

Ríos et al. v. Venezuela

ABSTRACT¹

As in the Perozo et al. v. Venezuela case, this case, too, is about a series of attacks, and general harassment, of journalists by supporters of President Hugo Chavez. In this case, the victims were journalists of the Radio Caracas Televisión (RCTV). Venezuela tried to resist proceedings before the Commission and Court with every procedural mean. However, eventually, the Court found violation of several rights of the journalists, including the infrequently invoked right to seek, receive, and impart information and ideas.

I. FACTS

A. Chronology of Events

December 17, 2001: Aggressors issue death threats and attack reporters of Radio Caracas Televisión (“RCTV”), Javier García and David Pérez Hansen, with stones as they cover a ceremony at the National Pantheon in Caracas in honor of Simón Bolívar the Liberator.² At the National Cemetery, government supporters attack reporter Luisiana Ríos, who has to be escorted away by military police.³

January 20, 2002: Ms. Ríos, Mr. García, Mr. Isnardo Bravo, and Mr. Pérez Hansen converge at the Cajibal Observatory to cover the program, “Aló Presidente,” a weekly Sunday television and radio program from President Hugo Chávez Frías.⁴ When their vehicles arrive at their designated network areas, Ms. Ríos steps out and approximately fifty people circle the vehicle and begin banging and kicking it while shouting ex-

1. Diane Chang, Author; Nathaniel Reinhardt, Editor; Kathryn Benson, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Ríos et al. v. Venezuela, Admissibility Report, Report No. 6/04, Inter-Am. Comm’n H.R., Case 12.441, ¶ 39 (Feb. 27, 2004); Ríos et al. v. Venezuela, Petition to the Court, Inter-Am. Comm’n H.R., Case 12.441, ¶ 85 (Apr. 20, 2007).

3. *Id.*; Ríos et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 194, ¶ 156 (Jan. 28, 2009).

4. Ríos et al. v. Venezuela, Admissibility Report, ¶ 39.

pletives.⁵ The attackers wear t-shirts that read “Coordinadora Simón Bolívar.”⁶ Aggressors simultaneously threaten and attack Mr. García, Mr. Bravo, Mr. Hansen, and cameraman Luis Augusto Contreras Alvarado.⁷

March 12, 2002: Mr. Bravo and Mr. Hansen report suffering from frequent attacks by members of the M-28, activists with ties to the Government, around the Central University of Venezuela because of their coverage of the people’s courts led by the Lina Ron Bolivarian Circles’ Attorney Alfonzo Cancino.⁸

March 24, 2002: Demonstrators verbally attack Mr. Bravo while he attempts to report on a demonstration outside the National Assembly.⁹

April 3, 2002: Demonstrators attack Mr. Bravo, Mr. Wilmer Marcano, and Mr. Winston Gutiérrez as they cover a demonstration by stoning and dousing them with water at the headquarters of the Social Security Institute.¹⁰ The aggressors also threaten to beat them with chains.¹¹

April 10, 2002: While she covers news at the Petróleos de Venezuela (“PDVSA”) headquarters in Chuao, attackers strike reporter Isabel Alvarez in the face with a rock, requiring immediate medical attention and twelve stitches.¹²

April 13, 2002: State military personnel hold Mr. Eduardo Sapene Granier, Vice President for Information and Special Programs¹³ for Radio Caracas Televisión (“RCTV”),¹⁴ at the RCTV headquarters while the “Bolivarian Circles”¹⁵ conduct an assault upon RCTV.¹⁶ Over the course

5. *Id.*

6. *Id.*; Daniel Wallis, *Insight: Chavista Militants May Be Wild Card After Venezuela Vote*, REUTERS (Aug. 15, 2012), <http://www.reuters.com/article/us-venezuela-colectivos-idUSBRE87E0GN20120815> (“Coordindaora Simón Bolívar” refers to a political organization in support of President Hugo Chávez Frías).

7. Ríos et al. v. Venezuela, Admissibility Report, ¶ 39.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. Ríos et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 173.

13. Ríos et al. v. Venezuela, Petition to the Court, ¶ 67 (Apr. 20, 2007).

14. *Id.* ¶ 35, n.5.

15. Ríos et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 133, 185. The Bolivarian Circles is a group that openly supports the State government.

