

# Chocrón Chocrón v. Venezuela

## ABSTRACT<sup>1</sup>

*This case is about the summary dismissal from service of a domestic judge because of unspecified comments she made. The Inter-American Court eventually found violations of the American Convention, specifically the victim's right to recourse before a competent court and the right to a hearing within reasonable time by a competent and independent tribunal.*

### I. FACTS

#### A. Chronology of Events

**February 15, 1982 – February 2, 1999:** Ms. Mercedes Chocrón Chocrón serves in various positions of the Judiciary.<sup>2</sup>

**July 30, 1999:** Ms. Chocrón Chocrón serves as Judge of First Instance of the Transitory Criminal Proceedings Regime.<sup>3</sup> She serves in this capacity until April 3, 2001.<sup>4</sup>

**August 12, 1999:** The National Constituent Assembly enacts a decree ordering a reorganization of all branches of government.<sup>5</sup>

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2. Chocrón Chocrón v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 227, ¶ 77 (July 5, 2011). Specifically, Ms. Chocrón Chocrón served in the following positions: (1) Judge Rapporteur for the Ninth Criminal Court of First Instance of the Federal District and the Miranda State Court from February 15, 1982 until approximately 1984; (2) Associate Judge of the Nineteenth Superior Court for the Federal District and Miranda State Court from May 13 to June 28, 1991; (3) Temporary Judge of the Sixteenth Court of First Instance for Criminal Law and Protection of Public Assets of the Metropolitan Caracas Judicial Circuit from September 19, 1994 to May 14, 1997; (4) Second Alternative Temporary Judge of the Thirty-Second Criminal Court of First Instance of the Metropolitan Caracas Judicial Circuit from June 25 to September 30, 1996; (5) Provisional Judge from September 15 to October 3, 1997; and (6) Second Associate Judge of the Thirty-Seventh Criminal Court of the Metropolitan Caracas Judicial Circuit from October 26, 1998 to February 2, 1999. *Id.* ¶ 77 n.96.

3. *Id.*

4. *Id.*

5. *Id.* ¶ 53. The National Constituent Assembly was created in April 1999 to transform the State, create a new legal system, and achieve an effective social and participatory democracy. *Id.*

**August 19, 1999:** The National Constituent Assembly declares that the judiciary is in a state of emergency and creates an Emergency Judicial Commission.<sup>6</sup> The Emergency Judicial Commission consists of nine members, four of whom are members of the National Constituent Assembly. The Emergency Judicial Commission's functions include the power to remove members of the judicial branch facing corruption proceedings, members guilty of unwarranted judicial delays, members whose decisions have been repeatedly nullified or reversed because of manifested disregard or ignorance of the law, members guilty of malfeasance, and members whose wealth appears disproportionate to their salaries.<sup>7</sup>

**December 22, 1999:** Following the enactment of the 1999 Constitution, the Emergency Judicial Commission ceased to exist and the National Constituent Assembly establishes the Public Authorities Transition Regime ("PATR").<sup>8</sup> The Commission for Restructuring and Operation of the Judicial System ("CFRSJ") is created to take over the powers granted to the Emergency Commission and is given the additional authority to regulate, administer, inspect, and supervise the courts and public defenders.<sup>9</sup> However, this additional authority ends once the Supreme Tribunal creates the Judiciary's Executive Directorate to take over that work.<sup>10</sup>

**August 2, 2000:** The Supreme Court of Justice ("SCJ") issues and publishes the Regulations on the Direction, Governance and Administration of the Judicial Branch.<sup>11</sup> These regulations create the Judiciary's Executive Directorate and the Judicial Commission.<sup>12</sup> The purpose of the Judicial Commission is to supervise the functions of the Judiciary's Executive Directorate and to take over the additional authority assigned to the CFRSJ, so that the CFRSJ is only responsible for disciplinary procedures filed against judges.<sup>13</sup> Additionally, the Judicial Commission is responsible for appointing and removing judges.<sup>14</sup>

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¶ 52.

