

**REPORT No. 171/10<sup>1</sup>**  
PETITION 578-03  
ADMISSIBILITY  
MIGUEL ANGEL MILLAR SILVA *ET AL.*  
CHILE  
November 1, 2010

**I. SUMMARY**

1. The present report refers to petition 578-03, which was initiated before the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission,” “Commission,” or “IACHR”), by virtue of the presentation of a petition that was received on August 4, 2003 by Mr. Miguel Millar Silva (hereinafter “the petitioner”) against the Republic of Chile (hereinafter “Chile” or “the State”). On July 27, 2004, with the consent of the petitioner, Gustavo Gómez (of AMARC-ALC) and Francisco Cox, representing the Center for Justice and International Law (CEJIL), presented themselves as co-petitioners. The petitioner alleges that the State violated the obligation to respect the rights to freedom of expression and equality under the law, contained in Articles 1.1, 13, and 24 of the American Convention on Human Rights (hereinafter “American Convention”) to his detriment as the director of a radio station, as well as to the detriment of Narciso Nahuelquín Lepío (the producer of the radio station); Patricia Cocq, Luis Jerez, Carolina Leyton, Soledad Lorca, Vanesa Mancisidor, Marcia Paredes, Alejandra Venegas (all journalists with the station *Radio Estrella del Mar*); Genaro Barría, Eduardo Carimoney, Mabel Chiguay Carimoney, Rodrigo Levicoy, Palmenia Saldivia and Marcos Silva (all members of civil society organizations and unions that use the radio to inform the community); and of society in general.

2. The petitioner explained that *Radio Estrella del Mar* is located in a small town on the Island of Melinka, in the south of Chile. The island has problems of accessibility and connectivity. The petitioner alleges that the Island of Melinka has serious institutional limitations as a result of this isolation, with a virtual absence of organs of the Central Administration and the Judicial Branch. The petitioner alleges that this situation “impedes the satisfaction of the basic needs of the population.”

3. The petitioner explained that on the Island of Melinka, electricity is provided by the municipality through its own electricity-generating equipment and that there are two systems of provision of energy: a restricted-access one with extended hours that allows for the use of energy free of charge from eight o'clock in the morning until twelve o'clock at night, and one with unrestricted access with limited hours that is subject to payment according to consumption and operates from six o'clock in the evening until twelve o'clock at night.

4. According to the petitioner's account, the station *Radio Estrella del Mar*, of which he is the director, was excluded from the provision of electricity through the extended-hours system. He alleged that this was due to the animosity of the mayor in relation to the radio's editorial slant. He considered that this discrimination constitutes a violation of Articles 13 (freedom of expression) and 24 (equality under the law) of the American Convention.

5. The State did not present observations to the petition.

6. The Inter-American Commission concludes that it is competent to decide the complaint presented by the petitioner, that it is admissible in light of that provided in Article 46 of the American Convention, with respect to the alleged violations of the rights recognized in Articles 13 and 24 in relation to 1.1 of the American Convention. As a result, the Commission decides to notify the parties, continue with the analysis of the merits in relation to the alleged violations of the American Convention, to publish the present report, and to include it in its Annual Report to the OAS General Assembly.

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<sup>1</sup> Commissioner Felipe González, of Chilean nationality, did not participate in the deliberations or the decision in the present case, in accordance with the provisions of Article 17(2)(a) of the Regulations of the Commission.

## II. PROCESSING BY THE COMMISSION

7. The petition was received by the IACHR on August 4, 2003. On September 30, 2003, the petition was submitted to the State, and it was granted a period of two months to submit its observations. On June 14, 2009, the request to the State to submit its observations was repeated, and it was given a month in which to do so. The State did not present observations regarding the petition. On June 16, 2009, the petitioner presented additional information.

## III. POSITIONS OF THE PARTIES

### A. Position of the petitioner

8. The petitioner explained that *Radio Estrella del Mar* is located in a small town of about 1,400 inhabitants<sup>2</sup> located on the Island of Melinka, in the south of Chile, which belongs to the Guaitecas Municipality. The Island of Melinka has problems of accessibility and connectivity. In this sense, the petitioner explained that the island is more than six hours by boat from the port of Quellón, a journey that the boat “Alejandrina” makes once per week. Additionally, the boat makes the “Cordillera Route,” which unites the Island of Melinka with the Port of Chcabuco in over thirty hours.

