

San Miguel Sosa et al. v. Venezuela

ABSTRACT¹

This case is about the termination from employment of three civil servants because they had signed the petition to recall President Hugo Chavez in 2003. The Court found a violation of several articles of the American Convention, including Article 23(1)(b) (Right to Elect and Be Elected) and Article 23(1)(c) (Right to Have Access to Public Service), Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas) and Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights).

I. FACTS

A. Chronology of Events

August 2002: After experiencing a year-long institutional and political crisis, opposition political parties and civil society organizations launch a nationwide campaign to demand the resignation of President Hugo Chávez Frías.² Under the Constitution, the President could be removed from office before the term expires through a recall election, which is triggered by a submission of signatures of at least 10 percent of registered voters.³

November 4, 2002: Opposition organizations deliver to the National Electoral Council (*Consejo Nacional Electoral*, “CNE”) over two million signatures requesting President Chávez’s resignation.⁴

December 3, 2002: The CNE approves the petition and calls for a national consultative referendum to be held on February 2, 2003.⁵

1. Laura Leonardi Rodi, Author; Kaylie O’Connor, Editor; Gabrielle Szlachta-McGinn, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 348, ¶ 41-42 (Feb. 8, 2018).

3. *Id.* ¶ 41 n. 57.

4. *Id.* ¶ 42.

5. *Id.* ¶ 44.

January 22, 2003: The Acting Chamber for Electoral Matters of the Supreme Court of Justice (*Tribunal Supremo de Justicia*, “TSJ”) calls off the referendum and orders the halt of all electoral processes, consultations and citizen participation in public matters until the National Assembly appoints new members to the CNE.⁶

February 2, 2003: The Electoral Chamber of the TSJ and members of civil society organizations launch a second campaign of collection of signatures (“El Firmazo”) and this time collect over three million signatures.⁷

September 12, 2003: After submitting the petition to the CNE, the CNE rules the petition inadmissible due to the violation of procedural requirements, including the fact that it was filed late.⁸ The CNE announces a third date for the collection of signatures to take place, this time between November 28 and December 1, 2003 (“El Reafirmazo”).⁹

October 19, 2003: President Chávez makes a public statement threatening anyone who intends to sign the petition.¹⁰

October 21, 2003: The Commander of the Army declares the military is only constitutionally granted the right to vote, which excludes any participation in any signature collection or demonstration from either side.¹¹

March 2, 2004: The CNE concludes the signature verification process and publishes the entire list of the names in the media.¹² The list indicates which signatures the CNE accepted and had been challenged.¹³ President Chávez authorizes parliament member Luis Tascón to retrieve copies of the signature sheets.¹⁴ Mr. Tascón publishes the list (“lista Tascón”) on his website and accuses those who signed of participating in fraud and to be traitors of the nation.¹⁵ Following publication of the list, there are many reports of public employees whose names are on the list being threatened

6. Rocío San Miguel Sosa et al. v. Venezuela, Admissibility Report, Report No. 59/13, Inter-Am. Comm’n H.R., Pet. No. 212-06, ¶ 10 (July 16, 2013).

7. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶ 47.

8. *Id.* ¶ 50.

9. Rocío San Miguel Sosa et al. v. Venezuela, Admissibility Report, ¶ 12.

10. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶ 53.

11. *Id.* ¶ 54.

12. *Id.* ¶ 62.

13. *Id.*

14. Rocío San Miguel Sosa et al. v. Venezuela, Admissibility Report, ¶ 15.

15. Rocío San Miguel Sosa et al. v. Venezuela, Report on the Merits, Report No. 75/15, Inter-Am. Comm’n H.R., Case No. 12.923, ¶ 12 (Oct. 28, 2015).

or losing their jobs.¹⁶ Amongst them are Ms. Rocío San Miguel Sosa, Ms. Magally Chang Girón and Ms. Thais Coromoto Peña, who are employed at the National Border Council (*Consejo Nacional de Fronteras*; “CNF”), which is attached to the Ministry of Foreign Affairs of Venezuela (Ministerio de Relaciones Exteriores).¹⁷

