

VENEZUELA:
THE DISMANTLING OF THE RULE OF LAW
SINCE THE INSTAURATION OF THE CHAVISTA REGIME

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Abstract

This essay aims to analyse the complex issue of the gradual dismantling of the rule of law in Venezuela, through a chronological analysis of the various violations of the Constitutional Charter and the regimes that have occurred over the years.

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Introduction

The dismantling of the Rule of Law in Venezuela, or rather its total elimination, has not been produced abruptly, through a military *coup d'état*, one of those to which the XXth. Century Latin America had made us been accustomed to, as a matter of fact, it begun in 1999, by means of a progressive destruction plan of each and all of the

democratic institutions that had been able to grow since 1958, after almost 60 years of military governments more or less autocratic and, certainly, following 10 years or iron-clad dictatorship headed by General Marcos Pérez Jiménez. Such gradual, incisive, perseverant dismantlement's object has essentially been the substitution of the Social and democratic State of law and justice consecrated by article 2 of the 1999 Constitution, by the implementation of a supposed "socialist" state that has become a reality in a totalitarian State, supported by the force of arms, led by a group of politicians and militaries who have been concentrating power against more than 30 million persons. As a product of years of corruption inefficiency, elimination of civil and political liberties and of a nefarious intervention of the State in the economy, absolutely controlling all of the citizen's action environments, we currently have the world's highest hyperinflation, the greatest population's exodus ever have been recorded in Latin America, the highest death toll due to the lack of medicines, and food and to persisting violence; and with citizens trying to survive from the deepest precariousness and struggling for the return of the rule of law and democracy through free, fair, transparent and independent elections. The Venezuelan society is currently suffering from what has been called and declared a complex humanitarian emergency¹, a concept being different from that of humanitarian crisis because the latter appears as a consequence either from natural disasters, or from armed conflicts.

The complex humanitarian crisis, rather, as affirmed by the very same United Nations Organization (UN), is the product of several factors progressively unleashing it, to wit: a) the dismantling of formal economy and state structure; b) civil conflicts; c) starvations; d) humanitarian crises; and e) the population's exodus. Hence, the feature of complex humanitarian crisis is that its main cause is of a political kind; it is the result of political policies imposed by authoritarian regimes gradually destroying the societies' cultural, civil, legal, political and economic stability, as in effect it is the case in Venezuela. I shall try to summarize the fundamental milestones

¹<http://www.civilisac.org/emergencia-humanitaria-compleja/las-emergencias-humanitarias-complejas-caracter-politico>.

having marked the dismantling of the rule of law in Venezuela through these 20 years of Chavista government, those being the leading to the implementation of an authoritarian regime of a communist nature. Said milestones' exposition turns around the principles governing and supporting the Rule of Law: a) Principle of legality, (the State's and its public powers' abidance to the Law) from which derive those of constitutional supremacy (the Constitution is the supreme law and the foundation of the legal system); and, the principle of constitutional rigidity (the Supreme Law's amendment may only be made by means of the principles in it provided); b) The respect, guarantee and protection of rights, human and fundamental ones; c) The separation of powers and, especially the requirement of an impartial and autonomous judicial power; d) The principle of popular sovereignty.

The facts being told pretend to give evidence about how the chavista regime, assuming power by means of democratic mechanisms (after 2 failed coups d'état led by Chávez on February and November 1992), "brilliantly" dismantled the Rule of Law. Elected as President of the Republic in 1998, and as long as the oil income allowed it, Hugo Chávez had the backing of the majority of Venezuelans, something that made it possible for him to clear the way for the completion of a "socialist" State, altering and violating the legal system that he, himself had proposed in the 1999 constitutional text, one contemplating all the guarantees, freedoms and rights defended by modern constitutional States. Due to the radical drop of oil income, with the Venezuelan economy's foundations annihilated; with the rule of law's institutions weakened and attacked; and the premature and surprising death of Chávez, the popular support sustaining the chavista fortress began to crumble.

Then started a phase in which the Chavista government, now led by Nicolás Maduro undressed itself. All of that is revealed with the parliamentary elections of December 2015. The opposition was able to overwhelmingly win, in spite of the fact that the institutions and public powers were already kidnapped by the government's power and subjected to the Executive's and government party's sole will. Let us then begin to tell about the milestones revealing the

violence actions against the Venezuelan Rule of Law and democracy, perpetrated by the power itself during the two last decades. That, in two natural parts: Hugo Chávez and Nicolás Maduro Moros.

I. Hugo Chávez Frias

After two coup d'état attempts, led by Lieutenant Colonel Hugo Chávez on February and November 1992, and following his liberation by means of a pardon granted to him by President Caldera, Chávez was elected President in December 1998, for the 1999-2004 presidential term. On the day of his swearing in before Congress, on February 2, 1999, Hugo Chávez pronounced the following words: "I swear before God, the Homeland my people that under this dying Constitution, that I shall and promote or boost the necessary democratic transformations being in order that the Republic may have a *Magna Carta* suitable to the new times". And, effectively, he complied with his oath, yet only that for Chávez the "new times" were not precisely, the same times of a democratic and under rule of law State.

1. The violation of the 1999 Constitution from the day following its "popular" sanction (1999-2000)

The Venezuelan 1999 Constitution is the product of the setting-on of a constituting process conducted disregarding the 1961 Constitution, by the Hugo Chávez candidate, then endorsed by the formerly called Supreme Court of Justice, once the candidate's election as President was secured. A lot has been written about that process and it is not what is of interest here. I just want to stress that the National Constituent Assembly was shaped in an anti-democratic way, inasmuch as it did not warrant the minorities' proportional representation; at the same time, it was also contrary to the Venezuelan State's federal conformation, since no equal representation to each state it was provided. Such Assembly was formed by 125 chavista "constituents" and only 6 who were not, even though the pro-government representatives won with only by the 52% of the votes.

The text composed under those conditions was submitted for referendum approval in the middle of a natural catastrophe of enormous dimensions'; the participation rate was just 44.02% of the electoral registry. Such text does not have a true transition regime, and, besides, since the beginning, suffered several modifications without having met the procedures provided therefore.²

1.1. The creation of a Public Power's Transition Regime after the Constitution was approved

The Constitution of 1999 was drafted by a National Constituent Assembly called behind the 1961 Constitution's back; under the impulse of the recently elected president, Hugo Chávez. The new Constitution was submitted to binding referendum and the text was approved on December 15, 1999. Although its essential mission was to produce the new constitutional text and the National Constituent Assembly had concluded its task, that very same year the Assembly enacted a Decree with constitutional rank regulating "The Public Powers' Transition Regime" by means of which, directly and without any consultation, appointed each of the Public Powers head officers³.

⁴ It is important to underline that, even when the 1999 Constitution was approved, the National Assembly started a transition regime; we thus have, for instance, that it decreed on August 1999 the Judicial Emergency, something that allow them to create the Commission of Organization and Operation for the Judicial Power by means of which it dismissed judges and prosecutors and directly, without possibility of any contest, appointed their substitutes for along 10 years whereas said Commission operated until the year 2010.

³ In such sense, Professor Brewer Carías has denounced in many of his essays and writings published along these 20 years, that National Constituent Assembly of 1999, attributing itself competencies it did not have (inasmuch as they had not been approved by means of the referendum), acted as follows: 1) it set a National Legislative Commission (the so called Tiny Congress that had not been provided by the recently approved Constitution); 2) substituted the states' legislative assemblies; intervened the Mayoralties and the Legislative Councils; 3) Directly appointed the Supreme Tribunal of Justice's magistrates, without meeting the requirements provided by the recently approved 1999 Constitution; and 4) also promulgated the Public Power's Electoral Statute. All of it was performed during the year 2000 without having been approved by referendum. In this sense, consult, among others, cf. A. Brewer Carías, *Golpe de Estado y proceso constituyente en Venezuela* (2001); Vv.

Thus, a transition regime was created outside the Constitution. A recourse was entered before the Constitutional Chamber—recently appointed using the questioned Decree, against such ‘Transition Regime’. that ⁴ The Chamber declared that the regulation was supra-constitutional and, accordingly it was not subject to the just promulgated Constitution.