9. The petitioner claims that the Island of Melinka faces serious institutional limitations as a result of this isolation, with a virtual absence of organs of the Central Administration and the Judicial Branch. This, in the opinion of the petitioner, makes the satisfaction of “the population’s basic needs” difficult. The petitioner explained that the presence of the Guaitecas Municipality is “omnipresent” and “without counterbalance.”

10. The petitioner explained that *Radio Estrella del Mar* of Melinka was founded by the Diocese of Ancud and is operated by the Foundation for *Radio Estrella del Mar*. The radio station has a concession for fm radio broadcasting, the title to which is held by the diocese and which was granted through decree 234 of 1994 of the Sub-secretary of Telecommunications of the Ministry of Transportation and Telecommunications of Chile. The petitioner stated that, at the time the petition was presented to the IACHR, he was serving as the director of the radio and that 42 persons were employed there, 9 of which are presented as victims in the present petition. The petitioner explained that *Radio Estrella del Mar* not only carries out the informational role of all social communications media, but is also an effective channel of communication between the various local actors and organizations, which turn to the radio station to disseminate and communicate their opinions, activities, and information to their members and to the rest of the community.

11. The petitioner alleged that, due to the situation of isolation of the Island of Melinka, the population is supplied with electricity by motor generators owned and administered by the Municipality. The petitioner explained that there are two systems for providing electrical services. On the one hand, there is a service for limited distribution with an extended schedule, from eight o’clock in the morning until twelve o’clock at night, which supplies public services and a limited number of homes of functionaries and institutions that serve the community. This service is provided free of charge by the Municipality. On the other hand, there is a service for broad distribution, but with a limited schedule that covers all of the homes in Melinka from six o’clock in the evening until twelve o’clock at night. Users are charged for this service. The petitioner explained that until shortly before the petition, all the communications media present in Melinka—two national channels and two radio stations, *Radio Estrella del Mar* and a radio station owned by the Municipality—were provided with electricity under the system of limited distribution, free, and with an extended schedule.

12. The petitioner alleged that in October 1999, at the instruction of the Municipality, *Radio Estrella del Mar* was connected to the limited-schedule system, while other media remained connected to the extended-hours system. The petitioner alleged that on September 16, 2000, he sent a letter to the

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<sup>2</sup> Instituto Nacional de Estadísticas de Chile, Censo Nacional 2002 (2002 National Census). Available at: [http://www.inec.cl/canales/chile\\_estadistico/demografia\\_y\\_vitales/demografia/pdf/cdpubaldcasjunio2005.zip](http://www.inec.cl/canales/chile_estadistico/demografia_y_vitales/demografia/pdf/cdpubaldcasjunio2005.zip) (ZIP format).

Mayor of Las Guaitecas, requesting to be reconnected to the system of extended-hours, like the other communications media on the island. The petitioner claimed that he did not receive a formal reply, although he indicated that shortly thereafter, the Mayor had said, in the context of a domestic legal proceeding, that the exclusion of *Radio Estrella del Mar* was due to reasons of a technical nature. Nevertheless, the petitioner stated that *Radio Estrella del Mar* was excluded from the regime for extended hours because of the negative view that the Mayor had of the radio station.

13. In this regard, the petitioner transcribed in his petition excerpts from an interview with Mayor Luis Miranda de Chiguay and published in February 2001 by journalist Victor Godoy, in the framework of a summary ordered by the radio's legal representative, relating to the possible reasons for one of the attacks suffered by the radio station (infra para. 14). According to the petitioner, the Mayor had stated during that interview that Radio Estrella del Mar had been conspiring to bring about "la cosa tambalee" and that "there are two sides, right and left. The radio is on the other side in a nasty, dirty position; it's a shame." The mayor also stated that the director had an attitude that was "hostile and badly-intentioned" and requested the Bishop to "take measures to reign in Mr. Millar's pernicious attitude." In summary, the petitioner considered that the exclusion of *Radio Estrella del Mar* from the provision of electricity according to the extended schedule and free of charge was arbitrary discrimination by public officials because they were not in agreement with the media's editorial slant.

