DISSENTING OPINION OF JUDGE *ad-hoc* PIER PAOLO PASCERI SCARAMUZZA

In the case of Perozo et al V. the Bolivarian Republic of Venezuela

With the permission of the opinion of the majority of my colleagues, I, **Pier Paolo Pasceri S.**, Judge *ad-hoc* of the Inter-American Court of Human Rights , regret to dissent from the judgment for having a different criterion as to the grounds and the operative paragraphs exposed therein (except for operative paragraphs 1, 2 and 3 of the decision) [1] and therefore I am unable to join the decision adopted by the majority of the judges of this Court, whose favorable opinions adopted the judgment on the merits as to the remaining issues that formed part of the decision from which I dissent today. In that sense, I shall now present the grounds in the following way:

I do not agree with foregoing judgment since, in my opinion, there are procedural and substantive reasons that must be observed:

1) Procedural reasons:

The procedural reasons are related to the objection of non-exhaustion of domestic remedies that was not decided but until the date the judgment was delivered, and was dismissed by the sentencing majority. In my opinion, said objection should have been admitted in light of the claims contained in the application filed by the Inter-

[1] The reason for which I do not dissent from these operative paragraphs are the following:

a) regarding the decision related to "On *the untimeliness in the filing of arguments and evidence contained in the Brief of Pleadings, Motions and Evidence submitted by the alleged victims*", it must be observed that such decision has been considered in the Order of the Court's President of March 18, 2008, and since it was not appealed, the decision became final. In fact, an appeal could have been filed against this decision by virtue of the terms of article 29 (2) of the Rules of Procedure of the Inter-American Court of Human Rights; but there is no record that such decision has been appealed; therefore, since it is a final decision, it cannot be subjected to a review in the judgment on the merits and insofar as such decision was ratified, I am *unable to dissent from it now. In fact, it provides:*
Article 29. Decisions.
1. The judgments and orders for discontinuance of a case shall be rendered exclusively by the Court.
2. All other orders shall be rendered by the Court if it is sitting and by the President if it is not, unless otherwise provided. Decisions of the President that are not purely procedural may be appealed before the Court.
3. Judgments and orders of the Court may not be contested in any way.

b) As to the decision related to"*New Arguments and Allegations contained in the Autonomous brief signed by the Alleged victims*", the reason why I agree with this is that I share the grounds expressed in the judgment regarding this issue. In fact, the judgment declares that the alleged victims cannot introduce new facts different from those that are contained in the application presented before the Court. Likewise, according to the judgments, the victims may put forward, on the basis of the facts mentioned by the Commission, new allegedly violated rights or facts that allow explaining, clarifying or disproving the facts mentioned in the application, which, in my opinion, results in the better understanding by the full Court of the matter under question, always limiting to the facts mentioned in the application.
c) Regarding the decision on the "*prejudice in the roles played by some judges of the Court*", the reason why I agree with the solution provided to this problem was mentioned in the decision that, in that moment, became final. To accept that, on this occasion, that there is a possibility of reanalyzing the decision, would imply to modify or eliminate the effect of a former adjudication that resulted from the Decision of October 18, 2007 made by the judges that, at that time, composed the Court (page 1103 of the records on the merits); which, in light of the terms of article 29 (3) of the Rules of Procedure of the Inter-American Court of Human Rights, may not be contested,

American Commission on Human Rights and as a consequence, regarding the petitions contained in the autonomous brief of the alleged victims.

Even when the undersigned believes that the criminal actions are not consistent or sufficient to satisfy the claims lodged before this Court as shall be analyzed *infra*, it is evident that the State has expressed before this Court its nonconformity with the fact that the Court tried the case instead of the domestic law. That springs from the brief of the answer to the application.

In that sense, the judgment from which I dissent constitutes an anticipated ruling on matters that should be decided before courts of the Venezuelan State. Therefore, the application should have not been admitted at the beginning of this proceeding or prior to the decision on the merits of the instant case and, as a consequence, the case should be filed.

The foregoing consideration is based on the following reasons:

1.1. On Consistency

I understand that there are actions, petitions or remedies within the Venezuelan legislation that could still settle and satisfy, eventually, the same claims put forward before this international instance (contained in the application filed by the Commission or in its autonomous brief), to which the petitioners did not resort.

It spring from the reading of the application filed by the Commission- and similarly, from the autonomous brief containing the requests [2]-, that, in accordance with the

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[2] In fact, it was put forward in the autonomous brief of requests of the alleged victims that:

"1) The Venezuelan State has violated the right to humane treatment enshrined in article 5.1 of the American Convention of Human Rights, in relation to its obligation to respect and guarantee the human rights established in article 1.1 regarding:

a. *Mental integrity: …omissis...*
b. *B. physical integrity .... omissis ...*

And that for these violations, the State is held internationally responsable.

2) The Venezuelan State has violated the right to freedom of thought and expression enshrined in article 13 of the American Convention of Human Rights, in relation to its obligation to respect and guarantee the human rights established in article 1(1) and that it is held internationally responsible for such violation.

3) The Venezuelan State has violated the right to property enshrined in article 21 of the American Convention of Human Rights, in relation to its obligation to respect and guarantee the human rights established in article 1(1) and that it is held internationally responsible for such violation.

4) The Venezuelan State has violated the right to a fair trial and judicial protection enshrined in articles 8 and 25 of the American Convention of Human Rights, in relation to its obligation to respect and guarantee the human rights established in article 1(1) and that it is held internationally responsible for such violation.

