

San Miguel Sosa et al. v. Venezuela

ABSTRACT¹

This case is about the arbitrary dismissal of three employees of the National Border Council (Consejo Nacional de Fronteras CNF) of Venezuela who had signed a request to hold a referendum to recall President Hugo Chavez. Eventually, the Court found Venezuela in violation of several articles of the American Convention on Human Rights.

I. FACTS

A. Chronology of Events

December 6, 1998: Hugo Rafael Chávez Frías is elected President on a platform to implement political and economic reforms to address Venezuela's high rates of poverty, unemployment and inflation. As soon as he is in office, President Chávez pushes through the adoption of a new populist Constitution.

December 30, 1999: A new Venezuelan Political Constitution is enacted.² Articles 71 and 72 provide that all government offices filled by popular vote are subject to recall and established a process to that end.³ The revocation of a government official requires the approval by at least twenty percent of registered voters in a referendum.⁴

November 4, 2002: Venezuelan local organizations and political parties in opposition of the President call for a referendum to recall President Hugo Chávez.⁵ To build this campaign, organizers collect over two

1. Shannon Leap, Author; Adam Knighton, Editor; Elizabeth Russo, Chief IACHR Editor; Cesare Romano, Faculty Advisor

2. San Miguel Sosa v. Venezuela, Report on the Merits, Report No. 75/15, Inter-Am. Comm'n H.R., Case No. 12.923, ¶ 59 (Oct. 28, 2015).

3. *Id.* ¶ 59.

4. *Id.*

5. San Miguel Sosa v. Venezuela, Admissibility Report, Report No. 59/13, Inter-Am. Comm'n H.R. Pet. No. 212-13, ¶ 10 (July 16, 2013).

million petition signatures, which are turned over to the National Electoral Council (Consejo Nacional Electoral; CNE).⁶

November 29, 2002: In a nationally televised speech President Chávez states he will not resign under any circumstance.⁷

December 3, 2002: The CNE issues Resolution 021203-457 which calls all registered voters to participate in a consultative referendum, set for February 2, 2003, addressing President Chávez's revocation.⁸

December 30, 2002: Five members of the Fifth Republic Movement, a democratic socialist political party in support of President Chávez, petition to the Electoral Chamber of the Supreme Court of Justice for injunctive relief to stop Resolution 021203-457 from taking effect.⁹

January 22, 2003: The Electoral Chamber of the Supreme Court of Justice resolve the petition in favor of the Fifth Republic Movement and orders the CNE to suspend all electoral and referenda processes, including Resolution 021203-457.¹⁰

February 2, 2003: In view of the Electoral Chamber's ruling, local organizations and political parties in support of President Chávez's revocation launch a new signature collection campaign, commonly known as "El Firmazo" (the Big Signature Drive).¹¹ The drive collects signatures to convene a recall referendum of the Presidential term, instead of the original ballot referendum question regarding the President's term.¹²

August 20, 2003: Organizers submit more than 3 million signatures supporting the recall referendum to the CNE.¹³

September 12, 2003: The CNE finds the petition signatures inadmissible due to untimely filing.¹⁴ The CNE has more than thirty requirements for

6. *Id.* ¶ 10.

7. San Miguel Sosa v. Venezuela, Report on the Merits, ¶ 61.

8. *Id.* ¶ 62.

9. *Id.* ¶ 63.

10. *Id.* ¶ 64.

11. San Miguel Sosa v. Venezuela, Admissibility Report, ¶ 11.

12. *Id.*

13. *Id.* 009.

14. *Id.*

recalling a presidential term in office.¹⁵ The CNE issues regulations that establishes its power to publish these signatures.¹⁶

November 28 – December 1, 2003: The CNE establishes a new period for organizers to collect petition signatures.¹⁷ This new petition drive is known as “El Reafirmazo,” (The Big Reaffirmation).¹⁸ In the weeks leading up to the drive, and during the drive itself, the President and other government leaders make threatening public statements to intimidate and discourage citizens from participating in the signature drive.¹⁹

December 2, 2003: The Ministry of Infrastructure announces that it will make the signatures collected during El Reafirmazo public and post them in the collection centers in order for Venezuelan citizens to verify the signatures.²⁰

