

Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela

ABSTRACT¹

This is a case about the lack of independence of the judiciary in Venezuela under Hugo Chávez’s regime. Ana María Ruggeri Cova, Perkins Rocha Contreras, and Juan Carlos Apitz Barbera were removed from their positions as judges of the First Court of Administrative Disputes on October 30, 2003, on the grounds that they had committed an inexcusable judicial error. The victims believed their removal was contrary to the principle of judicial independence and undermined the right of judges to decide freely in accordance with the law. This case gave the Court the chance to explore in depth the standards of independence and impartiality applicable to the national judiciary. The Court found that the State violated the American Convention on Human Rights.

I. FACTS

A. Chronology of Events

December 1998: In preparation for his election to the presidency, Hugo Chávez Frías, the candidate of the Polo Patriótico party, convenes a National Constitutional Assembly and writes a proposal entitled “The Hugo Chávez Proposal for the Transformation of Venezuela.”² At the root of the proposal is a social pact to bolster Venezuela’s democratic foundations.³

April 25, 1999: A consultative referendum is held following the election of Hugo Chávez, in which eighty-five percent of the participating

1. Jenna Eyrych, Author; Grace Kim and Sascha Meisel, Editors; Sarah Frost, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. *Report on the Situation of Human Rights in Venezuela*. Inter-Am. Comm’n H.R., Report No. OEA Ser.L/V/II.118, doc. 4 rev. 2, ¶ 21 (Dec. 29, 2003).

3. *Id.*

electorate votes to hold elections to form a National Constitutional Assembly, which will be responsible for drafting a new constitution for the State.⁴

July 25, 1999: The members of the newly created National Constitutional Assembly are elected, consisting of 104 regional, twenty-four national, and three indigenous candidates.⁵ These members will draft the new Constitution.⁶

August 3-November 15, 1999: The National Constitutional Assembly meets and drafts a new Constitution that changes the State's institutional structure.⁷

August 12, 1999: The National Constitutional Assembly orders a massive restructuring of all government agencies, including the judicial branch, under the new Constitution.⁸

August 19, 1999: The National Constitutional Assembly creates the Judicial Emergency Commission ("JEC") after declaring the judiciary to be in a state of emergency and reorganization.⁹ The JEC is endowed with powers that had previously belonged to Venezuela's Judicature Council, including the power to dismiss judges who receive complaints or who are under criminal investigation.¹⁰ In a future decree, the JEC is to be granted the power to rule on judges' removal or continued employment.¹¹ The JEC is created as a temporary body to be dismantled upon the enactment of the new Constitution; it continues operating, however, for a year after the new Constitution is adopted.¹²

December 15, 1999: Venezuela adopts the Constitution of the Bolivarian Republic of Venezuela.¹³ The National Constitutional

4. *Id.* ¶ 23.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* ¶ 164.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 182, ¶ 26 (Aug. 5, 2008).

Assembly declares Venezuela a “Transitional Government Regime.”¹⁴

The new constitution calls for the establishment of disciplinary tribunals within the judiciary, which will be guided by the proposed Venezuelan Code of Judicial Ethics.¹⁵

Late December 1999: The Commission for Operating and Restructuring the Judicial System (“CORJS”) is formed to temporarily take over the functions performed by the JEC.¹⁶ It is created to evaluate judicial officials, hold public elections for judges, and impose disciplinary sanctions when necessary.¹⁷ Its main task is to organize a competitive examination for awarding judges a position on the bench.¹⁸ Under the new Constitution, the Supreme Tribunal of Justice (“STJ”) is instructed to organize a body called the Executive Directorate of the Magistrature (“DEM”) to replace the CORJS in performing the governance and administration of the judiciary.¹⁹

At the same time, the Inspectorate General of Courts (“IGC”) is also established to “gather evidence for the disciplinary proceedings against judges and other court officials.”²⁰ The IGC is to report disciplinary infringements to the CORJS.²¹

Despite these alterations to the judiciary, controversy lingers in regards to guarantees of due process in the appointment and dismissal of judges.²² Article 255 of the new Constitution calls for judges to be appointed “by means of public competitions,” in which “[c]itizen participation in the process of selecting and designating judges shall be guaranteed by law.”²³ Nonetheless, 995 provisional judges are allegedly selected and appointed without taking the competitive exams in the years following the inception of the new constitution.²⁴ Additionally,

14. *Report on the Situation of Human Rights in Venezuela*, ¶ 165.

15. Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, ¶ 26.

16. *Report on the Situation of Human Rights in Venezuela*, ¶ 167; Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, ¶ 27.

17. Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, ¶ 27.

18. *Id.*

19. *Report on the Situation of Human Rights in Venezuela*, ¶ 167.

20. Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, ¶ 28.

21. *Id.*

22. *Report on the Situation of Human Rights in Venezuela*, ¶ 168.

23. *Id.* ¶ 169.

24. *Id.* ¶ 170.

