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Session: Hundred and Nineteenth Regular Session (23 February – 12 March 2004)
Title/Style of Cause: Mauro Acosta Padron, Laorwins Jose Rodriguez Henriquez, Randolpho Blanco Valencia, Luis Alfonso Fernandez Rodriguez and Julio Gregorio Rodriguez Garcia v. Venezuela

Doc. Type: Decision
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalo, Florentin Melendez.
Commissioner Freddy Gutierrez Trejo, of Venezuelan nationality, did not take part in the discussion and voting on the present report, pursuant to Article 17(2)(a) of the Rules of Procedure of the Commission.

Dated: 27 February 2004
Citation: Acosta Padron v. Venezuela, Petition 4542/02, Inter-Am. C.H.R., Report No. 8/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)

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I. SUMMARY

1. On November 19, 2002, Sol Vargas Arnal, Information Manager of the Venevisión News Department, (hereinafter "the Petitioner") submitted a petition to the Inter-American Commission on Human Rights on behalf of Laorwins José Rodríguez Henríquez, Mauro Acosta Padrón, Randolpho Blanco Valencia, Luis Alfonso Fernández Rodríguez, and Julio Gregorio Rodríguez García, all employees of the television station Venevisión (hereinafter "the Victims"). The petition alleges that the Bolivarian Republic of Venezuela (hereinafter "the State") violated the Victims' rights to freedom of expression, personal integrity, a fair trial, and judicial protection as protected by Articles 13, 5, 8, and 25, respectively, of the American Convention on Human Rights. The Petitioners further allege that the State has violated its general obligations to respect and guarantee these rights under Articles 1(1) and 2 of the American Convention.

2. The Petitioner alleges that, since 2001, media workers in Venezuela, including the Victims, have been subjected to an ongoing and escalating campaign of harassment and aggression. The Petitioners claim that many of these aggressors are members of "Bolivarian Circles," groups of citizens that act at the behest of the government and that are funded and protected by the government. They further claim that the State has failed to undertake a serious investigation of these incidents in order to identify and punish the perpetrators.

3. As of the date of this report, the State had not submitted observations regarding this petition.

4. After reviewing the positions of the parties in light of the admissibility requirements set out in the American Convention, the Commission decided to declare the case admissible as it relates to the alleged violations of Articles 1(1), 2, 5, 8, 13, and 25 of the Convention, to notify the parties, to make public this decision and to included in its Annual Report.

II. PROCESSING BY THE COMMISSION

A. Petition

5. The Commission received the present petition on November 19, 2002 and acknowledged receipt in a letter to the Petitioners dated November 20, 2002.

6. On August 18, 2003, the Commission forwarded the pertinent parts of the petition to the State, establishing a period of two months for the State to respond. As of the date of this report, the Commission had received no response from the State regarding this communication.

B. Precautionary Measures

7. On February 25, 2002, Laorwins José Rodríguez Henríquez, Mauro Acosta Padrón, Sol Vargas Arnal, and Randolpho Blanco Valencia requested the Commission to adopt precautionary measures to avoid immediate, irreparable harm to their rights to life, freedom of expression, and personal integrity. On February 28, 2002, the Commission requested the Venezuelan government to adopt precautionary measures in favor of the named individuals and other Venevisión employees. Specifically, the State was asked to provide the protection measures necessary to safeguard the lives and personal integrity of the workers of Venevisión; to carry out an exhaustive investigation of the events of February, 3, 7, and 21, 2002, of which Venevisión workers Laorwins José Rodríguez Henríquez, Mauro Acosta Padrón, and Randolpho Blanco Valencia were the victims; to adopt the measures necessary to protect media workers' full exercise of the right to freedom of expression under Article 13 of the American Convention; and to categorically condemn, from the highest instances of the government, the ongoing acts of aggression against media workers. The Commission established a period of seven days from the date of this communication in order for the State to inform the Commission regarding the measures adopted. The measures were to be effective for 6 months and the State was to update the Commission every thirty days as to their implementation.

8. On March 8, 2002, the State responded to the Commission. The response first noted that the Ministry of Interior and Justice had received orders to implement the measures of protection. Regarding the need to carry out an investigation, the Attorney General's office received a communication asking it to carry out the necessary measures. Regarding the request to protect media workers' right to freedom of expression, the State sent a request to the Human Rights Ombudsman.

9. On March 20, 2002, the State's report was transmitted to the Petitioners, who were given 30 days to submit their observations.