December 19, 2003: The signatures collected in El Reafirmazo are submitted to the CNE.²¹

January 30, 2004: President Chávez requests the original petitions and signatures from the CNE to be given to Congressman Luis Tascón.²² President Chávez files this request before the CNE is able to validate the signatures that the opposition had submitted.²³

February 1, 2004: The CNE authorizes the Maisanta Campaign Office, a group that Congressman Tascón represents, to photocopy all signature sheets that the opposition party submitted supporting the referendum on the recall of the President’s term.²⁴ This is known as the “Tascón List.”²⁵

When the opposition party hands over their collected signatures, the CNE and other government agencies propose to launch a procedure by which each petition signature can be validated or withdrawn.²⁶ At the

15. *Id.*

16. *San Miguel Sosa v. Venezuela, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (Ser. C) No. 348, ¶ 51 (Feb. 8, 2018).*

17. *San Miguel Sosa v. Venezuela, Admissibility Report, ¶ 12.*

18. *Id.* ¶ 12.

19. *Id.*

20. *Id.* ¶ 13.

21. *Id.*

22. *Id.* ¶ 14.

23. *San Miguel Sosa v. Venezuela, Admissibility Report, ¶ 14.*

24. *Id.*

25. *Id.*

26. *Id.*

same time, the CNE accuses the opposition of fraudulent signature collections.²⁷

February 15, 2004: On his Sunday television program, the President urges the country to visit the website that posted the “Tascón List,” where everyone could see who signed the petition to recall his term.²⁸ Individual signers can be found using the site’s search tool. The website includes also a form for viewers to make corrections and a hotline to report improper inclusion of names.²⁹ The site also accuses the signers of fraud and treason.³⁰ As a result, public employees begin to feel pressure to remove their signatures from the list.³¹ Over one million signatures are challenged through this process.³²

March 20, 2004: The Ministry of Health issues a statement saying “signing against Chávez is an act of terrorism” and that “a traitor cannot be in positions of trust and that however many people as may be necessary, those who have signed, are out.”³³

March 22, 2004: The Chairman of the National Border Council (Consejo Nacional de Fronteras CNF) terminates Ms. Rocío San Miguel Sosa, Ms. Magally Chang Girón and Ms. Thais Coromoto Peña’s employment contracts.³⁴ Ms. San Miguel Sosa has worked with the government for thirteen years, seven of which with the CNF.³⁵ Ms. Chang Girón has worked for the CNF for six years, and Ms. Coromoto Peña has worked for the government twenty years, nine of which with the CNF.³⁶

March 29, 2004: The Ministry of Foreign Relations announces to the media that “it found it logical that an official holding a position of trust that has signed against Hugo Chávez makes his or her position available [to others]; otherwise, he or she will be transferred to other duties within the Ministry of Foreign Relations. He or she will not be dismissed, but

27. *Id.*

28. *Id.* ¶ 15.

29. San Miguel Sosa v. Venezuela, Admissibility Report ¶ 15.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* ¶ 16.

34. *Id.* ¶ 9.

35. San Miguel Sosa v. Venezuela, Admissibility Report, ¶ 8.

36. *Id.*

will no longer be able to be a close collaborator.”³⁷ Throughout March 2004, the media reports many complaints of political discrimination.³⁸

It is within this context that Ms. San Miguel Sosa, Ms. Chang Girón, and Ms. Coromoto Peña’s contracts with the CNF are terminated.³⁹ The CNF only terminates the employment contracts of employees whose names appear as signatories on the referendum petition.⁴⁰

Although the notification of termination does not state a particular reason for the termination, the CNF’s Executive Secretary orally informs each petitioner, in private, that they are being dismissed because they signed the recall petition.⁴¹

Ms. Coromoto Peña is told that her dismissal will be vacated if she disavows her signature on the CNE’s “day of challenge”.⁴²

April 20, 2004: The CNE Chairman announces that over one million signatures will be challenged and the signers can retract their signatures on the “day of challenge.”⁴³

May 27, 2004: The alleged victims file a criminal complaint with Venezuela’s Attorney General citing political discrimination as the driving force behind their terminations.⁴⁴ They also report these facts to the Office of the People’s Ombudsman.⁴⁵

June 27, 2004: The Day of Challenge is held. Ms. San Miguel Sosa validates her signature on this day, despite it previously being challenged.⁴⁶

June 29, 2004: The Office of the People’s Ombudsman opens an official investigation.⁴⁷

July 7, 2004: The lead Prosecutor’s office opens a criminal investigation into the matter.⁴⁸

37. *Id.* ¶ 16.