Article 255 holds judges “personally liable.†.†.for errors, delays and unjustified omissions, for substantial failures to observe the rules of procedure, for denial of justice.†.†.”²⁵

January 18, 2000: The Constitutional Assembly appoints the seven members of the CORJS.²⁶

August 2000: The DEM is established, replacing the CORJS and assuming responsibility over judicial administration, as directed in the new Constitution.²⁷

August 2, 2000: The CORJS is confirmed as the disciplinary organ of the judiciary, with the IGC still acting as its ancillary body.²⁸ The STJ assumes the authority to reorganize the CORJS as it sees fit, effectuating that CORJS members may be removed at anytime for any reason.²⁹

August 14, 2001: The STJ declares a state of emergency over judicial competitions, due to extremely high levels of appointed provisional judges that are found within the judiciary.³⁰ The DEM responds by supposedly ending judicial appointments.³¹ Despite this, the DEM is criticized because its own members are appointed, not elected, thus raising questions as to the impartiality of judges even at the highest judicial levels.³² Further, it is suspected that judges who have delivered judgments contrary to the government’s interests have had their appointments revoked without explanation.³³

September 12, 2000: The Plenary Chamber of the STJ appoints Ana María Ruggeri Cova, Evelyn Margarita Marrero Ortiz, Luisa Estela Morales, Juan Carlos Apitz Barbera, and Perkins Rocha Contreras as provisional judges of the First Court of Administrative Disputes (“First

25. *Id.*

26. Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, ¶ 140.

27. *Report on the Situation of Human Rights in Venezuela*, ¶ 173.

28. Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, ¶ 29.

29. *Id.* ¶¶ 141, 142.

30. *Report on the Situation of Human Rights in Venezuela*, ¶ 172.

31. *Id.* ¶ 173.

32. *Id.*

33. *Id.*

Court”).³⁴ It is agreed that the appointments will last until judges from the pertinent public competition can fill the offices.³⁵ The First Court has jurisdiction to hear cases relating to administrative acts issued by any branch of government, except those issued by the President and the Ministers.³⁶ The STJ is the only judicial body that can hear appeals of the First Court’s judgments.³⁷

August 2002-August 2003: The First Court hands down a series of eleven judgments that are supposedly “contrary to the interests of the administration.”³⁸ After the First Court issues its decision in the “Plan Barrio Adentro” case in August 2003, Venezuela’s President, Hugo Chávez, makes a statement urging citizens to disregard the judgment.³⁹ President Chávez also publicly advocates the plurality’s removal.⁴⁰ The “Plan Barrio Adentro” case was about a Government health plan that allowed foreign medical doctors to practice in Venezuela without requiring their recertification.⁴¹ Judges Marrero and Morales issued dissenting opinions.⁴²

June 11, 2002: The First Court delivers a judgment regarding a petition for precautionary *amparo* in an appeal to annul an administrative act issued by the First Circuit Recording Office Junior Registrar in the Baruta Township of Miranda State (“Junior Registrar’s Office”).⁴³ The lower court had ruled in favor of a records official who refused to

34. Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, ¶ 31.

35. *Id.*

36. *Id.* ¶ 30.

37. *Id.*

38. *Id.* ¶¶ 112-114. Judgments include: (1) granting an *amparo* to a military base that kept a helicopter from taking off in the midst of a mass gathering in Caracas; (2) suspending proceedings against Army generals by investigation councils; (3) declaring unconstitutional a General’s eviction from his home by an Army General Commander; (4) granting an *amparo* to demilitarize a state where Army and National Guards were present; (5) ordering that the Mayor of Caracas be allowed to enter the Metropolitan Police Department, which was under military control; (6) prohibiting the National Guard from demanding supplies from private companies; (7) ordering the transfer of revenues, which were constitutionally owed to Carabobo; and (8) invalidating an administrative decision that made workers employed by an unchartered oil workers’ union irremovable.

39. *Id.* ¶¶ 115-116.

40. *Id.*

41. *Id.*

42. *Id.* ¶ 115.

43. *Id.* ¶ 32.

record a piece of real estate.⁴⁴ The First Court unanimously issues the *amparo*, and decides that the act should be annulled, overturning the lower court's judgment.⁴⁵

October 8, 2002: The Junior Registrar's Office requests that the Chamber for Political and Administrative Matters ("CPAM") remove the case from the First Court's jurisdiction.⁴⁶ Removal of a case from a court with proper jurisdiction is an exceptional remedy that the CPAM will only allow if the First Court's decision directly affects public interest or is flagrantly unjust.⁴⁷

June 3, 2003: The CPAM declares the First Court's judgment null and void, and accuses the judges of making a serious and inexcusable legal error.⁴⁸ In the past, the STJ has held judicial error deserving of removal from office, the maximum disciplinary action that can be taken against a judge.⁴⁹ A copy of the judgment is forwarded to the IGC to determine if the legal error demands judicial removal.⁵⁰

July 17, 2003: The IGC agrees to open its own preliminary investigation into the matter.⁵¹

September 5, 2003: The IGC commissions an inspector to continue the investigation and orders that notice be served to the First Court judges.⁵²

September 10-12, 2003: The five First Court judges who issued the judgment are given notice that they are under investigation by the IGC.⁵³

September 18, 2003: Judge Rocha Contreras' chauffeur, Mr. Alfredo Romero, is detained for allegedly removing a file from the First Court at the request of Mr. Apitz Barbera and Mr. Rocha Contreras.⁵⁴

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* ¶ 33.

49. *Id.* ¶ 34.

50. *Id.* ¶ 35.

51. *Id.* ¶ 36.

52. *Id.*

53. *Id.*

54. *Id.* ¶ 123.

