

HARASSMENT OF "PRIMERO JUSTICIA" LEADERS Henrique Capriles Radonski Case

On April 12, 2002, a demonstration took place in front of the Cuban Embassy in Venezuela, headquartered in "Urbanización Chuao", El Cafetal Parish, Baruta Municipality in the State of Miranda.

Already early in the morning of April 12, people were gathering in front of said Embassy in order to protest against the supposed presence of some Venezuelan public officers on the Embassy's premises. Some people acted with violence, thus damaging some cars parked in the public roads and cutting off electricity and water supply to the Embassy.

In the afternoon of April 12, being present some agents of the Metropolitan Police, the Mayor of Baruta Municipality, Henrique Capriles Radonski (hereinafter referred to as "the Mayor"), went to the Embassy and demanded respect for it from the demonstrators. The Mayor also urged them to refrain from performing any acts against public order. Immediately after, the diplomats of the Republic of Cuba invited the Mayor to have a meeting with them inside the Embassy in order to have a discussion about what was happening. As a result, they authorized the entrance into the Embassy of a commission whose members were Mayor Henrique Capriles Radonski, representatives from the Caracas Metropolitan District Mayor's Office, and a cameraman and a reporter from Televen T.V. channel.

These events were broadcast through several audiovisual mass media, thus showing to the public opinion (even through live and direct broadcast) all actions undertaken by Mayor Henrique Capriles Radonski on April 12. This allows us to highlight the following facts:

1. When Mayor Capriles arrived at the place where the demonstration was taking place, he called the demonstrators to order (in spite of the fact that he has an administrative police rather



than a police to keep public order) and demanded that they refrain from committing any violent act whatsoever. Mass media did broadcast, even live, the following statements made by the Mayor:

"People here must understand that demonstrations have always been peaceful; if someone who has infiltrated this demonstration tries to generate violence, such person is going to be seized and taken away from this area."

2. Mayor Henrique Capriles Radonski had at all times great respect for the diplomatic authorities of the Republic of Cuba and the Embassy's facilities, and urged all citizens to respect the Embassy and recalled the prerogatives that have the diplomatic representations under International Law. When leaving the Embassy, the Mayor did in fact declare:

"I can't say or confirm that there are no Venezuelan political refugees here in the Embassy. I can't do that simply because I didn't inspect the Embassy, because the Embassy are (sic) obviously another country's territory, and one is not allowed to, and not even the military or the police, make there a tour or round of inspection. All embassies are to be respected and that is what people here have been asked to do."

All events referred to hereinabove are a notorious communicational fact that needs no supporting evidence since they were broadcast (even live) through several T.V. channels, such as Venevision, Radio Caracas Television, Televen and Globovision.

Now then, in spite of the true essence of the events that took place on April 12, 2002, the State-owned T.V. channel "Venezolana de Television, C.A." has repeatedly broadcast a T.V. program called "Siege to an Embassy" wherein the Venezuelan T.V. audience is shown a completely twisted and distorted version of the facts that occurred on April 12 in front of the Cuban Embassy, thus violating the rights of honor, image, dignity and reputation of Mayor Henrique Capriles Radonski and other authorities of Baruta Municipality in the State of Miranda. What is



even worse is that, additionally, they grossly harm the constitutional rights of the audience watching said T.V. program and receiving the message passed on because all ethical and constitutionally imposed constraints to freedom of speech are infringed in said message. As a result, all information presented therein is deceitful, untimely and biased.

The program "Siege to an Embassy" provided the following information:

A) With regard to the demonstration itself:

"An uncontrolled crowd, with the complicity of the national mass media, the municipal authorities and the municipal police that were in favor of the coup d'état, acted like vandals against the Embassy of the Republic of Cuba".

B) With regard to the behavior of Mayor Henrique Capriles Radonski and other officials authorized by the diplomats to enter the Embassy in order to discuss about the events:

"This Commission, instead of fulfilling its obligation in accordance with the International Law and agreements, justified the actions committed and asked that the Embassy be inspected as a requisite for appearing the demonstrators and guaranteeing them that there were no political pro-government refugees inside the Embassy".

