

REPORT No. 114/11
PETITION 243-07
ADMISSIBILITY
MARCEL GRANIER *ET AL.*
VENEZUELA¹
July 22, 2011

I. SUMMARY

1. On March 1, 2007, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition filed by Carlos Ayala Corao and Pedro Nikken (hereinafter “the petitioners”) in which they alleged that the Bolivarian Republic of Venezuela (hereinafter “the State” or “the Venezuelan State”) was responsible for violations of the human rights of Mr. Marcel Granier and 22 other shareholders, executives and/or journalists at the television station Radio Caracas Televisión (RCTV) (hereinafter “the alleged victims”).

2. According to the petitioners, the State decided not to renew RCTV’s license or concession to operate as a television station in order to silence that media outlet and thus prevent it from airing anti-government opinions, criticism and news. They also point that by means of a court proceeding to which the alleged victims were not party, the State decided on its own initiative to takeover RCTV’s broadcasting equipment, which it did without giving the alleged victims a court hearing or due process, and without paying them compensation. The petitioners contend that this, combined with the State’s failure to respond to the remedies filed by the alleged victims, would constitute a violation of the rights to a fair trial, to freedom of thought and expression, to private property, to equality and non-discrimination, and to judicial protection, recognized in articles 8, 13, 21, 24 and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), all this in conjunction with the general obligations undertaken in articles 1(1) and 2 thereof. Finally, the petitioners contend that the petition is admissible because of an unwarranted delay in rendering a final judgment on the domestic remedies, which is the exception allowed under Article 46(2)(c) of the American Convention to the rule requiring exhaustion of domestic remedies.

3. As of the date of approval of this report, the Venezuelan State has not filed its response to the petition.

4. After examining the position of the parties on the basis of the admissibility requirements set forth in articles 46 and 47 of the Convention, the Commission concludes that it is competent to take up the petition and that the petition is admissible with respect to the alleged violation of the rights recognized in articles 8, 13, 24 and 25 of the American Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of the alleged victims, who are RCTV shareholders, executives and/or journalists. The petition is also admissible with respect to the alleged violation of the right to private property protected under Article 21 of the Convention, in relation to Article 1(1) thereof and to the detriment of the alleged victims who are RCTV shareholders. The Commission therefore orders that the parties be notified of the report, which is to be published and included in the Commission’s Annual Report to the OAS General Assembly.

¹ In keeping with Article 17(2) of the Commission’s Rules of procedure, Commissioner Luz Patricia Mejía Guerrero, a Venezuelan national, did not participate in either the discussion of or the decision on this petition.

II. PROCEEDINGS BEFORE THE COMMISSION

5. The petitioners filed a petition with the IACHR on March 1, 2007. In their submission, they requested that the Commission ask the Inter-American Court of Human Rights to order provisional measures for the alleged victims. On April 23, 2007, the IACHR decided to deny this request from the petitioners. Also, the petitioners provided additional information on their petition on March 14, June 20, and August 18, 2007. Following a preliminary analysis, on October 16, 2007 the Commission informed the petitioners that the petition could not be processed because the Commission had no way of establishing whether the remedies under domestic law had been pursued and exhausted.

6. On February 28, 2010, the petitioners filed a petition with the Commission reiterating and updating the information they had reported in their March 1, 2007 submission. They also described new developments related to that petition and supplied still more information on March 22, April 15 and May 20, 2010. On this last occasion, they presented a list of the alleged victims included in their petition. Following a new preliminary analysis, the Commission proceeded to process this petition. Then, on March 11, 2011, the brief and its attachments were forwarded to the Venezuelan State, which was given two months in which to present its response. On June 15, 2011, the petitioners provided the Commission with a copy of a document from one of the domestic court records, which was sent to the State on June 16, 2011. As of the date of approval of this report, the Venezuelan State has not presented its response to the petition.

III. THE POSITIONS OF THE PARTIES

A. The petitioners

7. The petitioners contend that the alleged victims are shareholders, executives and/or journalists at Radio Caracas Televisión RCTV, C.A.² They assert that RCTV, a media outlet, is operated as a free-to-air VHF (very high frequency) television station broadcasting news and airing opinion-based programs. According to the petitioners, RCTV maintained an independent editorial line that was critical of the government and of the process known as the “Bolivarian Revolution.”

8. The petitioners contend that, under Decree No. 1,577 of May 27, 1987, the State had granted RCTV a concession to operate a free-to-air television station and to use its frequency on the broadcast spectrum for a period of 20 years –in other words, until May 27, 2007-; at the end of that period, when the time came to extend the concession, the company then in possession of the concession would be given preferential treatment.