14. Additionally, the petitioner denounced a series of acts of harassment against members of the radio station that occurred before *Radio Estrella del Mar's* access to electricity was restricted, such as the illegal occupation of its installations by a municipal official in September 1999; the interference with its transmissions by a television station apparently operating without the necessary permits from the Municipality; and threats received by employees of *Radio Estrella del Mar*, which occurred in October 2000, among others.

15. The petitioner explained that due to this situation, on September 16, 2000, in his capacity as director of the radio, he formally requested in a letter addressed to the Mayor that the benefit of extended-hour electrical service be extended to *Radio Estrella del Mar*, as is enjoyed by the other social communications media present in Melinka. According to the petitioners, they have not received any formal response to that request.

16. Additionally, the petitioner indicated that he had filed a remedy for protection (*recurso de protección*) before the Court of Appeals of Coyhaique against the municipal authority. Additionally, he explained that on December 26, 2002 the Court of Appeals rejected the petition and declared it to be unfounded, considering that the Municipality's decision was made in the "was carried out within the context of and in carrying out its proper functions and in exercise of its particular powers." This judgment was appealed by the petitioner to the Supreme Court. However, the Supreme Court affirmed the judgment on February 5, 2003.

17. The petitioner stated that in February of 2003 he communicated with the Secretary General of Government and with the Sub-secretary of Telecommunications, who on April 4, 2003 responded saying that "there is no interference with the telecommunications regulations" and therefore declined to intervene in the case. The petitioner considered that the domestic legal system is insufficient to prevent the arbitrary action of the public authority in this matter.

18. In relation to Article 24 of the American Convention, the petitioner considered that the rights to equal opportunities and non-discrimination of the radio director, the radio producer, and the social communicators who exercise their right to freedom of expression through *Radio Estrella del Mar*, as well as all those who use the radio to inform the community or to receive information, were violated. According to the petitioner, by cutting the provision of light and charging for it in conditions different from those applied to other communications media, the State created discriminatory conditions that benefited state-owned media and violated equality of opportunity.

19. In relation to Article 13 of the American Convention, the petitioner stated that the State's actions have a chilling effect on the expression of ideas, thoughts, and opinions through *Radio Estrella*

*del Mar*. He also considered that the right of the community of Melinka to receive information was violated given that *Radio Estrella del Mar* is the only local media that is not state-owned. According to the petitioner, discrimination in access to electricity is nothing other than a mechanism of official control over communications media and a restriction on freedom of expression. In this respect, the petitioner alleged that in the interview with the mayor (*supra*, para. 14), the official made various public statements against the radio station that show that the discrimination in the provision of electricity had as its principal objective silencing the voice of *Radio Estrella del Mar*.

20. According to the petitioner, the scheme for distributing electrical power to communications media constitutes a true system of subsidies that is justified by the situation of isolation of the Island of Melinka. Nevertheless, according to the petitioner, these subsidies cannot be distributed discriminatorily and must be assigned in conditions of equality. Finally, the petitioner stated that it is not sufficient to recognize the right to establish communications media if equal access to basic services needed to operate those media is not guaranteed.

21. Finally, the petitioner alleged that the presumed violations set forth were committed to the detriment of himself as the director of the radio; of Narciso Nahuelquín Lepío as producer of the radio; of Patricia Cocq, Luis Jerez, Carolina Leyton, Soledad Lorca, Vanesa Mancisidor, Marcia Paredes, and Alejandra Venegas as social communicators for the radio, because they saw themselves censored in their informative work and in their right to receive information; and of Genaro Barría, Eduardo Carimoney, Mabel Chiguay Carimoney, Rodrigo Levicoy, Palmenia Saldivia and Marcos Silva in their capacities as members of civil society organizations and syndicates, because they have seen their right to use the radio to inform the community and their right to receive information be restricted. Additionally, the petitioner stated that the entire population of the Island of Melinka has also been affected in its right to receive information.

#### **B. Position of the State**

22. The State did not present observations, despite the fact that the IACHR resent the observations it considered pertinent (*supra* para.7).