1.2 The substantial and formal modifications of the 1999 Constitution’s contents

On the other hand, the constitutional text approved on December 15, 1999, published in the Official Gazette on December 30, 1999, was republished on March 24 of the year 2000, whereas the National Constituent Assembly included an Exposition of Motives – that was never submitted to the public’s approval- changing 182 articles and 13 transitory provisions. From the former it turned out, that as from March 2000, there were two constitutions in Venezuela. That of 1999, approved by the people under referendum, and that of March 2000, modified, unilaterally, by a National Constituent Assembly that officially concluded its functions on December 1999.

2. The constitutional regime’s gradual reform by means of laws and decree-laws (2007-2010)

During his first constitutional term (1999-2006) Hugo Chávez, undoubtedly counted with a great popular support. However, he also counted with an increasing fierce political opposition that, since 2001 made efforts to prove the regime’s authoritarian nature. From that period comes the movement of April 2002, that came to request the temporary ousting of the Chávez’s government; the so-called taking of the Altamira Square by military officers during several months, between 2002 and 2003; the subsequently known as “oil strike” between 2002 and 2003; the promotion of a consultant referendum aimed to provoke Hugo Chávez’s renunciation (2003); the launching

Aa (eds.), *Estudios sobre la Asamblea Nacional Constituyente y su inconstitucional convocatoria en 2017* (2017).

⁴ The CC/STJ, sentence 6 of January 6, 2000.

or implementation of a recall referendum of Hugo Chávez's mandate (2004); the massive waiver to participate in the parliamentary elections of 2005 due to the absence of adequate electoral conditions. Between 2003 and 2004 the Supreme Tribunal of Justice dismantled the National Electoral Council, just after the so-called the Chambers' war⁵. There was also the closing of the First Court of Contentious Administrative Matters ⁶.

Finally, on December 2006, presidential elections were held with the political opposition's participation. Chávez obtained 62.7% of the votes, with a 74.87% of participation rate⁷. On the following day, he proposed a constitutional reform that would be copied on some *axes* to which he referred during the campaign, and that would lead Venezuela to socialism.

2.1 Constitutional reform and its rejection by mean of referendum (2007)

In the year of 2007, president Chávez proposed the amendment of the Constitution in several of its essential aspects⁸ since he pretended to substitute the State of law by a "socialist" state in order to establish the so-called communal State⁹. The proposal was submitted binding referendum, yet the citizens rejected it. The official results for that process were never published. In 2008, Leopoldo López, the Major of the Municipality of Chacao and the opposition leader with highest popular support, was politically disabled by the

⁵ See A. Brewer Carías, J. Peña Solís (eds.), *La Guerra de las Salas del TSJ frente al referéndum revocatorio* (2004).

⁶ The report issued by the Inter American Human Rights Commission of October 24, 2004, accounts the consequences for the Rule of Law and human rights.

⁷ http://www.cne.org.ve/divulgacionPresidencial/resultado_nacional.php

⁸ The 1999 Venezuelan Constitution provides three procedures for its text's review; the constitutional amendment, the constitutional reform and the Constituent Assembly. This last procedure is aimed to reform the Constitution in its essential foundations; hence, the very same constitutional text provides necessary process to get the people's approval by means of referendum.

⁹ The reform sought by mid 2007 was initiated not through the call of a National Constituent Assembly by means of referendum, as it should have been, it was rather proposed before the National Assembly formed by deputies whom since 2005, were mainly members of the government party.

Comptroller of the Republic, banning him from participating or holding public positions during 6 years.

2.2 The 2009 constitutional amendment

One of the topics, issues or aspects that Chávez pretended to modify back in 2007 was the limitation for the President's reelection. Rejected his reform project and failing to recognize the effects assigned by the Constitution to such rejection, he proposed a new amendment of the Constitution that was finally approved by means of a new referendum, thus eliminating the restrictions to the successive nomination for all popular election offices.¹⁰

2.3. The constitutional regime's reform by means of laws and decree-laws (2007-2010)

Since 2007, communist laws began to be adopted starting to refer to the "Popular Power". That went on during 2008 and 2009, in spite of the reform's rejection. 2010 was a corollary. In January 2010 and successive months, President Chávez declared the necessity of a change the State's structure and to public policies, clearly assuming Marxism as a doctrine that ought to be materialized¹¹ In September of that very same year of 2010, there were new parliamentary elections, in which the government lost the qualified majority and for such reason by the end of the year 2010, prior to the initiation of the new legislative term, it enacted a set of organic laws incorporating said Marxist doctrine and regulating a socialist, militarist, centralized,

¹⁰ Originally, Chávez's proposal referred only to the amendment of the Constitution's article 230, which prohibited the indefinite reelection; yet on January 5, 2009, the President decided include also governors, majors, deputies and any other elected public offices. All the amended articles being referred to elective public offices will not be transcribed; it will suffice, as an example to indicate the amendment related to the president of the republic's reelection: "Article 230 (old one): The presidential term is of six years. The President of the Republic may be reelected just one time, for an additional term." "Article 230 (amended): The presidential term is of six years. The President or Female President may be reelected."

¹¹<http://www.cubadebate.cu/especiales/2010/02/21/lineas-chavez-rimbo-al-estado-comunal/#XQD15i3SF-U>.

police State called a communal State¹². A communal State, or socialist State, was legally established in parallel to the social, democratic of law and justice State consecrated by the Constitution.

3. On Hugo Chávez's illness, his new reelection (2013-2019) and his decease¹³

According to the consulted sources, since mid 2011, when the President became ill with cancer,¹⁴ until the date of his death (March 2013), the government kept in secrecy the real health condition of Hugo Chávez, in order to avoid the activation of the procedure provided by article 233 of the Constitution setting the President's temporary and absolute absences. The mentioned article provides in its first paragraph that it shall be deemed as an absolute absence, among others, "the permanent physical or psychic inability certified by a medical board designated by the Supreme Tribunal of Justice and with the National Assembly's approval"¹⁵. On October 7, 2012,

¹² The Popular Power's Organic Laws, of the Communes, of the Communal Economic System, of Public and Communal Planning, and of Social Comptrollership, in order to structure the communal State by means of the so-called popular power there was a reform of the Organic Law of Municipal Public Power, the Laws of the State Planning Councils and Coordination of Public Policies, and of the Local Councils of Public Planning.

¹³ It is recommended to read of the chronicles which professor Brewer Carías wrote during those months, from December until March of 2013, where he carefully analyses each one of the violations against the Venezuelan Constitution and Laws. Such Chronicles can be consulted in A. Brewer Carías, *La destrucción del Estado de Derecho, la ruina de la democracia y la dictadura judicial. Tratado de Derecho Constitucional Tomo XVI* (2017), 223 ff.

¹⁴ Since there are no official reports on this subject, I limited myself to quote the available information from Wikipedia, the only one offering information in such sense and which quotes newspaper articles and information having been given during Hugo Chávez's illness. I refer to the article titled "*Anexo: Cronología de la enfermedad terminal de Hugo Chávez*". Consult also "*Cronología de los problemas de salud del presidente Hugo Chávez*", El Universal, Caracas, 31 December 2012.

¹⁵ Article 233. The following shall be absolute absences of the President of the Republic: death, the renunciation, the destitution decreed by judgment of the Supreme Tribunal of Justice, the permanent physical or mental inability certified by a medical board designated by the Supreme Tribunal of Justice and with the

and despite of his persisting illness, Chávez participated at the new presidential elections, for the 2013-2019 constitutional term. With a very precarious health, he won with 55.07% (8,191,13) of the votes against Henrique Capriles who grouped all the opposition forces and obtained 44.31% (6.591,304) of the votes.¹⁶ At the end of October 2012, President Chávez, already elected for the following presidential term, admits he is seriously ill and travels to Cuba to start a new treatment; on December 8, he returns to Caracas and announces on TV and media that the cancer has not disappeared and that he must have a new surgery in Havana.