March 12, 2004: The Chairman of the CNF terminates Ms. San Miguel Sosa, Ms. Chang Girón and Ms. Coromoto Peña under from their employment because they signed the petition to recall President Chávez.¹⁸ Ms. San Miguel Sosa is also expelled from her position as a professor at the Advanced Air Force Academy and the Advanced Naval War School, and her husband, who is an active-duty officer in the Navy, is not assigned to a position within his Naval unit.¹⁹

May 27, 2004: Ms. San Miguel Sosa, Ms. Chang Girón and Ms. Coromoto Peña file a complaint with the Ombudsman claiming that their employment contracts had been unjustifiably and discriminatorily terminated because of their signing of the petition.²⁰ However, the Ombudsman concludes their claims could not be proven and that the Government had acted within its contractual rights.²¹

Ms. San Miguel Sosa, Ms. Chang Girón and Ms. Coromoto Peña also file a criminal complaint with the State Attorney General requesting an investigation.²² However, the Twenty First Court of First Instance in Functions of Control dismisses the claim after finding no evidence of criminal wrongdoing and that their terminations were authorized by the terms of their employment contracts.²³ Their appeal is also rejected by the Seventh Chamber of the Appeals Court and the Criminal Cassation Chamber of the Supreme Justice Court.²⁴

July 22, 2004: The victims file an amparo action — an application for constitutional protection — against the CNF.²⁵ As evidence to support their case, they submit recordings and conversation transcripts, including one where Ms. San Miguel Sosa’s superior told her she could not demand

16. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶ 65.

17. *Id.* ¶ 71.

18. Rocío San Miguel Sosa et al. v. Venezuela, Admissibility Report, ¶¶ 17-18.

19. *Id.* ¶ 20.

20. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶ 85.

21. *Id.* ¶¶ 86-87.

22. *Id.* ¶ 96.

23. *Id.* ¶¶ 98-99.

24. *Id.* ¶ 101.

25. *Id.* ¶ 88.

the recall of the person who was paying her.²⁶ However, the Fourth Judge of First Instance rejects the evidence and concludes no political discrimination exists.²⁷

All three public servants appeal this decision to the Third Superior Labor Court of the Labor Judicial Circuit of the Judicial Circumscription of the Metropolitan Area of Caracas.²⁸ However, their appeal is also rejected.²⁹

April 27, 2005: The Public Ministry initiates an investigation to determine whether any criminal acts had been committed by any public or private parties due to the misuse of the Tascón list.³⁰ The Prosecutor's Office rules the publishing of the Tascón list was not *illegal per se*, because it ensured the "authenticity and transparency of the process."³¹

May 2005: The CNE publishes a resolution condemning the discrimination of those who signed the petition and demands the Prosecution and Ombudsman Offices defend the rights of those who lost their jobs because of the exercise of their political rights.³²

2005: A new list ("lista Maisanta"), which consolidated the names of those who signed the petitions in favor of the recall election, is created.³³ It includes "detailed information on registered voters and their political positions."³⁴ The victims claim both lists have been used as databases to store information for political purposes and political control.³⁵

26. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶ 77.

27. *Id.* ¶ 93-94.

28. *Id.* ¶ 95.

29. *Id.*

30. *Id.* ¶ 100.

31. *Id.*

32. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶¶ 69, 147.

33. *Id.* ¶ 70.

34. *Id.*

35. *Id.*

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

March 7, 2006: Ms. Ligia Bolívar Osuna and Mr. Héctor Faúndez Ledesma present a petition on behalf of Ms. San Miguel Sosa, Ms. Chang Girón and Ms. Coromoto Peña to the Inter-American Commission on Human Rights.³⁶

The State argues the petition inadmissible because the victims have not exhausted domestic remedies.³⁷ The State alleges they chose to pursue constitutional relief via an *amparo* action.³⁸ However, they should have brought the case before the trial-level labor court.³⁹

July 16, 2013: The Commission issues Admissibility Report No. 59/13, which declares the petition admissible.⁴⁰

October 28, 2015: The Commission issues Merit Report No. 75/15.⁴¹ The Commission concludes that the State is responsible for violating rights provided in Articles 8 (Right to a Fair Trial), 13 (Freedom of Conscience and Religion), 23 (Right to Participate in Government), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention, in connection with Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention, to the detriment of Ms. San Miguel Sosa, Ms. Chang Girón, and Ms. Coromoto Peña.⁴² The Commission finds no evidence that the State violated rights provided in Article 5 (Right to Humane Treatment) of the Convention.⁴³

In light of the foregoing violations, the Commission recommends the State: (1) reinstate the victims to their civil service jobs, or jobs similar to the ones they would currently have had they not been terminated, or, if there are objective reasons preventing the State from reinstating

36. Rocío San Miguel Sosa et al. v. Venezuela, Admissibility Report, ¶ 1.

37. *Id.* ¶ 3.