As a consequence, in light of the violations declared and after the adjudication of international responsibility of the Venezuelan State for such violations, the State is required to adopt the following measures of reparations for the victims:

1. To adopt the measures necessary to stop and prevent those actions of officials or government agents as well as of private individuals that affect the personal integrity, that impede the search, access, expression and broadcasting of information or that affect the right to property of the alleged victims in the case at hand;

2. To adopt the measures necessary to deal with, promptly and effective, in protection of the victims, the situations in which the officials and state agents or private individuals

claims made before this Court, it was requested to hold the Venezuelan State responsible for:

- Violation of the right to freedom of expression (article 13 of the American Convention)
- Violation of the right to humane treatment (article 5 (1) of the American Convention)
- Violation of the rights to a fair trial and judicial protection (articles 8(1) and 25 of the American Convention)

And as a consequence, the Venezuelan State:

- Must adopt all the measures necessary to prevent actions by both state agents and private citizens that could hamper the seeking, receiving, and imparting of information by social communicators and support staff;
- Must adopt all the measures necessary to respond with due diligence whenever there are acts of State agents as well as private individuals that hamper the seeking, receiving, and imparting of information by social communicators and support staff.;
- Must conduct an impartial and exhaustive investigation in order to prosecute and punish all those materially and intellectually responsible for the facts set out in this case and publish the results of those investigations;
- Must ensure the victims the free access to official sources of information; without any type of interference or arbitrary conditions;
- Must repair the damages caused to the victims by the acts of State authorities; and
- Must pay the legal costs and expenses incurred in the processing of the case both at the national level and the expenses derived from the processing of the case before the Inter-American system.

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caused an impairment to the personal integrity, that impede the search, access, expression and broadcasting of information or that affect the right to property of the victims in this case.

3. To adopt the measures necessary to carry out a serious, thorough and complete investigation to determine the responsible of the violations mentioned in this proceeding and, once the alleged responsible are identified, to subject them to due process in order to determine the legal responsibility.

4. The result of such investigations must be made public and the Venezuelan State must publicly recognize the international responsibility by means of the publication in a national newspaper of whatever judgment this Tribunal may render;

5. To issue a strong condemnation of the attacks to which the victims have been subjected in the instant case , from its highest level and to adopt a conduct that promotes the respect for freedom of expression, tolerance and dissident opinions and positions;

6. To publish the most relevant parts of whatever judgment on merits the Court may hand down, in a newspaper of national circulation during the time the Court deems appropriate and to publish the entire text of the judgment in the official gazette of the State;

7. To freely provide, through national health centers, the appropriate treatment required by the victims of this case, prior statement of their consent to such effect, for the necessary time, including the provision of medicines;

8. To guarantee the equitable, fair and free access to information and news, without the imposition of discretional and arbitrary conditions;

9. To adopt the legislative measures and of whatever kind that are necessary to fully ensure the exercise of the freedom of expression and information;

*10. **To pay the victims identified in this case, the compensations that may correspond for the pecuniary and moral damage caused to them; and***

11. To pay the legal costs and expenses incurred during the processing of this case, both at the domestic level and at the Inter-American system for the protection of Human Rights". The emphasis is mine.

In keeping with my opinion and by way of example, it should be emphasized that there is an appropriate action within the Venezuelan legal system for the autonomous protection of constitutional rights, which has a similar regulation under the American Convention on Human Rights, such as the right to freedom of expression, enshrined in article 57 of the Constitution of the Bolivarian Republic of Venezuela (hereinafter, CBRV), right to defense and due process (or which is the same, right to a fair trial and judicial protection) established in articles 26 and 49 of the CBRV, right to humane treatment, established in article46 of the CBRV; **the appropriate action is the action for the protection of constitutional rights or also called *constitutional amparo*** set forth in article 27 of the CBRV , which was developed in the *Organic Law of Amparo of Constitutional Rights and Guarantees* and in some binding judgments of the Constitutional Chamber of the Supreme Court of Justice, which could have been an effective remedy in Venezuela if immediately or directly taken, for the case there were no regular actions capable of protecting the persons demanding justice within the Venezuelan legal system.

It spring from the court records followed before this Court that no action for constitutional amparo was lodged in order to protect or reestablish the rights allegedly violated or threatened to be violated, which are enshrined and regulated, in a similar way, under the American Convention on Human Rights, as previously discussed.

Moreover, it should be mentioned that a possible decision of *amparo* could have satisfied some or all the claims contained in the petition which were transcribed *supra*- and that, in a similar and expanded way, were requested by the alleged victims in its autonomous brief- for example, by ordering the adoption of those measures necessary to prevent that actions of the State's agents as well as of private individuals from keep hindering the search, reception and dissemination of information urging the law enforcement personnel to take specific steps to avoid the repetition of events such as these; or by guaranteeing the identified petitioners the exercise of the right to freedom of thought and expression; specially , the exercise of their profession; or by ordering, as an example of an action for *amparo* against judgments or against the omission of actions, an impartial and thorough investigation in order to prosecute and punish all the responsible for the facts mentioned in the complaint.

Moreover, outside the framework of the constitutional law but within the scope of Venezuelan administrative proceedings, it is worth mentioning that administrative courts do not only hear about statements of the government (of administrative acts, administrative contracts) but it also hear about the omissions or deficiency (of public utilities for instance) as well as about the control over *de facto* proceedings or material or ordinary behavior of the administration itself, having constitucional authority (article 259 of the CBRV[3]) to order the necessary measures to restore the subjective legal situations harmed by administrative actions .

Progressively, the judicial protection the Venezuelan State was providing by means of its judiciary, regarding these last proceedings (de facto proceedings or material or

[3] Article 259. The administrative and adjudicatory jurisdiction corresponds to the Supreme Court of Justice and other courts determined by law. The administrative organs have the authority to annul the general or individual administrative acts that are contrary to law, even because of misuse of power; condemn the payment of sums of money and the reparation of damages originated under the responsibility of the Administration; hear about claims in relation to public utilities and order the necessary measures to restore the subjective legal situations impaired by the administrative actions.

ordinary proceedings) was formally and positively provided for in the Venezuelan legislation inasmuch as it enshrined the possibility for administrative courts to hear about claims against *de facto* proceedings attributable to organs of the National Executive branch and other national high-ranking authorities that exercise the Public Power (article 5 (27), consistent with the first paragraph of the same article, all of them of the Organic Law of the Supreme Tribunal of Justice of Venezuela). It follows that claims tending to control the *de* facto proceedings that may have conducted the organs of the Executive and other national high-rank authorities exercising the public power, might have been lodged and processed by means of this action stipulated in the domestic legislation.