"By insisting on the need for inspecting the Embassy in search of political refugees, the members of this Commission pretended not to know what International Law prescribes in terms of political asylum, such power belonging solely and exclusively to embassies."

C) With regard to Mayor Henrique Capriles Radonski:

"The diplomatic staff prevented at all times the disrespectful intention of Mayor Capriles Radonski".



"Once Mayor Capriles left the Embassy without reaching his objective and questioning the Ambassador's word, the siege to the Cuban Embassy continued".

D) With regard to the mass media's behavior:

"While mass media showed those images, none of them sounded a note of warning about the consequences of said actions. Morbid contemplation and incitement were the prevailing attitudes towards these events."

"The national news that were backing the coup d'état encouraged these actions as part of a legitimate protest demonstration of a social sector."

Likewise, the program "Siege to an Embassy" presented and edited the statements made by Mayor Henrique Capriles Radonski on April 12 in a very twisted manner. The meaning of his statements was therefore deliberately distorted in order to manipulate the facts and inform that Mayor Capriles did blockade the Embassy all the time with the disrespectful intention of transgressing its premises, which was a violation of the International Law and agreements. As a matter of fact, the T.V. program referred to hereinabove only provides the following extract of the answer given by Mayor Henrique Capriles Radonski when asked by journalists about the presence of Venezuelan authorities inside the Embassy:

"...say or confirm that there are no Venezuelan political refugees here in the Embassy. I can't do that simply because I didn't inspect the Embassy..."

The daily broadcasting by Venezolana de Television during the months of August and September 2002, and sporadically through the rest of 2002 and 2003 of the program "Siege to an Embassy" is a public, communicational and notorious fact.



The arbitrary, offensive and biased position of the program "Siege to an Embassy" is a clear violation of the constitutional rights and guarantees of Henrique Capriles Radonski since it attempts against the principle of freedom of speech and of unbiased, timely and accurate information for all the inhabitants of the Bolivarian Republic of Venezuela who are the recipients of the programs broadcasted by Venezolana de Television. These rights and guarantees are expressed in articles 60, 57, 58 and 22 of the Constitution. For this reason, the attorneys and the Mayor appeared before the Supreme Court of Justice of the Bolivarian Republic of Venezuela and filed a proceeding aimed at guaranteeing the inviolability of these constitutional rights.

As a result of the aforementioned events that occurred near the Embassy of Cuba in Venezuela on the 12th of April, 2002, the Attorney's-General Office began an investigation that was entrusted to the Fourth Prosecutor's Office with national jurisdiction in environmental issues.

On October 15, 2002, the Fourth (4th) prosecutor for environmental issues, Danilo Baltazar Anderson, attorney-at-law, issued a writ of summons to Henrique Capriles Radonski to take his deposition as witness on the events that gave rise to the investigation. On October 18, 2002 the Mayor appeared before the Attorney's-General Office as proof of his willingness to collaborate with the investigation and rendered testimony.

Subsequently, on November 28, 2002, the prosecutor once again summoned the Mayor but this time, charges were made against him. In view of this, the Mayor, in accordance with the provisions set forth in articles 137 and 139 of the Venezuelan Criminal Procedure Code, requested before the so called Court of Control the appointment of his defense counselors Arturo Lopez and Francisco Boza.

In virtue of all the above, the Mayor presented on December 03, 2002 a writ notifying the party representing the Attorney's-General Office that the appointment of his counselors and their swearing in before a Court of First Instance in Control Functions, had been impossible until that date.



On January 9, 2003, the Mayor appeared before the 31st Court of Control of the Criminal Judicial Circuit of the Metropolitan Area of Caracas where he appointed his counselors who accepted and took oath. Access to the record of the process was denied repeatedly to the defense, and the Mayor exercising his rights as the defendant requested the court the following:

"... likewise I hereby request this court to allow me, as defendant, to render declaration in accordance with the provisions set forth in paragraph 125 of the Criminal Procedure Code..."