He publicly designed Nicolás Maduro (his Vice President) as his political heir, clamming the votes for him in the event that he should be “disabled” to rule. On December 11 Chávez is operated for the fourth time and on the 31st, Maduro returns from Havana announcing that the President’s health is getting worse. January 10, 2013 was the starting date for the presidential term. The elected president should have given oath before the National Assembly; yet the seriousness of his illness restrained him from doing so. For that reason and required a previous constitutional interpretation, the Constitutional Chamber adopted an opinion on January 9, 2013¹⁷ affirming that since Chávez had been reelected and performing at the presidency, the fact of not appearing before the Legislative Power to be sworn did not mean that he should not keep performing functions pointing out that what the “principle of administrative continuity” should be applied. In case of the President’s absences due to health reasons, the Constitution provides that the Supreme Tribunal must appoint a medical board that must inform if the President’s absence is temporary or absolute adding that in the event that such report determines that there are sufficient grounds to declare the absolute absence, the National Assembly must approve it. Notwithstanding,

approval of the National Assembly, the office’s abandonment, declared by the National Assembly, as well as the mandate was publicly revoked.

¹⁶http://www.cne.gob.ve/resultado_presidencial_2012/r/1/reg_000000.html?

¹⁷ Sentence no. 2 SC/TSJ, 1 September 2019, <http://historico.tsj.gob.ve/decisiones/scon/enero/02-9113-2013-12-1358.HTML>; see A. Brewer Carías, *Estado de Derecho, la ruina de la democracia y la dictadura judicial*. Colección *Tratado de Derecho Constitucional Tomo XVI* (2017).

the evidence and violating again the Constitution (there was no doubt that if the procedure would have been initiated, his inability to serve as president would have been declared, since he was in fact unable before the elections), and neither the Supreme Tribunal or the Legislative Power acted, as they should have. Hugo Chávez never assumed the position of President. His decease was announced on March 5, 2013. Regarding human rights' violation, it is worth to mention that in the year 2012 the Inter American Human Rights Court ruled against the Chávez government in several complaints for violation of the Constitution and fundamental rights during preceding years; Then, Chávez decided to withdraw Venezuelan jurisdiction from the Court's jurisdiction reasoning that its decisions violated the national sovereignty. Therefore, he denounced the *American Human Rights Convention*.

II. NICOLAS MADURO

Deceased Chávez and applying the article 233 of the Constitution's, the Executive Vice President Nicolás Maduro should be appointed as interim President and, within the following 30 days, the National Electoral Council should call for a new presidential election for the term 2013-2019. It happened so, but ignoring the article 229 of the Constitution¹⁸.

1. New presidential elections and Nicolás Maduro's proclamation as new president (2013-2019)

After the announcement of Hugo Chávez's decease, and following the mandate of the article 233¹⁹, Nicolás Maduro should

¹⁸Article 229. One may not elect President of the Republic whoever is performing the office of Executive Vice President, Minister, Governor and Mayor, on the day of his or her nomination or at any other moment between such date and that of the election,

¹⁹ Article 223. The following shall be absolute absences of the President of the Republic: death, the renunciation, the destitution decreed by judgment of the Supreme Tribunal of Justice, the permanent physical or mental inability certified by a medical board designated by the Supreme Tribunal of Justice and with the

temporarily cover the absolute absence of the President. Due to the need of calling of a new electoral process, and in view that Nicolás Maduro had been “designated successor” by Chávez, there was a practical problem as a consequence of the article 229 of the Constitution. Such article expressly prohibits the Executive Vice President’s nomination as candidate to run for President. Again, the problem was solved by the Constitutional Chamber, through a decision of March 08, 2013²⁰, in which declared that Maduro “no longer performs as vice president and becomes the president in charge”²¹. Maduro could not be candidate, under express constitutional prohibition. He became candidate by means of a decision of the Constitutional Chamber. The elections took place on April 14, 2013. The elections resulted in the government’s party victory and that of its candidate Maduro, but with very tight results since the latter obtained 50.61% of the votes (7,587,759) while his closest competitor, Henrique Capriles Radonski, obtained 49.12% (7,363,980)²². The Opposition contested these results since during the voting process at least 3,500 possible irregularities were observed, generating several doubts about such results; the Electoral Power refused to perform the audits, arguing that the error margin was minimal and that it did not affect the whole results. The Constitutional Chamber received and decided against several

approval of the National Assembly, the office’s abandonment, with it being declared by the National Assembly, as well as his mandate being publicly revoked. Whenever an absolute absence of the President elect should be produced prior to the assumption, one shall proceed to a new universal, direct and secret election within the following thirty consecutive days. While the new President is being elected and assumes, the Executive Vice President shall be in charge of the Presidency of the Republic. In the former cases, the new President shall complete the corresponding constitutional term. If the absolute absence is produced during the constitutional term’s last two years, the Executive Vice President shall assume the Presidency of the Republic until completing the same.

²⁰ Sentence no. 141, SC/TSJ, 8 March 2013, <https://www.accesoalajusticia.org/wp-content/uploads/2016/03/SC-Nº-141-08-03-2013.pdf>.

²¹ <https://www.accesoalajusticia.org/volviendo-atras-como-justifico-el-tsj-la-ausencia-de-chavez/>.

²² http://www.cne.gob.ve/resultado_presidencial_2013/r/1/reg_000000.html?

electoral recourses due to forced formal reasons, but the resolution of such disputes corresponded to the Electoral Chamber instead,²³.

2. Protests against the president of the Republic, Nicolás Maduro (2014)

2.1 Protests and violations of human rights

In early year 2014, the country's economic condition was really serious. The high inflation rates, the shortages of food and medicines; the student protests' repression, the institutionalized violence and impunity; the discontent of half of the population with the results of presidential elections and the dark handling of Chávez's illness and decease, brought the beginning of a set of protests against the government, led and promoted by three of the opposition's leaders²⁴. Massive protests paralyzed the country from February through July 2014, and it resulted in the excessive use of force by military and police bodies together with pro-government armed groups, whom violently raged against protesters. At least 9,286 protests were accounted nationwide.

The result of these months of chaos was a systematic violation of human rights. The figures are the following: 43 people dead while in use of the right to peaceful protest, most of them murdered by government forces, other by incidents generated by the barricades placed by people protesting in order to block the public roads; 878 people injured, including security force's staff; tens of persons tortured and mistreated; and 3,351 people arrested, many of them are

²³ Sentence no. 1.111, 7 August 2013; it is also recommended to read the analysis made by Allan Brewer Carías about the unconstitutional situation of the Constitutional Hall when it advocates the knowledge of the electoral contentious appeals against elections on that date; analysis which is found in said book of the referred author, A. Brewer Carías, *Estado de Derecho, la huída de la democracia y la dictadura judicial* (2017), 223 ff.

²⁴ María Corina Machado, Antonio Ledezma y Leopoldo López.

still in jail waiting for trial.²⁵ During the protests, an arrest warrant was issued against Leopoldo López, another the opposite leader. Such warrant was issued by Public Prosecutor (Luisa Ortega Díaz), who accuses him for “public instigation, damages to property and criminal association”.

On February 18, López surrendered to the authorities and, on September 2015 he was sentenced to 14 years of prison. The *United Nations Organization*, the *European Union*, *Amnesty International* and *Human Rights Watch* as well as other international human rights organizations, condemned such sentence since it attempted against the right to protest, also because the decision was adopted in a trial which violated all the due process constitutional guarantees²⁶. In November of that very same year the prosecutor and the General Chief Prosecutor Luisa Ortega Díaz whom formerly accused López expressed in 2018 that such process was set-up without evidence and that the same were all false.

2.2 Appointment of public powers officials without counting with the qualified majority required by the Constitution

In the middle of a deep political, social and economic crisis (the scarcity of food and medicines had already made the government impose rationing measures), the National Assembly appointed the Magistrates of the Supreme Tribunal, the Comptroller General of the Republic and the People’s Defender with a simple majority of the deputies’, although according to article 279 of the Constitution such appointments should be made requiring a qualified majority of 2/3 of the deputies²⁷. It is also necessary outline

²⁵<https://www.amnesty.org/download/Documents/AMR5312392015SPANISH.pdf>
<http://www.observatoriodeconflictos.org.ve/oc/wp-content/uploads/2015/01/Conflictividad-en-Venezuela-2014.pdf>.