Moreover, by way of example, the pecuniary claims contained in the autonomous brief of requests, pleadings and evidence of the victims (page 619, of the measures of full reparation requested by the victims that were included in numeral 21 (rectius10), lodged with this Court, should have been referred to by means of the specific action that exists within the Venezuelan legislation, which is, that of pecuniary claims against the Republic, with all the requirements that such action implies (article 5, numeral 24, consistent with the first paragraph of the same article, all of them of the Organic Law of the Supreme Tribunal of Justice of Venezuela[4]).

In view of the fact that all of the foregoing is by no means intended to be exhaustive in relation to the possibilities existing within the Venezuelan domestic legislation, I must point out that there are, apart from said actions, other remedies within the Venezuelan criminal jurisdiction, which, as has been alleged by the Venezuelan State, were not fully exhausted. A brief comment regarding such remedies will be made below.

The domestic remedies described, in the opinion of the undersigned, comply with the requirements of the Convention, according to which States Parties have the obligation to provide effective legal remedies to the alleged victims of human rights violations (article 25), and to substantiate such remedies pursuant to the rules of due process of law (article 8.1), all of that in accordance with the general obligation of States Parties to ensure to all persons subject to their jurisdiction the free and full exercise of the rights enshrined in the Convention (article 1.1).

It spring from the court records followed before this Court, when compared to the what has been alleged herein, that the alleged victims did not effectively exhaust those remedies tending to the protection of human rights, the reparation of damage, among other things, provided for by domestic law , which under the terms of articles 46.a and 47 of the American Convention on Human Rights (1969)[5], constitute

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[4] **Article 5**
" *The competences of Supreme Tribunal of Justice, as the highest Tribunal of the Republic are:*
…omissis...
24. To know the demands proposed against the Republic, States, Municipalities or any Autonomous Institute, Public Entity or Company in which the Republic exerts a decisive and permanent control in terms of direction or administration, if its value exceeds the 70,001 tax unit)
…omissis...
The Tribunal shall hear in its Plenary Division the matters referred to in this article, numerals 1 to 2. The Constitutional Division shall hear the matters provided for in numerals 3 to 23. The Political Administrative Division shall hear the matters provided for in numerals 24 to 37. The Penal Cassation Division shall hear the matters provided for in numerals 38 to 40. The Civil Cassation Division shall hear the matter provided for in numerals 41 to 42. The Social Cassation Division shall hear the matters provided for in numerals 43 to 44. The Electoral Division shall hear the matters provided for in numerals 45 and 46. The matters provided for in numerals 47 to 52 shall be heard by the division corresponding to the matter in question.

grounds of inadmissibility, which in my opinion, was an issue of international public law verifiable, even unofficially, by the Commission[6] or the Court, even when, as has been mentioned, this preliminary objection was initially raised by the Venezuelan State before this Court at the moment of answering the application.

It is then that only upon the exhaustion of these remedies **(and bearing in mind the proper consistency and connection that must exist between the petition made before the domestic courts and the petition that should be made before the Commission and this Court)** the parties shall be able to resort to the Inter-American system of protection or, failing that, to prove that the remedies are ineffective and inoperative to solve the issue at stake.

In other words, the petition lodged before this Inter-American system for the protection of human rights must be closely related to the remedies exhausted at the domestic level in order to verify, among other things, the suitability of the proceeding chosen to protect, at the international level, the situation reported to be violated, as well as the proper exhaustion of domestic remedies, all this to give the State the possibility of not only examining and determining, by means of the domestic remedies, the case but also repairing the damage probable caused. The international jurisdiction is of a subsidiary, reinforcing and complementary [7] nature.

There is no evidence in the court records showing that the remedies mentioned *supra* (or some other recourse that may exist) were filed or whether they were effective within the domestic courts; no reason was given about why such remedies were not filed, in accordance with the requirement stipulated in article 46 (2) a), b), c) of the Convention; as a result, the Commission, in my opinion, had to examine the reasonings about the exhaustion of the domestic remedies and come to the conclusion that the petition filed before it should be declared to be inadmissible.

This Court has ruled upon, on several occassions, on the procedural opportunity to determine about a ground of inadmissibility as the one put forward by the State and the Court has pointed out it may decide on the objection prior to the judgment on the merits [8] or as a preliminary phase, in the judgment that finally settles the controversy.[9]

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[5] **Article 46** 1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law; (…)
Article 47 The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if: a) any of the requirements indicated in Article 46 has not been met; (…)

[6] According to article 31 (1) of the Rules of Procedure of the Inter-American Commission on Human Rights, the Commission **shall verify** whether the remedies of the domestic legal system have been pursued and exhausted.

[7] Case of Acevedo Jaramillo et al V. Perú. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Legal Costs. Judgment of November 24, 2006. Series C No. 157, para. 66; *Case of Zambrano Vélez et al V. Ecuador*. Merits, Reparations and Legal Costs. Judgment of July 4, 2007. Series C No. 166, para. 47; the *Effect of Reservations on the Entry into Force of the American Convention on Human Rights*. (Art. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982, Series A Nº.2, para. 31; *The Word "Laws" in Article 30 of the American Convention on Human Rights.* Advisory Opinion OC-6/86 of May 9, 1986, Series A Nº.6, para. *26, and Case of Velásquez Rodríguez V. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 61.

[8]; **See, Judgment in favor of a preliminary decision different from the decision on the merits.** Case of *Fairén Garbi and Solís Corrales V. Honduras. Preliminary Objections.* Judgment of June 26, 1987.

In the case at hand, the petitioners alleged to have exhausted the domestic remedies by means of complaints filed before the Attorney General's Office and some proceedings instituted before the criminal courts, which, I insist, are not consistent with the legal claims lodged before this Court. [10]

In fact, the criminal court exercising criminal jurisdiction in Venezuela (and not acting as constitutional court) within the sphere of its authorities, **could not rule upon** the violation of freedom of expression (as has been one of the decisions of this Court) or order measures necessary to avoid acts of State's agents and private individuals tending to hamper the seeking, reception and dissemination of information by mass media and associated personnel; or require measures necessary to prevent that acts of State's agents or private individuals hinder the seeking, reception and dissemination of information or guarantee the exercise of the right to freedom of expression and thought, particularly, the exercise of the profession of the petitioners. The majority has an opinion different to what I put forward herein as has been read from the operative paragraphs of the judgment and paragraph 300 thereof. These claims, as we saw, are protected by other remedies that were not exhausted.

