



ORGANIZACIÓN DE LOS ESTADOS AMERICANOS
WASHINGTON, D.C. 2 0 0 0 6 EEUU

March 7, 2012

Ref.: Case No. 12.724
Allan R. Brewer Carías
Venezuela

Mr. Secretary:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights in order to file Case No. 12.724, Allan R. Brewer Carías v. the Bolivarian Republic of Venezuela (hereinafter "the State of Venezuela", "the Venezuelan State" or "Venezuela") before the jurisdiction of the Inter-American Court of Human Rights. The case relates to the lack of judicial guarantees and judicial protection in the proceedings brought against constitutional attorney Allan R. Brewer Carías for the crime of conspiring to change the Constitution through violent means in connection with the events of April 11 and 13, 2002, in which he was alleged to have participated in the drafting of the so-called "Carmona Decree" ordering the dissolution of the public authorities and the establishment of a "democratic transition government."

In its Merits Report, the Commission concluded that in this particular case the fact that three temporary judges were responsible for hearing the preliminary stage of the criminal proceedings brought against Allan Brewer Carías in itself constituted a violation of judicial guarantees. Moreover, the Commission considered that the fact that one of the temporary judges was suspended and replaced two days after having filed a complaint for failure to comply with an order he had issued requiring that the accused be given access to the complete file on his case, together with the rules and practices in Venezuela regarding the appointment, dismissal and provisional tenure of judges, constituted violations of the guarantees of judicial independence and impartiality and contravened the right to judicial protection. Finally, the Commission considered that not being able to make photocopies of the file and to access it in its entirety violated the victim's right to have adequate means for preparing his defense.

Mr.
Pablo Saavedra Alessandri, Secretary
Inter-American Court of Human Rights
P.O. Box 6906-1000
San José, Costa Rica
Enclosure

The State ratified the American Convention on Human Rights on August 9, 1977 and accepted the contentious jurisdiction of the Court on June 24, 1981. In that regard, the facts debated in the case fall within the temporal jurisdiction of the Court.

The Commission has designated Commissioner Felipe González, and Executive Secretary Santiago A. Canton, as its delegates. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary; Tatiana Gos, Lilly Ching y Karin Mansel, attorneys of the Executive Secretariat of the IACHR, have been designated to serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission is enclosing with this communication a copy of Report 171/11 prepared in compliance with Article 50 of the American Convention, as well as a copy of the entire file before the Inter-American Commission (Appendix 1) and the annexes used in the preparation of Report 171/11 (Annexes). The Commission adopted Report on the Merits No. 171/11 on November 3, 2011 and forwarded it to the State on December 7, 2011, granting it two months to report on steps taken to comply with the Report's recommendations. On February 7, the State presented a communication which did not provide information regarding compliance with the recommendations made by the Commission but rather questioned the conclusions of the Merits Report, based on arguments invoked by the State on a number of occasions throughout the processing of the case that were duly and timely analyzed.

The Commission submits this case to the jurisdiction of the Inter-American Court in view of to the need to obtain justice for the victims, the nature and gravity of the violations found, and the failure of the State to carry out the recommendations.

The Inter-American Commission is submitting to the jurisdiction of the Court the full facts and human rights violations as set out in merits report 171/11 and asks the Court to adjudge and declare the international responsibility of the State of Venezuela for:

violating articles 8 and 25 of the American Convention, in relation to articles 1.1. and 2, with respect to Allan R. Brewer Carías.

Consequently, the Commission is asking the Inter-American Court to order the following reparations:

1. That the State adopt measures to ensure the independence of the judiciary, with reforms to strengthen the procedures whereby judges and prosecutors are appointed and removed, to affirm their tenure in those positions, and to eliminate the temporary status of the vast majority of judges and prosecutors, in order to uphold the rights to judicial protection and to a fair trial established in the American Convention.
2. Should the criminal proceedings against Allan Brewer Carías continue, that the State establish the conditions necessary to ensure that the trial is conducted in accordance with the guarantees and standards enshrined in Articles 8 and 25 of the American Convention.
3. That the State make appropriate reparations for the human rights violations established in this report, in both their material and moral dimensions.

Moreover, the Commission points out that this case contains elements affecting inter-American public interest already addressed by the human rights protection system with respect to the principle of judicial independence established in Article 8.1 of the American Convention. The Commission considers that this case will enable the Court to apply its jurisprudence regarding the temporary nature of the Judiciary in Venezuela from a different perspective, namely, its relation with the right to judicial guarantees and protection of the person accused.

Likewise, given that these issues have a significant impact on inter-American public order, pursuant to Article 35.1.f) of the Rules of Procedure of the Inter-American Court, the Commission would like to ask the incorporation, of the following expert testimonies Antonio Canova González, in the case of Chocrón Chocrón vs. Venezuela, José Luis Tamayo Rodríguez and Alberto Arteaga Sánchez, in the case of Reverón Trujillo vs. Venezuela, and Param Kumaraswamy and Jesús María Casal Hernández, in the case of Apitz Barbera et. al vs. Venezuela, who referred to the subjects of public order previously mentioned and to offer the following expert's statement:

José Zeitune, who will refer to international standards on the impact of the temporary nature of judges and prosecutors in relation to the principle of judicial Independence, due process of law and judicial guarantees of the persons accused in a criminal proceeding, in particular, in the context of a criminal accusation with political content.

The curriculum vitae of the expert proposed by the Inter-American Commission will be included in the annexes to merits report 171/11.

Finally, the name of the petitioner in the case before the Commission and its particulars are as follows:

Pedro Nikken


Please accept renewed assurances of my highest regards.

Signed in the original

Elizabeth Abi-Mershed
Deputy Executive Secretary