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REPORT No. 312/21
PETITION 961-10
REPORT ON ADMISSIBILITY

NELSON J. MEZERHANE GOSEN
VENEZUELA

Approved electronically by the Commission on November 2, 2021.

Cite as: IACHR, Report No. 312/21. Petition 961-10 Admissibility. Nelson J. Mezerhane Gosen. Venezuela. November 2, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Asdrúbal Aguiar
Alleged victim:	Nelson J. Mezerhane Gosen
State denounced:	Bolivarian Republic of Venezuela
Rights invoked:	Articles 7 (right to personal liberty), 8 (right to a fair trial), 11 (right to privacy), 13 (freedom of thought and expression), and 25.1 (judicial protection) of the American Convention on Human Rights ¹

II. PROCEDURE BEFORE THE IACHR²

Reception of petition:	June 29, 2010
Additional information received during initial review	Aug 19, 2010; September 7 and 20, 2010; January 14, 2011; March 16, 2011; July 26, 2011; August 4 and 8, 2011; February 6, 2012; April 12 and 20, 2012; May 9 and 22, 2012; August 31, 2012; September 17, 2012; January 25, 2013; February 28, 2013; March 13 and 20, 2013; April 5 and 16, 2013; September 9, 2013; December 18, 2013, January 5, 2018; October 7, 2018; March 31, 2019; July 21, 2019; June 12, 2020; October 8, 2020.
Notification of the petition to the State:	March 24, 2017
State's first response:	May 4, 2018
Additional observations from the petitioner	July 10, 2018

III. COMPETENCE

Competence Ratione personae:	Yes
Competence Ratione loci:	Yes
Competence Ratione temporis:	Yes
Competence Ratione materiae:	Yes, American Convention (ratification instrument deposited on August 9, 1977)

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International res judicata:	No
Rights declared admissible	Articles 7 (right to personal liberty), 8 (right to a fair trial), 11 (right to privacy), 13 (freedom of thought and expression), and 25.1 (judicial protection) of the American Convention in relation to its article 1.1 (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of section VI
Timeliness of the petition:	Yes, in the terms of section VI

V. SUMMARY OF ALLEGED FACTS

1. The petitioner turns to the IACHR so that it declares Venezuela's international responsibility for the violation of the human rights of Nelson José Mezerhane Gosen, by virtue of the alleged political persecution to which he was subjected in his capacity as co-founder, principal director, and shareholder of the television communication medium Globovisión. This persecution would have had the purpose of silencing the Globovisión television station, given its independent editorial line and critical of the then government of Hugo

¹ Hereinafter "the American Convention" or "the Convention".

² The observations presented by each party were duly transmitted to the opposing party.

Chávez. This would have materialized, mainly, in the arbitrary opening of three judicial processes against him, which implied the progressive confiscation of all his patrimonial assets and property, the deprivation of his freedom, as well as in successive public statements made by the president of the Republic and several other senior public officials against Mr. Mezerhane. The petitioner highlights that the common denominator of the facts that give rise to this complaint have been the serious attacks on due process, effective judicial protection, and freedom of expression.

2. Regarding the first judicial proceeding, the petitioner reports that on November 4, 2005, the 34th Court of First Instance for Criminal Matters in Control Functions issued, at the request of the Public Ministry, an arrest warrant against Mr. Mezerhane, considering him as one of the intellectual authors of the murder of prosecutor Danilo Anderson, which occurred in November 2004. As a result of this order, two web pages that support the government published a photo of Mr. Mezerhane with expressions such as "don't let him escape." and "wanted", accusing him of being one of the masterminds of the murder. The then vice president, José Vicente Rangel, also publicly urged that the alleged victim surrender to justice. On November 14, Mr. Mezerhane voluntarily appeared before the Control Court.

3. The petitioner narrates a series of serious irregularities in the framework of this process, which has had serious consequences for the personal life and the economic and commercial activity of Mr. Mezerhane, and which would have constituted a form of persecution, product of a State policy.