²⁶ For this issue and for many others related to the systematic violation of human rights in Venezuela. One must read the Report issued by the United Nations *High Commissioner for Human Rights* dated July 31, 2017 titled *Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017* (2018).

²⁷ Article 279. The Republican Moral Council shall convoke a Committee of the Citizen Powers Nominations Evaluation, to be formed by representatives of several

that the designation of the National Electoral Council's members, both in 2004 as on 2014, were made by the Constitutional Chamber of the Supreme Tribunal of Justice, when such designations must be made with the favorable vote of 2/3 of the parliament's deputies according to art. 296 of the Constitution²⁸.

3. On the new National Assembly with an opposition majority and the express appointment of the express magistrates of the Supreme Tribunal of Justice (2015)

On December 2015 there were elections of deputies for the National Assembly. Said election results were as follows: the opposition obtained 112 seats of a total of 167, with a 56.21% (7,728,025) of the votes, while the government party obtained 40.92% of the votes (5,625,248)²⁹ On December 2015 and before the new National Assembly started operating, the outgoing Legislative Power elected the new magistrates of the Supreme Tribunal, in contravention of all legal and constitutional requirements. Effectively, 11 Magistrates surprisingly resigned (5 of the Constitutional Chamber) although their terms expired in 2016, all of it to prevent that they were appointed by the new National Assembly; the terms provided by the Constitution and by the *National Assembly's Interior and Debates Regulations* to make the nominations and corresponding

sectors of the society; it shall forward a public process from whose results one shall obtain a short list of three for each Citizen Power's, which shall be submitted to consideration of the National Assembly. The latter, by means of the favorable of two thirds of its members, shall choose within a term not exceeding thirty continuous days to the holder of the Citizen Power being considered. If upon this term's conclusion there is no agreement in the Assembly, the Electoral Power shall put the issue to popular consultation.

²⁸Article 296. The National Electoral Council shall be integrated by five persons not linked to organizations with political purposes; three of them shall be nominated by the civil society, one by the national universities' faculties of legal and political sciences, and one by the Citizen Power. The National Electoral Council's members shall be appointed by the National Assembly with the vote of two thirds of its members. The National Electoral Council's members shall choose their President among them, in accordance with the law.

²⁹ http://www.cne.gob.ve/resultado_asamblea2015/r/0/reg_000000.html?

challenges were violated; the chairman of the Nominations Committee had been a candidate of the Government party and have not been elected and, moreover, he was also a magistrate candidate!!! The Nominations Committee's Secretary was the son of said committee's chairman. All the nominated candidates for magistrates were directly linked to Chavism: either for being registered in the government's party or because they had recently lost the parliamentary elections or for having served offices in the Executive Power. Most of the nominees did not meet the requirements set by the Constitution, several did not have post graduate studies, nor experience as university professors or judges; others lacked the minimum time since their law degrees (art. 263³⁰ Constitution)³¹. The need to control of the country's highest court by the government caused one of the greatest violations of the Rule of Law during the Venezuelan democratic history. When the Magistrates assumed their offices on December 2016, the Constitutional Chamber's *express* judges devoted themselves, to dilute progressively the legislative body's powers through more than 96 judgments (since 2016 until April 2019), emptying their contents in the Chamber's clear role as the Executive Power's subaltern.

The Constitutional Chamber transferred and distributed the National Assembly's functions among the Executive Power, to the electoral Council or Agency, also to the National Constituent Assembly and even to itself, simply eliminating its powers as legislative body. The Constitutional Chamber also disqualified the

³⁰Article 263, In Order to be magistrate if the Supreme Tribunal of Justice it is required: 1. To have Venezuelan nationality by birth without having any other nationality. 2. To be a citizen with recognized honorability. 3. To be a jurist with recognized competence, to enjoy a good reputation. To have performed as a lawyer during at least fifteen years and to have a postgraduate university degree in legal science; or to have been a chair holding university professor, or to be or having been superior judge in the specialty corresponding to the Chamber for which he or she is being nominated, with a minimum of fifteen in performance of the judicial career, and recognized prestige in his or hers functions performance. 4. Whatsoever other requirements set by the law.

³¹ Cf. Report issued by the ONG *Acceso a la Justicia* (2016). <https://www.accesoalajusticia.org/wp-content/uploads/2016/03/informe-a-AN-3-2.pdf>.

opposition parties and deputies, many of them tried and jailed without respecting their parliamentary immunity and without due process, by military justice. Ultimately and since it was elected and recognized by the very same Electoral Power, none of the Legislative Power's decisions, have not been implemented since the Constitutional Chamber invalidated them³². As we will see, to all that we need to add a key point: the creation of a National Constituent Assembly (NCA) without any previous call to the people, nor following any constitutional procedure, just in order to substitute the National Assembly.

4. On the permanent declaration of the state of emergency and on the violation of human rights and the revocation referendum (2016)

The 2016 year's outlook is as follows: Nicolás Maduro decreed the State of Exception or Emergency limiting rights and guarantees, and extending it every 60 days in spite of the Constitution provides that the exception may not last more than one hundred twenty days (constitution's art. 338)³³; furthermore, these continuous declarations of State of exception have not counted with the mandatory

³² Cf. A. Brewer Carías, *El reparto de despojos: La usurpación definitiva de las funciones de la Asamblea Nacional por la Sala Constitucional del Tribunal Supremo de Justicia al asumir el poder absoluto del Estado*, 149-150 *Revista de Derecho Público* 292, 300 (2017); A. Brewer Carías, *De la dictadura judicial contra la Asamblea Nacional* (2017).

³³ Article 338. The state of alarm may be decreed when there were catastrophes, public calamities or other similar events seriously endangering the Nation's security or that of its citizens. Said state of exception shall last up to 30 days and may be extended up to thirty days more. A state of economic emergency may be decreed when there appear extraordinary economic circumstances seriously affecting the Nation's economic life. Its duration shall be of up to sixty days and may be extended by an equal term. The state of interior or exterior emergency may be decreed in the event of an internal or external conflict seriously endangering the Nation's security or that of its citizens. It shall last for up to ninety days and may be extended for further ninety days. Approval of the exception states corresponds to the National Assembly. An organic law shall regulate the states of exception and determine the measures that may be adopted based on the same.

legislative's approval, as required by the Constitution, but with the approval of the Constitutional Chamber³⁴.

Likewise, Maduro ruled by Decree Laws, substituting the National Assembly's essential competence. During the year 2016, the Constitutional Chamber declared unconstitutional and cancel or overrode or voided the majority of the laws and other parliamentary acts adopted by the National Assembly, both in the matter of legislation or law-making and of political control over the Government and Public Administration as the Constitutional mandate prescribes³⁵.

From the human rights perspective, according to the Venezuelan NGO "*Observatorio de la Violencia*", during the year 2016, 5,281 persons were murdered by the action of the state security bodies or forces for "resistance to the authority" or contempt to authority³⁶. Also, according to the Venezuelan NGO Foro Penal, by the end of 2016 there were 109 political prisoners in jails; likewise, and in accordance with the same NGO, since January 2014 until September 2016, there were 6,535 dues to political reasons³⁷. Last but not least, the National Electoral Council refused to call the recall

³⁴ <https://www.accesoaljusticia.org/golpe-constitucional/>.

³⁵ Cfr. Acceso a la Justicia, TSJ concretó disolución de la Asamblea Nacional en 2017 <https://www.accesoaljusticia.org/tsj-concreto-disolucion-de-la-asamblea-nacional-en-2017/>; A. Brewer Carías, *La instalación de la Asamblea Nacional el 5 de enero de 2017, su acuerdo de 9 de enero de 2017, declarando la falta absoluta del Presidente de la República, y la anulación del acto de instación y de todos sus actos por el poder constitucional*, 149 150 *Revista de Derecho Público* 261, 270 (2017); A. Brewer Carías, *Crónica sobre el último sablazo dado por la "justicia constitucional" contra la Asamblea Nacional terminando con sus funciones como órgano de representación popular* (2017); G. Sira Santana, Gabriel, *La Asamblea Nacional según el Tribunal Supremo de Justicia, luego de las elecciones parlamentarias del año 2015*, 148 *Revista de Derecho Público* 33 (2017).