That same day, the Mayor appeared before the Attorney's-General Office and submitted a formal CHALLENGE against the Prosecutor Danilo Baltazar Anderson on the grounds set forth in paragraph 8 of Article 86 of the Organic Criminal Procedure Code, and on Article 57 of the Organic Law ruling the Attorney's-General Office. Our defendant requested the Attorney-General to appoint a SPECIAL PROSECUTOR for the case.

Consequently, on January 29, 2003 a notification identified under No DSG-OR-0902, dated January 10, 2003 was received at the Mayor's office located in the Baruta Municipality informing that the request for appointing a Special Prosecutor to try the case against our defendant was remitted to the Direction of Common Offenses.

On March 6 of that same year, Henrique Capriles Radonski, Mayor of the Autonomous Baruta Municipality received a new writ of summons signed by Prosecutor Danilo Baltazar Anderson requesting him to appear, as defendant, before the Attorney's-General Office on March 12.

Since the Mayor was never notified about the outcome of the aforementioned challenge, on March 10, 2003, Prosecutor Danilo Baltazar Anderson was challenged once again by the Mayor ratifying his request for the appointment of a Special Prosecutor to try the case.

Although on May 13, 2003 the Prosecutor Danilo Baltazar Anderson was notified in writing about the appointment and swearing in of the counselors of Henrique Capriles Radonski, the



counselors were not notified about any proceeding filed by the Attorney's-General Office in relation to the criminal investigation. The prosecutor Danilo Anderson was restrained from the trial as a result of having being challenged and by law, according to the provisions clearly set forth in Article 61 of the Organic Law ruling the Attorney's-General Office.

More than a year later from the last writ of summons, on March 16, 2004 during the broadcasting of the TV program "Alo Ciudadano" information was given that the Prosecutor Danilo Baltazar Anderson had requested an order of imprisonment against our represented party, in virtue thereof, the attorneys of the Mayor went to the Palace of Justice in Caracas where they witnessed that none of the so called Courts of Control, that supposedly were on duty that day were working. As a result records were made in writing jointly with the court officers which read:

"... likewise I made a tour with the bailiff and was able to observe that in courts 8,16,24,40 and 48 there was no personnel working."

On that same day, March 16, 2004, at approximately 9:30 P.M, from the main office of the Palace of Justice, prosecutor Danilo Baltazar Anderson gave an astonishing declaration to the media, clearly violating the provisions set forth in article 304 of the Venezuelan criminal text, according to which, the 40th Court of First Instance in Control Functions of the Criminal Judicial Circuit of the Metropolitan Area of Caracas, presided by the attorney Jose Ramón Flores, had just issued an order of imprisonment against Henrique Capriles Radonski, and that the corresponding writs were being issued upon the request of the prosecutor.

On March 17, 2004, the counselors of Henrique Capriles appeared before the 40th Court of Control with the objective of confirming the information that had been broadcasted on the previous night through the media. However, in spite of having been duly appointed and sworn in before a court exercising control functions by the explicit request of the commissioned prosecutor, the access to the records was denied to them claiming that the defendant did not have counselors appointed, completely omitting the information reflected in the proceedings clearly stating the appointment and swearing in of his lawyers.



As a result of this gross and flagrant violation of the constitutional human rights and guarantees of the Mayor, a claim was filed before the Court Inspection Office, located on the 6th floor of the Palace of justice where the Inspector on duty Dr. David Castillo received the petition and gave due course for its processing in accordance with the law. In spite of all the above, Judge Jose Ramon Flores denoting a very biased position, also denied access to the records to the Court Inspector.

On March 18, 2004 a writ was submitted before the 40th Court of Control to request that the defense lawyers be allowed to read the contents of the records, in order to fully exercise the rights of the Mayor and defend his interests. On that same day, a formal accusation was submitted before the Executive Board of the Magistracy against Judge Jose Ramon Flores, who chairs the 40th Court of First Instance in Control Functions with jurisdiction over the Caracas Metropolitan Area. The cause was a flagrant violation of the right to a defense, to due process of law, access to justice, effective protection of the law and presumption of innocence by the trial judge.