September 23, 2003: Armed members of the General Directorate of Intelligence and Prevention Services (“DISIP”) and the Public Prosecutor’s Office conduct a search of the First Court pursuant to the criminal investigation of the September 18th events.⁵⁵

October 6, 2003: Judges Apitz Barbera and Rocha Contreras are summoned by the Public Prosecutor’s Office.⁵⁶

October 7, 2003: The IGC commences a disciplinary investigation into the September 18th events.⁵⁷ The IGC also files an accusation with the CORJS recommending the removal of the five First Court judges on the grounds that they committed a serious judicial error.⁵⁸

October 8, 2003: The CORJS orders Mr. Apitz Barbera and Mr. Rocha Contreras suspended for sixty-days.⁵⁹

October 9, 2003: Mr. Apitz Barbera and Mr. Rocha Contreras bring an action for *amparo* against the Chamber for Constitutional Matters of the STJ after being suspended from the First Court.⁶⁰

October 23, 2003: The Criminal Cassation Chamber of the STJ rules that removing files from the First Court was a common practice.⁶¹ Therefore, detaining Mr. Rocha Contreras’ chauffeur for the offense was unfounded.⁶²

October 26, 2003: Despite the Criminal Cassation Chamber’s judgment, President Chávez publicly criticizes members of the First Court for behaving corruptly.⁶³

October 30, 2003: The CORJS removes four of the five members of the First Court.⁶⁴ Sanctions are not implemented against Judge Evelyn

55. *Id.* ¶ 124.

56. *Id.* ¶ 125.

57. *Id.*

58. *Id.* ¶ 37.

59. *Id.* ¶ 150.

60. *Id.*

61. *Id.* ¶ 127.

62. *Id.*

63. *Id.* ¶ 128.

64. *Id.* ¶ 38.

Marrero because she is eligible for retirement.⁶⁵ Sanctions are later suspended against Judge Luisa Estella Morales and her retirement is ordered to be processed after she brings a “recourse to reconsider” the First Court’s decision.⁶⁶ Judges Merrero and Morales, the two judges who dissented from the offending judgment, retired due to the allegations of judicial error and were later appointed to the STJ.⁶⁷

November 4, 2003: The *El Universal* newspaper publishes an article in which it states that the First Court was vacant and inactive for eight months following the removal of the judges.⁶⁸

November 13, 2003: Mr. Apitz Barbera and Mr. Rocha Contreras petition the Plenary Chamber of the STJ to reconsider their removal, arguing that the CORJS does not have jurisdiction to remove judges from office.⁶⁹ They also appeal to the judiciary to annul their removal from office, contending that the CORJS had violated their right to be tried by their natural judge, their right to defense and due process, their right to independence of judicial office, and their right to protection against misuse of power.⁷⁰

November 27, 2003: Mr. Apitz Barbera and Mr. Rocha Contreras file an administrative appeal and measure for *amparo* with the CPAM for an annulment of the removal from office issued by the CORJS.⁷¹ As of the date that the Court issued its Judgment on the Merits, the CPAM had yet to deliver a decision on the merits of the case.⁷²

December 29, 2003: The Inter-American Commission on Human Rights publishes their Report on Human Rights stating that, currently, only 250 judges have been appointed based on the competitive examinations.⁷³ Moreover, out of the 1,772 judges in Venezuela, a staggering eighty-four percent are provisional or temporary judges, which means that they “do not enjoy security of tenure in their positions

65. *Id.*

66. *Id.*

67. *Id.* ¶ 120.

68. *Id.* ¶ 40.

69. *Id.* ¶ 39.

70. *Id.*

71. *Id.* ¶ 162.

72. *Id.* ¶ 163.

73. *Report on the Situation of Human Rights in Venezuela*, ¶ 174.

and can be freely removed or suspended.”⁷⁴ This practice runs counter to the judicial framework adopted by both the United States and the United Nations.⁷⁵ These judiciaries and the Inter-American Commission require judges to be appointed and to maintain stability in their appointments free from interference from other branches of government.⁷⁶

June 21, 2004: The Chamber for Constitutional Matters of the STJ rejects the *amparo* that was filed by Mr. Apitz Barbera and Mr. Rocha Contreras on October 9, 2003 due to inactivity of the proceedings and fines the judges five thousand *bolivars*.⁷⁷ According to the case records, the case has been inactive for over six months, the maximum time period in which to bring an *amparo* suit.⁷⁸

September 8, 2004: The Plenary Chamber of the STJ rejects Mr. Apitz Barbera and Mr. Rocha Contreras’ November 13, 2003 appeal.⁷⁹

October 2005: New judges are finally appointed to the First and Second Courts for Administration Matters.⁸⁰

April 18, 2007: The CPAM finds the *amparo* action filed by Mr. Apitz-Barbaera and Mr. Rocha Contreras inadmissible.⁸¹

B. Other Relevant Facts

The Constitution of the Bolivarian Republic of Venezuela is the foundation of Venezuela’s legal system and the highest legal standard of the republic.⁸² The Constitution recognizes five branches of government: Legislative, Executive, Judicial, Citizens, and Electoral.⁸³

The Legislative Branch is unicameral and is made up of the elected

74. *Id.* ¶ 159.

75. *Id.* ¶¶ 154-155.

76. *Id.*

77. Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, ¶ 151.

78. *Id.*

79. *Id.* ¶ 157.

80. *Id.* ¶ 40.

81. *Id.* ¶ 163.

82. *Report on the Situation of Human Rights in Venezuela*, ¶ 50.

83. *Id.* ¶ 27.

members of the National Assembly.⁸⁴ The National Assembly has the power to legislate on matters pertaining to the nation and the operation of the different branches of the national government, and to propose amendments to the Constitution.⁸⁵

The Executive Branch is comprised of the President of the Republic, the Vice President, ministers, and other officials determined by Constitutional standards.⁸⁶ The Executive Branch enforces compliance with the laws, directs government activity and external and international relations of the Republic, acts as Commander in Chief of the National Armed Forces, manages the treasury and negotiates national loans, appoints the Attorney General, and leads the National Assembly.⁸⁷

The Judicial Branch consists of the STJ and other courts as determined by law, the public Ministry, Office of the Human Rights Ombudsman, criminal investigative agencies, justice system officials, and citizens participating in the administration of justice.⁸⁸ Judges are to be selected by public competition, not appointment, and then selected by juries from the judicial circuits.⁸⁹ According to the Constitution, the Judicial Branch is autonomous.⁹⁰ Members of the Judicial Branch are not permitted to engage in political or private activities that are incompatible with their official functions except for educational activities.⁹¹ The Supreme Tribunal of Justice's duties include ruling on whether there are grounds for impeachment for any judicial, executive, or legislative official, resolving administrative disputes, and overseeing Venezuela's courts.⁹²

The Citizens Power Branch is designed to prevent, punish, and investigate acts that interfere with public ethics and morals.⁹³ The Branch is composed of the Office of the Attorney General, the Office of the Ombudsman, and the Office of the Comptroller General.⁹⁴ Together, these Offices make up the Republican Morals Council, which is the

84. *Id.*

85. *Id.* ¶ 29.

86. *Id.* ¶ 30.

87. *Id.* ¶ 31.

88. *Id.* ¶ 33.

89. *Id.* ¶ 35.

90. *Id.* ¶ 34.

91. *Id.*

92. *Id.* ¶ 36.

93. *Id.* ¶ 38.

94. *Id.* ¶ 37.

direct action arm of the Citizen Power Branch.⁹⁵ All organizations are expected to cooperate with the Republican Morals Council while performing all of their functions.⁹⁶

The Electoral Branch is composed of the National Electoral Council and its subordinate agencies.⁹⁷ The Electoral Branch is responsible for regulating electoral laws.⁹⁸

The Constitution provides that the State must guarantee to all persons the right to inalienable, indivisible, and interdependent human rights.⁹⁹ Individuals are guaranteed the right to certain civil, political, economic, social, and cultural rights, namely “the right to life, personal freedom, due process, property, freedom of expression, freedom of assembly and association, equality, protection of children, indigenous rights, health, education, freedom of religion and conscience, environmental rights and the right to the work.”¹⁰⁰

II. PROCEDURAL HISTORY

A. *Before the Commission*

April 6, 2004: Ms. Ruggeri Cova, Mr. Rocha Contreras, and Mr. Apitz Barbera present a petition to the Inter-American Commission on Human Rights against Venezuela.¹⁰¹

March 8, 2005: The Commission declares the case admissible in Admissibility Report No. 25/05 with respect to violations of Article 8 (Right to a Fair Trial), Article 23(1)(c) (Right to Have Access to Public Service), and Article 25 (Right to Judicial Protection) all in relation to Article 1(1) (Obligation of Non-Discrimination) and Article 2 (Obligation to Give Domestic Legal Effect to Rights).¹⁰² The

95. *Id.*

96. *Id.* ¶ 39.

97. *Id.* ¶ 45.

98. *Id.* ¶ 46.

99. *Id.* ¶ 50.

100. *Id.*

101. Ana María Ruggeri Cova, Perkins Rocha Contreras y Juan Carlos Apitz v. Venezuela, Admissibility Report, Report No. 24/05, Inter-Am. Comm’n H.R., Case No. 12.489, ¶ 5 (Mar. 8, 2005).

102. Ana María Ruggeri Cova, Perkins Rocha Contreras y Juan Carlos Apitz (“First Court of Administrative Disputes”) v. Venezuela, Petition to the Court, Inter-Am. Comm’n H.R., Case No. 12.489, ¶ 13 (Nov. 29, 2006).

Commission declares the case inadmissible with respect to violation of Article 24 (Right to Equal Protection).¹⁰³

August 14, 2006: The Commission submits its Report on Admissibility No. 25/05 to the State.¹⁰⁴

July 20, 2006: The Commission issues Report on the Merits 64/06 finding the State responsible for violating Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), Article 8(2) (Right to Be Presumed Innocent), and Article 25 (Right to Judicial Protection) in conjunction with Article 1(1) (Obligation to Respect Rights) and Article 2 (Obligation to Give Domestic Legal Effect to Rights).¹⁰⁵ It recommends that the State restore the judges to their positions in the First Court and compensate them for lost wages.¹⁰⁶ The Commission also recommends that the State take steps to adopt the Venezuelan Code of Judicial Ethics.¹⁰⁷

November 24, 2006: After requesting and receiving two extensions, the State reports that it is unable to comply with the Commission's recommendations.¹⁰⁸

B. Before the Court

November 29, 2006: The Commission submits the case to the Court after the State failed to adopt its recommendations.¹⁰⁹

1. Violations Alleged by Commission¹¹⁰

Article 8 (Right to a Fair Trial)
Article 25 (Right to Judicial Protection)
all in relation to:

103. *Id.*

104. *Id.* ¶ 17; Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, ¶ 1.

105. *Report on the Situation of Human Rights in Venezuela*, ¶ 15.

106. *Id.* ¶ 16; Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, ¶ 1.

107. *Report on the Situation of Human Rights in Venezuela*, ¶ 16.

108. *Id.* ¶ 4.

109. Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, ¶ 1.

110. *Id.* ¶ 4.

Article 1(1) (Obligation to Respect Rights)
Article (2) (Obligation to Give Domestic Legal Effects to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims¹¹¹

Same Violations Alleged by Commission, plus:

Article 23 (Right to Participate in Government)

Article 24 (Right to Equal Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effects to Rights)

Article 29(c) (Interpretation Cannot Preclude Inherent Rights or Rights Derived from Democratic Governance)

in relation to:

Article 29(d) (Restrictions Regarding Interpretation) of the American Convention.

January 22, 2008: The International Commission of Jurists and the Due Process of Law Foundation submits an amicus curiae brief to the Court.¹¹²

III. MERITS

A. *Composition of the Court*¹¹³

Cecilia Medina Quiroga, President

Sergio García Ramírez, Judge

Manuel E. Ventura Robles, Judge

Leonardo A. Franco, Judge

Margarette May Macaulay, Judge

Rhadys Abreu Blondet, Judge

111. *Id.* Mr. Hector Fernández Ledesma served as representative of Ms. Ana María Ruggeri Cova, Mr. Perkins Rocha Contreras, and Mr. Juan Carlos Apitz Barbera.

112. *Id.* ¶ 8.

113. Judge Diego García Sayan disqualified himself from hearing this case on January 28, 2008 because he did not want his affiliation with the Andean Commission of Jurists to affect the perception of the Court as an impartial and independent body.

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

August 5, 2008: The Court issues its Judgment on the Preliminary Objection, Merits, Reparations, and Costs.¹¹⁴

The Court found unanimously that Venezuela had violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal), in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effects to Rights) of the Convention, to the detriment of Mr. Apitz Barbera, Mr. Rocha Contreras, and Ms. Ruggeri Cova,¹¹⁵ because:

Article 36 of Venezuela's Transitional Scheme for Exercising Public Powers states that the CORJS and IGC "will not be subject to challenge."¹¹⁶ Despite this, Judge Rocha filed a challenge to his removal from office against the CORJS, and Judge Apitz Barbera requested that the CORJS decline jurisdiction over his case.¹¹⁷ The Court found that, although there was no evidence that the State prevented the victims from having a hearing before an impartial tribunal, the State's legislature prevented the victims from requesting review of the CORJS's impartiality.¹¹⁸ The State, therefore, violated the victims' guarantee to a hearing prior to an impartial trial, as defined in Article 8(1) in relation to Articles 1(1) and 2.¹¹⁹

The State failed to state the grounds on which the claim was based.¹²⁰ The duty to state grounds exists to protect citizens against trials that are not grounded in the law.¹²¹ A judgment must show that both parties'

114. Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 182 (Aug. 5, 2008).

115. *Id.* ¶ 267, "Declares" ¶ 3.

116. *Id.* ¶ 59.

117. *Id.* ¶ 60.

118. *Id.* ¶ 66.

119. *Id.* ¶ 67.

120. *Id.* ¶ 77.

121. *Id.*

arguments have been duly weighed.¹²² The Court looked to international law for valid grounds by which a judge may be removed.¹²³ Such grounds did not include situations in which a higher judicial body had overturned a judge's decision.¹²⁴ Judges must be able to act independently, without feeling compelled to placate a higher reviewing body.¹²⁵

Further, the IGC's accusation and CORJS's removal order were based solely on CPAM's findings, with no further evidence presented.¹²⁶ The Court found that the CORJS failed to address the petitioners' main arguments, making the petitioners' disciplinary proceedings little more than a formality.¹²⁷ The Court also found that CORJS failed to rule on the petitioners' request for evidence and took no steps to obtain evidence, which violated the petitioners' "due guarantees" as required by Article 8(1) in relation to Articles 1(1) and 2.¹²⁸

Finally, the State failed to provide Mr. Apitz Barbera, Mr. Rocha Contreras, and Ms. Ruggeri Cova a fair trial by an independent court.¹²⁹ The petitioners were tried by the CORJS.¹³⁰ According to previous Court decisions, "an adequate appointment process and a fixed term of office" would evince judicial independence and "neither regular nor temporary judges can be subject to discretionary removal".¹³¹ The STJ was able to appoint and remove members of the CORJS without following any pre-defined procedures.¹³² The Court conceded that certain facts alleged by the Commission and the Representatives remained unproven, including the fact that the CORJS dismissed the First Court judges in response to pressure exerted by the Executive Branch.¹³³ However, given that removal from the CORJS was discretionary and no Code of Ethics existed to ensure judicial stability, the Court found that the petitioners were not provided sufficient

122. *Id.* ¶ 78.

123. *Id.* ¶ 82.

124. *Id.* ¶ 84.

125. *Id.*

126. *Id.* ¶ 87.

127. *Id.* ¶ 91.

128. *Id.* ¶ 94.

129. *Id.* ¶ 267, "Declares" ¶ 7.

130. *Id.* ¶ 137.

131. *Id.* ¶ 138.

132. *Id.* ¶ 142.

133. *Id.* ¶ 147.

*guarantees that the CORJS acted independently in its decision to remove the petitioners from their positions.*¹³⁴

Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal), in relation to Article 1(1) ((Obligation to Respect Rights) of the Convention, to the detriment of Mr. Apitz Barbera and Mr. Rocha Contreras,¹³⁵ because:

*Mr. Apitz Barbera and Mr. Rocha Contreras contended that the CPAM took an unjustifiably long time in formulating a judgment on their appeal for annulment against the order for their removal from office that was filed on November 27, 2003.*¹³⁶ *The annulment was filed over four years ago and was still pending at the time of this judgment.*¹³⁷ *The State had the burden of proof to show that the complexity, procedural activity done by the proponents, and the judicial activity by the authorities justified the time it had taken to reach a judgment on the appeal for annulment.*¹³⁸ *The court first found that the State did not detail the complexity of the matter.*¹³⁹ *Second, the Court found that the parties made no attempt to delay the proceedings, and in fact, acted diligently to obtain a decision by the CPAM.*¹⁴⁰ *Lastly, five judges from the CPAM disqualified themselves so they could hear the claim brought by the victims.*¹⁴¹ *Disqualifications were not admitted though until December 20, 2006 – over 3 years after the original claim was submitted.*¹⁴² *The Court found that this period of time was not reasonable and had not been justified by the State.*¹⁴³

Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Mr. Apitz Barbera, Mr. Rocha Contreras,¹⁴⁴ because:

134. *Id.*

135. *Id.* “Declares” ¶ 8.