The foregoing shows sufficient reasons to dissent from the majority opinion.

1.2 On the procedural moment to raise the objection

One of the reasons given by the majority of the judges to dismiss the objection of non-exhaustion of domestic remedies was that the State failed to point out the remedies that remained to be exhausted by the alleged victims and that it did not allege either, the lack of exhaustion of such remedies [11], coming to the conclusion, in this way, that said preliminary objection was not raised but until the adoption of the Report on Admissibility by the Commission by means of a brief submitted during the stage of merits, substantiated before the Commission; therefore, the majority of the judges concluded that the State did not raise this objection at the appropriate procedural moment.

It is impossible to agree either on the procedural moment to raise the objection, though it seems this is an alternative criteria established in previous decisions[12],

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Series C No. 2, para. 90; and *Case of Godínez Cruz V. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 3, para. 93.

[9] **See, Judgment in favor of joining the decision of exhaustion of remedies to the merits of the case***:* Case of *Velásquez Rodríguez.* Preliminary Objections, Judgment of June 26, 1987.

[10] From another point of view, in consideration of the suitability of the criminal proceedings, consult the concurring opinion of Judge Sergio García Ramírez in the judgment of the Inter-American Court in the case of Kimel, of May 2, 2008.

[11] The other reason given by the Court to dismiss the preliminary objection is based on the Court's assessment regarding the other allegations put forward by the State and the representatives and the fact that they are closely tied to the merits of the case and shall, therefore, be considered, where pertinent, in the corresponding chapters ...

[12] Cases: **A)** Respondent State may expressly or impliedly waive the right to invoke this rule (Case of Castillo Páez, Preliminary Objections. Judgment of January 30, 1996. Series C No. 24, para. 40; Case of Loayza Tamayo; Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, para. 40). **B)** the objection asserting non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings or as has been established in subsequent judgments, the objection, to be timely,

inasmuch as that would mean to accept that an State's agent may change, before the Commission or the Court, the terms under which the State (whichever state it is) accepted to become a member state to the American Convention on Human Rights. We understand that if the goal was to establish a preclusive opportunity to raise this objection, the text of the American Convention should expressly establish so.
Nothing of the foregoing means that the purpose of the decision of the majority opinion regarding the preclusion effect of the terms was not understood, but that such terms should be expressly established.

It is evident how necessary is to count on procedural rules and to have those rules expressly and positively embodied, in order to establish the procedural cases and the consequences that a State may hypothetically face: Untimely presentation of arguments related to international public law; express waiver of the right to invoke the non-exhaustion of domestic remedies; procedural opportunity and phase in which the objection of non-exhaustion of domestic remedies must be raised; possibility that the Commission eliminates this phase; obligation for the State invoking such objection to indicate the remedies that remain to exhaust, as well as to prove the effectiveness of such remedies.

There is no set of rules, in this sense, currently within the Inter-American system and in my opinion; they are rules of vital importance for the processing of those cases of a global nature, that the Commission as well as the Court, must hear, respectively; therefore, for what the law ought to be, the State Parties must approve a regulatory text, in the Protocol to the amendment of the procedural part of the American Convention on Human Rights or simply, amend article 62 of the American Convention to regulate this aspect. That shall lead to the improvement of the Inter-American system for the Protection of Human Rights and shall ensure legal certainty and stability for the parties in the proceeding.

I insist, to accept that international courts may declare the untimeliness or express or implied waiver of the right to invoke objections that imply the analysis of rules of international public law, such as the example of exhaustion of domestic remedies, would cause a clear inequality between the parties who are settling their issues at the domestic level and those who, by not doing it, have direct access to international courts; resulting, maybe, in excessive work of the Ministry of Foreign Affairs, the procedural risk implied in bringing a case to the jurisdiction of an international court or considering, maybe, that the objection of exhaustion of domestic remedies has never been admitted by the Court due to, certainly, the lack of clarity with which this

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must be raised at the stage of admissibility of the case before the Commission, that is, before any consideration as to the merits; otherwise, the express waive of the right to invoke it shall be presumed by the party having the right to it (*Case of Castillo Páez, Preliminary Objections*. *Ibid*. page. 40; Case of Loayza Tamayo; Preliminary Objections. *Ibid*., para. 40; Case of Loayza Tamayo; Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, para. 56). *Case of Kimel*, *supra* note 26, para. 49; *Case of Herrera Ulloa, supra* note 27, para. 81; *Case of the Mayagna (Sumo) Awas Tingni Community.* Preliminary Objections, supra note 29, para. 53. **c)** the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective (Case of *Castillo Paéz, Preliminary Objections*. *Ibid*. para. 40; Case of Loayza Tamayo; Preliminary Objections. *Ibid*., para. 40; Case of Cantoral Benavidez; Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31; Case of Durand and Ugarte, Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33).

This criterion has been recently ratified in the following matters: Case of the Saramaka People V. Surinam. Preliminary Objections, Merits, Reparations and Legal Costs. Judgment of November 28, 2007. Series C No. 172, para. 43 and Case of Salvador Chiriboga V. Ecuador. Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, para. 40.

issue is embodied in the set of rules previously mentioned. This, coupled with an increase in the number of cases, would make of this Court, instead of a subsidiary tribunal, a main tribunal, and the problems that this implies.

It would seem that the case-by-case and particular solution of one or several international cases could generate a clear unbalance in domestic set of rules and a clear inequality among nations.

To my understanding, if a question of admissibility was decided before the Commission, that same question should be analyzed, once again, by the Court considering the judicial functions of this last body as opposed to the first one. This function is in line with the full jurisdiction the Court exercises over the decisions made by the Commission[13].

This inherent power of exercising the jurisdiction *in toto* has been upheld by this Court in previous cases[14] pointing out that the American Convention is drafted in broad terms which indicate that the Court exercises full jurisdiction over all the issues related to a case. This Tribunal is competent, therefore, to decide whether there has been a violation of any of the rights and liberties enshrined in the American Convention and to protect, by means of the appropriate measures, the consequences that derive from said situation; however, it is also competent to try the prerequisites on which the possibility to hear a case is based and to verify the compliance with the procedural rule concerning the interpretation or application of the Convention[15].

