional protection rejecting to extradition petition, the Costa Rican Supreme Court directly questioned the absence of independence of the Judiciary in Venezuela, considering that it lacked all "the minimal guaranties required by a system of objective and impartial justice," adding that nobody could expect in Venezuela to be subject to a trial with minimal judicial guarantees according to international law standards, even in a case like the one decided, related to a common crime, like fraud.

Additionally, the Court considered that the lack of the "basic guaranty of independence of judges and prosecutors," was due to the fact that Venezuela denounced in 2012 the American Convention of Human Rights, considering that decision as "a grave threat regarding the effective respect of fundamental tights." For the Costa Rican Court that mean that the Venezuelan State had "serious judicial and political weakness in order to assure the accused person a process with the basic due process guaranties according to the Constitution and to the international law on human rights."

The Supreme Court, eventually concluded affirming that:

> "No due process of law can exist, if judges are appointed without stability; if the accusation is made by provisional prosecutors without guaranties that could assure their independence when protecting fundamental rights, and a fair trial. Separation of powers, which is the political condition that supports a criminal trial, does not exists in those conditions."

Consequently, and regarding the request of extradition, in the case, the Supreme Court of Costa Rica decided that in Venezuela the extradition procedure "contains elements that demonstrate that there are no institutional conditions to assure the effective defense of the fundamental rights of the accused;" adding that within the essential conditions for the protection of freedom,

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[15] Véase el texto de la sentencia en http://jurisprudencia.poder-judicial.go.cr/SCIJ_PJ/busqueda/jurisprudencia/jur_Documento.aspx?param1=Ficha_Sentencia&nValor1=1&nValor2=644651&strTipM=T&strDirSel=directo&_r=1. Véase la noticia de prensa sobre dicha sentencia en http://www.nacion.com/sucesos/poder-judicial/Sala-IV-extradicion-cuestiona-Venezuela_0_1504049615.html See on this decision: Allan R. Brewer-Carías, "El cuestionamiento del Poder Judicial venezolano por un tribunal extranjero. De cómo la Sala IV (Sala Constitucional) de la Corte Suprema de Justicia de Costa Rica liberó a un presunto estafador cuya extradición había sido solicitada por el Estado de Venezuela, por errores inexcusables en la petición de extradición formulada, y además, por constatar que la ausencia de autonomía e independencia del Poder Judicial en Venezuela no le garantiza a nadie posibilidad alguna de debido process." Available at http://www.allanbrewercarias.com/Content/449725d9-f1cb-474b-8ab2-41efb849fea3/Content/Brewer.%20SOBRE%20EL%20CUESTIONAMIENTO%20DEL%20PODER%20JUDICIAL%20VENEZOLANO%20POR%20LA%20CORTE%20SUPREMA%20DE%20COSTA%20RICA.%20agosto%202015.pdf

> "a system of independent justice must exists guaranteeing the objectivity and impartiality of judges, without which it is impossible to guarantee freedom in face of the punitive power of the State."

The consequence of all this reasoning was for the Court to reject the Venezuelan State petition for extradition, freeing the accused.

But in particular, regarding the fact that Venezuela has denounced the American Convention, the Costa Rican Court added that:

> "To send a citizen to a country that has denounced the Convention that protect fundamental rights, do not give enough confidence in order to admit that the person that is sent to another jurisdiction, would be treated according to the basic guarantees that any citizen must have, regardless of its nationality."

Finally, in the decision, the judges of the Supreme Court of Costa Rica expressed their opinion that no confidence can exists regarding "a system of justice lacking of independence like the Venezuelan, that has been proven to be inefficient in order to accomplish its functions," particularly, when in:

> "many cases it has been used as a mechanism for the persecution of political opponents or dissidents, or simple critics of the political process, including political leaders, human rights defendants, trade unions leaders and students."

III

Following the decision of the Supreme Court of Costa Rica, the Supreme Federal Tribunal of Brazil, through a decision issued on November 11, 2015,[16] also in a process of extradition of another Venezuelan citizen at the request of the Venezuelan Government, eventually protected the indicted and also granted his freedom, rejecting the request of the Venezuelan State. The Court justified its decision based on the "fear that the accused could not have in his country the right to an impartial trial in case of a possible extradition." The Tribunal considered that more important was the need to protect the basic rights of individuals, and among them, the right to be have a trial by an independent and impartial judge, according to the due process rules, than the international cooperation on criminal matters.