16. Ríos et al. v. Venezuela, Admissibility Report, ¶ 39.

of the entire day and part of the night, demonstrators carry out various acts of violence outside of RCTV's headquarters to such an extent that journalists are unable to evacuate the building or else risk exposing themselves to harm.¹⁷

April 18, 2002: Protesters verbally abuse Ms. Ríos as she covers a story on Army Captain José Rodrigo García Contreras at the Miraflores Presidential Palace.¹⁸

May 2, 2002: Supporters of the Bolivarian Circles verbally attack Ms. Ríos, who is covering Mr. Pedro Carmona's appearance before the Venezuelan Parliament, with a myriad of threats, including phrases such as: "We're going to kill you," "dirty dog," "rat," "trash-talker," "conspirator," and "traitor to the country."¹⁹

May 28, 2002: Ms. Ríos attempts to go to work at 5:00 a.m. but a vehicle is parked behind her car, blocking her departure.²⁰ In response, Ms. Ríos contacts her apartment's concierge to find out which resident blocked her vehicle.²¹ The building's concierge informs Ms. Ríos that the son-in-law ("Hernán") of Mr. Federico Carmine of apartment 19, who does not reside at the building, had caused the problem.²² Ms. Ríos reports that Hernán had written a note, which he had stuck on the door, threatening to alert the Bolivarian Circles.²³ Ms. Ríos further notes that this incident is her third encounter with the Carmine family; they also blocked her path to work and maliciously inflicted scratches on her car.²⁴

July 31, 2002: Protesters hurl insults toward and threaten to kill Mr. Bravo, Mr. Marcano, and Mr. Gutiérrez near the Supreme Court of Justice.²⁵ Protesters further attack the RCTV vehicles parked in the area, first by scratching them and then by breaking the cars' windows and puncturing the tires.²⁶ Later in the afternoon, protesters throw a teargas

17. Ríos et al. v. Venezuela, Petition to the Court, ¶ 212.

18. Ríos et al. v. Venezuela, Admissibility Report, ¶ 39.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

bomb inside a second RCTV vehicle, which ignites a fire.²⁷

August 14, 2002: Cameraman Antonio José Monroy is shot in the leg while covering a news story.²⁸ The hospital admits him for surgery, and he is unable to work for two weeks.²⁹

August 15, 2002: “Supporters of the President” assault and verbally abuse Mr. Pérez Hansen as he attempts to cover statements from the Vice President of the Republic.³⁰

December 4, 2002: “Supporters of the government” hurl death threats and insults at reporter Erika Paz and cameraman Samuel Sotomayor.³¹

August 14, 2003: “Supporters of the ruling party” arrive at RCTV headquarters, where they violently protest and write insults on the walls of the building.³²

August 21, 2003: A leader of the Bolivarian Circles verbally attacks reporter Noé Pernía while he attempts to cover a union protest led by employees of the Mayor’s Office of the Municipality of Libertador.³³

June 3, 2004: Protesters march toward the main entrance of the Metropolitan Mayor’s Office, where Mr. Pernía is covering a press conference.³⁴ The mob moves toward RCTV headquarters and proceeds to violently protest in front of the building.³⁵ They set fire to an RCTV vehicle and open fire on the building.³⁶ The attack lasts approximately one hour; the mob even fires shots at RCTV personnel who peer outside the headquarters’ windows.³⁷

27. *Id.*

28. Ríos v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 205, 208. Paragraph 205 of the Judgment states that Mr. Monroy is shot on August 15, 2002, but paragraph 208 states that Mr. Monroy is shot on August 15, 2002. The investigation in this case proved the events occurred on August 14, 2002. *Id.* n.190.

29. *Id.*

30. *Id.* ¶ 213.

31. *Id.* ¶ 222.

32. *Id.* ¶ 234.

33. *Id.* ¶ 242.

34. *Id.* ¶ 258.

35. *Id.*

36. *Id.*

37. *Id.*

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

January 29, 2002: Several RCTV and *Globovisión* employees request that the Commission adopt precautionary measures during their coverage of the Venezuelan president's Sunday program, "Aló Presidente."³⁸

January 30, 2002: The Commission adopts precautionary measures, requesting State protection for the reporters.³⁹ The Commission also requests that the State extensively investigate reported attacks upon media employees.⁴⁰ The Commission grants the State fifteen days to issue an update on the specific compliance actions taken in response to the request.⁴¹

May 30, 2002: Luisiana Ríos, Luis Augusto Contreras Alvarado, Eduardo Sapene Granier, Javier García, Isnardo Bravo, David Pérez Hansen, Wilmer Marcano, Winston Gutiérrez, Isabel Mavarez, and all employees of the RCTV television station ("the petitioners") present information stating that, despite the Commission's request for an investigation, the Public Prosecutor's Office did not act diligently, allowing an unreasonable amount of time to elapse.⁴² They further report that aggressions against reporters have risen since the Commission's initial precautionary measures.⁴³ The petitioners report that, due to the State's failure to enact adequate protective measures, RCTV took the initiative to protect its employees, including providing them with bulletproof vests, helmets and gas masks.⁴⁴ The State responds that the case of the RCTV reporters is "being investigated."⁴⁵

July 23, 2002: The Commission receives a petition on behalf of Ms.

