

# **SOME CONSTITUTIONAL AND LEGAL CHALLENGES POSED BY THE PROCESS OF TRANSITION TOWARDS DEMOCRACY DECREED BY THE NATIONAL ASSEMBLY OF VENEZUELA, SINCE JANUARY 2019\***

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## **I. THE ORIGIN OF THE PROCESS: THE DISRUPTION OF THE DEMOCRATIC ORDER AFTER THE PARLIAMENTARY ELECTION OF DECEMBER 2015**

After the election of new members of the National Assembly, in December 2015, in which the Government lost the absolute majority it previously had during more than one decade, Venezuela has been immerse in a grave political crisis due to the effort of the Executive Branch of government in collusion with the Judiciary, to obstruct and suffocate the Legislative branch, crushing the opposition that legitimately controls the Assembly.

Such efforts have provoked a serious alteration of the constitutional order, mainly due to the actions taken by the Constitutional Chamber of the Supreme Tribunal, give motives to the Secretary-General of the Organization of American States, Luis Almagro, to produce two Reports in 2016 requesting Permanent Council of the Organization, the application of Article 20 of that Charter<sup>1</sup> because

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\* Text of the Presentation made at the Event on “Perspectives on Venezuela: Present and Future Challenges,” organized for the Launching of the New York Chapter of the Inter-American Bar Association (*Federación Interamericana de Abogados*), New York, 17 July 2019.

<sup>1</sup> The first Report dated June 23, 2016, was called the *Report on the situation in Venezuela in relation to compliance with the Inter-American Democratic Charter* of May 30, 2016 (See the communication of the Secretary-General of the OAS of May 30, 2016 with the *Report on the situation in Venezuela in relation to compliance with the Inter-American Democratic Charter*, in [oas.org/documents/spa/press/OSG-243.es.pdf](http://oas.org/documents/spa/press/OSG-243.es.pdf). See this text and the other Reports of the Secretary-General of the OAS cited in this Opinion, in *La crisis de la democracia en Venezuela, la OEA y la Carta Democrática Interamericana. Documentos de Luis Almagro. (2015-2016)*, Iniciativa Democrática España y las Américas, Editorial Jurídica Venezolana, Caracas / Miami 2016). The second, dated March 14, 2017, was called *Follow-up Report on Venezuela*. See the communication of the Secretary-General of the OAS of March 14, 2017

considering that “*in the current situation in Venezuela*” the country is “*facing serious disruptions to the democratic order.*”<sup>2</sup> He observed, in brief :

That “*there is no clear separation and independence of public authorities in Venezuela, where there is observed one of the clearest cases of co-optation of the Judiciary by the Executive Power,*”<sup>3</sup> reporting on:

“*the continuation of violations of the Constitution, especially with regard to the balance of powers, functioning, and integration of the Judiciary, human rights violations,*”<sup>4</sup>

In his report, he urged the Executive Power:

To “*eliminate all forms of non-compliance with constitutional and political precepts regarding the balance of State powers,*”<sup>5</sup>

To stop “*the exercise of the permanent blockade of the Executive Power regarding the laws approved by the National Assembly*”<sup>6</sup> and

“*to ensure the validity of laws that have been passed so far;*”<sup>7</sup>

He also requested:

“*a new integration of the Supreme Tribunal of Justice [...] since the current integration is completely flawed, both in the appointment procedure and by the political bias of virtually all its members.*”<sup>8</sup>

In short, as Dr. Almagro stated on June 23, 2016, before the Permanent Council of the Organization of American States, summarizing his first *Report* of May 30, 2016, in relation to the situation of the “*alteration of the constitutional order that disrupts the democratic order*” of Venezuela, that what he had:

“*attested to in Venezuela is the loss of the moral and ethical purpose of politics. The Government has forgotten to defend the greater good, the collective good [...] The Venezuelan People are facing a government that is no longer accountable. A Government that no longer protects citizens’ rights. A Government that is no longer democratic [...] In Venezuela we have witnessed a constant effort by the executive and judiciary powers to prevent or even invalidate the normal functioning of the National Assembly. The Executive Power has repeatedly used unconstitutional interventions against the legislature, with the collusion of the Constitutional Chamber of the Supreme Tribunal of Justice. The evidence is clear [...]* These examples clearly demonstrate the *lack*

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with the *Follow-up report on Venezuela* at <http://www.oas.org/documents/spa/press/informe-VZ-spanish-signed-final.pdf> .

<sup>2</sup> See the communication of the Secretary-General of the OAS of May 30, 2016 with the *Report on the situation in Venezuela in relation to compliance with the Inter-American Democratic Charter*, p. 125. Available at <http://www.oas.org/documents/spa/press/OSG-243.es.pdf> .

<sup>3</sup> *Idem.* p. 73.

<sup>4</sup> *Idem.*, p. 128.

<sup>5</sup> *Idem.*, p. 127.

<sup>6</sup> *Idem.*

<sup>7</sup> *Idem.*

<sup>8</sup> *Idem.*

*of independence of the judiciary. The tripartite system of democracy has failed, and the judiciary has been co-opted by the executive power [...]*<sup>9</sup>

Even more explicit and tragic was what Secretary-General Almagro stated in an open letter addressed to one of the Venezuelan political leader, dated August 22, 2016, on the occasion of his conviction that he called a “political horror,” reaffirming:

*“the pitiful end of democracy in Venezuela. Paragraph by paragraph it is, likewise, the end of the Rule of Law.”*<sup>10</sup>

Saying that in Venezuela, “a threshold has been crossed, which means that it is *the very end of democracy.*”<sup>11</sup>

And concluding by saying that, “*today in Venezuela, there is no democracy or Rule of Law.*”<sup>12</sup>

All this situation has been recently confirmed in July 2019, in the “Report of the United Nations High Commissioner for Human Rights Michelle Bachelet, on the situation of Human rights in the Bolivarian Republic of Venezuela,” in which she stated that:

*“30. Over at least a decade, the Government and government-controlled institutions enforced laws and policies that have accelerated the erosion of the rule of law and the dismantlement of democratic institutions, including the National Assembly. These measures are aimed at neutralizing, repressing and criminalizing political opponents and people critical of the Government. This trend has accelerated since 2016, after the opposition won the majority of National Assembly seats, resulting in increased repression targeting the political opposition, and steadily reducing the already limited democratic space.*

*76. For over a decade, Venezuela has adopted and implemented a series of laws, policies and practices, which have restricted the democratic space, weakened public institutions, and affected the independence of the judiciary. Although these measures have been adopted with the declared aim of preserving public order and national security against alleged internal and external threats, they have increased the militarization of State institutions and the use of the civilian population in intelligence gathering and defense tasks.”*<sup>13</sup>

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<sup>9</sup> Text of Secretary-General Luis Almagro’s statement to the Permanent Council of the OAS, June 23, 2016, available at: [http://www.el-nacional.com/politica/PresentacindelSecretarioGeneraldeOEAante\\_NACFIL20160623\\_0001.pdf](http://www.el-nacional.com/politica/PresentacindelSecretarioGeneraldeOEAante_NACFIL20160623_0001.pdf).

<sup>10</sup> Text of Secretary-General Luis Almagro’s open letter to Leopoldo López, of August 22, 2016, is available at *Lapatilla.com*, August 23, 2016: <http://www.lapatilla.com/site/2016/08/22/almagro-a-leopoldo-lopez-tu-injusta-sentencia-marca-un-hito-el-lamentable-final-de-la-democracia-carta/>.

<sup>11</sup> *Idem.*

<sup>12</sup> *Idem.*

<sup>13</sup> The text of the Report of Mme. Bachelet is available at [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A\\_HRC\\_41\\_18.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_18.docx) See the comments on such report in Allan R. Brewer-Carías, “Informe Bachelet: Desahucio al régimen,” 8 de julio de 2019, published in: *Diario Constitucional*, Escuela de Derecho de la Universidad Mayor, Santiago de Chile, 11 de julio de 2019, p. 1; available at <https://www.diarioconstitucional.cl/noticias/actualidad-internacional/2019/07/10/publican-el-informe-bachelet-desahucio-al-regimen-por-allan-r->

## II. THE REJECTION BY THE NATIONAL ASSEMBLY OF THE UNCONSTITUTIONAL CONVENING OF A CONSTITUENT ASSEMBLY IN 2017, AND OF THE PRESIDENTIAL ELECTION ON MAY 2018

It was precisely in such general situation, of the total rupture of the constitutional order, that the *National Assembly legitimately elected in December 2015, composed of the representatives of the people, representing popular sovereignty, and as the primary political and legislative interpreter of the Constitution*, after the unconstitutional convening of a National Constituent Assembly in May 2017,<sup>14</sup> began to assume the transition process towards democracy and in order to restore the validity of the violated Constitution.

For such purpose, one of the most important Resolutions of the National Assembly, issued after the unconstitutional call for a presidential election held on May 20, 2018 made by such Constituent Assembly, which was issued on of May 22, 2018,<sup>15</sup> was the one denouncing the electoral process held of May 20, 2018 in which Nicolás Maduro was supposedly re-elected, as a “farce,” stating that such process:

“breached all electoral guarantees recognized in Human Rights Treaties and Agreements, as well as in the Constitution of the Bolivarian Republic of Venezuela, and the Organic Law on Electoral Processes, taking into account the effective absence of the Rule of Law; the bias of the electoral arbitrator; the violation of the effective guarantees for the exercise of the right to suffrage and for the exercise of the right to be elected to offices of popular election; the absence of effective controls against the acts of electoral corruption perpetrated by the Government; the systematic violation of the freedom of expression, in addition to the partiality of government-controlled social media, and the absence of effective and transparent mechanisms of electoral observation.”

*The National Assembly interpreted* in addition, that, since “the people of Venezuela” had abstained from participating in the illegitimate electoral process, it was said people who:

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<sup>14</sup> See on this matter, Allan R. Brewer-Carías, *La inconstitucional convocatoria de una Asamblea Nacional Constituyente en fraude a la voluntad popular*, Colección Textos Legislativos, No. 56, Editorial Jurídica Venezolana, Caracas 2017 pp. 178 pp. Available at: [http://allanbrewercarias.com/page/3/?s&categoria=libros&taxonomy\\_year](http://allanbrewercarias.com/page/3/?s&categoria=libros&taxonomy_year)

<sup>15</sup> Text of the Resolution available at <http://www.asambleanacional.gob.ve/actos/acuerdo-reiterando-el-desconocimiento-de-la-farsa-realizada-el-20-de-mayo-de-2018-para-la-supuesta-eleccion-del-presidente-de-la-republica> . Similarly, in the review “Asamblea Nacional desconoce resultados del 20M y declara a Maduro “usurpador,” available at *NTN24*, May 22, 2018, available at <http://www.nten24.com/america-latina/la-tarde/venezuela/asamblea-nacional-desconoce-resultados-del-20m-y-declara-nicolas>

“in defense of our Constitution and under the protection of its Articles 333 and 350, *had decided to reject, ignore, and not validate the farce* called for May 20, despite government pressure by means of social control.”

By virtue of the above, then, the National Assembly, again, *as a legitimate political and legislative body representing popular sovereignty, and as primary interpreter of the Constitution on behalf of the people*, in said Resolution of May 22, 2018, agreed:

“1. *To declare as non-existent the farce of May 20, 2018*, having been carried out completely outside the provisions of Human Rights Treaties, the Constitution, and the Laws of the Republic.

2. *Not to accept the alleged results announced by the National Electoral Council* and in particular, the alleged election of Nicolás Maduro Moros as President of the Republic, who should be regarded as a usurper of the office of the Presidency of the Republic.

3. *Not to accept any illegitimate and illegal acts of proclamation and swearing in* by which it is intended to constitutionally vest citizen Nicolás Maduro Moros as the alleged president of the Bolivarian Republic of Venezuela for the 2019-2025 term.”<sup>16</sup>

This was ratified by the national Assembly in Resolution of November 13, 2018 and in the text of the “*Statute governing the transition to democracy to restore the validity of the Constitution of the Bolivarian Republic of Venezuela*” of February 5<sup>th</sup>, 2019, providing the following:

*Article 8.* The political event that took place on May 20 2018 was not a legitimate presidential election. Consequently, no President elect exists in order to legitimately assume the Presidency of the Bolivarian Republic of Venezuela.”<sup>17</sup>

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<sup>16</sup> See comments to that Resolution in Allan R. Brewer-Carías, “Reflexiones sobre la dictadura en Venezuela después de la fraudulenta reelección de Nicolás Maduro en mayo 2018,” available at <http://allanbrewer-carrias.com/wp-content/uploads/2018/05/184.-Brewer.-doc.-SOBRE-LA-DICTADURA.-VENEZUELA.-5-2018pdf>, New York, May 27, 2018. This study was included in the book: Allan R. Brewer-Carías, *Crónica Constitucional de una Venezuela en las Tinieblas*, Editions Olejnik, Santiago, Buenos Aires, Madrid, 2019, pp.43-86 (Available at: <http://allanbrewercarias.com/wp-content/uploads/2019/04/188.-CRONICA-CONSTITUCIONAL-VZLA-EN-TINIEBLAS-Car%C3%A1tula-e-%C3%ADndice.pdf>); and in the book Allan R. Brewer-Carías, *La transición a la democracia en Venezuela. Bases constitucionales y obstáculos usurpadores*, Iniciativa Democrática España y las Américas, Editorial Jurídica Venezolana, Caracas / Miami 2019, pp. 115-149 (Available at: <http://allanbrewercarias.com/wp-content/uploads/2019/06/193.-Brewer.-bis-5.-TRANSICION-A-LA-DEMOCRACIA-EN-VLA.-BASES-CONSTITUC.-1-6-2019-para-pag-web-1.pdf>).

<sup>17</sup> The text of the *Statute for Transition* is available at [http://www.asambleanacional.gob.ve/documentos\\_archivos/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282.pdf](http://www.asambleanacional.gob.ve/documentos_archivos/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282.pdf). Also available at [https://www.prensa.com/mundo/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282\\_LPRFIL20190205\\_0001.pdf](https://www.prensa.com/mundo/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282_LPRFIL20190205_0001.pdf)

### III. THE GENERAL REJECTION OF THE MAY 2018 PRESIDENTIAL ELECTION IN THE INTERNATIONAL COMMUNITY

Such presidential election of May 20, 2018, declared un-existent by the National Assembly, also caused an important international reaction, beginning on May 21, 2018, with the important declaration of the *Lima Group*, in which the Governments of Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Guyana, Honduras, Mexico, Panama, Paraguay, Peru, and Santa Lucía agreed to exert diplomatic pressure on the regime, ratifying their willingness “to help preserve the powers of the National Assembly,” but expressing, among other things, that:

“They do not *recognize* the legitimacy of the electoral process developed in the Bolivarian Republic of Venezuela which concluded on May 20, for not complying with the international standards of a democratic, free, fair, and transparent process.”<sup>18</sup>

There should also be noted the position of the United States, whose Secretary of State stated, quite simply:

“The United States condemns the fraudulent election that took place in Venezuela on May 20. This so-called “election” is an attack on the constitutional order and an affront to Venezuela’s tradition of democracy.”<sup>19</sup>

Likewise, the reaction of the G7 Group, which brings together the leaders of Germany, Canada, the United States, France, Italy, Japan, and the United Kingdom, and the European Union should be pointed out, who in a joint statement denounced the development of said presidential election for “not meeting international standards” nor ensuring “basic guarantees,” concluding that “Venezuela’s presidential election and its outcome, as it is not representative of the democratic will of the citizens of Venezuela.”<sup>20</sup>

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<sup>18</sup> See information on *Politico.mx*, May 21, 2018, at <https://politico.mx/minuta-politica/minuta-politica-gobierno-federal/m%C3%A9xico-y-el-grupo-lima-no-reconocen-elecci%C3%B3n-en-venezuela/> U.S. Vice President Mike Pence, through his official Twitter account @VP, after calling the May 20 electoral process a “farce,” stated that: “The United States stands up against dictatorship and in favor of the Venezuelan people calling for fair and free elections.” See *93.1 Costa del Sol*, May 21, 2018, available at <http://www.costadel-solfm.net/2018/05/21/mike-pence-estados-unidos-se-levanta-contra-la-dictadura-vienen-mas-acciones-contra-el-gobierno-de-venezuela/>.

<sup>19</sup> See Mike Pompeo's statement: “The United States condemns the fraudulent election that took place in Venezuela on May 20. This so-called ‘election’ is an attack on constitutional order and an affront to Venezuela’s tradition of democracy,” in “An Unfair, Unfree Vote in Venezuela,” Press Statement, *Secretary of State*, Washington, DC., May 21, 2018, en <https://www.state.gov/secretary/remarks/-2018/05/282303.htm>.

<sup>20</sup> See “G7 Leaders’ Statement on Venezuela,” on the official website of Canada’s Prime Minister Justin Trudeau, May 23, 2018, in <https://pm.gc.ca/eng/news/2018/05/23/g7-leaders-statement-venezuela>. See also, in the review “The G7 denounced the elections in Venezuela for ‘not meeting international standards’ or ensuring ‘basic guarantees,’ in *Infobae*, May 23, 2018, in <https://www.infobae.com/america/venezuela/2018/05/23/el-g7-denuncio-las-elecciones-en-venezuela-por-no-cumplir-los-estandares-internacionales-ni-asegurar-garantias-basicas/>. See also the

A few months later, on November 13, 2018, the National Assembly itself adopted a “*Resolution intended to promote a political solution to the national crisis, strengthening the democratic forces of the people of Venezuela with the support of the international community,*”<sup>21</sup> declaring:

“Nicolas Maduro Moros’s claim to continue usurping the presidential powers as of January 10, 2019 as unconstitutional, and convening the people of Venezuela and the international community to defend the Constitution and bring about political change in our country.”

Subsequently, all these premises were ratified by the National Assembly in the Explanatory Statement for the sanctioning of the “*Statute governing the transition to democracy to restore the validity of the Constitution*” of February 5, 2019, by declaring that the political process:

“which began on January 10, 2019, had its origins when opposition forces refused to participate in the fraudulent process of May 20, 2018, after refusing to sign the Electoral Agreement proposed by the emissaries of Nicolás Maduro Moros in the Dominican Republic. On May 20, 2018, the de facto regime intended to simulate an electoral process in which Venezuelans were unable to exercise their right to vote in freedom and laid the foundations for the current usurpation scenario.”<sup>22</sup>

#### **IV. THE ROLE OF THE NATIONAL ASSEMBLY AS PRIMARY INTERPRETER OF THE CONSTITUTION IN THE ABSENCE OF A LEGITIMATELY ELECTED PRESIDENT THAT COULD TAKE OATH IN JANUARY 2019, AND THE POSITION OF THE PRESIDENT OF THE NATIONAL ASSEMBLY AS PRESIDENT IN CHARGE OF THE REPUBLIC SINCE JANUARY 10, 2019**

In this context, it can be said that the National Assembly assumed the role imposed by political and constitutional circumstances, and, as *the legitimate political and legislative body representing popular sovereignty, and in its role as the primary interpreter of the Constitution on behalf of the people*, it effectively proceeded to *interpret the Constitution* in order to solve the political crisis arising from the unprecedented political event in the history of the country, which was that, on January 10, 2019, the country lacked a legitimately elected and recognized president who could be sworn in, and take office as President of the Republic for the 2019-

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information in “G7 and European Union unite to reject recent election in Venezuela,” *north shore news*, The Canadian Press, May 23, 2018, in <http://www.nsnews.com/news/national/g7-and-european-union-unite-to-reject-recent-election-in-venezuela-1.23310884> .