Worse still, in addition to the numerous violations of the constitutional law and to the procedures described, upon receiving the writ whereby access to the procedural records was requested, attorney Jose Ramon Flores acting as Judge of the 40th Court of Control, ordered that the written petition of the counsel for the defense to access the records be returned, despite the fact that the document had been admitted.

On March 23, 2004, the counsel for the defense of the Mayor appeared before the Criminal Court of the Supreme Court of Justice in order to request the REMOVAL of the case filed against Mayor Henrique Capriles TO A SUPERIOR COURT, which was being processed by the 40th Court of First Instance in Control Functions of the Criminal Judicial Circuit of the Metropolitan Area of Caracas, identified with Number 3002-04. Such request was made in accordance with number 29 of Article 42 of the Organic Law of the Supreme Court of Justice, in view of the fact that the investigation was overtly and repeatedly infringing the constitutional rights of the Mayor. This attests to the injustice and obvious imbalance and procedural



disorganization, to the gross and flagrant violation of the right to a Defense and Due Process of Law, enshrined in Article 49 of the Constitution of the Bolivarian Republic of Venezuela and the Minimum Guarantees established in Article 8 of the American Convention on Human Rights and Article 14 of the International Civil Rights Agreement ratified by the Bolivarian Republic of Venezuela.

On April 4, 2004, the Criminal Court of the Supreme Court of Justice returned a judgment on the request and decided to take over the case from a lower court and to ANNUL the warrant of arrest issued by the 40th Court of First Instance in Control Function of the Criminal Judicial Circuit of the Metropolitan Area of Caracas, against Henrique Capriles Radonski. The following are some of the reasons why the Court passed that decision:

From the proceedings described it is evident that Mayor Capriles appeared in response to the summons of the Attorney's-General Office and presented his deposition as witness. Likewise, he appeared voluntarily before the Thirty-First Court of First Instance in Control Function of the Criminal Judicial Circuit of the Metropolitan Area of Caracas, to present his deposition as accused and to appoint his counsel for the defense.

Hence, the warrant of arrest requested by the Attorney's-General Office and granted by the 40th Court of First Instance in Control Function of the Criminal Judicial Circuit of the Metropolitan Area of Caracas is devoid of any legal grounds since the conditions established in Article 250 of the Organic Criminal Procedure Code are not met. This means, first of all, that there is not a clear attribution of the crimes for which the arrest was requested, nor is there any solid procedural certainty about the perpetration or participation of the accused. And, secondly, it is impossible to argue in this case that there is a risk that the accused could escape or hinder the process, since, as proven by the records Mayor Capriles has shown his willingness to appear before the competent authorities. Furthermore, his position as Mayor evidences his commitment to the country. (highlighted by the authors)



It is common knowledge that preventive imprisonment is entirely precautionary; more over, this is an exceptional measure aimed at assuring the appearance of the accused in the process and at guaranteeing the right to his defense.

Along these same lines, the attitude of an individual cannot be considered as guilty of contempt simply because of a nonappearance before a particular authority. Contempt implies the constant denial of the defendant to respond to the summons of the authority. This is not evidenced in this case, since in several occasions, HENRIQUE CAPRILES RADONSKY responded to the subpoenas of the Attorney's-General Office; moreover, on January 9, 2003, he appeared voluntarily before the Thirty-First Court of First Instance in Control Function of the Metropolitan Area of Caracas, when he appointed his defense counselors and requested a deposition as the accused in the premises of that same court. Thus, his obligatory appearance was no longer required and his defense counselors were then empowered to access the records of the proceedings to organize the defense.

It can also be seen in the records that the right to a defense of Mayor Capriles, now accused, was obstructed by the 40th Judge of First Instance in Control Function of the Criminal Judicial Circuit of the Metropolitan Area of Caracas, when he denied the defense counselors any access to the records of the investigation. This is clearly a violation of the rules of due process of law.

Consequently, the arrest warrant is by all means abusive, in the light of the above circumstances. Assuming that the attitude of the accused had been contemptuous, the appropriate action should have been then the application of the Mandate foreseen in Article 310 of the Organic Criminal Procedure Code. However, this is not applicable in this case, since Mayor Capriles, as we already stated, always responded to the summons to be questioned about the events under investigation. This is why Article 243 of the Organic Criminal Procedure Code makes reference to imprisonment as a preventive measure when all the other measures are insufficient to guarantee the outcome of the process. However, in this particular case and in view of the above circumstances, the attitude of the accused and the breach against the right of



the accused to a defense, indicate that the arrest warrant is not in order. (highlighted by the authors)

Upon these considerations, the Criminal Court of the Supreme Court of Justice of Venezuela, with the opinion of Judge Blanca Rosa Marmol de Leon, ordered that the proceedings be referred to the Chair of the Criminal Judicial Circuit of the Metropolitan Area of Caracas for distribution and forwarding of the file to a different Court of Control in order to inform the accused about the investigation records and proceed as required, in accordance with the provisions of Articles 49 of the Constitution in force, 304 and 250 with regards to articles 251, 252, 256, 243 and 247 of the Organic Criminal Procedure Code. The judge also ordered Mayor Henrique Capriles Radonski to appear before the corresponding Court of Control, upon being summoned. If this order was not followed, the pertinent Mandate established in Article 310 ejusdem shall proceed.

On April 1, 2004, following the decision in favor of Mayor Henrique Capriles by the highest court of justice in Venezuela, the Attorney-General of the Republic, Isaias Rodriguez, attorney-at-law, made the following statements to the media:

- "... there was never any obstacle to prevent access to the records by the trial judge which was one of the reasons why the arrest warrant was annulled..."
- "... On two occasions he refused to appear before the Attorney's-General Office for his deposition and this is an indication of contempt and of his unwillingness to abide by the criminal pursuit..."

Likewise, the Higher Investigating Prosecutor - Danilo Baltazar Anderson – expressed his opinion to the national media on April 3, 2004, with regards to the decision in favor of Mayor Henrique Capriles:



"We shall not validate the aberrant decision adopted by the Criminal Court of Justice with our presence in a Court of Control" (El Universal 03-03-2004)

With regards to the judgment written by Judge Blanca Rosa Marmol he expressed the following comments:

"opens the door so that any criminal may refuse to appear before the Attorney's-General Office" (El Universal 03-03-2004)

Later on, on April 22, 2004, Mayor Henrique Capriles Radonski was summoned to appear on May 11, 2004 before the Court of Control of the Second Criminal Judicial Circuit of the Metropolitan Area of Caracas, as accused of being involved with the events that took place in the Cuban Embassy on April 2002.

Later on, last April 30, 2004, the national press published once again the statements made by the Higher Investigating Prosecutor Danilo Baltazar Anderson:

"remember that a very sad decision was recently made by the Criminal Court whereby the arrest warrant against Capriles Radonski was annulled, despite the fact that he refused to give his deposition before the Attorney's-General Office and that created a bad precedent." (El Universal-04-30-2004.)

Finally, on May 11, 2004, the hearing to listen to the accused was held in the Second Court of Control chaired by provisional judge Fidolo Salcedo. The hearing took place in the presence of the investigating prosecutor of the Attorney's-General Office, Dr. Danilo Baltazar Anderson, the accused Henrique Capriles Radonski and his defense counselors.

During the Hearing, investigating Prosecutor Danilo Anderson presented the accusations of "breach of international principles, attempt to attack heads of government, arbitrary imprisonment, private violence, abuse of authority, aggravated public intimidation and property



damages" for the events in the Cuban Embassy on April 12, 2002. During the hearing, the investigating prosecutor requested once again a *Judicial Measure of Preventive Imprisonment* against the Mayor, arguing – contrary to the judgment dated April 1, 2004 – "that there were grounds for the Preventive Imprisonment Measure in accordance with Article 250 of the Criminal Procedure Code and that there was convincing evidence to presume that Mayor Capriles had been the perpetrator or a party to the alleged crimes, in addition to the risk of escaping".