38. Ríos et al. v. Venezuela, Admissibility Report, ¶ 11.

39. *Id.* ¶ 12.

40. *Id.*

41. *Id.*

42. *Id.* ¶ 14.

43. *Id.*

44. *Id.*

45. *Id.* ¶ 15.

Ríos, Mr. Contreras Alvarado, Mr. Granier, Mr. Garcia, Mr. Bravo, Mr. Hansen, Mr. Marcano, Mr. Gutiérrez, and Ms. Mavarez, all employees of RCTV.⁴⁶ The petition alleges that the State violated Article 5 (Right to Humane Treatment), Article 8 (Right to a Fair Trial), Article 13 (Freedom of Thought and Expression), and Article 25 (Right to Judicial Protection) of the American Convention.⁴⁷ The petitioners allege that official State policies violate their freedom of expression and personal integrity, leading to physical and verbal abuse as well as vandalism and destruction of property.⁴⁸ The petitioners further allege undue delay by the Attorney General's Office in carrying out necessary investigations, pursuing prosecution, and granting relief for the victims.⁴⁹

August 22, 2002: The petitioners submit another report, alleging that the State has failed to comply with the Commission's precautionary measures.⁵⁰ The petitioners also report new attacks on RCTV reporters and request that precautionary measures expressly protect these victims.⁵¹

September 16, 2002: The Commission forwards the petitioners' August 22, 2002 report to the State, requesting compliance with the precautionary measures of January 29, 2002, while broadening the measures to include coverage of the new RCTV victims.⁵²

November 27, 2002: The Commission requests provisional measures from the Court in light of the fact that precautionary measures did not produce the intended results and the attacks continued.⁵³ The Court grants the measures, requiring the State to adopt all protective measures necessary to protect the employees of RCTV.⁵⁴ The Court further requires the State to investigate all the reported facts in an expedient manner and punish the responsible parties.⁵⁵

The Commission files a brief before the Court pursuant to Articles 63(2) of the Convention and 74 of the Rules of Procedure of the Com-

46. *Id.* ¶ 1.

47. *Id.* ¶ 2.

48. *Id.* ¶ 3.

49. *Id.* ¶ 4.

50. *Id.* ¶ 17.

51. *Id.*

52. *Id.*

53. *Id.* ¶ 20.

54. *Id.*

55. *Id.*

mission, requesting Provisional Measures in favor of Ms. Ríos, Mr. Amaya, Mr. Monroy, Ms. Castellanos, and Mr. Uribe, all employees of RCTV.⁵⁶ In the brief, the Commission requests the Court to order the State to: (1) adopt necessary measures to protect the personal safety and freedom of expression demanded by the alleged victim employees of RCTV; (2) conduct a thorough investigation of the attacks upon the alleged victims; (3) adopt all necessary measures for government officials, authorities, and sympathizers to refrain from exacerbating aggression toward the alleged victims; (4) condemn aggressions toward employees of the media.⁵⁷ In response, the Court orders the State to expediently adopt all necessary measures to protect the life, liberty, and personal safety of the alleged victims.⁵⁸

December 12, 2002: The State reports that the Attorney General has commissioned two public prosecutors in the Caracas jurisdiction to handle the case, in compliance with the Court's request.⁵⁹

January 10, 2003: The State reports that the Ministry of the Interior and Justice had instructed the Directorate of Intelligence and Prevention Services, the Metropolitan Police, and the Libertador Municipal Police to provide the reporters with requested protection.⁶⁰

January 16, 2003: The Commission expresses concern over the State's failure to comply with the provisional measures and requests the Court to summon the parties for a hearing to assess the State's compliance.⁶¹

February 17, 2003: The Court holds a public hearing and decides that the State is not in compliance with provisional measures and must immediately comply.⁶²

February 20, 2003: The Court issues a new resolution, declaring that the State failed to effectively implement the required provisional

56. Ríos et al. v. Venezuela, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E), "Having Seen" ¶ 1 (Nov. 27, 2002).

57. *Id.*

58. *Id.* "Decides" ¶ 1.

59. Ríos et al. v. Venezuela, Admissibility Report, ¶ 21.

60. *Id.* ¶ 23.

61. *Id.* ¶ 24.