38. *Id.*

39. *Id.* ¶ 17.

40. *Id.* ¶¶ 17, 18.

41. San Miguel Sosa v. Venezuela, Admissibility Report, ¶ 18.

42. *Id.*

43. *Id.* ¶ 19.

44. *Id.* ¶ 23.

45. *Id.* ¶ 24.

46. *Id.* ¶ 1.

47. San Miguel Sosa v. Venezuela, Admissibility Report, ¶ 24.

48. *Id.* ¶ 23.

July 22, 2004: The alleged victims file an amparo appeal petitioning for constitutional relief with the Labor Circuit Court of the Judicial District of the Metropolitan Area of Caracas' Fourth Trial Court.⁴⁹

August 7, 2004: The Office of the People's Ombudsman officially closes their investigation into petitioners' complaint.⁵⁰ This terminates the case file processing and orders it to be archived.⁵¹

August 15, 2004 – December 31, 2004: The referendum to Recall the President is held on August 15, 2004. Ms. San Miguel Sosa, Ms. Chang Girón, and Ms. Coromoto Peña vote in the referendum.⁵² Following the referendum, the signers of the petition are retaliated against.⁵³ By the end of 2004, Ms. San Miguel Sosa is expelled from her professorship position at the Advanced Naval War School and the Advanced Air Force Academy.⁵⁴

January 21, 2005: The Prosecutor moves to dismiss the case, claiming that, under Venezuelan criminal law, the incidents recorded in the complaint do not rise to the level of criminal offenses.⁵⁵

April 4, 2005: Control Court 21 of the Metropolitan Area of Caracas' Criminal Judicial Circuit dismisses the charges because the facts do not suggest criminal offenses under Venezuelan law.⁵⁶

April 15, 2005: President Hugo Chávez issues a public order to "bury" Congressman Luis Tascón's list.⁵⁷

In their domestic case, the alleged victims appeal the Criminal Court's decision to dismiss their case, arguing that the facts they allege in their complaint constitute criminal offenses set forth in Articles 166, 175, 203, 254, 286 of the Criminal Code, Article 256 of the Organic Law of Voting and Political Participation, and Article 68 of the Law Against Corruption.⁵⁸

49. *Id.* ¶ 25.

50. *Id.* ¶ 24.

51. *Id.*

52. *Id.* ¶ 19.

53. San Miguel Sosa v. Venezuela, Admissibility Report, ¶ 19.

54. *Id.* ¶ 20.

55. *Id.* ¶ 23.

56. *Id.*

57. *Id.* ¶ 21.

58. *Id.* ¶ 23.

April 26, 2005: Attorney General responds to the May 27, 2004 criminal complaint and assigns the Caracas Prosecutor to investigate the political discrimination complaints.⁵⁹ Although the alleged victims file a complaint regarding the political discrimination, the Prosecutor never calls them to pursue the investigation.⁶⁰ These are all political corruption, abuse of power, and conspiracy crimes.⁶¹

May 12, 2005: Venezuelan Appellate Court upholds the case's dismissal because the investigated facts are not punishable offenses.⁶²

July 7, 2005: Petitioners file an appeal with the Supreme Court, asking it to overturn the appellate decision to dismiss.⁶³

July 27, 2005: The Labor Circuit Court of the Judicial District of the Metropolitan Area of Caracas' Fourth Trial Court rules on the July 22, 2004 petition finding the alleged victim's claims meritless.⁶⁴

September 9, 2005: The Labor Circuit Court of the Judicial District of the Metropolitan Area of Caracas' Third Superior Court upholds the Fourth Trial Court's July 27, 2005 judgment which found the alleged victim's claims meritless.⁶⁵

September 27, 2005: The Supreme Court dismisses the May 24, 2004 criminal complaint and terminates the investigation into the political discrimination of the alleged victims.⁶⁶

B. Other Relevant Facts

[NONE]

II. PROCEDURAL HISTORY

A. Before the Commission

59. San Miguel Sosa v. Venezuela, Admissibility Report, ¶ 21.

60. *Id.*

61. *Id.* ¶ 23.