IV

After this two cases, we then have the very important decision of the Supreme Court of Chile, issued on November 18, of 2015,[17] in which the "universal jurisdiction for the protection of human rights" was implemented, based on international treaties and on *ius cogens*, concluding by granting constitucional protection in favor of two Venezuelan

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[16] Véase la reseña de la sentencia en: "Brasil otorga libertad a venezolano por dudar de imparcialidad de la justicia en Venezuela," en *lapatilla.com*, 11 de noviembre de 2015, en http://www.lapatilla.com/site/2015/11/11/brasil-otorga-libertad-a-venezolano-por-dudar-de-imparcialidad-de-la-justicia-en-venezuela/

[17] Véase la reseña de la sentencia en: ""Corte Suprema acoge recurso de protección de venezolanos Leopoldo López y Daniel Ceballos detenidos en penales de Caracas," en http://www.pjud.cl/web/guest/noticias-del-poder-judicial/-/asset_publisher/kV6Vdm3zNEWt/content/corte-suprema-acoge-recurso-de-proteccion-de-venezolanos-leopoldo-lopez-y-daniel-ceballos-detenidos-en-penales-de-caracas/

political leaders imprisoned in Venezuela, Leopoldo López y Daniel Ceballos, because – the Court said - :

> "it seems that the courts in Venezuela are not acting sufficiently in order to protect human rights of its own individualized citizens; and even it can be considered that they are acting at least with some collusion with the political purposes of the government."[18]

I want to stress that the Court argued that universal jurisdiction is recognized by Chilean Law, mentioning various cases previous cases in comparative law, including the "Pinochet case" in Spain, the "Adolfo Scilingo case" (2005) in Argentina, the "Guatemala Genocide" case (1999), and the "Tibet Genocide" case (2005).

Based on those international precedents, the Court admitted the possibility to issue an injunction for the protection of essential human rights even regarding foreigners not residing in Chile and imprisoned in other country, arguing that the "action for protection" of human rights in Chile, particularly for the protection of life, was established in article 19 of the Constitution in order to protect the rights of "all persons, without distinction or geographical situation." The Court also referred to article 20 of the Chilean Constitution that establishes the possibility for the interested party or for anybody on his behalf, to file an action for protection before a court against any action or omission that harms the rights and guaranties established in the Constitution.

Based on this principles, the Court concluded that because the "respective court" to grant protection was not defined in the Constitution, and due to the fact that in the case the right to life of the Venezuelans citizens Leopoldo López y Daniel Ceballos, could be harmed, it proceeded to grant the constitutional protection, ordering:

> "to require, through the Government of Chile, to the Organization of American States Commission of Human Rights represented by its President or an authorized delegate, to go to Caracas, Venezuela, to the Ramo Verde and Guarico prisons where they are imprisoned and to verify their health situation and the lack of freedom of both protected persons."

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[18] El Defensor del Pueblo de Venezuela calificó la declaración de la Corte Suprema de Chile como "insólita y grosera" aseverando que la sentencia contra Leopoldo López "no se encuentra en el margen de la Ley de un país soberano como Venezuela." Véase: "Saab: Decisión de la Corte chilena sobre López y Ceballos es insólita y grosera," en *NOBITOTAL*, 20 de noviembre de 2015, en http://notitotal.com/2015/11/20/saab-decision-de-la-corte-chilena-sobre-lopez-y-ceballos-es-insolita-y-grosera/. Por su parte, el Tribunal Supremo de Venezuela, mediante Comunicado, rechazó "la ofensa a la institucionalidad, a la democracia y a la soberanía de nuestro país, al situar infundadas afirmaciones, al margen de la verdad y del Derecho Internacional," indicando que la sentencia de la Corte Suprema de Chile "carece de validez y es absolutamente inejecutable en el orden internacional e interno por violentar principios y normas universales del Derecho Internacional." Para fundamentar su rechazo, la Presidenta del Tribunal Supremo de Venezuela "Recordó que los tribunales en el país actúan cabalmente y preservando los derechos humanos, por lo que Venezuela se constituye en un verdadero Estado garantista de la esfera de los derechos ciudadanos." Agregó que el Poder Judicial honra su misión de preservar la soberanía por lo que nunca. Véase el texto enhttp://www.tsj.gob.ve/-/poder-judicial-venezolano-condena-decision-injerencista-de-la-corte-suprema-de-chile

The Court also asked the government in its decision to ask for the Commission to prepare a dossier and

> "a Report to be send to the General Assembly of the Organization of American States regarding the compliance of the international treaties on the matter, in order for such organ to adopt the proper measures for the protection of the essential rights, regarding which the Court must be informed."

The order was exclusively directed to the Chilean Government, for it to request from the Inter American Commission of Human Rights to send representatives to Venezuela. The Executive refused to comply with the order, arguing that is was an exclusive power of the Government to conduct international relations, and a petition for its nullity was filed by the Council of Defense of the State. After this rejection, the Court rejected the motion of nullity and modified its decision on December 28, 2015, substituting the order given to the Government by a direct request to the Inter American Commission. Nonetheless, the Commission, on February 8, 2016, rejected the request arguing that the Commission was out of the jurisdiction of national courts.

Besides, it is not useless to remember that during the past decade, Venezuela has systematically rejected any *in loc*o visit by the Inter American Commission; so even if the Commission would have decided according to the request of the Chilean Court, the visit would have been rejected by the Government.

Nonetheless, the importance of the Chilean Supreme Court decision, even though it has not been enforced, is the relevant fact to find from a Supreme Court of a Latin American country a formal reaction in relation to the lack of judicial guarantees in Venezuelan for citizens to be protected on their human rights while facing prison for political motives.