6. *Id.* ¶ 54.

7. All vacancies would be filled with alternate judges, or the Emergency Judicial Commission could appoint replacements when appropriate. *Id.*

8. *Id.* ¶¶ 55, 57.

9. *Id.* ¶ 59.

10. *Id.*

11. *Id.* ¶ 61.

12. *Id.*

13. *Id.* ¶¶ 61-62.

14. *Id.* ¶ 62.

**October 28, 2002:** Due to the resignation of a judge, the Judicial Commission of the Supreme Tribunal appoints Ms. Chocrón Chocrón as a temporary judge in the First Instance Court of the Caracas Metropolitan Area Criminal Judicial Circuit.<sup>15</sup>

**November 5, 2002:** Ms. Chocrón Chocrón accepts the position as temporary judge.<sup>16</sup>

**February 3, 2003:** The Judicial Commission meets and decides to remove Ms. Chocrón Chocrón from her position as temporary judge because of unspecified comments made to the SCJ.<sup>17</sup> Ms. Chocrón Chocrón is informed of this decision without reference to the comments that served as the basis for her removal.<sup>18</sup>

**February 25, 2003:** Via a nationwide newspaper, the Judiciary's Executive Directorate of the SCJ announces the annulment of Ms. Chocrón Chocrón's position and that she has been replaced with another temporary judge.<sup>19</sup>

**February 26, 2003:** Ms. Chocrón Chocrón files an appeal with the Judicial Commission seeking reconsideration of its decision.<sup>20</sup> Specifically, Ms. Chocrón Chocrón explains that she has no wrongdoings on her record and that she keeps the proper conduct of a judge "strictly respecting legality and good practice."<sup>21</sup>

**June 16, 2003:** The Judicial Commission dismisses Ms. Chocrón Chocrón's motion explaining that she was only a temporary judge whose purpose was to fill a vacancy.<sup>22</sup> The Judicial Commission added that although Ms. Chocrón Chocrón became a member of the Judiciary, she did not enter the "judicial career" because her appointment was not through the competitive selection process established in the Constitu-

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15. *Id.* ¶ 78.

16. *Id.* ¶ 79.

17. *Id.* ¶ 81. While the minutes of the Judicial Commission's meeting are vague in their description of the comments that resulted in Ms. Chocrón Chocrón's removal, the minutes also state that she was appointed to serve in this position on the condition that no objections were forthcoming, inferring that the comments received were objections to her appointment. *Id.*

18. *Id.* ¶ 82.

19. *Id.*

20. *Id.* ¶ 60.

21. *Id.* ¶ 83.

22. *Id.* ¶ 84.

tion, but through the Judicial Commission's exercise of discretionary authority.<sup>23</sup> Therefore, the Judicial Commission stated that Ms. Chocrón Chocrón does not enjoy tenure because she did not enter the judicial career and can be asked to leave the position in the same discretionary manner she was asked to take the position.<sup>24</sup> Finally, the Judicial Commission concluded that this decision is not disciplinary and does not have to do with Ms. Chocrón Chocrón's moral or ethical success within her position.<sup>25</sup>

**May 5, 2003:** Ms. Chocrón Chocrón files an appeal with the Political and Administrative Chamber of the SJC, stressing the Judicial Commission's lack of competence, due to the fact that the decision for her removal was made without the proper proceedings and that the removal violated her right to due process.<sup>26</sup>

**October 19, 2004:** The Political-Administrative Chamber of the Supreme Tribunal declares the appeal inadmissible, stating that the majority of the Judicial Commission may decide to remove a judge.<sup>27</sup> Furthermore, when the judge has a provisional or temporary appointment, as in Ms. Chocrón Chocrón's case, the removal decision does not require a prior hearing or justification with any specific or legal reasons.<sup>28</sup>

**May 20, 2004:** The SCJ's Organic Law, which orders the reorganization and restructuring of the Judiciary's Executive Directorate, enters into effect.<sup>29</sup> The SCJ establishes that the CFRSJ is only responsible for disciplinary functions during the enactment of legislation and the creation of disciplinary tribunals.<sup>30</sup> Furthermore, one of the powers of the SCJ is to appoint and swear in judges of the Republic.<sup>31</sup>

### *B. Other Relevant Facts*

[None]

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23. *Id.* ¶ 85.

