

## The Protection of Fundamental Human Rights In The Criminal Process

### National Report on Venezuela

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#### 1. INTRODUCTION

This contribution looks at the situation in Venezuela regarding the protection of human rights in Venezuelan criminal process, from a *lege lata* point of view. When reviewing the applicable legal rules in their supra-constitutional, constitutional and statutory hierarchy, an apparently guarantee-prone system appears. With the adoption of the Organic Code of Criminal Procedure and, most of all, with the enactment of the Constitution of The Bolivarian Republic of Venezuela in 1999, the aim was to eliminate an inquisitorial system that was disrespectful of fundamental rights.

The description of the Venezuelan situation that derives from the questionnaire on which this national report is based, shows clearly that, on paper and in principle, there are rules in Venezuela protecting what a democratic and social state under the rule of law requires: a criminal process protecting the fundamental rights of all those affected by the same. However, the scope of this contribution does not allow for a more detailed explanation of how these rules are enforced. The reader should therefore bear in mind that such an explanation would also have made clear that, since long ago and especially as from 1999, there is constant infringement of the rule of law in criminal process in Venezuela.

Summing up this situation, may we quote Montesquieu who, after visiting England, said: “When I go to a country, I do not look to see whether there are good laws, but whether they are enforced, for good laws are everywhere.”<sup>1</sup>

#### 2. APPLICABLE INTERNATIONAL LAW

Venezuela is a contracting party to the following human rights treaties, humanitarian law treaties and U.N. and other declarations:

Universal Declaration of Human Rights. Venezuela voted for the adoption and proclamation of this Declaration at the U.N. General Assembly, on December 10, 1948.

<sup>1</sup> Notes sur l'Angleterre, en *Œuvres complètes*, Editions du Seuil, 1964, p. 331-332.

International Covenant on Civil and Political Rights and first optional protocol, since August 10, 1978; second optional protocol since June 23, 1992

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, since June 26, 1991.

Inter-American Convention to Prevent and Punish Torture, since June 26, 1991.

Declaration on the protection of all persons from being subjected to torture, cruel, inhuman or degrading treatment or punishment. Venezuela voted for the adoption of this Declaration at the U.N. General Assembly in 1975.

Code of conduct for law enforcement officials. Venezuela voted for the Resolution 34/169 adopted by the U.N. General Assembly of 17 December 1979.

Basic Principles on the Independence of the Judiciary. Venezuela voted in favour of these Principles adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

Basic principles on the role of lawyers. Venezuela voted for the adoption of these principles by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

UN standard minimum rules for the administration of juvenile justice (Beijing Rules). Venezuela voted for the resolution 40/33 of 29 November 1985 adopted by General Assembly.

American Declaration of the rights and duties of Man. Venezuela voted for O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948).

American Convention on Human Rights. Ratified by Venezuela on July 18, 1978. Venezuela accepted the jurisdiction of the Inter American Human Rights Court on June 24, 1981.

#### A. Incorporation into the Venezuelan Legal System

Under article 145 of the Constitution, the treaties signed by the Republic must be approved by the National Assembly prior to their ratification by the President of the Republic, with the exception of those whose purpose is to comply with, or perfect, pre-existing obligations

of the Republic, to apply principles expressly recognised by it, to perform ordinary actions in international relations or to make use of powers expressly attributed by law to the National Executive.

#### B. Reservations

When Venezuela signed the American Convention on Human Rights it made a reservation subsequently inserted in the instrument of ratification, as follows:

“Article 60, paragraph 5 of the Constitution of the Republic of Venezuela of 1961 provides that ‘no one may be convicted in a criminal cause without having been personally notified of the charges and heard as provided by the law. Those accused of crime against public property may be tried in absentia with the guarantees and as provided by law.’ This possibility is not contemplated by Article 8.1 of the Convention, and for such reason, Venezuela formulates the corresponding reserve”.

However, with the adoption of the Constitution of the Bolivarian Republic of Venezuela in 1999, this exception for those accused of crimes against public property was eliminated and accordingly the reservation no longer applies.

#### C. Enforceability of Fundamental Human Rights through the Domestic Courts

Human rights treaties are self-executing under Venezuelan law. The Constitution of the Bolivarian Republic provides as follows:

Article 19. “The State guarantees every person, in accordance with the progressiveness principle and without discrimination, the inalienable, indivisible and interdependent enjoyment and performance of human rights. Their respect and guarantee are binding on bodies of Public Power in accordance with the Constitution, the human rights treaties entered and ratified by the Republic and the laws developing them.”

Article 23. “The treaties, covenants and conventions related to human rights, entered and ratified by Venezuela, have constitutional rank and prevail in domestic order, inasmuch as they have rules on their enjoyment and performance being more favourable than those provided by this Constitution and by the laws of the Republic, and are directly and immediately enforceable by the courts and other bodies of Public Power.”

#### D. Right of Complaint to an International Judicial Body

The Constitution of the Bolivarian Republic of Venezuela provides as follows:

Article 31. “Every one has the right, under the terms provided by human rights treaties, covenants and conventions ratified by the Republic, to file petitions or complaints with the international bodies created for such purposes, in order to apply for protection of their human rights. The Venezuelan State commits itself to adopt, in accordance with procedures provided by this Constitution and the laws, the measures being required in order to comply with the decisions issued by the herein contemplated international bodies.”

Article 46 of the American Human Rights Convention provides that the admission by the Inter-American Human Rights Commission of a communication, lodged in accordance with articles 44 or 45, shall be subject to the requirement (among other things) that domestic remedies have been pursued and exhausted in accordance with generally recognised principles of international law. Citizens must abide by this requirement before filing any petition or complaint with an Inter-American human rights body.

As a matter of clarification, it should be said that under the American Human Rights Convention, citizens do not have a direct right of complaint to an international judicial body. They have the right to file a petition with the Inter-American Human Rights Commission —which is not a judicial body— alleging violation of those human rights guaranteed and protected by the American Convention. If the Commission adopts a report deciding that the State subject to the petition has indeed violated human rights and therefore is responsible under international law, the Commission may file a complaint with the Inter-American Human Rights Court.