V

In all the three cases, the facts denounced by the Supreme Courts of Justice of Costa Rica, Chile and Brazil, exactly reflect the current situation of the Judiciary in Venezuela, where since 2000, through the progressive control by the Government of the Supreme Tribunal of Justice, which in Venezuela has the constitutional function of governing and administrating the whole Judiciary, the Judiciary has been completely politically controlled.

And this has been possible because the discretionary power that a Commission of the Supreme Tribunal has in order to appoint and dismiss judges,[19] in a discretionary way, with the result that all the courts have been packed with temporal and provisional judges, lacking any sort of stability, and being subjected to political instructions.

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[19] See Rafael J. Chavero Gazdik, 2011. *La Justicia Revolucionaria. Una década de reestructuración (o involución) Judicial en Venezuela*, Caracas: Editorial Aequitas; Laura Louza Scognamiglio, 2011. *La revolución judicial en Venezuela*, Caracas: FUNEDA; Allan R. Brewer-Carías, 2005. La progresiva y sistemática demolición de la autonomía e independencia del Poder Judicial en Venezuela (1999-2004), *XXX Jornadas J.M. Dominguez Escovar, Estado de derecho, Administración de justicia y derechos humanos*, Barquisimeto: Instituto de Estudios Jurídicos del Estado Lara, pgs. 33-174; and Allan R. Brewer-Carías, 2007. La justicia sometida al poder (La ausencia de independencia y autonomía de los jueces en Venezuela por la interminable emergencia del Poder Judicial (1999-2006), *Cuestiones Internacionales. Anuario Jurídico Villanueva 2007*, Centro Universitario Villanueva, Madrid: Marcial Pons, pp. 25-57.

That means that the judicial career provided for in the Constitution, seeking the appointment of judges only through open and public contest never has been implemented; as well as the Judicial Disciplinary Jurisdiction, also provided in the Constitution (Articles 254 and 267), has never been effectively implemented. Consequently, judges are dismiss in a discretionary way, without due process, being impossible in such conditions to be effective instruments for the protection of human rights, being on the contrary the Judiciary the main tool used by the Government to implement the structuring of a Totalitarian State, and persecute political dissidents.[20]

VI

In such condition, the Venezuelan political system has ceased to be a democratic one, even if elections have taken place during the past years in the country. As I mentioned at the beginning, democracy is much more than the sole popular or circumstantial election of government officials, as it has been formally declared in the Inter American Democratic Charter adopted by the Organization of American States in 2001. [21].

That Charter, in effect, among the *essential elements of the representative democracy*, in addition of having periodical, fair and free elections, includes the respect for human rights and fundamental liberties; the access to power and its exercise with subjection to the rule of law; the plural regime of the political parties and organizations; and what is the most important of all, the "separation and independence of public powers" (Article 3); all of which can only be satisfied when in a country, a system of mutual control by the different branches of government has been implemented.

In addition, the same Inter American Democratic Charter refers to what it is called the *fundamental components of the democracy*, referring to the transparency of governmental activities; the responsibility of governments; the respect of social rights and freedom of speech and press; the constitutional subordination of all institutions of the State, including the military, to the legally constituted civil authority; and the respect to the rule of law by all the entities and sectors of society.

These fundamental elements and components of democracy can only be guaranteed in a system where the principle of separation and independence of powers is established and guaranteed, through a check and balance system based on their independence and autonomy, being such principle the one that can allow the functioning of a democracy.

That is, only when the separation of powers is exists, all the other essential factors of democracy can exists: namely, fair elections and political pluralism; effective democratic participation; effective transparency in the exercise of government; a government subjected

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

[21] See on the Inter-American Democratic Charter, in Allan R. Brewer-Carías, 2002. *La crisis de la democracia venezolana. La Carta Democrática Interamericana y los sucesos de abril de 2002*, Caracas: Ediciones El Nacional, pp. 137 ff.; Asdrúbal Aguiar, 2008. *El Derecho a la Democracia*, Caracas: Editorial Jurídica Venezolana.

to the Constitution and to the rule of law; the possibility to access to justice; and most important, a true and effective guaranty for the respect of human rights.[22]

VII

In this situation of lacking of an effective separation between the branches of government, the Supreme Tribunal in Venezuela, controlled by the Government, instead of being the guardian of the Constitution and of the enforcement of the principle of separation of powers, it has been one of the main tools used for political persecution, acting in collusion with the Executive, and in addition, the main instrument in order to neutralized the National Assembly recent elected with a new majority controlled by the opposition.

On matters of political persecution, one important case is the *Radio Caracas Televisión* case in 2007, referred to the violation of freedom of expression and information, by means of the confiscation of the assets and the shutdown of a very important TV station,. In that case, the amazing element is that it was the Supreme Tribunal, not the Government, the State organ that materialized the State intervention in order to terminate the authorization and licenses of the TV station, whose assets were confiscated by the Tribunal, assigning all the equipment to a State-owned enterprise; and all, by means of an illegitimate Supreme Tribunal decision.[23] The case is the most vivid example of the illegitimate collusion or confabulation between a politically controlled Judiciary and an authoritarian government in order to reduce freedom of expression, and to confiscate private property. This case was submitted before the Inter American Commission on Human Rights and from there before the Inter American Court of Human Rights. This Court ruled in 2015, condemning the State for the violations of human rights of the owners and workers of *Radio Caracas Televisión*, but only to find a response issued by the Supreme Tribunal, very diligently at the request of the Executive, simply declaring that the Inter American Court decision was not enforceable in Venezuela,[24] violating not only international obligations of the State but also specific provisions of the Constitution. But as the Supreme Tribunal has nobody to control it, it has assumed the conduction of the policy of the government with absolute impunity.