<sup>21</sup> Available at [http://www.asambleanacional.gob.ve/documentos\\_archivos/acuerdo-con-el-objeto-de-impulsar-una-solucion-politica-a-la-crisis-nacional-260.pdf](http://www.asambleanacional.gob.ve/documentos_archivos/acuerdo-con-el-objeto-de-impulsar-una-solucion-politica-a-la-crisis-nacional-260.pdf)

<sup>22</sup> Text available at [https://www.prensa.com/mundo/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282\\_LPRFIL20190205\\_0001.pdf](https://www.prensa.com/mundo/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282_LPRFIL20190205_0001.pdf)

2025 term under article 231 of the Constitution; in particular because the act of the election of Mr. Nicolás Maduro held on May 20, 2018, *since May 22, 2018 was declared as “non-existent”* by the same National Assembly, when formally rejecting the results of such an election.<sup>23</sup>

In this political situation of constitutional crisis, the *National Academy of Political and Social Sciences*, which is the highest consultative entity of the country on institutional matters, on January 4th, 2019, highlighted that due “to the non-existence of the necessary conditions in order to celebrate free and just elections,” the illegitimate presidential “reelection” of May 2018, has placed the country in an “unprecedented situation” (which was the one that Venezuelans faced in January 2019), “due to the fact that on next January 10th 2019, date on which, as established in article 231 of the Constitution, the president for the constitutional term 2019-2019 has to be sworn, the country lacks of a president legitimately elected by means of free and just election.”

Consequently, the Academy, facing the grave situation of the country confirmed by those “unconstitutional and illegitimate facts,” and considering that it was necessary to proceed “to comply with the citizens’ duty establish in article 333 of the Constitution,” it demanded “the different Branches of Government to respect the Constitution,” and to “proceed to the full reestablishment of the constitutional and democratic order of the country;” a message which was directly addressed to the National Assembly, recognized as the only State organ with democratic legitimacy in the country, due to the fact that all the other branches of government were totally subordinated to the national Executive, in particular, the Supreme Tribunal of Justice, the National Electoral Council, and the organs of the Citizens Branch, led by the General Prosecutor of the Republic.<sup>24</sup>

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<sup>23</sup> Text of the Resolution available at [http://www.asambleanacional.gob.ve/actos/\\_acuerdo-reiterando-el-desconocimiento-de-la-farsa-realizada-el-20-de-mayo-de-2018-para-la-supuesta-eleccion-del-presidente-de-la-republica](http://www.asambleanacional.gob.ve/actos/_acuerdo-reiterando-el-desconocimiento-de-la-farsa-realizada-el-20-de-mayo-de-2018-para-la-supuesta-eleccion-del-presidente-de-la-republica) . Similarly, in the review “National Assembly does not accept the results of 20M and declares Maduro an ‘usurper,’ in *NTN24*, May 22, 2018, available at <http://www.ntn24.com/america-latina/la-tarde/venezuela/asamblea-nacional-desconoce-resultados-del-20m-y-declara-nicolas>

<sup>24</sup> See the Declaration of the *Academia de Ciencias Políticas y Sociales*: “Ante el 10 de enero de 2019: fecha en la que ha de juramentarse al presidente de la República conforme a la Constitución,” January 4, 2019; available at: <http://www.acienpol.org.ve/cmacionpol/Resources/Pronunciamientos/PRONUNCIAMIENTO%20DE%20LA%20ACADEMIA%20DE%20CIENCIAS%20POLITICAS%20Y%20SOCIALES%20SOBRE%20EL%20RECHAZO%20A%20LA%20DEMANDA%20DE%20GUYANA%20CONTRA%20VENEZUELA%20def..pdf> . See the reference in the book: *Academia de Ciencias Políticas y Sociales, Doctrina Académica Institucional. Instrumento de reinstitucionalización democrática. Pronunciamientos 2012-2019*, Tomo II, Editorial Jurídica Venezolana, Caracas 2019, pp. 332 ff. Available at: <http://allanbrewercarias.com/wp-content/uploads/2019/07/libro.-PRONUNCIAMIENTOS-DE-LA-ACADEMIA-19-6-2019-DEFINITIVO.pdf>

In any case, the National Assembly, in effect, as representative of the people, exercise the *Legislative Power* of the State, and as such is the *primary official interpreter of the Constitution*,<sup>25</sup> sanctioning laws (articles 202-218) as well as other parliamentary acts that, without having the form of law, can also be dictated on behalf of the people, in direct and immediate execution of the Constitution.

The Constitution, of course, can and should be interpreted by all persons, all officials, and all the organs of the Government who are responsible for applying it. No organ of the State, not even the Supreme Tribunal of Justice when acting as the maximum and last interpreter of the Constitution (Article 335), has a monopoly on constitutional interpretation,<sup>26</sup> but in the case of the National Assembly, as the representative body of popular sovereignty, as stated by Javier Pérez Royo, it is “the first interpreter of the Constitution and the most important one,” being the Legislator, “the normal, ordinary interpreter of the Constitution,” adding that:

“the Constitution is a legal rule that refers at first instance to a political interpreter. Parliament is the political body that interprets the Constitution in the only way it knows how to do so: in a political sense. It is also a *privileged interpreter, insofar as it is the democratically elected representative of the citizens and, therefore, expresses the general will.*” That is precisely why its interpretation in the form of a law is imposed on the whole of society.”<sup>27</sup>

It was precisely in the context of the aforementioned political crisis that the National Assembly, interpreting the Constitution on behalf of the people, in the absence of an express text regulating the denounced situation, decided, in order to solve it, to apply in an analogous manner, article 233 of the Constitution itself, which refers to cases of “absolute lack of a president before the inauguration of office.” Consequently, it considered then that, in the absence of a legitimately elected president who could be sworn in as President of the Republic for the 2019-2025 term, the President of the National Assembly had a duty to take the office of the Presidency of the Republic, since he has, among the functions inherent to his office, precisely to take care of the presidency in cases of absolute lack of the President of the Republic.

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<sup>25</sup> See Claudia Nikken, *Consideraciones sobre las fuentes del derecho constitucional y la interpretación de la Constitución*, Centro de Derecho Público y de la Integración Editorial Jurídica Venezolana, Caracas 2019, p. 85.

<sup>26</sup> See Nestor Pedro Sagués, *La interpretación judicial de la Constitución*, Second edition, Lexis Nexis, Buenos Aires 2006, p. 2; See Elisur Arteaga Nava, “La interpretación constitucional,” in Eduardo Ferrer Mac Gregor (Coordinator), *Interpretación Constitucional*, Universidad Nacional Autónoma de México, Editorial Porrúa, Mexico 2005, Volume I, pp. 108 and 109.

<sup>27</sup> See Javier Pérez Royo, “La interpretación constitucional,” in Eduardo Ferrer Mac Gregor (Coordinator), *Interpretación Constitucional*, Universidad Nacional Autónoma de México, Editorial Porrúa, México 2005, Volume I, pp. 889

Thus, on the same day January 10, 2019, being the country in the unique situation previously described, the National Assembly decreed the “emergency due to the total disruption of constitutional continuity,” and began to set the path for the “ceasing of the usurpation.”<sup>28</sup> That same day, Juan Guaidó, in his character as President of the National Assembly stated that “Today there is no Chief of State, today there is no commander in chief of the Armed Forces, today there is a National Assembly that represents the people of Venezuela,”<sup>29</sup> beginning himself, according to the Constitution, to be in charge of the Presidency of the Republic.

This was later ratified by the same National Assembly by Resolution of January 15, 2019 “regarding the declaration of usurpation of the Presidency of the Republic by Nicolas Maduro Moros and the reinstatement of the Constitution,”<sup>30</sup> in which the Assembly decided “to formally declare the usurpation of the Presidency of the Republic by Nicolas Maduro Moros and, consequently, consider the de facto status of Nicolas Maduro as legally ineffective, and declare all the alleged actions of the Executive Branch to be null and void, pursuant to Article 138 of the Constitution,; and to “apply by analogy Article 233 of the Constitution, in order to fill in the absence of a president-elect while concurrently acting to restore the constitutional order based on Articles 333 and 350 of the Constitution, and cause the ceasing of the usurpation by effectively forming a Transition Government and proceeding to organize free and transparent elections.” All these political decisions interpreting the Constitution, regarding the role of the President of the National Assembly as President in Charge of the Republic, were ratified in the law of the *Statute that governs the transition to democracy in order to reinstate the Constitution of the Bolivarian Republic of Venezuela*, of February 5<sup>th</sup>, 2019, setting forth in Article 14, that:

Article 14. The President of the National Assembly is, according to article 233 of the Constitution, the legitimate President in Charge of the Bolivarian republic of Venezuela. The decisions of the President in Charge are to be subjected to parliamentary control of the National Assembly according to article 187.3 of the Constitution.”<sup>31</sup>

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<sup>28</sup> See: “Venezuela: Asamblea Nacional se declara "en emergencia" por jura de Nicolás Maduro. Su presidente, Juan Guaidó hizo un llamado a las fuerzas militares de Venezuela para que acompañen una eventual transición política, en Tele13, 10 de enero de 2019, available at: <http://www.t13.cl/noticia/mundo/venezuela-asamblea-nacional-se-declara-emergencia-juranicolas-maduro> .

<sup>29</sup> See “Juan Guaidó: Hoy no hay jefe de Estado,” in Noticiero52, 10 de enero de 2019,” available at <https://noticiero52.com/juan-guaidohoy-no-hay-jefe-de-estado/>.

<sup>30</sup> Available at: [http://www.asambleanacional.gob.ve/actos/\\_acuerdo-sobre-la-declaratoria-de-usurpacionde-la-presidencia-dela-republica-por-parte-de-nicolas-maduro-moros-y-el-restablecimiento-de-la-vigenciade-la-constitucion](http://www.asambleanacional.gob.ve/actos/_acuerdo-sobre-la-declaratoria-de-usurpacionde-la-presidencia-dela-republica-por-parte-de-nicolas-maduro-moros-y-el-restablecimiento-de-la-vigenciade-la-constitucion).

<sup>31</sup> The text of the *Statute for Transition* is available at [http://www.asambleanacional.gob.ve/documentos\\_archivos/estatuto-que-rige-la-transicion-a-la-](http://www.asambleanacional.gob.ve/documentos_archivos/estatuto-que-rige-la-transicion-a-la-)

Consequently, after these formal constitutional interpretation issued by the National Assembly, applying by analogy Article 233 of the Constitution due to the absence of a legitimate president-elect that could be sworn in as president of the Republic for the 2019-2025 term, this implied as we have already stated, that as of January 10, 2019, representative Juan Guaidó, in his capacity as president of the National Assembly, by mandate of the Constitution and without losing his capacity as such president of the Assembly, became by law the interim President of the Republic, which, among other public statements, was expressed by Juan Guaidó himself in a public rally held on January 23, 2019. By assuming the interim presidency of the Republic in his capacity as President of the National Assembly, Representative Juan Guaidó merely fulfilled a duty imposed by the Constitution. Consequently, there was no “self-proclamation” as has been affirmed, but the assuming of one of the functions that have been constitutionally vested on him as president of the National Assembly. As expressed by Guaidó himself:

“My assumption as interim president is based on Article 233 of the Venezuelan Constitution, according to which, if at the onset of a new presidential term there is no chief of state elected, the power shall be ascribed to the president of the National Assembly until the holding of fair elections. For this reason, my oath of January 23 cannot be deemed a “self-proclamation.” I did not assume the presidency of my own accord but in pursuance of the Constitution.”<sup>32</sup>

In this way, and in accordance with this interpretation, it can be said that the president of the National Assembly did not “proclaim himself [President]” as has been wrongly stated,<sup>33</sup> but took charge of Presidency of the Republic by virtue of

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<sup>32</sup> See Juan Guaidó, “How the World Can Help Venezuela,” en The New York Times, New York, 31 de enero de 2019, p. A23. See also, on this: José Ignacio Hernández, “De juramentos y proclamas: una explicación,” in Prodavinci, 24 de enero de 2019, available at: <https://prodavinci.com/de-juramentos-y-proclamas-una-explicacion/>

<sup>33</sup> See on this topic Allan R. Brewer-Carías, “Juan Guaidó is not ‘Self-Proclaimed.’ He assumed the Interim Presidency of the Republic of Venezuela as of January 10, 2019, in observance of the Constitution, due to the absence of a legitimately-elected President,” March 8<sup>th</sup>, 2019, available at: <http://allanbrewercarias.com/wp-content/uploads/2019/03/189.-Juan-Guaid%C3%B3-is-not-Self-Proclaimed.-March-2018.pdf> . See also the text in the book: Allan R. Brewer-Carías, *Crónica Constitucional de una Venezuela en las Tinieblas*, Ediciones Olejnik, Santiago, Buenos Aires, Madrid, 2019, pp. 289-290 (Available at: <http://allanbrewercarias.com/wp-content/uploads/2019/04/188.-CRONICA-CONSTITUCIONAL-VZLA-EN-TINIEBLAS-Car%C3%A1tula-e-%C3%ADndice.pdf>); and in the book Allan R. Brewer-Carías, *La transición a la democracia en Venezuela. Bases constitucionales y obstáculos usurpadores*, Iniciativa Democrática España y las Américas, Editorial Jurídica Venezolana, Caracas / Miami 2019, pp. 227-238 (Available at: <http://allanbrewercarias.com/wp-content/uploads/2019/06/193.-Brewer.-bis-5.->

law, without any additional swearing in, for he had already been sworn in for that purpose when he accepted the office of President of the Assembly on January 5, 2019. In other words, on January 23, 2019 the National Assembly did not declare Juan Guaidó as Interim President of Venezuela, nor that on that date at a public rally he took formally “oath” as President in Charge of the Republic. Juan Guaido, who was sworn al President of the National Assembly on January 5<sup>th</sup> 2019, due to the absence of a legitimately President-elect that could took its Oath before the Assembly on January 10<sup>th</sup>, since that same day, according to the Constitution (art. 233) automatically (*ex-constitutione*) began to be in Charge of the Presidency of the Republic, due to the absence of legitimately elected President; a fact that had been formally ratified by the National Assembly as the legitimate political and legislative body that represents the sovereign will of the people and as primary interpreter of the Constitution on behalf of the people, by means of Resolutions issued on May 22, 2018.<sup>34</sup>

Apart from the interpretation of article 233 of the Constitution, as already mentioned, the *National Assembly, moreover, as a legitimate representative of popular sovereignty*, on the same day, January 10, 2019, proceeded to declare itself “in a state of emergency due to the complete breakdown of the constitutional thread,” proceeding, *as the primary interpreter of the Constitution*, to establish what it called “the path to the cessation of usurpation.”<sup>35</sup>

In that situation, moreover, as regards Mr. Maduro, in spite of being formally considered by the National Assembly as illegitimately “re-elected” President of the Republic for the 2019-2025 term, in an election formally declared “non-existent,” and who, therefore, could not be sworn in for that period before the popular representation as ordered by the Constitution, did so illegitimately, not before the National Assembly, *but before the Supreme Tribunal of Justice*, controlled by the Executive Power; an act that had no value, and which was not accepted by the

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[TRANSICI%C3%93N-A-LA-DEMOCRACIA-EN-VLA.-BASES-CONSTITUC.-1-6-2019-para-pag-web-1.pdf](#)).

<sup>34</sup> See the text of the Resolution in <http://www.asambleanacional.gob.ve/actos/acuerdo-reiterando-el-desconocimiento-de-lafarsa-realizada-el-20-de-mayo-de-2018-para-la-supuesta-eleccion-del-presidente-de-la-republica> . See also: “Asamblea Nacional desconoce resultados del 20M y declara a Maduro “usurpador,” en NTN24, 22 de mayo de 2018; available at <http://www.ntn24.com/americ-latina/la-tarde/venezuela/asamblea-nacional-desconoce-resultados-del-20m-y-declaranicolas>.

<sup>35</sup> See the report “Venezuela: National Assembly declares itself ‘in emergency’ due to Nicolas Maduro’s swearing into office. Its president, Juan Guaidó, called on Venezuela’s military to accompany an eventual political transition, in *Tele13*, January 10, 2019, available at: <http://www.t13.cl/noticia/mundo/venezuela-asamblea-nacional-se-declara-emergencia-jura-nicolas-maduro>

National Assembly as well as by much of the international community.<sup>36</sup>

## V. THE DECLARATION OF THE USURPATION OF THE PRESIDENCY OF THE REPUBLIC BY NICOLÁS MADURO IN JANUARY 15, 2019 AND THE STEPS FOR THE RESTAURATION OF THE VALIDITY OF THE CONSTITUTION TO BE CONDUCTED BY THE ASSEMBLY

The route to seek for the ceasing of the usurpation” announced in the January 10<sup>th</sup>, 2019 decision of the National Assembly decreeing the “emergency due to the total disruption of constitutional continuity,” was subsequently defined by the National Assembly through another Resolution, dated January 15, 2019, through which, acting as *the only authority with democratic legitimacy of the Venezuelan State, and as representative of the Venezuelan people*, it declared “*the usurpation of the Presidency of the Republic by Nicolás Maduro Moros and the restoration of the validity of the Constitution*”<sup>3738</sup> or “*of the constitutional order*” based in what is establish “in articles 5, 187, 233, 333, and 350<sup>39</sup> of the Constitution.”