38. *Id.*

39. *Id.*

40. *Id.* ¶ 4.

41. Rocío San Miguel Sosa et al. v. Venezuela, Report on the Merits, ¶ 4.

42. *Id.*

43. *Id.*

such employment, the State must pay compensation to the victims; (2) pay the victims compensation for the material and moral human rights violations; (3) perform a reasonably timed, thorough and impartial criminal and administrative investigation aimed at fully clarifying the facts and establishing the respective responsibilities for the violations; and (4) adopt necessary legislative and administrative measures to prevent similar events from happening, including establishing clear rules regarding the use of political data collected with safeguards to ensure the freedom of expressing political opinions without fear of repercussions, and implementing training programs on the prohibition of political discrimination for public officials and legal practitioners.⁴⁴

B. Before the Court

March 8, 2016: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁴⁵

1. Violations Alleged by the Commission⁴⁶

Article 8 (Right to a Fair Trial)

Article 13 (Freedom of Conscience and Religion)

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)

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

2. Violations Alleged by the Representatives⁴⁷

Same violations alleged by the Commission, plus:

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

Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)

44. Rocío San Miguel Sosa et al. v. Venezuela, Report on the Merits, “Recommendations” ¶ 1-4.

45. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶ 3.

46. Rocío San Miguel Sosa et al. v. Venezuela, Report on the Merits, ¶ 4.

47. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶ 6.

Article 23(1)(c) (Right to Have Access to Public Service) of the Inter-American Convention on Human Rights.

III. MERITS

A. *Composition of the Court*⁴⁸

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
 Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary
 Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

February 8, 2018: The Court issues its Judgment on Merits, Reparations, and Costs.⁴⁹

The Court found unanimously that Venezuela had violated:

Article 23(1)(b) (Right to Elect and Be Elected) and Article 23(1)(c) (Right to Have Access to Public Service) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention to the detriment of Ms. San Miguel Sosa, Ms. Chang Girón, and Ms. Coromoto Peña,⁵⁰ because:

Article 23(1) (Right to Elect and Be Elected) guarantees a citizen's right to participate in public affairs, whether it be through direct involvement, a representative, voting, service to one's country, or, as in this case, entering a political election as a candidate.⁵¹ The Court noted that the right to political participation requires certain institutions and procedural mechanisms that ensure the effective exercise of the right, and which

48. *See generally* San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs.

49. *Id.*

50. *Id.* “declares” ¶ 1.

51. *Id.* ¶ 111.

*prevent or counteract legal or de facto practices that result in discrimination or retaliation against citizens who exercise the right.*⁵²

The Court considered the right to request and participate in a recall election, as authorized by the State Constitution, a political right protected by the American Convention.⁵³ Further, discriminating against a person because she is a political opponent is not acceptable under the Convention.⁵⁴ Finally, the Court reiterated that it presumes the existence of discriminatory treatment if it rests on a prohibited class of differential treatment outlined in Article 1(1) of the Convention.⁵⁵

First, the Court examined whether the publication of the list of those who had signed was acceptable under the Convention.⁵⁶ The Court highlighted that there was no evidence that the CNE weighed the necessity of published the list against the risk that such publication might impact the people who signed it.⁵⁷ The fact that the list was published on a website under the title “mega fraud” was enough evidence for the Court to conclude that the list was published with ulterior motives other than guaranteeing parties’ rights of the process.⁵⁸ The Court found the publication of the list produced an enabling environment for the discrimination and political persecution of those who were perceived as detractors of the government, which was incompatible with the State’s duties under Article 23(1) of the Convention.⁵⁹

Next, the Court concluded the State abused its power when it activated the discretionary termination clause of the public employees’ employment contracts as a cover for retaliating against them because they legitimately exercised their constitutional rights by signing the petition.⁶⁰ The Court considered the transcripts and recorded conversations circumstantial evidence, including reports from international observers regarding political persecution in Venezuela, the opportunity to withdraw

52. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶ 111.