62. *Id.* ¶ 25; Ríos et al. v. Venezuela, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E), "Decides" ¶¶ 1–2 (Feb. 20, 2003).

measures.⁶³ The Court requires that the Commission and the State create a mechanism for coordinating and supervising the provisional measures no later than March 21, 2003.⁶⁴

March 13, 2003: The Commission sends a letter to the State to schedule the meeting establishing the coordination and supervision mechanism.⁶⁵ The Commission further reports that the State has delayed in investigating the attacks in violation of the provisional measures.⁶⁶

April 15, 2003: The Commission again requests the State to organize a meeting to establish and activate the coordination and supervision mechanism.⁶⁷

April 23, 2003: The State responds, stating that it is looking into a date.⁶⁸

June 19, 2003: The Commission again requests the State to organize a meeting regarding the coordination and supervision mechanism.⁶⁹

October 15, 2003: The Commission requests the State to outline steps taken by the Attorney General to address the petitioners' claims and to identify available, effective domestic remedies.⁷⁰

December 2, 2003: The Court issues a resolution stating that the State has not effectively implemented the required protections.⁷¹ Further, the Court notes that the State missed several deadlines and extensions.⁷² The Court subsequently decides in its resolution: (1) to reiterate the State's ineffective implementation of mandatory provisional measures; (2) to declare the State non-compliant with the American Convention; (3) to declare the State non-compliant with its obligations to the Court; (4) to report the State's non-compliance to the General Assembly of the Organization of American States should the State continue not to comply;

63. Ríos et al. v. Venezuela, Admissibility Report, ¶ 25.

64. *Id.*

65. *Id.* ¶ 28.

66. *Id.* ¶ 29.

67. *Id.* ¶ 31.

68. *Id.* ¶ 32.

69. *Id.* ¶ 35.

70. *Id.* ¶ 10.

71. *Id.*

72. *Id.*

(5) to remind the State of its obligation to expediently adopt necessary measures for the protection of the victims; (6) to remind the State that it must grant petitioners the ability to participate in the planning and implementation of protective measures as well as keep them informed on the progress of provisional measures; (7) to reiterate the State's investigatory and prosecutorial obligations; (8) to require the State to report on measures adopted in compliance with this resolution on or before January 7, 2004; (9) to request that the Commission send comments to the Court within fifteen days of notification of the State's report; (10) to request that the State continue reporting on its compliance of provisional measures to the Court every two months; and (11) to notify the State and Commission of this resolution.⁷³

February 27, 2004: The Commission approves Admissibility Report No. 06/04.⁷⁴

October 26, 2006: The Commission approves Report on the Merits No. 119/06.⁷⁵ The Commission determines that because the State had complete knowledge of the situation and was aware of the acts of violence on the streets and at the RCTV headquarters, the State failed to protect freedoms of expression.⁷⁶ Further, the Commission cites a lack of State diligence in investigating the attacks and harassment on RCTV employees, leading to violations by the State.⁷⁷ Specifically, the Commission claims that the State violated Article 5 (Right to Humane Treatment), Article 8 (Right to a Fair Trial), Article 13 (Freedom of Thought and Expression), and Article 25 (Right to Judicial Protection).⁷⁸ The Commission recommends that the State adopt measures to ensure the freedom of expression, carry out an independent investigation, ensure freedom of expression protections for the particular victims, and provide reparations.⁷⁹

B. Before the Court

April 20, 2007: The Commission submits the case to the Court after the

73. *Id.* ¶ 38; *see also* Ríos et al. v. Venezuela, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E), "Having Seen" ¶ 1 (Dec. 2, 2003).

74. Ríos et al. v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, ¶ 1.

75. *Id.*

76. *Id.* ¶ 112.

77. *Id.* ¶ 2.

78. *Id.* ¶ 3.

79. Ríos et al. v. Venezuela, Petition to the Court, ¶ 313.

State failed to adopt its recommendations.⁸⁰

1. Violations Alleged by Commission⁸¹

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁸²

Same Violations Alleged by Commission, additionally in relation to:

Article 2 (Domestic Legal Effects)

Article 7(b) (Right to Personal liberty) of the American Convention.

June 4, 2007: The Court receives a brief from eight people, seven of whom are alleged victims, dated May 29, 2007, requesting the adoption of provisional measures.⁸³ The brief alleges new facts had occurred, including a formal announcement of the closing of RCTV operations, enforced by the State.⁸⁴ The parties allege these acts imply a new failure of the State to comply with its international obligations.⁸⁵ They request that the Court order provisional measures allowing RCTV to continue normal operation.⁸⁶

June 14, 2007: The Court rules on the requests for provisional measures presented on June 4, 2007.⁸⁷ The Court reiterates that requests for provisional measures must directly relate to issues of serious gravity

80. Ríos v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

81. *Id.* ¶ 3.

82. *Id.* ¶ 4. Mr. Paulo Sergio Pinheiro, Messrs. Santiago A. Chacón, Ignacio J. Álvarez, Ms. Elizabeth Abi-Mershed, Débora Benchoam, Lilli Ching Soto, Silvia Serrano, Mr. Ariel E. Dulitzky, and Ms. Alejandra Gonza served as representatives of the victims.