### 3. DOMESTIC CRIMINAL PROCESS

#### A. Bill of Rights in the Venezuelan Constitution

The Constitution of the Bolivarian Republic of Venezuela has what could be called a “Bill of Rights. Title III of the Constitution deals with Duties, Human Rights and Guarantees and its Chapter I refers to the General Provisions. The above-quoted Article 19 provides that respect for and guarantee of human rights “are binding on bodies of Public Power in accordance with the Constitution, the human rights treaties entered and ratified by the

Republic and the laws developing them". The same Title III refers to civil rights, as provided in Articles 43 through 61. These articles provide for the same rights and guarantees established in the International Covenant on Civil and Political Rights and in the American Convention on Human Rights. Article 49 is practically a copy of the American Convention's Article 8, providing rights pertaining to fair trial and criminal process.

#### B. Law Governing Criminal Process

Criminal process in Venezuela is governed by statutory law. Under the Constitution, the criminal justice authorities enjoy a high degree of autonomy and independence. They should not be politically accountable for their decisions and actions. Their decisions may be reviewed, as provided by the law, by higher courts in the case of judges, and by courts in the case of other authorities. Violation of ethics and administrative regulations may lead to disciplinary sanctions. With regard to judges, Article 6 of the Organic Law of the Judicial Power states that judges shall have criminal, civil, administrative and disciplinary responsibility only in cases and in the manner previously established by the laws. Article 7 forbids that judges be removed, suspended or transferred, except in cases and according to the procedure provided by the law. Judges are personally responsible, under the terms provided by law, for error, unjustified delay or omissions, for material non-observance of procedural rules, for denial, partiality, and for any crimes of bribery and prevarication they commit in performing their functions.

#### C. Activation of Powers in Criminal Process

The criminal process starts when the Office of Public Prosecution, after thorough investigation, determines that a crime or felony, or other punishable unlawful action, has been committed and that there are serious suspicions against an individual. If such is the case, a prosecutor indicts the suspect person before a "judge of control" (see *infra sub 4.A.c.*). This judge decides whether there is reason or not to proceed to a trial.

##### a. Reasonable suspicion/probable cause that an offence has been committed

In principle, there must be a reasonable suspicion that an offence has been committed and that an individual has committed the offence. Venezuelan criminal procedure puts the main

stress on probable cause at the stage of charging and deciding on the defendant's degree of guilt, whether the defendant is guilty by reason of negligence or intent.

However, pro-active investigation is possible under the requirement of a reasonable suspicion based on evident facts that an offence is being planned or is about to be committed. Article 34 of the Organic Law of Public Prosecution provides that, among the duties and attributions of Public Prosecutors are to "Order the opening of investigations, when having knowledge of the presumed commission of some punishable fact of public action."

On the other hand, under the Executive Decree which has statutory force and governs the Bodies of Scientific, Criminal Investigations and Criminalistics, the main investigative body is the Corps of Scientific, Criminal Investigations and Criminalistics. Article 10 and 11 of said Decree provide as follows

Article 10: "Main Body: The Corps of Scientific, Criminal Investigations and Criminalistics is the main body in matters of criminal investigations."

Article 11: "Competence. It is the competence of the Corps of Scientific, Criminal Investigations and Criminalistics:

1. To undertake activities ordered by the Public Prosecution, aimed at investigating and certifying the perpetration of a criminal offence, including all the circumstances that may influence its qualification and the authors' and other participants' responsibility, at identifying victims and persons having knowledge of the facts, as well as securing the active and passive objects related to the offence."

It is therefore clear that the police, who may only act if expressly permitted to do so by law, and the public prosecution service may exercise certain powers before reasonable suspicion has been established.

#### D. Actors in Criminal Process

##### a. Judiciary

In Article 255, the Constitution provides that admission to a judicial career and the promotion of judges shall be through public examinations ensuring the aptitude and excellence of those participating, and that they shall be chosen by juries of the circuits in the manner of and under the conditions provided by law. Judges are appointed and sworn in

by the Supreme Tribunal of Justice. The law shall guarantee the participation of citizens in proceedings for the selection and appointment of judges.

#### Qualifications of professional judges, training and judicial career

In accordance with Article 10 of the Statute on Judiciary Career, those who wish to enter the career judiciary must pass a public examination with the highest grade and with a statement of their ability based on the result of a neural-psychiatric evaluation. In order to take part in the examination, a person must be a Venezuelan citizen, a lawyer, of untainted conduct, more than twenty-five years of age, with free enjoyment of civil and political rights, and have practiced as a lawyer for a minimum of three certified years, or have successfully completed a graduate course in legal matters. An entrant into the career judiciary starts at category “C”, as provided in the judiciary ranking. Candidates who are more than thirty years old, have distinguished themselves in the speciality, who are authors of valuable legal works or university professors with recognised competence, or who are lawyers with more than ten certified years of practice may also enter the Career Judiciary and be admitted in categories “A” and “B”

Professional judges are trained at the School of the Judiciary created by the Organic Law of the Council of the Judiciary. Chapter V, Article 21, on the aim of School of the Judiciary:

“The aim of the School of the Judiciary is to ensure that the performance of the judges and officers functions will be in consonance with the principles of the State under the Rule of Law. In order to fulfil this aim, the School shall enter into agreements with national and international education and research institutes. The School of the Judiciary shall have a functionally and territorially non-concentrated organisation.

#### Constitution of the tribunal of fact in a criminal trial for serious offences

Under the Organic Code of Criminal Procedure, the tribunal in a criminal trial for serious offences is constituted by either a mixed court with two laymen (*escabinos*) or a jury court. The *escabino* is defined as a citizen who is not an attorney and who sits together with a professional judge to try offences punishable with a prison term of more than four years but less than 16 years (mixed tribunal). A “juror” is defined as each of the nine citizens who are not attorneys, who sit on a court presided over by a professional judge, to try offences punishable with a prison term of over 16 years. Less serious offences are subject to trial by a single professional judge. In accordance with the Organic Code of Criminal Procedure,

the professional judge, in trials for less serious offences, plays an active, truth-finding role and is also bound to see that due process is respected during the trial.

#### The investigating judge

The figure of the investigating judge (judge of instruction) no longer exists in Venezuelan criminal procedure. It did exist prior to the adoption of the Organic Code of Criminal Procedure, when there were courts of instruction. It should however be said that under the current system governed by the Code of Criminal Procedure there is a category of judges called “judges of control”. They do not have the investigative powers that the judges of instruction had, but they do grant leave to prosecute and may grant permission for the use of invasive investigative measures.