In response to this request by the Investigating Prosecutor, Mayor Capriles' defense counsel argued the absence of a legal basis for the *Judicial Measure of Imprisonment* since: "The provisions of Article 250 of the Criminal Procedure Code were not met due to the fact that for two years no actions had been taken to investigate there being only one expert appraisal and one witness deposition. Additionally, there has been no contempt as evidenced by the judgment of the Criminal Court of the Supreme Court of Justice dated April 1, 2004". Similarly, upon considering the request made by the investigating prosecutor, the defense counsel requested the Control Judge to open an investigation of prosecutor Danilo Anderson for contempt of court, since the judgment of the Criminal Court is binding and hence must be accepted by the Judge, considering that there has been no change with regards to the facts of the case.

At the conclusion of the hearing, the Second Control Judge (provisional) Fidolo Salcedo, attorney-at-law, passed the *Judicial Measure for Preventive Imprisonment* and established as the prison the General Office of Intelligence and Prevention Services (DISIP). Likewise, the judge approved that a proceeding be opened against the Prosecutor with regards to contempt of the judgment of the Criminal Court, dated April 4, 2004.

VIOLATION OF THE MAYOR'S RIGHTS

Having to appear before the Second Court of Control of the Criminal Judicial Circuit of the Metropolitan Area on May 11, 2004 constitutes an imminent violation of Mayor Henrique Capriles Radonski's procedural rights in view of considerations to the contrary by both the Public Prosecutor, who has both publicly and at a hearing before the Control Justice expressed his



rejection of judgment pronounced by the Criminal Court of the Supreme Court of Justice dated April 1, 2004; and by the Criminal Court, which, for fear of duress by as well as its attachment and servility toward the government, and given its temporary condition, has acted with bias and not according to law. This clearly constitutes a serious and extremely urgent situation, which violates the right to due process provided for under Article 8 of the American Convention; consequently, Mayor Henrique Capriles Radonski, a public figure and a leader opposing the current government runs the risk that his procedural rights may not be guaranteed in the investigation brought against him.

Upon his appearance in court on May 11, 2004, The Mayor was put in a serious and irregular procedural situation since he was unlawfully imprisoned in full violation of Judgment given by the Criminal Court of the Supreme Court of Justice dated April 1, 2004. Our fear that his procedural rights may not be guaranteed is based on the Public Prosecutor's intent, as disclosed in his declarations made to the national media in clear violation of the orders given in the referred judgment, as well as on the currently questioned independence and impartiality of the courts of the Republic.

This situation is yet more serious in the case of Henrique Capriles Radonski given his condition as a public figure and high government official having responsibilities with the Baruta Municipality population. Being imprisoned, a measure which is clearly against the law and contrary to the referred judgment dated April 1, 2004, the rights of the Mayor are being violated once again, which undoubtedly impacts the regular course of the Baruta Municipality Mayor's administration, thus directly affecting all the citizens that live in said Municipality.

Article 8 of the Convention establishes general guidelines for due process or right to procedural defenseⁱ which "includes the conditions to be met in order to ensure the adequate defense of those whose rights or obligations are under judicial advisement" ii.

Article 8.1 of the American Convention provides that every person has the right to be heard in any action by a "competent, independent and impartial court". Compliance with these three



requirements allows guaranteeing the right determination of persons' rights and obligations. In addition, all the State bodies having jurisdictional functions must meet these characteristics. In this sense, the Inter-American Court of Human Rights has specifically pointed out that "every person subject to a trial of any kind before a State body shall have the guarantee that said body be competent, independent and impartialⁱⁱⁱ

The impartial court guarantee is based on the possibility to have national courts ensuring persons that their controversies will be decided by an authority that has no interest or personal relation whatsoever with the problem, and will maintain an objective point of view at the time of solving said problem. In the case of Mayor Henrique Capriles Radonski sound grounds exist to fear the lack of impartiality by State bodies since the Mayor has been a leading political figure opposing the current government of citizen Hugo Rafael Chavez Frias, who on repeated occasions has addressed intimidating statements to the person of the Mayor; such statements having being made publicly through a TV program called "ALO PRESIDENTE" that State TV channel Venezolana de Television broadcasts on Sundays. Particularly in relation to the order of imprisonment against Mayor Henrique Capriles Radonski, the President expressed his position in said program through the following statements:

"...I am very pleased that the government does not feel alone any more in confronting these violent and subversive sectors. At the Attorney's-General Office of the Republic they continue making efforts and achieving concrete results. How wonderful that they issue an order of imprisonment, from a Prosecutor to a coup monger, ahhh good, that's good.... and there may be more..."