Other cases of political persecution, also related to freedom of expression that can be mentioned are the cases against Guillermo Zuloaga and Nelson Mezerhane; two very distinguish businessman that were the principal shareholders of *Globovisión*, the other

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[22] See Allan R. Brewer-Carías, "Democracia: sus elementos y componentes esenciales y el control del poder. Nuria González Martín (Comp.)**,** in *Grandes temas para un observatorio electoral ciudadano, Vol. I, Democracia: retos y fundamentos,* Instituto Electoral del Distrito Federal, México 2007, pp. 171-220.

[23] See the Constitutional Chamber Decision N° 957 (May 25, 2007), in *Revista de Derecho Público* 110, Editorial Jurídica Venezolana, Caracas 2007, 117ff. See the comments in Allan R. Brewer-Carías, 2007. El juez constitucional en Venezuela como instrumento para aniquilar la libertad de expresión plural y para confiscar la propiedad privada: El caso RCTV, *Revista de Derecho Público*", Nº 110, (abril-junio 2007), Caracas: Editorial Jurídica Venezolana, pp. 7-32.

[24] See Allan R. Brewer-Carías, "La condena al Estado en el caso *Granier y otros (RCTV) vs. Venezuela,* por violación a la libertad de expresión y de diversas garantías judiciales. Y de cómo el Estado, ejerciendo una bizarra "acción de control de convencionalidad" ante su propio Tribunal Supremo, ha declarado inejecutable la sentencia en su contra." 14 de septiembre de 201,"available at http://www.allanbrewercarias.com/Content/449725d9-f1cb-474b-8ab2-41efb849fea3/Content/Brewer.%20La%20condena%20al%20Estado%20en%20el%20caso%20CIDH%20Granier%20(RCTV)%20vs.%20Venezuela.%2014%20sep.%202015.pdf

independent TV station that after the takeover of *Radio Caracas Television*, remained with a critic line of opinion regarding the government. They both were harassed by the Public Prosecutor Office and by the Judiciary; accused of different common crimes that they did not commit, based on false witnesses' depositions; they were detained without any serious base, their enterprises were occupied and their property confiscated. They both had to leave the country, without any possibility of obtaining Justice. Their cases have also been submitted before the Inter American Commission of Human Rights, but the decisions are pending.

In this same matters of persecution to the media, mention must be made to the unjustified the suits for defamation that the then President of the National Assembly filled against the Editors and the members of the Board of Directors of two ery important News Papers, *Tal Cual* and *El Nacional*,[25] only because in some of its editions were reproduced some news that have been previously published in the *ABC* of Spain and in *The Wall Street Journal,* with mentions with some matters related to drug trafficking. The criminal judge in charge of both processes, immediately issued orders affecting the freedom of the accused, prohibiting them to leave the country, and imposing regular personal presentation before the court of the accused. In any case, those that at that time were out of the country could not return.

This confirm that the Judiciary, particularly on criminal matters, has been used as the government instrument to pervert Justice, in many cases distorting the facts in specific cases of political interest, converting innocent people into criminals, and liberating criminals of all suspicion. It was the unfortunate case of the mass killings committed by government agents and supporters as a consequence of the enforcement of the so-called *Plan Avila*, a military order that encouraged the shooting of peoples participating in the biggest mass demonstration in Venezuelan history which on April 11, 2002, was asking for the resignation of the then President of the Republic. The soothing provoked a general military disobedience by the high commanders, in a way witnessed by all the country in TV, which ended with the military removal of the President, although just for a few hours, until the same military reinstated him in office. Nonetheless, in order to change history, the shooting and mass killing were re-written, and those responsible that everybody saw in live in TV, because being government supporters were gratified as heroes, and the Police Officials trying to assure order in the demonstration, like the Officers Simonovic and Forero, were blamed of crimes that they did not commit, and condemned of murder with the highest term of 30 years of prison.

The former Chief Justice of the Criminal Chamber of the Supreme Tribunal of Justice, Eladio Aponte Aponte, confessed four years ago (2012) in a TV Program (SolTV) in Miami, when answering questions about the existence of "political prisoners" in Venezuela,