I believe that any decision delivered by this Court must be subsidiary to the system of justice of each State and the Court may only issue a ruling prior to a State's decision, if the ineffectiveness of the remedies was proven; which did not happen in the case at hand, consistent with the claims made before this Court, considering that such remedies were not lodged.

I hereby present my dissenting opinion for considering that there must be harmony among the Convention, the Rules of Procedure of the Commission and of the Court and the domestic set of rules of the defendant State, which I have tried, in my capacity as judge *ad* hoc, to bring to the attention of the Court's Judges in order for them to closely learn about the law enforced in the State under question and the practice developed by it, together with its standards, in order to bring it in line with the precepts of the American Convention.

2) Substantive reasons:

[13] See Case *of Tibi,* Judgment of September 7, 2004. Series C Nº 114, para. 144; Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 79 and Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 65.

[14] See Case of the "*Street Children*" (*Villagrán Morales et al*). Preliminary Objections. Judgment of September 11, 1997, Serie C No. 32, para. 17 and 19. This judgment ratifies the criteria exposed in the judgment of the case of Velásquez Rodríguez, Preliminary Objections. Judgment of June 26, 1987.

[15] See Case of the 19 Tradesmen. Preliminary Objection. Judgment of June 12, 2002. Series C No. 93, para. 27; *Case of Goiburú et al. Preliminary Objections.* Judgment of September 1, 2001. Series C No. 82, para. 71; *Case of Goiburú et al. Preliminary Objections.* Judgment of September 1, 2001. Series C No. 81, para. 71; and Case of Hilaire. *Preliminary Objections.* Judgment of September 1, 2001. Series C No. 80, para. 80.

Even when technically it would not be necessary to carry out an analysis regarding the merits of the case at hand, I think it is appropriate to analyze them inasmuch as by dismissing the preliminary objection of exhaustion of domestic remedies, the Court pointed out:

> *"Therefore, the Court verifies that the State did not raise such preliminary objection until after the adoption of the Report on Admissibility by the Commission, by means of a brief filed during the stage on the merits. Consequently, the Court concludes that the State failed to raise such objection at the appropriate procedural moment; therefore, the Court rejects the forth preliminary objection raised by the State.*
>
> *The Court cannot consider the arguments put forward by the State in the final written allegations regarding this objection, which do not complement those initially offered, for being untimely presented. With respect the rest of the arguments exposed by the State and the representatives, only those that are closely related to the merits of the case, shall be considered, where appropriate, in the following chapters".*

It spring from the foregoing that according to the Court, the objection of non-exhaustion of domestic remedies was related to the merits; therefore, the Court analyzed it upon examining the alleged violation of the right to humane treatment and freedom of thought and expression.

Hence, even though in the operative paragraph of the judgment, the Court did not declare that the Venezuelan State failed to comply with the obligation established in article 8 [16] of the Convention (right to a fair trial), the operative paragraph related to the declaration of the State's responsibility for the non-compliance with the obligation contained in article 1.1 *ejusdem* as to ensure the free exercise of the right to seek, receive and impart information and the right to humane treatment embodied in articles 13.1 and 5.1 therein, is based on a line of argument that is connected by a common factor which is- according to the majority opinion- the

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[16] ***Article 8 (Right to a Fair Trial)***

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;

b. prior notification in detail to the accused of the charges against him;

c. adequate time and means for the preparation of his defense;

d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;

g. the right not to be compelled to be a witness against himself or to plead guilty; and

h. the right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.

5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

ineffectiveness of the Venezuelan system of justice; from there, the connection of the procedural reasons to dissent from the majority opinion and the relevancy of these brief considerations as to the merits.

In fact, Chapter VIII of the text of the judgment is divided into three subchapters; the first one refers to the context of the facts reported and the declarations made by public officials; the second one refers to the facts that violated the personal integrity of the alleged victims and their right to freely seek, receive and impart information; and lastly, the third subchapter is related to the investigation into the facts.

It is noted in the **first of the subchapters** that:

a) the Court contextualizes the situation presented, pointing out that all the incidents of the case at hand occurred in an environment and during periods of strong bias and social and political conflict (paragraph 132 of the Judgment);

b) The Commission pointed out in the annual reports on the situation of human rights in Venezuela, adopted between 2003 and 2006, "***the lack of investigation into the facts*** *and noticed that, on several occasions, it requested the State the adoption of precautionary measures in order to protect the life, humane integrity and freedom of expression of reporters, cameramen and photographers*". (Paragraph 133 of the Judgment) the emphasized part is mine.

c) It is expressly stated that it has not been proven the speeches analyzed in the judgment show or reveal, *per se*, the existence of a State's policy. Moreover, it was noted that no sufficient evidence was furnished proving that the actions or omissions carried out by state organs or structures, through which the public power is exercised, have been part of a State's policy [17] according to the terms alleged. (Paragraph 150 of the Judgment).

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[17] In the same line of thought, the report Nº 119/06 of the Commission, of October 26, 2006 in the case of "Luisiana Ríos et al V. Venezuela", para. 180 and 212, pointed out that:
"…omissis… For this reason, the thought and expression of those who do critical reporting of the government enjoys broad protection under the Convention as far as they form part of the political debate of the society. Likewise, the democracy itself needs that the expression of the thought of those who are political figures or followers of the ruling party within the framework of this debate, enjoys equal protection … omissis … the Commission notes that most of the statements attached, in which the President, for example, refers to the private media as, inter alia, "The Four Horsemen of the Apocalypse", "Fascists", who are doing a "terrorist campaign", who are organized against the government of Venezuela, against the People, the laws and the Republic, liars, evil and immoral people, golpistas and terrorists (supra para. 109) though they may have a strong and critical content that may be considered offensive, they constitute legitimate expressions of thoughts and opinions on the particular ways that the mass media may report, which are protected and guaranteed under article 13 of the American Convention and the Commission does not find they constitute a violation of this treaty".