24. *Id.*

25. *Id.*

26. *Id.* ¶ 86.

27. *Id.* ¶ 87.

28. *Id.*

29. *Id.* ¶ 63.

30. *Id.*

31. *Id.*

## II. PROCEDURAL HISTORY

*A. Before the Commission*

**May 15, 2005:** Ms. Yadira Atía López, later replaced by Mr. Rafael J. Chavero Gazdik, presents an initial petition on behalf of Ms. Chocrón Chocrón against the State.<sup>32</sup>

**March 15, 2006:** The Commission issues Report on Admissibility No. 38/06, finding the petition admissible.<sup>33</sup>

**March 17, 2009:** The Commission adopts Report on Merits No. 9/09, finding that the State violated the victim's rights to a fair trial and effective judicial remedy.<sup>34</sup>

*B. Before the Court*

**November 25, 2009:** The Commission submits the case to the Court after the State failed to comply with its recommendations.

**May 18, 2010:** The State files two preliminary objections: (1) partiality of some of the judges of the Court; and (2) failure to exhaust domestic legal remedies.<sup>35</sup> Additionally, the State denies violating the rights stated by the parties.<sup>36</sup>

**September 3, 2010:** Acting President of the Court, Judge Alberto Pérez Pérez issues an order concerning the State's first preliminary objection, declaring that the alleged partiality of functions performed by some of the judges is non-existent.<sup>37</sup>

1. Violations Alleged by Commission<sup>38</sup>

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

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32. *Chocrón Chocrón v. Venezuela*, Admissibility Report, Report No. 38/06, Inter-Am. Comm'n H.R., Petition No. 549-05, ¶ 4 (Mar. 15, 2006).

33. *Chocrón Chocrón v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, ¶ 1.

34. *Id.*

35. *Id.* ¶ 5.

36. *Id.*

37. *Id.* ¶ 5 n.6.

38. *Id.* ¶ 3.

*all in relation to:*

Article 1(1) (Obligation to Respect Rights)

Article (2) (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

## 2. Violations Alleged by Representatives of the Victims<sup>39</sup>

Same Violations Alleged by Commission, plus:

Article 23(1)(c) (Right to Have Access to Public Service) of the American Convention.

### III. MERITS

#### A. *Composition of the Court*<sup>40</sup>

Diego García-Sayán, President  
 Leonardo A. Franco, Vice-President  
 Manuel E. Ventura Robles, Judge  
 Margarette May Macaulay, Judge  
 Rhadys Abreu Blondet, Judge  
 Eduardo Vio Grossi, Judge

Pablo Saavedra Alessandri, Secretary

#### B. *Decision on the Merits*

**July 1, 2011:** The Court issues its Judgment on Preliminary Objection, Merits, Reparations and Costs.<sup>41</sup>

The Court decided unanimously to reject the remaining preliminary objection filed by the State,<sup>42</sup> because:

*The State insisted that Ms. Chocrón Chocrón did not exhaust the remedies provided under domestic law before presenting her case to the*

39. *Id.* ¶ 54. Mr. Carlos M. Ayala Coroa, Mr. Rafael J. Chavero Gazdik, and Ms. Marianella Villegas Salazar serve as representatives of Ms. Chocrón Chocrón. *Id.* ¶ 5.