4. In the first place, the petitioner maintains that the guarantee of a natural judge was violated in this process. This, given that in November 2004 the Judicial Commission of the Supreme Court of Justice qualified -without trial- the murder of the prosecutor as a terrorist act, through Resolution 2004-0217, creating a special jurisdiction to hear the case of Mr. Mezerhane for crimes linked to terrorism. The petitioner alleges that this *ad hoc* jurisdiction does not take place through rules of legal rank and violates Mr. Mezerhane's right to the natural judge by submitting him to a jurisdiction created after the events. Likewise, the petitioner indicates that the prosecutors in the case recused the judge who was in charge of the case, and the Sixth Judge of First Instance in Control Functions was assigned to hear it. The petitioner states that it was an illegal distribution, since the third court to which jurisdiction is granted in matters of terrorism was not present. On November 16, 2005, at the presentation hearing, the recently appointed judge decided to maintain Mr. Mezerhane's pre-trial detention, even in the absence of evidence regarding his alleged intellectual participation in the crime.

5. According to the petitioner, the request for pre-trial detention for Mr. Mezerhane by the Public Ministry was based solely on elements that certified the death of the prosecutor, on an interchange of calls between two citizens, and on the statement of a witness, promoted by the Public Ministry as advance evidence. The Attorney General of the Republic affirmed that a Colombian witness had addressed him directly, and allowed him to find the intellectual authors. However, the petitioner affirms that it was proven that the alleged witness never appeared to testify to the Court, and that it was a "deliberate fraudulent setup attempted by the same Venezuelan Public Ministry" and that together with the Judge they had prepared several different records on the same act. When warned about the insufficiency of the witness by other prosecutors, the Attorney General would have stated: "Don't you worry, this case is piped to the Supreme Court of Justice." Therefore, the petitioner maintains that the order of pre-trial detention failed to comply with the requirement of article 250 section 2 of the Organic Code of Criminal Procedure, which requires the Public Ministry to prove well-founded elements of conviction.

6. In the framework of this process, the petitioner argues that the alleged victim was unlawfully deprived of his liberty in 2005 at the headquarters of the former Directorate of Intelligence and Prevention Services (DISIP), now known as the Bolivarian Intelligence Service. (SEBIN), for 45 days. The petitioner indicates that Mr. Mezerhane's defense filed an appeal against the decision that decreed his pre-trial detention and that on December 8, 2005, the Seventh Chamber of the Court of Appeals of the Criminal Judicial Circuit of the Caracas Metropolitan Area ratified the measure of pre-trial detention decreed against him, for the alleged commission of the crime of homicide carried out with treachery and by fire as a determiner (intellectual author). Faced with this decision, on December 16, 2005, the petitioner filed a constitutional *amparo* action before the Constitutional Chamber of the Supreme Court of Justice for alleged violations of Mr. Mezerhane's rights to personal liberty, to defense, and to be heard by a natural judge.

7. Likewise, with respect to the aforementioned witness presented in the case, the petitioner indicates that it presented before the Constitutional Chamber of the Supreme Court, the prosecution offices, and the court of the case certifications issued by the Criminal Court of Santa Marta, Colombia, which evidence that the alleged witness from the Public Ministry was imprisoned from August 22 to December 18, 2002, so he could not have witnessed the alleged meeting held in the Darien jungle in Panama between September 3 and 6, 2003, where the crime would have been forged, as the witness points out. Finally, in 2018, the Public Ministry charged the forging of records on the witness to former prosecutor Gilberto Landaeta, one of the investigators in the murder of prosecutor Danilo Anderson.

8. The petitioner alleges that on December 20, 2005, the Sixth Control Court substituted the measure of pre-trial detention by alternative precautionary measures in a number greater than those legally contemplated, and that it included, for example, the prohibition leaving the country and the obligation to appear regularly before the judge. On January 23, 2006, the same court prohibited the Venezuelan media from referring to or making public any information related to the aforementioned witness, which they consider "a serious violation of the right to information in every democracy."

9. Subsequently, on March 10, 2006, the defense of the alleged victim proceeded to challenge the judge in charge of the Sixth Court on the grounds that there would be serious reasons that would compromise their impartiality and for having mediated without any justification an extension of the substitute precautionary measures decreed in December 2005, which included a prohibition to move outside the jurisdictional limits of the Court. The petitioner affirms that this challenge, as well as it would happen with all the remedies and actions exercised by the defense of the alleged victim, was rejected.