³⁶ Informe 2016, *Observatorio Venezolano de violencia* (OVV). <https://observatoriodeviolencia.org.ve/2016-ovv-estima-28-479-muertes-violentas-en-venezuela/>

³⁷ *Foro Penal, Reporte sobre la represión del Estado Venezolano, año 2016*, cf. <https://foropenal.com/reporte-sobre-la-represion-del-estado-venezolano-ano-2016>.

referendum claimed by the citizens following the guidelines provided in the Constitution³⁸.

5. The usurpation or misappropriation of the Legislative Power by the Supreme Tribunal of Justice and the reactivation of massive protests (2017)

5.1 On the Constitutional Chamber's decisions and the new wave of popular protests

On March 28 and 29, 2017, the Constitutional Chamber adopted sentences no. 155 and 156, respectively, limiting the National Assembly's members' immunity, as well as depriving and assuming their legislative's powers. Those powers were then transferred to the Executive Power³⁹.

Facing such temerity, the opposition several countries from the international community's and the *Organization of American States* described such action as an internal or self-inflicted coup⁴⁰. On the following day Venezuela's Chief Prosecutor, Luisa Ortega Díaz⁴¹, expressed her concern before such sentences because they clearly violated or infringed the Constitution destroying also the separation of powers and the judicial power's independence principles. Therefore, she declared that the country's main Jurisdictional Court was materializing the usurpation or misappropriation of functions. As a consequence of such decisions, civil protests were reactivated

³⁸ J.I. Hernández, *Análisis de las violaciones cometidas por el Consejo Nacional Electoral en el procedimiento de Referendo Revocatorio 2016* (2017).

³⁹ As it was conveniently asserted by the Venezuelan NGO *Acceso a la Justicia*, the issue with such decisions from the Constitutional Chamber was that they "ended up with the thrust in Venezuelan parliament". See also A. Brewer Carías, *La Consolidación de la Dictadura Judicial: La Sala Constitucional en un juicio sin proceso usurpó todos los poderes el Estado, decretó inconstitucionalmente un Estado de Excepción y eliminó la inmunidad parlamentaria* (2017).

⁴⁰https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-019/17.

⁴¹ We shall remember, that she acted on government's behalf during all these years, and also whom back in 2014 leaded the process and imprisonment or incarceration or jailing of the Venezuelan political opponent Leopoldo López's.

again throughout the whole or national territory; those protests begin on April and concluded on July 2017, and leading once again, to new human rights' violations.

The High Commissioner for Human Rights (OHCHR) from the Office of the United Nation's published a report titled Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to July 31 2017, in which the generalized and systematic use of excessive force, arbitrary detentions, illegal search warrants, mistreatments and tortures, among other arbitrariness committed by the national authorities and security forces during the four months of protests against the national Government⁴². Currently, the International Criminal Court has initiated a preliminary investigation process about the facts occurred since the year 2014. During such period, 6,729 protests were recorded; 134 people were murdered as a consequence of such protests; 5,511 people were arrested for political reasons following the information provided by the Venezuelan NGO "Foro Penal", between January the 1st up to December 31st, the majority during April and August 2017⁴³.

5.2 On the void or null or invalid and unconstitutional call for a Constituent Assembly

On May 1st 2017, and going far beyond the provisions the Constitution of 1999, Nicolás Maduro, initiated the procedure for the establishment of a National Constituent Assembly, usurping the popular sovereignty, since only the people, as the sole holders of the original constituent power, were entitled to decide, by means of referendum if this kind of procedure could be initiated or not.⁴⁴ Maduro not only did request the aforementioned procedure against the Constitution, but besides or moreover setting-up the elections' guidelines, by establishing an electoral and territorial system in

⁴²http://www.ohchr.org/Documents/Countries/VE/HCReportVenezuela_1April-31July2017_SP.pdf.

⁴³ *Foro Penal, Reporte 2017 sobre la represión en Venezuela*, cf. <https://foropenal.com/wp-content/uploads/2018/01/INFORME-REPRESION-DICIEMBRE-2017-1.pdf>.

⁴⁴ A. Brewer Carías, *Bases Constitucionales del proceso de transición democrática liderizado por la Asamblea Nacional en Venezuela, frente a la usurpación* (2019), 9 ff.

which not all the ballots had the same value. As a consequence of Maduro's electoral guidelines, five million people were excluded.

Once again, the Constitutional⁴⁵ and its Electoral Chamber justified such exclusion through four decisions⁴⁶. Obviously, during the constituents' election process of July 30, 2017, all kinds of human rights' violations were denounced: threats to public officers; absence of electoral guarantees and lack of international observation; and on the day of such void or invalid elections, protestors were repressed resulting in the murder of 10 citizens⁴⁷. The vices of that electoral process were of such entity that the technological company in charge of the electoral processes in Venezuela since 1999, Smarmatic Company from London, warned about the manipulation of "at least" 1 million ballots in the National Constituent Assembly's elections⁴⁸. Just in one month, a new National Constituent Assembly (NCA) was created, as a super ruling power above all the constitutional one, with the capacity to adopt supra-constitutional regulations and of remove authorities or officers just for its willingness, and aiming to set-up a communal power; creating thus, an illegitimate constituent power running in parallel to the Legislative Power that had been democratically elected back in December 2015.

Finally, it is worth to bear in mind that during year 2017, Maduro kept or maintained the state of exception or emergency and

⁴⁵ By means of sentence no. 455, the Constitutional Chamber declared the constitutionality of the President of the Republic's decree whereby he calls for a National Constituent Assembly imposing, fallaciously, the idea that the President have not usurped the popular sovereignty by setting-up the guidelines of the electoral system (sectorial and territorial voting) by choosing of the constituents.

⁴⁶ Sentences of the Electoral Chamber (EC), (#83, 84 and 85 of June 27) denied three electoral recourses filed both by citizens and by the Deputy General Prosecutor, asserting that the Constitutional Chamber had already pronounced about the issue in Sentence no. 455, Acceso a la Justicia Informe año 2017 (2017).

⁴⁷ <http://efectococuyo.com/politica/30-de-julio-el-dia-en-que-hubo-muertes-barricadas-y-elecciones-cuestionadas-en-venezuela/>.

⁴⁸ Also, Reuters, the international news agency informed that for the NCA elections only 3.7 million people had voted on Sunday at 5:30 p.m., far away from the 8.1 million that the NEC's president had assured that it had been obtained at the journey's closing. The thing is that not even the chavism's supporters warranted the results. <https://lta.reuters.com/article/topNews/idLTAKBN1A11UZ-OUST>.

the constitutional rights were suspended or duty suspension He extended such exception extending it on six occasions⁴⁹. As the Venezuelan NGO “*Acceso a la Justicia*” affirmed, until 2017 the events against the rule of Law and Human Rights in Venezuela from the beginning of Nicolás Maduro’s presidential term: “... (omitted)... have led to our country to be listed as a dictatorship by organizations experts in human rights, such as Human Rights Watch and Freedom House International. Others like The Inter American Human Rights Commission (IACHR) have ranked Venezuela since 2010 as one of the countries in which there is no democracy or is facing circumstances that affect seriously the use and enjoyment of the fundamental rights; these affirmations were published in their annual report 2010 (chapter IV). Alike, in August 2017 the Office of the UN Commissioner for Human Rights, published a report about the generalized and systematic use of excessive force, arbitrary detentions, illegal searches, mistreatments and tortures, among other abuses committed by national authorities and security forces along the protests against the national Government that lasted four months. The international community has not been left behind and, particularly, since Sentences # 155 and 156 of the Supreme Tribunal of Justice’s (STJ) Constitutional Chamber (CC) of March 2017, a few countries began to withdraw its ambassadors and asserting that a dictatorship has been established in Venezuela. In the national scenario, several NGO’s as well as recognized defenders of human rights’ have also declared that Venezuela entered into an authoritarian modeling 2016 and that the STJ played an important role there to⁵⁰.