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[25] See "Admiten demanda de Cabello contra Tal Cual y El Nacional," in Globovisión 13 august 2015, available at http://archivo.globovision.com/mp-admitio-demanda-de-diosdado-cabello-contra-tal-cual-y-el-nacional/. On this same day (May 6, 2016) it was announced that Cabello has also filed a suit against *The Wall Steret Journal*. See: "Cabello demanda en EEUU al Wall Street Journal por vincularlo al narcotráfico," in Analitica.com, May 5, 2016, available at http://www.analitica.com/actualidad/actualidad-nacional/diosdado-cabello-demanda-al-diario-wall-street-journal-por-articulo-sobre-narcotrafico/; and in *La Opinión*, Cúcuta, May 6, 2016, available at: http://www.laopinion.com.co/venezuela/cabello-demanda-en-eeuu-al-wall-street-journal-por-vincularlo-al-narcotrafico-111375#ATHS

saying: "Yes, there are people regarding which there is an order not to let them free," referring particularly to "the Police Officers," mentioning Officer Simonovic. The same former Justice, answering a question about "Who gives the order," simply said: "The order comes from the President's Office downwards," adding that "we must have no doubts, in Venezuela there are no sewing point if it is not approved by the President." He finally said, answering a question about if he "received the orders to not to let free Mr. Simonovis," that: "the position of the Criminal Chamber" was simply "to validate all that arrived already done; that is, in a few words, to accept that these gentlemen could not be freed." [26]

To hear this answers given by one who until recently was the highest Justice in the Venezuelan Criminal System, produce no other than indignation, because it was him, as Chief Criminal Justice, the one in charge of manipulating justice, in the way he confessed; condemning the Police Officers, just because obeying orders from the Executive.

In other cases, the Constitutional Chamber of the Supreme Tribunal has been the instrument of the government in order to assume direct control of other branches of government, as happened in 2003 with the take-over of the Electoral Power, which since then has been completely controlled by the Executive. Through a decision on matters of judicial review of legislative omissions, the Supreme Tribunal, in a way contrary to the Constitution, decided, usurping the role of the National Assembly as electoral body to elect such high officials, and directly appointed the new members of the National Electoral Council, but of course without complying with the conditions established in the Constitution for such indirect popular election, with a specific supermajority of votes.[27]

Through this decision, the Constitutional Chamber assured for the Government the complete control of the Electoral Council, kidnapping the citizen's rights to political participation through the 2004 recall referendum, and allowing the official governmental party to manipulate the electoral results of almost all the elections that have taken place in the country. In December of 2014, the same situation was repeated, and again the Constitutional Chamber of the Supreme Tribunal, has appointed again the members of the Electoral Council, usurping the legislative body's constitutional attributions. It is not surprising that the proposed recall referendum that is currently taken place could be subjected to the same slow operation suffered in 2004, to prevent its effectivity.

The Constitutional Chamber of the Supreme Tribunal has also been the instrument in order to attack the democratic principle in the country, imposing non-elected officials as Head of State, as was the case of Nicolás Maduro in 2013 when the death of President Chavez had not yet being announced[28] or revoking the popular mandate of elected officials

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[26] See the text of the statement on, in *El Universal*, Caracas 18-4-2012, available at: http://www.eluniversal.com/nacional-y-politica/120418/historias-secretas-de-un-juez-en-venezuela

[27] See Decision Nº 2073 of August 4, 2003, Case: *Hermánn Escarrá Malaver y oros*), and Decision Nº 2341 of August 25, 2003, Case: *Hemann Escarrá y otros*. See in Allan R. Brewer-Carías, "El secuestro del poder electoral y la conficación del derecho a la participación política mediante el referendo revocatorio presidencial: Venezuela 2000-2004," *Stvdi Vrbinati, Rivista tgrimestrale di Scienze Giuridiche, Politiche ed Economiche*, Año LXXI – 2003/04 Nuova Serie A – N. 55,3, Urbino: Università degli Studi di Urbino, 2003/2004, pp.379-436

[28] See the text of the decisions in http://www.tsj.gov.ve/decisiones/scon/Enero/02-9113-2013-12-1358.html and in in http://www.tsj.gov.ve.decisioes/scon/Marzo/141-9313-2013-13-0196.html.

without having jurisdiction to do so. In the first case, as mentioned, the Supreme Tribunal in January 2013 imposed the Vice President Nicolás Maduro to be in charge of the Presidency and to continue in that position although not being an elected official because he was appointed by the former President.[29] It was the Supreme Tribunal the one that additionally allowed him, contrary to the express text of the Constitution, to be candidate to the same position in the subsequent election, without leaving the post.[30]

In the second case, the Constitutional Chamber of the Supreme Tribunal revoked the popular mandate of two mayors (one of which was Vicencio Scarano Spisso), usurping the people's right to revoke mandates through referendum (art. 74);[31] and also revoked the mandate of a member of the National Assembly, Maria Corina Machado, a matter that also can only be decided by the people through a referendum,[32] just because she spoke before the General Assembly of the Organization of American States, denouncing the lack of democracy in the country.