10. According to the petitioner, six months after the alleged victim was identified as the alleged mastermind of the murder of the Prosecutor, on May 23, 2006, his defense requested the Sixth Control Judge to set a reasonable period of time so that the Public Ministry concluded the investigation against him. It indicates that the Court set a term of sixty days, but after this term the Public Ministry requested an extension, which was granted for sixty days. According to the petitioner, after this period, in accordance with article 314 of the Organic Code of Criminal Procedure, the Public Ministry had to present the accusation or request the dismissal. If it did not do so, it informs that, according to said regulations, the judge had to order the archiving of the proceedings. In addition, on September 26, 2006, on the occasion of filing a third motion to the constitutional *amparo* action, Mr. Mezerhane's defense informed the Constitutional Chamber of the Supreme Court of Justice the alleged violations against him, considering, among others, that the Public Ministry would be breaching the duty of probity by "unduly delaying the decree of a pending conclusive act", as well as "giving value to a false act such as the supposed statement [of the alleged witness]".

11. The petitioner indicates that on December 13, 2006, once the extension granted to the Public Ministry had expired, as well as the deadline for it to present the accusation or dismissal, the Attorney General, through a televised intervention, announced the decree of a conclusive act within of the process against the alleged victim, and asked the judge to approve his decree, as Attorney General, of a "prosecution archive." The petitioning party affirms that the foregoing was contrary to the regulations, and that it sought to keep Mr. Mezerhane subject to justice as a defendant, in total uncertainty and legal insecurity since there is the possibility of ordering the reopening of the investigation when new ones appear elements of conviction, for reasons of evident and manifest retaliation for being one of Globovisión's shareholders. The petitioner indicates that the only consequence in favor of the accused is the cessation of the precautionary measures. Likewise, it observes that the Public Ministry admitted at the press conference that there were no elements to accuse Mr. Mezerhane, but refused to request the dismissal, alleging that closing an investigation at a crucial moment would be "irresponsible" and "unconstitutional", since it would stimulate impunity.

12. In light of the foregoing, the petitioner reports that Mr. Mezerhane's defense filed before the judge the reasons for the inadmissibility of said "prosecution archive", and that on February 13, 2007 the Control judge declared said archive to be admissible, considering the archive as unconstitutional Article 314 of the Constitution that obligated the Public Ministry to present the accusation or request the dismissal of the accused. The petitioner alleges that there is no appeal against Mr. Mezerhane, and that on March 14, 2007, his defense filed an extraordinary appeal for review before the Constitutional Chamber of the Supreme Court of Justice, which declared it inadmissible on May 4, 2007. The petitioner states that successively, on March 28, 2007 it requested the Criminal Cassation Chamber of the Supreme Court of Justice to interpret the content of

article 315 of the Organic Code of Criminal Procedure, particularly in relation to how long the "prosecution archive" as a measure can be maintained against the alleged victim. The petitioner alleges that the appeal was admitted, but to date no decision has been verified. Likewise, it adds that on May 28, 2007, it requested before the 30th, 38th, 39th and 53rd Prosecutors of the Public Ministry with National Competence that the dismissal of the case be decreed, having passed more than six months from the date on which his "prosecution archive". The petitioner indicates that he has never had a response to this request.

13. Regarding the amparo action before the Constitutional Chamber of the Supreme Court of Justice to challenge the arrest warrant, the petitioner states that it was only resolved in October 2007, two years after it was filed, and it was declared inadmissible. The petitioner indicates that the Chamber argued that in February 2007 the Sixth Court of First Instance agreed to cease all the measures of personal coercion and assurance imposed by the aforementioned court on Mr. Mezerhane. In this sense, it concluded that with said decision the alleged violations against Mr. Mezerhane ceased, causing the amparo action to lose its validity. Despite the foregoing, the petitioner alleges that the decision of the Sixth Control Judge agreed to "a kind of illegal and unconstitutional "prosecution archive" in the course of the process and at the request of the Public Ministry", keeping the case against the alleged victim open and without solution of continuity.