In similar terms, the report on the merits of the Commission in the case of "Gabriela Perozo et al V. Venezuela," para. 176,177,180,181,139, analyzed the same statements in the case at hand:
"… omissis … the Commission notes that most of the statements annexed, though they may have a strong and critical content constitute legitimate expressions of thought and opinions on the special methods that a mass media may use to report, which are protected and guaranteed under article 13 of the American Convention and the commission finds that they do not constitute a violation of that treaty ... omissis … the Commission deems that the importance of the mass media and, in particular, of the work of the reporters do not imply an immunity in relation to possible criticism of the society in general, including those of public officials. On the contrary, as vehicles of social communication, they should be open and set a tolerance margin before the public scrutiny and criticism of the receivers of the information they impart … omissis .,, Therefore, it is evident that within the framework of the public debate in Venezuela, the issue regarding how the mass media do their job is an issue of public debate and then, the criticism and ratings made in this matter by officials or private individuals must be tolerated as long as they do not directly lead to violence …. Omissis … the Commission deems that the statements of the officials, despite the fact that

d) It determine that most of the statements made by state authorities are not in line with the State's obligation to ensure the right to humane treatment and the right to freely seek, receive and impart information and therefore, they could have had an intimidating effect on the victims (paragraph 161).

The judgment concludes that there is the possibility that the non contempt [18] on the part of the authorities before the aggressive incidents commited by third parties, have led the alleged victims, employees of Globovisión, to a situation of greater vulnerability to perform their jobs, running the risk of suffering unfavorable consequences for their rights (paragraph 154 to 161).

From the three foregoing paragraphs, the undersigned notes that the causal link existing between the reported damage suffered by the alleged victims in some of the cases and the State's non-compliance of which the State was declared responsible, is weak or nonexistent, considering that it was impossible to determine, specifically, whether the statements placed the employees (reporters, photographers, cameramen, assistants) in that special situation of relative vulnerability [19] inasmuch as it exists only the possibility, which implies that it could or could not happened, coupled with that pursuant to the Commission, most of the statements did not constitute a violation of the Convention. In fact, it was mentioned in the judgment that, even when it does not spring from the declarations that the unfortunate facts that occurred have been attributed to the authorities, neither that the self-identification with the editorial line of Globovisión was a *conditio sine qua non* lead the petitioners to a situation of vulnerability, the State is necessarily held responsible for the non-compliance with the obligation to guarantee the exercise of the right to freely seek, receive and impart information and the right to personal liberty.

According to the theory of responsibility, the Court pointed out, in the judgment from which I dissent, upon analyzing the influence the alleged victims had on the incidents, that:

> *"74. The Court recalls that in the instant case, its role is to determine, as an international court of human rights exercising its contentious jurisdiction, the State's responsibility under the American Convention for the alleged violations and not the responsibility of Globovisión, or of its managers, shareholders or employees, in relation to certain facts or historical incidents that occurred in Venezuela, nor even their role or performance as a social media. The Court does not determine the rights of Globovisión, in its capacity as company,*

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they may be shocking, strong, offensive or insensitive … omissis … cannot be considered as the State's failure to comply with the duty to respect the right to freedom of expression and opinion, when such right implies exactly its exercise … omissis … though they contribute to create an environment of intense discussion and bias of the mass media … the strong content of the statements cannot be considered a direct cause of the subsequent acts committed to detriment of the employees of Globovisión".

[18] Contrary to what it has been set forth, it is important to transcribe para. 142 of the Report on Merits of the Commission, in the case of "Gabriela Perozo et al V. Venezuela", regarding the same statements that are analyzed in the instant case, it was pointed out:
"…omissis … The Commission took note of the fact that in April 2003, the President of the Republic issued an appeal to respect journalists and treat them with dignity as they deserve".

[19] This concept was first introduced by the Advisory Opinion OC-18/03 of September 17, 2003. Juridical Condition and Rights of the Undocumented Migrants and then judgments in the: *Case of the "Maripirán Massacre" V. Colombia. Judgment of September 15, 2005. Para*. 174. Case of the Girls Yean and Bosico V. Dominican Republic. Judgment of September 8, 2005

> *corporation or legal entity. Even if it is true that Globovisión or its personnel has committed the acts that the State understands they did, this does not provide a justification for failing to comply with the State's obligation to respect and guarantee human rights. Dissent and different opinions or ideas are consubstantial to the pluralism that must rule in a democratic society.*

The questioning regarding the causal link highlighted the need to examine the participation of the victims in the occurrence of the incidents mentioned in the judgment, in order not to try or condemn them, in view of the fact that this Court is not competent to try the civilians of States Parties, but on the contrary, to determine the existence of guilt of the State as well as to determine what lead to that situation of relative vulnerability. It seems appropriate to emphasize that the State produced evidence in this sense and the Court declared it was inadmissible[20].

It does not spring from the State's arguments that the State was holding the alleged victims responsible but, on the contrary, it was invalidating the ground for exemption from liability. Unfortunately, the evidence produced to demonstrate this exemption was not admitted, as has been mentioned; however, I believe that it was one of the answers expected during the trial from the alleged victims or the State, within the framework of the social harmony that should result from all judgment in a society or a nation; therefore, there is no possibility to try this ground for exemption from liability.

The foregoing comments and observations in relation to the judgment from which I dissent, are facts that serve as the basis for the questioning about the service of administration of justice and the Venezuelan judicial system mentioned in the judgment in the subsequent subchapter, which deals with, as this subchapter did, the hindrance or inability of some employees of the media to do their jobs (final part of paragraph 160) corroborated by the lack of due diligence, the procedural inactivity, and the delay in the investigations.

Following this line of thought, it should be mentioned that the **second subchapter**:

a) Evidences the need to have produced the evidence invoked by the State by which it was determined or not the participation of the victims in the events mentioned or "*that they took part of acts related to disorderly conducts"* (paragraph 167) inasmuch as the representatives denied that the aggressions suffered by the alleged victims were the consequence of their own behavior (paragraph 165), even when, as it was mentioned, the State raised it as ground for exemption of liability.

b) Surprises me considering that the sentencing majority pointed out that it was not going to rule upon the suitability and effectiveness of the protective measures (paragraph 168); nevertheless, upon analyzing the facts, it examined each one of the judicial proceedings (paragraph 169 and subsequent), individually, as if it was possible to separate into sections the actions of the Venezuelan judicial system; this decision is made after it was mentioned that the mere order to adopt protective measures does not show whether the State has effectively protected the beneficiaries of the measures. (paragraph 167). All this highlights the connection between the facts and the judicial system (and within this, the Venezuelan judicial system) and all the foregoing with the judgment adopted by the majority of the judges.