In particular the National Assembly, in this Resolution of January 15, 2019, referred to the constitutional obligation of all citizens and officials set forth for in article 333 of the Constitution,<sup>40</sup> which compels them to cooperate in the restoration

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<sup>36</sup> Indeed, on the same day, January 10, 2019, the Permanent Council of the Organization of American States, decided “not to recognize the legitimacy of Nicolás Maduro’s regime,” by approving the proposal made by Argentina, Chile, Colombia, Costa Rica, the United States, Peru and Paraguay, approved with the favorable vote of Jamaica, Panama, Paraguay, Peru, The Dominican Republic, Santa Lucía, Argentina, Bahamas, Brazil, Canada, Colombia, Costa Rica, Ecuador, Grenada, Guatemala, Guyana, Honduras, and Haiti. See information in *El País*, January 11, 2019, at [https://elpais.com/internacional/2019/01/10/estados\\_unidos/1547142698\\_233272.html](https://elpais.com/internacional/2019/01/10/estados_unidos/1547142698_233272.html). See *El Nacional*, January 10, 2019, at [http://www.el-nacional.com/noticias/mundo/oea-aprobo-resolucion-para-desconocer-juramentacion-maduro\\_265882](http://www.el-nacional.com/noticias/mundo/oea-aprobo-resolucion-para-desconocer-juramentacion-maduro_265882)

<sup>37</sup> Available at [http://www.asambleanacional.gob.ve/actos/\\_acuerdo-sobre-la-declaratoria-de-usurpacionde-la-presidencia-de-la-republica-por-parte-de-nicolas-maduro-moros-y-el-restablecimiento-de-la-vigenciade-la-constitucion](http://www.asambleanacional.gob.ve/actos/_acuerdo-sobre-la-declaratoria-de-usurpacionde-la-presidencia-de-la-republica-por-parte-de-nicolas-maduro-moros-y-el-restablecimiento-de-la-vigenciade-la-constitucion)

<sup>38</sup> Text available at <https://www.infobae.com/america/venezuela/2019/01/15/la-asamblea-nacional-de-venezuela-declaro-a-maduro-usurpador-del-presidencia/>. See comments to said Statute and its constitutional basis in Allan R. Brewer-Carias, *La transición a la democracia en Venezuela. Bases constitucionales y obstáculos usurpadores* (Available at: <http://allanbrewercarias.com/wp-content/uploads/2019/06/193.-Brewer.-bis-5.-TRANSICI%C3%93N-A-LA-DEMOCRACIA-EN-VLA.-BASES-CONSTITUC.-1-6-2019-para-pag-web-1.pdf>), Iniciativa Democrática España y las Américas, Editorial Jurídica Venezolana, Caracas / Miami 2019, pp. 219 ff.

<sup>39</sup> Article 350 states: “The people of Venezuela, faithful to their republican tradition, to their struggle for independence, peace, and freedom, will not recognize any regime, legislation, or authority that contradicts the democratic values, principles, and guarantees or undermines human rights.”

<sup>40</sup> Article 333 states: “This Constitution will not lose its validity or cease to be observed by act of force or because it is repealed by any means, other than those provided for therein. In such an event, any citizen, whether or not vested with authority, shall have a duty to cooperate in the restoration of its effective validity.”

of the effective validity of the Constitution when it has been violated; given “the right to civil disobedience in the face of the usurpation of Nicolás Maduro,” which derives from article 350 of the Constitution,<sup>41</sup> also referred. Based on Those provisions and given “the absence of a constitutional rule regulating the current situation,” the Assembly then proceeded to interpret the Constitution, deciding to:

“*apply analogously Article 233 of the Constitution, in order to supplement the absence of an elected president at the same time as taking action to restore constitutional order based on articles 333 and 350 of the Constitution, and, thus, make cease the usurpation, effectively conform the Transitional Government, and proceed to the organization of free and transparent elections.*”

In this way, *the National Assembly, as the primary interpreter of the Constitution and as a body through which the people exercise their sovereignty*, in an act, without a doubt, of civil disobedience,<sup>42</sup> formally declared, “*the usurpation of the Presidency of the Republic by Nicolás Maduro Moros, and, therefore, assumed as legally ineffective the de facto situation of Nicolás Maduro, deeming as null and void all the alleged acts emanating from the Executive Power, in accordance with article 138 of the Constitution.*”

This was ratified by the national Assembly in Resolution of November 13, 2018 and in the text of the “*Statute governing the transition to democracy to restore the validity of the Constitution of the Bolivarian Republic of Venezuela*” of February 5<sup>th</sup>, 2019, providing the following:

*Article 9.* By virtue of the aforementioned in the previous article, the exercise of the Presidency of the Bolivarian Republic of Venezuela by Nicolas Maduro Moros or any other official or representative of the facto regime is a usurpation of authority according to article 138 of the Constitution.”<sup>43</sup>

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<sup>41</sup> Article 350 states: “The people of Venezuela, faithful to their republican tradition, to their struggle for independence, peace, and freedom, will not recognize any regime, legislation, or authority that contradicts the democratic values, principles, and guarantees or undermines human rights.”

<sup>42</sup> See comments in Allan R. Brewer-Carías, “El desconocimiento del régimen de Nicolás Maduro y de su ilegítima “reelección” del 20 de mayo de 2018, expresado por el pueblo a través de sus representantes en la Asamblea Nacional, en 2018 y 2019: Un caso elocuente de desobediencia civil en el constitucionalismo contemporáneo,” March 22, 2019, at: <http://allanbrewercarias.com/wp-content/uploads/2019/03/192.-Brewer.-Desconocimiento-r%C3%A9gimen-art.-350-C.pdf>. See in Allan R. Brewer-Carías, *La transición a la democracia en Venezuela. Bases constitucionales y obstáculos usurpadores*, Iniciativa Democrática España y las Américas, Editorial Jurídica Venezolana, Caracas / Miami 2019, pp. 199-225 (Available at: <http://allanbrewercarias.com/wp-content/uploads/2019/06/193.-Brewer.-bis-5.-TRANSICI%C3%93N-A-LA-DEMOCRACIA-EN-VLA.-BASES-CONSTITUC.-1-6-2019-para-pag-web-1.pdf>); and in Allan R. Brewer-Carías, *El derecho constitucional a la desobediencia civil. Estudios*, Ediciones Olejnik, Santiago, Buenos Aires, Madrid 2019, pp. 187-198.

<sup>43</sup> The text of the *Statute for Transition* is available at [http://www.asambleanacional.gob.ve/documentos\\_archivos/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282.pdf](http://www.asambleanacional.gob.ve/documentos_archivos/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282.pdf). Also available at <https://www.prensa.com/mundo/estatuto-que-rige-la-transicion-a-la>

*As a result of the analogous application of Article 233 of the Constitution, in the absence of a legitimately elected president to be sworn in as president for the 2019-2025 term, the Assembly considered that the President of the National Assembly would be in charge of the Presidency of the Republic; deciding, in the aforementioned Resolution of January 15, 2019, pursuant to Articles 333 and 350 of the same Constitution, to:*

*“Adopt, within the framework of the application of Article 233, measures to restore conditions of electoral integrity, so that, once the usurpation has ceased and the Transitional Government has been effectively established, proceed to the convening and holding of free and transparent elections within the shortest possible time, as provided for in the Constitution and other laws of the Republic and applicable treaties.”<sup>44</sup>*

Under this framework, adopted in a parliamentary act without form of law issued in direct and immediate implementation of the Constitution, it can be said that the National Assembly assumed the political process of restoring democratic order, ceasing the usurpation of the Presidency by Nicolás Maduro, establishing the framework for political transition, anticipating that the President of the National Assembly, that is, of the Legislative Power, would take over the functions corresponding to him to take over the Presidency of the Republic, formally entrusting him, “to ensure compliance with legal regulations approved until the democratic order and the Rule of Law in the country are restored.”

## **VI. THE REACTION OF THE CONSTITUTIONAL COURT, ACTING EX-OFFICIO, AGAINST THE RESOLUTION OF THE NATIONAL ASSEMBLY OF JANUARY 15, 2019, BY MEANS OF A “UNILATERAL DECLARATION” NO 3, OF JANUARY 21, 2019**

It should be mentioned that, in view of this important Resolution of the National Assembly of January 15, 2019, the Constitutional Chamber of the Supreme Tribunal of Justice, on January 14, 2019, issued an odd “judgment” No. 3 of January 21, 2019,<sup>45</sup> formulated as a kind of *unilateral declaration* rendered without any process, case or controversy, that is, without trial or parties, without anyone having asked for

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<sup>44</sup> Available at [http://www.asambleanacional.gob.ve/actos/\\_acuerdo-sobre-la-declaratoria-de-usurpacionde-la-presidencia-de-la-republica-por-parte-de-nicolas-maduro-moros-y-el-restablecimiento-de-la-vigenciade-la-constitucion](http://www.asambleanacional.gob.ve/actos/_acuerdo-sobre-la-declaratoria-de-usurpacionde-la-presidencia-de-la-republica-por-parte-de-nicolas-maduro-moros-y-el-restablecimiento-de-la-vigenciade-la-constitucion)

<sup>45</sup> See the references in the report: “SJ [Supreme Tribunal of Justice] declares the current Board of Directors of the National Assembly null and void” *Runrunes.com*, January 21, 2019, at <https://runrun.es/noticias/370711/tsj-declara-nula-actual-junta-directiva-de-asamblea-nacional/>

it and, therefore, rendered *ex officio*,<sup>46</sup> based only on a the ruling issued by the same Chamber two years before (No. 2 of January 11, 2017), in which it had declared the National Assembly in “contempt,” and had provided that the “action of the National Assembly and anybody or individual contrary to what is decided here will be null and void.”<sup>47</sup> This “decision” of the Constitutional Chamber cannot be considered as a valid and effective judicial review ruling, being contrary to what the Venezuelan constitutional and legal standard establishes on matters of judicial review.

In effect, according to the Venezuelan Constitution (Article 336), the Constitutional Chamber of the Supreme Court has the power to exercise judicial review *of* constitutionality over the laws and the other acts of the National Assembly with rank of law or issued in direct and immediate execution of the Constitution. But that judicial review powers can only be exercised by the Constitutional Chamber, as imposed in the Organic Law on the Supreme Tribunal of Justice,<sup>48</sup> at the request of an interested party (Article 89), through the filing of a “popular action of unconstitutionality” (*actio popularis*) (Article 32), with which a process of unconstitutionality against a law or other the State acts can be initiated. That is, in Venezuela, as is the general trend on matters of judicial review in comparative law, judicial review of legislation can only take place at the request of an interested party by means of a popular action, in a case and controversy judicial process, with all the due process of law guaranties.<sup>49</sup> The only exception to this principle, is the possibility for the Constitutional Chamber to exercise judicial review control in an *ex officio* way, at its own initiative, only of the Executive decrees declaring state of

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<sup>46</sup> See the comments in Allan R. Brewer-Carías, *La transición a la democracia en Venezuela. Bases constitucionales y obstáculos usurpadores*, Iniciativa Democrática España y las Américas, Editorial Jurídica Venezolana, Caracas / Miami 2019, pp. 168 ff. (Available at: <http://allanbrewercarias.com/wp-content/uploads/2019/06/193.-Brewer.-bis-5.-TRANSICI%C3%93N-A-LA-DEMOCRACIA-EN-VLA.-BASES-CONSTITUC.-1-6-2019-para-pag-web-1.pdf>).

<sup>47</sup> Available at <http://historico.tsj.gob.ve/decisiones/scon/enero/194891-02-11117-2017-17-0001.HTML>. See comments to this judgment in Allan R. Brewer-Carías, *La consolidación de la tiranía judicial en Venezuela*, Editorial Jurídica Venezolana, Caracas 2017, pp. 21, 81, 116 ff. and 131 ff. (Available at: <http://allanbrewercarias.com/wp-content/uploads/2017/06/ALLAN-BREWER-CARIAS-LA-CONSOLIDACI%C3%93N-DE-LA-TIRAN%C3%8DA-JUDICIAL-EN-VZLA-JUNIO-2017-FINAL.pdf>).

<sup>48</sup> See in *Official Gazette* No 39.483 of August 9, 2010.

<sup>49</sup> See Allan R. Brewer-Carías, “The Citizen’s Access to Constitutional Jurisdiction: Special Reference to the Venezuelan System of Judicial Review,” in *Cuadernos de Soluções Constitucionais*, No. 4, Associação Brasileira de Constitutionistas Democratas, ABCD, Malheiros Editores, São Paulo 2012, pp. 13-29, available at [http://allanbrewercarias.com/wp-content/uploads/2012/06/II-4-711.-THE-CITIZENS-ACCES-TO-CONSTITUTIONAL-JURSDICTION-Round-Table-IACL-Brasil-2009-Lecture\\_.doc.pdf](http://allanbrewercarias.com/wp-content/uploads/2012/06/II-4-711.-THE-CITIZENS-ACCES-TO-CONSTITUTIONAL-JURSDICTION-Round-Table-IACL-Brasil-2009-Lecture_.doc.pdf).

exceptions (Article 366.6).<sup>50</sup>

So in no other way, the Constitutional Chamber of the Supreme Tribunal of Justice may initiate *ex officio* a judicial process in order to exercise judicial review over any act of State, and much less in no way the Constitutional Chamber can pretend to annul a State's acts without a case and controversy process, and without giving notice and hearing the interested State entity in a judicial procedure in which the rules of due process of law rules must be respected.

And that was the case of decision No. 3, of January 21, 2019, which was issued, *ex-officio*, only based in a previous ruling issued by the same Chamber two years before, No. 2 of January 11, 2017, declaring null and void all the actions of the National Assembly for "contempt" of court. So, starting from there, the Constitutional Chamber, considering that it was "a public, flagrant, and communicative fact" that the National Assembly had disrespected that 2017 ruling by incurring in an alleged "repeated constitutional omission," it simply stated:

"That the National Assembly has no valid Board of Directors, incurring the invalid 'Board' elected on January 5, 2019 (like those unconstitutionally 'appointed' in 2017 and 2018), in usurpation of authority, so all its acts are void, with absolute nullity, in accordance with the provisions of article 138 of the Constitution. It is thus declared."

But the declaration of the Constitutional Chamber did not stop there. With regard to the National Assembly Resolution of January 15, 2019, it declared that it allegedly violated "Articles 130, 131, and 132 of the Constitution, in particular the duty that 'everyone' has to comply with and abide the Constitution, the laws, and other acts that the bodies of the Public Power order in the exercise of their duties," because they did not recognize "the Judiciary by disregarding its judgments, the Electoral Power that conducted the electoral process which elected, proclaimed, and swore in" Mr. Maduro as President "for the 2019-2025 term," and "the Executive Power by ignoring the investiture of its holder and, most seriously, the sovereignty holder, the people, who made its choice in transparent elections, through universal, direct, and secret suffrage," which had "elected" the Constituent Assembly "who was the convener of the aforementioned presidential elections."

On this basis, the Chamber "declared" that the National Assembly's Resolution of January 15, 2019, allegedly "implies an act of force that seeks to repeal the constitutional text (Article 333) and all the consequential acts of the National Public Power," all of which, the Chamber said, forced it "*to act ex officio* for the protection

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<sup>50</sup> See Allan R. Brewer-Carías, "Judicial Review in Venezuela," in *Duquesne Law Review*, Volume 45, NO. 3, Spring 2007, pp. 439-465; available at <http://allanbrewercarias.net/Content/449725d9-f1cb-474b-8ab2-41efb849fea8/Content/II,%204,%20502.%20Judicial%20Review%20in%20Venezuela.%202006%20Duquesne%20Nov.%202006%20Revised%20version.pdf>.

of *the* fundamental text, in accordance with Articles 266.1, 333, 334, 335, and 336, the latter of Title VIII (Regarding the Protection of the Constitution). It is thus decided.”

*The* Chamber also considered it “unheard of” to seek to apply “analogically” the causes contained in Article 233 of the Constitution in order to justify the alleged absolute lack of the President of the Republic,” considering that it could not:

“add to these causes, another ‘accommodative’ cause, through a purported legal fiction, to determine that there were no elections in our country on May 20, 2018, and that from the results of the elections convened by the Constituent Power and the Electoral Power, that no Head of Government was elected.

Such clauses are of strict law and may not be modified and/or expanded analogously, without violating the Constitution. It is thus decided.”

The Constitutional Chamber, however, ignored that what the National Assembly had done in sanctioning that January 15, 2019 Resolution, had been precisely to interpret article 233 of the Constitution analogously, without “adding” to said rule any alleged additional “clause.” Simply, as *the first interpreter of the Constitution and, in particular, because it was called to apply this rule, the National Assembly interpreted it analogously, applying it to the situation, to resolve the constitutional crisis affecting the country, in execution of what had already been agreed upon since May 22, 2018, resolving :*

[To] “declare as non-existent the farce carried out on May 20, 2018,”

[Not to accept] “the alleged results announced by the National Electoral Council and, in particular, the alleged election of Nicolás Maduro Moros as President of the Republic, who should be regarded as a usurper of the office of the Presidency of the Republic,” and

“to ignore any null and illegitimate acts of proclamation and swearing in under which it is intended to vest the citizen Nicolás Maduro Moros as the alleged president of the Bolivarian Republic of Venezuela for the 2019-2025 term.”<sup>51</sup>

The Constitutional Chamber, cutting off the right of popular representation to *apply* and interpret the Constitution, on the mention it made of article 350 thereof, declared it “absolutely impertinent,” ending its “declarative argument” stating that:

“the National Assembly cannot assume the role of a Supreme Tribunal of Justice to declare a purported usurpation, since it would imply the characterization of the conduct described in Articles 138 and 139, in accordance with Articles 136 and 137, all of the Constitution. It is thus declared.”

In this way, the Chamber again ignored the essential power of the National

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<sup>51</sup> Text of the Resolution of May 22, 2018 available at <http://www.asambleanacional.gob.ve/actos/acuerdo-reiterando-el-desconocimiento-de-la-farsa-realizada-el-20-de-mayo-de-2018-para-la-supuesta-eleccion-del-presidente-de-la-republica>. Similarly, in the review “National Assembly does not accept the results of 20M and declares Maduro a ‘usurper,’” in *NTN24*, May 22, 2018, available at <http://www.ntn24.com/america-latina/la-tarde/venezuela/asamblea-nacional-desconoce-resultados-del-20m-y-declara-nicolas>

Assembly to be the original body for the interpretation of the Constitution,<sup>52</sup> a body through which the people exercise their sovereignty.

## VII. THE CONDUCT OF THE CONSTITUTIONAL COURT WITHIN THE SAME PATTERN OF CONDUCT DEFINED SINCE 2016, TO SUFFOCATE THE NATIONAL ASSEMBLY, IN COLLUSION WITH THE NATIONAL EXECUTIVE, AND THE INSTITUTIONAL REACTION OF THE ASSEMBLY IGNORING THE JUDICIAL UNCONSTITUTIONAL DECISIONS

Of course, this was not the first time that the Constitutional Chamber of the Supreme Tribunal, as the tool that it has been for the authoritarian regime in Venezuela for many years,<sup>53</sup> tried to neutralize the action of the National Assembly, considering all its *actions* null and void. This is evidenced by the mention it made of its previous judgment No. 2 of January 11, 2017,<sup>54</sup> which declared null and void both the act of the Assembly's constitution for its second annual period of January 5, 2017, and the Resolution of January 9, 2017 that declared the absolute lack of a President of the Republic, adding that:

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<sup>52</sup> As mentioned before, and as Javier Pérez Royo stated: "The first interpreter of the Constitution and the most important, by far, is the legislator. The legislator is the normal, ordinary interpreter of the Constitution. Consequently, the Constitution is a legal rule that refers at first instance to a political interpreter. Parliament is the political body that interprets the Constitution in the only way it does: in a political register. It is also a privileged interpreter, insofar as it is the democratically elected representative of the citizens and, therefore, expresses the general will." See Javier Pérez Royo, "La interpretación constitucional," in Eduardo Ferrer Mac Gregor (Coordinator), *Interpretación constitucional*, Universidad Nacional Autónoma de México, Editorial Porrúa, Mexico 2005, Volume I, pp. 889.