14. Regarding the second proceeding, the petitioner indicates that on November 22, 2004 an investigation was opened for an alleged environmental crime which would compromise the criminal responsibility of the alleged victim. The petitioner explains that Mr. Mezerhane is a shareholder and/or legal representative of various companies dedicated to national tourism development, which had been commissioned by the State for the recovery and operation of various abandoned establishments, which required large investments. On November 22, 2014, a few days after the murder of the prosecutor, the 5th Prosecutor's Office of the Public Ministry with Environmental Competence at the National Level issued a criminal investigation order against the company Inversora Turística Caracas, for alleged violation of environmental criminal legislation in the development and execution of activities in the El Ávila National Park.

15. Mr. Mezerhane was charged with committing environmental crimes on August 11, 2005, three months after his appointment as the intellectual author of the prosecutor's murder, and he was not informed about the circumstances of time, place, and manner of the commission of his alleged crime, nor of the facts or information that the prosecution's investigation found. On October 16, 2005, the Twenty-fifth Control Judge of the Caracas Metropolitan Area Criminal Circuit ordered that Mr. Mezerhane be brought to trial. Subsequently, Mr. Mezerhane requested to be heard by the Criminal Chamber of the Supreme Court of Justice, alleging the violation of his constitutional rights and the rights to defense and due process, as well as effective judicial protection. According to the petitioners, the then president of the Criminal Chamber of the Supreme Court of Justice had concealed the sentence favoring the alleged victim, which had already been approved and signed by all the members of the Criminal Chamber in November 2009, and a different one was issued that changed said criterion and was published on August 17, 2010, without having been drafted yet.

16. Although the Twelfth Trial Judge decided to release Mr. Mezerhane from all criminal responsibility in the environmental matter, on August 13, 2009, the judge was dismissed and her decision was reversed by the 9th Chamber of the Circuit Court of Appeals of the Metropolitan Area of Caracas, which ordered a new trial. Likewise, in 2007, the tourism operation contracts entered into by Mr. Mezerhane's companies with the State were unilaterally terminated or prevented from being carried out.

17. Regarding the third proceeding, the petitioner reports that on December 19, 2009, then-President Chávez publicly ordered the then Attorney General of the Republic to criminally investigate Mr. Mezerhane, after he testified and reported to the press about the campaign that officials and journalists in the service of the government had launched against the Federal Bank, of which he was a shareholder and president. The petitioner affirms that they tried to bankrupt the Bank believing that Mr. Mezerhane was the owner of Globovisión, and that, therefore, different ministers of the State let Mr. Mezerhane know that he had to sell the television channel "to overcome its difficulties". The petitioner also maintains that when not accepting the ultimatum of then President Chávez to vary Globovisión's editorial line in May 2010, at the president's request the Federal Bank was intervened on June 14, 2010 behind closed doors, and the Public Ministry requested precautionary measures against Mr. Mezerhane, that included the prohibition to leave the country and the prohibition to alienate and encumber their assets. The State ordered the liquidation of the Federal Bank, under false assumptions and arguments related to an alleged financial crisis and its illiquidity, despite the fact that

the evaluation of the Superintendency of Banks in that period indicated that the bank had equity stability and liquidity. Likewise, the State ordered the intervention and liquidation of the commercial company Sindicato Ávila, whose shares were the direct property of Mr. Mezerhane. This company owned 20% of the shares of Corpomedios, the company that owns Globovisión. This, according to the petitioner, shows that the purpose was government control of Globovisión. The petitioner affirms that the Bank's assets, as well as Globovisión's shares, were not auctioned under the law, but "awarded directly and virtually free of charge."

18. According to the petitioner, on June 14, 2010, the Public Ministry began criminal investigations related to the intervention of the Federal Bank at the request of the Superintendency of Banks, for alleged banking offenses. The petitioner reports that Mr. Mezerhane's defense filed a lawsuit that requested the annulment of the intervention act and that, among others, an arrest warrant was issued against him within the framework of this process, as well as that his extradition was requested. In this regard, the petitioner indicates that the government promoted a popular collection of signatures requesting the extradition of the alleged victim, as well as indicated to the clients of the Federal Bank that, in order for them to collect their deposits, they should sign the public request for extradition. According to the petitioner, the alleged victim was not formally charged in the file that motivated his request for extradition, he was not informed about the facts investigated and that allegedly directed against him, nor did his lawyers have access to investigations despite being accredited by a power of attorney granted.