136. *Id.* ¶ 162.

137. *Id.* ¶ 172.

138. *Id.*

139. *Id.* ¶ 173.

140. *Id.* ¶ 174.

141. *Id.* ¶ 175.

142. *Id.* ¶ 176.

143. *Id.* ¶ 181.

144. *Id.* ¶ 267, “Declares” ¶ 9.

The petitioners were not granted simple, prompt, and effective recourse to a competent court for protection of their rights in regards to the constitutional amparo they filed against the Chamber of Constitutional Matters of the ICJ on October 9, 2003.¹⁴⁵ The Court found that ruling on an amparo application 256 days after it was presented was too long a time period to redress alleged human rights violations.¹⁴⁶ Further, according to Venezuela's Organic Law on Administrative Procedures, the Supreme Court of Justice should have answered the appeal filed by Mr. Apitz Barbera and Mr. Rocha Contreras within 90 days,¹⁴⁷ but the STJ failed to reach a judgment until nine months and twenty-six days after the appeal was presented.¹⁴⁸ The State did not explain why the matter was not resolved sooner despite the fact that it was the State's own law that established the given term.¹⁴⁹ The Court, therefore, found that such an unjustifiable delay violated Article 25(1), in relation to Article 1(1).¹⁵⁰

The Court ruled unanimously in favor of Venezuela regarding the following issues:

Regarding Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention:¹⁵¹

The petitioners contended that the CORJS did not have jurisdiction to remove them from their judicial appointments.¹⁵² This power belonged solely to the Plenary Chamber of the STJ.¹⁵³ Article 8(1) guarantees "the right to a hearing by a competent. f. f. tribunal, previously established by law."¹⁵⁴ On September 8, 2004, the Plenary Chamber of the STJ declined its jurisdiction and assigned the petitioners' case to the CORJS for consideration.¹⁵⁵ Further, the new Constitution granted the CORJS jurisdiction to hear all disciplinary proceedings against judges

145. *Id.* ¶ 156.

146. *Id.* ¶ 159.

147. *Id.*

148. *Id.*

149. *Id.* ¶ 160.

150. *Id.* ¶ 171.

151. *Id.* "Declares" ¶¶ 4, 6.

152. *Id.* ¶ 47.

153. *Id.*

154. *Id.* ¶ 50.

155. *Id.* ¶ 52.

in Venezuela.¹⁵⁶ No domestic rule existed granting a body other than the CORJS the power to hear this case.¹⁵⁷ The Court found that the CORJS was, therefore, a competent tribunal to hear disciplinary hearings against the petitioners.¹⁵⁸

The petitioners further contended that they were not permitted to present an argument to the CPAM in the Junior Registrar's Office case.¹⁵⁹ The Court found that the judges of the First Court were not parties to the proceedings to remove the Junior Registrar's Office case to a higher court.¹⁶⁰ The CPAM had a duty only to process the remedies available to the parties objecting to the First Court's decision.¹⁶¹ In determining on appeal that the First Court had made an inexcusable judicial error, the CPAM did not violate any right of the victims to a hearing.¹⁶²

The petitioners further argued that they were denied a right to be heard at any hearing.¹⁶³ The Court found that Article 8(1) of the Convention did not necessarily guarantee the right to an oral hearing.¹⁶⁴ Since the representatives did not offer any arguments to justify the necessity of an oral hearing as a guarantee of due process, the Court found that the State did not violate the petitioners' right to a hearing.¹⁶⁵

The petitioners asserted that they were removed from the judiciary in an effort by the Venezuelan government to cleanse the court of judges who were not ideologically aligned with President Chávez.¹⁶⁶ They claimed that this interfered with the judiciary's independence.¹⁶⁷ Considering the seriousness of these allegations, the Court required a high standard of proof to establish the truth of the violations.¹⁶⁸ The petitioners first offered as evidence a speech given by a Justice of the Chamber for

156. *Id.* ¶ 53.

157. *Id.*

158. *Id.*

159. *Id.* ¶ 68.

160. *Id.* ¶ 71.

161. *Id.* ¶ 73.

162. *Id.*

163. *Id.* ¶ 74.

164. *Id.* ¶ 75.

165. *Id.*

166. *Id.* ¶ 96.

167. *Id.*

168. *Id.* ¶ 97.

*Constitutional Matters of the STJ.*¹⁶⁹ According to them, the justice insisted that judges should interpret the Constitution in accordance with prevailing political views.¹⁷⁰ The Court did not find that the opinion condoned support toward any given political position.¹⁷¹

The petitioners also called attention to fact that three justices of the Electoral Chamber who signed a presidential recall referendum were removed or retired.¹⁷² The petitioners claimed that the STJ increased the number of magistrates on the court in order to obtain political control.¹⁷³ The Court, however, found a lack of evidence for this assertion, as the petitioners had provided only expert opinions for their theories with no further proof.¹⁷⁴

The Court also found a lack of evidence for petitioners' assertion that certain Justices and public officials expressed political favoritism for the President of Venezuela.¹⁷⁵

Regarding Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effects to Rights) of the Convention to the detriment of Ms. Ruggeri Cova:¹⁷⁶

*The representatives allege that Ms. Ruggeri Cova was denied judicial protection as a result of her removal from the First Court.*¹⁷⁷ However, the Court found that Ms. Ruggeri Cova failed to file any judicial appeal against the order for removal from office.¹⁷⁸ Since Ms. Ruggeri did not appeal the order of removal, the Court found that no violation of the right to judicial protection was committed.¹⁷⁹

Regarding Articles 23 (Right to Participate in Government) and 24 (Right to Equal Protection) in relation to Article 1(1) (Obligation to

169. *Id.* ¶ 98.