<sup>53</sup> See among others: Allan R. Brewer-Carías, *Crónica sobre la "In" Justicia Constitucional. La Sala Constitucional y el autoritarismo en Venezuela*, Colección Instituto de Derecho Público, Universidad Central de Venezuela, No. 2, Editorial Jurídica Venezolana, Caracas 2007 (Available at: <http://allanbrewercarias.com/wp-content/uploads/2007/09/113.-CRONICA-SOBRE-LA-IN-JUSTICIA-07-07-2017-2.pdf>); "El juez constitucional al servicio del autoritarismo y la ilegítima mutación de la Constitución: el caso de la Sala Constitucional del Tribunal Supremo de Justicia de Venezuela (1999-2009)," in *Revista de Administración Pública*, No. 180, Madrid 2009, pp. 383-418 (Available at: <http://allanbrewercarias.net/Content/449725d9-f1cb-474b-8ab2-41efb849fea8/Content/BREWER-CARIAS.pdf>); "El juez constitucional al servicio del autoritarismo y la ilegítima mutación de la Constitución: el caso de la Sala Constitucional del Tribunal Supremo de Justicia de Venezuela (1999-2009)" in *IUSTEL, Revista General de Derecho Administrativo*, No. 21, June 2009, Madrid, ISSN-1696-9650 (Available at: <http://allanbrewercarias.com/wp-content/uploads/2009/07/607.-599.-JUSTICIA-CONSTITUCIONAL-Y-DEMOLICI%C3%93N-DEL-ESTADO-DE-DERECHO.-Seminario-EGE-marzo-2009.doc.pdf>).

<sup>54</sup> Available at <http://historico.tsj.gob.ve/decisiones/scon/enero/194891-02-11117-2017-17-0001.HTML>

“Any action of the National Assembly and of anybody or individual against what is decided herein shall be null and void of any validity and legal effectiveness, without prejudice to the liability to which there may be in place.”

With such a declaration, ratified by another judgment of the same Constitutional Chamber No. 3 of January 11, 2017,<sup>55</sup> it was sought to definitively take away from the people their most elementary right in a Rule of Law, which is to exercise sovereignty through their representatives; all of which was again ratified in another judgment No. 7 of January 26, 2017, with which the Chamber proceeded to declare again the absolute nullity and unconstitutionality of all the actions of the Assembly.<sup>56</sup>

The above highlights how, since 2016, the Supreme Tribunal has sought to strip the National Assembly of all its legislative constitutional powers, imposing even a previous unconstitutional authorization by the Executive Power to be able to sanction the laws.<sup>57</sup> It has also nullified its powers of political and administrative control,<sup>58</sup> imposing, for example, the prior approval of the same Executive Vice-President in order to interpellated Ministers, with questions posed only in writing,<sup>59</sup> eliminating the powers to approve votes of censure of Ministers, or to approve the

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<sup>55</sup> Available at <http://historico.tsj.gob.ve/decisiones/scon/enero/194892-03-11117-2017-17-0002.HTML>

<sup>56</sup> Available at [historico.tsj.gob.ve/decisiones/scon/enero/195578-07-26117-2017-17-0010.HTML](http://historico.tsj.gob.ve/decisiones/scon/enero/195578-07-26117-2017-17-0010.HTML)

<sup>57</sup> See the comments in Allan R. Brewer-Carías, “El fin del Poder Legislativo: La regulación por el Juez Constitucional del régimen interior y de debates de la Asamblea Nacional, y la sujeción de la función legislativa de la Asamblea a la aprobación previa por parte del Poder Ejecutivo,” in *Revista de Derecho Público*, No. 145-146, (January-June 2015), Editorial Jurídica Venezolana, Caracas 2016, pp. 428-443 (Available at: <http://allanbrewercarias.com/wp-content/uploads/2017/01/art.-4-879.-Fin-Poder-legislativo-sujeci%C3%B3n-al-Poder-Ejecutivo-RDP-145-146.-2016.docx.pdf>); and in Allan R. Brewer-Carías, *La dictadura judicial y la perversión del Estado de derecho. El Juez Constitucional y la destrucción de la democracia en Venezuela*. (Prologue of Santiago Muñoz Machado), Ediciones El Cronista, Fundación Alfonso Martín Escudero, Editorial IUSTEL, Madrid 2017; Carlos Ayala and Rafael J. Chavero Gazdik, “*El libro negro del TSJ de Venezuela: Del secuestro de la democracia y la usurpación de la soberanía popular a la ruptura del orden constitucional (2015-2017)*,” Editorial Jurídica Venezolana, Caracas 2017, pp. 105-218

<sup>58</sup> See Allan R. Brewer-Carías, “El desconocimiento de los poderes de control político del órgano legislativo sobre el gobierno y la administración pública por parte del juez constitucional en Venezuela,” in *Opus Magna Constitucional, Tomo XII 2017 (Homenaje al profesor y exmagistrado de la Corte de Constitucionalidad Jorge Mario García Laguardia*, Instituto de Justicia Constitucional, Adscrito a la Corte de Constitucionalidad, Guatemala. 2017, pp. 69-107 (Available at: <http://allanbrewercarias.com/wp-content/uploads/2017/06/891.-desconocim.-libro-h.Garcia-LaG.pdf>).

<sup>59</sup> See comments in Allan R. Brewer-Carías, “Comentarios al decreto N° 2.309 de 2 de mayo de 2016: La inconstitucional ‘restricción’ impuesta por el Presidente de la República, respecto de su potestad de la Asamblea Nacional de aprobar votos de censura contra los Ministros,” in *Revista de Derecho Público*, No. 145-146, (January-June 2016), Editorial Jurídica Venezolana, Caracas 2016, pp. 120-129 (Available at: <http://allanbrewercarias.com/wp-content/uploads/2017/01/II-4-884.-Comentarios-al-decreto-No.-2309.-RDP-145-146.-2016.pdf>)

states of emergency that are decreed;<sup>60</sup> it has eliminated its self-protection powers over its own acts by preventing in particular, by means of judgment No. 9 of the Constitutional Chamber of March 1<sup>st</sup>, 2016, from overturning the unconstitutional decision of December 2015 to appoint Supreme Tribunal judges.<sup>61</sup> Finally, it has overturned absolutely all the laws that it has passed since January 2016 to date, declaring them unconstitutional,<sup>62</sup> including even an amnesty law.<sup>63</sup>

All these decisions Constitutional Chamber's rulings rendered against the popular representation, the National Assembly, have been rejected and not recognized by the National Assembly the, beginning with the aforementioned ruling

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<sup>60</sup> See comments in Allan R. Brewer-Carías, “El ataque de la Sala Constitucional contra la Asamblea Nacional y su necesaria e ineludible reacción. De cómo la Sala Constitucional del Tribunal Supremo pretendió privar a la Asamblea Nacional de sus poderes constitucionales para controlar sus propios actos, y reducir inconstitucionalmente sus potestades de control político sobre el gobierno y la administración pública; y la reacción de la Asamblea Nacional contra a la sentencia N° 9 de 1-3-2016,” available at <http://allanbrewercarias.com/wp-content/uploads/2016/03/Brewer.-El-ataque-Sala-Constitucional-v.-Asamblea-Nacional.-SentNo.-9-1-3-2016.pdf>; and “Nuevo golpe contra la representación popular: la usurpación definitiva de la función de legislar por el Ejecutivo Nacional y la suspensión de los remanentes poderes de control de la Asamblea con motivo de la declaratoria del estado de excepción y emergencia económica,” in *Revista de Derecho Público*, No. 145-146, (January-June 2016), Editorial Jurídica Venezolana, Caracas 2016, pp. 444-468 (Available at: <http://allanbrewercarias.com/wp-content/uploads/2016/11/863.-862.-Brewer.-Otro-golpe-a-la-democracia.-El-fin-de-los-partidos-pol%C3%ADticos-aut%C3%B3nomos-julio-2015.pdf>).

<sup>61</sup> Available at <http://historico.tsj.gob.ve/decisiones/scon/marzo/185627-09-1316-2016-16-0153.HTML>. See the comments in Allan R. Brewer-Carías, in “El ataque de la Sala Constitucional contra la Asamblea Nacional y su necesaria e ineludible reacción. De cómo la Sala Constitucional del Tribunal Supremo pretendió privar a la Asamblea Nacional de sus poderes constitucionales para controlar sus propios actos, y reducir inconstitucionalmente sus potestades de control político sobre el gobierno y la administración pública; y la reacción de la Asamblea Nacional contra a la sentencia N° 9 de 1-3-2016,” available at <http://allanbrewercarias.com/wp-content/uploads/2016/03/Brewer.-El-ataque-Sala-Constitucional-v.-Asamblea-Nacional.-SentNo.-9-1-3-2016.pdf>.

<sup>62</sup> See comments in Allan R. Brewer-Carías, “La aniquilación definitiva de la potestad de legislar de la Asamblea Nacional: el caso de la declaratoria de inconstitucionalidad de la Ley de reforma de la Ley Orgánica del Tribunal Supremo de Justicia,” May 16, 2016, available at: <http://allanbrewercarias.com/wp-content/uploads/2016/05/135.-Brewer.-Aniquilaci%C3%B3n-Asamblea-Nacional.-Inconstituc.-Ley-TSJ-15-5-2016.pdf>.

<sup>63</sup> See the study of sentences handed down in Allan R. Brewer-Carías, “*El Juez Constitucional y la perversión del Estado de derecho. La dictadura judicial’ y la destrucción de la democracia en Venezuela.*,” Editorial Jurídica Venezolana Internacional, June 5, 2016 (Available at: <http://allanbrewercarias.com/wp-content/uploads/2016/06/Brewer.-libro.-DICTADURA-JUDICIAL-Y-PERVERSI%C3%93N-DEL-ESTADO-DE-DERECHO-2a-edici%C3%B3n-2016-ISBN-9789803653422.pdf>). See also: Carlos M. Ayala Corao y Rafael J. Chavero Gazdik, *El libro negro del TSJ de Venezuela: Del secuestro de la democracia y la usurpación de la soberanía popular a la ruptura del orden constitucional (2015-2017)*, Editorial Jurídica Venezolana, Caracas 2017, 394 pp.; and José Vicente Haro, “Las 111 decisiones inconstitucionales del TSJ ilegítimo desde el 6D-2015 contra la Asamblea Nacional, los partidos políticos, la soberanía popular y los DDHH,” in *Buscando el Norte*, July 10, 2017, <http://josevicenteharogarcia.blogspot.com/2016/10/las-33-decisiones-del-tsj.html>

No. 9 issued on March 1<sup>st</sup> 2016,<sup>64</sup> considering that despite the fact that they are Supreme Tribunal's rulings, they cannot unlawfully change the text of the Constitution, nor can its rules be repealed by such Chamber. If this happens, as has been the case with many of these rulings, the National Assembly, as stated in Article 333 of the Constitution, as "any citizen vested with authority or not," has assumed "the duty to cooperate in the restoration of its effective validity;" a duty which, in fact, the congressmen who are members of the National Assembly that were elected by the people and represent the popular sovereignty have, and that, on behalf of the people who elected them, they must assume, rejecting the illegitimate mutations and changes to the Constitution, and doing what is in their hands according to their own powers to restore its effective validity.

The National Assembly has therefore assumed the duty to confront not only the Executive Power, but the Constitutional Chamber of the Supreme Tribunal, and is not obliged to abide any of its decisions that are in violation of the Constitution.<sup>65</sup> In the structure of the Constitution, there is no other body of the Government that assures to the National Assembly the execution and imposition of its decisions taken in accordance with the Constitution and on behalf of the popular will, other than the National Assembly itself, to the effect of which it is compelled to formally declare, as has already done, that the Constitutional Chamber's unconstitutional judgments and the unconstitutional decisions of the Executive Power do not have and cannot have any legal effect.<sup>66</sup>

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<sup>64</sup> Available at <http://historico.tsj.gob.ve/decisiones/scon/marzo/185627-09-1316-2016-16-0153.HTML>. See the comments in Allan R. Brewer-Carías, in "El ataque de la Sala Constitucional contra la Asamblea Nacional y su necesaria e ineludible reacción. De cómo la Sala Constitucional del Tribunal Supremo pretendió privar a la Asamblea Nacional de sus poderes constitucionales para controlar sus propios actos, y reducir inconstitucionalmente sus potestades de control político sobre el gobierno y la administración pública; y la reacción de la Asamblea Nacional contra a la sentencia N° 9 de 1-3-2016," available at <http://allanbrewercarias.com/wp-content/uploads/2016/03/Brewer.-El-ataque-Sala-Constitucional-v.-Asamblea-Nacional.-SentNo.-9-1-3-2016.pdf>.

<sup>65</sup> On this, you see the work of José Amando Mejía, "El deber de la Asamblea Nacional de desconocer a la Sala Constitucional," in *Primer Poder AC*, April 19, 2016, in <http://archivoprimerpoder-ac.blogspot.com/2016/04/el-deber-de-la-asamblea-nacional-de.html>

<sup>66</sup> It is inescapable to cite, as a precedent, the National Assembly Resolution of March 22, 2007 (*Official Gazette* No. 38,635 of March 23, 2007, which left *without any legal effect* an unconstitutional judgment of Constitutional Chamber No. 301 of February 27, 2007 (Case: *Adriana Vigilancia and Carlos A. Vecchio*), The Resolution was preceded by the following motives: "That, as provided for in article 187 of the Constitution of the Bolivarian Republic of Venezuela, 'It is for the National Assembly to legislate in matters of national jurisdiction and on the functioning of the various branches of the National Power', except for the exception provided for in Article 203 *eiusdem*; // It is for the National Assembly to exercise supervisory functions over the Government and the National Public Administration under the terms enshrined in the Constitution and in the laws; // That 'Any act dictated in the exercise of the Public Power that violates or impairs the rights guaranteed by this Constitution and the Law is null and void...', as established by article 25 of our Constitution; // That 'All usurped authority is ineffective and its acts are null and void', in

This was precisely the case with judgment No. 9 of March 1, 2016, by which that Chamber “intended to limit the constitutional powers of the National Assembly,” and which it rejected by Resolution dated March 3, 2016,<sup>67</sup> not just for formal reasons,<sup>68</sup> but for the unconstitutional content of the judgment, stating, among other reasons:

(xi) That “the Constitutional Chamber’s judgment No. 9 of March 1, 2016, in attempting to take away the constitutional powers of parliament because of the

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accordance with article 138 of our constitutional text; // That the content of that judgment shows an analysis and decision that, exceeding its functions and invading the privative powers of the National Assembly, ‘constitutionally interprets the meaning and scope of the proposition contained in Article 31 of the Income Tax Act...’ substantially altering the content of the article, its scope, and legal consequences, even if the nullity of that article was not denounced and thus expressly stated in numeral 2 of the decision.” Based on these Recitals, the Assembly agreed: *First*: To consider null and void number 2 of the judgment of the Constitutional Chamber of the Supreme Tribunal of Justice no. 01-2862, dated February 27, 2007 and published in the *Official Gazette* of the Bolivarian Republic of Venezuela No. 38,635 of Thursday March 01, 2007, as well as the reasoning with which it was supported and, consequently, [left] without any legal effect. // *Second*: To urge the Venezuelan people, and in particular the taxpayers, as well as the National Integrated Customs and Tax Administration Service (Seniat), not to apply number 2 of the operative part of said ruling, as it is considered to be a violating act of the Constitution of the Bolivarian Republic of Venezuela.” See, on that judgment No. 301 of 27 February 2007, my comments in Allan R. Brewer-Carías, “El juez constitucional en Venezuela como legislador positivo de oficio en materia tributaria” in *Revista de Derecho Público*, No. 109 (January –March 2007), Editorial Jurídica Venezolana, Caracas 2007, pp. 193-212 (Available at: <http://allanbrewercarias.net/Content/449725d9-f1cb-474b-8ab2-41efb849fea8/Content/II.%204.%20508.pdf>); and in *Libro Homenaje a Tomás Enrique Carrillo Batalla*, (Coordinator Asdrúbal Grillet Correa), Volume I, Universidad Central de Venezuela, Caracas 2009, pp. 163-189 (Available at: <http://allanbrewercarias.net/Content/449725d9-f1cb-474b-8ab2-41efb849fea8/Content/II.4.625.pdf>).

<sup>67</sup> See “Asamblea Nacional aprobó acuerdo de rechazo contra sentencia del TSJ,” in *Infome 21.com*. March 1, 2016; available at: <http://infor-me21.com/politica/asamblea-nacional-aprobo-acuerdo-de-rechazo-contra-sentencia-del-tsj>

<sup>68</sup> The President of the National Assembly, Henry Ramos Allup, in addition, in rejecting sentence No. 9 of March 1, 2016, highlighted the fact that “The TSJ invalidated its own sentence by a lack of signatures of the magistrates,” Ramos Allup said in the legislative plenary debate./ The President of the National Assembly (AN) stressed that the ruling was signed by four judges of the Constitutional Chamber, instead of at least five of the seven judges who make up the chamber./ “Therefore, this judgment does not exist,” added Ramos Allup, who warned that “the country will not accept” that now, seeing the error, the TSJ will issue a correction of the ruling with the signatures required for its validity.” See *Grupo Fórmula* March 3, 2016, <http://www.radioformula.com.mx/no-tas.asp?Idn=575332&idFC=2016>. See also: Henry Ramos: “La sentencia número 9 del TSJ no existe,” available at: <http://www.eluniversal.com/nacional-y-politica/>. In reality, the important thing is that the fact that there appear on the website of the Supreme Tribunal the names of all seven judges (*Gladys M. Gutiérrez Alvarado, Arcadio de Jesús Delgado Rosales, Carmen Zuleta de Merchán, Juan José Mendoza Jover, Calixto Ortega Ríos, Luis Fernando Damiani Bustillos, Lourdes Benicia Suárez Anderson*) at the end of the judgment, without any indication of whether some of them rejected it or not, and only an indication that the last three did not sign it, presumes that they participated in the debate and consideration of the judgment, which was inadmissible. Available at <http://historico.tsj.gob.ve/decisiones/scon/mar-zo/185627-09-1316-2016-16-0153.HTML>

change that has democratically taken place in the parliamentary majority, represents a blow to popular *sovereignty*.”

(xii) That “this judgment is part of a sequence of decisions of the Supreme Tribunal of Justice aimed at cutting off the integrity and functioning of the National Assembly, as well as not accepting the institutional consequences of the outcome of the elections of December 6, 2016.”

In the Resolution, finally, the National Assembly decided to “Categorically reject the alleged judgment No. 9 of March 1, 2016, of the Constitutional Chamber of the Supreme Tribunal of Justice, as non-existent for violating Article 40 of the Organic Law of the Tribunal Supreme Tribunal of Justice.”

## **VIII. THE GENERAL RECOGNITION OF THE TRANSITION DEMOCRATIC PROCESS LED BY THE NATIONAL ASSEMBLY AND THE PRACTICAL INFECTIVITY OF THE CONSTITUTIONAL COURT DECISION REGARDING THE NATIONAL ASSEMBLY RESOLUTION OF JANUARY 15, 2019**

Faced with this situation of confrontation between two branches of Government, one that represents the popular will - the National Assembly - and the Supreme Tribunal -which has aligned itself with the illegitimate Executive Power-, it was obvious that the Constitutional Chamber of the latter, *ex officio*, would proceed to “annul” without trial and by violating all constitutional rules that guarantee due process, the National Assembly’s Resolution of January 15, 2019, which established *the basis of the route for the transition towards democracy in Venezuela*, and which has followed its course, among other factors, with full national and international recognition. On the other hand, none of the decisions of the Constitutional Chamber have become effective, and those decisions are, in practice, not recognized.