#### IV. ANALYSIS OF ADMISSIBILITY

##### A. Competence of the Commission *rationae personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

23. The petitioner has standing to present a petition before the Commission in accordance with that provided under Article 44 of the American Convention. In the petition, individual persons are mentioned as presumed victims with respect to whom the State has assumed the obligation to respect and guarantee the rights recognized in the American Convention. With respect to the allegation regarding considering the society of the Island of Melinka as a presumed victim, it should be noted that, in general, the Commission's competence in the processing of individual cases refers to acts that infringe upon the rights of a specific person or persons,<sup>3</sup> which is to say, a petition that denounces a concrete violation with respect to a determined person.<sup>4</sup> Given the foregoing, the society of the Island of Melinka cannot be considered as a presumed victim of the violations alleged by the petitioner in the framework of the present individual case.

24. With respect to the State, the Commission notes that Chile has been a State Party to the Convention since August 21, 1990, the date on which it deposited its instrument of ratification. Therefore, the Commission has competence *rationae personae* to examine the petition.

25. The Commission has competence *ratione loci* to consider the petition, since it alleges violations of rights protected under the American Convention that occurred in the territory of a State Party to it. The IACHR has competence *rationae temporis* given that the obligation to respect and guarantee the rights protected in the American Convention was in force in the State on the date that the violations alleged in the petition are claimed to have occurred. Finally, the Commission has competence *rationae materiae* because in the petition violations of rights protected in the American Convention are alleged.

##### B. Other requirements for admissibility of the petition

###### 1. Exhaustion of domestic remedies

26. Article 46(1)(a) of the American Convention provides that in order for a complaint presented to the Inter-American Commission to be admissible, the remedies offered by domestic jurisdiction must have been exhausted in accordance with generally recognized principles of international law. This requisite has the objective of permitting the national authorities to learn about an alleged violation of a protected right and, when it is appropriate, to have the opportunity to resolve it before it is brought before an international body.

27. In the present case, the petitioner states that all ordinary domestic remedies under Chilean law have been exhausted. Specifically, the petitioner maintained that he presented a remedy for protection that was rejected on December 26, 2002 by the Court of Appeals of Coyhaique. On January 2, 2003, the petitioner filed an appeal before the Supreme Court. On February 5, 2003, that court affirmed the appealed judgment. The petitioner reported that he was notified of the judgment on the day it was issued, however, he stated that it was only available to the plaintiffs in the Court of Appeals of Coyhaique on February 24, 2003. Additionally, the petitioner alleged that the Court of Appeals rejected the action and declared it to be unfounded because it considered that the challenged act of the municipal authority "was carried out within the context of and in carrying out its proper functions and in exercise of its particular powers."

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<sup>3</sup> See generally, IACHR, Case of *Emérita Montoya González*, Report 48/96, Case 11.553 (Costa Rica), in the Annual Report of the IACHR 1996, OAS/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, paras. 28,31.

<sup>4</sup> I/A Court H.R., Advisory Opinion OC-14/94, "*International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*," of December 9, 1994, para 45. See also, paras. 46-47.

28. According to what can be inferred from principles of international law, reflected in the precedents established by the Commission and the Inter-American Court, the State complained against can expressly or tacitly renounce the invocation of the lack of exhaustion of domestic remedies.<sup>5</sup> Secondly, the exception of failure to exhaust domestic remedies, to be timely, must be raised during the first stages of the proceedings before the Commission, and the failure to do so is presumed to be a tacit renunciation of this exception by the interested State.<sup>6</sup> Thirdly, in accordance with the applicable burden of proof in this matter, the State that alleges failure to exhaust domestic remedies must indicate which domestic remedies must be exhausted and must provide proof of their effectiveness.<sup>7</sup>

29. In the present case, the Commission considered that, in general, the remedy for protection and the appeal filed by the petitioner are adequate and effective remedies to redress violations of fundamental rights. In this respect, and taking into account that the State did not present any claims relating to the satisfaction of the requirement of exhaustion of domestic remedies, nor did it indicate any additional remedies that must be exhausted, the Commission concludes that the requirement set forth in Article 46(1)(a) of the American Convention has been fulfilled by the petitioner.

## **2. Deadline for lodging a petition**

30. According to that provided in Article 46(1) of the Convention, for a petition to be admissible, it must be presented within a period of six months, counting from the date on which the alleged victim was notified of the final decision at the domestic level.

31. In the present case, the final judgment on the matter was issued on February 5, 2003, by the Supreme Court of Justice of Chile. Taking into account that the petition was received by the IACHR on August 4, 2003, the Commission considers that in the present case, the requisite set forth in Article 46(1)(b) of the American Convention is satisfied.