170. *Id.*

171. *Id.* ¶ 100.

172. *Id.* ¶ 101.

173. *Id.*

174. *Id.*

175. *Id.* ¶¶ 102, 106.

176. *Id.* "Declares" ¶ 10.

177. *Id.* ¶ 182.

178. *Id.* ¶ 183.

179. *Id.* ¶ 185.

Respect Rights) and 2 (Obligation to Give Domestic Legal Effects to Rights) of the Convention.¹⁸⁰

Typically, commission of an inexcusable judicial error would prevent judges from accessing future public office.¹⁸¹ The representatives pointed out that Judges Marrero and Morales – the only judges who challenged the First Court’s judgment – were not sanctioned, and were instead promoted as justices of the STJ following their commission of an inexcusable judicial error.¹⁸² The victims alleged that since Judges Marrero and Morales were not disqualified, the victims had no equal protection under the law.¹⁸³ In response, the state pointed out that Judges Marrero and Morales were granted the option to retire instead of being sanctioned.¹⁸⁴ This option was not available to the victims since they had neither served for ten years in the judiciary nor served for twenty years in Public Administration.¹⁸⁵ The Court supported the State’s position, finding that the victims were not in a situation of equality with Judges Marrero and Morales, and therefore unequal treatment was acceptable.¹⁸⁶

Regarding Articles 29(c) (Interpretation Cannot Preclude Inherent Rights or Rights Derived from Democratic Governance) and (d) (Interpretation Cannot Exclude or Limit Rights Recognized in the American Declaration or Other Similar Legal Instruments) of the Convention in relation to Article 3 of the Inter-American Democratic Charter.¹⁸⁷

The petitioners alleged that the State’s violation of their rights was a consequence of weakening of democracy in Venezuela, which violated their right to democracy guaranteed in Article 29.¹⁸⁸ The Court discussed three instances where it had invoked Article 29 of the Convention.¹⁸⁹ The first was to define the content of certain provisions

180. *Id.* “Declares” ¶¶ 11-12.

181. *Id.* ¶ 186.

182. *Id.*

183. *Id.*

184. *Id.* ¶ 188.

185. *Id.*

186. *Id.* ¶ 196.

187. *Id.* “Declares” ¶ 14.

188. *Id.* ¶ 216.

189. *Id.* ¶ 217.

of the Convention.¹⁹⁰ The second was to define the criteria for construction.¹⁹¹ The third was to determine the scope of the Court's advisory jurisdiction.¹⁹² The Court analyzed the right violated in relation to the interpretation principles outlined in 29(c) in order to determine if a right had been violated.¹⁹³ In this case, there was no issue with the concept of democracy under the interpretation provisions.¹⁹⁴ Therefore, the Court found no violation.¹⁹⁵

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. *Specific Performance (Measures of Satisfaction and Non- Repetition Guarantee)*

1. Reinstatement of Victims

Since the removal of Mr. Apitz Barbera, Mr. Rocha Contreras, and Ms. Ruggeri Cova violated judicial protection, the Court instructed the State to reinstate the victims to their positions.¹⁹⁶ The victims were to be placed into positions in the judiciary in which they had the same rank, pay, and social benefits as they received prior to removal.¹⁹⁷ If legitimate reasons existed wherein the State could not reinstate a victim to the judiciary, the State was instructed to pay that individual \$100,000.¹⁹⁸

2. Publish the Judgment and Issue a Public Apology

190. *Id.*

191. *Id.* ¶ 218.

192. *Id.* ¶ 219.

193. *Id.* ¶¶ 220-222.

194. *Id.* ¶ 222.

195. *Id.* ¶ 223.

196. *Id.* ¶ 246.

197. *Id.*

198. *Id.*

The Court ruled that the State must publish specific explanatory and operative paragraphs of the Judgment in the Official Gazette and in another newspaper of widespread circulation.¹⁹⁹ The Court deemed this sufficient reparation and did not order the State to publicly apologize.²⁰⁰

3. Adapt Domestic Laws to the Provisions of the Convention

In 2003, the National Assembly drafted the Venezuelan Code of Ethics, but the Code was never enacted.²⁰¹ In 2006, the Chamber for Constitutional Matters of the STJ declared the National Assembly's inaction in adopting the Code of Ethics unconstitutional.²⁰² Since the Venezuelan Judiciary had attempted to enact the Code of Ethics, and the transitional regime had lasted for nine years, the Court determined that the State must adopt any measure required to pass the Code of Ethics.²⁰³ The State was also instructed to provide an appropriate selection and appointment process for members of the CORJS in order to ensure their independence and impartiality as long as the provisional regime was in effect.²⁰⁴

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court instructed the State to allot \$48,000 to Mr. Apitz Barbera, Mr. Rocha Contreras, and Ms. Ruggeri Cova as compensation for infringement of their rights.²⁰⁵ The victims provided inadequate documentation for calculating their unearned salaries and proving that they required compensation for psychological distress.²⁰⁶

2. Non-Pecuniary Damages

199. *Id.* ¶ 249.

200. *Id.* ¶ 250.

201. *Id.* ¶ 253.

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.* ¶ 236.

206. *Id.* ¶¶ 232-235.