See on these decisions: Allan R. Brewer-Carías, "Crónica sobre la anunciada sentencia de la Sala Constitucional del Tribunal Supremo de 9 de enero de 2013 mediante la cual se conculcó el derecho ciudadano a la democracia y se legitimó la usurpación de la autoridad en golpe a la Constitución," en Asdrúbal Aguiar (Compilador), *El Golpe de Enero en Venezuela (Documentos y testimonios para la historia),* Editorial Jurídica Venezolana, Caracas 2013, pp. 133-148

29 See on the Supreme Tribunal decision: Allan R. Brewer-Carías, "Crónica sobre la consolidación, de hecho, de un gobierno de sucesión con motivo del anuncio del fallecimiento del Presidente Chávez el 5 de marzo de 2013," en Asdrúbal Aguiar (Compilador), *El Golpe de Enero en Venezuela (Documentos y testimonios para la historia),* Editorial Jurídica Venezolana, Caracas 2013, pp. 199-218

30 See on the Supreme Tribunal decisions, the comments in Allan R. Brewer-Carías, "Crónica sobre las vicisitudes de la impugnación de la elección presidencial de 14 de abril de 2013 ante la sala electoral, el avocamiento de las causas por la Sala Constitucional, y la ilegítima declaratoria de la "legitimidad" de la elección de Nicolás Maduro mediante una "Nota de prensa" del Tribunal Supremo," en Asdrúbal Aguiar (Compilador), *El Golpe de Enero en Venezuela (Documentos y testimonios para la historia),* Editorial Jurídica Venezolana, Caracas 2013, pp. 297-314

31 See decision No. 138 of March 17, 2014 in http://www.tsj.gov.ve/decisiones/scon/marzo/162025-138-17314-2014-14-0205.HTML See the comments on this decisión in Allan R. Brewer-Carías, "La ilegítima e inconstitucional revocación del mandato popular de Alcaldes por la Sala Constitucional del Tribunal Supremo, usurpando competencias de la Jurisdicción penal, mediante un procedimiento "sumario de condena y encarcelamiento. (El caso de los Alcaldes Vicencio Scarno Spisso y Daniel Ceballo)," en *Revista de Derecho Público,* No 138 (Segundo Trimestre 2014, Editorial Jurídica Venezolana, Caracas 2014, pp. 176-213.

32 See María Corina Machado case, decision No. 207 of March 31, 2014, in http://www.tsj.gov.ve/decisiones/scon/marzo/162546-207-31314-2014-14-0286.HTML. Also in *Official Gazette* No. 40.385 April 2, 2014. See the comments on this decision in Allan R. Brewer-Carías, "La revocación del mandato popular de una diputada a la Asamblea Nacional por la Sala Constitucional del Tribunal Supremo de oficio, sin juicio ni proceso alguno (El caso de la Diputada María Corina Machado)," in *Revista de Derecho Público,* No 137 (Primer Trimestre 2014, Editorial Jurídica Venezolana, Caracas 2014, pp. 165- 189; and

Finally, in another decision, the Supreme Tribunal, also in violation of the democratic principle, accepted that the right of a citizen to be elected, which is a constitutional right, could be limited by an administrative body as is the General Audit Office, disqualifying him to run for elected positions. It was the case of Leopoldo López Mendoza, former Mayor of one of the Municipalities in Caracas, regarding which the Supreme Tribunal [33] refused to declare that such disqualification for the exercise of a political right was contrary to the American Convention of Human Rights, and to the Constitution.

The lack of justice in Venezuela, lead López to filed a petition before the Inter American Court of Human Right, seeking the protection of his political right, which he effectively obtained in 2011, in a decision in which the State was condemned for violations to his rights. Nonetheless, in this case, again, at the express request of the Government, the Supreme Tribunal also decided that the Inter American Court decision was non-enforceable in the country,[34] requesting the Government to denounce the American Convention of Human Rights which eventually was done.

VIII

Within this panorama, therefore, it is not surprising to find a judicial decision like the one issued by a criminal court in 2015, condemning Leopoldo López Mendoza to 13 years, 9 months and 12 hours in prison, for crimes that he did not commit, being in fact a condemnation for the supposed "felony" of having expressed his political opinion, publicly, against the government of Venezuela, in full exercise of his freedom of expression of his thoughts which nonetheless is guaranteed in the Constitution;[35] and for having been one of

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[33] See decision Nº 1265 of August 5, 2008the text of the decision in http://www.tsj.gov.ve:80/decisiones/scon/Agosto/1265-050808-05-1853.htm See on this decisions the comments in Allan R. Brewer-Carías, "La incompetencia de la Administración Contralora para dictar actos administrativos de inhabilitación política restrictiva del derecho a ser electo y ocupar cargos públicos (La protección del derecho a ser electo por la Corte Interamericana de Derechos Humanos en 2012, y su violación por la Sala Constitucional del Tribunal Supremo al declarar la sentencia de la Corte Interamericana como "inejecutable"), en Alejandro Canónico Sarabia (Coord.), *El Control y la responsabilidad en la Administración Pública, IV Congreso Internacional de Derecho Administrativo, Margarita 2012*, Centro de Adiestramiento Jurídico, Editorial Jurídica Venezolana, Caracas 2012, pp. 293-371

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

[35] As José Ignacio Hernandez said, "The trial against Leopoldo López began as a result of the opinions he had expressed. That is to say, López is not on trial for having destroyed or having set fire to buildings. Those violent acts doubtlessly deserve total rejection and the start of the

the leaders of the pacific street demonstration that were convened throughout the country in February of 2014, generating popular protest and rejection regarding the authoritarian régime; only disrupted by violence provoked by government agents.