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[20] See judgment in process (Order) of the President of the Court of March 18, 2008, para. 19 and 28

c) Systematically makes an analysis of each one of the facts, and the sentencing majority determined that third parties not related to the government carried out the activities that hindered the alleged victims from doing their jobs; following this line of thought, it concludes that because of the actions of the third parties, the State is not responsible for the violation of the right to humane treatment. Regardless of this consideration, it is expressly mentioned that in most of the cases, there were actions and omissions attributable to the Venezuelan judicial system[21] and the State did not justify it; for example, it was mentioned that: The Court notes an unwarranted procedural delay; or that there is no evidence proving that the State acted with due diligence in the development of the investigations or at the appropriate procedural time; or that the investigation lasted a certain period of time; or that it was ordered the investigation after certain time; or that the first measure was adopted after a certain number of years; or that no proceeding was instituted or no investigation carried out or that there was delay in such proceeding or investigation; or that no medical-legal evaluation was performed in certain cases; or that there were unwarranted delays in the delivery of certain decisions by the authorities in charge of the criminal prosecution, based on the fact that there was no sufficient evidence in the investigation. (See, paragraphs 167, 172, 183, 187, 194, 196, 199, 215, 221, 225, 228, 231, 235, 240, 244, 249, 252, 256, of the judgment).

In light of the foregoing, it would seem evident the unremarkably efficiency and effectiveness of the Venezuelan judicial system and as a result, it would seem appropriate the decision contained in the judgment regarding the non-compliance with the duty to guarantee the rights enshrined in articles 13.1 and 5.1 of the Convention, considering such ineffectiveness. Nevertheless, as shall be analyzed *infra*, that must not have been a determining factor in the decision.

d) When discussing, in this subchapter, the violation of the mental and moral integrity of the alleged victims, even when the Court disregards the expert examination represented by the psychological evaluation made by Magdalena López, it determines – presumably, based on the experience inasmuch as there is no evidence that would allow to scientifically come to the conclusion of the sentencing majority- that, by virtue of the fact that the alleged victims were subjected to hindrances, aggressions, threats, acts of harassment and intimidation during their jobs, the State is responsible of the obligation to guarantee the right to mental and moral integrity of the victims mentioned. (Paragraph 287). I presume that this decision was made because the State exposed the alleged victims to a situation of relative vulnerability as well as due to the lack of effectiveness of the system and the Venezuelan judiciary. Considering that there is no reasoning for the conclusion that the sentencing majority came to, we must ratify that the causal link is very weak or nonexistent as has been analyzed *supra.*

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[21] "Article 253. The power to administer justice derives from the citizens and is enforced on behalf o the Republic as mandated by law.

The bodies of the Judiciary have the responsibility of hearing the cases and matters according to their jurisdiction, by means of the procedures determined by law and they must enforce and carry out their decisions.

The judicial system is formed by the Supreme Tribunal of Justice, the other courts determined by law, the Attorney General of the Republic, the Public Defender, the criminal investigation divisions, the assistants and officers of justice, the penitentiary system, the alternative means of justice, the citizens who participate in th e administration of justice according to the law and the lawyers authorized to practice". The emphasis is mine.

Lastly and following the order mentioned, I note in the **third subchapter** that:

a) The Court, after analyzing the arguments of the State where it was mentioned other actions instituted different from the criminal ones (paragraph 301), concludes that the parties have emphasized the complaints and investigations conducted by the criminal courts, ending with an analysis of the existing remedies available at the criminal courts (paragraph 305).

I ratify the statement made *supra* regarding the fact there was no consistency between the claims lodged before the Inter-American system for protection and the domestic remedies that should be exhausted in order to have access to that system, insofar as a criminal court, acting with criminal jurisdiction in Venezuela, **shall not be** able to restore the situation alleged by the victims to be impaired. These actions may be verified by means of administrative actions or remedies stipulated in the Venezuelan set of rules or constitutional measures.

b) By considering that the criminal proceedings were not suitable or sufficient, as has been pointed out *supra,* the Court only analyzed the efficiency and effectiveness of the criminal proceedings to prove – mistakenly, in my opinion- that if the State's organs acted according to the terms of the COPP (Basic Code of Criminal Procedure)[22] the results of this case would be different.

c) The judgment even analysis the lack of action on the part of the State during the criminal proceedings to conclude that such inactivity led to a detrimental act for the victims. In fact, it was mentioned that the Attorney General's Office had to request the dismissal of the complaints in case that after the opening of the investigation, it was determined that the facts of this case constituted a crime that needed to be prosecuted at the request of a party, in accordance with section 301 of the COPP of 2001. It is necessary to emphasize that two sections of that instrument are in conflict with this decision: sections 24 and 25[23] . To base the decision to condemn the State [24] on the inactivity of the Attorney General's Office by not having requested the dismissal according to section 301 *ejusdem,* means not doing a full interpretation of the code in question and not understanding that the private individuals should have, in that situation and according to the two sections mentioned, directly resorted to the judicial authorities.

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[22] See para.310 to 312 of the judgment from which I dissent.

[23] "Section 24. Exercise. The criminal action must be instituted by the Attorney General's Office *ex officio*, **unless it may be only be instituted by the victim or at the victim's request**". **The emphasis is mine.**
"Section 25. Offenses that can be prosecuted in a private suit. The victim can only institute the actions resulting from crimes that the law establishes as offenses prosecutable in a private suit. Moreover, the prosecution shall be conducted pursuant to the special procedure regulated by this Code.
Nevertheless, for those offenses that can be prosecuted in a private suit as established in Chapters I, II and III, Title VIII, Second Book of the Criminal Code, it would be enough the accusation brought before the Public Prosecutor Office or before the competent police division of criminal investigations, made by the victim or its legal representatives or guardians, if the victim were incompetent, without prejudice to the terms established by special laws".
Where the victim is not able to bring an accusation or suit by itself, due to its age or mental condition, or if the victim has no legal representation, or if such representation is not competent, the Attorney General's Office has the obligation to institute the criminal action. The pardon, dismissal or waiver of the victim shall end the proceeding, unless the victim was a minor (less than 18 years of age).