The Court instructed the State to allot \$40,000 to Mr. Apitz Barbera, Mr. Rocha Contreras, and Ms. Ruggeri Cova for moral damages resulting from the State's violations.²⁰⁷ The victims were subjected to damaging criticism in the public forum and denied a judicial response to their claims, all of which the Court found deserving of non-pecuniary damages.²⁰⁸

3. Costs and Expenses

The Court instructed the State to allot \$5,000 to each victim as reimbursement for costs and expenses.²⁰⁹ Although the victims' representatives failed to produce any receipts for alleged expenses incurred by the victims, the Court determined this amount in equity.²¹⁰

4. Total Compensation (including Costs and Expenses ordered):

\$ 279,000

C. Deadlines

The Court ordered the State to reinstate the victims to the judiciary within six months of notice of the Judgment.²¹¹ If the State could not reinstate a victim to the Judiciary due to legitimate reasons beyond the will of the victim, the State was ordered to pay the victim \$100,000 within eighteen months of notice of the Judgment.²¹²

The Court ordered the State to publish the Judgment within six months from notice of the judgment.²¹³

The Court ordered the State to enact the Venezuelan Code of Ethics within one year of the judgment.²¹⁴

The Court ordered the State to pay pecuniary and non-pecuniary damages and costs and expenses directly to the beneficiaries within one year.²¹⁵

207. *Id.* ¶ 242.

208. *Id.*

209. *Id.* ¶ 260.

210. *Id.* ¶¶ 258, 260.

211. *Id.* ¶ 246.

212. *Id.*

213. *Id.* ¶ 249.

214. *Id.* ¶ 253.

215. *Id.* ¶¶ 236, 242, 260.

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP²¹⁶

November 12, 2009: The State is required to submit a report on measures taken to comply with the judgment.²¹⁷ Despite continual reminders from the Court, the deadline passes without the State submitting any information regarding compliance with the judgment.²¹⁸

December 8, 2009: The victims' representatives request the Court to summon the parties to a hearing to discuss compliance with the judgment.²¹⁹

December 18, 2009: The Court summons the State, the victims or their representatives, and the Commission to a private hearing to be held on January 29, 2010 to discuss the State's compliance with the judgment.²²⁰

January 29, 2010: The Court holds a private hearing where the State submits a copy of a December 18, 2008 decision by the Venezuelan Court's STJ.²²¹

November 23, 2012: The Court issues its second order regarding monitoring compliance with its judgment.²²² The State has not submitted a report showing it complied with the Court's judgment, even after repeated reminders.²²³

The Court orders the State to comply with its order.²²⁴ First, the

216. As of 02/15/2014, the Court has issued its third report on monitoring compliance but the official Court report is not yet available on the Court's website.

217. Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, Monitoring Compliance with the Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶ 4 (Dec. 18, 2009).

218. *Id.*

219. *Id.* "Having Seen" ¶ 5.

220. *Id.* "Resolved" ¶ 1.

221. Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, Monitoring Compliance with the Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶ 5 (Nov. 23, 2012).

222. Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, monitoring Compliance with the Judgment, Order of the Court, (Nov. 23, 2012).

223. *Id.* "Having Seen" ¶ 6.

224. *Id.* "Declares That" ¶ 2.

State must satisfy the pecuniary and non-pecuniary damages, as well as reimburse the representatives for costs and expenses.²²⁵ Second, the State must reinstate Juan Carlos Apitz Barbera, Perkins Rocha Contreras, and Ana María Ruggeri Cova to their previous positions, if they wish.²²⁶ Third, the State must publish certain paragraphs of the judgment.²²⁷ Finally, the State must adopt measures required to approve the Venezuelan Code of Judicial Ethics.²²⁸

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[Apitz Barbera et al. \(“First Court of Administrative Disputes”\) v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 182 \(Aug. 5, 2008\).](#)

2. Decisions on Merits, Reparations and Costs

[Apitz Barbera et al. \(“First Court of Administrative Disputes”\) v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 182 \(Aug. 5, 2008\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Apitz Barbera et al. \(“First Court of Administrative Disputes”\) v. Venezuela, Monitoring Compliance with the Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. \(Dec. 18, 2009\).](#)

[Apitz Barbera et al. \(“First Court of Administrative Disputes”\) v. Venezuela, Monitoring Compliance with the Judgment, Order of the](#)

225. *Id.* “Declares That” ¶ 2(a).

226. *Id.* “Declares That” ¶ 2(b).

227. *Id.* “Declares That” ¶ 2(c).

228. *Id.* “Declares That” ¶ 2(d).

[President of the Court, Inter-Am. Ct. H.R. \(Nov. 23, 2012\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

Ana María Ruggeri Cova, Perkins Rocha Contreras y Juan Carlos Apitz v. Venezuela, Petition No. 282/04, Inter-Am. Comm'n H.R. (Apr. 6, 2004).

2. Report on Admissibility

[Ana María Ruggeri Cova, Perkins Rocha Contreras y Juan Carlos Apitz v. Venezuela, Admissibility Report, Report No. 24/05, Inter-Am. Comm'n H.R., Case No. 12.489 \(Mar. 8, 2005\).](#)

3. Provisional Measures

[None]

4. Report on Merits

Ana María Ruggeri Cova, Perkins Rocha Contreras y Juan Carlos Apitz v. Venezuela, Report on the Merits, Report No. 64/06, Inter-Am. Comm'n H.R., Case No. 12.489 (July 26, 2006).

5. Application to the Court

Ana María Ruggeri Cova, Perkins Rocha Contreras y Juan Carlos Apitz ("First Court of Administrative Disputes") v. Venezuela, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.489 (Nov. 29, 2006).

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2014]

Apitz Barbera et al. v. Venezuela

1503

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