The measure of imprisonment ordered against the Mayor is clearly unlawful and is not in due process of law; it leads us to understand that the government's attitude is to seek to neutralize the Mayor's political position and bring him into disrepute before the general public opinion. In view of the current political situation in Venezuela we fear that the judiciary may be used to unlawfully imprison the Mayor in absolute infringement of the Venezuelan criminal law and judgment pronounced on April 1, 2004.



In order to understand the seriousness and urgency of this matter, one must consider how these government attitudes may impact the impartiality of justices commissioned in their majority on a temporary basis. In this sense, the Inter-American Court, following the European Court case law, has pointed out that:

"independence of any judge supposes to have an adequate commissioning process, with an established term in office, and a guarantee against external pressures" iv

Our grounded fear may be well understood by recalling the recent summary dismissal of criminal judges ordered by the Judiciary Commission or the President of the Supreme Court of Justice, with no respect for their fundamental rights, such as the right to due process of law and the right to defense, and particularly, without giving magistrates official notice of the reasons why such a severe measure was being applied to them. Their rights should have been guaranteed even in their condition as temporary judges. It caught our attention that such decisions were made with regard to judges in charge of hearing highly politically sensitive cases, and after they had ordered to set free persons that were under arrest following the events that developed from February 27, 2004, when abuses of force by State officers took place, as well as violations of human rights in public demonstrations opposing the current Venezuelan government.

Serious procedural infringements occurred in the investigation against Mayor Henrique Capriles Radonski such as disregarding judgment by the Supreme Court of Justice dated April 1, 2004; repeated partiality and lack of independence of State courts in view of their temporary condition; and the apparent intimidating behavior by the President of the Republic, high government officials, and the Public Prosecutor against Mayor Henrique Capriles Radonski are undoubtedly indicative of violations of Henrique Capriles Radonski's constitutional rights.

Last, the American Convention imposes obligations on States which are positive in nature, and whose intend is to guarantee the free and full exercise of rights provided therein. Member States are obligated to organize all the state machinery, and in general, all the structures by which the exercise of the public power is expressed, in such a way that they be capable of



juridical ensuring the absolute exercise of human rights. Thus, the obligation to guarantee the free and full exercise of human rights is not exhausted by the existence of a set of laws provided to enforce such obligation but entails the need for a government behavior ensuring the existence of an effective guarantee for the free and full exercise of human rights".

Under the terms of the Inter-American Court, the State does not exhaust the obligation assumed under Article 8 of the Convention by the simple fact of having produced a judicial decision stating the violation of rights, but the Court has the obligation to carry out concrete measures allowing for the protection of said rights. In this case, we request not only that the judgment by the Supreme Court of Justice be complied with, but that appropriate measures be taken both to protect judicial guarantees owed to Mayor Henrique Capriles Radonski, and prevent past procedural infringements occurred before the State judicial bodies from happening again.

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ⁱ Inter-American Court of Human Rights. Genie Lacayo Case, judgment dated January 29, 1997, paragraph 74

ⁱⁱ Inter-American Court of Human Rights. Judicial Guarantees in Emergency Situations. Advisory Opinion AP-9/87, dated October 6, 1987, paragraph 28.

iii Inter-American Court of Human Rights. Constitutional Court Case, judgment dated January 31, 2001, paragraph 77.

^{iv} Inter-American Court of Human Rights. Constitutional Court Case, judgment dated January 31, 2001, paragraph 75.

^v Inter-American Court of Human Rights. Velasquez Rodriguez Case, judgment dated July 29, 1988, C Series No. 4, paragraphs. 166-168