40. For reasons beyond their control, Judge Alberto Pérez Pérez was unable to participate in the deliberation and signing of the Judgment and Deputy Secretary Emelia Segares Rodríguez was unable to attend the deliberation of this Judgment. *Id.* at nn.1-2.

41. *Chocrón Chocrón v. Venezuela*, Preliminary Objections, Merits, Reparations, and Costs.

42. *Id.* ¶ 24.

Court.<sup>43</sup> Specifically, it stated that Ms. Chocrón Chocrón did not file an appeal for review before the Constitutional Chamber of the Supreme Court of Justice.<sup>44</sup>

The Court determined that it settled this issue in the case of *Reverón Trujillo v. Venezuela*, wherein it concluded that objections regarding the failure to exhaust domestic remedies must be raised at the appropriate time; if they are not, the party forfeits the opportunity to raise them.<sup>45</sup> Here, the State did not submit its preliminary objection on the failure to exhaust domestic remedies during the admissibility proceeding, meaning it did not raise its preliminary objection before the Commission.<sup>46</sup> Thus, the State forfeited its chance to argue this preliminary objection and, accordingly, the Court rejected the State's preliminary objection.<sup>47</sup>

The Court found unanimously that the State had violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) of the Convention, to the detriment of Ms. Chocrón Chocrón,<sup>48</sup> because:

*Article 8 (Right to a Fair Trial) of the Conventions sets the rules for due process.*<sup>49</sup> *Due process is a series of guidelines that must be implemented procedurally in order to allow an individual adequate representation against the State.*<sup>50</sup> *The Court stated that even labor and administrative powers have limitations, and the respect for human rights must not be overlooked.*<sup>51</sup>

*Here, Ms. Chocrón Chocrón's appointment was terminated based on unspecified "comments" made to the SJC.*<sup>52</sup> *These comments were never revealed or clarified; therefore the Court does not have sufficient information to conclude whether her termination was punishable.*<sup>53</sup> *Be-*

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43. *Id.* ¶ 15.

44. *Id.*

45. *Id.* ¶ 20.

46. *Id.* ¶ 21.

47. *Id.* ¶ 24.

48. *Id.* ¶ 123.

49. *Id.* ¶ 115.

50. *Id.*

51. *Id.*

52. *Id.* ¶ 116.

53. *Id.*

cause the Judicial Commission had authority to exercise its discretion in removing judges, the Court analyzed whether that discretion was a violation of Ms. Chocrón Chocrón's judicial rights.<sup>54</sup> The Court highlighted the fact that temporary judges must have a certain degree of job stability.<sup>55</sup> Thus, Ms. Chocrón Chocrón's removal could only be justified if it was a disciplinary procedure or executed by a duly founded administrative decision.<sup>56</sup> The Court believed it was necessary to understand the grounds for Ms. Chocrón Chocrón's termination.<sup>57</sup>

The Court concluded that the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) by abusing its right to make administrative decisions by making arbitrary decisions. This significantly affected Ms. Chocrón Chocrón's job stability and her ability to defend herself.<sup>58</sup>

Article 25(1) (Right of Recourse Before a Competent Court) in relation to Article 1(1) of the Convention, to the detriment of Ms. Chocrón Chocrón,<sup>59</sup> because:

Article 25(1) (Right of Recourse Before a Competent Court) details the State's obligation to provide effective judicial remedies when an individual experiences a violation of her fundamental rights.<sup>60</sup> The State's remedies must make an effective contribution to ending harmful situations and ensure full exercise of the protected rights under the Convention.<sup>61</sup>

When Ms. Chocrón Chocrón asked the reason for her annulment, the Judicial Commission and the Political and Administrative Chamber of the SCJ pointed to their power to annul judges when there was an agreement among the majority of the members.<sup>62</sup> This inadequate response did not provide Ms. Chocrón Chocrón with the opportunity to defend herself and effectively challenge the decision.<sup>63</sup> Thus, the Court found that the State violated Article 25(1) (Right of Recourse Before a

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54. *Id.*

55. *Id.* ¶ 117.