Hence the importance, for example, at the national institutional level, of the Statement of the *Academy of Political and Social Sciences* of January 29, 2019, in which it considered that:

“The National Assembly has proceeded to invoke and apply article 333 of the Constitution and its president, Congressman Juan Guaidó, assumed on January 23, 2019, the presidency on an interim basis for the restoration of the *democratic* institutions and the effective validity of the Constitution, receiving recognition from a major group of countries.”

And, on that basis, disregarding completely the “decision” of the Constitutional Chamber of the Supreme Tribunal of Justice, the Academy agreed:

“To support the *People* of Venezuela and the National Assembly in their struggle for the restoration of the Rule of Law and the democratic system, as well as for the respect of citizens’ rights and freedoms and to recognize, following article 333 of the Constitution, the legitimacy of the actions that, with the limit of constitutional principles and values, the National Assembly carries out so that free, universal, direct, and secret elections that are in accordance with the

constitutional principles that impose the guarantee of freedom, impartiality, participation, equality, and transparency, take place.”<sup>69</sup>

For its part, at the international level, on January 23, 2019, the United States Government declared that:

“It recognizes Juan Guaidó as Venezuela’s new interim president and strongly supports his courageous decision to assume that role under article 233 of the Venezuelan Constitution and with the backing of the National Assembly, to restore democracy in the country [...].

We will work in close cooperation with the legitimately elected National Assembly to facilitate Venezuela’s transition to the restoration of democracy and the Rule of Law, in line with the Inter-American Democratic Charter [...]

The new Venezuelan government carries the flame of democracy on behalf of Venezuela. The United States expresses its continued support for President Guaidó, the National Assembly, and the People of Venezuela.”<sup>70</sup>

After this recognitions of congressman Juan Guaidó as legitimate President of Venezuela and of the National Assembly as legitimate representative of the people, other recognitions followed by almost all the countries of America (except Cuba, Mexico, Uruguay, Bolivia, Nicaragua), and by a large number of countries around the world (except Russia, China, Iran, Turkey),<sup>71</sup> including the recognition of the European Parliament, which urged all the States of the European Union to do the same.<sup>72</sup>

Weeks later, and after receiving recognition from other European countries, including Spain, Portugal, Germany, the United Kingdom, Denmark, the Netherlands, France, Hungary, Austria, Finland, Belgium, Luxembourg, the Czech

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<sup>69</sup> See “Pronunciamento sobre la legitimidad de la aplicación del artículo 333 de la Constitución por la Asamblea Nacional a los fines de la restitución de su vigencia efectiva,” January 29, 2019, at <http://acienpol.org.ve/cmacionpol/Resources/Pronunciamentos/Acuerdo%20de%20Acienpol%20Art.%20333.pdf>. See also in the book: *Doctrina Académica Institucional. Instrumento de reinstitucionalización democrática, Pronunciamentos 2012-2019*, Academia de Ciencias Políticas y Sociales, Editorial Jurídica Venezolana, Caracas 2019, pp. 332-334 (Available at: <http://allanbrewercarias.com/wp-content/uploads/2019/07/libro.-PRONUNCIAMIENTOS-DE-LA-ACADEMIA-19-6-2019-DEFINITIVO.pdf>).

<sup>70</sup> See the statement “Recognition of Juan Guaido as Venezuela’s Interim President,” U.S. Embassy in Peru, January 23, 2019 at <https://pe.usembassy.gov/es/reconocimiento-de-juan-guaido-como-presidente-interino-de-venezuela/>

<sup>71</sup> See “Estos son los países que reconocen a Juan Guaidó como presidente (i) de Venezuela y los que apoyan a Maduro,” in *El Comercio*, January 28, 2019, available at: <https://www.elcomercio.com/actuali-dad/juan-guaido-venezuela-reconocimiento-diplomacia.html> .

<sup>72</sup> See Information in “El Parlamento Europeo reconoce a Juan Guaidó como ‘legítimo presidente interino de Venezuela,’” in *ABC España*, January 31, 2019, availale at: [https://www.abc.es/espana/abc-parlamento-europeo-reconoce-juan-guaido-como-legitimo-presidente-interino-venezuela-201901311357\\_video.html](https://www.abc.es/espana/abc-parlamento-europeo-reconoce-juan-guaido-como-legitimo-presidente-interino-venezuela-201901311357_video.html). By February 4, 2018, 8 a.m. ET, the following European countries had already recognized Juan Guaidó as Venezuela’s legitimate interim president: Spain, France, Sweden, United Kingdom, Denmark, Portugal, Latvia, Austria, Lithuania, Poland, Netherlands, Germany.

Republic, Latvia, Lithuania, Estonia, Poland, Sweden and Croatia.<sup>73</sup> More recently, for instance, the Government of Greece, announced it had “decided to recognize the president of the democratically elected national assembly, Juan Guaidó, as the interim president of Venezuela in order for him to call free, fair and democratic presidential elections.”<sup>74</sup>

On the other hand, regarding international organizations, on March 15, 2019, the government of the President in Charge Juan Guaidó received the very important recognition of the Inter-American Development Bank, when its officers approved “a resolution recognizing the appointment by Mr. Juan Guaidó of Mr. Ricardo Hausmann” as “Governor of the IDB for Venezuela.” In this way, the IDB became the first international financial institution to recognize a representative of the government of Guaidó.<sup>75</sup>

With regard to the European Parliament’s Resolution of January 31, 2019 on the situation in Venezuela (2019/2543(RSP)), it is important to note that:

“Juan Guaidó is recognized as the legitimate interim president of the Bolivarian Republic of *Venezuela*, in accordance with the Venezuelan Constitution and in accordance with Article 233 thereof, and [the European Parliament] fully supports his roadmap.”

In particular, in order to take that decision, the Parliament proceeded from the following recitals:

“A. Whereas the elections held on May 20, 2018 were held without complying with the minimum international standards necessary for the development of a credible process, and without respecting political pluralism, democracy, transparency, and the Rule of Law; whereas the European Union, together with other regional organizations and democratic countries, did not recognize either the elections or the authorities that emerged from this illegitimate process.

B. Whereas, on January 10, 2019, Nicolás Maduro illegitimately usurped the presidential power before the Supreme Tribunal of Justice, in breach of the constitutional order.

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<sup>73</sup> See Andrés Gil, “The main EU countries recognize Guaidó as interim president of Venezuela” in *eldiario.es*, February 4, 2019, available at: [https://www.eldiario.es/internacional/principales-UE-Guaido-presidente-Venezuela\\_0\\_864413573.html](https://www.eldiario.es/internacional/principales-UE-Guaido-presidente-Venezuela_0_864413573.html); and “The joint statement of the 19 EU countries that have recognized Guaidó as interim president of Venezuela” at *eldiario.es*, February 4, 2019, available at: [https://www.eldiario.es/internacional/declaracion-conjunta-UE-reconocido-Guaido\\_0\\_864414451.html](https://www.eldiario.es/internacional/declaracion-conjunta-UE-reconocido-Guaido_0_864414451.html)

<sup>74</sup> See in The Washington Post, July 12, 2019, available at: [https://www.washingtonpost.com/world/the\\_americas/greece-recognizes-venezuelas-guaido-as-interim-president/2019/07/12/bcc87e74-a484-11e9-a767-d7ab84aef3e9\\_story.html?noredirect=on&utm\\_term=.7191db57ad8d](https://www.washingtonpost.com/world/the_americas/greece-recognizes-venezuelas-guaido-as-interim-president/2019/07/12/bcc87e74-a484-11e9-a767-d7ab84aef3e9_story.html?noredirect=on&utm_term=.7191db57ad8d)

<sup>75</sup> See information: “IDB recognizes Ricardo Hausmann as Venezuela’s representative,” *El Nacional*, March 15, 2019, at [http://www.el-nacional.com/noticias/mundo/bid-reconoce-ricardo-hausmann-como-representante-venezuela\\_274824](http://www.el-nacional.com/noticias/mundo/bid-reconoce-ricardo-hausmann-como-representante-venezuela_274824).

C. Whereas on January 23, 2019, Juan Guaidó, legitimate and democratically elected president of the National Assembly, was sworn in as interim president of Venezuela, in accordance with article 233 of the Venezuelan Constitution.”<sup>76</sup>

All the previously mentioned international recognitions, were followed by the important recognition of the government led by the President of the National Assembly, Juan Guaidó, by the Organization of American States, not only by having accepted the representation of Venezuela by the Ambassador appointed by Guaidó as Interim President, in the Permanent Council’s meeting of April 10 2019;<sup>77</sup> but by accepting the cessation of effects of the denunciation of the OAS’s Charter that Nicolás Maduro filed two years earlier (April 27, 2017) seeking to withdraw Venezuela from the OAS, which was to enter into effects on April 27, 2019.<sup>78</sup>

On the contrary, the OAS gave all legal its value to the letter of the Interim President Juan Guaidó, dated February 8, 2019, issued under his functions as set forth in the *Statute of Transition* (art. 14) and according to articles 233, 236.4, 152 and 333 of the Constitution, and sent to the Secretary General of the OAS, ratifying “the will of the Venezuelan nation to remain as Member State in the Charter of the Organization of American States,” as had been previously decided by the National Assembly by means of Resolutions of May 2, 2017 and January 22, 2019; and consequently, asking it “leave without effects the alleged denunciation of the OAS’s Charter, so that Venezuela could remain as member State of the Organization.”<sup>79</sup>

The recognition by the OAS of the representatives appointed by the Interim President Juan Guaidó, was ratified on June 27, 2019, in the 49<sup>a</sup> General Assembly of OAS held in Medellín, Colombia, whereas the Member States by majoritarian vote ratified the recognition of the representatives appointed by the President of the

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<sup>76</sup> See text in European Parliament, 2014-2019, Approved Texts, P8\_TA-PROV(2019)0061 Situation in Venezuela, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2019-0061+0+DOC+PDF+V0//ES> .

<sup>77</sup> The Permanent Council of OAS vote don April 10, 2019 "to accept the appointment of Mr. Gustavo Tarre as permanent representative selected by the National Assembly, until new elections takes place and a Government democratically elected is appointed." See Andrea Rincón, “Reconocen al enviado de Guaidó, Gustavo Tarre, como representante del Parlamento ante la OEA,” in *France 24*, April 10, 2019, available at: <https://www.france24.com/es/20190409-oea-reconocimiento-tarre-guaido-venezuela>

<sup>78</sup> On April 27 2017, in effect, the government of Nicolas had notified the Secretary of the OAS the “undeclinable decision to denounce the Charter of the Organization of American States according to its article 143, which starts the definitive withdraw of Venezuela from that Organization.” See the informtion and the text of the letter, in: “Gobierno de Venezuela entregó carta de denuncia para iniciar formalmente su salida de la OEA,” en *Nodal*, 26 de abril de 2017, available at: <https://www.nodal.am/2017/04/venezuela-inicio-formalmente-su-salida-de-la-oea/>

<sup>79</sup> See the information and text of the letter, in Ana María Matute, “Guaidó dejó sin efecto salida de Venezuela de la OEA,” en *El Nacional*, 7 de marzo de 2019, available at: [http://www.el-nacional.com/no-ticias/mundo/guaido-dejo-sin-efecto-salida-venezuela-oea\\_273818](http://www.el-nacional.com/no-ticias/mundo/guaido-dejo-sin-efecto-salida-venezuela-oea_273818) .

National Assembly, as Interim President of the Republic.”<sup>80</sup>

## **IX. THE STATUTE GOVERNING THE TRANSITION TOWARDS DEMOCRACY TO RESTORE THE VALIDITY OF THE CONSTITUTION SANCTIONED BY THE NATIONAL ASSEMBLY ON FEBRUARY 5<sup>TH</sup>, 2019 AND ITS BASIC RULE FOR THE PROTECTION OF THE INTERESTS OF THE REPUBLIC ABROAD**

In any event, in view of the irrelevance of what was unconstitutionally “declared” *ex officio* by the Constitutional Chamber of the Supreme Tribunal of Justice, without trial or proceeding, in the above mentioned judgment No. 3 of January 21, 2019 in relation to the National Assembly’s Resolution dated January 15, 2019, the *first fundamental decision* adopted in execution of said Resolution to conduct the democratic transition process was precisely the sanctioning of the “*Statute governing the transition to democracy to restore the validity of the Constitution of the Bolivarian Republic of Venezuela*,”<sup>81</sup> sanctioned by the National Assembly on February 5, 2019, pursuant to articles 7 and 333 of the Constitution,<sup>82</sup> for the purpose of “establishing the regulatory framework governing the democratic transition in the Republic” (article 1). Article 7 refers to the supremacy of the Constitution and article 333 establishes the duty of any citizen and authorities, to “cooperate in the restoration of its effective validity.”

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<sup>80</sup> See the note “OEA ratificó reconocimiento a representantes de Guaidó,” in *Runrunes*, 28 de junio de 2019, available at: <https://runrun.es/noticias/383500/oea-ratifico-reconocimiento-a-representantes-de-guaido/> . On this, the representative of the United States before the OAS, Kimberly Breir, said that: “Being this the first Assembly of OAS in which the interim government of Juan Guaidó take its sit in the table, this meeting demonstrates a broad international acknowledgment to the legitimate government of Venezuela.” See the note: “Venezuela divide a OEA, Uruguay se retira de Asamblea en protesta contra delegación Guaidó,” in *Reuters*, 27 de junio de 2019, available at: <https://lta.reuters.com/articulo/venezuela-politica-oea-idLTAKCNITS27G-OUHLT>

<sup>81</sup> Text available at [http://www.asambleanacional.gob.ve/documentos\\_archivos/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282.pdf](http://www.asambleanacional.gob.ve/documentos_archivos/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282.pdf) . Also available at [https://www.prensa.com/mundo/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282\\_LPRFIL20190205\\_0001.pdf](https://www.prensa.com/mundo/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282_LPRFIL20190205_0001.pdf) . See comments to said Statute and its constitutional basis in Allan R. Brewer-Carias, *La transición a la democracia en Venezuela. Bases constitucionales y obstáculos usurpadores*, Iniciativa Democrática España y las Américas, Editorial Jurídica Venezolana, Caracas / Miami 2019, pp. 239 ff. (Available at: <http://allanbrewercarias.com/wp-content/uploads/2019/06/193.-Brewer.-bis-5.-TRANSICION-A-LA-DEMOCRACIA-EN-VLA.-BASES-CONSTITUC.-1-6-2019-para-pag-web-1.pdf>)

<sup>82</sup> Text available at [http://www.asambleanacional.gob.ve/documentos\\_archivos/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282.pdf](http://www.asambleanacional.gob.ve/documentos_archivos/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282.pdf) . Also available at [https://www.prensa.com/mundo/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282\\_LPRFIL20190205\\_0001.pdf](https://www.prensa.com/mundo/estatuto-que-rige-la-transicion-a-la-democraciapara-restablecer-la-vigencia-de-la-constitucionde-la-republica-bolivariana-de-venezuela-282_LPRFIL20190205_0001.pdf)

The said *Statute for Transition* was formally qualified by the National Assembly as a “normative act,” as having the rank and value of law, issued “in direct and immediate implementation of Article 333 of the Constitution of the Bolivarian Republic of Venezuela,” being as its article 4 point out, “of mandatory compliance for all public authorities and officials, as well as for individuals” (article 4).

In such character, as having the rank of law issued according to article 187.1 of the Constitution, the Statute has the effect of *lex speciali* and *lex posterior*, that is, with power to abrogate or amend any legislation then in force, as well as any other State acts of inferior normative rank, during the period of the “transition towards democracy to restore the validity of the Constitution.” That is why the Statute has been considered as a “constitutional normative act” and “a normative act superior to the formal laws;”<sup>83</sup> and “as a legislative act of constitutional rank, or at least, the authentic interpretation of the same Constitution, and consequently, of obligatory compliance under the principle of constitutional supremacy.”<sup>84</sup>

Regarding this *Statute for Transition*, on the other hand, it was formally recognized by the National Academy of Political and Social Sciences, the highest consultative entity of Venezuela on institutional matters, in a Pronouncement issued on February 15, 2019, in which it decided:

First: To manifest its conformity with the constitutional legal regime established by the national Assembly in the *Statute governing the transition to democracy to restore the validity of the Constitution of the Bolivarian Republic of Venezuela*,” as an unknown political process that it is developing representing the popular sovereignty in order to reestablish the enforcement of the Constitution and achieve the conditions for the celebration of free, just, competitive elections.

Second: Support in a special way the constitutional function of political conduction and direction of the State exercised by the National Assembly and its Board of Directors,; as well as constitutional functions of the President in Charge of the republic, legitimately and in a temporal condition assumed, according to the Constitution and to the referred Statute, by Engineer Juan

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<sup>83</sup> See José Duque Corredor, “Bloque Constitucional de Venezuela. Comentarios y reflexiones sobre el Estatuto de Transición de la dictadura a la democracia de Venezuela,” Epilogue to the book: Allan R. Brewer-Carías, *Transición hacia la democracia en Venezuela. Bases constitucionales y obstáculos usurpadores*, IDEA, Editorial Jurídica Venezolana, Caracas/Miami 2019, pp. 332, 332, available at: <http://allanbrewercarias.com/wp-content/uploads/2019/06/193.-Brewer.-bis-5.-TRANSICI%C3%93N-A-LA-DEMOCRACIA-EN-VLA.-BASES-CONSTITUC.-1-6-2019-para-pag-web-1.pdf>)

<sup>84</sup> See Asdrúbal Aguiar, “Transición hacia la democracia y responsabilidad de proteger en Venezuela: Mitos y realidades,” prologue to the book: Allan R. Brewer-Carías, *Transición hacia la democracia en Venezuela. Bases constitucionales y obstáculos usurpadores*, IDEA, Editorial Jurídica Venezolana, Caracas/Miami 2019, p. 39, available at <http://allanbrewercarias.com/wp-content/uploads/2019/06/193.-Brewer.-bis-5.-TRANSICI%C3%93N-A-LA-DEMOCRACIA-EN-VLA.-BASES-CONSTITUC.-1-6-2019-para-pag-web-1.pdf>)

Guidó, which must be exercised under the public law principle of coordination and parliamentary control, without subordination nor undo interferences.<sup>85</sup>

The Statute has, inter alia, the following objectives relating to the institutional reorganization of the Republic:

“1. Regulate the actions of the different branches of the Public Power during the democratic transition process in accordance with article 187, number 1 of the Constitution,<sup>86</sup> allowing the National Assembly to initiate the process of restoring constitutional and democratic order.”

2. Establish the guidelines according to which the National Assembly will protect, before the international community, the rights of the Venezuelan government and people, until a provisional government of national unity is formed.”