⁴⁹ *Acceso a la justicia: Informe año 2017*. <https://www.accesoalajusticia.org/wp-content/uploads/2018/08/Bolet%C3%ADn-informe-anual-Acceso-a-la-Justicia-2017.pdf>

⁵⁰ *Acceso a la Justicia: El largo camino a la dictadura*. <https://www.accesoalajusticia.org/golpe-a-las-garantias-constitucionales/>

6. Protests for the lack of basic services, the illegitimate presidential elections for the term 2019-2025 term and the hyperinflation (2018)

According to figures published by *Venezuelan Observatory of Social Conflicts* in January 2019, during 2018 there was an increase of protests of 30% compared to 2017; a record for Venezuela, where previous figures reached 12,715 marches or manifestations, that is to say, 35 protests took place on daily bases⁵¹. Unlike the former year's protests, those of 2018, were mostly to demand the provision of services, the protection of economic, social, cultural and environmental rights, while political reasons were displaced⁵². Simultaneously to this absolute crisis situation, Maduro requested the illegitimate National Constituent Assembly to call for presidential elections. These elections were supposed to be called on December 2018. Instead were held in May, that is to say 7 months in advance. Maduro's petition was made after having illegalized political parties and had imprisoned many of the opponents. The advancement of the presidential elections was the President's answer after the failure of the conversations between the government and the opposition promoted by the church, as well as the international community. Those conversations took place during January and February 2018 at the Dominican Republic. One of the key issues raised by the opposition within that frame was the call for free, plural and transparent elections in December with an impartial electoral Council and with the presence international observers. The elections were held, but without any compliance of the electoral legislation and constitutional provisions.

⁵¹ <http://www.observatoriodeconflictos.org.ve/tendencias-de-la-conflictividad/conflictividad-social-en-venezuela-2018>.

⁵² Indeed, as specified the annual report of the *Observatorio Venezolano de Conflictividad Social (OVCS)*, *89% of the protests took place to the request of economic, social, cultural and environmental rights, the protests for political reasons were displaced because : "Were to face the lack of effective public policies to attend urgent problems related to the public services' quality, collective labor agreements, health, food and education, the citizens protests were on a daily basis and these are the reasons on top of political protests".

The consequence is that those results were not recognized by the Venezuelans or by the international community. In the words of the Venezuelan NGO “*Acceso a la Justicia*”: 1. They were not held on the constitutional scheduled date, December 2018 (for being the closest to the mandate’s culmination January 10), but on May 2018, without any justification; 2. They were called by the National Constituent Assembly (NCA), an illegitimate body with supra-constitutional powers and not by the competent body, the National Electoral Council (NEC); 3. The opposition did not participate because it was being progressively annulled since 2016, by means of multiple judgments of the Supreme Tribunal of Justice (STJ) and actions by the NEC and the NCA; 4. There were no impartial international observers and there was no control while they were held; a series of irregularities were detected and denounced by several non-governmental organizations by filing an appeal before the Supreme Tribunal of Justice declared inadmissible by the Electoral Chamber as it used to⁵³.

Besides the deep social crisis resulting from the absence of services and the political crisis due to the illegal advancement of the presidential elections, an economic crisis, never seen before, kept getting deeper.

By December 2018, Venezuela found itself among the first three countries of the world with the highest inflation rate (hyperinflation).

According to the National Assembly’s statistics, in 2018, the prices variation in Venezuela were of 1,698,488.2%. Just in December the inflation rate showed an increase of 141.75%. The daily inflation for the last month of the year was of 3%.⁵⁴. Useful to remind that

⁵³ See *Acceso a la Justicia: ¿Por qué Juan Guaidó no se autoproclamó?* <https://www.accesoalajusticia.org/por-que-juan-guaido-no-se-autoproclamo/>; cf. A. Brewer Carías, *Bases Constitucionales del proceso de transición democrática liderizado por la Asamblea Nacional en Venezuela, frente a la usurpación*, cit. at 45.

⁵³ By Sentence no. 455 the Constitutional Chamber declares the constitutionality of the decree.

⁵⁴ <http://www.bancaynegocios.com/venezuela-cerro-2018-con-inflacion-de-1-698-4882/>; “*Fmi prevé Una Inflación De 10.000.000% Para Venezuela En 2019*”, on *El Universal Diario*, date 10/09/2018, en

officially the country entered into hyperinflation on November 2017, when the prices recorded an increase of more than 50%⁵⁵.

7. On the usurpation or misappropriation of powers by Nicolás Maduro and the request for the reestablishment of the rule of Law and democracy (2019)

As on January 10, 2018 –the expiring date for the constitutional term, there was no democratically elected president, nor a recognized one by the international community and the majority of Venezuelans. the reason was that such elections were called by a ‘de facto’ body, the National Constituent Assembly created by Nicolas Maduro in parallel and to substitute and on the back of the Legislative Power, democratically elected back in December 2015. As was indeed recognized by the very same Electoral Power.

Accordingly, on January 11, 2019, the sole legitimate representative of popular sovereignty was, and still is, the Parliament, since: The National Constituent Assembly was not called by the people as provided by the Constitution, but by the President who has not competences for such a call; the People’s Defender, the General Prosecutor, as well as the members of the National Electoral Council were chosen by the illegitimately designed National Constituent Assembly and not by the Legislative Power, as the Constitution of 1999 also provides; most of the Supreme Tribunal Magistrates were designated regardless any of the mandatory provided by the Constitution, as well as such appointments were performed by an incompetent body (outgoing of the Legislative Power back in 2015), by means of an express procedure.

<http://www.eluniversal.com/economia/22724/fmi-preve-una-inflacion-de-10000000-para-venezuela-en-2019>; “Asamblea Nacional Informó Inflación Mensual Y Anualizada De Febrero”, on *El Nacional Diario*, date 03/14/2019; “La Inflación De Venezuela Se Desacelera Pero Sigue Exorbitantemente Alta”, *El Nuevo Herald Diario*, date 03/14/2019, en <https://www.elnuevoherald.com/noticias/mundo/america-latina/venezuela-es/article227740674.html>.

⁵⁵ <https://www.efe.com/efe/america/economia/venezuela-entra-en-hiperinflacion-por-primera-vez-su-historia/20000011-3426684>.

Thus, when Nicolás Maduro swore as president before the National Constituent Assembly and before the Supreme Tribunal of Justice, on January 10, 2019 he became a ‘de facto president’, usurping illegitimately the power; such illegitimacy and unconstitutionality affects not only to the Executive, but to all the other powers, with the exception of the National Assembly, the last public body elected according to mandatory provisions of the Constitution and Laws⁵⁶. To face such scenario on January 15, 2019, the Legislative Power declared⁵⁷ the usurpation of the presidency by Nicolás Maduro, and, on the 23rd of the same year, proclaimed Juan Guaidó, the President of the National Assembly, President. Guaidó swore before a huge majority of citizens to reestablish the constitutional order, the rule of Law and the democracy by means of free and democratic elections, for which he assumed, provisionally, the office of President. He did not “self-proclaimed” as has being highlighted by some international communication media, he only swore before a competent authority, which is not the same.

Indeed, “the proclamation is the declaration of a candidate as the winner in an electoral process, and the second [oath] expresses the loyalty to the Constitution and the laws, that was what Juan Guaidó did on January 23. Accordingly, it is erroneous to say that Juan Guaidó “self-proclaimed” himself, since he did not declare himself the winner of an election, since he was not even elected as president of the Republic, he was only designated as such temporarily by the AN in view of the usurpation of the office by Maduro who was not legally and technically speaking, elected on May 20, 2018”⁵⁸.

⁵⁶ Cf. A. Brewer Carías, *Bases Constitucionales del proceso de transición democrática liderizado por la Asamblea Nacional en Venezuela, frente a la usurpación y Acceso a la Justicia: ¿Por qué Juan Guaidó no se autoproclamó?* (2019).

⁵⁷ Cf. A. Brewer Carías, *Bases Constitucionales del proceso de transición democrática liderizado por la Asamblea Nacional en Venezuela, frente a la usurpación*, cit. at. 45, 77.

⁵⁸ See *Acceso a la Justicia: ¿Por qué Juan Guaidó no se autoproclamó?* <https://www.accesoalajusticia.org/por-que-juan-guaido-no-se-autoproclamo/>; A. Brewer Carías, *Bases Constitucionales del proceso de transición democrática liderizado por la Asamblea Nacional en Venezuela, frente a la usurpación*, cit. at. 45, 141 ff.

What were the constitutional grounds on which the Venezuelan parliament was based to decide that its president should be who should lead the transition towards democracy in Venezuela? The Constitution of 1999 do not have a provision to rule the facts arisen from January 10th (year?): the existence of an illegitimately elected president who could swear on the scheduled date, as provided by article 231 of the Constitution and that who could take the office.

So, the sole recourse to rule such facts were to apply the article 233 of the Constitution by analogical interpretation. Such interpretation principles are part of the Constitution itself when regulates the absolute absence before taking the office, as well as the values and principles of the social and democratic State of law, jointly with the articles related to the usurpation of power and the right of rebellion. Indeed, the Article 233 provides that: "Whenever the absolute absence of the elected president occurs prior to assuming office, a new universal, direct and secret election should be called within the thirty consecutive following days. As long as the election and the assumption by the new president takes place, the president of the National Assembly shall be in charge of the Presidency of the Republic." Thus, and bearing in mind that on January 10 a new presidential term was beginning, also that elections of May the 20th had not been recognized, and that there was no elected president as on January 10, the answer that can be extracted from the Constitution was and is, that the president of the National Assembly was the one to be sworn as interim president until a new, free, independent, transparent election with international observers is called by a competent authority. Hence, the Parliament -public power representing popular sovereignty and whose democratic legitimacy is out of doubt, he proceeded to do it as it happened.

III. Summary and conclusion

The aforementioned facts, have marked the essential milestones. It provides evidence as how, each of the bases and principles on which the rule of Law is based have been systematically

violated. In as much as making a detailed correlation between facts and the principles stated in this work's introductory part would suppose extending us excessively, we shall only stop at one of them: the principle of the judges' autonomy and impartiality, since without them it is impossible to warrant the rule of Law, democracy and the defense of the human rights.

The judges that lacks of independence are “the judges designated for their political or personal link with those who designate them (designated by ‘hand-picked’), or who may only remain or be promoted in their offices by virtue of their personal relations” (Pérez Perdomo. 2004-367)⁵⁹. It is precisely the absence of judicial independence what allowed the rooting of a totalitarian and failed State in Venezuela resulting therefrom in the most serious consequences for Venezuelans. When a politicized judge who does not comply with his essential functions which is to control the power, there is a free road for the instauration of a totalitarian regime. The Supreme Tribunal of Justice, but especially its Constitutional Chamber, has created the conditions for the takeover of the absolute power by the Executive. Although Venezuelan judicial system has never been an example to be followed both before and after chavism, what has happened during these two decades has no precedents. The road towards the politicization of the Judicial Power in Venezuela started in August 1999⁶⁰. When the National Constituent Assembly before the elaboration and promotion of the Constitution, created the Commission of Judicial Restructuring and declared the judicial emergency, proceeding to remove some judges and appoint other ‘hand-picked’ in a moment of total instability. Due to the judges' provisory condition in the year 2003, the Inter American Human Rights Court published a report expressing its concern for aspects

⁵⁹ L. Louza, *La independencia del Poder Judicial a partir de la Constitución de 1999*, 30 *Politeia* 35, (2007).

⁶⁰ Cf. *Acceso a la Justicia, Evaluación del desempeño del sistema de justicia venezolano (2001-2015)*; <https://www.accesoalajusticia.org/wp-content/uploads/2017/09/sistema-judicial-1.pdf> y ULA Observatorio de Derechos Humanos: *Derecho a la Justicia en Venezuela*. <http://www.uladdhh.org.ve/wp-content/uploads/2018/12/Informe-Derecho-al-acceso-a-la-justicia-en-Venezuela-Descargar.pdf>.

“affecting the independence and impartiality of the Judicial Power, particularly the high percentage of judges and prosecutors in temporariness tenure and the breach to observe certain procedures set by law and by the Constitution for their appointment and removal”.

The year 2004 was determinant to weaken the Judicial Power’s scarce independence. The chavista government did not have the qualified majority at the National Assembly and nevertheless, infringing the Constitution, enacted the *Organic Law of the Supreme Tribunal of Justice* (art. 203 CBRV) raising the number of magistrates from 20 to 32 to get more power among them. Likewise, the parliament, without having the mandatory qualified majority, appointed 49 of the Tribunal’s magistrates (17 holders and 32 substitutes), allowing for 2006, the Supreme Tribunal was composed almost completely by non-independent nor impartial or autonomous magistrates⁶¹.

Since the enactment of the Constitution until 2008, the magistrates of the Supreme Tribunal of Justice’s were renewed on three occasions, in spite of the fact that article 264 of the Constitution provides that such magistrates’ term in office must be 12 years.

Another revealing and dramatic example of the judges’ subordination to the Executive, was the famous case of judge Afiuni, who in 2009 was immediately arrested by the security bodies after President Chávez ordered her imprisonment by television.

⁶¹ It is quite important to remember the day when the Supreme Tribunal of Justice resolved to take off all its masks and express its absolute devotion to Chávez: that day was February 26, 2006, when Venezuelans incredulous watched by television, that in the Act of opening the judicial year, the Supreme Tribunal of Justice’s Magistrates sitting at the auditorium’s podium, and the Instance judges and those of the Contentious Courts (who were sitting as pretended public) in front of the President of the Republic, yelled outstanding the government party’s motto saying “Ühm ah, Chávez no se va” [Oh, oh, Chávez doesn’t leave”]. Since Chávez passed away at any the public headquarters and any the court you can read notices saying “Here no one talks bad about Chávez”. After his death, I witnessed at some trials before the First Instance Court and while they were questioning me to get my testimony, I saw the screens of the court officers’ computers’ and Chávez’s face was while the computer was idle mode.

The reasoning was that she had granted provisional freedom to Mr. Eligio Cedeño, in jail for president's instructions. A criminal court condemned her to 5 years of prison.

This case was so arbitrary that on December 30, 2009 the Inter American Human Rights Commission published a report describing this situation as “a coup by President Chávez to the magistrates and lawyers in the country”⁶².

The tortures and inhumane treatments suffered by the judge Afiuni in jail was terrible and are known by international entities that pressure for claiming house arrest.

Between 2005-2013, the Constitutional Chamber never ruled against the Executive for any violation of a constitutional right; nor any petition on the grounds of unconstitutionality was granted. No government act was override, neither any President's decrees-law was ever considered against the Constitution.

The aforementioned illegality of the so-called express designation of magistrates also shown the absolute lack of independence of the Supreme Tribunal of Justice; and how, from January 2016, the Constitutional Chamber (composed by 7 persons that were active members of the government party) played a crucial role in the destruction of the rule of Law and the Constitution, since: suspended three of the opposition's candidates to avoid the shaping of a qualified majority and declared the recently elected National Assembly in contempt; as a consequence of the supposed National Assembly's contempt, all their acts, laws and regulations enacted

⁶² “At this report's paragraph 300, the IACHR, makes references to judge Afiuni's case: «Regarding these facts, on December 17, 2009 the IACHR sent an information request to the State. On their turn some United Nations' rapporteurs expressed their deep concern for judge Afiuni's arrest, that they described as “a coup by President Hugo Chávez against the independence of magistrates and lawyers in the country”. The UN rapporteurs expressed their worry from the fact that President Hugo Chávez had publicly instructed the General Prosecutor and the Supreme Tribunal's President to punish judge Afiuni with the highest penalty .In such sense, they said that “the reprisals for performing functions constitutionally guaranteed and the creation of a climax of fear in the judicial power and the lawyers does not serve any other purpose that of undermining the rule of law and obstructing justice”; see ULA *Observatorio de Derechos Humanos: Derecho a la Justicia en Venezuela*.

were declared against the Constitution by the Chamber; by emptying the legislative power competences, the Chamber dismantled, it's the National Assembly by means of 96 sentences from January 2016 up to this date; supported the creation of the National Constituent Assembly in 2017, body that called for the illegitimate elections of 2018; and, the Supreme Tribunal acting in Full Chamber decided to waive the deputies' immunity and by means of its sentences allowing also the imprisonment of regional governors from the opposition as well as members of parliament.