#### b. Prosecution Service

The Venezuelan Public Prosecution Service is known as *Ministerio Público*. It is a hierarchical organization. The Organic Law of Public Prosecution *Ley Orgánica del Ministerio Público* provides in Article 2 that the *Ministerio Público* is autonomous and independent of the other bodies of Public Power and, as a consequence, may not be prevented nor curtailed by any other authority in the performance of its functions.

According to the Constitution in Article 127, the *Fiscalía General de la República* (Office of the Attorney General of the Republic) is the State organ which has as its fundamental objectives, the control and preservation of legality based on the monitoring of strict compliance of the Constitution, the laws and other legal provisions, by the bodies of the State, by economic and social entities and by citizens. And it is charged with the instigation and performance of public (judicial) criminal action as the State's representative. The law also establishes its other objectives and functions, as well as the form, scope and opportunity for the *Fiscalía* to make use of its powers in order to attain its expressed aims.

Article 128 of the Constitution defines the *Fiscalía General de la República* as an organic unit subordinated only to the National Assembly of Popular Power and to the Council of State. The *Fiscal General de la República* (Attorney General of the Republic) receives direct instructions from the Council of State and is in charge of the direction and regulation of the *Fiscalía* throughout the entire national territory. The *Fiscalía*'s bodies are organized

vertically throughout the entire nation; they are subordinated only to the *Fiscalía General de la República* and are independent of every local body.

Articles 129 and 130 of the Constitution provide respectively that the *Fiscal General de la República* and the vice-attorneys general are elected and may be dismissed by the National Assembly of Popular Power, and that the *Fiscal General* is accountable for his administration to the National Assembly of Popular Power and for the term provided by law.

#### Prosecutors' qualifications and training

In the case of the Attorney General of the Republic and in accordance with the Article 284 of the Constitution, the *Ministerio Público* falls under the responsibility of the Attorney General of the Republic (*Fiscal General de la República*), who performs his tasks directly with the assistance of the officers determined by the law. In order to be Attorney General of the Republic the same eligibility conditions are required as for the magistrates of the Supreme Tribunal of Justice. The Attorney General of the Republic is appointed for a period of seven years.

In the case of *fiscales del Ministerio Público* (public prosecutors), Article 79 of the Organic Law of the Office of Public Prosecution (*Ley Orgánica del Ministerio Público*) provides that Public Prosecutors follow a career governed by the provisions of the Personnel Status regulations issued by the Attorney General of the Republic. In order to enter the public prosecution service, candidates must pass an examination with the highest grade (above seventy five percent (75%) of the established range of grades).

With regard to a code of conduct for the Prosecution Service, Venezuela follows the Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

#### Bringing a prosecution

The Organic Law of the Office of Public Prosecution provides in Article 34 that the duties and powers of public prosecutors include ordering investigations to be opened when they have knowledge of the presumed commission of what is known under Venezuelan law as a

punishable act of public action. In these cases, private persons may join the prosecution – normally on behalf of the victim(s). There are crimes of private actions for which private persons may institute prosecution themselves (for instance, cases of libel and slander). Public prosecutors have the monopoly on bringing a prosecution related to crimes and offences of public action.

If, on the basis of that investigation, the prosecutor reaches the conclusion that such an act has been committed and that a person is suspected of having committed such an act, he must bring a prosecution, by applying to a judge of control, who will decide if the prosecution is to go forward. In accordance with the Organic Law of the Office of Public Prosecution, the prosecutor may not instigate prosecution if there is not enough evidence.

If an accusation is to be brought before a criminal court, the Organic Law of Criminal Procedure provides for a preparatory phase before a judge of Control, the aim of which is preparation of the oral and public trial by means of investigation of the truth and collection of all elements of evidence, allowing the grounds for the prosecutor's accusation and the indicted subject's defence to be established (Article 280). To that end, during the course of the investigation the *Ministerio Público* must record not only the facts and circumstances that form the grounds for prosecution of the indicted person, but also those tending to exonerate him from guilt. In the latter case, the Public Prosecutor is bound to provide the indicted subject with all of the evidence in his favour (Article 281). Moreover, according to the Organic Code of Criminal Procedure (Article 108, 7) it is the duty of the public prosecution in a criminal process to move, whenever necessary, for a stay of cause or for the indicted subject's absolution.

#### c. Relationship between the prosecution service and the police

The Statute on Scientific, Penal and Criminal Research Bodies (*Ley de los Órganos de Investigaciones Científicas, Penales y Criminalísticas*) provides that the actions of the Corps of Scientific, Criminal and Criminalistics Investigations and of the other bodies charged with criminal investigation are subject to the direction the *Ministerio Público*, in accordance with provisions in the Organic Law of Criminal Procedure, the Organic Law of Public Prosecution, this statute-ranked Decree and its regulations (Article 3). Article 11 sums up the duties of the main body of criminal investigations:

To take steps as ordered by the Office of Public Prosecution, in order to investigate and record the commission of a criminal offence, including all the circumstances that may influence its qualification and the authors' and other participants' responsibility; to identify victims and persons having knowledge of the facts; and to secure the active and passive objects related to the offence.

To cooperate with the other bodies of citizen security in the creation of crime prevention centres and in the organisation of control systems or data bases related to drug-trafficking, international terrorism, disappearances, unlawful movements of capital, organised crime and other criminally defined actions.

To prepare and analyse in coordination with the National Institute of Statistics and submit to the Ministry of the Interior and Justice statistics on criminality whenever they may be required, with the purpose of adopting prevention policies and applying the necessary measures in order to meet the State's objectives in matters of security.

To develop prevention, orientation, publicity, cooperation and information policies in order to institute technological measures for the reduction and deterrence of criminal activity.

If necessary, to assist the National Direction of Identification and Foreigners, and to cooperate in the identification, localization and apprehension of foreign citizens sought by other countries.

To perform the other actions and functions attributed in accordance with the law.

d. Other investigative agencies with investigative/evidence-gathering powers

The Statute on Scientific, Penal and Criminal Research Bodies identifies in Article 12 the following bodies with special competence in criminal investigations:

The National Armed Force through its components whenever performing investigative functions related to offences within the sphere of its legal attributions.

The competent body in matters of Ground Transit and Transportation in cases provided in its respective statute.

Any other body on which said legal competence may be attributed under the law

The powers of these organizations do not materially differ from police powers in the area of criminal investigation leading to prosecutions. There are less extensive in the sense that

they are restricted to the sphere of their legal attributions (offences punished by the Code of Criminal Prosecution and other applicable military statutes and regulations and ground transit and transportation offences).

The relationship between these investigative agencies and the prosecution service is that they investigate and prepare the cases sought for indictment and accusation by the prosecution service. They do not indict.

#### e. Defence

Defence lawyers must be licensed to practice law. The degree of lawyer (*abogado*) issued by a national university entitles the holder to register with the bar association and to act as a barrister.

Article 3 of the Statute on Lawyers provides that, in order to appear as counsel for another person at trial, to produce oral or written legal opinions and to take any step inherent to the lawyer's profession, it is necessary to have a lawyer's degree, save for the exceptions contemplated by the law. Legal representatives of persons or of others' rights, the presidents or representatives of cooperative associations, civil or business associations, not being lawyers, may not appear at trial on behalf of those they represent without the assistance of practicing lawyers. Judges, Registrars, Notaries and other civil, political and administrative authorities may only admit practicing lawyers as third parties' representatives, in matters reserved to them under the law, without prejudice to what is provided in statutes and other provisions regulating to employee-employer relationships (Article 5).

According to Article 37 of the Organic Code of Criminal Procedure, an indicted person is entitled to appoint a trusted lawyer as defence counsel. Should they fail to do so, the judge shall appoint a public defender as from the first act of proceedings or, peremptorily, prior to rendering a deposition. Should the indicted person wish to defend themselves, the judge shall allow it whenever it does not harm the technical efficacy of the defence. Intervention by counsel does not preclude the indicted person's right to speak. Only lawyers can act as counsel in criminal proceedings and have right of audience in the courts. They may not have any impediment against the free practice of the profession in accordance with the Statute on Lawyers and be in full enjoyment of their civil and political rights (Article 138).

## Public Defender's Office

The Public Defender's Office is governed by the Organic Law of Public Defence (*Ley Orgánica de la Defensa Pública*). Article 2 provides for a Public Defender's Office (*Defensoría Pública*) as a body of the system of justice whose fundamental purpose is to guarantee effective judicial protection of the constitutional right of defence in the diverse areas of its competence. In the same manner, it dedicates itself to offering a public defence service at a national level, free of charge, to persons so requiring, without distinction of socio-economic class.

## Lawyers' associations

There are several bar associations in Venezuela, one for each state of the Republic. In order to be authorised to practice law, lawyers must register with their local bar association. Registry in the local bar authorizes practice throughout the entire country. As well as registering with a bar association, lawyers must also register with the Lawyer's Institute of Social Security (*Instituto de Previsión Social del Abogado*).

## Code of conduct

There is a Code of Professional Ethics of the Venezuelan Lawyer. In Article 1 it states:

“Compliance with the rules contained in this code shall be mandatory for all Lawyers in their public and private life. Its application refers to provisions of the law, and its provisions may not be deprived of their force nor made less rigorous by agreements of any kind. All acts with the intention of opposing it, whether resulting from public or private persons or entities are void.”

Sanctions against lawyers' misconduct are provided by the Statute on Lawyers which gives jurisdiction to the Disciplinary Tribunals of the Bar Associations in Article 61. The tribunals hear in first instance infringements of the Statute and its Regulations, of the rules of professional ethics, of the resolutions and decisions adopted by the (Bar Association's) Meetings and other professional bodies and organs, as well as grievances against members

of the Judiciary, the parties' lawyers or representatives. "Misconduct" covers abandonment of the case, clear negligence in the defence once assumed, bribery, unlawful practice of the profession and violation of a professional secret, save when it occurs in order to prevent or denounce the commission of a criminal offence.

In the lawyer-client relationship, the lawyer has control over the litigation. The Organic Code of Criminal Process provides that the defendant may dismiss his lawyer at any time and have him replaced by any other lawyer of his choice. The same Code provides that the defendant may opt to defend himself. The defence lawyer is regarded as the inseparable and partisan representative of the client, never as an officer of the court, not even in the case of public defenders, who are officers of the Public Defender's Office. Public defenders are also regarded as the client's inseparable and partisan representatives. Under the above-mentioned Statute on Lawyers, the defence has the duty to actively gather and introduce evidence to support their client's case.

#### E. Court Procedure

##### a. Investigation of the facts, truth-finding and evidence

In the law of criminal procedure, the emphasis lies on court procedure with regard to establishing the facts of a criminal case. But in practice, facts are established during pre-trial procedure. The prosecution produces the evidence surrounding the facts in order to bring the action before a Judge of Control (*Juez de Control*). This judge decides whether the evidence gathered during the pre-trial phase is sufficient to warrant a trial and whether the accused will be arrested or not during the trial, or if any provisional measures should be adopted.

The prosecution compiles a 'dossier' (*expediente*) to introduce evidence for examination. As soon as a suspect gets knowledge of the fact that the Office of Public Prosecution is gathering evidence against him in order to possibly indict him, he is entitled to access to the dossier, to object to any evidence against him and to prove anything enabling him to establish his innocence. Under Venezuelan law the burden of the proof in criminal cases lies with the prosecution and, therefore, the prosecution has the main responsibility for gathering evidence. The Venezuelan Constitution establishes the principle of the presumption of innocence and therefore, the defendant should not have to prove anything.

Yet, anything the defendant alleges to assert his innocence or to negate the prosecution's evidence reverses the burden of the proof, and gives him the responsibility for gathering evidence. The Venezuelan legal system applies the Roman legal maxim *actori incumbet onus probandi sed reus excipiendo, actor fit.*

The tribunal of trial (*tribunal de juicio*) is not fully acquainted with the case before the trial starts. The first judge to become acquainted with it is the Judge of Control who decides whether the case brought by the prosecution should go to trial or not. The tribunal of fact sees and hears all of the admissible evidence, and according to Article 22 of the Organic Code of Criminal Procedure, must evaluate it *sana crítica*, observing the rules of logics, scientific knowledge and maxims of experience. The court does not have an active truth-finding role. It finds the procedural truth by hearing the witnesses' examination and cross-examination and through the evaluation of other evidence.

#### b. Appeal

The Organic Code of Criminal Procedure provides that appeal is admissible against the final judgment issued in the oral trial (Article 451). According to Article 452 of appeal may only be founded on:

Violation of rules related to the trial's oral nature, immediacy, concentration and publicity; Clear default, contradiction or illogic nature in the reasoning of the judgment, or if the latter is founded on illegally obtained evidence or on evidence incorporated in violation of the principle of orality;

Infringement or omission of substantial procedural formalities to the severe detriment of the defence;

Violation of the law through non-observance or erroneous application of a legal rule.

Appeal against a final judgment must be filed before the judge or tribunal that issued it within the ten days following its date of issue, or publication of the integral text, in the event that the judge should defer its drafting under the motive stated in article 365 of the Code. The Appeal must be lodged by means of a founded brief, expressing concretely and separately each ground for appeal with its foundations and the solution sought. No other ground may be alleged other than on this occasion. The appellant must produce evidence to prove a defect related to a procedural formality in contradiction with the entry in the

minutes of the hearing or in the judgment. Both prosecution and defence can request reversal of the judgment. When only the defence appeals the Court of Appeal may reverse the lower court's decision, absolving the defendant. It may uphold the lower court's decision but it may never impose a more severe punishment. According to Venezuelan law *reformatio in peius* is not possible.

Revision (Article 470 Organic Code of Criminal Procedure) is available in cases where there has been a miscarriage of justice, against a definite judgment, at all times and only for the benefit of the defendant, if:

by virtue of contradictory judgments two or more persons may be suffering punishment for the same crime, that could only have been committed by one of them;

the judgment found that there was proof of the homicide of a person, who, after that person was presumed to be dead, is proven to be alive;

the evidence on which the judgment was based turns out to be false;

subsequent to the conviction, some fact occurs or is discovered or a document appears that was unknown during the process, being evidence that the facts did not exist or that the defendant did not commit the offence;

the conviction was a consequence of a bribe or corruption of one or several of the judges who passed said conviction, the existence of bribery or corruption having been declared by definite judgment;

a criminal statute is adopted eliminating the fact's punishable nature or diminishing the established punishment.

The Venezuelan criminal legal system allows for recourse to cassation to the Supreme Tribunal of Justice in Criminal Cassation Chamber, but merely on points of law. The decision by the Supreme Tribunal of Justice may have adverse effects for a defendant who has been acquitted when the remedy of cassation was filed by the prosecution.

### c. Constitutionality

The Constitutional Chamber of the Supreme Tribunal of Justice performs central control of constitutionality, and acts in violation of rights safeguarded by the Constitution may be subject annulment. Article 39 of the Organic Law on Protection of Constitutional Rights and Guarantees provides as follows:

“Every person who is subjected to suppression or restriction of their freedom, or is threatened in his or her personal security by violation of constitutional guarantees, is entitled to have a competent judge with jurisdiction ... issue an order of *habeas corpus*.”

#### F. Essential Nature of Venezuelan Criminal Process

If one were to rate the essential nature of the Venezuelan criminal law procedure on a scale of 1 – 10, one could say 7 for adversarial and 3 for inquisitorial. This assessment is based, among other things, on the provisions of article 304 of the Organic Code of Criminal Procedure. It provides for disclosure of information with regard to the investigation by prosecution and defence. The prosecution may however elect for (partial) non-disclosure in the interests of effective investigation, though never for longer than 48 hours. Non-disclosure is also possible if publicity were to jeopardize the investigation, although the prosecution is bound to a limit of 15 days (to be renewed for the same period) and the defence (and the victim or their counsel) may request that the judge of control examines the reason for non-disclosure and puts an end to it.

### 4. HUMAN RIGHTS IN DOMESTIC CRIMINAL PROCESS

#### A. The Right to Life

The Venezuelan legal system does not have the death penalty and there are no moves to introduce capital punishment. The right to life does impose positive obligations on the state to instigate criminal investigations if reliable information points to a life-threatening situation. These obligations derive from articles 1 and 2 of the American Human Rights Convention. Under constitutional provisions and under the Organic Law on Protection of Constitutional Rights and Guarantees (*Ley Orgánica de Amparo sobre Derechos y Garantías Constitucionales*), the State may be requested to instigate this kind of investigation if anyone files an action for constitutional protection alleging that there is a life threatening situation.

#### B. The Right to be Protected against Cruel and Humiliating Treatment

This right is an absolute right, guaranteed by article 5 of the American Convention on Human Rights and by articles 19 and 46 of the Constitution. It imposes positive obligations on the state to instigate criminal investigations if reliable information points to a situation in which an individual may be subject to such treatment.

Article 5 of the Organic Law of the Scientific, Penal and Criminal Research requires that the police must respect the principles related to human rights and due process at all moments during criminal investigation, with express consideration of the presumption of innocence, the right to freedom, the right of defence and the respect of established procedures.

Any suspect is entitled to an interpreter and to be assisted without charge by a translator or interpreter if he does not understand or speak Spanish (Article 125 Organic Code of Criminal Procedure). Moreover, Article 49 of the Constitution guarantees that due process shall apply to all judicial and administrative actions and that the right to counsel shall apply from the moment the suspect knows he is being investigated. If a suspect is not interrogated as a witness, he may be assisted by counsel of his choice. As a consequence, defence and legal assistance is a non-violable right at every stage and degree of the investigation.

### C. Detention Rights

Under Article 247 of the Organic Code of Criminal Procedure, all provisions restricting the indicted subject's freedom, limiting his powers and defining flagrancy, shall be construed restrictively. With regard to pre-trial detention, any crime that is being committed or has just been committed is deemed a flagrant crime, as is any crime for which the suspect may be pursued by the police authority, by the victim or by public outcry, or in which he may be caught just shortly after having committed the act, at the same place or near the place where it was committed, with weapons, instruments or any other object that in leads to a reasonable presumption that the suspect is the author of the crime. In these cases, any authority must and any private individual may apprehend that person, provided that the crime may be punished by deprivation of liberty, delivering him to the nearest authority, who shall commit him to Public Prosecution within twelve hours after apprehending him (Article 248).

#### a. Habeas Corpus

Under article 125 of the Organic Code of Criminal Procedure any individual being indicted and deprived of his liberty is entitled to be informed specifically and clearly on the facts being imputed to him.

#### Police questioning

The police may only hold a person for questioning in the event of flagrancy. In other cases, detention requires a court order that may only be issued when there is a *corpus delicti* and a reasonable suspicion of a person's guilt. Information obtained by the police regarding the commission of criminal offences and their authors' identity, must be recorded in minutes to be signed by the acting officer so that they may be used by the public prosecutor as a basis for the indictment, without prejudice to the suspect's defence rights (Article 112 Organic Code of Criminal Procedure). The police must communicate the results of their findings to the Office of Public Prosecution and under no circumstances may more than twelve hours elapse without them informing the Office of Public Prosecution of the situation (Article 113).

#### Remand

The maximum time that a person may be remanded in custody before appearing before an independent judicial body is 36 hours (always provided there has been flagrancy, otherwise, detention must be ordered by a judge). The minimum level of suspicion is quite subjective. The law says that a person may be remanded in custody if a judge finds that a crime has been committed, and there are founded suspicions about said person's guilt.

Since Venezuelan law has established the principle of presumption of innocence, this should imply that an indicted person should be tried in freedom. Article 250 of the Organic Code of Criminal Procedure, however, provides that the Judge of Control may order the indicted subject's preventive detention at the request of the Office of Public Prosecution, provided that there is proof of the existence of: "... a reasonable presumption, given the specific circumstances of the case, of a risk of flight or of hampering the search for the truth regarding a concrete investigative action." However, if the grounds allowing for judicial preventive detention may be reasonably satisfied by other, less harsh measures, the competent tribunal, *ex officio* or at the request of prosecutor or suspect, has the choice of imposing house arrest with or without any surveillance, or the posting of adequate bail by

the suspect himself or through another person, by means of the deposit of money, securities, or by bond by two or more adequate persons. The principle of proportionality applies, while the judge imposing the measure may also provide for regular monitoring/review by a court-appointed person (Article 256 Organic Code of Criminal Procedure).

#### E. Fair Trial Rights

Guarantees of a fair trial and other fundamental rights relevant to criminal process apply indiscriminately to all persons, as provided by the Constitution.

##### a. The right to know the charge

Under the Constitution and the Organic Code of Criminal Procedure any person being indicted has the right to know the charges and to be informed thereof as soon as he becomes aware that he is being investigated. The information must be provided with full details. The charge may become definite as soon as the public prosecution enters the accusation before the judge.

The charge may be amended during trial. During the debate, and before parties make concluding statements, the public or private prosecutor may widen the accusation, by including a new fact or circumstance not previously mentioned and modifying the legal qualification or the penalty. The private prosecutor may adhere to the public prosecutor's amended charge. If new facts or circumstances are included in an amended charge, the defendant must be heard and all parties informed, as they are entitled to move for suspension of the trial in order to offer new evidence or to prepare their defence. If this right is asserted, the tribunal must suspend the debate for a certain time (at the discretion of the court) in accordance with the nature of the facts and the requirements of the defence. The new facts or circumstances must be included in the decree on reopening the trial. (Article 351, Organic Code of Criminal Procedure)

##### b. The right to bring one's case before an independent and impartial tribunal within a reasonable time

This right is granted by article 8 of the American Human Rights Convention and by the Venezuelan Constitution. A defendant may insist on appearing before an independent and impartial judge. Indeed, there is no way that a person may waive the right to have the case brought before an independent and impartial judge. Even when there is an admission of the facts – the equivalent of a plea bargain – the case must be brought before a judge and the defendant is entitled to legal aid.

In that case, once the accusation has been admitted at the preliminary hearing, or in the case of an abbreviated procedure once the accusation has been brought and prior to the debate, the judge instructs the defendant as to the procedure under admission of the facts and hears his statement. He may admit the facts and ask the tribunal to impose immediate punishment. In these cases, the judge, in a reasoned decision, must reduce the punishment applicable to the crime from a third to half of the penalty that should have been imposed, considering the circumstances, the affected legal interest and the social damage caused. (In the event of crimes where there has been violence against persons, against public property or of those defined in the Organic Law on Narcotic and Psychotropic Substances, of which the maximum penalties exceed eight years, the judge may only reduce the punishment up to a third.). The judge may not impose a penalty below the lower limit of that provided by the law for the respective crime (Article 376 Organic Code of Criminal Procedure). A defendant may appeal to a court on the ground that his admission of the facts was not made voluntarily and knowingly.

c. An independent and impartial tribunal

Appointment of Judges

We have seen above that admission to the judiciary involves a judicial career and promotion of judges is by means of public examination and election by the judiciary circuits' juries. Citizen participation in the proceedings for the selection and appointment of judges is guaranteed by law. Judges may only be removed or suspended from office through proceedings expressly provided by the law. Moreover, magistrates, judges, officers of Public Prosecution and public defenders, as from the date of their appointment and until they leave their respective offices, may not, save for the performance of the right to vote, be involved in any partisan political activities, guilds or unions. Nor may they be

involved in any lucrative private activities that are not compatible with their function, either directly or through intermediaries, or perform any other public function with the exception of educational activities. Judges may not form associations between themselves (Article 256 of the Constitution).

Judges are not appointed for life and, with the exception of the Magistrates of the Supreme Tribunal of Justice, they are not well paid.

#### Admonishment of judges

Under Article 38 of the Statute on the Judicial Career, judges may be admonished if:  
They offend their peers or their inferiors by word or in writing, or by acting against their superior.

They trespass beyond the rational limits of their authority with respect to their assistants and their subordinates, to those who address them in matters of justice, or to those assisting at the hall of hearings, whatever may be the purpose of their assistance.

They are seen to be intoxicated in view of the public.

They fail to hold hearings or to dispatch without justified cause, or fail to comply with the established schedule.

They leave their place of duty during working hours and without justification, without the required permission.

The Tribunal's Diary is not regularly maintained.

They incur unjustified delays or are careless in the handling of (any part of) procedures.

#### Suspension of judges

Under Article 39 of the above-mentioned Statute, judges shall be suspended from their offices on the following grounds:

If they solicit loans in cash or kind, or other favours or services, which because of their frequency or other circumstances, may cast doubt on the officer's decorum or impartiality.

If they contract obligations leading to judicial claims for which they are declared liable.

If their performance is not satisfactory on an annual basis, as evaluated under provisions of article 32 of this Statute.

### Lay participation

Lay participants (“*escabinos*”) are chosen as follows. The list of lay judges is drawn by the Executive Direction of The Judiciary of the Supreme Tribunal of Justice every year on October 31. The results of the draw are sent to the Judicial Circuits in order that the criminal courts may choose, by lot, the lay judges called to act in mixed tribunals (Article 155 of the Organic Code of Criminal Procedure).

### Excuse and recusal of judges

Professional judges, lay judges, public prosecutors, secretaries, experts and interpreters, and any other officers of the Judicial Power, may be recused if they have blood relations with any of the parties, their spouses, (adoptive) children or counsel; if they have friendly or hostile relations with any of the parties; if they, or their spouses or blood relatives, have any direct interest in the trial’s results; if they have maintained, directly or indirectly and regarding the matter brought to their knowledge, without the presence of all the parties, some kind of communication with any of them or with their counsel; if they have issued an opinion in the case, or have participated as prosecutor, defender, expert, interpreter or witness, provided that, in any of these cases, the recused is performing the office of judge (a judge who has given a decision in a pre-trial procedure may not act as a trial judge); if there are any other serious reasons to doubt their impartiality (Article 86 Organic Code of Criminal Procedure). Under article 87, the officers against whom any of the above mentioned grounds of recusal apply, must excuse themselves without waiting to be recused.

#### d. Reasonable time

It is hard to establish what a “reasonable time” is. In any event, a person subject to preventive detention pending a final judgment is entitled to provisional freedom. No personal restraining measure may be ordered if it is disproportionate to the crime’s seriousness, the circumstances of its commission and the probable punishment, and such measures may never exceed the lowest penalty provided for each crime with a maximum of two years (Article 244 Organic Code of Criminal Procedure).

#### e. Presumption of Innocence

The presumption of innocence is established by the Constitution and by the law. Under the Constitution and the Organic Code of Criminal Procedure (Articles 125 and 131) a suspect/defendant has the right to remain silent and to be informed of the constitutional principle exempting him from declaring (in his own cause), and even when consenting to declare, to do so without oath. Any adverse inference that could be drawn at trial if a suspect/defendant chooses to remain silent is a matter of opinion. If what the suspect/defendant has something to say in his own favour, the fact of remaining silent could have an adverse effect and may reverse the burden of the proof resting with the prosecution.

#### Burden of proof

The burden of the proof rests with the prosecution in principle. This is a logical consequence of the principle of presumption of innocence. However, in Venezuela the legal maxims *actore incumbit onus probandi* and *actore non probante, reus absolvitur* do apply. The burden of proof can be reversed according to the exceptions brought by the defendant and the maxim *reus in excipiendo actor fit* applies.

#### Sanctions for public statements

There are no explicit sanctions for making statements about a person's guilt in ongoing cases. However, under certain circumstances, Article 190 of the Venezuelan Penal Code could be applicable: "Any one who, by reason of his situation, function, profession, art or occupation may have knowledge of some secret whose revelation may cause damage, and reveals it without a fair motive, shall be punished with five to thirty days prison".

#### f. Right to counsel and legal aid

We have seen that all suspects and defendants in a criminal case have a right to counsel, without exception as soon as the suspect learns of a criminal investigation against him. The law guarantees client-counsel confidentiality. The right to counsel implies an adequate defence. The defendant decides what is "adequate" and has the right to oppose the actions of defence counsel with no special proceedings therefore.

The Venezuelan legal system provides for legal aid for indigent defendants, through the Office of Public Defenders. There is no need to qualify as an indigent in order to be entitled

to a public defender. The Office of Public Defenders lacks sufficient lawyers able to provide acceptable defence to those needing it. These lawyers are not well prepared in most cases and the resources to prepare a good defence are insufficient.

#### g. Defence rights

The Constitution and the Organic Code of Criminal Procedure grant sufficient time for the preparation of the defence.

The right to know and contest the evidence is guaranteed by the Constitution and by the Organic Code of Criminal Procedure. This implies, for the defence, the right to access and disclosure of the prosecution case as from the pre-trial level. No trial may begin without the defence being fully informed of the charges and the evidence brought against the defendant. Both the defence and the defendant have the right to be present during investigative operations such as search and seizure. The suspect has the right to request that the investigation be activated and that he be informed of its contents, save in cases in which part of it may be subject to non-disclosure (but then only for the specified time). Non disclosure may be admissible in cases of State security or when sudden disclosure could adversely affect the process, particularly when there are several co-defendants. If non disclosure of sensitive information jeopardizes the defence, the defendant may file action for constitutional protection.

The defence has a right to seek and introduce evidence on behalf of the defendant, and also the right to call experts on behalf of the defendant and to have experts' findings re-examined, to call witness and to re-examine witnesses. Hearsay testimony is allowed only when supported by other evidence confirming it. Anonymous testimony is inadmissible. The right to know and contest the evidence is constitutionally guaranteed and applies as soon as there is knowledge of a pending investigation. There is no restriction to the disclosure of any information that may be harmful to the suspect or defendant.

#### h. Interpretation and translation

Given that Article 49 of the Constitution provides that due process shall apply to all judicial and administrative actions and that every person is entitled to be heard in every class of process, whoever does not speak Spanish or cannot communicate verbally is entitled to an

interpreter. There are no restrictions regarding any relevant language. Unfortunately, there are not sufficient qualified interpreters in the country. Interpreters who act in courts are “public interpreters” authorized as such by the Ministry of the Interior and Justice after having passed a strict examination. There are no guarantees of quality.

g. The right to privacy

The Venezuelan legal system is quite flexible as to the use of pro-active, invasive investigative methods that could infringe a person’s right to privacy. However use of these methods must be authorized by a court.

Inspections and searches

Should it be necessary to inspect places, things or persons, and there is sufficient reason to suspect that traces of the crime will be found, or that at a specific place the suspect or any fugitive may be found, a search may proceed after due authorization by the judge of control (Article 217 Organic Code of Criminal Procedure).

Covertly or fraudulently recording, obtaining, interrupting or preventing any communication between persons is a criminal offence, punishable by three (3) to five (5) years imprisonment. However, Article 6 Statute on Protection of the Private Nature of Communications) provides that police authorities may prevent, interrupt, intercept or record communications solely for the purpose of investigating specific criminal acts. In those cases, those authorities must apply for authorization to the judge with competent jurisdiction, expressly indicating the period for which authorization is requested. It is not to exceed a period of sixty (60) days, but may be extended by equal periods. The Office of Public Prosecution must be notified of the authorization immediately.

h. The right to freedom of expression; the role of the media in criminal process

Under article 57 of the Constitution, all persons are entitled to free expression of their thoughts, their ideas or opinions and may voice them in writing or in any other form of expression. To this end, they may avail themselves of any means of communication and diffusion, without any kind of censure. Whoever makes use of these rights assumes full liability for whatever has been expressed. Article 58 adds that communication is free and

plural and entails the duties and responsibilities provided by law. Every person is entitled to opportune, truthful and impartial information, without censure, in accordance with the Constitution's principles.

Prosecutors, judges and lawyers must be very careful about what they say to the media during the stage of process when the secrecy of the investigation should be respected. During the trial while no decision has been adopted, judges must not reveal to the media any opinion on the outcome of the trial in order not to be challenged.

The media may report freely on ongoing cases at the trial stage. During the investigative stage they must refrain from reporting any secret issue which has come to their knowledge. If journalists fail to comply with restrictions on information about the case, they could be prevented from covering it. If the trial is held behind closed doors for such reasons as the protection of privacy and of children, journalists may be denied access to the courtroom. Audio-visual media is not allowed inside the courtroom. They are free to cover the news at the court's entrance. Some criminal courts provide special facilities for the press, such as press cards, press-room at court, and a telephone connection. There are no internet facilities but, in some cases, reporters have satellite access to the web in big cities.

#### F. Use in Criminal Proceedings of Material Gathered through a Violation of Fundamental Rights

Use of material that has been gathered through a violation of human rights is not permitted under the Venezuelan Constitution and laws, nor under the American Human Rights Convention, which considers such use a violation of due process. There is a principle established by article 190 of the Organic Code of Criminal Procedure that

“Actions performed in violation of, or failing to observe, the formalities and conditions provided by this Code, by the Constitution of the Republic, by the laws, international treaties, conventions and agreements entered by the Republic, may not be appreciated in order to serve as grounds for a judicial decision, save when the defect could have been remedied or validated.”

Article 191 of the same Code considers as absolute nullities those actions concerning the defendant's intervention, assistance and representation [...] implying non-observance or violation of fundamental rights and guarantees provided by this Code, by the Constitution

of the Republic, by the laws, international treaties, conventions and agreements entered by the Republic.

Such violations may lead to the exclusion of the unduly obtained evidence. This is always the case, of course, in the case of inhuman or degrading treatment during interrogation by investigative agencies and the misuse of invasive methods by authorities. Breaches of pre-trial detention may lead to *habeas corpus* and to the punishment of those having illegally deprived the freedom of an individual, a crime under the Venezuelan Penal Code. Undue delay in bringing the case may result in discontinuance. It is a clear violation of due process under the Constitution and the American Human Rights Convention. The same applies to prosecutorial misconduct/abuse of process or infringement of other fair trial rights. As to undue infringement of privacy and/or presumption of innocence through statements made to the media by figures with public authority, these do not necessarily affect the outcome of the trial. However, they could adversely affect fair trial if such infringement has influence on the Court's judgment.

#### G. State of Emergency and Derogation from Obligations under Human Rights Treaties

Article 336 of the Constitution provides for a declaration of states of exception by the President of the Republic, in Council of Ministers. States of exception are explicitly defined as all such circumstances of a social, economic, political or ecologic nature that seriously affect the Nation's security and that of institutions and citizens, while the powers available to face such events are insufficient. In such case, the guarantees provided by the Constitution may be temporarily restricted, save for those concerning the right to life, to the prohibition of non-communication or torture, the right of due process, the right of information and other intangible human rights.

#### 5. RECENT LEGAL CHANGES AFFECTING HUMAN RIGHTS

On October 26, 2005, the Organic Law against Organised Crime came into force. This statute made it possible to define a long list of crimes committed to favour/assist a criminal organisation, as organised crime felonies. Some of this statute's provisions may affect human rights, although shielded or secret evidence is not used in *ex parte* proceedings.

The Venezuelan legal system has experienced an increase of investigative and coercive powers of the investigative authorities, as may be seen, for instance, in the Organic Law against Organised Crime. Yet, such an increase is not only due to changes in statute law; it is the courts' practice, often going above the law, which allows investigations beyond the normal limitations.

Nevertheless, during the last nine years, there has been a shift of powers in Venezuela. The executive power has strong control over all other powers: legislature, judiciary, controlling and electoral. In too many cases, the legislature has transferred its law-making power to the executive. Judges, be they Magistrates of the Supreme Tribunal or of all other levels are not appointed under strict compliance with the Constitution and applicable statutes. The Supreme Tribunal of Justice appoints the judges but their appointment does not always follow the standards set by the law. In principle there are competitions in which all qualified lawyers should be able participate, but the Supreme Tribunal of Justice gives undue preference to candidates belonging to the government's party or just friendly with the government. This leads to a loss of independence and autonomy for the judiciary. All too often, a judge is suspended when having decided against the executive's interest.

A recent change in the organisation of the criminal courts has created a special jurisdiction for crimes of terrorism. In principle there is no change regarding the right of the suspect/accused/detained to an independent and impartial tribunal. But if the suspect/accused/detained has the right to an independent and impartial tribunal under the law, in practice this often is not the case. There are too many cases of persons who are not tried by their natural judge. Under the Code of Military Justice, military courts judge active members of the military who commit crimes punishable under that Code. If they commit other crimes regular courts should judge them, but that is not always the case. Moreover, there are many instances where civilians are judged by military courts in violation of the law. The right to one's natural judge is also violated if the venue is changed to another court where the public prosecution feels that they have a greater chance of getting a conviction.

There are other problems too relating to fundamental rights of fair trial. The maxim in *dubio pro reo*, for example, is included in the Venezuelan legal system. There are instances, however, when this maxim is not applied, as was the case with an amnesty law passed on

December 31, 2007. As to the presumption of innocence, as we have said above, the Constitution and the law do guarantee such a presumption. This principle includes the notion that, save for specific exceptions provide by the law, any person accused of a crime should be judged in freedom. We have already mentioned those exceptions and we have said that the rule seems to be the exception: most suspects/defendants are deprived of their freedom during the entire criminal process. Although the right to be tried without undue delay is guaranteed by the Constitution and the law, there are cases where trials have been ongoing for over two years without a verdict of innocence or guilt being reached. And while the prohibition of double jeopardy is always respected as are most procedural rights of the defence, there are many cases where the courts unlawfully rule that some items of the defence are inadmissible.

And finally, the right to have a higher court review the sentence under all legally available remedies is guaranteed by law. The only exception applies to the President of the Republic and some other highly ranked public officers. They are tried by the Supreme Tribunal of Justice and there is no possibility to appeal or review the judgment of this Highest Court. The Inter-American Human Rights Commission has approved a report stating that the fact that there is no remedy in these trials before the Supreme Tribunal of Justice violates the American Human Rights Convention