19. Finally, the petitioner indicates that on September 5, 2012, the INTERPOL Files Commission decided, after the claim of the alleged victim and the request of the Venezuelan State for a red alert for his arrest, that the case was predominantly of a political nature and was therefore within the scope of article 3 of the INTERPOL Constitution³. Therefore, the petitioner reports that the aforementioned international organization refused to include information about Mr. Mezerhane in its files. The petitioner alleges that, for the same reasons, Mr. Mezerhane was granted political asylum by the United States on November 25, 2013. The petitioner claims that this decision is an important recognition of Mr. Mezerhane's status as a persecuted individual.

20. The petitioner reports that from the beginning of the alleged persecution against Mr. Mezerhane there has been a systematic campaign of discredit, of advocacy for hatred and violence through a speech of insults and insults against him. The petitioner reports that this speech would be sustained and broadcast on government television, Channel 8, and by journalists in the service of the government. It refers, for example, that the alleged victim and other directors of independent social media were identified in 2008 by then-President Chávez as allegedly responsible for an "assassination" attempt against him, which was branded as a terrorist act by this president, as well as exposed him to hatred and "public derision" during a parliamentary election campaign, "targeted him for being a capitalist." Likewise, the petitioner reports that then-President Chávez accused the alleged victim of being an "enemy of the revolution" and "banker owner of the Globovisión television station." The petitioner points out that personally and over the phone, then-President Chávez gave Mr. Mezerhane an ultimatum by saying: "Either fix GLOBOVISION for me or face the consequences!"

21. The petitioner alleges that Globovisión is subjected to sustained harassment by the government for political reasons and that the attacks suffered by its executives and journalists led to the Perozo et al. Case, in which the Inter-American Court declared the responsibility of the Venezuelan State. Regarding Mr. Mezerhane's situation in particular, the petitioner indicates that according to the sworn statement by the President of the Criminal Chamber of the Supreme Court of Justice at the time, he was persecuted "[for] eminently political reasons, determined by the government's desire to silence the social communication media, in particular the medium of which he was a shareholder, GLOBOVISIÓN". The petitioner affirms that because Mr. Mezerhane did not respond to official pressure and did not accept to vary the independent editorial line of the medium, he was accused before three different judicial instances for crimes that he has not committed, and they progressively confiscated all his patrimonial assets and properties.

22. Regarding the exhaustion of domestic remedies, the petitioner states that in the present petition the three exceptions provided for the exhaustion of domestic remedies apply.

³ Article 3 of the INTERPOL Constitution: "The Organization is strictly prohibited from any activity or intervention in matters or matters of a political, military, religious or racial nature." Available at: <https://www.interpol.int/en/Resources/Documents>

23. The petitioner alleges that the three criminal proceedings initiated against Mr. Mezerhane correspond to crimes of public action, in which the procedural impulse corresponds to the State and which have not been resolved to date. It alleges that the fact that a sentence has not yet been handed down is precisely one of the grievances that has forced them to resort to judicial protection. Regarding the first proceeding against Mr. Mezerhane, the petitioner indicates that, although the events occurred in 2004, the investigation is at a standstill and no sentence has been handed down. Regarding the criminal process for an alleged environmental crime, the petitioner affirms that, as in the previous case, the investigation that began in 2004 is paralyzed and no sentence has been handed down. Regarding the process related to alleged illegal banking started in 2010, the petitioner alleges that it has not been concluded either.

24. On the other hand, regarding the argument of the Venezuelan State to condition the processing of the criminal proceedings on Mr. Mezerhane personally appearing in said proceedings, the petitioner alleges that the foregoing would obligate the alleged victim to expose himself to the grievances and violations of human rights that he is denouncing, to submit to the persecution of which he is the object and to the inhuman and degrading treatment that implies confinement in prisons without natural light, without ventilation and without adequate hygiene conditions. The petitioner also maintains that there is nothing that Mr. Mezerhane's physical presence can add to what is an exclusive responsibility of the State, that is, to investigate criminal acts, process it in the corresponding courts and issue a judgment. The petitioner claims that a remedy that forces the alleged victim to submit to illegal and arbitrary detention is not an effective remedy. On this point, the petitioner points out that, according to the jurisprudence of the Court, the exhaustion of domestic remedies cannot be demanded from anyone who feels a well-founded fear that the exercise of said remedies could endanger the exercise of their rights. In addition, it maintains that the IACHR has established that the petitioner does not have to exhaust domestic remedies at the cost of putting their life or physical integrity at risk, due to an official policy, a police practice, or an environment of generalized hostility against that individual or the group to which they belong.