To these ends, the court in charge of his case, which without doubt is part of the group of "Judges of Horror" that make up the Venezuelan judiciary, through a decision issued on September 10, 2015,[36] considered that Leopoldo López was a "public instigator" and was an allegedly determiner of having other citizens commit the felony of arson and damage to public properties, and furthermore, considered that he had become associated with others with the intention of committing crimes, thus applying no other that the Law against Organized Crime and Terrorism, but without demonstrating which was the association, or who were its members, or what was the felonious motive of such supposed association.

This judicial atrocity is one more example of the *de facto* suspension of the validity of the Constitution, which is nevertheless always invoked by any official who might have a copy, not in order to apply the Constitution but to violate it; being another example of the fact that all powers of the State have been placed at the service of authoritarianism,[37] and, particularly, the criminal judges who have become agents of the political persecution.

The order given by the Government was to persecute López Mendoza, which was comply by the Pubic Ministry controlled by the Executive Power, accusing him of all imaginable crimes, such as homicide, terrorism, arson and damage to properties, and furthermore, of the felonies of public instigation and association to commit crime, [38] and thus, immediately upon the request of the prosecutor, and without any proof, an arrest warrant was issued against López in that same month of February 2014.[39]

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respective investigations. But the trial against López has nothing to do with that. This criminal trial is basically about judgment being passed upon López's political opinions." See José Ignacio Hernández, "Todo lo que debe saber para entender por qué se enjuicia a Leopoldo López," in *Prodavinci*, 16 June 2014, at http://prodavinci.com/blogs/todo-lo-que-debe-saber-para-entender-por-que-se-enjuicia-a-leopoldo-lopez-por-jose-i-hernandez/

[36] See on this decision Allan R. Brewer-Carías, "The Sentencing of Leopoldo López for the "felony" of opinion." Or How the Judges of Horror are Forcing the People into a Citizens' Rebellion," October 2015," available at http://www.allanbrewercarias.com/Content/449725d9-f1cb-474b-8ab2-41efb849fea3/Content/Brewer.%20The%20Sentencing%20of%20Leopoldo%20L%C3%B3pez%20for%20the%20felony%20of%20opinion.%20Oct.%202015.pdf Also in Spanish: ""La condena contra Leopoldo López por el "delito de opinión." O de cómo los jueces del horror están obligando al pueblo a la rebelión popular." 10 de octubre de 2015," available at http://www.allanbrewercarias.com/Content/449725d9-f1cb-474b-8ab2-41efb849fea3/Content/Brewer.%20I,%202,%20119.%20CONDENA%20DE%20LEOPOLDO%20L%C3%93PEZ.%2010%20Oct.%202016.pdf

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

[38] See the text of the writ of accusation at http://cdn.eluniversal.com/2014/06/02/ACUSACION_LEOPOLDO.pdf. See "Fiscalía presentó acusación contra Leopoldo López," *El Nacional*, Caracas 14 April 2014, at http://www.el-nacional.com/politica/Fiscalia-General-acusacion-Leopoldo-Lopez_0_385161540.html

[39] See "Un tribunal ordena la detención de Leopoldo López," en *El Tiempo.com.ve*, Puerto la

Eventually, the criminal court issued the decision condemning Leopoldo López, as mentioned, for having been presumably the determiner of the felonies of arson and damages, and the author of the felonies of public instigation and association to commit crime.[40] As Amnesty International rightly considered the matter, the sentence was pronounced "without any credible evidence" against López, "which demonstrates the absolute lack of judicial independence and impartiality in Venezuela."[41]

In any case, the accusation and the Venezuelan court decision, was directed to persecute and prosecute no other hat the "felony" of opinion, made through the analysis of Lopez's speeches by a linguistic expert witness who only affirmed, in a hypothetical way, that Leopoldo López, "upon cultivating anger in his discourse, arguing against the current national government, *could have transferred* this sentiment to his audience." Thus, based just an hypothetical assumption, Lopez was condemned as having been "determiner" or "inducer" of crimes supposedly committed by others. The prosecutor agreed that the participation of López "did not consist of deploying the felonies of arson and damage to property in a direct manner," but considered that there were supposed elements,

> "such as the expert evidence in the analysis of the speeches of the indicted Leopoldo López, sufficient to deem that he did indeed command and induce demonstrators to conduct an attack against the seat of the Public Ministry, and against the property of the Venezuelan State*."*

Drawing from the aforementioned, in consequence, the Judge in her sentence considered that Leopoldo López used "*the art of the word*, - yes this is the main element of the decision – "the art of the word in order to make his followers believe that there was an alleged constitutional departure, when the conditions he sought were not present, such as the resignation of the President of the Republic," but at the same time recognizing that López in his discourse "appealed for peace and tranquility."