53. *Id.* ¶ 117.

54. *Id.* ¶ 118.

55. *Id.* ¶ 116.

56. *Id.* ¶ 128.

57. *Id.* ¶ 132.

58. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶ 133.

59. *Id.*

60. *Id.* ¶ 150.

signatures, and the President's hostile public statements against his political detractors.⁶¹

The Court found by six votes to 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 American Convention to the detriment of Ms. San Miguel Sosa, Ms. Chang Girón, and Ms. Coromoto Peña,⁶² because:

The freedom of thought and expression functions in both an individual and collective capacity.⁶³ Individually, it protects the right of every individual to disseminate ideas, opinions, and information through all appropriate means to reach the greatest number of people.⁶⁴ Collectively, the right entitles the public to hear stories, news, and opinions of third parties.⁶⁵ A State violates Article 13 (Freedom of Thought and Expression) when it uses its authority to prevent the free circulation of news.⁶⁶

The Court determined that the signing of the recall election petition constituted a form of expression of a political opinion, and that the public servants were subjected to discrimination in retaliation against their legitimate exercise of freedom of expression constituted a direct restriction of this freedom.⁶⁷ The Court further concluded that the actions of the government could have interfered with free public debate and could have had dissuasive, frightening or inhibitive effects to the detriment of the collective exercise of freedom of expression.⁶⁸

The Court found unanimously that Venezuela had violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25(1) (Right of Recourse Before a Competent Court) in relation to Article 1(1) (Obligation of Non-

61. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶¶ 141-142, 145-147.

62. *Id.* “declares” ¶ 2.

63. *Id.* ¶ 152.

64. *Id.*

65. *Id.*

66. *Id.* ¶¶ 152-153.

67. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶¶ 156-158.

68. *Id.* ¶ 159.

Discrimination) of the American Convention to the detriment of Ms. San Miguel Sosa, Ms. Chang Girón, and Ms. Coromoto Peña,⁶⁹ because:

The Court also found the State failed its duties to the public servants under their rights to due process and effective remedy because the State courts did not sufficiently justify their decision to dismiss the applicants' amparo action.⁷⁰ Each of the State courts resolved the matter on the merits and without delay, thus demonstrating that the case was not complex.⁷¹ However, the Supreme Court took ten months to resolve its initial question of jurisdiction.⁷² The Court found the Supreme Court's delay was excessive enough to affect the efficiency of the State's judicial processes.⁷³

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

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) in relation to Article 23(1) (Right to Participate in Government), Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas), Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and Article 25(1) (Right of Recourse Before a Competent Court) and Article 1(1) (Obligation of Non-Discrimination) of the American Convention to the detriment of Ms. San Miguel Sosa, Ms. Chang Girón, and Ms. Coromoto Peña,⁷⁴ because:

The Court also held that Venezuela had violated the principle of progressive development of Economic, Social and Cultural Rights in relation to the right to employment because of the government use of employment termination as a tool to silence and discourage political dissidence.⁷⁵

69. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, “declares” ¶ 3.

70. *Id.* ¶¶ 186, 196.

71. *Id.* ¶ 199.

72. *Id.*

73. *Id.*

74. *Id.* “declares” ¶ 4.

75. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶¶ 220-222.

The Court found unanimously that Venezuela had not violated:

Article 24 (Right to Equal Protection) of the American Convention,⁷⁶ because:

The Court concluded that there was no evidence that the political discrimination was the result of a lack of protection based on the unequal application of a law.⁷⁷ Thus, because the Court already analyzed the discrimination that the public servants suffered under Articles 23(1) and 13(1) of the Convention, it did not find it was necessary to rule on the violation of Article 24.⁷⁸

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention,⁷⁹ because:

The Court held that it was not necessary to analyze whether the State violated Article 2 (Obligation to Give Domestic Legal Effect to Rights) since neither the petitioners nor the Commission presented enough evidence of norms or practices that the Court needed in order to evaluate the responsibility of the State.⁸⁰

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

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the American Convention,⁸¹ because:

The Court explained it was the State courts' responsibility to examine the facts and evidence presented to determine whether any public or private persons allegedly committed criminal acts established in the criminal complaint the public servants filed before the Public Ministry.⁸² The Court declined to apply or interpret the criminal procedural norms that were in force within the State at the time of the alleged criminal activity.⁸³ Thus, the Court did not have sufficient evidence to properly analyze the

76. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, "Declares" ¶ 5.