10. On April 18, 2002, the Petitioners requested precautionary measures in favor of two additional Venevisión workers, Luis Alfonso Hernández and Julio Gregorio Rodríguez Garcia. Considering these media workers included in the original precautionary measures, which applied generally to all employees of Venevisión, the Commission transmitted the information submitted by the Petitioners to the State on April 19, reiterating its request to the State to adopt the measures requested on February 28 and asking for information regarding the named individuals.

11. During the Commission's visit to Venezuela on May 6 to 10, the Petitioners presented a request for precautionary measures on behalf of Julio Gregorio Rodríguez Garcia, Mauricio Cabal Zamorano, Graciliano Esteban Leal Hernández, Nelson Torres Flores, and Ray Carlos Avilez Luna of Venevisión. The Commission forwarded the information to the State on May 22, 2002 and requested information within a period of 7 days.

12. On June 6, 2002, the State replied to the Commission's request for information stating that police officials had met with the journalists of Venevisión to determine what protection measures they required. Additionally, the State informed that the Attorney General's Office had commissioned prosecutors to investigate the incidents, clarify the facts, and establish responsibility. Finally, the government noted that the Human Rights Ombudsman had issued a call to all governmental agencies to put into place programs and practices aimed at protecting the human rights of all citizens, but particularly under the circumstances, journalists and media workers.

13. On June 13, 2002, the State's report was transmitted to the Petitioners, who were given 30 days to submit their observations.

14. On June 20, 2002, the Petitioners submitted their observations regarding the State's report. They alleged that the actions undertaken by the State were formalities that had no real effect on the security of the media workers. This information was transmitted to the State on July 9, 2002. The State was given a period of ten days in which to submit its observations.

15. On July 31, 2002, precautionary measures were solicited on behalf of Venevisión journalist Ray Carlos Avilez Luna. Considering this journalist included in the original precautionary measures, which applied generally to all employees of Venevisión, the Commission transmitted the information submitted by the Petitioners to the State on August 1, reiterating its request to the State to adopt the measures requested on February 28 and asking for information regarding the named individual.

16. On August 28, 2002, the Petitioners requested the extension and expansion of the precautionary measures, alleging that the State had failed to implement the previous measures and that the pattern of aggression against journalists and media workers had not stopped. On August 30, 2002, the Commission extended the measures for six months and gave the State 30 days to present its observations.

17. On October 16, 2002, the Commission received a submission from the State dated August 13, 2002. In this submission, the government states that the General Directorate of Police Coordination and the Director of the Metropolitan Police were instructed to implement measures to protect Luis Alfonso Hernández and Julio Gregorio Rodríguez García. The government further reported that the Attorney General's Office had commissioned prosecutors to carry out the necessary investigations. The government also showed that it had instructed the Attorney General's Office, the Ministry of Interior and Justice, and the Human Rights Ombudsman to adopt the appropriate measures with respect to Ray Carlos Avilez Luna. This information was transmitted to the Petitioners on October 24, 2002.

18. On February 28, 2003, the Petitioners requested that the precautionary measures be extended, alleging that the State had failed to implement the previous measures and that the pattern of aggression against journalists and media workers had not stopped. On March 7, 2003, the Commission granted the extension for six more months, giving the State a period of 10 days to present information.

19. On September 5, 2003, the Petitioners requested a further extension of the precautionary measures, again alleging that the State had failed to implement the previous measures and that the pattern of aggression against journalists and media workers had not stopped. The Commission granted the extension for an additional six months and gave the State a period of 10 days in which to submit its observations.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

20. The Petitioners refer to incidents that occurred in two contexts. The first group of incidents took place in the context of the events celebrating the tenth anniversary of the failed coup d'état, by the current President of the Republic, in particular, during the parades that occurred as part of these celebrations.

21. On February 3, 2002, cameraman Mauro Acosta Padrón, assistant Laorwins José Rodríguez Henríquez, and correspondent Randolpho Blanco were the objects of verbal aggressions, intimidation, and shoving by hundreds of supporters of President Hugo Chavez as they were trying to cover the President's visit to the state of Aragua. Acosta was hit on the back of the head. Government supporters also covered the camera lens as the team tried to film.

22. On February 7, 2002, Mauro Acosta Padrón, Laorwins José Rodríguez Henríquez, and Randolpho Blanco were covering an opposition demonstration in Valencia, Carabobo State, when government supporters arrived and began to insult and shove them. More government supporters arrived in buses and drove at high speed into the area where the journalists and cameramen were gathered. Mauro Acosta Padrón was hit by one of these trucks and suffered serious injuries.