25. Likewise, the petitioner alleges that the State has not indicated how the culmination of these three criminal proceedings that had the purpose of persecuting and punishing a political adversary and depriving him of control of a social communication medium, could constitute an adequate and effective remedy that would have allowed him to end the political persecution against Mr. Mezerhane, avoid the confiscation of his assets, and give him back control of the editorial line of a media outlet he owns. The petitioner also indicates that the remedies invoked by the State of Venezuela are neither adequate nor effective to resolve the complaint raised in this petition. The petitioner alleges that these remedies could not limit the political persecution that made use of "surrealist" accusations made before courts lacking independence and impartiality, which served as an instrument to carry out the political persecution that is denounced in the petition. Then, it indicates that there are no jurisdictional remedies available to exhaust.

26. Finally, the petitioner alleges that there is no criminal due process in Venezuela given the lack of independence of the judiciary. The petitioner highlights that the IACHR has repeatedly pointed out the deterioration of democratic institutions and the rule of law, which has repercussions on the exercise of citizens' human rights. On this point, it enunciates numerous pronouncements of the IACHR and other international organizations denouncing this situation. It highlights that it is a country where prosecutors and judges are provisional, and where those who decide independently and impartially are dismissed for not following superior guidelines. The petitioner cites a sworn statement before a US court by the then president of the Criminal Chamber of the Supreme Court of Justice, who confirmed the total and unscrupulous absence of independence of the Judicial Power in Venezuela, noting that the consequence of acting contrary to the instructions Presidential for a judge was impeachment and in some cases jail. Likewise, it cites a statement by a magistrate of the Supreme Court of Justice in February 2011 in which it affirms that said court and the rest of the country's courts should "apply the laws severely to punish conducts or redirect conducts that are detrimental to the construction of socialism".

27. The petitioner maintains that the facts of this case occur in the context of the absence of separation and independence of the public powers, as observed by the IACHR in the report "Democracy and Human Rights in Venezuela". It indicates that the alleged victim did not have judicial guarantees in any of the three proceedings against him, that he had to remain in pre-trial detention - despite the fact that the norms indicate that pre-trial detention is the exception and not the rule - that the Prosecutor General of the Republic prepared and presented a false witness to accuse him of the murder of the prosecutor, and that the judge who dared to rule in his favor was dismissed. It maintains that in this case there has been no due process of law, that

the alleged victim did not have the opportunity to defend himself and be heard by an independent and impartial court, and that any decision taken by the Venezuelan courts in this case will not be credible or the result of a regular process.

28. For its part, the State alleges that the alleged victim has not exhausted domestic remedies and that in the instant case the exceptions to the exhaustion of domestic remedies provided for in Article 31.2 of the IACHR Rules of Procedure do not apply. Likewise, it alleges that in its brief the alleged victim did not include any reference to the judicial remedies attempted to previously exhaust in the domestic jurisdiction, before resorting to the inter-American system. On the other hand, the Venezuelan State indicates that this petition is similar to the case “Brewer Carías v. Venezuela,” in which the Inter-American Court of Human Rights declared the preliminary objection filed by Venezuela valid, considering that domestic remedies were not exhausted.

29. The State also indicates that this petition is related to various criminal proceedings initiated against the alleged victim and that they are still ongoing. In this sense, it points out the existence of a first judicial process initiated after the murder of a Public Prosecutor of the Public Ministry, which occurred in 2004 and the other two related to irregularities allegedly occurred in companies or commercial companies directed and/or presided over by the alleged victim. It states that despite these ongoing processes, the alleged victim left Venezuela on March 6, 2010, without having returned to the country to date; and that is why these processes are suspended, in view of the fact that in the country the trial *in absentia* is prohibited. Additionally, it indicates that on August 26, 2010, the Criminal Cassation Chamber of the Supreme Court of Justice declared admissible the request for active extradition of the alleged victim to the United States Government in order to ensure his submission to the Venezuelan justice. Finally, it informs that “[i]n the alleged denial that some type [of] impairment of his human rights had indeed occurred, it could still be resolved through the different ordinary judicial remedies that could eventually be exercised.”