## **3. Duplication of proceedings and *res judicata***

32. Article 46(1)(c) establishes that the admission of a petition is subject to the requirement that the issue "is not pending in another international proceeding for settlement" and Article 47(d) of the Convention stipulates that the Commission will not admit a petition that is "substantially the same as one previously studied by the Commission or by another international organization." In the case at hand, there is no indication of any of these circumstances for inadmissibility.

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<sup>5</sup> IACHR, Report No. 69/05, Petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, para. 42; I/A Court H.R., *Case of Ximenes-Lopes v. Brazil. Preliminary Objection*. Judgment of November 30, 2005. Series C No. 139, para. 5; I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, para. 49; and I/A Court H.R., *Case of the Serrano-Cruz Sisters v. El Salvador. Preliminary Objections*. Judgment of November 23, 2004. Series C No. 118, para 135.

<sup>6</sup> I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Preliminary Objections*. Judgment of February 1, 2000. Series C No. 66, para. 53; *Case of Castillo-Petruzzi et al v. Peru. Preliminary Objections*. Judgment of September 4, 1998. Series C No. 41, para. 56; and I/A Court H.R., *Case of Loayza-Tamayo v. Peru. Preliminary Objections*. Judgment of January 31, 1996. Series C No. 25, para. 40.

<sup>7</sup> IACHR, Report No. 32/05, Petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons affected by HIV/AIDS, Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., *Case of Durand and Ugarte v. Peru. Preliminary Objections*. Judgment of May 28, 1999. Series C No. 50, para. 33; and *Case of Cantoral-Benavides v. Peru. Preliminary Objections*. Judgment of September 3, 1998. Series C No. 40, para. 31.

#### 4. Characterization of the alleged facts

33. For purposes of the admissibility report, the IACHR must resolve at this stage of the proceedings only whether there are facts that, if proven, tend to characterize violations of the Convention, as stipulated in Article 47(b) of the American Convention, or if the petition is “manifestly groundless” or “obviously out of order,” according to clause (c) of the same article. The IACHR must carry out a *prima facie* evaluation to determine whether or not the complaint establishes an apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of such a violation. The test that should be applied at this stage is simply a summary analysis and does not prejudice or advance an opinion regarding the merits of the case.

34. From the information and allegations presented by the petitioner, it can be deduced that *Radio Estrella del Mar* was denied access to electrical power provided by the Municipality free of charge under the restricted extended-hours system, that is, from eight o'clock in the morning until twelve o'clock at night. This decision, according to the petitioner's allegations, was motivated by the Mayor's animosity towards the radio station and generated inequality amongst the various communications media in Melinka, since the two television channels and the municipal radio station continued to receive the extended-hours electrical service. In the petitioner's opinion, there was no reason that could reasonably justify this decision. Finally, he affirms that the decision seriously prejudiced the functioning of the radio station and had a silencing effect upon all of the communicators who work there.

35. The Commission considers that, taking into account the allegations and the information provided, there could be a possible violation of the alleged victims' rights to freedom of expression and equality before the law. In effect, if the allegations regarding the arbitrary restriction of access to extended-hours electrical service, motivated by the editorial line of the radio station, can be proven, these facts could constitute a violation of Articles 13 and 24 of the American Convention.

36. As a result, in the case at hand, the Commission concludes that the petitioner has formulated complaints that, if they are compatible with other requirements and are proven to be true, could characterize a violation of the rights that enjoy protection according to the American Convention, specifically those contemplated in Articles 13 (freedom of thought and expression) and 24 (right to equal protection), in relation to Article 1(1) (obligation to respect rights).

#### V. CONCLUSIONS

37. The Commission concludes that it is competent to consider this case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention.

38. In light of the preceding arguments of fact and law, and without prejudging the merits of the case,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS****DECIDES:**

1. To declare the instant case admissible in relation to the alleged violations of the rights recognized in Articles 13 and 24, in relation to 1(1), of the American Convention.
2. To notify the parties of this decision.
3. To proceed with the analysis of the merits of the case.
4. To make this report public and publish it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 1<sup>st</sup> day of the month of November 2010.  
(Signed): Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission.