CONSTITUTIONAL COURT

JOINT MOTION

On March 22, 2017, citizen HÉCTOR RODRÍGUEZ CASTRO, acting as congressman to the National Assembly of the Bolivarian Republic of Venezuela, and coordinator of the homeland parliamentary block for Bolívar state, assisted by attorney Miguel Bermúdez, registered at Inpreabogado under n° 107.347, presented a writ at the secretariat of this constitutional court containing the appeal for annulment for it being unconstitutional against *"the parliamentary act passed by the National Assembly on March 21, 2017, entitled 'Agreement for the reactivation of the application process of the Inter-American Charter of the OAS, as a peaceful conflict resolution mechanism to restore constitutional order in Venezuela'..."*.

On that same date, this docket was acknowledged in the court and magistrate Juan José Mendoza Jover who, acting as the designated speaker, signs this decision.

Later on, on March 27, 2017, it was agreed that this case be decided based on a joint motion by the magistrates of this court.

The analysis of the case having been conducted, the court in order to decide makes the following considerations:

I
ON THE APPEAL FOR ANNULMENT FILED

The petitioner in his libel writ related the following events as the basis for his appeal:

That on December 30, 2015, the electoral court of the Supreme Court of Justice in sentence n° 260/2015, issued a precautionary suspension on the effects of the totalization, adjudication and proclamation acts emanated from the entities subordinated to the National Elections Council with respect to the candidates elected per uninominal vote, list vote and indigenous representation in the elections process which took place December 6, 2015 in Amazonas state;

That on January 6, 2016 the board of directors of the National Assembly invalidly swore in citizens Julio Haron Ygarza, Nirma Guarulla and Romel Guzamana, holders of identity documents numbers V-12.173.417, V-1.569.032 and V-13.325.572, the subjects of the precautionary suspension measure on the effects of totalization, adjudication and proclamation, in blatant contempt of the sentence *supra* quoted of the electoral court;

That on January 11, 2016, the electoral court issued a sentence and joint motion and pronounced itself as per the following terms:

> 1. It instructed the board of directors of the National Assembly to cancel said swearing in and consequently proceed to the immediate disincorporation of citizens Julio Haron Ygarza, Nirma Guarulla and Romel Uzamana (sic).
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> 2. It declared absolutely null the acts by the National Assembly issued or to be issued so long as citizens subject to decision N° 260 of December 30, 2016 continue to be incorporated.

That on July 28, 2016, the board of directors of the National Assembly, once again in contempt of sentence by the electoral court number 260 of 2015, swore in citizens Julio Haron Ygarza, Nirma Guarulla and Romel Guzamana as congressmen for Amazonas state, breaching a judicial decision that issued a precautionary suspension on the effects of totalization, adjudication and proclamation acts thereof and the effects of which had not yet ceased.

That on August 1st, 2016 the electoral court of the Supreme Court of Justice, by virtue of the request for declaration of contempt filed by the party requesting the aforementioned electoral litigious appeal, as well as by the congresspersons of the National Assembly of the parliamentary fraction entitled Homeland block, pronounced itself as per the following terms, declaring:

> 1. CONTEMPT for the sentences issued by the electoral court number 260 on December 30, 2015 and number 1 on January 11, 2016, and in the case of the continued contempt of said decisions, reserves the right to exercise any and all applicable legal actions or procedures.
>
> 2. THE JUDICIAL INVALIDITY, INEXISTENCE AND NULLITY due to the flagrant violation of the constitutional public order as per the alleged act of swearing in citizens Julio Ygarza, Nirma Guarulla and Romel Guzamana as congressmen to the National Assembly carried out on July 28, 2016 by the board of directors of the national legislative body, as well as any and all acts or proceedings issued by the National Assembly after swearing in the aforementioned citizens.
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> 3. NOTIFY this decision to the above identified citizens Julio Ygarza, Nirma Guarulla and Romel Guzamana, the National Assembly of the Bolivarian Republic of Venezuela and the citizen attorney general of the Republic.

That on September 2, 2016, this constitutional court in decision n.° 808 declared among other pronouncements that "*... all acts emanating from the National Assembly, including the laws sanctioned, are patently unconstitutional and are therefore absolutely null and void of all legal enforcement and validity so long as contempt for the electoral court of the Supreme Court of Justice continues. Consequently, the top tribunal has annulled all the acts by the National Assembly since July 28, 2016, the date the usurping congressmen of Amazonas state were sworn in, ignoring the sentences that have annulled the draft constitutional laws and amendments for blatantly violating the Constitution".*

That on January 5, 2017, a plenary session of the National Assembly was called on the occasion of the election of the board of directors of said legislative body, during which act the parliamentary fraction of the so-called Mesa de la Unidad, in contempt of the mandates by the electoral and constitutional courts of the Supreme Court of Justice, "*…postulated and elected a spurious board of directors of the National Assembly, which comprised the following: congressman Julio Andrés Borges as the president, congressman Freddy Guevara Cortez as the first vice-president and congresswoman Dennis Fernández as the second vice-president, and the following were elected and sworn in as secretary and sub secretary: citizens José Ignacio Guédez and José Luis Cartaya, respectively".*

That on March 21st, 2017, "*…the spurious board of directors of the National Assembly called a session and approved by the chamber with the presence of the congresspersons comprising the so-called Unity Block the 'Agreement for the reactivation of the application process of the Inter-American Charter of the OAS, as a peaceful conflict resolution mechanism to restore constitutional order in Venezuela'…*".

That it is a public, notorious and communicational event that the board of directors of the National Assembly, jointly with the congressmen and congresswomen grouped in the so-called Unity Block, have decided to remain in contumacious contempt of the decisions issued by the electoral court and by the constitutional court of the Supreme Court of Justice, which instructed the disincorporation from the National Assembly of citizens Julio Ygarza, Nirma Guarulla and Romel Guzamana, who were unconstitutionally and illegally sworn in as congressmen for Amazonas state at the session held on July 28, 2016. The abovementioned citizens have so far not been formally disincorporated by the parliament in full.

That said situation "*…invalidates any proceeding exercised by the National Assembly, including the election of the new board of directors. Coupled to this, the precautionary guarantee issued by the constitutional court in sentence N° 948 of November 15, 2016, which expressly instructed the congresspersons of the National Assembly to abstain from continuing on with the purported political trial initiated against the president of the republic must be considered".*

That the *"board of directors invalidly designated"* is incurring in usurpation of functions contemplated in article 138 of the constitution, which sets forth that "*that all usurped authorities are inefficient and their acts are null and void".* Therefore the abovementioned citizens do not possess the legal quality to exercise the responsibilities inherent to the posts of president, first vice-president, second vice-president, secretary and assistant secretary, respectively, since their designations are unconstitutional due to the contempt and consequently, lack legitimacy and legality to exercise the direction, representation and management of the national parliament.

That the acts committed by the congresspersons of the National Assembly at the session called on March 21st, 2017, in passing the referred "*Agreement for the reactivation of the application process of the Inter-American Charter of the OAS, as a peaceful conflict resolution mechanism to restore constitutional order in Venezuela",* constitute crimes contained in the Criminal Code, specifically that of treason to the homeland, included and sanctioned in articles 128, 129 and 132.

That "*…the Supreme Court of Justice being the entity that shall exclusively decide on the crimes committed by the congresspersons to the National Assembly, we consider that although it is not necessary for the highest court of the Supreme Court of Justice to settle cases related to criminal matters, it is necessary to obtain a pronunciation and exhort to the institutional nature of the Venezuelan State, to pronounce itself and act*

in consequence on the serious actions being committed against the republic and the Venezuelan people and which could seriously affect the independence, sovereignty and integrity of the Bolivarian Republic of Venezuela".

The petitioner indicated that the crime of treason to the homeland *"…is configured when specific actions are carried out within or outside of the republic with or without the complicity of another nation or country, destined to affect the normal operations of the State and its institutions; also considered as treason to the homeland the act by means of which a request or impetration is raised to a foreign government to intervene, participate in or resolve internal political affairs of the Bolivarian Republic of Venezuela, and treason to the homeland includes any declaration to foreign officials slandering the President of the republic".*

That in the text of the agreement passed at parliament, "…*clearly demonstrates the configuration of this crime by (…) the congresspersons to the National Assembly who participated in the session and passed said text, openly requesting the Organization of American States and its member states to apply the Inter-American democratic charter to its own nation, which constitutes a very serious affront by these parliamentarians against the democratic and republic basis for our homeland and in prejudice to the people itself that elected them to defend their interests. This type of action openly disavows the legitimacy, legality, sovereignty and independence of our homeland*".

That they appear before this court as the ultimate interpreter of the Constitution so that "…*as per the provisions in article 336 numeral 4 of the constitution, in accordance to numeral four of article 25 of the Organic Law on the Supreme Court of Justice, the session held on March 21st, 2017 and the parliamentary act passed on the "Agreement for the reactivation of the application process of the Inter-American Charter of the OAS, as a peaceful conflict resolution mechanism to restore constitutional order in Venezuela" is declared null and void since it is unconstitutional since it was conducted in blatant contempt and disavowal of the contents of sentence of the electoral court N° 260 issued on December 30, 2015, a criterion confirmed as per the sentence by the Constitutional court N° 808 of September 2, 2016, as well as contempt al mandate of constitutional guarantee for the protection of civil rights as per sentence N° 948 issued on November 15, 201(sic) and since said agreement contradicts fundamental principles in our republican order as expressed in articles 1,2,3,5,7 and 326 of the Constitution of the Bolivarian Republic of Venezuela".*

Finally, the plaintiff state that *"despite the repeated calls made by the electoral court and the (sic) constitutional court of the Supreme Court of Justice, the National Assembly has decided to remain at the margin of the constitution, a situation with annuls any decision adopted by said body, and for this reason we respectfully request that the highest court of the Supreme Court of Justice declare null and inexistent this new antidemocratic incursion by the parliament against the rule of law and to therefore annul them absolutely and unequivocally".*

Lastly, he requested that this court "…*examine the possibility of issuing letters requisitorial to the entities comprising the Moral Republican Council and other entities and institutions of the national public power it deems pertinent so as to commence an investigation to determine the individual criminal responsibility of each congressman and congresswoman to the National Assembly who are members of the so-called Unity Block, since their acts constitute a blatant contempt to the sentences and mandates of constitutional guarantee for the protection of civil rights of this maximum tribunal, as well as the commission of the crime of treason to the homeland, included and sanctioned in the Venezuelan Criminal Code".*

II
ON THE COMPETENCY

In the case of rulings, the nullity of the parliamentary act issued by the National Assembly on March 21st, 2017is requested, and for this reason, as per the jurisprudence of this court as set forth in sentences numbers 1665 of June 17, 2003, case *"Leopoldo Nucete et al";* 923 of June 8, 2011, case *"Daniel Ceballos"* and 345 of April 16, 2013, case *"Grace Lucena et al",* as per articles 25 numeral 4, 334 in fine, and 336 numeral 4 of the Constitution of the Bolivarian Republic of Venezuela, this court is competent to settle this request. And so it is thus decided.

III
ON THE ADMISSIBILITY THEREOF

This court proceeds to hear about the admission on the claim of nullity and for said purposes observes the provisions in article 133 of the Organic Law on the Supreme Court of Justice, which states the following:

Article 133. The inadmissibility of the motion shall be declared:
1. When mutually excluding lawsuits or motions are accrued or the procedures for which are incompatible;
2. When the documents indispensable to verify if the lawsuit or motion is admissible are not attached;
3. When there is a patent lack of legitimacy or representation attributed to the male or female defendant, or whoever acts in their name, respectively;
4. When a judgment or lis pending exists;
5. When it contains offensive or disrespectful concepts;
6. When there is a lack of passive legitimacy.

Thus, once the grounds for inadmissibility have been reviewed (as in effect they have been) as per the transcribed regulations, this court warns in its preliminary study that the request for a ruling is not subsumed to any of the referred grounds and therefore this court admits this motion for nullity. And so it is hereby declared.

IV
ON THE DECLARATION OF THE ISSUE AS BEING OF MERE LAW

The foregoing having been decided, for this court it is timely to refer to the resolution of an issue as of mere law, for which it is convenient to reiterate the dictum in sentence of June 20, 2000 (Case *Mario Pesci Feltri Martínez v. the norm contained in article 19 of the decree emanated from the Constituent National Assembly which created the transition regime for the public power*), which on this matter set forth the following:

> The bases as well as the justification thereof being different, this court deems it necessary to precise once again the relevant notes in these two situations; in this regard, it is reiterated that that the request for declaration of urgency and reduction of time frames '...proceed when factual or legal circumstances are invoked by the petitioner that justify the dispensation of said proceeding, it also being possible that the declaration proceed ex oficio when deemed necessary by the judge, after reading the content of the writ'. This was sustained by the political administrative court of the then called Supreme Court of Justice in repeated and peace-time jurisprudence, as understood by this constitutional court as can be appreciated in the case of Allan R. Brewer-Carías, Claudio Eloy Fermín Maldonado and Alberto Franceschi González v. electoral statutes of the public power and decree issued on May 28, 2000 to carry out specific elections in decision nº 89 of March 14, 2000.
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> In turn the procedure of mere law as set forth in reiterated decisions by the top tribunal of the republic, only proceeds when the controversy is circumscribed to questions of mere doctrine, the interpretation of a legal text or a contractual clause or of another public or private instrument. This means to say that that the decision could be taken by examining the situation posed and the corresponding interpretation of the applicable norms. In particular the political administrative court of the then Supreme Tribunal of Justice sustained the following:
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> 'A cause of mere law is therefore that which, there being no discussion as to events, requires no opening of a period for producing evidence, being sufficient the study of the act and its comparison to the norms allegedly breached by it to, once concluded the legal interpretation conducted by the judge the consent or not as per the law is declared. It can even become evident from the start of the process –of the terms of the request for annulment- that the case is of mere law and therefore it not be necessary to summon the interested parties to exercise their pretensions –in defense or attack of the disputed act- since there is no possibility for discussion beyond aspects of law and not of facts.

Likewise, special mention must be given to sentence n° 1077 of September 22, 2000, case Servio Tulio León, in which this court specified the distinction between the sentences of the so-called constitutional jurisdiction from those issued by civil, mercantile and other courts in regular jurisdictions by stating the following:

> All claims and sentences by the so-called constitutional jurisdiction differ from those aired and issued by civil, mercantile and other courts exercising jurisdictional functions.
> As a result of the constitutional control being held by all the nation's courts, the aim of which by means of the acts of the constitutional judges is constitutional supremacy and the effective application of constitutional norms and principles. When said control is exercised, it does not necessarily have to be aimed against someone or against unknown opponents since all the nation's inhabitants could fall under the mode of control proposed by a specific individual but since it is the Supreme Court of Justice which is the maximum guarantor of constitutional supremacy and effectiveness, it is it as the maximum constitutional court by means of the courts with competence therefor which upon being urged must ensure the integrity of the constitution (articles 334 and 335 of the constitution in force) by means of jurisdictional decisions.
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> This special structure of claims which must abide by the constitution oftentimes leads to nobody being formally sued, which sets doubts as to its litigious nature but as through them

> the aim is not to create new legal situations and the development of existing ones, the processes implemented in this regard cannot be deemed to be of voluntary jurisdiction (article 895 of the Code on Civil Procedures), so this is not the nature of constitutional cases.
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> These are processes which potentially contain a controversy among the plaintiff and other components of society with a stance that is contrary to the former, and that do not deal as in civil proceedings for example, of reclamations of rights among parties. But said nature does not eliminate processes in constitutional acts with parties taking up the position of a defendant, as would be the case of society incarnated in the public prosecutor's office, or indeterminate interested parties called to trial by means of edicts or concrete litigators, as occurs in constitutional guarantees for the protection of civil rights. Nor does it exclude sentences that produce res judicata, the effects of which -as in civil proceedings-may be absolute or relative.
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> Based on the foregoing, the jurisdictional entities that settle all constitutional matters may issue sentences declaring certainty (merely declarative sentences), which, depending on the issue at hand, may produce full res judicata.
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> Since constitutional claims basically seek the protection of the Constitution, not all necessarily need to be based on a concrete historical event alleged by the plaintiff, and this sets them apart from other claims that originate litigious processes, which are based on facts comprising the de facto suppositions of the rules whose application is requested.
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> The popular action of unconstitutionality for example is based on a law or act colliding with the constitutional text. It is a question of mere law, which only requires judiciary verification therewith. Said situation which is not exclusive to all constitutional acts is also verified in some constitutional guarantees, and does not require any specific personal interest to inchoate it, or an affirmation by the plaintiff of entitlement over a subjective material right, sufficing it that he states that the law recognized the right to jurisdictional activity. Therein lies the popular nature thereof (see Juan Montero Aroca. La Legitimación en el Proceso Civil. Edit. Civitas. 1994). (Highlights placed by this ruling).

In agreement with the previously transcribed rulings, as well as the jurisprudence precedents of this court contained in sentences numbers 445/2000, 226/2001, 1.684/2008, 1.547/2011 and 09/2016, considering on the one hand, that this case is of mere law since it does not require the evacuation of any proof whatsoever, inasmuch as it focuses on obtaining a pronunciation on the constitutional nature of an act and on the other hand, based on the seriousness and urgency of the statements underlying the request for annulment presented, linked to the current existing situation in the Bolivarian Republic of Venezuela, with a direct incidence over the entire Venezuelan people, this court declares that this case is of mere law and its resolution is urgent.

Based on the foregoing, as per the provisions in article 7 of the Code on Civil Procedures, applicable due to the suppletory waiver of article 98 of the Organic Law on the Supreme Court of Justice, in accordance to article 145 ejusdem, the court deems it pertinent to decide on this issue without further ado. And it is therefore so decided.

V
CONSIDERATIONS FOR DECIDING

The inchoated petition for nullity for it being unconstitutional is aimed at dispute the act by the National Assembly aimed at endorsing the application of the Democratic charter on the Bolivarian Republic of Venezuela, with the warning made by the petitioner to this court that this act constitutes another expression of its blatant will to disregard the Constitution of the Bolivarian Republic of Venezuela and specifically sentences numbers 260 of December 30, 2015, 1 of January 11, 2016 and 108 of August 1st, 2016 issued by the electoral court and numbers 269 of April 21, 2016, 808 of September 2, 2016, 810 of September 21, 2016, 952 of November 21, 2016, 1012, 1013, 1014 of November 25, 2016 and 2 of January 11,2017 issued by this constitutional court.

The mandates contained in said rules are not option for the public power entity they were aimed at but as surmised from the Constitution (article 7), the Organic Law on the Judiciary Power (article 1) and the Organic Law on the Supreme Court of Justice (article 3) are compulsory, under penalty of the legal consequences set forth in the Venezuelan laws on the respect and maintenance of public constitutional order and furthermore for the respect and preservation of the democratic system.

As previously stated, in declaring the case as of mere law, it does not require probationary material for its resolution inasmuch as from the events narrated as well as the rulings by this court openly non complied by the National Assembly (among others, sentences N° 3 of January 14,2016; N° 615 of July 19, 2016 and N° 810 of September 21, 2016) it is evidenced that in effect there exists a clear intention to remain in blatant confrontation with the Constitution, its superior principles and values as well as in permanent contempt of the sentences issued by the electoral court and by this constitutional court, to the extent that its noncompliance not only responds to an attitude of omission but an act of patent aggression to the people as the direct representative of national sovereignty; there exists a conduct that seriously disowns the superior values of our rule of law which are peace, independence, territorial sovereignty and integrity, which constitute acts of "treason to the homeland", as referred by the petitioner.

It is relevant at this time to underscore that on the official web page of the National Assembly http://www.asambleanacional.gob.ve/noticia/show/id/17508 appears news of the disputed agreement which expressly reads as follows:

> With 90 votes in favor, the congressmen to the National Assembly members of the Unity Block passed this Tuesday at a regular session a draft Agreement for the reactivation of the application process of the Inter-American democratic charter of the Organization of American States (OAS), as a peaceful conflict resolution mechanism to restore constitutional order in Venezuela.
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> The document was presented by congressman Luis Florido (Unidad-Lara), who indicated that the Constitution of Venezuela has been trampled on and breached by the executive power and all the powers connected to it.
> In light of this the parliamentarian asserted that there is a law that is higher than the magna carta and it is the Inter-American democratic charter, stating in turn that article 23 of the Constitution states that any agreements entered into by the republic are an integral part of the constitutional text and therefore prevail over it.

In this regard it asserted that that the Democratic charter protects the Venezuelan citizens, but also democracy in the nation.

Recalling that this norm was subscribed on September 11, 2001 by the then president Hugo Chávez for the purposes of protecting democracy against any attempt of constitutional alteration such as a coup, he pointed out.

Florido highlighted that article 3 of the democratic charter sets forth that "Essential elements of representative democracy are among others the respect for human rights and fundamental liberties; Access to power and its exercise based on the rule of law; Periodic free, fair elections based on universal and secret suffrage as an expression of the sovereignty of the people; A plural regime of political parties and organizations and the separation and independence of the public powers".

At the same time he said that the aforementioned charter includes mechanisms in case of alteration of the constitutional order in article 20. "In the event that there is an alteration of constitutional order that seriously affects its democratic order, any member state or the Secretary General may request an immediate call to the Permanent council to make a collective appreciation of the situation and adopt any decisions which are deemed convenient. Depending on the situation, the permanent council may instruct the necessary diplomatic procedures including good offices, to promote the normalization of the democratic institution" (…)

"Article (sic) 20 seeks to restore constitutional order through the mechanisms of diplomacy and good offices" he emphasized.

He also referred to article 21 expressing what is involved in suspending a member state that repeatedly alters constitutional order.

He said that the democratic charter is (sic) activated since June 23, 2016 and the current report presented by Luis Almagro, the Secretary General of the OAS, reflects what the actual National Assembly has consigned.

"I request a recognition for Luis Almagro, the Secretary General of the OAS, for his fight and for his service to the Venezuelan people, who today suffer and cry out due to the absence of food, medicines and (sic) the lack of democracy".

He explained that the report by the Secretary General clearly reflects what was expressed by the AN. In the first place the carrying out of elections in Venezuela, so as to restore constitutional order, the release of all political prisoners, the establishment of a humanitarian channel to permit the entry of food and medicines for the population and respect for the constitutional faculties of the current national parliament as well as the separation of powers, and the respect and warranties for human rights.

He repeated that the current agreement is to clearly state the position of the National Assembly with respect to the Organization of American States (OAS) and the application of article 20 of the Inter-American democratic charter.

It is worthwhile noting that at the presentation of the agreement the National parliament counted on the presence of family members of political prisoners including Mitzy Capriles de Ledezma and the mother of Leopoldo López, Antonieta Mendoza de López.

Agreement:

The text read out loud by the secretary of the AN contemplates expressing that the evolution of the nation's situation since May 2016, when the National Assembly sent the report to the Secretary General of the OAS revealing the exacerbation of the dismantling of democratic institutions and political persecution coupled to the growing humanitarian crisis has worsened the alteration of the constitutional and democratic order suffered in Venezuela.

The second item reflected in the agreement requested support to immediately call the Permanent council as per article 20 of the Inter-American democratic charter to engage in a

collective appreciation of the nation's situation, especially the alteration of the constitutional and democratic order.

The text also urges the permanent council of the OAS to urgently enforce the mechanisms foreseen in article 20 of the Inter-American democratic charter to restitute the right to vote and guarantee the holding of timely elections under equal conditions.

It is also agreed (sic) that all political prisoners must be immediately released, a humanitarian channel must be established, respect for (sic) the constitutional faculties of the National Assembly must be enforced, the powers must be separated and human rights must be respected, protected and guaranteed.

The text also urges the member governments of the OAS to endorse through the diplomatic representatives the discussion at the permanent council of the severe humanitarian and institutional crisis suffered in Venezuela.

Based on this, the Constitutional court in safeguarding the provisions, principles and constitutional warranties, is forced to provide a solution to the obstacles faces in the effective application thereof, whether due to an action or an omission of an entity of the public power -such as the National Assembly which among other functions has the function of legislating- and apply the legal remedy designed by the Constituent to face a situation of unconstitutionality that affects not only the individual sphere of the legislators who have not incurred in said situation of omission but due to the function they have been entrusted with affect the collective, in this case, the people where national sovereignty resides as previously stated.

Therefore, this constitutional court considers that the direct aggrieved party in this action are the people of the Bolivarian Republic of Venezuela, who have the plausible expectation and legitimate trust in their elected authorities in democracy as a system of government, that the superior values consecrated in the magna carta and the constitutional principles be effectively guaranteed preventing any act that seeks interference by a foreign authority no matter its nature since it constitutes a serious offense to the supreme norm of the Venezuelan State, which must be obeyed by all the entities in the public power, and this court in exercising its constitutional jurisdiction, is called to avoid illegal constitutional acts attempting against the independence and national sovereignty and that lead to the rupture of the constitution order and continuation which is the basis for the democratic and social rule of law and justice given to the people of Venezuela by means of universal votes.

In this regard, it must be mentioned that this constitutional court in respect to the principles of independence, sovereignty, legality, legal security and constitutional public order, as guarantor of the rights and warranties foreseen in the fundamental text, must annul the previously examined disputed act which is unconstitutional and instructs that all applicable *erga omnes* measures be taken that tend towards the stability of the republic's institutions. And so it is thus decided.

VI
ON THE INNOMINATE CONTROL OF CONSTITUTIONALITY

Now then, it is deemed pertinent to reiterate that this constitutional court is the maximum and ultimate interpreter of the Constitution of the Bolivarian Republic of Venezuela and that ultimately based on its attribution of protecting the Constitution (Title VIII), it must guarantee the supremacy and effectiveness of the

constitutional norms and principles, corresponding to it to establish the interpretations on its content and scope so any action or omission of the bodies and individuals leading to disown the regulatory aspect of the rule of law of the republic -which includes the pronunciations of this court in relation to the constitutional provisions- necessarily imply their examination and consideration and as the case may be, to declare the nullity of all acts that run counter to it as well as the exercise of all other corresponding actions (see, among others, articles 1, 2, 3, 5, 7, 137, 253, 266, 334, 335 and 336 of the constitution).

In the respect, this court, in sentence n° 1415 of November 22, 2000, declared that:

> (…) the Constitution is supreme insofar as it is the product of the self-determination of a people, given unto itself with no intervention by foreign elements and no internal impositions. Thus, the Constitution necessarily becomes the fundamental norm to which the multiple forms acquired in human relations find links in a specific society and time period.
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> Therein that the Constitution jointly with the rule of law as a whole is of an inherently regulatory nature. This is an axiological state of being assumed by the community to be of compulsory compliance, and to the infractions thereto, the corrective mechanisms created by the rule of law itself are activated. It therefore is that "the law is precisely identified for constituting a specific mechanism to give order to human social existence" (Cf. F. J. Ansuátegui et al.,, "El Concepto de Derecho" in a course on the theory of law, Marcial Pons, page 17), the Constitution, also, and it cannot be otherwise, imposes models of conduct leading towards fulfilling modes of behavior in a specific society." (Highlights added).

As per a similar criterion, in decision n° 33 of January 25, 2001, this constitutional court asserted the following:

> (…) what we know today as Constitutional law has been the product of a process of legal absorption of two conjoining currents; One is power and authority and the other is individual freedom and the quest for what is good for society. The Constitution undoubtedly is the principal and maximum legal and political arbitrator in this process from which all emerged as the axis of the rule of law. The principle of supremacy of the Constitution is a reflection of said nature.
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> The Constitution is supreme among other reasons because in it are recognized and positively drafted basic values of individual existence and social cohabitation at the same time as it instruments the democratic and pluralistic mechanisms for the legitimation of power, such as those relative to the designation of the authorities and the mandates with respect to the how and what for this authority is exercised. The purpose thereof is the respect for the free and responsible determination of individuals, tolerance for what is diverse or different and the promotion of the harmonious development of the people. The principle of supremacy of the Constitution responds to these values the enactment of which provides quality of life and the common good." (Highlights added).

On the origins of constitutional jurisdiction as the guarantee that defines the supreme norms, principles and values sovereignly adopted by the people and poured into the Constitution, this court in sentence n° 1415 of November 22, 2000, recalled the following:

(…) Constitutional jurisdiction, in general terms, and in particular in democracies whose systems of constitutional warranties have been influenced by the current American model, is tax-based in the first place, of a jurisprudence tradition that began with the ruling issued by Justice Major Edward Coke in the case of Dr. Bonham of 1610 (England), from which the following paragraph is extracted:

'It appears in our books that in many cases common law (understood to mean fundamental law) controls the laws of parliament and sometimes decides that they are entirely null because when a law passed by parliament runs counter to common law and reason, or is repugnant or of impossible execution, common law must predominate over it and pronounce the nullity of said law.'(Reports, part VIII, 118 a., quoted by G. Sabine: History of Political Theory, Economic Culture Fund, page 351).

Although the position of judge Coke, by way of the dynamic of the confrontation between the English King and the Parliament, was not what definitively marked the historical and political fate of Britain, same cannot be affirmed with respect to the British colonies which settled in America where the idea of the Constitution as a supreme norm was deeply entrenched as well as the Lockean ideology of individual rights, according to which moral rights and duties are intrinsic and have priority over the law to such an extent that the public authority is forced to enact through the law all that is naturally and morally fair. "In effect, Locke interpreted natural law as a pretension to some innate and inalienable rights inherent to each and every individual" (Cf. G. Sabine: ob. quote page 404).

Based on these premises the sentence in the case of Marbury v. Madison, 5 U. S. (1 Granch), 137 (1803) of the Supreme Court of the United States of America was issued by judge John Marshall, on which the doctrine of constitutional regulatory links was based even, in respect of the laws issued by the federal power of that nation. The following lines were extracted from said sentence:

'It is too simple a proposition to discuss that either the Constitution controls all legislative acts that contradict it, or the legislative may alter the Constitution by means of a regular law. Between these alternatives there is no middle term. Either the Constitution is a superior or supreme, unmodifiable right through ordinary means or it is at the same level as legislative acts and, as any other law, it is modifiable when the legislative sees fit. If the first term of the alternative is true then a legislative act contrary to the Constitution is not the law. If the second term is true, then all written constitutions would be absurd attempts by the people at limiting a power that by its very nature would be unlimited. Certainly, all items set forth in the written constitutions contemplate these as forming the supreme and fundamental right of the nation and consequently the theory of the respective governments must be that a regular legislative law that contradicts the constitution is null' (quoted by E. García de Enterría, The Constitution as Norm and the Constitutional Tribunal, Civitas, page 177).

Another milestone to highlight in this evolution was the creation of the Constitutional courts strictly per se, initiated by the Weimar Constitution of 1919, as well as the Austrian Constitution of 1920 perfected in 1929, the conception of which is due to the celebrated jurist Hans Kelsen. Characteristic of this model is the connection of the legislator to the Constitution, beyond that of the public court or powers, so it was affirmed that the work of the constitutional court reached beyond that of a negative legislator than that of a judge in its most traditional sense. Thus the laws were examined by that negative legislator who decided in abstract on the correspondence thereof with the constitutional text and

in the case of contradiction or incompatible correspondence, issue a constitutive decision of unconstitutionality with effects only towards the future (Cf. H. Kelsen, Writs on Democracy and Socialism, Debate, 1988, Page 109 and following.).

After World War Two it became apparent that it was convenient to offer warranties on the efficacy of a document that is not just a sheet of paper, according to the famous phrase by Lassalle. On the contrary, after this very tough experience of de-legitimation and death, that sheet of paper signified the ultimate and most resistant defense against antidemocratic currents. It was thus entrusted to the constitutional courts the transcendental political task of safeguarding the constitutional principles and values, defend constitutional supremacy and interpret and apply the constitution as its sole unique and natural regulatory reference. Therein lies the importance, for example, of the French Constitutional Council and the contemporary Italian, Austrian, Spanish and Federal German constitutional courts.

As indicated by this court in the aforementioned sentence n° 1415 of November 22, 2000:

Therein that the functions performed by this court, in particular that referring to the interpretation of the Constitution in response to a specific action, must be contrasted to the content of the constitutional mandamus in light of three basic principles, i. e. first, that of the competence, which acts as a principal instrument for the exercise of power once legitimated; secondly, that of the separation of powers, safeguarding the necessary coordination among them, as well as the exercise of certain functions which not being essential are of their natural competency based on which there is a functional balancing mechanism in the division of powers and mutual controls or counterbalances among the entities that exercise it. And thirdly, the principle of exercise of power based on the law, an essential element of the rule of law and the democratic system, based on which autocracy and arbitrariness are execrated. Said principles, insofar as they are fundamental to the rule of law, demand the distribution of functions among diverse entities and the acts thereof based on predetermined rules, whether as a mode of interdiction of arbitrariness or as mechanisms of efficiency in complying with the State's objectives" (Highlights added).

This interpretation and application is one of the main functions of constitutional jurisdiction in respect of which this court, in sentence 33 of January 25, 2001 stated the following:

The moderate and rational use of power which, as previously viewed, has its ultimate legal expression in the Constitution, has needed the functioning of certain organisms which, either serve to curb the authority itself by acting as its censors or guarantee inter-organic harmony and respect for fundamental rights. The appearance of the parliamentary institution has to do with the first ideas referred to. The second order, i.e., the bodies through which the separation of powers, respect for fundamental rights and individual or collective aspirations as expressed in the Constitution are guaranteed, is the part that is incumbent on us.

Thus this alludes to the technique derived from the principle of supremacy of the Constitution based on which certain specialized bodies are entrusted with the task of overseeing respect for public ethics which, as a series of axiological objectives or goals, must acknowledge and preserve political power through the law. Said bodies have - from a legal perspective - the final word on the scope and content of the principles and norms contained in the Constitution.

Consequently, whether said judiciary instances have an organic existence within the judiciary power or outside of it, or whether they are denominated as tribunals, courts, councils or constitutional courts, the truth is that they are sources of judiciary law since they complement the jurisprudence of the mandamus with general regulations. They also own a different power of arbitration depending on the author (Troper for example) as classic legislative, executive and judiciary powers, a trait of notorious presence based on the same author, in the French Constitutional Council. But in any event, what characterizes them is the exercise of the so-called constitutional warranty power, through which they control the ultimate goal of justice as expressed in the law, insofar as they realize the axiological content of the Constitution and guarantee respect for the fundamental rights (Peces-Barba, G. et al., "Derecho y Fuerza" in a course on the theory of law, Marcial Pons, Madrid, page 117).

Through its decisions, the constitutional jurisdiction based on arguments and reasonings nevertheless issued as expression of the will in the Constitution, seeks to concretize on the one hand the ethical and political objectives of said norm, by modulating them to criteria of opportunity or usefulness in line with the reality and new situations and on the other hand, interpret in abstract the Constitution to clarify precepts the intellection or application of which raise doubts or present degrees of complexity.

On the other hand, said jurisdiction is entrusted with directing all manifestations of will or judgment for the maximum legal operators within the parameters set forth by said norm. As per the foregoing none of the public powers escapes from its influence, including the judiciary power. Said link is universal (…)

1.- The foregoing amply justifies that the Constitution of the Bolivarian Republic of Venezuela has created a never-before-seen body within the also recently appointed Supreme Court of Justice, which has been conceived as a jurisdictional instance with marked specialization in protection, tending towards ensuring the integrity, supremacy and effectiveness of the Constitution. This body is the constitutional court.

This specialization becomes concrete in the exercise of constitutional tutelage in its maximum intensity. Not precisely in the mode exercised by the court in full of the then called Supreme Tribunal of Justice, which was restricted in its constitutional warranty functions as if it were a negative legislator, meaning to say that the court in full acted as a complement to the legislative power (the sole entity subjected to the Constitution) while it was in charge of revoking acts with rank and force of law issued in contravention of the Constitution. Since it was not conceived as a regulatory legal entity directly applicable to the various legal operators, it was understood that the interpretations of the Constitution made by the court in full were not binding and its influence was associated to the abrogation effect of the nullity rulings of acts with ranks or force of law. On the contrary, this constitutional court is entrusted not only of annulling acts of that nature but has been assigned the interpretation of the constitutional text, so as to overcome any difficulties or contradictions and enforce the juridical political principle based on which the fundamental rights precede and axiologically limit any manifestations of power. For this it has been placed at the Forefront of the legal apparatus in respect to its application, to the extent that its decisions are bound to the other courts of the Supreme Court of Justice, not only by the grace of its powers to annul but as a derivation of the aforementioned function (…).

Finally, in its sentence n° 1309 of July 19, 2001, this constitutional court expressed:

> Rightfully so it has been said that law is a regulatory theory at the service of a policy (the policy that underlies the axiological project of the Constitution), and that the interpretation must be committed if the supremacy thereof is to be maintained when exercising the constitutional jurisdiction attributed to the judges, with the best political theory underlying the system that is being interpreted or is being integrated and institutional morality that serves as the axiological basis (*interpretatio favor Constitutione*). In this order of ideas, the standards to settle the conflict among the principles and norms must be compatible with the Constitution's political project (A democratic and social rule of law and justice) and must not affect the term of said project with ideological interpretation elections that privilege individual rights to the death or that embrace the primacy of international legal order over national law in detriment to the sovereignty of the State. Although the modern theory of law has removed the absolute character of the State attributed to it by the dogma of sovereignty, for current legal science the formulation of the relationship between international law and national law varies depending on the reference system adopted, since for it, as Kelsen stated, both systems are equally admissible and there is no legal method that gives preference to one over the other (Reine Rechtslehre, Wien, Deuticke, 1960, p. 343). And it is observed that the validity of international law depends on the explicit recognition of the Constitution (art. 23). From the systematic standpoint, the option of the primacy of international law is a tribute to the globalizing and hegemonic interpretation of individualistic rationalism. The new theory is a combat for the supremacy of the appraising social order that serves as the basis for the Constitution of the Bolivarian Republic of Venezuela.
>
> …Omissis…
>
> This therefore means to say that that a supposedly absolute and supra-historic system of principles cannot be placed above the Constitution, nor that the interpretation thereof runs counter to the political theory that sustains it. From that point of view we shall have to negate any theory that postulates absolute rights or ends and, although intra-constitutional anomies among norms and among these and the legal principles are not excluded (*verfassungswidrige ver fassungsnormen*) [unconstitutional constitutional norms] the interpretation or integration must be done *ohne Naturrecht* (devoid of the natural law), based on the tradition of live culture the meaning and scope of which depends on the concrete and historical analysis of values shared by the Venezuelan people. Part of the protection and guarantees of the Constitution of the Bolivarian Republic of Venezuela therefore lie in a political perspective *in fieri*, reluctant to ideologically bind with theories that may limit, under the pretext of universal validities, our national sovereignty and self-determination as demanded in article 1° *ejusdem*.

The abovementioned jurisprudence of the constitutional court is absolutely in agreement with the provisions of the Charter of the Organization of American States (OASA-41) in particular, which contains the following articles:

> Article 1
>
> The American states set forth in this charter the international organization which has been developed to achieve order in peace and justice, foster their solidarity, reinforce their collaboration and defend their sovereignty, their territorial integrity and their independence. Within the United Nations the Organization of American States constitutes a regional entity.
>
> The Organization of American States has no other faculties than those expressly conferred by this Charter, none of the provisions of which authorizes it to intervene in matters of

internal jurisdiction of the Member states.

Article 2

The Organization of American States, in order to realize the principles in which it is based and fulfill its regional obligations as per the UN Charter, hereby sets forth the following essential purposes:

a) Guarantee peace and safety in the continent;

b) Promote and consolidate representative democracy within the scope of respect for the principle of non-interventionism;

c) Prevent possible causes of difficulty and ensure the peaceful solution of controversies arising among the Member states;

d) Organize solidary actions therewith in case of aggressions;

e) Procure the solution of political, juridical and economic problems arising among them;

f) Promote by means of cooperation actions, their economic, social and cultural development;

g) Eradicate critical poverty, which constitutes an obstacle to the full democratic development of the people of the hemisphere, and

h) Attain the effective limitation of conventional weaponry that would permit the dedication of a greater number of resources to the economic and social development of the Member states.

Chapter II

PRINCIPLES

Article 3

The American states reaffirm the following principles:

a) International law is a rule of conduct of the member states in their reciprocal relations.

b) International order is essentially constituted by the respect to the personality, sovereignty and independence of the member states and by the faithful compliance to the obligations emanating from the treaties and other sources of international law.

c) Good faith must rule the relations among the member states.

d) The solidarity of the American states and the lofty goals pursued through it require the political organization thereof on the basis of the effective exercise of representative democracy.

e) Every state has the right to choose without foreign interference its political, economic and social system, and organize itself as it deems fit, and is under the duty to not interfere in the affairs of any other state. Based on the foregoing, the American states shall fully cooperate with one another and independently of the nature of their political, economic and social systems.

f) The elimination of critical poverty is an essential part of the promotion and consolidation of representative democracy and constitutes a common and shared responsibility of the American states.

g) The American states condemn wars and aggressions: victory does not grant any rights.

h) An aggression against an American state constitutes an aggression to all the other American states.

i) International controversies arising between two or more American states must be settled by means of peaceful procedures.

j) Justice and social security are the bases for lasting peace.

k) Economic cooperation is essential for the joint wellbeing and prosperity of the people of the continent.

l) The American states hereby proclaim the fundamental rights of human persons without distinction of race, nationality, creed or gender.

m) The spiritual unity of the continent is based on respect for the cultural personality of the American nations and requires close cooperation in the lofty goals of human culture.

n) Education of the people must aim towards justice, liberty and peace.

…Omissis…

Article 19

No state or group of states has the right to intervene directly or indirectly and regardless of the reason in the internal or external affairs of any other state. The foregoing principle excludes not only the armed forces but also any other form of interference or tendency to attempt against the personality of the State, and the political, economic and cultural elements that comprise it.

Article 20

No state may apply or foster the application of economic or political coercive measures to force the sovereign will of any other state and obtain advantages of any nature whatsoever therefrom.

So, bearing in mind the foregoing, it is notoriously communicational that after issuing the act declared as null in this sentence, other actions and even omissions have been taking place that could also especially seriously attempt against the system of values, principles and norms foreseen in the Constitution of the Bolivarian Republic of Venezuela, and ultimately against the stability of the republic, of the region and of the most elementary notion of universal justice, and for this reason as per articles 7, 137, 253, 266, 322, 326, 333, 334, 335, 336 and 350 of the fundamental text, in harmony with its articles 337 and following, by way of the State of Exception in force in the republic (see sentence n° 113 of March 20, 2017); this constitutional court, as the maximum and ultimate interpreter of the fundamental text, instructs in writing the opening of an innominate control process as to the constitutionality (the docket of which shall be opened with a certified copy of this decision) to guarantee the nontransferable rights of the nation and male and female Venezuelans, the purposes of the State and the protection of the nation's justice, independence and sovereignty (see, among others, articles, 1, 2, 3 and 5 *ejusdem*), which shall continue as per articles 128 and following of the Organic Law on the Supreme Court of Justice and the jurisprudence of this court. And so it is thus decided.

In this regard, by virtue of the provisions in article 135 and following of the Organic Law on the Supreme Court of Justice, instructions are issued to notify this decision to the President of the Bolivarian Republic of Venezuela, the President of the Moral Republican Council, the attorney general of the republic and the public prosecutor of the republic. For said purposes please send a certified copy of this decision to these officials. The interested parties must be summoned by means of a notice.

Lastly, send this docket to the court to try the case to realize the instructed notifications and summon the interested parties as per the provisions in the law that regulates the functions of this

high tribunal, especially article 91, and continue the proceedings. And so it is thus decided.

VII

ON THE PRECAUTIONARY MEASURE

Article 130 of the Organic Law on the Supreme Court of Justice recognizes within the frame of Chapter II, *"On proceedings at the constitutional court"*, registered in Title XI, denominated *"Transient Provisions"*, the general precautionary powers of the constitutional court on the occasion of jurisdictional proceedings tried in it.

In effect, the aforementioned provision collects the peaceful and reiterated doctrine of this court (sentence n° 269 of April 25, 2000, case *ICAP*), which established that precautionary protection constitutes an essential element of the right to effective judiciary protection and therefore is a fundamental provision of the process that explicitly and directly pursues a preventive aim. In other words, it is a cardinal instrument to safeguard the legal situation of the justiciables so as to prevent them from suffering injuries that are irreparable or hard to repair while the case is being tried (see sentence 2.370/2005, of August 1st, *case Línea Santa Teresa C.A.*); Therein lies its instrumental nature, meaning to say that precautionary measures do not constitute an end in and of themselves but are pre-ordained to a final ulterior decision, so in regards to substantive law act as mediated protection, and therefore, as safeguard to the efficient operation of the jurisdictional function.

The foregoing brings to mind the provisions in sentence n° 1.025 of October 26, 2010 (case *"Constitution of Táchira state"*) which in respect to the precautionary provisions issued based on said article stated:

> This thus means that the quoted instrumental nature determines on the one hand, its temporary nature and at the same time, due to its ideal or sufficient nature to safeguard the effectiveness of the protection of the law, since if measures are granted that do not guarantee the results of the proceeding, the precautionary protection shall be frustrated insofar as it shall not be useful to the undertaking thereof.
> It is thus timely to refer to Calamandrei (1984. Providencias Cautelares, Editorial Bibliográfica Argentina, Buenos Aires), in the sense that, as an effect of the service nuance of precautionary measures, these must be homogeneous to the base petition since they attain their highest efficiency the more similar they are to the measures which are to be adopted for the satisfaction of the definitive claim or cause of action, reiterating that they constitute the warranty of execution of the final ruling.
> So then, the basis for the precautionary measure does not depend on a comprehensive and deep knowledge of the object of dispute in the main process, but of a peripheral or superficial knowledge aimed at obtaining a pronunciation of mere probability on the existence of the discussed right in which the concomitant circumstances must be weighed as well as the public interests in conflict, by virtue of the presumption of legitimacy of the acts carried out by the public power.

Based on this, it is observed that the precautionary powers of this court are not subject to the dispositive principle and therefore operate even by the judge without the request of any party. They also respond to circumstances of need and urgency, and are therefore excluded from the inopportune principle of procedural acts

and this determines that they proceed in any status and degree of the case, so long as they are required to safeguard the situation in dispute.

In this respect, it is important to mention that precautionary measures are characterized in the first place, by their instrumentality, meaning to say that they do not constitute an end in and of themselves, but are pre-ordained to the issuing of an ulterior final decision. Secondly, they are temporary and, consequently, disappear when the sentence that puts an end to the main process is issued, notwithstanding the judge's power to amend or revoke them for happenstance reasons even when the main process has not concluded. Thirdly, is the ideal nature thereof to safeguard the effectiveness of the protection of the law invoked since, if measures are granted that do not guarantee the results of the proceeding, the precautionary protection shall be frustrated insofar as it shall not be ideal to realize it.

In this manner, the provisional decision, although it represents an approximation to the *thema decidendum* to the principal judgment, is essentially different in regards to the declaration of certainty of the base decision.

As can be observed, it is a probable analysis and not a declaration of certainty and, thus, does not imply an anticipated pronunciation on the merits of the dispute, but an analysis on the verisimilitude thereof which may or may not be confirmed in the final sentence when recognized with the force of res judicata and on the basis of all conviction elements. In other words, it is an anticipated but superficial appreciation of the right in dispute, based on the *prima facie* impression of the pretension.

As per the traits mentioned and the guarantee-based nature of the precautionary protections, the national legislator acknowledged in the new law regulating the functions of this maximum Tribunal one of the more novel and progressive natures of these measures, i.e., its innominate nature which consists in that the power of safeguarding held by the judges and concretely the judges of this court on situations carried to trial extends to any positive or negative measure necessary for the effective protection of the justiciables.

In this manner, this high tribunal and the courts in general can adopt any of the precautionary measures expressly collected in the mandamus, as happens with the suspension of effects, the prohibition to transfer and encumber or issue a providence that, without being expressly mentioned in the law, permits the protection of the interests and rights aired in trials.

In this regard, in light of the unusual actions affecting the peace and sovereignty of the nation and the repeated conduct contrary to international rule of law executed by the current Secretary General of the Organization of American States (OAS) injurious to the general principles of international law and the charter of the Organization of American States (A-41), referring to the self-determination, independence and sovereignty of the people, among others (see sentences of this court n° 1939 of December 18, 2008, 1652 of November 20, 2013 and 3342 of December 19, 2002), based on the provisions of article 236.4, in harmony with articles 337 and following *ejusdem* (see sentence n° 113 of March 20, 2017), among others, the President of the Bolivarian Republic of Venezuela is instructed to proceed to exercise the international measures he deems pertinent and necessary to safeguard the constitutional order and in exercise of his constitutional attributions and so as to guarantee governability in the nation, take the civil, economic, military, penal, administrative, political, juridical and social measures he deems pertinent and necessary to avoid a state of commotion and within the framework of the State of Exception and in light of the continued contempt and legislative omission of the National Assembly, to exceptionally revise the substantive and adjective legislation (including the Organic Law against Organized Crime and Funding for Terrorism, the Law Against Corruption, the Criminal Code, the Organic Procedural Criminal Code and the Code on Military Justice since crimes of a military nature may have been committed),

that enables the warding off of the serious risks threatening the democratic stability, peaceful cohabitation and the rights of male and female Venezuelan citizens as per the wording and spirit of articles 15, 18 and 21 of the Organic Law on States of Exception in force.

It is opportune to refer that as per the provisions in article 200 of the fundamental text, parliamentary immunity only protects the acts deployed by congresspersons in the exercise of their constitutional attributions (which is not compatible with the current situation of contempt the National Assembly is immersed in) and therefore in no case protects them when incurring in (flagrant) constitutional and criminal illicit acts (see sentence issued by this constitutional court n° 612 of July 15, 2016 and by the court in full No. 58 of November 9, 2010 and 7 of April 5, 2011, among others).

Likewise, the President of the Bolivarian Republic of Venezuela is instructed to evaluate conduct of the international organizations the republic is a member of, which could be deploying proceedings similar to those being exercised by the current executive secretary of the Organization of American States (OAS) in detriment to the democratic principle and the principle of equality internally notwithstanding acknowledging the dignified action of the member states who have bravely defended the principles of international law and have therefore defended the position of the Bolivarian Republic of Venezuela, as well as at other opportunities have vindicated the rights of other nations which as our homeland have been arbitrarily besieged for denouncing injustices committed daily in the international system by interfering actions and thus guarantee as per our historic tradition the social human rights inherent to all our population, and especially of the oppressed people. And so it is decided.

VIII
DECISION

For the foregoing reasons, this constitutional court of the Supreme Court of Justice, in exercising the constitutional jurisdiction as the maximum safeguarding instance of the Constitution, as well as to maintain the indispensable measures to restore constitutional order and administer justice on behalf of the republic per authority granted by the law, hereby declares:

1.- That IT IS COMPETENT to learn about and settle this appeal for annulment filed by citizen HÉCTOR RODRÍGUEZ CASTRO, acting as congressman to the National Assembly of the Bolivarian Republic of Venezuela, and coordinator of the homeland parliamentary block for Bolívar state, assisted by the aforementioned identified attorney Miguel Bermúdez, against *"the parliamentary act passed by the National Assembly on March 21, 2017, entitled 'Agreement for the reactivation of the application process of the Inter-American Charter of the OAS, as a peaceful conflict resolution mechanism to restore constitutional order in Venezuela'..."*.

2.- ADMITS the appeal for annulment filed against the parliamentary act held on March 21st, 2017.

3.- DECLARES OF MERE LAW the resolution of this appeal for annulment.

4.- DECLARES the NULLITY FOR UNCONSTITUTIONAL *"(of) the parliamentary act passed by the National Assembly on March 21, 2017, entitled 'Agreement for the reactivation of the application process of the Inter-American Charter of the OAS, as a peaceful conflict resolution mechanism to restore constitutional*

order in Venezuela'…".

5.- THE JUDGE INITIATES WITHOUT THE REQUEST OF ANY PARTY the innominate control process as to the constitutionality with respect to the acts stated in this decision, the docket of which shall commence with the certified copy thereof.

5.1.- DECREES THE FOLLOWING PRECAUTIONARY MEASURES:

5.1.1.- INSTRUCTS the President of the Bolivarian Republic of Venezuela, as per article 236.4, in harmony with the provisions in articles 337 and following *ejusdem* (see sentence n° 113 of March 20, 2017), among others, to proceed to exercise all the international measures he deems pertinent and necessary to safeguard the constitutional order, and in exercise of his constitutional attributions and so as to guarantee governability in the nation, to take the civil, economic, military, penal, administrative, political, juridical and social measures he deems pertinent and necessary to avoid a state of commotion; and within the framework of the State of Exception and in light of the continued contempt and legislative omission of the National Assembly, to exceptionally revise the substantive and adjective legislation (including the Organic Law Against Organized Crime and Funding for Terrorism, the Law Against Corruption, the Criminal Code, the Organic Procedural Criminal Code and the Code on Military Justice –since crimes of a military nature may have been committed-), that enables the warding off of the serious risks threatening the democratic stability, peaceful cohabitation and the rights of male and female Venezuelan citizens as per the wording and spirit of articles 15, 18 and 21 of the Organic Law on States of Exception in force.

5.1.2.- INSTRUCTS the President of the Bolivarian Republic of Venezuela to evaluate the conduct of the international organizations the republic is a member of, which could be deploying proceedings similar to those being exercised by the current executive secretary of the Organization of American States (OAS), in detriment to the democratic principle and the principle of equality internally, notwithstanding acknowledging the dignified action of the states who have bravely defended the principles of international law and have therefore defended the position of the Bolivarian Republic of Venezuela, as well as at other opportunities have vindicated the rights of other nations which as our homeland have been arbitrarily besieged for denouncing injustices committed daily in the international system by interfering actions and thus guarantee, as per our historic tradition, the social human rights inherent to all our population, and especially of the oppressed people.

5.2.- Instructions are issued to notify this decision to the President of the Bolivarian Republic of Venezuela, the President of the Moral Republican Council, the attorney general of the republic and the public prosecutor of the republic. For said purposes please send a certified copy of this decision to these officials.

5.3.- INSTRUCTS the notification of the interested parties by means of notices in the press.

5.4.- INSTRUCTS that this docket be sent to the substantiation court for the purposes of continuing to process this appeal.

6.- INSTRUCTS the publication of this decision in the judiciary gazette and the official gazette of the Bolivarian Republic of Venezuela, the summary of which must read: "*Sentence by the constitutional court declaring the nullity for unconstitutional of the parliamentary act passed by the National Assembly on March 21, 2017, on the purported Reactivation of the Process of Application of the Inter-American Charter of the OAS and the initiation of the innominate control process as to the constitutionality of further actions that also attempt against the independence, sovereignty and other inalienable rights of the Nation*".

Let it be published, recorded and notified. Let these instructions be complied with.

Issued, signed and sealed in the dispatch room of the constitutional court of the Supreme Court of Justice in Caracas, on the twenty-seventh (27) day of March, two thousand seventeen (2017). 206° years of Independence and 158° of the Federation.

The chairperson of the court,

Juan José Mendoza Jover

The vice-chairperson,

Arcadio Delgado Rosales

the Magistrates,

Carmen Zuleta de Merchán

Calixto Ortega Ríos

Luis Fernando Damiani Bustillos

Lourdes Benicia Suárez Anderson

Federico Sebastián Fuenmayor Gallo

The Secretary,

Dixies J. Velázquez R.

Docket 17-0323