62. *Id.* ¶ 24.

63. *Id.* ¶ 23.

64. San Miguel Sosa v. Venezuela, Report on the Merits, ¶ 21.

65. *Id.*

66. *Id.* ¶ 23.

March 7, 2006: Ms. Ligia Bolívar Osuna and Héctor Faúndez Ledesma lodge a complaint with the Inter-American Commission on Human Rights on behalf of Ms. San Miguel Sosa, Ms. Chang Girón, and Ms. Coromoto Peña (hereinafter, the “alleged victims”).⁶⁷ The complaint alleges that the Bolivarian Republic of Venezuela (hereinafter, “the State”) violated Articles 5 (Right to Humane Treatment, 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression), 16 (Freedom of Association), 23 (Right to Participate in Government), 24 (Right to Equal Protection), 25 (Right to Judicial Protection), 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) of the Convention.⁶⁸ These alleged violations are all in relation to Articles 1(1) (Obligation of Non-Discrimination), 2 (Obligation to Give Domestic Legal Effect to Rights), and 29 (Interpretation of the Convention) of the Convention.⁶⁹

The State moves for the petition to be found inadmissible.⁷⁰ It argues that the alleged victims used an inappropriate proceeding in the amparo appeal for a constitutional remedy, rather than filing their case in a trial-level labor court.⁷¹ The State therefore argues that the alleged victims have not exhausted the appropriate remedy to restore their allegedly violated rights.⁷²

July 16, 2013: The Commission approves Report of Admissibility 59/13.⁷³ IT concludes that it has jurisdiction to hear the alleged victims’ claims arising from violations of Articles 5, 8, 13, 16, 23, 24, 25, 26, 46, and 47 of the American Convention, in conjunction with Articles 1.1 and 2.⁷⁴ The parties are notified and the Admissibility Report is published.⁷⁵

October 28, 2015: The Commission approves the Merits Report, finding the State is responsible for violating the rights provided in Article 23 (Right to Participate in Government), Article 13 (Freedom of Thought and Expression), Article 24 (Right to Equal Protection), Article 8 (Right to a Fair Trial), and Article 25 (Right to Judicial Protection) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention.⁷⁶

67. San Miguel Sosa v. Venezuela, Admissibility Report, ¶ 1.

68. *Id.*

69. *Id.*

70. *Id.* ¶ 3.

71. *Id.*

72. *Id.*

73. San Miguel Sosa v. Venezuela, Merits, Reparations, and Costs, ¶ 2.

74. San Miguel Sosa v. Venezuela, Admissibility Report, ¶ 4.

75. *Id.*

76. San Miguel Sosa v. Venezuela, Merits, Reparations, and Costs, ¶ 2.

In light of the foregoing violations, the Commission recommends the State: (1) restore the victims' employment in the same position they would occupy otherwise and financially compensate the victims for lost wages, independent of reparations; (2) compensate the victims for the declared human rights violations; (3) conduct the investigation, trial, and other criminal or administrative procedures related to these violations within a reasonable amount of time; (4) adopt preventative measures to ensure similar violations cannot reoccur in the future.⁷⁷

December 8, 2015: The Commission notifies the State of the Merits Report and grants a two-month period for the state to report on its compliance with the above recommendations.⁷⁸ Upon the Commission's submission of the case to the Court, the State has not yet responded to this notification.⁷⁹

B. Before the Court

March 8, 2016: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁸⁰

1. Violations Alleged by Commission⁸¹

Article 8 (Right to a Fair Trial)

Article 13 (Freedom of Thought and Expression)

Article 23 (Right to Participate in Government)

Article 24 (Right to Equal Protection)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1.1 (Obligation of Non-Discrimination) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁸²

77. San Miguel Sosa v. Venezuela, Report on the Merits, Report No. 75/15, Inter-Am. Comm'n H.R., Case No. 12.923, ¶ 208. (Oct. 28, 2015).