77. *Id.* ¶ 164.

78. *Id.* ¶ 165.

79. *Id.* "declares" ¶ 6.

80. *Id.* ¶¶ 166-167.

81. *Id.* "declares" ¶ 7.

82. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶ 203.

83. *Id.* ¶ 204.

victims' right to be heard regarding the complaint they filed in the criminal proceeding.⁸⁴

Finally, the Court lacked enough evidence to analyze whether judicial authorities failed to exercise their independent judgment with respect to both the amparo action and the criminal complaint.⁸⁵

The Court found unanimously that Venezuela had not violated:

Article 5(1) (Right to Physical, Mental, and Moral Integrity) and Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) of the American Convention,⁸⁶ because:

Article 5(1) (Right to Physical, Mental, and Moral Integrity) protects the "physical, mental, and moral" integrity of individuals, whereas a violation of the right provided by Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) ranges from torture to harassment "to cruel, inhuman or degrading treatment."⁸⁷ Further, the "physical and psychological consequences under Article 5(2) vary in intensity according to" factors including the "duration of treatment, age, sex, health, or vulnerability" of the victims, which the Court will analyze specifically in each situation.⁸⁸ Here, the Court held the victims failed to present a clear distinction between alleged damage to their mental physical health, after the State terminated their contracts, and any material or non-material damage they suffered, and thus, it could not determine whether the State violated Article 5(1) (Right to Physical, Mental, and Moral Integrity) and Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment).⁸⁹

84. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶ 205.

85. *Id.* ¶ 210.

86. *Id.* "declares" ¶ 8.

87. *Id.* ¶ 169.

88. *Id.*

89. *Id.* ¶ 172.

*C. Dissenting and Concurring Opinions*1. Concurring and Partially Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot⁹⁰

Judge Mac-Gregor Poisot issued a concurring and partial dissent for two reasons: (1) to substantiate the reasons why he considered the violation of an individual's right to work obvious in the case, and to explain several circumstances that have contributed to the expansion of the right to work in different contexts of the employment relationship; and (2) to express his dissent regarding the majority criterion that the State did not violate right to be heard by an independent judge.⁹¹

First, Judge Mac-Gregor Poisot noted that under the Committee on Economic, Social, and Cultural Rights, the right to work is both an individual and a collective right.⁹² The principle of non-discrimination applies directly to the right to work and is essential to the enjoyment of that right.⁹³

Second, Judge Mac-Gregor Poisot dissented by holding that the State violated the right to a hearing by an independent court found in Article 8(1) of the Convention because the judiciary lacked independence, excluded important evidence, and failed to provide adequate recourse for the public servants, which obstructed their access to justice.⁹⁴

2. Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto⁹⁵

Judge Sierra Porto issued a partially dissenting opinion opposing the majority's conclusion that the State violated the right of freedom of expression.⁹⁶ He considered that, when signing the recall election petition, the public servants only exercised their political rights, but not their freedom of expression.⁹⁷ He reasoned that, as they did not intend the fact they had signed to become public, the act of signing could not be considered

90. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, Concurrent and Partially Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C) No. 348 (Feb. 8, 2018).

91. *Id.* ¶¶ 3-4.

92. *Id.* ¶ 6.

93. *Id.* ¶¶ 6, 8.

94. *Id.* ¶¶ 56, 58.

95. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 348 (Feb. 8, 2018).

96. *Id.* ¶ 1.