In particular, in Article 15 of the same *Statute*, the National Assembly regulated various mechanisms for the “defense of the rights of the Venezuelan people and government,” providing for the possibility that the necessary decisions be “taken to that end;”

“in order to ensure the safeguarding of the assets, goods, and interests of the Government abroad and to promote the protection and defense of the human rights of the Venezuelan people, all in accordance with the treaties, conventions, and international agreements in force.”

These safeguard measures were therefore conceived to be applied abroad, that is, regarding the assets and interest of the Republic outside the country, and for that purpose Article 15 of the *Statute*, confirmed that the President of the National Assembly, is the “legitimate President in charge of the Republic” (article 14), and that “under article 333 of the Constitution,” has the power to exercise, inter alia, the following powers, “subject to the authoritative scrutiny of the National Assembly under the principles of transparency and accountability:”

“a. Appoint Ad-Hoc Management Boards of Directors to assume the management and administration of public institutes, autonomous institutes, state foundations, state civil associations or societies or State enterprises, including those incorporated abroad, and any other decentralized bodies, in order to appoint its administrators and, in general, to take the necessary measures for the control and protection of their assets. Decisions taken by the President in charge of the Republic shall be immediately complied with and shall have full legal effects.”

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<sup>85</sup> Available at <http://www.acienpol.org.ve/cmacionpol/Resources/Pronunciamientos/Pronunciamento%20sobre%20Estatuto%20de%20Transici%C3%B3n.%20def.pdf>; and in the book: Academia de Ciencias Políticas y Sociales, *Doctrina Académica Institucional. Instrumento de reinstitucionalización democrática. Pronunciamientos 2012-2019*, Tomo II, Editorial Jurídica Venezolana, Caracas 2019, p. 337 ff. Available at: <http://allanbrewercarias.com/wp-content/uploads/2019/07/libro.-PRONUNCIAMIENTOS-DE-LA-ACADEMIA-19-6-2019-DEFINITIVO.pdf>.”

<sup>86</sup> Article 187.1 states: “The National Assembly is responsible for: 1. Legislating on the matters of national competence and on the functioning of the various branches of the National Power.”

b. While the Attorney General of the Republic is validly appointed pursuant to Article 249 of the Constitution, in line with the provisions of Articles 15 and 50 of the Organic Law of the Office of the Attorney General of the Republic, the Republic in Charge of the Republic may designate the person to discharge the office of special attorney general for the defense and representation of the rights and interests of the Republic, the State-owned corporations and other decentralized entities of the Public Administration abroad. This special attorney will have the authority to appoint judicial attorneys-in-fact, even in international arbitration proceedings, and shall exercise the functions referred to in paragraphs 7, 8, 9 and 13 of Article 48 of the Organic Law of the Office of the Attorney General of the Republic, with the limitations arising from Article 84 of that Law and from this Statute. This representation shall be directed especially towards ensuring the protection, control and recovery of the State's assets abroad, and to carry out any action that may be necessary in order to safeguard the rights and interests of the State. The attorney so appointed shall have the power to carry out any action and exercise all the rights that would pertain to the Attorney General with regard to the assets referred to herein. To this end, he must satisfy the same conditions demanded by Law to hold the office of Attorney General of the Republic.”

Therefore, according to these provisions of the *Statute for Transition*, two main attributions were assigned by the National Assembly to the President of the National Assembly, as President in charge of the Republic,” to be exercised “subject to the authoritative scrutiny of the National Assembly under the principles of transparency and accountability,” for the purpose of protecting the assets and interest of the Republic outside the country, and therefore conceived to have their main effects abroad: on the one hand, to appoint a Special Attorney in order to defend and represent the rights and assets of the republic, State-owned enterprises and the decentralized entities of Public Administration; and on the other hand, to appoint Ad-Hoc Management Boards of Directors to assume the management and administration of public institutes, autonomous institutes, state foundations, state civil associations or societies or State enterprises, including those incorporated abroad, and any other decentralized bodies, in order to appoint its administrators and, in general, to take the necessary measures for the control and protection of their assets; with particular reference to the State Owned enterprise *Petróleos de Venezuela S.A (PDVSA)*, and its subsidiaries.

The President in Charge, Juan Guaidó proceed to enforce the provisions of the National Assembly, although the Constitutional Chamber, as could be expected tried to block its decisions.

## **X. THE NEW REACTION OF THE CONSTITUTIONAL CHAMBER AGAINST THE STATUTE FOR TRANSITION, ALSO EXPRESSED THROUGH AN INVALID UNILATERAL DECLARATION No. 6 OF FEBRUARY 8<sup>th</sup>, 2019, ISSUED EX-OFFICIO**

In effect, the *Statute for the Transition to Democracy*, of February 5<sup>th</sup> , 2019, as

was also expected, was the subject of another unilateral declaration, issued *ex officio* three days later, called “judgment” No. 6, of February 8, 2019,<sup>87</sup> by which the Constitutional Chamber declaring null and void the *Statute for the Transition* towards democracy, also in an *ex officio* way, without anyone having asked for it or having claimed it, mentioning for this purpose:

(i) the abovementioned judgment No. 2 of January 11, 2017, declaring the contempt of the National Assembly, the nullity of the act of installation of the same of January 5, 2017, and the appointment of its board of January 9, 2017; and the nullity and invalidity of any action of the National Assembly against what was decided therein;

(ii) the aforementioned “unilateral declaration *ex officio*” No. 3 of January 21, 2019, which declared the Resolution of the National Assembly of January 15, 2019 to be invalid, “on the declaration of the usurpation of the Presidency of the Republic by Nicolas Maduro Moros and the restoration of the validity of the Constitution;” and

(iii) and judgment No. 4 of January 23, 2019, where it made reference to previous decisions stating that “any action of the National Assembly and of anybody or individual against what is decided herein shall be null and void of any validity and legal effect, without prejudice to the liability applicable.”

Based on only such quotations, the National Assembly ended up declaring null and void the *Statute for the Transition* towards democracy, for having been adopted, it said, “in plain contempt and without a validly appointed or sworn in Board of Directors;” and furthermore, ratifying “that any action of the National Assembly and anybody or individual against what is decided herein will be null and void of any validity and legal effect.”

This “unilateral statement” by the Chamber that is supposed to be a “judgment,” made without any case or controversy, trial or process, without arguments made by anyone, and, as has already been said, as already mentioned, was issued in violation of the most basic rules of due process, without legal effect, let alone the mention of alleged defects of unconstitutionality of the articles of the *Statute*, which no one has claimed and to which, of course, no one has responded, and that, according to the legal system, the Constitutional Judge is prohibited from “arguing” on his own account.<sup>88</sup>

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<sup>87</sup> Exp. No. 17-0001. Available at <http://www.tsj.gob.ve/-/sala-constitucional-del-tsj-declara-nulo-estatuto-que-rige-la-transicion-a-la-democracia-emanado-de-la-asamblea-nacional-en-desacato>

<sup>88</sup> See Allan R. Brewer-Carías, “Régimen y alcance de la actuación judicial de oficio en materia de justicia constitucional en Venezuela”, in *Revista IURIDICA*, No. 4, Legal Research Center Dr. Aníbal Rueda, Arturo Michelena University, Valencia, July-December 2006, pp. 13-40 Available at: <http://allanbrewercarias.net/Content/449725d9-f1cb-474b-8ab2->

The same applies to the Constitutional Chamber's claim to qualify the issuance of the above-mentioned *Statute* as an "act of force" or "coup d'état," when what the National Assembly has sought to achieve is precisely the cessation of the usurpation, which indeed is an act of force, and put an end to the "permanent coup d'état" that has been even conducted by the Constitutional Chamber itself,<sup>89</sup> all of which has produced a "constitutional and legal abnormality,"<sup>90</sup> which is what it intended to overcome.

In any event, as regards, in particular, to the transitional regime of PDVSA and its subsidiaries provided for in the *Statute*, in the face of the irregular functioning of the management that used to exist in such enterprises that put Venezuela's assets abroad at risk, the only "observation" issued by the Chamber was that "everything concerning acts of government corresponds to the President of the Republic as a body of the Executive Power," which is precisely the reason why the National Assembly authorized the President in charge of the Republic to carry out the appointments provided for in the norm.

In any event, in the face of this confrontational situation of the Constitutional Chamber against the National Assembly, and the existing national and international political situation, whereas Juan Guaidó, President of the National Assembly has been recognized as to be in charge of the Presidency of the Republic, and the National Assembly has been recognized as the only legitimately elected body in the country, the legal and political inefficiency that the decisions of the Constitutional Chamber of the Supreme Tribunal of Justice may have is evident, in particular in the countries that have recognized them. Such recognition implies that the decisions of the National Assembly have all their legal effects, as is precisely the case in the United States and Colombia in the aforementioned court cases, where the judges have recognized Juan Guaidó as the legitimate President in charge of the Republic, and the National Assembly as the only legitimate representative of the people.

## **XI. THE NATIONAL ASSEMBLY DECISION REGARDING THE APPOINTMENT OF A SPECIAL ATTORNEY OF THE PROTECTION**

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<sup>89</sup> See Allan R. Brewer-Carías, *La dictadura judicial y la perversión del Estado de derecho. El Juez Constitucional y la destrucción de la democracia en Venezuela*, (Prologue of Santiago Muñoz Machado), Ediciones El Cronista, Fundación Alfonso Martín Escudero, Editorial IUSTEL, Madrid 2017, pp. 30 ff.

<sup>90</sup> See Claudia Nikken, *Consideraciones sobre las fuentes del derecho constitucional y la interpretación de la Constitución*, Centro para la Integración y el Derecho Público, Editorial Jurídica Venezolana, Caracas 2019, pp. 141 ff.

## AND DEFENSE OF THE INTERESTS OF THE REPUBLIC ABROAD

As provided in article 15.b of the Statute for Transition,, the President n Charge of the Republic was authorized to appoint a special attorney for the defense and representation of the rights and interests of the Republic and all other decentralized entities abroad, according to Articles 15 and 50 of the Organic Law of the Office of the Attorney General of the Republic.<sup>91</sup>

And in fact, and in spite of the “declaration” of the Constitutional Chamber No. 6, of February 8, 2019 against the Statute for Transition, the special attorney was designated by Interim President Juan Guaidó, and approved by the national Assembly<sup>92</sup> who began to perform his duties within the regulatory framework of the Transition Statute.

As to Article 15 of the Organic Law of the Office of the Attorney General of the Republic, referred to above, it states the following:

*Article 15.* The Office of the Attorney General of the Republic, in coordination with the Ministry of the People’s Power competent on foreign affairs, may establish permanent or temporary seats outside the territory of the Bolivarian Republic of Venezuela or designate representations abroad, for the purpose of defending the rights, assets and patrimonial interests of the Republic.”

The Statute, which has the rank of law, and because it is a special and subsequent law, can modify the current legislation during the period of transition to democracy in order to restore the validity of the Constitution. This means that, regarding the legal system of the State-owned corporations and other decentralized entities of the Public Administration, notwithstanding what may be provided in the respective legal or statutory systems of those State-owned corporations and other decentralized entities of the Public Administration, in connection with “the defense and representation of the rights and interests” thereof abroad, the special attorney has the duty to exercise the defense and representation of the rights and interests of such State-owned corporations and other decentralized entities of the Public Administration abroad, including, for example, those of the Central Bank of Venezuela.<sup>93</sup>

Also regarding the designation of a special attorney for the defense and

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<sup>91</sup> See in *Official Gazette* Extra N° 6.210 of December 30, 2015, re-printed in *Official Gazette* Extra N° 6.220 of March 15, 2016.

<sup>92</sup> This actually took place with the appointment of Dr. José Ignacio Hernández, approved by the national Assembly on February 27, 2019.

<sup>93</sup> See on the character of the Central Bank of Venezuela: Allan R. Brewer-Carías, “Sobre el Banco Central de Venezuela, como ente descentralizado de la Administración Pública del Estado, con personalidad jurídica de derecho público directamente prevista en la Constitución. New York, 9 de mayo 2019; available at: <http://allanbrewercarias.com/wp-content/uploads/2019/05/196.-Brewer.-Sobre-el-BCV-y-representacion-del-procurador-especial-2019..pdf>

representation of the rights and interests of the Republic, State-owned corporations and other decentralized entities of the Public Administration abroad, the other rule of the Organic Law of the Office of the Attorney General of the Republic referred to in Article 15.b of the Statute for Transition, is Article 50 of said law, which provides the following:

*“Article 50. The Attorney General of the Republic may grant powers to lawyers who are not officials of the Office of the Attorney General of the Republic, to perform duties outside the Bolivarian Republic of Venezuela, in representation and for the defense of the rights, assets and patrimonial interests of the Republic. In this case, these powers shall be granted complying with the relevant legal formalities. The President of the Republic should be notified whenever the attorneys-in-fact are foreign citizens.*

The Attorney General of the Republic may grant the Ambassadors and Consuls of the Republic accredited in foreign countries the respective powers to represent the Republic, both in and out of court, with the assistance of lawyers, on matters inherent in the respective diplomatic or consular representative offices.”

According to this provision, which, as already mentioned, has the rank of law, the special attorney appointed abroad can grant powers to attorneys to persons that are not officials of the Office of the Attorney General of the Republic, to act outside the Bolivarian Republic of Venezuela for the representation and defense of the rights, assets and patrimonial interests of the Republic, and of the State-owned corporations and other decentralized entities of the Public Administration.

In addition, as already mentioned, the special attorney appointed by the President in Charge of the Republic, in order to protect, control and recover State’s assets abroad, and to safeguard the rights and interests of the State also has the following competences pursuant to Article 15 of said Statute:

*“to designate judicial attorneys-in-fact, even in international arbitration proceedings, and exercise the attributes referred to in paragraphs 7, 8, 9 and 13 of Article 48 of the Organic Law of the Office of the Attorney General of the Republic, with the limitations arising from Article 84 thereof and of this Statute.*

In particular, therefore, according to article 48 of the Organic Law of the Office of the Attorney General of the Republic, the special attorney for the defense and representation of the rights and interests of the Republic, State-owned corporations and the other decentralized entities of the Public Administration abroad, has the following specific attributes:

To create and direct the advisory committees he may deem convenient for the best performance of his duties (Art. 48.7).

To appoint representatives of the Office of the Attorney General of the Republic before international entities (Art. 48.8).

To set up international headquarters and representative offices, always for the purpose of attending to matters related to the representation and defense of the rights, property and equity interests of the Republic, State-owned corporations and other decentralized entities of the Public Administration (Art. 48.9).

Grant powers of attorney or mandates to individuals, whenever required for the representation and defense of the interests of the Republic, State-owned corporations and the other decentralized entities of the Public Administration (art. 48.13).

As stated above, since the Transition Statute is a parliamentary decision of a normative nature that pursues the direct and immediate enforcement of the Constitution, having the rank of law and, consequently, by being a special and subsequent law, it has the power to amend the current legislation during the term of the transition to democracy for the restoration of the validity of the Constitution. Therefore, its provisions prevail during that period with regard to Article 2 of the Organic Law of the Office of the Attorney General of the Republic, which provides that “The powers and competences of representation and judicial and extra-judicial defense of the rights, assets and patrimonial interests of the Republic, both at a national and international level, cannot be exercised by any other body or official of the State without a prior express substitution authorized by the Attorney General of the Republic.”

The foregoing allows to affirm that the political-constitutional situation that arose in January 2019, due to the absence of a lawfully elected president that could be sworn in as president of the Republic before the Assembly for the 2019-2025 term, and in view of the usurpation of said office by Nicolas Maduro as of January 10, 2019 declared by the National Assembly, all of which implied a rupture of the constitutional continuity, the National Assembly, complying with the duty imposed upon it by Article 333 of the Constitution to restore the effect and force of the fundamental charter in its capacity as representative of the people’s sovereign power and primary interpreter of the Constitution, issued the mentioned Statute for transition, which is a parliamentary decision of a normative nature for the direct and immediate enforcement of the Constitution, having the same rank as a law, thus providing the necessary legal grounds to lead such democratic transition, among which, the designation of a special attorney for the defense and representation of the rights and interests of the Republic, the State-owned corporations and the other decentralized entities of the Public Administration abroad.”

The provisions governing the actions of the special attorney are mandatory according to the Venezuelan Constitution, and since the Transition Statute is a special and subsequent law, it can also amend the pertinent aspects of the current legislation during the period of the transition to democracy that will restore the validity of the Constitution.

In addition to the appointment of the special attorney of the Republic on February 27, 2019, the national Assembly approved a *Resolution Ratifying the usurpation of the Attorney General of the Republic and in support of the Special Attorney*, dated March 19, 2019, in which the Assembly, considering that Reinaldo Muñoz Mendoza cannot be considered as the legitimate General Attorney of the republic due to the fact that he was appointed without following the constitutional formalities, effectively ratified that “all acts and contracts issued or signed by Reinaldo Muñoz Mendoza, invoking its condition of General Attorney of the Republic must be considered inexistent,” and additionally “ratified that the judicial and extra-judicial representation of the Venezuelan State, even in international arbitration, corresponds exclusively to the Special Attorney designated according to the Statute for Transition.”

In addition, in such resolution, the national Assembly exhorted the foreign courts and arbitral international tribunals and any other authority of foreign States to not to accept Reinaldo Muñoz Pedroza or any of the lawyers appointed by him, as representing the Venezuelan State.”

## **XII. THE NATIONAL ASSEMBLY DECISION REGARDING THE NEED TO APPOINT AN AD-HOC BOARD OF DIRECTORS OF PETROLEOS DE VENEZUELA S.A. (PDVSA) FOR THE PROTECTION OF ITS ASSETS ABROAD, AND ITS SUBSEQUENT APPOINTMENT BY DECISION OF THE PRESIDENT IN CHARGE OF THE REPUBLIC APPROVED BY ASSEMBLY THROUGH RESOLUTION OF FEBRUARY 12, 2010,**

Regarding the appointment of Ad-Hoc Management Boards of Directors to assume the management and administration of public decentralized institutions and public enterprises, also provided in article 15.a of the Statute for Transition, Article 34 of the same Statute, provided in particular, for to the appointment of an Ad-Hoc management Board of PDVSA, specifically motivated by the “the risks in which PDVSA and its subsidiaries are in as a result of usurpation,” setting forth a “transitional regime of PDVSA and its affiliates,” to govern, “while such a situation persists.”

For such purpose, the Statute expressly empowered the “President in charge of the Republic, under the authoritative control of the National Assembly and within the framework of the application of Article 333 of the Constitution,” the power to appoint “the *Ad-hoc Management Board of Petróleos de Venezuela S.A. (PDVSA)* pursuant to Article 15, section a,” of the *Statute*, so that the Ad-hoc Management Board “exercises the rights that correspond to PDVSA as a shareholder of *PDV Holding, Inc.*” (article 34).

This decision of the National Assembly regarding PDVSA was not to substitute the Board of Directors of PDVSA in Venezuela, but only to appoint an *Ad-Hoc* Management Board of Directors of such company in order to assume the management and administration of *its subsidiaries incorporated abroad*, “in order to appoint its administrators and, in general, to take the necessary measures for the control and protection of their assets.

For such purpose, the same Article 34.1 provided that this attribution by the President in charge of the Republic should be exercised in accordance with the following principles:

*First*, that the Ad-hoc Management Board could “be composed of people domiciled abroad.”

Second, that the Ad-hoc Management Board have “the powers which corresponds to the shareholders’ meeting and to the PDVSA board of directors.”

*Third*, that, in such capacity, with the Ad-hoc Management Board having the powers of the shareholder’s meeting and of the PDVSA board of directors, it may “take all necessary steps to appoint the board of directors of *PDV Holding, Inc.*, representing PDVSA as a shareholder in that company.”

*Fourth*, the new directors of *PDV Holding, Inc.* must take “all necessary actions in order to appoint the new boards of directors of the subsidiaries of that company, including *Citgo Petroleum Corporation*.”

Such transitional provision, moreover, as expressly stated in the text of the *Statute*, must prevail:

“over any other applicable rules, and shall guide the interpretation of any other formalities required in the Venezuelan legal system and in corporate documents, for the purpose of representing PDVSA as a shareholder of *PDV Holding, Inc.*”

This *rule* of the *Statute* is the ratification of the rank of law of its norms, which prevail over any other provision of a *Statute*, regulation or of any corporate by-law, particularly of the PDVSA by-laws, related to the representation of PDVSA as a shareholder of *PDV Holding, Inc.* Consequently, in order to appoint the Ad-Hoc representative of PDVSA, for the purpose of representing PDVSA as a shareholder of *PDV Holding, Inc.*, due to the obligatory and prevailing legal rank of the *Statute*, according to its provisions the by-laws of PDVSA were not to be followed, nor formally amended.

The *Statute* went further, establishing for the new directors of *PDV Holding, Inc.* and its subsidiaries appointed in accordance with these provisions. the *Statute* provided that “the functional autonomy of those enterprises and, in particular, of PDVSA” should be ensured. For that purpose, Article 34.3 provides that:

“a) The autonomous management of the commercial sector of *PDV Holding, Inc.* and its subsidiaries will meet commercial efficiency criteria, keeping safe the control and accountability mechanisms exercised by the National Assembly within the framework of its powers, and the other applicable control mechanisms.

b) *PDV Holding, Inc.* and its affiliates shall have no relationship with those who currently usurp the Presidency of the Republic. While such a situation of usurpation persists, *PDV Holding, Inc.* and its subsidiaries will not make any financial payments or contributions to PDVSA."

All these provisions of the Statute for Transition, being a parliamentary act of direct and immediate enforcement of the Constitution of normative order, have the rank of law, and therefore, the power to amend the legislation then in force, being a special law and subsequent law, during the period of the "transition towards democracy to restore the validity of the Constitution."

Consequently, and in spite of the "declaration" of the Constitutional Chamber No. 6, of February 8, 2019 against the Statute for Transition, that according to the Venezuelan constitutional system cannot have validity nor effects, on February 13, 2019, following Articles 5 and 34 of the Statute, the National Assembly sanctioned the "*Resolution by which it is authorized the appointment to serve as the intervention body, called "Ad-hoc Management Board," to assume the functions of the Shareholder's Assembly and Board of Directors of Petróleos de Venezuela S.A., to act on its behalf and, as the sole shareholder of PDV Holding, Inc., proceed to appoint its Board of Directors, and consequently to appoint the Board of Directors of Citgo Holding, Inc., and Citgo Petroleum Corporation.*"<sup>94</sup>

In dictating this, the National Assembly reaffirmed that the Statute *is a law* sanctioned "in compliance with Article 333 and Article 187.1 of the Constitution of the Republic," "as a pact of coexistence for the civic life of Venezuelans, and as a sure path towards democratic transition, having as its main basis the re-institutionalization of the Constitution of the Republic intentionally misplaced by the National Executive Power."

Therefore, during the period of transition to democracy and of the full restoration of the validity of the Constitution, the Ad-Hoc Management Board of PDVSA, provided for in the Statute and appointed in the manner provided for therein, was entitle to exercise "the powers of the shareholder's meeting and the PDVSA board of directors," to exercise "the rights that correspond to PDVSA as a shareholder of *PDV Holding, Inc.*," and to "perform all necessary steps to appoint the Board of Directors of *PDV Holding, Inc.*, representing PDVSA as a shareholder in that company;" with the new directors of *PDV Holding, Inc.*, having competence to carry out "all necessary actions for the purpose of appointing the new boards of directors of the subsidiaries of that company, including *Citgo Petroleum Corporation.*"

These rules of the *Statute*, as indicated in the same text of the *Statute*, having the

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<sup>94</sup> Available at: <http://www.asambleanacional.gob.ve/actos/acuerdo-que-autoriza-el-nombramiento-para-ejercer-los-cargos-del-organo-de-intervencion-llamado-junta-administradora-ad-hoc-que-asuma-las-funciones-de-la-asamblea-de-accionista-y-junta-directiva-de-pe>.

rank of law, must prevail:

“over any other applicable rules, and shall guide the interpretation of any other formalities required in the Venezuelan legal system and in corporate documents, for the purpose of representing PDVSA as a shareholder of PDV Holding, Inc.”

In other words, the rules governing the actions of the *Ad-hoc Management Board of Petróleos de Venezuela S.A.*, therefore have legal status in the Venezuelan legal order, rendering them mandatory, and they may also amend the legislation then in force in the relevant aspects regulated, as it is a special law and subsequent law, for as long as the transition to democracy to restore the validity of the Constitution lasts.<sup>95</sup>

In compliance with the rules of Articles 15 and 34 of that *Statute*, dated February 8, 2019, the President in charge of the Republic, Juan Guaidó, appointed the *Ad-hoc Management Board of Petróleos de Venezuela S.A.*,<sup>96</sup> with the powers corresponding to the Shareholders’ Assembly and the PDVSA Board of Directors, in order to carry out all the necessary actions to appoint the Board of Directors of *PDV Holding, Inc.*, representing PDVSA as a shareholder in that company.

In the same executive decision of appointment, all in implementation of the provisions of the *Statute*, the President in charge of the Republic stated that the *Ad Hoc Administrative Board*, directly or through the person appointed by it, should represent PDVSA as a shareholder in *PDV Holding, Inc.*, for the purpose of giving the written consent of the same as the sole shareholder, required to appoint the Board of Directors of *PDV Holding, Inc.*

As a result of this decision, the President in charge decided to revoke and terminate any authorization or appointment that PDVSA had made before that date for the representation of the same as a shareholder of *PDV Holding, Inc.*, including, without limitation, the subscription of written consents as the sole shareholder of *PDV Holding, Inc.*<sup>97</sup>

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<sup>95</sup> Therefore, in the “Report presented by the Permanent Committee on Energy and Petroleum to authorize the appointment to hold the positions of the intervention body, called the ‘Ad-hoc Management Board’, which assumes the functions of the Shareholder’s Meeting and Board of Petróleos de Venezuela S.A., to act on its behalf and, as the sole shareholder of PDV Holding, Inc., proceed to appoint its Board of Directors, and consequently appoint the Board of Directors of Citgo Holding, Inc., and Citgo Petroleum Corporation,” of February 12, 2019, the Statute is described as “a Law by which it is possible to have a special legal regime,” which was established in article 34 of the Statute Governing the Transition to Democracy to Restore the Validity of the Constitution,” “where a special and temporary regime for the intervention of Government companies is created, which in a special way allows to appoint an intervention body, called an ‘Ad-hoc Management Board.’” Text consulted”copy of the original

<sup>96</sup> Comprised of the following people: Simón Antunes, Gustavo J Velasquez, Carlos José Balsa, Ricardo Alfredo Prada, and David Smolansky

<sup>97</sup> Text consulted: copy of the original.

On the same date (February 8, 2019), as provided for in the *Statute*, the President in charge of the Republic sent that decision of appointment of the members of the *PDVSA Ad-hoc Management Board* to the Permanent Committee on Energy and Petroleum of the National Assembly for the purpose of the required authoritative check, including the precise information of the persons that the *PDVSA Ad-hoc Management Board* would appoint as members of the Boards of Directors of the subsidiary *PDVSA PDV Holding, Inc.*, and of the persons who would be successively appointed members of the Boards of Directors of the companies *Citgo Holding, Inc.* and *Citgo Petroleum Corporation*.<sup>98</sup>

Always pursuant to what is established in the *Statute*, on February 12, 2019, the Permanent Committee on Energy and Petroleum of the National Assembly presented to it, the “*Report submitted by the Permanent Committee on Energy and Petroleum to authorize the appointment to serve as the intervention body, called the ‘Ad-hoc Management Board’, to assume the functions of the Shareholder’s Meeting and Board of Directors of Petróleos de Venezuela S.A., to act on its behalf and, as the sole shareholder of PDV Holding, Inc., to proceed to appoint its Board of Directors, and consequently to appoint the Board of Directors of Citgo Holding, Inc., and Citgo Petroleum Corporation,*” proposing to the Assembly the approval of the appointments made by the President in charge of the Republic as members of the Ad-hoc Management Board of PDVSA.

To this end, and as one of the important reasons for the Report, the recitals of the Permanent Committee referred to the situation that existed of “the absence of Venezuelan directors” of that company “in the face of the impossibility of the members of the Board of Directors appointed by the illegitimate Government of Maduro, to be able to reside in the United States, which is why the operation of the company falls on a management whose officers are American citizenship;” and that, “due to the usurpation exercised by Nicolás Maduro, it is not possible to get the Board of Directors of Petróleos de Venezuela S.A., and its shareholders’ meeting to comply with all the formalities to appoint the new Board of Directors of *PDV Holding, Inc.*, the Company *Citgo Holding, Inc.*, and the Company *Citgo Petroleum Corporation*.”<sup>99</sup>

Said *Report*, was submitted for consideration to the National Assembly on February 13, 2019, which approved the already mentioned “*Resolution authorizing the appointment to serve as the intervention body, called ‘Ad-hoc Management Board,’ to assume the functions of the Shareholder’s Assembly and Board of Directors of Petróleos de Venezuela S.A., to act on its behalf and, as the sole shareholder of PDV Holding, Inc., to proceed to appoint its Board of Directors, and*

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<sup>98</sup> Text consulted: copy of the original

<sup>99</sup> Text consulted: copy of the original

consequently appoint the Board of Directors of Citgo Holding, Inc., and Citgo Petroleum Corporation.”<sup>100</sup> This new Resolution of the National Assembly was preceded by a set of “Recitals” that summarized the situation arising from the political crisis of the country, which forced the National Assembly to assume the process of transition to democracy, including the fact that, “on May 20, 2018 the *de facto* regime sought to simulate an electoral process whereas Venezuelans were unable to exercise their right to vote in freedom, laying the groundwork for Nicolás Maduro and his regime to promote *the scenario of usurpation of the Presidency of the Republic for a new presidential term,*” recapitulating, to this end:

(i) that “on 22 May 2018, the Sovereign National Assembly approved the “Resolution Reiterating the Non-Recognition of the Farce that took place on May 20, 2018 by the Alleged Election of the President of the Republic;”

(ii) that “Nicolás Maduro *usurps the office of President of the Republic, which constitutes an ineffective authority and, consequently, all acts arising from that usurpation are null and void,* as provided for in article 138 of the Constitution;” and

(iii) that “as a result of this unfortunate legal situation of usurpation generated by citizen Nicolás Maduro and his regime, and in accordance with the provision laid down in Article 333 of the Constitution of the Republic, the National Assembly has had to assume the constitutional powers, as set out in the first section of article 233 of the Constitution of the Republic, and in that sense, the legitimate President in charge of the Bolivarian Republic of Venezuela is the President of the National Assembly.”

Furthermore, on the particular situation of PDVSA and its subsidiaries, the National Assembly’s Resolution of February 12, 2019 stated that, “due to the usurpation of the Presidency of the Republic illegally exercised by Nicolás Maduro, *it is not possible to ensure that neither PDVSA Board of Directors or its shareholder’s meeting can comply with all formalities to appoint the new Board of Directors of PDV Holding, Inc., of the Company Citgo Holding, Inc., and the Company Citgo Petroleum Corporation,*” which is why, precisely the *Statute* for the Transition “established a special and temporary legal regime for the intervention of State companies, which allows for the appointment of an intervention body, called “*Ad-hoc Management Board,*” appointed by the President in charge of the Republic, to assume the functions of the PDVSA shareholder and board of directors, to act on its behalf as the sole shareholder, and to appoint the Board of Directors of *PDV Holding, Inc.,* and consequently the Board of Directors of *Citgo Petroleum Corporation.*”

On the basis of all this, the above-mentioned Resolution of February 12, 2019 approved the appointment that the President in charge of the Republic, Juan Guaidó,

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<sup>100</sup> Available at: <http://www.asambleanacional.gob.ve/actos/acuerdo-que-autoriza-el-nombramiento-para-ejercer-los-cargos-del-organ-de-intervencion-llamado-junta-administradora-ad-hoc-que-asuma-las-funciones-de-la-asamblea-de-accionista-y-junta-directiva-de-pe>

had made since February 8, 2019<sup>101</sup> of the members of the *Ad-hoc Management Board of Petróleos de Venezuela S.A.*<sup>102</sup>

Likewise, in the Resolution, the National Assembly provided that this *Ad-hoc Management Board of Petróleos de Venezuela S.A.*, would proceed to carry out all necessary actions in order to appoint the new boards of directors of the subsidiaries of *PDV Holding, Inc.*, *Citgo Holding, Inc.*, and the Company *Citgo Petroleum Corporation*.<sup>103</sup>

The Resolution of February 12, 2019, finally, instructed the *Ad-hoc Management Board of Petróleos de Venezuela S.A.*, as well as the new directors of *PDV Holding, Inc.*, and the boards of directors of the named subsidiaries, to proceed immediately, among others things, to implement a plan aimed at “obtaining the protection of assets of the company CITGO.”

After the above-mentioned agreement was approved, the members of the *Ad-hoc Management Board of Petróleos de Venezuela S.A.*, representing this company at the Shareholders’ Meeting of *PDV Holding, Inc.* held on February 15, 2019, decided to reform the Company’s Bylaws, to remove former members of the Board of Directors, and instead, to appoint the new members of the Board of Directors of the company *PDV Holding, Inc.*<sup>104</sup>

Subsequently, on the same date, February 15, 2019, the members of the Board of Directors of *PDV Holding Inc.*, , representing this company, at the Shareholders’ Meeting of *Citgo Holding, Inc.*, resolved to appoint the President and the Secretary of the Board,<sup>105</sup> authorizing them to execute on behalf of the company the Shareholders’ Assembly of the company *Citgo Holding Inc.*, for the purpose of removing the members of its Board of Directors and appointing the members of its

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<sup>101</sup> Decision of February 8, 2019. Text consulted: copy of the original.

<sup>102</sup> The following persons Simon Antunes; Gustavo J. Velasquez; Carlos José Balza; Ricardo Alfredo Prada, and David Smolansky. Decisions of February 15, 2019. Text consulted: copy of the original.

<sup>103</sup> Comprised of the following persons: As for *PDV Holding, Inc.*, the following persons: Luisa Palacios; Edgar Rincón; Oswaldo Nuñez; Fernando Vera; Elio Tortolero, and Andrés Padilla. As for *Citgo Holding, Inc.*, the following persons: Luisa Palacios; Edgar Rincón; Angel Olmeta; Oswaldo Nunez; Javier Troconis, and Rick Esser; and as for *Citgo Petroleum Corporation*, the following persons: Luisa Palacios; Edgar Rincón; Luis Urdaneta; Ángel Olmeta; Andrés Padilla, and Rick Esser. Decisions of February 15, 2019. Text consulted: copy of the original.

<sup>104</sup> The following: Luisa Palacios; Edgar Rincón; Oswaldo Nuñez; Fernando Vera; Elio Tortolero, and Andrés Padilla, and, at the same time, appointed Luisa Palacios and Fernando Vera, respectively, as President and Secretary of the company. Decisions of February 15, 2019. Text consulted: copy of the original.

<sup>105</sup> Ms. Luisa Palacios as President of the company, and Mr. Fernando Vera as Secretary of the Board. Decisions of February 15, 2019. Text consulted: copy of the original.

Board of Directors, which was indeed done in the Assembly of the same date.<sup>106</sup>

Moreover, on the same date, February 15, 2019, the members of the Board of Directors of *PDV Holding Inc.*, representing this company, at the Shareholders' Meeting of *Citgo Petroleum Corporation.*, resolved to appoint the President and Secretary of the Board,<sup>107</sup> authorizing them to execute on behalf of the company the Shareholders' Assembly of the company *Citgo Petroleum Corporation*, for the purpose of removing the members of its Board of Directors and appointing the new members of its Board of Directors, which was in effect done in Assembly of the same date, which actually took place on the same day, February 15, 2019.<sup>108</sup>

On the same day, February 15, 2019, all minutes of the Shareholders' Assembly of the aforementioned companies with the appointments made of their Boards of Directors were notified to the corresponding register of the State of Delaware, USA.

### **XIII. THE NEW EX-OFFICIO “DECLARATION” No. 39 OF FEBRUARY 14, 2019, ISSUED BY THE CONSTITUTIONAL CHAMBER OF THE SUPREME TRIBUNAL PURPORTING TO ANNUL THE NATIONAL ASSEMBLY RESOLUTION OF FEBRUARY 12, 2019**

In the case of these decisions taken following the mandate contained in the *Statute of the Transition*, and particularly in the “*Resolution by which the appointment to serve as the intervention body, called ‘Ad-hoc Management Board,’ is authorized to assume the functions of the Shareholder’s Assembly and Board of Directors of Petróleos de Venezuela S.A., to act on its behalf and, as the sole shareholder of PDV Holding, Inc., proceed to appoint its Board of Directors, and consequently to appoint the Board of Directors of Citgo Holding, Inc., and Citgo Petroleum Corporation,*” dated February 13, 2019, it was also expected that the Constitutional Chamber of the Supreme Tribunal would rule *ex officio*, which it did immediately, also by an unilateral declaration or “judgment” No. 39 of February 14, 2019.

Again, this new decision of the Constitutional Chamber is an invalid and unconstitutional judicial review ruling, issued *ex-officio*, which, as already explained, is prohibited in the Organic Law of the Supreme Tribunal of Justice. It was delivered by the Chamber only on the basis of its decision taken a week earlier,

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<sup>106</sup> The following persons: Luisa Palacios; Edgar Rincón; Angel Olmeta; Oswaldo Nunez; Javier Troconis, and Rick Esser. Decisions of February 15, 2019. Text consulted: copy of the original.

<sup>107</sup> Ms. Luisa Palacios as President of the company, and Mr. Fernando Vera as Secretary of the Board . Decisions of February 15, 2019. Text consulted: copy of the original.