78. San Miguel Sosa v. Venezuela, Merits, Reparations, and Costs, ¶ 2.

79. *Id.*

80. *Id.*

81. *Id.*

82. San Miguel Sosa v. Venezuela, Admissibility Report, ¶ 4. Ms. Ligia Bolívar Osuna and Mr. Héctor Faúndez Ledesma served as representatives of Ms. Rocío San Miguel Sosa, Ms. Magally Chang Girón, and Ms. Thais Coromoto Peña.

Same Violations Alleged by Commission, plus:

Article 5 (Right to Humane Treatment)

Article 16 (Freedom of Association)

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) and

Article 29 (Interpretation of the Convention) of the American Convention.

December 20, 2016 – February 14, 2017: Human Rights Watch, the Ibero-American Observatory of Democracy, and the Litigation Group of Public Interest Law of the Universidad del Norte in Barranquilla, Colombia submit *amicus curiae* briefs to the Court.⁸³

III. MERITS

A. Composition of the Court

Eduardo Ferrer Mac-Gregor Poisot, President

Eduardo Vio Grossi, Vice-President

Roberto F. Caldas, Judge

Humberto Antonio Sierra Porto, Judge

Elizabeth Odio Benito, Judge

Eugenio Raúl Zaffaroni, Judge

L. Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary

Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

February 8, 2010: The Court issues its Judgment on Merits, Reparations, and Costs.⁸⁴

The Court found unanimously that Venezuela had violated:

83. *San Miguel Sosa v. Venezuela*, Merits, Reparations, and Costs, ¶ 8.

84. *Id.* ¶ 1.

Article 23(1)(b) (Right to Elect and Be Elected), Article 23(1)(c) (Right to Have Access to Public Service), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Ms. San Miguel Sosa, Ms. Chang Girón, and Ms. Coromoto Peña,⁸⁵ because:

The Court concluded that the State denied victims their right to political participation when President Chávez requested and publicly published the signatures on the Tascón List.⁸⁶ The Court pointed to the State's particular intolerance of political participation and dissent in Venezuela at the time as critical context to finding the State's violation.⁸⁷ This environment invited retaliation against those on the list, which took the form of terminating the victims' employment contracts.⁸⁸

Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal) and Article 25(1) (Right of Recourse Before a Competent Court) in relation to Article 1(1) of the Convention, to the detriment of Ms. San Miguel Sosa, Ms. Chang Girón, and Ms. Coromoto Peña,⁸⁹ because:

The right to be heard, enshrined in the Convention, requires that parties have access to judicial proceedings, without undue delay or obstacles.⁹⁰ The State did not comply with the judicial guarantees because the domestic courts did not sufficiently evaluate the facts of the parties' allegations and did not consider all evidence, nor did they pursue procedural avenues that could illuminate the whether the State acted with discriminatory intent when it terminated the alleged victims' contracts.⁹¹ The appellate courts did not guarantee judicial protection for the alleged victims.⁹²

The State has an obligation to provide a judicial remedy for acts that violate individuals' fundamental rights.⁹³ The Court analyzed this violation for the States denial of the victims' amparo constitutional

85. *Id.* "Resolution Points," ¶ 1.

86. *Id.* ¶¶ 128-131.

87. *Id.* ¶¶ 130-131.

88. *Id.* ¶ 151.

89. *San Miguel Sosa v. Venezuela, Merits, Reparations, and Costs*, "Resolution Points," ¶ 3.

90. *Id.* ¶ 188.

91. *Id.* ¶¶ 189, 193.

92. *Id.* ¶ 191.

93. *Id.* ¶ 180.

*claim.*⁹⁴ *In regards to the amparo action, the Court concluded that the State's denial to hear the evidence supporting the claim misunderstood the nature of and restricted the scope of the action and therefore remedy.*⁹⁵ *By denying this right, the State denied the victims' access to justice, due process, and rights to know the truth, enshrined in Article 25.*⁹⁶

The Court found by six votes against one that Venezuela had violated:

Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas) in relation to Article 1(1) (Obligation of Non-Discrimination) of the convention to the detriment of Ms. San Miguel Sosa, Ms. Chang Girón, and Ms. Coromoto Peña,⁹⁷ because:

*In a broad sense, signing a referendum is a form of political expression due to the fact that it is a prerequisite for initiating democratic debate on a matter of public importance.*⁹⁸ *Article 13(1) provides that freedom of expression is protected through "any procedure of your choice," and because the signature is a de facto expression of opinion, it qualifies under this article.*⁹⁹ *When the victims were discriminated against because of this political expression, the result was a restriction on their freedom of expression and therefore a violation of Article 13(1).*¹⁰⁰

The Court found by five votes against two that Venezuela had violated:

Articles 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights), 23(1) (Right to Participate in Conduct of Public Affairs), 13(1) (Right to Seek, Receive, and Impart Information and Ideas of All Kinds), 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal), 25(1) (Right of Recourse Before a Competent Court), and 1(1) (Obligation to Respect Rights),¹⁰¹ because: *The State's arbitrary termination of the victims' employment constituted an abuse of power and political intimidation.*¹⁰² *This termination was an*

94. *Id.* ¶ 178.

95. *San Miguel Sosa v. Venezuela, Merits, Reparations, and Costs*, ¶ 189.

96. *Id.*

97. *Id.* "Resolution Points," ¶ 2.

98. *Id.* ¶ 157.

99. *Id.*

100. *Id.* ¶ 158.

101. *San Miguel Sosa v. Venezuela, Merits, Reparations, and Costs*, "Resolution Points," ¶ 4.

102. *Id.* ¶ 221.

act of retaliation against the victims for exercising their right to political participation.¹⁰³ Such termination was designed to punish and silence the victims as well as deter other possible dissenters from exercising their rights to expression.¹⁰⁴

When the victims sought redress for these harms in the State's domestic courts, the State also denied their access to a competent judicial forum in violation of Article 8.1 of the Convention.¹⁰⁵ The State argued the termination was solely a labor or employment legal matter, rather than a constitutional rights matter, and therefore denied the victims their right to access judicial remedies.¹⁰⁶ The Court found that the right to work "implies the right not to be unfairly deprived of a job," and therefore has an obligation to protect workers from unfair dismissals.¹⁰⁷

The Court found unanimously that Venezuela had not violated:

Article 24 (Right to Equal Protection) of the Convention,¹⁰⁸ because:

The victims' claims of discrimination was sufficiently analyzed under Articles 23 and 13 of the Convention and therefore it was not necessary to analyze such discrimination through Article 24 of the Convention.¹⁰⁹

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention,¹¹⁰ because:

The Commission and Representatives failed to state which steps the State allegedly failed to adopt in particular.¹¹¹ Therefore, the Court held that the victims' had not met the required elements sufficiently to analyze under this Article.¹¹²

103. *Id.* ¶ 220.

104. *Id.*

105. *Id.*

106. *Id.* "Resolution Points," ¶ 5.

107. *San Miguel Sosa v. Venezuela, Merits, Reparations, and Costs*, ¶ 220.

108. *Id.* ¶ 257.

109. *Id.* ¶ 165.

110. *Id.* "Resolution Points" ¶ 6.

111. *Id.* ¶ 166.

112. *Id.* ¶ 167.

Articles 5(1) (Right to Physical, Mental, and Moral Integrity), and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) of the Convention,¹¹³ because:

The violation of right to personal integrity is typically applied in the context of torture or cruel, unusual, and inhumane treatment.¹¹⁴ The victims did not allege any damage to their physical or mental health.¹¹⁵ The Court held that the facts of this case do not meet these standards and therefore found it inappropriate to analyze this violation for this case.¹¹⁶

The Court found by five votes against two that Venezuela had not violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention,¹¹⁷ because:

General allegations that imply a lack of impartiality require concrete facts in order to find a violation.¹¹⁸ The Court did not find sufficient facts, as alleged, to find a violation of this Article.¹¹⁹

C. Dissenting and Concurring Opinions

1. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto

In a separate opinion, Judge Humberto Antonio Sierra Porto agreed with the Court's decision that the State's violated of Article 13 (right to freedom of thought and expression).¹²⁰ However, in analyzing the State's retaliation against the victims for their vote under Article 13, the Court confused the issues, according to Judge Humberto Antonio Sierra Porto.¹²¹ He argued that making the victims' votes regarding the recall and referendum public did not violate their right to freedom of thought

113. San Miguel Sosa v. Venezuela, Merits, Reparations, and Costs, "Resolution Points," ¶ 8.

114. *Id.* ¶ 170.