56. *Id.*

57. *Id.*

58. *Id.* ¶¶ 117, 120-123.

59. *Id.* ¶ 130.

60. *Id.* ¶ 127.

61. *Id.* ¶ 128.

62. *Id.* ¶ 129.

63. *Id.*



*Competent Court) in relation to Article 1(1) of the American Convention to the detriment of Ms. Chocrón Chocrón.*<sup>64</sup>

Article 2 (Obligation to Give Domestic Legal Effect to Rights) in relation to Articles 8(1) (Right to Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court) of the American Convention,<sup>65</sup> because:

*Article 2 (Obligation to Give Domestic Legal Effect to Rights) requires States to adopt the proper legislative measures to ensure the rights established in the American Convention.*<sup>66</sup> *Additionally, States must refrain from enacting laws that would conflict with the free exercise of the rights enumerated in the Convention.*<sup>67</sup>

*In August 1999, a Decree on the Reorganization of the Judiciary reshaped the State Judiciary.*<sup>68</sup> *Along with the reconstruction process, the State adopted the Ethics Code of Venezuelan Judges; however, it was not yet implemented at the time of this Judgment.*<sup>69</sup> *Furthermore, although Ms. Chocrón Chocrón's status as a judge merited a level of stability, the State defended the arbitrary removal of provisional and temporary judges.*<sup>70</sup> *Essentially, the State did not adopt clear practices in order to facilitate full exercise of judicial guarantees in the removal of judges like Ms. Chocrón Chocrón.*<sup>71</sup> *Therefore, the State failed to comply with Article 2 (Obligation to Give Domestic Legal Effect to Rights) in relation to Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court) of the American Convention.*<sup>72</sup>

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64. *Id.* ¶ 130.

65. *Id.* ¶ 142.

66. *Id.* ¶ 140.

67. *Id.*

68. *Id.* ¶ 141.

69. *Id.*

70. *Id.*

71. *Id.* ¶ 142.

72. *Id.*

The Court found unanimously that it was not necessary to rule on:

Article 23(1)(c) (Right to Have Access to Public Service) in relation to Article 1(1) of the American Convention,<sup>73</sup> because:

*In the cases of Apitz Barbera et al. v. Venezuela and Reverón Trujillo v. Venezuela, we discussed that Article 23(1)(c) (Right to Have Access to Public Service) does not establish the right to accede to public office, but the right to do so on general terms of equality.<sup>74</sup> Thus, when the process of appointment, promotion, suspension, and removal are reasonable, the right is respected.<sup>75</sup> Access under equal conditions is insufficient if there is no effective protection of permanence in public office positions.<sup>76</sup>*

*Here, Ms. Chocrón Chocrón's access to public service was not an issue.<sup>77</sup> When there was a certain need for temporary judges to fill vacancies, it was reasonable to use temporary judges, like Ms. Chocrón Chocrón.<sup>78</sup> Thus, the Court found that it was unnecessary to rule on the alleged violation of Article 23(1)(c) (Right to Have Access to Public Service) of the American Convention.<sup>79</sup>*

### 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. Judgment as a Form of Reparation

The Court indicated the Judgment constitutes a form of repara-

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73. *Id.* ¶ 136.

74. *Id.* ¶ 135.

75. *Id.*

76. *Id.*

77. *Id.* ¶ 136.