97. *Id.* ¶ 4.

an act of exercise of freedom of expression as their goal was not to communicate ideas to others.⁹⁸ He considered that forms of expression of political opinion that are meant to be in secret are different in nature to public forms of expression: the first involves only the right to political participation while the latter involves both the right to political participation and one's right to freedom of expression.⁹⁹

3. Partially Dissenting Opinion of Judge Eduardo Vio Grossi¹⁰⁰

Judge Vio Grossi issued a dissenting opinion holding that the judicial independence in the State was significantly impeded; the State intimidated the people who initiated the recall and also intimidated State entities including courts of justice.¹⁰¹

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 noted that the Judgment itself is a form of reparation.¹⁰²

2. Investigate, Prosecute and Punish those Responsible for Abuse of Power and Violation of Constitutional Rights

The Court ordered the State to investigate the circumstances of the alleged events of abuse of power and violation of constitutional rights.¹⁰³ The Court reiterated it was not responsible for determining any criminal relevance of public officials' conduct of those who participated in the process.¹⁰⁴ However, because the misuse of power could have criminal,

98. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto, ¶ 9.

99. *Id.* ¶¶ 10-11.

100. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 348 (Feb. 8, 2018).

101. *Id.* ¶ 12.

102. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, "and provides" ¶ 9.

103. *Id.* "and provides" ¶ 10.

104. *Id.* ¶ 232.

disciplinary or other relevance, the State must investigate, identify and where appropriate, prosecute and punish anyone responsible for such violations.¹⁰⁵

3. Publish the Judgment

The Court ordered the State to publish its Judgment within six months.¹⁰⁶ The Court required the State publish (1) the official summary of the Judgment in the Official Gazette; (2) the official summary of the Judgment in a national newspaper with wide circulation; and (3) the entire Judgment on an official website, which is accessible to the public and available for at least one year.¹⁰⁷ The Court noted the State must immediately notify the Court once each publication is made available regardless of any time period restriction.¹⁰⁸

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 for the sum they would have earned had the State not terminated their employment contracts.¹⁰⁹

2. Non-Pecuniary Damages

The Court awarded \$10,000 each to Ms. San Miguel Sosa, Ms. Chang Girón, and Ms. Coromoto Peña for the significant emotional distress they suffered due to the economic, social and professional challenges caused by the State's violations of their rights.¹¹⁰

105. San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, ¶ 232.

106. *Id.* “and provides” ¶ 11.

107. *Id.* ¶ 233.

108. *Id.* ¶ 234.

109. *Id.* ¶ 238.

110. *Id.* ¶ 240.

3. Costs and Expenses

Finally, the Court awarded \$20,000 each to Ms. San Miguel Sosa, Ms. Chang Girón, and Ms. Coromoto Peña for the reasonable costs and expenses of litigation.¹¹¹

4. Total Compensation

\$225,000.

C. Deadlines

The State must publish the Official Summary and the Judgment within six months from the date of the Judgment.¹¹²

The State must make all payments for material and immaterial damages and for the reimbursement of costs and expenses within one year from the date of the Judgment.¹¹³

Within one year from the Judgment, the State must provide the Court with a report on the measures it took to comply with the Judgment.¹¹⁴

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]

111. *San Miguel Sosa et al. v. Venezuela*, Merits, Reparations, and Costs, ¶ 250.

112. *Id.* “and provides” ¶ 11.

113. *Id.* ¶¶ 251; “and provides” ¶ 12.

114. *Id.* “and provides” ¶ 13.

2. Decision on Merits, Reparations and Costs

San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 348 (Feb. 8, 2018).

San Miguel Sosa et al. v. Venezuela, Merits, Reparations, and Costs, Concurrent and Partially Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C) No. 348 (Feb. 8, 2018).

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

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

3. Provisional Measures

San Miguel Sosa et al. v. Venezuela, Resolution of the President, Inter-Am. Ct. H.R. (ser. C) No. 348, ¶ 1 (Dec. 20, 2016).

San Miguel Sosa et al. v. Venezuela, Resolution of the Court, Inter-Am. Ct. H.R. (ser. C) No. 348, ¶ 1 (Feb. 6, 2017).

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4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

A. *Inter-American Commission*

1. Petition to the Commission

[None]

2. Report on Admissibility

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3. Provisional Measures

[None]

4. Report on Merits

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5. Application to the Court

Rocío San Miguel Sosa et al. v. Venezuela, Letter of Submission, Inter-Am. Comm'n H.R., Case No. 12.923 (Mar. 8, 2016).

VIII. BIBLIOGRAPHY

[None]