115. *Id.* ¶ 172.

116. *Id.* ¶ 171.

117. *Id.* "Resolution Points," ¶ 7.

118. *Id.* ¶ 208.

119. San Miguel Sosa v. Venezuela, Merits, Reparations, and Costs, ¶ 210.

120. San Miguel Sosa v. Venezuela, Venezuela, Merits, Reparations, and Costs, Judgement, Partially Dissenting Vote of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (ser. C), No. 348, ¶ 3 (Feb. 8, 2018).

121. *Id.* ¶ 4.

and expression.¹²² Instead, he argued that the Court should have analyzed this issue in the context of Article 23 (right to participate in government).¹²³

In addition, he held that the majority incorrectly ruled that the State violated Article 26 (right to work) for three reasons.¹²⁴ First, the Commission declined to hear the allegations when petitioners raised them during processing before the Commission because the alleged facts were insufficient to support a finding that the State violated Article 26.¹²⁵ Second, the fact that the victims were fired does not equate to the violation of a right to work.¹²⁶ Third, the Court strayed from its purpose to administer justice when it conflated the law in its decision on this violation.¹²⁷

2. Partially Dissenting Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Eduardo Vio Grossi argued that the Court should not have considered the Article 26 (right to work) violations because the Court only has jurisdiction over rights “recognized” in the Convention, and Article 26 protects rights that “derive from economic, social, and education, scientific, and cultural norms contained in the Charter of the Organization of the American States.”¹²⁸ He argued that the Court does not have jurisdiction over these violations.¹²⁹

Additionally, Judge Eduardo Vio Grossi disagreed with the Court’s finding the State violated the victims’ right to judicial guarantees because the Court’s judgement misaligned with the facts corresponding to the claims.¹³⁰

3. Concurring and Partially Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot

122. *Id.*

123. *Id.* ¶ 13.

124. *Id.* ¶ 16.

125. *San Miguel Sosa v. Venezuela, Venezuela, Merits, Reparations, and Costs, Judgement, Partially Dissenting Vote of Judge Humberto Antonio Sierra Porto*, ¶ 18.

126. *Id.* ¶ 19.

127. *Id.* ¶ 20.

128. *San Miguel Sosa v. Venezuela, Venezuela, Merits, Reparations, and Costs, Judgement, Partially Dissenting Vote of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C), No. 348, 2 (Feb. 8, 2018).*

129. *Id.* ¶ 3.

130. *Id.* ¶¶ 5-13.

In a separate opinion, Judge Eduardo Ferrer Mac-Gregor Poisot concurred with the majority ruling on the victims' right to work, despite the representatives not directly alleging such violation.¹³¹ He elaborated upon the reasoning guiding the Court's finding that the right to work is a conventionally protected right.¹³² He clarified that the Court protects the right to work and access to judicial remedies, regardless of employer contracts and the possibility of job instability.¹³³ He also reiterated the importance of affirming that the State cannot punish or discriminate against its workers who express their political opinion.¹³⁴

Additionally, Judge Eduardo Ferrer Mac-Gregor Poisot disagreed with the Court's ruling that the victims' did not allege sufficient elements to declare a violation of the right to be heard before an independent tribunal.¹³⁵ He argued that the Court should have considered the case a violation of Article 25 (Right to Judicial Protection) of the American Convention.¹³⁶

IV. REPARATIONS

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

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

1. Judgement as a Form of Reparation

The Court indicated that the Judgement itself was a form of reparation.¹³⁷

2. Adopt Measures to Prevent Deviation of Power

131. *San Miguel Sosa v. Venezuela, Venezuela, Merits, Reparations, and Costs, Judgement, Concurring and Partially Dissenting Vote of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C), No. 348, ¶ 3-4 (Feb. 8, 2018).*

132. *Id.* ¶ 34.

133. *Id.* ¶ 35.

134. *Id.*

135. *Id.* ¶ 48.

136. *Id.* ¶ 58.