The provisional or provisory tenure for both for judges and public prosecutors remains in force, allowing their removal when they do not follow the government's instructions⁶³.

Since the Constitution of 1999 promoted by the chavista regime came into force, Venezuela entered into a stage in which the new constituted powers gradually proceeded to dismantle the social and democratic State of Law created by the very same President that had promoted it. It was possible because the real intention of the government's party since it came into the power was to implement a socialist State, with Marxist shape.

Infringing the principles supporting the rule of Law, all the Public Powers acted against such rule submitting themselves to the Executive's instructions and orders. A prominent role in the destruction of the rule of Law was played by the Supreme Tribunal of Justice. Through all the judgments or sentences adopted along these past twenty year, the Constitutional, Administrative and Electoral Chambers showed a its absolute political partiality in order to achieve in order to enable a full control of the power in favor of the

⁶³ "On August 2017, 25 Public Prosecutors of the state of Mérida were dismissed; they were provisional although they had been serving at public administration for 25 years. These dismissals occurred when the officers expressed their differences with the presidential call to an NCA. In spite of the fact that they have filed both judicial and administrative recourses, their cases have not been heard yet by the justice". Confront with the report published by the "*Observatorio de Derechos Humanos*" from Venezuelan University of the Andes (ULA): *Derecho a la Justicia en Venezuela*, which we highly recommended since it clearly summarizes how the Judicial Power's polarization took place in Venezuela.

Executive Power⁶⁴. Because of it and of the public policies applied by the government against the Constitution, Venezuela currently suffers a complex humanitarian crisis in which the human rights have been systematically infringed, transforming the Venezuelan society into a group of men and women living under immediacy and survival⁶⁵. The figures gathered today by international bodies protecting human rights as well as by Venezuelan NGOs who have a truly laudable work during all these years are frightening. So far (May 2019) and since 1999 the numbers are as follows:

Deaths by violence (1999-2018): the NGO “*Observatorio Venezolano de Violencia*” (OVV), expressed that between the years 1999 and 2018, in Venezuela more than 300 thousand violent deaths were recorded. In 91% of the homicides there has not been even an arrest; since 1999, some 7,200 inmates have died at reclusion centers. On daily basis, an average of 40 young people or youths die in Venezuela⁶⁶

Murdered for protesting (2014, 2017, 2018, 2019): during the months that those protests lasted, we have that in the year 2014, 43

⁶⁴ “The judgments or sentences by the Constitutional Chamber beginning on December 6, 2016, have created a coup d’état in constant evolution; and are the consequence of a long road that began with the very same constituent process that ended with the Constitution of 1999. Thus, the Constituent Assembly called by the Supreme Tribunal of Justice’s-, elected violating the Constitution of 1961– in force by 1999, exceeded the mandate given by the electors by creating an illegitimate transitory regime that led to, ‘de facto’, elimination of the separation of powers principle. In this context, the Constitutional Chamber, created by the Constitution of 1999, has played a key role. From its first judgment, the Constitutional Chamber assaulted the constitutional system of justice, usurping the condition as the “highest and last interpreter of the Constitution” setting itself up and ‘de facto’ as the highest Court, even above the Supreme Tribunal of Justice”; see J.I. Hernández, *Asedio a la Asamblea Nacional*, in Vv. Aa. (eds.), *Estado de Derecho, la huida de la democracia y la dictadura judicial* (2019), 742 ff.

⁶⁵ We recommend the following press article published by the New York Times about the crisis in Venezuela: Venezuela lives the worst economic crisis for a country without war, according to experts, <https://www.nytimes.com/es/2019/05/17/venezuela-crisis-economia/?rref=collection%2Fsectioncollection%2Fnyt-es>.

⁶⁶ <https://elcooperante.com/ovv-entre-1999-y-2018-en-venezuela-se-registraron-mas-de-300-mil-muertes-violentas/> (Consulted on 05/09/19).

deaths occurred; by 2017, other 163 deceased; in 2018 during the social protests other 14 people died; and so far, this year 2019, since February we can count already 51 protesters murdered. This figure amounts a total of 271-murdered people.⁶⁷

Political prisoners: According to the NGO “*Foro Penal*” by the end of February 2019, the number of political prisoners increased to 966 people. Considering that the former number reported by the NGO was of 273, in means that there was an increase of 700 people, the highest number in Venezuela’s history since the “*Foro Penal*” keeps records (18 years ago). The updated figure (April 29, 2019) is of 775 political prisoners at national level⁶⁸.

Declaration of a complex humanitarian crisis, The crisis in figures: 3,7 million people suffered malnutrition in 2018, according to the FAO; 7 million Venezuelans require humanitarian aid according to the United Nations’ Humanitarian Affairs and Emergency Relief Office; 6 million families all over the country benefit from the food provided or distributed by the Government; 1.9 million people require nutritional assistance, including 1.3 million children under 5 years of age according to the United Nations’ Humanitarian Affairs and Emergency Relief Office; 2.8 million people require medical

⁶⁷ “*Víctimas De Represión. Asesinados*”, ONG *Foro Penal*, actualizado para el 31/01/2018, en <https://foropenal.com/victimas-de-la-represion/#asesinados-estados>, (Consulted on 05/03/2019); “*Declaración Sobre La Situación En Venezuela*”, Organization of American States (OAS), dated 07/03/2014, at http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-084/14, (Consulted on 03/05/2019); “*Venezuela: Violenta Respuesta A Las Manifestaciones. Denuncias De Asesinatos, Detenciones, Cierre De Medios*”, Human Rights Watch (ONG), dated 03/03/2019, at <https://www.hrw.org/es/news/2019/05/03/venezuela-violenta-respuesta-las-manifestaciones>.

⁶⁸ “*Víctimas De Represión. Asesinados*”, ONG *Foro Penal*, available at <https://foropenal.com/victimas-de-la-represion/#asesinados-estados>; “*Declaración Sobre La Situación En Venezuela*”, Organization of American States (OAS), at http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-084/14; “*Venezuela: Violenta Respuesta A Las Manifestaciones. Denuncias De Asesinatos, Detenciones, Cierre De Medios*”, Human Rights Watch (ONG), at <https://www.hrw.org/es/news/2019/05/03/venezuela-violenta-respuesta-las-manifestaciones>.

assistance, including 1.1 children under 5 years of age according to the United Nations’ Humanitarian Affairs and Emergency Relief Office; 4.3 million children under 5 years of age require water and sanitation assistance, according to the United Nations’ Humanitarian Affairs and Emergency Relief Office; 1 million children have interrupted their education as a consequence of the crisis according to the United Nations’ Humanitarian Affairs and Emergency Relief Office.

Massive exodus of population: during the year 2018, 2,400,000 Venezuelan people were accounted leaving the country as emigrants or refugees; and in 2019, the number grew to 3,706,624 people. (*no queda claro si estás comparando la cifra de migración mundial con la venezolana o la de venezolanos que emigraron a cualquier país del mundo, por lo que lo he dejado así*)⁶⁹.

⁶⁹ “Más De 300.000 Niños Venezolanos En Colombia Necesitan Ayuda” - Organización de las Naciones Unidas (ONU), Noticias ONU, con fecha del 29 de abril de 2019, <https://news.un.org/es/story/2019/04/1455081>; “Emergencias. Situación En Venezuela. Cifras Oficiales”, Alto Comisionado de las Naciones Unidas para los Refugiados (UNHCR Or ACNUR), en <https://www.acnur.org/situacion-en-venezuela.html> (Consultadas el 02/05/2019); “Los Flujos De Venezolanos Continúan Constantes, Alcanzando Ahora La Cifra De 3,4 Millones”, Alto Comisionado de las Naciones Unidas para los Refugiados (UNHCR - ACNUR), en <https://www.acnur.org/noticias/press/2019/2/5c700eb94/los-flujos-de-venezolanos-continuan-constantemente-alcanzando-ahora-la-cifra.html>, (Consultada el 03/05/2019); “El éxodo venezolano. urge una respuesta regional ante una crisis migratoria sin precedentes”, Human Rights Watch (ONG), en <https://www.hrw.org/es/report/2018/09/03/el-exodo-venezolano/urge-una-respuesta-regional-ante-una-crisis-migratoria-sin>.