83. Ríos et al. v. Venezuela, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E), “Having Seen” ¶ 1 (June 14, 2007).

84. *Id.* ¶ 7(b).

85. *Id.*

86. *Id.*

87. *Id.* ¶ 11.

involving an urgent need to protect persons from irreparable damage.⁸⁸ If the request does not involve irreparable harm, the Court must consider the case on the merits.⁸⁹ To be considered on its merits, the case must be presented to the Court for judgment rather than through a request for provisional measures.⁹⁰ Thus, the Court dismisses the request and requires that the State maintain the provisional measures already ordered.⁹¹

July 9, 2007: The State appoints Mr. Pier Paolo Pasceri Scaramuzza as judge *as hoc*.⁹²

September 21, 2007: The State raises preliminary objections.⁹³ First, the State argues that Judges Cecilia Medina Quiroga and Diego García-Sayán should not hear the case due to conflicts of interest.⁹⁴ The State contends that these judges have relationships with a non-governmental organization, and that an attorney of a victim is president of this organization.⁹⁵

Second, the State argues that the alleged victims have not exhausted domestic remedies.⁹⁶ The State contends that, by filing with the Public Prosecutor's Office for alleged violations of constitutional rights, the victims were subject to case processing in different phases that would be addressed by State courts.⁹⁷ The State specifically refers to remedies available for appeals, dismissing cases, and countering dismissals.⁹⁸ It claims that none of the alleged victims sought remedies.⁹⁹

Further, the State contends that in terms of the alleged verbal attacks and damage to property, the alleged victims should have filed their complaints directly with the civil trial courts, since the Public Prosecutor's Office could not prosecute or investigate the private claims.¹⁰⁰ The State argues that the alleged victims did not file any action within the State legal system with regard to official speeches

88. *Id.* ¶ 9.

89. *Id.* ¶ 10.

90. *Id.*

91. *Id.* ¶ 11.

92. *Id.* ¶ 7.

93. *Ríos et al. v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, ¶ 5.

94. *Id.* ¶ 30.

95. *Id.*

96. *See id.* ¶¶ 33–34.

97. *Id.* ¶ 33.

98. *Id.* ¶¶ 33–34.

99. *Id.*

100. *Id.* ¶ 34.

broadcasted pursuant to Article 192 of the Organic Law of Telecommunications.¹⁰¹ The State claims that the alleged victims had the right seek remedies in the domestic judicial system but failed to do so.¹⁰²

November 16, 2007: The Commission and representatives present their written arguments to the State's preliminary objections.¹⁰³

May 15 – June 6, 2008: The Netherlands Institute for Human Rights, the Institute for Democracy and Human Rights of the Pontifical University of Peru, the Legal Office of the Torcuato Di Tella University, and the Association for Civil Rights submit amicus curiae briefs.¹⁰⁴

July 2 – 15, 2008: The International Radio Broadcasting Association, the Inter-American Media Society, and the World Association of Newspapers (“Association Mondiale des Journaux”) submit amicus curiae briefs.¹⁰⁵

July 29 – August 5, 2008: The Venezuelan Chamber of the Broadcasting Industry, the Association of the Bar of the City of New York, the National Syndication of Media Employees, and the Broadcasting Association of Chile submit amicus curiae briefs.¹⁰⁶

August 7, 2008: The World Press Freedom Committee submits an amicus curiae brief.¹⁰⁷

September 2 – 5, 2008: The National Union of Employees of the Radio-Television Industry Coraven and the Center of Studies on Law, Justice, and Society both submit amicus curiae briefs.¹⁰⁸

101. *Id.*

102. *Id.*

103. *Id.* ¶ 9.

104. *Id.* ¶ 19.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

III. MERITS

A. *Composition of the Court*¹⁰⁹

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
Pier Paolo Pasceri Scaramuzza, Judge *Ad Hoc*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

January 28, 2009: The Court issued its Judgment on Preliminary Objections, Merits, Reparations and Costs.¹¹⁰

The Court rejected part of the State's two preliminary objections to the merits of the case, and accepted part of the preliminary objections.¹¹¹

Regarding the first preliminary objection, the Court considered the State's request—that Judges Cecilia Medina Quiroga and Diego García-Sayán be prevented from hearing the case due to an existing relationship between those judges and a non-governmental organization—inadmissible.¹¹² The State's request did not constitute a preliminary objection.¹¹³ The Court did, however, analyze Judge García-Sayán's request for self-disqualification due to the potential for a conflict of interest and accepted the Judge's request.¹¹⁴

Regarding the second preliminary objection, the Court acknowledged that a state, which files an objection based upon the failure to exhaust domestic remedies, must prove that its domestic remedies were availa-

109. Judge Diego García-Sayán recused himself due to a conflict of interest because of his relationship with a non-governmental organization. *Id.* ¶¶ 8, 30–32.