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

30. The Venezuelan State alleges that the alleged victim did not exhaust domestic remedies since the criminal proceedings against him are still ongoing. It also alleges that the exceptions to the exhaustion of domestic remedies provided for in Article 31.2 of the IACHR Rules of Procedure do not apply to this petition. On the other hand, it states that despite these ongoing processes, Mr. Mezerhane left the country on March 6, 2010, without having returned to date. Due to the foregoing, it alleges that these processes are suspended, since in Venezuela trial *in absentia* is prohibited.

31. On the other hand, the alleged victim reported that, within the framework of the three criminal proceedings that were reportedly pursued against him, different remedies were filed in order to correct the violations allegedly committed against him, and that, to date, these proceedings have not been concluded and their respective sentences have not been handed down. In this regard, the petitioner pointed out that in the two processes started in 2004 the investigations would be paralyzed, and in the third process started in 2010 there would not be a conclusive sentence either. The petitioner affirmed that the foregoing is precisely one of the grievances that have forced Mr. Mezerhane to resort to judicial protection, as well it argued that the three criminal proceedings correspond to crimes of public action in which the procedural impulse would correspond to the State and that there is nothing to Mr. Mezerhane’s presence may add. Likewise, the petitioner argued that in Venezuela there is no criminal due process given the lack of independence of the judiciary, and that a judicial remedy cannot be expected to be effective when the order to prosecute Mr. Mezerhane came from the President of the Republic, the Attorney General of the Republic himself fabricated evidence to accuse Mezerhane of the prosecutor’s murder, a judge who ruled in his favor was dismissed, and none of his judicial guarantees were respected.

32. The IACHR recalls that the invocation of the exceptions to the rule of exhaustion of domestic remedies provided for in Article 46.2 of the American Convention is closely linked to the determination of possible violations of certain rights enshrined therein, such as the guarantees of access to justice and the right to effective judicial protection. However, Article 46.2, by its nature and purpose, is a norm with autonomous content compared to the substantive norms of the American Convention. Therefore, the determination of whether the exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question must be carried out prior and separately from the analysis of the merits of the matter, since it depends on a different standard of appreciation used to determine the possible violation of Articles 8 and 25 of the

Convention. The Commission recalls that the criterion for evaluating the admissibility phase differs from that used to rule on the merits of a petition; The Commission must carry out a *prima facie* evaluation to determine whether the petition establishes the basis for the violation, possible or potential, of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. This determination on the characterization of violations of the American Convention constitutes a primary analysis, which does not imply prejudging the merits of the matter⁴. This means that in the present case, the analysis of judicial independence and due process of law in Venezuela must be the subject of a substantive ruling in the merits phase of this proceeding, since those are the claims raised by the petitioners; but at the same time, these matters must be examined under the criteria of a *a priori* evaluation in this report, exclusively for the purposes of determining the admissibility of the petition, without prejudging its merits.

33. In this regard, from the time of the events raised in the petition to the present, the IACHR has repeatedly verified the lack of judicial independence in Venezuela. This happened, among others: in the 2004 Annual Report⁵, in the 2005 Annual Report⁶, in the 2006 Annual Report⁷, in the 2007 Annual Report⁸, (i) in the 2008 Annual Report⁹, (ii) in the Report 2009 Annual Report¹⁰, (iii) in the 2010 Annual Report¹¹, (iv) in the 2011 Annual Report¹², (v) in the 2012 Annual Report¹³, (vi) in the 2013 Annual Report¹⁴, (vii) in the Annual Report 2014 Annual Report¹⁵, (viii) in the 2015 Annual Report¹⁶, (ix) in the 2016 Annual Report¹⁷, (x) in the 2017 Annual Report¹⁸, (xi) in the 2018 Annual Report (xii)¹⁹, in the Annual Report 2019²⁰, and in the 2020 Annual Report. The subject was also examined in detail in (xiii) the Report on the Human Rights Situation in Venezuela of 2017²¹ and (xiv) the Report on Democracy and Human Rights in Venezuela of 2009²².