137. *San Miguel Sosa v. Venezuela, Merits, Reparations, and Costs, "Declares" ¶ 9.*

The Court ordered the State to undertake investigations and identify, prosecute and punish those found responsible for the deviation of power described in this case.¹³⁸

3. Publish the Judgement

The Court ordered the State to publish the Court's Official Summary of the Judgement in the official gazette and in a nationally-circulated newspaper.¹³⁹ Additionally, the Court ordered the State to publish the entire judgement on its official website, accessible from the homepage of the website, and for one year.¹⁴⁰ The State must complete this reparation within six months of its notification of the Court's judgement and notify the Court when it makes these publications.¹⁴¹

4. Report Compliance

5.

The State must take measures to comply with the judgement and submit a report to the Court within one year from the notification of the Judgement.¹⁴²

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$65,000 to Ms. San Miguel Sosa, \$40,000 to Ms. Chang Girón, and \$30,000 to Ms. Coromoto Peña as compensation for lost wages following their termination.¹⁴³

2. Non-Pecuniary Damages

The Court awarded \$10,000 to each of the victims: Ms. San Miguel Sosa, Ms. Chang Girón, and Ms. Coromoto Peña as compensation for the collateral consequences of their termination.¹⁴⁴ These included impacts to

138. *Id.* ¶ 232.

139. *Id.* ¶ 233.

140. *Id.*

141. *Id.* ¶¶ 233-234.

142. *Id.* "Resolution Points," ¶ 13.

143. *San Miguel Sosa v. Venezuela, Merits, Reparations, and Costs*, ¶ 238.

144. *Id.* ¶ 240.

their psychological and physical health; economic, social, family, and interpersonal instability resulting from unemployment; and the impacts on re-establishing a professional life.¹⁴⁵

3. Costs and Expenses

The Court awarded \$20,000 to the representatives of Ms. San Miguel Sosa, Ms. Chang Girón, and Ms. Coromoto Peña for litigation costs and expenses.¹⁴⁶

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

\$ 185,000

C. Deadlines

The State must complete all reparations within one year from the Court's notification of its judgement.¹⁴⁷

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

145. *Id.*

146. *Id.* ¶ 250.

147. *Id.* ¶¶ 233-234, 251.

[San Miguel Sosa v. Venezuela, Merits, Reparations, and Judgement, Inter-Am. Ct. H.R. \(Ser. C\) No. 348 \(Feb. 8, 2018\).](#)

Costs,

3. Concurring and Partially Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot:

[San Miguel Sosa v. Venezuela, Venezuela, Merits, Reparations, and Costs, Judgement, Concurring and Partially Dissenting Vote of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. \(ser. C\), No. 348 \(Feb. 8, 2018\).](#)

4. Dissenting Opinion of Judge Humberto Antonio Sierra Porto:

[San Miguel Sosa v. Venezuela, Venezuela, Merits, Reparations, and Costs, Judgement, Partially Dissenting Vote of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. \(ser. C\), No. 348 \(Feb. 8, 2018\).](#)

5. Dissenting Opinion of Judge Eduardo Vio Grossi:

[San Miguel Sosa v. Venezuela, Venezuela, Merits, Reparations, and Costs, Judgement, Partially Dissenting Vote of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. \(ser. C\), No. 348 \(Feb. 8, 2018\).](#)

6. Provisional Measures

[San Miguel Sosa v. Venezuela, Order of the President, Inter Am. Ct. H.R. \(Ser. E\) \(Dec. 20, 2016\).](#)

[San Miguel Sosa v. Venezuela, Order of the President, Inter Am. Ct. H.R. \(Ser. E\) \(Feb. 6, 2017\).](#)

[San Miguel Sosa v. Venezuela, Order of the President, Inter Am. Ct. H.R. \(Ser. E\) \(May 18, 2017\).](#)

7. Compliance Monitoring

[None]

8. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[San Miguel Sosa v. Venezuela, Admissibility Report, Report No. 59/13, Inter-Am. Comm'n H.R. Pet. No. 212-13 \(July 16, 2013\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[San Miguel Sosa v. Venezuela, Report on the Merits, Report No. 75/15, Inter-Am. Comm'n H.R., Case No. 12.923 \(Oct. 28, 2015\).](#)

5. Application to the Court

[None]

VIII. BIBLIOGRAPHY

[None]