IX

In the end, as mentioned, Leopoldo López was condemned to prison, not because he committed any crime, but because the State deemed that his political discourse had to be criminalized, in other words, there was a need to criminalize the exercise of his freedom of expression of his political ideas; and all, under the fallacious argument that, he had allegedly been the "determiner" of having other persons, whom he didn't even know, who, during the course of a public protest, had allegedly damaged and set fire to public property,

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Cruz, 13 February 2014, at http://eltiempo.com.ve/venezuela/politica/un-tribunal-ordenala-detencion-de-leopoldo-lopez/126105

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

[41] Amnesty International said: "The charges against Leopoldo López were never adequately substantiated and the prison sentence against him has a clearly political motive. His only 'crime' is being the leader of an opposition party in Venezuela. He never should have been arrested arbitrarily nor tried in the first place. He is a prisoner of conscience and ought to be released immediately and unconditionally. With this decision, Venezuela is choosing to ignore basic human rights principles, and giving a green light to more abuses See statements by Erika Guevara-Rosas, Americas Director at Amnesty International, in: "Venezuela: Sentence against opposition leader shows utter lack of judicial independence," Amnesty International, 10 September 2015, at https://www.amnesty.org/en/latest/news/2015/09/venezuela-sentence-against-opposition-leader-shows-utter-lack-of-judicial-independence/

even when those facts were not proven and he never made reference to such actions in his speech.

Furthermore, the Judge added that López was supposedly part of an "association to commit punishable acts" and that he allegedly had instigated to the disobedience of the laws, but without even identifying said "felonious association to commit crime" or the alleged "associated" conspirators.

Of course, all this was a vulgar parody in order to declare Leopoldo López guilty of the crimes linked to the exercise of his freedom of expression and other political rights, conducted by the Executive through the Public Prosecutor Office, using the criminal judicial system as the vindictive tool.

The most unbelievable fact of all this parody has been the tragic confession made by the public prosecutor in charge of the accusation against López, once he defected a few weeks after the publication of the decision, explaining in Miami that he had decided to leave the country in order to avoid to continue "with the farce that was put in scene" against López and a few students, denouncing – although rather late – the "pressure" exercised against him by the "National Executive and by his superiors in order to continue arguing based on the false proofs that were used to condemn López."

He expressed regrets, and explained that he did not want "to continue with the farce of such trial unjustly violating the rights" of the persecuted, encouraging judges and prosecutors to "tell the truth," to "lose the fear" and to "raise their voices, and express discontent for the pressure that our superiors exercised against us, threatening to destroy us, and to send us to jail."[42] This has also been the situation of Antonio Ledezma, Mayor of Caracas, also imprisoned without trial because expressing political opinions about the need to change the authoritarian government and the need in the future of a transitional government.

In a situation like this, therefore, indeed, it is not serious at all to talk about human rights, and much less about its protection; in the same sense that is not serious the decision adopted by the United Nations in October 2015, to elect Venezuela, a country in which human rights cannot be protected against the Government, as a member of the United Nation Commission of Human Rights. [43]

Certainly, the question is: What could be expected from Venezuela for the protection of

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[42] See the confessions of Franklin Nieves, on October 24, 2015 in the video available at https://www.youtube.com/watch?v=gfbJ8CUOiuo y en https://www.youtube.com/watch?v=GQeC7DCV7_s. On such confession, see Allan R. Brewer-Carías, "Lo que faltaba: la confesión del fiscal Franklin Nieves, acusador en el caso de Leopoldo López y otros estudiantes, condenados por los inexistentes "delitos" de "opinión" y de "manifestar," reconociendo la ausencia de independencia y de autonomía de los jueces y fiscales en Venezuela," 25 octubre de 2015," available at http://www.allanbrewercarias.com/Content/449725d9-f1cb-474b-8ab2-41efb849fea3/Content/LO%20QUE%20FALTABA.%20Confesi%C3%B3n%20Fiscal%20del%20caso%20Leopoldo%20L%C3%B3pez.%20Pruebas%20falsas,%20oct%202015.pdf

[43] "The election was considered as a "diplomatic triumph" by the President of the Republic." See in "Venezuela reelegida miembro del Consejo de DD.HH. de la ONU," in *Telesur*, 28 october 28, 2015 available at: http://www.telesurtv.net/news/Venezuela-reelegida-miembro-de-la-Comision-de-DD.HH.-de-la-ONU--20151028-0039.html

human rights in the world, if in the country the Government and the Judiciary colluded for the violation of such rights without any possibility to obtain protection? A situation that has been aggravated by the denunciation of the American Convention of Humans Rights, made in 2012 by the current President when he was the Minister of Foreign Affairs.

Simply, and unfortunately, nowadays it is not really serious at all to talk about protection of humans rights in Venezuela, or by the Venezuelan Government in international forums; and much less during the past months, when an elected body representing the people, as it is the National Assembly, has been systematically blocked and annulled in his legislative and political control roles, precisely by the Supreme Tribunal, who is now governing the country.

If the representatives of the peoples cannot control the Government or the Public Administration or even pass an amnesty law, precisely for the protections of human rights particularly of those incarcerated without cause, as the one sanctioned last month, which the same Constitutional Chamber considered unconstitutional in its entirely, of course violating the Constitution; is very little what can be done in the country if the authoritarian government continues squashing human rights with absolute impunity.

In that situation, expressions like the one of the Supreme Courts of Chile, Costa Rica and Brasil, as well as of International institutions and events like this one at Princeton University, all are welcomed and appreciated by all Venezuelans defending democracy, the democratic values and human rights.

Many thanks

Princeton, May 6, 2016