<sup>108</sup> The following persons as members of its Board of Directors: Luisa Palacios; Edgar Rincón; Luis Urdaneta; Angel Olmeta; Andrés Padilla, and Rick Esser. Decisions of February 15, 2019. Text consulted: copy of the original.

in the aforementioned judgment No. 6 of February 8, 2019, whereas the absolute nullity of the *Statute of the Transition to democracy* had been declared; also formulated, as already explained, without any process, case or controversy, that is, without trial or parties, without anyone having asked for it and, therefore, but in this case, based only, on its turn, in a previous ruling issued by the same Constitutional Chamber two years before (No. 2 of January 11, 2017), in which it had declared the National Assembly in “contempt,” and had provided that the “action of the National Assembly and anybody or individual contrary to what is decided here will be null and void.”<sup>109</sup>

All these “unilateral declarations,” are no more than that, not having according to the Venezuelan constitutional system of judicial review, any validity as judicial review on matters of judicial review, issued as has been mentioned, in the process of confrontation of the Constitutional Chamber of the Supreme Tribunal against the legitimately elected National Assembly, particularly after the parliamentary elections of December 2015, in which the Government lost the absolute majority control it used to have in such Assembly.<sup>110</sup>

This situation of confrontation, as also previously mentioned, was even denounced by the Secretary General of the Organization of American States in his Report of June 2016, in which he expressed how the world has “witnessed *a constant effort by the executive and judiciary powers to prevent or even invalidate the normal functioning of the National Assembly. The Executive Power has repeatedly used unconstitutional interventions against the legislature, with the collusion of the Constitutional Chamber of the Supreme Tribunal of Justice. The evidence is clear [...]* These examples clearly demonstrate the *lack of independence of the judiciary*. The tripartite system of democracy has failed, and the *judiciary has been co-opted by the executive power [...]*.”<sup>111</sup>

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<sup>109</sup> Available at <http://historico.tsj.gob.ve/decisiones/scon/enero/194891-02-11117-2017-17-0001.HTML>. See comments to this judgment in Allan R. Brewer-Carías, *La consolidación de la tiranía judicial en Venezuela*, Editorial Jurídica Venezolana, Caracas 2017, pp. 21, 81, 116 ff. and 131 ff.. Available at: <http://allanbrewercarias.com/wp-content/uploads/2017/06/ALLAN-BREWER-CARIAS-LA-CONSOLIDACION-DE-LA-TIRANIA-JUDICIAL-EN-VZLA-JUNIO-2017-FINAL.pdf> .

<sup>110</sup> See on the attempt of the Constitutional Chamber to suffocate the National Assembly in Allan R. Brewer-Carías, “Transition from Democracy to Tyranny through the Fraudulent Use of Democratic Institutions: The Case of Venezuela (1999-2018),” Lecture at the Clough Center for the Study of Constitutional Democracy, Boston College, Boston September 25, 2108. Available at: <http://allanbrewercarias.com/wp-content/uploads/2018/09/1218.-Brewer.-conf.-Transitiion-Democracy-to-Tyranny.-B.C.-2018.pdf>.

<sup>111</sup> Text of Secretary-General Luis Almagro’s statement to the Permanent Council of the OAS, June 23, 2016, available at: [http://www.el-nacional.com/politica/PresentacindelSecretarioGeneraldeOEAante\\_NACFIL20160623\\_0001.pdf](http://www.el-nacional.com/politica/PresentacindelSecretarioGeneraldeOEAante_NACFIL20160623_0001.pdf).

Now regarding the National Assembly February 12, 2019 Resolution, the Constitutional Chamber in its “declaration,” No, 39 dated February 14, 2019, after analyzing the legal status of PDVSA, in accordance with the Constitution (articles 302 and 303) and its own Bylaws, which regulates everything relating to the PDVSA Board of Directors, and its appointment by the President of the Republic, went on to state purely and simply that the above-mentioned Resolution was issued by the National Assembly “in pure and contumacious contempt of all the decisions of this Chamber as the highest instance of the constitutional jurisdiction of the Republic,” simply resolving, and without anyone having asked, without trial or process, that the Resolution “is null and void, without legal effect, as it emanates from the National Assembly in serious and contumacious contempt,” and it constitutes an “usurpation of the constitutional president of the Bolivarian Republic of Venezuela,” with the Resolution constituting “a flagrant and gross violation of the Constitutional Text and the socio-economic system of the Republic.” The same was decided by the Constitutional Chamber, also in an *ex-officio* declaration of unconstitutionality contained in decision No. 74 dated April 11, 2019, also purporting to declare null and void Decree No. 3 of President in Charge Juan Guaidó, of April 10, 2019, in which he amended his previous decision appointing the Ad-Hoc Board of Directors of PDVSA,<sup>112</sup> as well as the appointment of the special attorney of the Republic.

In its unilateral declaration No. 39, the Constitutional Chamber, without trial or process, usurping the competences that would fall within the commercial courts, in addition, went on to declare that the Resolution “contains appointments of authorities of the Board of Directors of PDVSA and some of its Affiliate Companies, which are null and void,” and usurping the competences that would fall within the criminal courts, stating that “those who appear there engage in crimes of usurpation of functions and other crimes of public action enshrined in the Venezuelan criminal legal order relating to corruption, organized crime, and terrorism, among others;” to then issuing various “precautionary measures” against the persons named in the Resolution, without them having any relation with constitutional processes as required by article 130 of the Organic Law of the Supreme Tribunal, such as those of the “prohibition of leaving the country,” “prohibition of selling and compromising assets,” and “blocking and freezing bank accounts.”

Again, as mentioned above with regard to the other unilateral and *ex officio* declarations issued by the Constitutional Chamber, in the current situation of confrontation of the Constitutional Chamber against the National Assembly, whereas the National Assembly has formally rejected and not recognized the decisions of the Supreme Tribunal of Justice, and in the existing national and international political situation, whereas the President of the National Assembly,

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<sup>112</sup> *Legislative Gazette* N° 6, dated April 10, 2019.

Juan Guaidó, has been recognized as the person in charge of the Presidency of the Republic, and the National Assembly recognized as the only legitimately elected body in the country, the legal and political inefficiency that the decisions of the Constitutional Chamber of the Supreme Tribunal of Justice may have is evident, in particular in those countries that have recognized the legitimacy of the National Assembly and the government of the Interim President, where such recognition implies that the decisions of the National Assembly have all their legal effects, as is precisely the case of the United States and Colombia, where as detailed above, the Courts have recognized Juan Guaidó as the legitimate President in charge of the Republic, and the Assembly as the legitimate representative of the people.

Moreover, the act of appointment of the *Ad-hoc Management Board of Petróleos de Venezuela S.A.* by the President in charge, Juan Guaidó, dated February 8, 2019, and modified by decree of the same Juan Guaidó, dated April 10, 2019, is an administrative act, and as such, is solely and exclusively subject to judicial review by the Administrative Political Chamber of the Supreme Tribunal of Justice (article 259, 266.5 of the Constitution) and not the Constitutional Chamber. Consequently, in accordance with article 26.5 of the Organic Law of the Supreme Tribunal of Justice, and article 23.5 of the Organic Law of Administrative Contentious Jurisdiction,<sup>113</sup> the Constitutional Chamber cannot adopt any ruling regarding such administrative acts; which is why rulings No. 39 of February 14, 2019, and No. 74 of April 11, 2019, mentioned above, in no case affects may affect the validity of the administrative acts issued by the President in charge, Juan Guaidó, appointing the directors of the Ad-hoc Management Board of Petróleos de Venezuela S.A., which also enjoy a presumption of validity until declared null and void by the competent courts.

With regard those decisions taken at the Shareholders' Meetings of the companies, *PDV Holding, Inc.*, *Citgo Holding, Inc.*, and *Citgo Petroleum Corporation*, they are corporate acts that are governed by the commercial law of the United States of America, and that, once recorded as they were in the records of the State of Delaware, enjoy the presumption of veracity and validity that gives them such registration, having all legal effects within the jurisdiction of application of the law of the United States of America. The control over such commercial corporate acts is only within the competence of the competent courts of the United States of America, being absolutely outside the scope of control by the courts of Venezuela, including the Supreme Tribunal of Justice.

Therefore, all the aforementioned appointment of the members of the *Ad-hoc Management Board* of Petróleos de Venezuela, S.A., made by the President of the National Assembly, Juan Guaidó Márquez, in his role as person in charge of the

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<sup>113</sup> *Official Gazette* No. 39.451, June 22, 2010.

Presidency of the Republic and within the framework of the *Status of Transition to Democracy* of February 5, 2019, should be regarded as a constitutional and legal appointment, which has all its legal effects; just as the appointments made by the *Ad-Hoc Management Board of Petróleos de Venezuela, S.A.*, by the members of the Board of Directors of the company *PDV Holding, Inc.*; the appointment made by the members of the latter company of the members of the Board of Directors of *Citgo Holding Inc.*; and the appointment made by the members of the latter company of the members of the Board of Directors of the company *Citgo Petroleum Corporation*, all located outside the territory of Venezuela, should also be considered as constitutional and legal, within the framework of the same Statute.

They are all acts that have been adopted and registered in the jurisdiction of the State of Delaware of the United States of America, having been adopted in accordance with what is provided in the *Status of Transition to Democracy* of February 15, 2019, sanctioned by the National Assembly and in accordance with the decisions of the President of the National Assembly, in charge of the Presidency of the Republic, Juan Guaidó, with the authorization of the former, they have to be considered as acts constitutionally and legally valid; being in addition, acts whose legitimacy has been recognized by the courts of North America.

#### **XIV. A NEW EX-OFFICIO DECISION OF THE CONSTITUTIONAL CHAMBER No. 74 OF APRIL 11, 2019, DECLARING THE NULLITY OF THE APPOINTMENT OF THE SPECIAL ATTORNEY OF THE REPUBLIC AND RATIFYING THE NULLITY OF THE APPOINTMENTS OF THE AD-HOC MANAGEMENT BOARD OF DIRECTORS OF PDVSA**

The Constitutional Chamber of the Supreme Tribunal on April 5, 2019, was requested by the representative of PDVSA in Venezuela to expand the precautionary measures that it had issued against the persons appointed in the Ad-Hoc Management Board of Directors of PDVSA and of its affiliates through decision No. 39 of February 14, 2019.

The Constitutional Chamber, based on the same arguments of the supposed contempt of the National Assembly regarding previous decisions of the Chamber issued since 2016, in decision No. 74 of April 11, 2019,<sup>114</sup> not only ratified and expanded the precautionary measures, according to what was requested, but also in an ex-officio way, without having being requested by anybody and without hearing anybody, proceed to ratified its prior purported declaration of the nullity of the appointment of the Ad-Hoc Management Board of Directors of PDVSA made by

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<sup>114</sup> Text consulted: copy of the original

Juan Guaidó, President in Charge of the republic, authorized by the National Assembly according to the prescription of the Statute for Transition.

But the Assembly did not stop here, and instead proceed to declare the nullity, *ex officio*, of the administrative act of the President in Charge of the Republic, through which, according to the provisions of the Statute for Transition, and duly authorized by the National Assembly on 28 of February of 2019, he appointed the special attorney in order to defend and represent the rights and interests of the Republic and all other Public Administration decentralized entities abroad.<sup>115</sup>

The Constitutional Chamber in said decision No 74 of April 11, 2017, although responding a petition of expansion of precautionary measures, proceed *ex-officio* to exercise powers of judicial review, declaring the absolute nullity of the appointment of the special attorney of the Republic, because it was issued by “an authority that was in a continuous and contumacious contempt” of many decisions of the Supreme Tribunal, issued since 2016; it was supposedly contrary to the Constitution and to the by-laws of PDVSA, and was issued based in an act considered null as is the Statute for Transition.

## **XV. THE RECOGNITION BY FOREIGN COURTS OF THE NATIONAL ASSEMBLY AND OF ITS PRESIDENT, JUAN GUAIDÓ, AS PRESIDENT IN CHARGE OF THE REPUBLIC, AND OF THEIR REPRESENTATIVES, AS THE LEGITIMATE REPRESENTATIVES OF VENEZUELA**

Nonetheless, in spite of the Constitutional Chamber effort to paralyze the process of transition towards democracy initiated by the National Assembly, the fact is that in the abovementioned national and international political situation, the National Assembly has been recognized abroad as the only legitimately elected body in the country, and its President, Juan Guaidó, has been recognized as the person in charge of the Presidency of the Republic, legitimately representing the National Executive.

In this context, the irrelevance of the declarations of the Constitutional Chamber of the Supreme Tribunal of Justice, that the National Assembly has formally rejected and formally not accepted, has been evident, in particular in the jurisdiction of the countries that have recognized them politically. Said recognition implies that the decisions of the National Assembly, National Assembly and the President in Charge, as the legitimate representatives of Venezuela; a situation that in the event of a

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<sup>115</sup> On February 26, 2019, José Ignacio Hernández was appointed special prosecutor of the Republic. In the brief filed by the representative of PDVSA before the Constitutional Chamber, it was reported that he had send requests before the International Center for Settlement of Investment Disputes ICSID, and the lawyers representing PDVSA, objecting the legitimacy of the representatives of the Republic.

conflict, have their full legal effects.

This, moreover, has already been decided by some Courts in the United States. For example, the *United States Court of Appeals for the District of Columbia*, in an Order issued on May 1, 2019, in the case of *Rusoro Mining Ltd. vs. Bolivarian Republic of Venezuela*. No. 18-7044, Doc. No. 1785518 (D.C. Cir. May 1, 2019), considering a request made to prevent the representatives of the government of Juan Guaidó, President of the National Assembly and, as such, President in charge of the Republic, in particular those appointed by the Special Attorney designated according to the provisions of the *Statute*, from being accepted to represent Venezuela in trial, accurately denied the request and accepted such representation, stating:

“The application includes a request by the administration on Nicolas Maduro to bar Juan Guaidó and his representatives from arguing this appeal on behalf of Venezuela. On January 23, 2019, the Executive Branch of the United States recognized Guaidó as Interim President of Venezuela. “What government is to be regarded here as representative of a foreign state is a political rather than a judicial question, and is to be determined by the political department of the government.” *Guaranty Trust Co. v. United States*, 304 U.S. 126, 137 (1938). The executive branch’s “action in recognizing a foreign government... is conclusive on all domestic courts, which are bound to accept that determination...” *Id.* At 138. Furthermore, “the rights of a sovereign state are vested in the state rather than in any particular government which may purport to represent it, and . . . suit in its behalf may be maintained in our courts only by that government which has been recognized by the political department of our government as the authorized government of the foreign state.” *Id.* At 137; see also *Pfizer v. Government of India*, 434 U.S. 308, 319-20 (It has long been established that only governments recognized by the United States . . . are entitled to access to our courts.”<sup>116</sup>

This decision has been ratified, inter alia, by the *United States District Court for the District of Columbia*, in a *Memorandum of Opinion* issued in the case *OI European Group B.V., vs. Bolivarian Republic of Venezuela*, Civil Action No. 16-1533 (ABJ), 21 May 2019.<sup>117</sup>

In other cases, and in the same sense, the Courts have accepted as representatives of *Petróleos de Venezuela S.A.* those appointed in accordance with the provisions of the *Statute of Transition* towards democracy adopted by the National Assembly, as is the case with the decision issued by the *United States District Court Of New York*, in the case *Red Tree Investments, LLC v. Petróleos de Venezuela S.A.*, Order 19-cv-2519 AJN, May 6, 2019.<sup>118</sup>

The same situation can be observed, for instance, in Colombia, were the Supreme Court of Justice, in Criminal Cassation Chamber, in a ruling of June 12, 2019, due

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<sup>116</sup> Available at <https://www.italaw.com/sites/default/files/case-documents/italaw10521.pdf>

<sup>117</sup> Available at <https://www.italaw.com/sites/default/files/case-documents/italaw10546.pdf>

<sup>118</sup> Available at <https://www.courtlistener.com/recap/gov.uscourts.nysd.512231/gov.uscourts.nysd.512231.33.0.pdf> at

to the fact that on January 23, 2019 “the President of Colombia has recognized the President of the National Assembly, Juan Guaidó, as Interim President of the Bolivarian Republic of Venezuela,” and that on February 23, 2019, it “received the credential letters of Humberto Calderón Berti, as Ambassador of Venezuela, appointed by the President of such State, Juan Guaidó;” the Court decided to terminate the extradition procedure in the case, initiated against Suyin Navarrete Balza at the request of the Venezuelan government in September 2018, due to the fact that the new Ambassador appointed by the Interim Presidente, Juan Guaidó, Humberto Calderón Berti, on May 15, 2019, requested to leave with any effect the extradition procedure, because it was requested by some one that “was usurping the functions of the Prosecutor General of the republic,” and that had “used the Venezuelan judicial system in order to initiate a political persecution against such person.”<sup>119</sup> Accordingly, the Supreme Court of Justice of Colombia formally recognized the Ambassador appointed by the Interim President of Venezuela, Juan Guaidó as the legitimate representative of that country in Colombia.

On the other hand, regarding the unilateral and ex-officio declarations of the Constitutional Chamber of the Supreme Tribunal of Venezuela, particularly the “declarations” No. 3 of January 21, 2019; No. 6 of February 8, 2019; No 39 of February 14, 2019 and No. 74 of April 11, 2019, they have been rejected and ignored in the country. And this rejection has occurred, first, because they have being issued by a partisan tribunal, acting in collusion with the Executive, and without autonomy and independence;<sup>120</sup> and second, because they have been issued against the provisions of the Constitution and of the Organic Law of the same Tribunal, that as already mentioned, prohibits the Tribunal on matters of concentrated judicial review decisions, to issue rulings ex-officio, without a case or controversy, that is, without a proper and constitutional judicial review process, in which none of the most elemental due process of law rules have been respected.

These sort of decisions, on the other hand, cannot be recognized in other foreign jurisdictions, like for instance, in the United States, where in order for a court to recognize as a comity a foreign judicial ruling, as has been decided by the US Supreme Court since 1895, the courts must assure that the foreign judgement:

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<sup>119</sup> See the text, *Case AP2269-2019. Radicación No. 5425*, in <http://www.cortesuprema.gov.co/corte/wp-content/uploads/2019/06/AP2269-2019.pdf>

<sup>120</sup> See, for instance, all the declarations and pronunciations of the National Academy of Political and Social Sciences on these matters of lack of autonomy and independence of the Judiciary, in the book: Academia de Ciencias Políticas y Sociales, *Doctrina Académica Institucional. Instrumento de reinstitucionalización democrática. Pronunciamientos 2012-2019*, Tomo II, Editorial Jurídica Venezolana, caracas 2019, pp. 27 ff.; 29 ff; 31 ff.; 85 ff.; 138 ff.;175 ff. 190 ff. 217 ff.; 222 ff.; ff. Available at: <http://allanbrewercarias.com/wp-content/uploads/2019/07/libro.-PRONUNCIAMIENTOS-DE-LA-ACADEMIA-19-6-2019-DEFINITIVO.pdf>

“appears to have been rendered by a *competent court, having jurisdiction of the cause and of the parties, and upon due allegations and proofs and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and formal record.*”<sup>121</sup>

New York, July 17, 2019

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<sup>121</sup> See US Supreme Court, *Hilton v. Guyot*, 159 U.S. 113 (1895). Available at: <https://supreme.justia.com/cases/federal/us/159/113/>