34. The findings of the IACHR in each of these reports have been meticulous and conclusive, in such a way that, for the purposes of this admissibility examination, it can be concluded - without implying any pronouncement on the merits of this case - that In Venezuela, in principle, due legal process is not guaranteed to those who are prosecuted by the administration of justice. In particular, when it is evidenced, as in the present case, that there is an interest directed from the highest levels of government to use criminal law as a weapon of persecution against a person. This overwhelming accumulation of information verified by the IACHR regarding the lack of judicial independence in Venezuela, particularly in cases like the present one, supports the exceptional fact that the exception of Article 46.1.a) is being applied to a case, such as the present one, in which domestic remedies have not been formally exhausted due to the absence of the alleged victim from the State in which he is being prosecuted, which ordinarily, outside of these circumstances, would, in principle, result in the inadmissibility of the petition for failure to exhaust domestic remedies²³.

35. For this reason, the IACHR declares the exception to the duty to exhaust domestic remedies set forth in Article 46.2.a) of the American Convention applicable. On the other hand, the Commission concludes that the petition has been presented within a reasonable period of time. This, given that the events have taken place since 2004, the petition was received in 2010, and its effects would extend to the present. Therefore, in view of the context and the characteristics of the facts included in this report, the Commission considers that

⁴ IACHR, Report No. 69/08, Petition 681-00. Admissibility. Guillermo Patricio Lynn. Argentina. October 16, 2008, para. 48.

⁵ Chapter IV, paragraphs 138-207

⁶ Chapter IV, paragraphs 214-370.

⁷ Chapter IV, paragraphs 138-252.

⁸ Chapter IV, paragraphs 221- 315.

⁹ Chapter IV, paragraphs 391-403.

¹⁰ Chapter IV, paragraphs 472-483.

¹¹ Chapter IV, paragraphs 615-649.

¹² Chapter IV, paragraphs 447-477.

¹³ Chapter IV, paragraphs 464-509.

¹⁴ Chapter IV, paragraphs 632-660.

¹⁵ Chapter IV, paragraphs 536-566.

¹⁶ Chapter IV, paragraphs 257-281.

¹⁷ Chapter IV, paragraphs 57-87.

¹⁸ Chapter IV, paragraphs 13-21.

¹⁹ Chapter IV.B, paragraphs 30-57.

²⁰ Chapter IV.B, paragraphs 30-48.

²¹ "Democratic Institutionalality, Rule of Law and Human Rights in Venezuela", pages 45 and following.

²² Part III, paragraphs 180 to 339.

²³ IACHR, Report No. 8/21, Petition 992-10. Admissibility. Guillermo Zuloaga Núñez. Venezuela. January 10, 2021, para. 17.

the petition was presented within a reasonable period of time and that the admissibility requirement regarding the period of presentation must be considered satisfied.

VII. COLORABLE CLAIM

36. The petitioner has presented numerous and detailed arguments on the factual and legal reasons why it considers that the opening of three criminal proceedings against Mr. Mezerhane, the arbitrary deprivation of his liberty, the violation of judicial guarantees and the confiscation of his assets, in the alleged persecutory context formed by the statements of high state officials against him, constitutes a form of state retaliation for the exercise of their freedom of expression through the Globovisión media outlet.

37. In view of the factual and legal elements presented by the parties and the nature of the matter brought to their attention, the Commission considers that if the allegations raised by the petitioners regarding the alleged violation of the rights to due process, judicial protection, personal liberty, as well as freedom of expression are proven, they could constitute *prima facie* violations of Articles 7 (right to personal liberty), 8 (right to a fair trial), 11 (right to privacy), 13 (freedom of thought and expression) and 25.1 (judicial protection) of the American Convention, in relation to Article 1.1 (obligation to respect rights) of the same instrument to the detriment of Mr. Nelson J. Mezerhane Gosen.

VIII. DECISION

1. To declare this petition admissible in relation to Articles 7, 8, 11, 13, and 25.1 of the American Convention, in relation to its Article 1.1; and

2. To notify the parties of this decision; to continue with the analysis on the merits of the matter; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 2nd day of the month of November, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.