110. Ríos et al. v. Venezuela, Preliminary Objections, Merits, Reparations and Costs.

111. *Id.* ¶¶ 30–40.

112. *Id.* ¶ 32.

113. *Id.*

114. *Id.*

ble, adequate, ideal, and effective.¹¹⁵ The Commission requested from the State on October 15, 2003, a detailed report on the actions carried out by the Venezuelan Public Prosecutor's Office with regard to the criminal claims filed on behalf of the alleged victims, and asked the State to indicate the domestic remedies available to the complainants.¹¹⁶ The State did not respond to the request.¹¹⁷

The Court observed that the Commission considered the investigations unduly and unjustifiably delayed and that the exception to domestic exhaustion of remedies stipulated in subparagraph C of Article 46(2) of the American Convention could be applied.¹¹⁸ The Court added the State's objection to the merits of the case to examine each party's arguments.¹¹⁹

The Court found six votes to one that the State of Venezuela had violated:

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) of the Convention, to the detriment of Carlos Colmenares, Pedro Antonio Nikken García, Javier García Flores, Isnardo José Bravo, David José Pérez Hansen, Erika Paz, Luisiana Ríos Paiva, Armando Amaya, Isabel Cristina Mavarez Marin, and Antonio José Monroy,¹²⁰ because:

The Court found that the State did not adequately prevent, protect, and investigate the crimes committed against the victims, members of the press.¹²¹ Specifically, the victims were subject to attacks, threats, and harassment in the course of their journalistic duties.¹²² The Court found sufficient evidence of psychological damage based on RCTV's internal medical service, which received a significant number of the victims after April 2002 for medical assessments related to "stress, hypertension, and digestive problems."¹²³

115. *Id.* ¶ 37.

116. *Id.* ¶ 38.

117. *Id.*

118. *Id.* ¶ 39.

119. *Id.* ¶ 40.

120. *Id.* ¶ 416.

121. *Id.*

122. *Id.* ¶ 272.

123. *Id.*

The Court reasoned that the appropriate State response to acts of aggression against journalists would have been the public condemnation of those acts.¹²⁴ Here, instead, State authorities created, or at least contributed, to the exacerbation of public hostility, intolerance, and animosity toward employees in the communication and journalism fields.¹²⁵ As a result, the Court held that the State violated its obligation to ensure the right to mental and moral integrity of the previously mentioned victims under Article 5(1) (Right to Physical, Mental, and Moral Integrity).¹²⁶

Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas), in relation to Article 1(1) of the Convention, to the detriment of Antonio José Monroy, Armando Amaya, Carlos Colmenares, David José Pérez Hansen, Erika Paz, Isabel Cristina Mavarez, Isnardo José Bravo, Javier García Flores, Luisiana Ríos Paiva, Pedro Antonio Nikken García, Anahís del Carmen Cruz Finol, Argenis Uribe, Herbigio Antonio Henríquez Guevara, Laura Cecilia Castellanos Amarista, Luis Augusto Contreras Alvarado, Noé Pernía, Samuel Sotomayor, Wilmer Marcano, and Winston Francisco Gutiérrez Bastardo,¹²⁷ because:

The State did not adequately prevent, protect, and investigate the crimes committed against the alleged victims, members of the press.¹²⁸

The Court indicated that the State's responsibility may extend to acts committed by third parties, if the State does not comply, through act or omission, by the appropriate state agents who are entrusted with addressing the protection of human rights under Article 1(1).¹²⁹ The State is not, however, responsible for human rights violations committed by individuals.¹³⁰ The Court observed that acts of harassment and threats against the victims resulted from both acts and omissions of State officials and private individuals.¹³¹

Moreover, the Court concluded that the appropriate response of State authorities to acts of aggression against journalists would have been

124. *Id.* ¶ 142.

125. *Id.* ¶ 148.

126. *Id.* ¶ 273.

127. *Id.* ¶ 265.

128. *Id.* ¶ 416.

129. *Id.* ¶ 109.

130. *Id.* ¶ 110.