23. The second group of incidents took place in April 2002. Luis Alfonso Fernández Rodríguez and Julio Rodríguez were covering the anti-government protests near the Miraflores Palace on April 11, in which a number of protesters were shot and killed or wounded by

government supporters. Fernández and Rodríguez were told by armed military officials to stop taping, and a government supporter disconnected their portable power supply, making it impossible for them to continue taping. Fernández was also harassed and threatened by members of Bolivarian Circles and other government supporters. After April 11, Fernández received threats that led him to leave the country temporarily for his safety.

24. Also on April 11, in the state of Carabobo, Randolpho Blanco Valencia was surrounded and verbally attacked by government supporters.

25. The Petitioners allege that all of these attacks were committed by supporters of the government of President Hugo Chavez, many of them members of so-called "Bolivarian Circles." The "Bolivarian Circles" are political organizations promoted by the President of the Republic to "organize the people" and "defend the revolution." These groups are constituted according to guidelines issued by the Executive, they register with the Miraflores Palace, and receive government funds. Some of these groups are peaceful and are directed at community service, but others are allegedly armed and violent.

26. The Petitioners further allege that all of the foregoing incidents of attacks against Venevisión occurred as a result of the systematic, aggressive, and violent discourse of President Chavez, which began in 2001. The attacks, the petitioners allege, not only have not been investigated by the State, they have been tolerated, justified, and encouraged by the President and some other high governmental officials.

27. The Petitioners state that the Victims have denounced all of the incidents of attacks against them before the Office of the Attorney General of the Republic, but that the Attorney General's Office has not taken any steps to carry out a serious investigation of any of these incidents. The Petitioners state that the Victims have provided the Attorney General's Office with videos and verbal descriptions of the perpetrators of the various attacks, which would make it possible to identify the perpetrators. Nevertheless, they allege that the State has made no efforts to either identify or apprehend these individuals.

28. The Petitioners state that, in spite of the precautionary measures issued by the Commission on the Victims' behalf, the State took no security measures to protect the Victims. As a result of the State's alleged disregard for the Victims' requests for protection, Venevisión found it necessary to buy security equipment, such as gas masks and bulletproof vests, for its employees.

29. With regard to Article 13 of the Convention, the Petitioners argue that the systematic acts of aggression committed against the Victims and other media workers have intimidated the Victims and led them to engage in self censorship; out of fear for their lives and personal integrity, and that this violates their right to freedom of expression. The Petitioners also argue that the State is directly responsible for these violations because the acts of aggression were committed by "Bolivarian Circles," entities supported by the State and acting on its behalf, or by government supporters acting under incitement by the government.

30. With regard to Article 5 of the Convention, the Petitioners allege that the State has violated the Victims' rights to physical, mental, and moral integrity, protected under Article 5 of the Convention. First, they allege that the State has encouraged or incited its supporters to verbally and physically assault media workers, threaten them with blunt implements, make death threats against them, and humiliate them. They argue that the State is directly responsible for these violations for the reasons previously stated. Secondly, they state that the fact that the Victims are unable to exercise their profession freely damages their mental and moral integrity.

31. With regard to Articles 8 and 25 of the Convention, the Petitioners allege that the State has violated the Victims' rights to a fair trial and judicial protection by failing to carry out a serious and exhaustive investigation of the above-detailed incidents. Furthermore, the acts of aggression against the Victims constitute crimes; the Public Ministry is the sole entity that can bring public penal actions and its failure to do so in the case of the Victims leaves them in a completely defenseless state. The Petitioners also allege that there is a lack of independence in the judicial branch and the Public Ministry that has prevented the Victims from having their rights to a fair trial and to judicial protection protected.

32. The Petitioners further state that the State has incurred in a violation of its general obligations to respect and guarantee the human rights protected under the American Convention, as required by Articles 1(1) and 2 of the Convention. These general obligations include both the duty of State agents to refrain from actions that violate human rights protected under the Convention and the responsibility of the State to prevent or investigate and punish human rights violations committed by private individuals. As previously stated, the Petitioners believe that the perpetrators of the acts of aggression should be considered "state agents" because they acted with the support and encouragement of the government. They also allege that the lack of a serious investigation of the incidents and the failure of the State to bring any of the perpetrators to justice indicates a violation by the State of its duty to give legal effect to the rights protected under the Convention, as required by Article 2.

33. Regarding the exhaustion of domestic remedies, the Petitioners allege that on February 18, 2002, the Victims denounced the aggressions to which they had been subjected prior to that date before the Attorney General's Office, in order that the Public Ministry could carry out an investigation to sanction those responsible. Ten days later, the Commission issued precautionary measures, which further emphasized the call to the State to investigate these incidents. On April 26, 2002, the Victims denounced the incidents that took place earlier that month. Nevertheless, the Petitioners allege that there has been no investigation, few individuals have been questioned by the Public Ministry, and no one has been charged in connection with any of the incidents. They state that because only the Public Ministry can initiate investigations in "public action" crimes, such as the ones committed against the Victims, this petition falls under one of the exceptions to the requirement of the exhaustion of domestic remedies. Article 46(2)(b) of the Convention states that a victim is excused from the requirement of showing exhaustion of domestic remedies if "the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them."

B. Position of the State

34. There was no response from the State regarding the admissibility of the petition.

IV. ANALYSIS OF THE ISSUE OF ADMISSIBILITY

A. Preliminary questions

35. The IACHR notes that the State has not responded to the petitioner's allegations or questioned the petition's admissibility. The IACHR would like to stress that Venezuela undertook various international obligations through the American Convention on Human Rights, including those provided for in Article 48(1)(a) of the Convention, which stipulates that: "[w]hen the Commission receives a petition or communication (...) (a) it shall request information from the government of the state indicated as being responsible for the alleged violations (...) This information shall be submitted within a reasonable period (...). (e) The Commission may request the states concerned to furnish any pertinent information." The Convention, therefore, requires States to provide the information requested by the Commission in the processing of an individual case.[FN2]

[FN2] See, eg., IACHR, Report No. 129/01, Case 12.389, Admissibility, Jean Michel Richardson, Haiti, December 3, 2001, para 11.

36. The IACHR feels it must also indicate that the information requested by the Commission is information that would enable it to reach a decision in a case submitted to it. The Inter-American Court of Human Rights has indicated that cooperation by the States is an essential obligation in international proceedings in the inter-American system:

In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.[FN3]

[FN3] IACt.HR, Velasquez Rodriguez Case (Honduras), Series C No. 4, Judgment of July 29, 1988, para. 135-36.

37. The IACHR and the Inter-American Court of Human Rights have also indicated that "the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law." [FN4] The Commission therefore reminds Venezuela that it has a duty to cooperate with the organs in the inter-American human rights system, for optimal fulfillment of its functions to protect human rights.

[FN4] Id. at para. 138; IACHR, Report No. 28/96, Case 11.297, Guatemala, October 16, 1996, para. 45.

B. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

38. The Petitioners have locus standi to submit petitions to the IACHR, in accordance with Article 44 of the Convention. The petition identifies as purported victims individual persons, whose rights under the Convention the Bolivarian Republic of Venezuela is committed to respect and ensure. With respect to the State, Venezuela is a State party to the American Convention. The Petitioners denounce acts or omissions directly imputable to the State. The Commission therefore considers that it has competence *ratione personae*. Additionally, the Petitioners allege that the actions of the "Bolivarian Circles" are directly imputable to the State. The Commission will make a determination in its report on the merits regarding the possibility that the State could be held directly responsible for the actions of such groups.

39. The Commission has competence *ratione materiae*, since the petition alleges violations of the Victims' human rights as protected by the American Convention under Articles 1(1), 2, 5, 8, 13, and 25.

40. The Commission has competence *ratione temporis*, since the events alleged in the petition took place at a time when the duty to respect and ensure the rights enshrined in the Convention was in force for the State, which ratified the Convention on August 9, 1977.

41. The Commission has competence *ratione loci* to take cognizance of this petition since it alleges violations of rights guaranteed by the American Convention that purportedly occurred in the territory of a State party.

C. Exhaustion of domestic remedies

42. Article 46(1)(a) of the American Convention states:

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law[.]

43. The Commission and the Court have repeatedly insisted on their "reinforcing and complementary"[FN5] status within the inter-American system of protection of human rights.[FN6] This status is reflected in Article 46(1)(a) of the Convention, which permits States parties to decide cases within their own legal framework, before there is need for recourse to an international proceeding.

[FN5] American Convention on Human Rights, Preamble, para. 2.

[FN6] See eg, Velasquez Rodriguez Case, supra note 4, para. 61; IACHR, Resolution No. 15/89, Case 10.208 (Dominican Republic), April 14, 1989, Conclusions, para. 5.

44. The Convention provides for certain exceptions in cases in which the exhaustion of domestic remedies is impracticable. One such situation is provided for under Article 46(2)(b), which provides that it is not necessary to exhaust domestic remedies when the "party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from accessing them[.]"

45. In the instant case, the Petitioners allege that the Victims have been denied access to remedies because the Public Ministry, which has the sole power to initiate investigation and prosecution for so called "public action" crimes, has failed to initiate investigations into the crimes against the Victims. The Victims first denounced such crimes to the Public Ministry on February 18, 2002, two years before the drafting of this opinion.

46. When a petitioner alleges that he or she is unable to exhaust domestic remedies, Article 31(3) of the Commission's Rules of Procedure provide that the burden then shifts to the government to demonstrate which specific domestic remedies continue to offer effective relief for the harm alleged. However, the State may expressly or tacitly waive its right to raise the issue of exhaustion of domestic remedies. Specifically, if the State does not respond to the petition in a timely manner and express its arguments regarding exhaustion of domestic remedies, this constitutes a tacit waiver of the non-exhaustion argument.[FN7] In this case, the petition was transmitted to the State on August 18, 2003, with a period of two months given to the State to respond. As of the date of this report, the State had not submitted any observations. Therefore, the State has tacitly waived its right to allege non-exhaustion of domestic remedies.

[FN7] See, eg., IACHR, Report No. 31/031, Case 12.195, Admisibility, Mario Alberto Jara Oñate and others, Chile, March 7, 2003, para. 35; IACtHR, The Mayagna (Sumo) Awas Tingi Community Case, Preliminary Objections, Judgment of February 1, 2000.

D. Deadline for submission of the petition to the IACHR

47. In the petition under consideration, the IACHR has concluded that the State of Venezuela tacitly renounced its right to assert the objection of failure to exhaust domestic remedies, as a result of which the requirement of Article 46(1)(b) of the American Convention is not applicable. However, the provisions of the Convention requiring the prior exhaustion of domestic remedies and the lodging of the petition within a period of six months from the date of the final judgment of the domestic jurisdiction are independent. The Inter-American Commission must therefore determine whether the petition under review was presented within a reasonable period. In that connection, the IACHR observes that the original petition was received on November 19, 2002.

The incidents complained of in the petition primarily occurred in February 2002 and April 2002. The IACHR considers that the petition was lodged within a reasonable period of time.

E. Duplication of proceedings

48. Article 46(1)(c) of the Convention provides that admissibility of a petition by the Commission requires that the subject of the petition or communication is not pending in another international proceeding for settlement. Article 47(d) of the Convention also stipulates that the Commission shall declare inadmissible any petition that is substantially the same as one previously studied by the Commission or by another international organization.

49. From the statements of the Petitioners, it does not appear that the petition is pending in any other international proceeding or forum, or that it is substantially the same as any previously studied by the Commission or by another international organization. The Commission therefore considers that in the instant case the requirements for admissibility in Articles 46(1)(c) and 47(d) of the Convention have been met.

F. Nature of the facts alleged

50. For purposes of admissibility, the IACHR has to determine whether the facts stated in the petition tend to establish a violation of rights set forth in the American Convention, as required under Article 47(b), or whether the petition must be dismissed as "manifestly groundless" or "obviously out of order" under Article 47(c).

51. The standard by which to assess these extremes are different from the one needed to decide the merits of a petition. The IACHR must do a prima facie evaluation, not to establish the existence of a violation but rather to examine whether the petition states facts that tend to establish a potential or apparent violation of a right guaranteed by the Convention. That examination is a summary analysis that does not imply any prejudgment or advance opinion on the merits of the petition. By establishing two clearly separate phases—one for admissibility and the other for the merits—the Commission's own Rules of Procedure reflect the distinction between the evaluation the Commission must make to declare a petition admissible, and the evaluation required to establish a violation.

52. The Petitioners have made allegations, which, if proven to be true, would tend to characterize violations of Articles 1(1), 2, 5, 8, 13, and 25 of the American Convention. The allegations are not "manifestly groundless" or "obviously out of order." Therefore, without prejudice to the merits of the case, the Commission considers that the requirements of Article 47(b) and (c) of the American Convention have been met with respect to Articles 1(1), 2, 5, 8, 13, and 25 of the Convention.

IV. CONCLUSIONS

53. The Commission considers that it has competence to take cognizance of this petition and that it is admissible as regards the requirements for admissibility contained in Articles 46 and 47

of the American Convention on Human Rights, and as regards the alleged violations of Articles 1(1), 2, 5, 8, 13, and 25 of the American Convention.

54. On the basis of the aforementioned arguments as to facts and law, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible as regards the presumed violations of rights protected by Articles 1(1), 2, 5, 8, 13, and 25 of the American Convention;
2. To notify the parties of this decision;
3. To continue with the examination of the case; and
4. To make public this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., the 27th day of February, 2002. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President, Susana Villarán de la Puente, Second Vice-President, Evelio Fernandez Arévalo, and Florentín Meléndez, Commission members.