[24] Para. 321 of the judgment from which I dissent.

Moreover, this requirement is also based (paragraph 315 and 316) on the mistaken interpretation of section 75 of the COPP[25], by understanding from that, the burden that lies on the State to produce all the measures of evidence necessary and to investigate the complaints with due diligence, concluding that the judicial authorities did not decide on the application of the rules on connection, neither they delivered decisions, except for some cases, that clarified whether the channel chosen was the appropriate one (paragraph 317). The truth is that said section deals with the ancillary jurisdiction for the case in which a same person is held responsible for the commission of a publicly actionable crime and a crime prosecutable at the request of a party, determining that the case shall be heard by the court competent to try the publicly actionable crime and the rules of ordinary procedure shall govern. The rule does not establish the proceeding that the State should institute but the way in which the procedural matter should be resolved if a person is held responsible for the commission of two crimes of different nature.

d) The sentencing majority concludes that the investigations did not constituted an effective means to guarantee the right to humane treatment and the right to seek, receive and impart information of the alleged victims (paragraphs 358 and 359); therefore, it was determined that the State is responsible for the non-compliance with articles 13.1 and 5.1 in conjunction with article 1.1 of the Convention, in light of the fact that the State led reporters to a situation of relative vulnerability (with a weak or nonexistent causal link as has been emphasized *supra*), which derived in a hindrance for the reporters to exercise their profession and the omission of State's authorities to carry out the investigations with due diligence (paragraph 362).

The foregoing conclusion makes us think about the responsibility of the State for the delivery of public services, including the Venezuelan judicial system and in this way, validate the conclusion at which the majority of the judges arrived. Thus, in short, it is the public judicial system what is being analyzed by this Court and it is this issue on which the fundamental reasoning of this judgment was based. Ultimately, the judicial system in Venezuela is required to have a very high, general and uniform standard.

The first thing that must be taken into account, in my opinion, is the nature of the service under question, the improvements and the difficulties entailed and what is needed for its development. Once the foregoing has been verified, it is possible to establish whether the system works poorly or with delay or if it simply did not work at all. The judgment made no analysis in that respect.

Likewise, regarding the requirements for the admissibility of the state responsibility, it is important to emphasize the requirement related to the damage.

It is necessary to mention, with accountability, that as to the damage, the instant case did not represent a special or abnormal damage.

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[25] "**Section 75. Ancillary Jurisdiction**. *"If any of the related crimes corresponds to the competence of an ordinary court and other crimes to the competence of special courts, the case shall be heard by the ordinary criminal court".*
When a same person is responsible for the commission of a publicly actionable crime and a crime prosecutable at the request of the aggrieved party, the case shall be heard by the court competent to try the publicly actionable crime and the rules of ordinary procedure shall govern".

It is not special because the omissions and delays determined by the Court are not addressed at the alleged victims only, inasmuch as, unfortunately, the delay and other judicial deficiencies are common to all the members of the Venezuelan community. The State has made efforts to solve the problems of the judicial system and, in some cases, it had successfully remedied the situation. In fact, there are satisfactory results as to the labor reform with the entry into force of the Organic Law of Labor Procedure of the year 2002; nevertheless, as to the criminal matters are involved, in spite of the entry into force of the Organic Code of Procedure in the year 1998 (together with the subsequent reforms), the results have not been so successful, maybe because it is the jurisdiction that had historically tried more cases in the country.

Consequently, the damage under analysis in this case is neither abnormal, inasmuch as it does not have more than the usual problems inherent to the functioning of a public service, as is the Venezuelan justice or the limitations imposed on the collective life. Definitely, it does not exceed the obstacles typical of the service.

These comments are not intended to justify the way in which the Venezuelan judicial system works and the consequences it had in the instant case. Though this is not my intention, I have to mention insofar as were at the presence of human rights. It must be observed that these points were not taken into account to base the decision made in the judgment, let alone to catalogue what a reasonable term or due diligence means in relation to the investigation, inasmuch as it was established that the State failed to comply with the obligation to ensure the exercise of the right to seek, receive and impart information and the right to humane integrity because the investigations did not contribute to or constitute an effective means to guarantee the right to humane treatment and the right to seek, receive and impart information of the alleged victims.

In other words, it is mostly because of the defects of the judicial system (at the criminal jurisdiction, considering that, as has been established at the beginning of this dissenting opinion, the victims did not exhaust other remedies, from which it cannot be inferred the same) that the Venezuelan State is held responsible and this responsibility is attributed to it without having analyzed the necessary grounds to establish the State's responsibility for the system and the judicial service.

Furthermore, it is necessary to emphasize, as mentioned in the judgment, the high level of conflict that existed in Venezuela at the moment of the occurrence of the unfortunate and repudiable facts reported, all of which minimizes the State's responsibility or makes more real the possibility of putting forward the exemption from liability due to the existence of *force majeure* in the delivery of public utilities.

The undersigned does not wish to conclude with this dissenting opinion without pointing out that the violence that existed in Venezuela during the occurrence of the facts analyzed in the case was deplorable; but it has been proven in the foregoing paragraphs that the domestic courts did not have the opportunity to try to find a solution to the conflict brought to the Court's attention, using its standards, virtues and defects. Only after proving that the proceedings of the State were unsatisfactory or showing that the domestic remedies were not suitable to satisfy the claims is that this matter could have been brought to the jurisdiction of the Inter-American system of protection. Doing the opposite would mean to empty the Venezuelan system of justice.

Based on the foregoing, I feel I have the duty and obligation to dissent from the judgment and I hereby present my opinion with the utmost respect for those who have a different point of view.

It is expressed, in this way, my reasoning to support my dissenting opinion in this case. Date *ut supra* .

Pier Paolo Pasceri
Judge *ad hoc*

Pablo Saavedra Alessandri
Secretary