131. *Id.* ¶ 133.

the public condemnation of those acts.¹³² Here, instead, State authorities created, or at least contributed, to the exacerbation of public hostility, intolerance, and animosity toward employees in the communication and journalism fields.¹³³

Thus, the State violated its obligations under Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas) by failing to protect the press against harm when it was aware of the victims' vulnerability.¹³⁴ The State's failure to investigate the allegations, and unjustified delays in executing the victims' filed complaints,¹³⁵ constituted an ineffective means to ensure the rights guaranteed to the victim's under Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas).¹³⁶ The acts and omissions of the State were incompatible with its duties to guarantee the rights of its citizens the freedom to seek, receive, and impart information.¹³⁷

C. Dissenting and Concurring Opinions

1. Dissenting Opinion of Judge *Ad Hoc* Pasceri Scaramuzza

Judge Pasceri Scaramuzza dissented from the Court's majority for procedural and substantive reason.¹³⁸ Procedurally, Judge Scaramuzza believed that the State's objection based upon the non-exhaustion of domestic remedies should have been admitted.¹³⁹ The case should have been decided before State courts without a satisfactory outcome before the application was submitted before the Court.¹⁴⁰ There are domestic actions, petitions, and remedies that could have settled the claims; the petitioners did not resort to these methods before turning to the international arena.¹⁴¹ The State legal system possesses an appropriate action

132. *Id.* ¶ 142.

133. *Id.* ¶ 148.

134. *Id.* ¶ 149.

135. *Id.* ¶ 318. Specifically, the Court alluded to the Public Prosecutor's Office order to investigate the facts alleged, which occurred on May 2, 2002 and May 28, 2002 by the victims' complaint, more than two years after its initial filing. *Id.* Moreover, the State's investigative actions occurred more than six years after filing. *Id.*

136. *Id.* ¶ 331.

137. *Id.*

138. Ríos et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Dissenting Opinion of Judge Pasceri Scaramuzza, Inter-Am. Ct. H.R. (ser. C) No. 194, ¶ 1 (Jan. 28, 2009).

139. *Id.* at 1.

140. *Id.*

141. *Id.* at 2.

(i.e. *constitutional amparo*) for the protection of constitutional rights, similar to that of the American Convention on Human Rights.¹⁴² A decision of *amparo* had the potential to satisfy some or all of the complaints contained within the petition before the Court.¹⁴³ It is only upon the exhaustion of effective and satisfactory domestic remedies that parties may turn to the Inter-American system for protection.¹⁴⁴ The request should have, therefore, been declared inadmissible.¹⁴⁵

Additionally, Judge Scaramuzza argued that the dismissal of the State's preliminary objection to the victims' non-exhaustion of domestic remedies is inadequate because there is insufficient precedent for determining when to raise the objection.¹⁴⁶ Judge Scaramuzza indicated that the majority found it appropriate to raise the objection of non-exhaustion of domestic remedies prior the adoption of the Admissibility Report.¹⁴⁷ However, if the American Convention had attempted to create a restricted opportunity to raise the objection, this intention should have been expressly established.¹⁴⁸ Further, if a question of admissibility is decided before the Commission, Judge Scaramuzza explained, it should also be analyzed before the Court, as the Court functions as the judicial body.¹⁴⁹

Substantively, Judge Scaramuzza noted that the speeches made by public officials, which exposed the press to attacks and threats from supporters of the government, were not sufficient to prove that the acts or omissions of the State agents were a part of the State's policies.¹⁵⁰ The causal link between the damage allegedly suffered by the victims in some of the cases and the State's non-compliance with international law was weak or nonexistent.¹⁵¹

Further, even if there were indications of State responsibility, the instant case did not necessitate a special damage.¹⁵² This particular case is not abnormal, as delays and other judicial deficiencies are common in the State.¹⁵³ While Judge Scaramuzza did not make this point to justify the low functionality of the State judicial system, he stressed that this

142. *Id.* at 4.

143. *Id.*

144. *Id.* at 6.

145. *Id.*

146. *Id.* at 7.

147. *Id.* at 7–8.

148. *Id.* at 8.

149. *Id.* at 9.

150. *Id.* at 11–12.

151. *Id.* at 12.

152. *Id.* at 17.

153. *Id.*

was neither unusual nor special given the political and social climate in the State at the time.¹⁵⁴ The fact that the State suffered from a high level of internal conflict minimized its responsibility for delivering effective public utilities.¹⁵⁵ Overall, Judge Scaramuzza dissented and believed that the State system should have been afforded ample and fair opportunity to address the petitioners' complaints before the case was brought before the Court.¹⁵⁶

IV. REPARATIONS

A majority of the Court, six votes to one, ruled that the State had the following obligations:

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

1. Investigate Events and Punish Those Responsible

The State must open investigations into the events within a reasonable period of time and accordingly hold the perpetrators responsible as established by law.¹⁵⁷ The results of the investigations must be publicly accessible.¹⁵⁸

2. Publish the Judgment

The State must publish in a nationally circulated newspaper the above investigations, along with the State's acknowledgement of responsibility.¹⁵⁹ The operative paragraphs of the Judgment must be included in the publication.¹⁶⁰

3. Publicly Acknowledge International Responsibility

The State must publicly acknowledge its international responsibility and publicly condemn the categorical attacks upon the victims by

154. *Id.* at 17–18.