78. *Id.*

79. *Id.*

tion.<sup>80</sup>

## 2. Reinstatement of Ms. Chocrón Chocrón

The Court declared that the State must reinstate Ms. Chocrón Chocrón to a position similar to the one she previously held.<sup>81</sup> Additionally, the salary, fringe benefits, and seniority must remain the same.<sup>82</sup> Although Ms. Chocrón Chocrón could be reinstated with the same temporary status, the Court's interpretation of a provisional status should guide the State's decisions.<sup>83</sup> The State would be required to pay \$30,000 if it did not reinstate Ms. Chocrón Chocrón within one year of this Judgment.<sup>84</sup>

## 3. Reform Legislation

The Court indicated that the State must adapt its laws to the appropriate international standards and to the American Convention.<sup>85</sup> The State must change the provisions allowing arbitrary removal of temporary judges and implement full respect to judicial guarantees and rights.<sup>86</sup>

Furthermore, the Court ordered that the State implement its Ethics Code in order to foster the independence of potential disciplinary bodies.<sup>87</sup> The Court emphasized the State's duty to ensure the rights of provisional and temporary judges.<sup>88</sup> Specifically, the State must abide by the American Convention and refrain from making laws that conflict with the American Convention.<sup>89</sup> Accordingly, the State must create procedures where temporary and provisional judges may exercise their right to defend themselves and obtain the reasons for their termination.<sup>90</sup>

## 4. Publish the Judgment

The Court ordered the State to publish the Court's official summary of this Judgment in the Official Gazette, in a national newspaper

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80. *Id.* ¶ 149.

81. *Id.* ¶ 153.

82. *Id.*

83. *Id.*

84. *Id.* ¶ 154.

85. *Id.* ¶ 162.

86. *Id.*

87. *Id.* ¶ 163.

88. *Id.* ¶ 164.

89. *Id.*

90. *Id.* ¶ 172.

with widespread circulation, and on the Official website, for one year.<sup>91</sup>

### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court awarded \$50,000 for the salary and fringe benefits Ms. Chocrón Chocrón would have received from the time of her arbitrary removal to the date the Judgment was handed down.<sup>92</sup>

#### 2. Non-Pecuniary Damages

The Court awarded \$10,000 to Ms. Chocrón Chocrón as compensation for non-pecuniary damages.<sup>93</sup>

#### 3. Costs and Expenses

The Court awarded \$18,000 to Ms. Chocrón Chocrón for the costs and expenses of legal representation.<sup>94</sup>

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

\$78,000 (plus \$30,000 if the State does not reinstate Ms. Chocrón Chocrón within one year of the Judgment)

### *C. Deadlines*

The State must comply with the order of the court to reinstate Ms. Chocrón Chocrón within one year of the Judgment.<sup>95</sup>

The State must reform its legislation to protect the rights enumerated in the American Convention and to conform to international standards within a reasonable time.<sup>96</sup>

The State must publish the Judgment in the proper outlets, within six months of the Judgment.<sup>97</sup>

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91. *Id.* ¶ 158.

92. *Id.* ¶ 184.

93. *Id.* ¶ 191.

94. *Id.* ¶ 198.

95. *Id.* ¶ 154.

96. *Id.* ¶ 163.

97. *Id.* ¶ 158.

The State must pay the pecuniary, and non-pecuniary damages, as well as the costs and expenses within one year of notification of the Judgment.<sup>98</sup>

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

*A. Inter-American Court*

1. Decisions on Preliminary Objections, Merits, Reparations and Costs

[Chocrón Chocrón v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct.H.R. \(ser.C\) No. 227 \(July 1, 2011\).](#)

2. Provisional Measures

[None]

3. Compliance Monitoring

[None]

4. Review and Interpretation of Judgment

[None]

*B. Inter-American Commission*

1. Petition to the Commission

[None]

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98. *Id.* ¶¶ 181, 191, 198.

## 2. Report on Admissibility

[Chocrón Chocrón v. Venezuela, Admissibility Report, Report No. 38/06, Inter-Am. Comm'n H.R., Petition No. 549-05, \(Mar. 15, 2006\).](#)

## 3. Provisional Measures

[None]

## 4. Report on Merits

[Not Available]

## 5. Application to the Court

[Chocrón Chocrón v. Venezuela, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.556 \(Nov. 25, 2009\).](#)

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