155. *Id.* at 18.

156. *Id.*

157. Ríos et al. v. Venezuela, Preliminary Objections, Merits, Reparations and Costs, ¶ 416.

158. *Id.* ¶ 401.

159. *Id.* ¶ 416.

160. *Id.*

publishing the Judgment in a newspaper with national circulation.¹⁶¹

4. Adopt Necessary Measures to Avoid Illegal Restriction of the Freedom of Speech

The State must adopt measures necessary to avoid the illegal restriction and hindrance of the freedom to seek, receive, and impart information.¹⁶² The State must guarantee fair and non-discriminatory access to the media without any arbitrary conditions.¹⁶³ The freedom of expression must be protected by any necessary additional legislative measures.¹⁶⁴

B. Compensation

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

[None]

3. Costs and Expenses

The Court ordered the State to pay \$10,000 in costs and expenses.¹⁶⁵

4. Total Compensation Ordered:

\$10,000¹⁶⁶

C. Deadlines

The reimbursement of expenses is to be paid directly to the victims or their legal representatives within one year¹⁶⁷ of notification of the

161. *Id.* ¶ 401.

162. *Id.* ¶ 416.

163. *Id.* ¶ 401.

164. *Id.*

165. *Id.* ¶ 409.

166. *Id.*

167. *Id.* ¶ 416.

Judgment.¹⁶⁸ If the beneficiaries of these funds are unable to receive the reimbursements within the allotted time, the State must deposit the funds in a State financial institution.¹⁶⁹ If the State fails to make timely payments, it must pay interest on the amount owed in accordance with State banking interest rates for late payments.¹⁷⁰

The Judgment must be published alongside the State's acknowledgement of responsibility in a nationally circulated newspaper within six months of the Judgment.¹⁷¹

Within one year of the notification of the Judgment, the State must provide the Court with an update on the progress of reparations.¹⁷² The case will be considered closed once the State has complied with all ordered reparations.¹⁷³

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

November 20, 2015: The Court found that the State failed to inform the Court of the measures taken to ensure compliance with the Judgment.¹⁷⁴

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[Ríos et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 194 \(Jan. 28, 2009\).](#)

2. Decisions on Merits, Reparations and Costs

168. *Id.* ¶ 410.

169. *Id.* ¶ 411.

170. *Id.* ¶ 414.

171. *Id.* ¶ 416.

172. *Id.*

173. *Id.*

174. Ríos et al. v. Venezuela, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Nov. 20, 2015).

[Ríos et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 194 \(Jan. 28, 2009\).](#)

[Ríos et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Dissenting Opinion of Judge *Ad Hoc* Pasceri Scaramuzza, Inter-Am. Ct. H.R. \(ser. C\) No. 194 \(Jan. 28, 2009\).](#)

3. Provisional Measures

[Ríos et al. v. Venezuela, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 27, 2002\).](#)

[Ríos et al. v. Venezuela, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 20, 2003\).](#)

[Ríos et al. v. Venezuela, Expansion of Urgent Matters, Order of the Court, Inter-Am. Ct. H.R. \(Oct. 2, 2003\).](#)

[Ríos et al. v. Venezuela, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 21, 2003\).](#)

[Ríos et al. v. Venezuela, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(Dec. 2, 2003\).](#)

[Ríos et al. v. Venezuela, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(May 4, 2004\) \(Available only in Spanish\).](#)

[Ríos et al. v. Venezuela, Expansion of Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(Sept. 8, 2004\).](#)

[Ríos et al. v. Venezuela, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(Sept. 12, 2005\) \(Available only in Spanish\).](#)

[Ríos et al. v. Venezuela, Provisional Measures Regarding Venezuela, Inter-Am. Ct. H.R. \(June 14, 2007\).](#)

[Ríos et al. v. Venezuela, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(July 3, 2007\).](#)

4. Compliance Monitoring

[Ríos et al. v. Venezuela, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., \(Nov. 20, 2015\) \(Available only in Spanish\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Ríos et al. v. Venezuela, Admissibility Report, Report No. 6/04, Inter-Am. Comm'n H.R., Petition No. 4109/2002 \(Feb. 27, 2004\).](#)

3. Provisional Measures

[None]

4. Report on Merits

Ríos et al. v. Venezuela, Report on Merits, Report No. 119/06, Inter-Am. Comm'n H.R., Case No. 12.441 (Oct. 26, 2006).

5. Application to the Court

[Ríos et al. v. Venezuela, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.441 \(Apr. 20, 2007\).](#)

VIII. BIBLIOGRAPHY

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