9. The petitioners report that on June 12, 2000, the State adopted the Organic Telecommunications Law [*Ley Orgánica de Telecomunicaciones* (LOTEL)] whereby it established a new system; pre-existing services with concessions, operating licenses or permits would have to conform to the requirements of the new system. They explain, however, that under LOTEL, the purpose, coverage and “lapse” of any concession already granted by the time the new Organic Telecommunications Law entered into force were supposed to be honored. According to the petitioners, the “lapse” was the period specified in Decree No. 1,577. The petitioners state that as required under the LOTEL, RCTV applied to have the terms of its license adapted to conform to the requirements of the new system, and to that end filed an application with CONATEL on June 5, 2002. They assert that CONATEL ignored their application and proceeded to enforce, in the case of RCTV, the new system of regulations and requirements instituted under LOTEL.

² According to the list supplied by the petitioners, the petition is being filed on behalf of the following alleged victims: a) Marcel Granier, Peter Bottome and Jaime Nestares, shareholders and executives; b) Jean Nestares, Fernando Nestares, Alicia Phelps de Tovar and Francisco J. Nestares, shareholders; c) Eladio Lárez, Daniela Bergami, Edgardo Mosca, Anani Hernández, Inés Bacalao, José Simon Escalona, Isabel Valero, Odila Rubin, Oswaldo Quintana, Carlos Lamas and Grilva Delgado, executives; d) Eduardo Sapene, executive and journalist; and e) Miguel Ángel Rodríguez, Soraya Castellano, María Arriaga and Larissa Patiño, journalists. Cf. Communication received from the petitioners on May 20, 2010.

10. The petitioners argue that as far back as 2003, independent television stations or channels in Venezuela faced the threat of losing the concessions they needed to operate. They maintain that back in June 2006, agents of the State stepped up the threats against RCTV because of its editorial line. They assert that on June 14, 2006, during a ceremony at the Ministry of Defense, the President of the Republic, Hugo Rafael Chávez Frías (hereinafter “President Chávez”) announced that:

We’re going to have to take a second look at concessions granted to television stations that are close to expiration [...] We cannot be so irresponsible as to continue to grant concessions to a handful of people who, availing themselves of the spectrum that is the property of the State –and by that I mean the people- then operate those stations and use them against us, functioning like a fifth column, under our very noses. I couldn’t care less what the oligarchs of the world say! [...] What I’m saying is this: I have ordered a review of the television concessions. Some stations or channels have signaled that they’re ready to change, and it would appear that they intend to obey the Constitution and the law, joining those who supported the *coup*, which was everyone.³

11. The petitioners state that on that same day, William Lara, Minister of Communications and Information (MINCI), asserted that the State had the authority not to renew the concessions of those media outlets whose behavior had not changed since April 11 and 12, 2002. According to the petitioners, those statements were echoed by other state officials and by President Chávez on numerous occasions. For example, they point to a December 1, 2006 conversation between the President and journalist Carlos Croes:

[President] Chávez: “Of course, a channel or station that hasn’t changed, whose owners have declared themselves to be enemies of the Government.”

Carlos Croes: “And don’t they have a right?”

[President] Chávez: “To declare themselves to be enemies of a government?”

Carlos Croes: “Well, if they don’t agree [with the government]?”

[President] Chávez: “Oh, well, then the government has a right to either grant them a concession or not grant it. It is a question of liberties; as Head of State, I’m not required to grant them the concession. [...] The government will evaluate the situation and make a decision when the time comes.”⁴

12. The petitioners go on to explain that starting in December 2006, President Chávez and other high-ranking officials of the State proceeded to announce the government’s decision not to renew RCTV’s concession. They cite speeches supposedly made by agents of the State in which RCTV is referred to as a “fascist,” “irresponsible,” “venomous,” and “liar” broadcaster that “supported the coup.” The petitioners mention, for example, statements that President Chávez made on December 28, 2006, and on January 10 and 19, 2007, respectively, in which he allegedly said the following; i) “The television concession ends in March, [...] so they better be packing their suitcases and figuring out what to do after March. There will be no new concession for Radio Caracas Televisión, which supported the *coup*”;⁵ ii) “[RCTV] has January, February, March, April and May [2007] and then they can scream, kick and do all they want to do, but the concession for that fascist channel is finished”⁶, and iii) “In May, we will nationalize –or better said, socialize- that space on the electromagnetic spectrum, a public good historically controlled by Venezuela’s pro-imperialist elites.”⁷

13. The petitioners also describe how in February 2007, as part of a government campaign, the State published advertisements in the newspapers and placed posters in government offices that said the following: “Give [t]ruth the concession... RCTV ... Don’t renew the concession for lying. The people have the power! (Bolivarian Government of Venezuela. Ministry of the People’s Power for

³ Communication received from the petitioners on February 18, 2010, p. 19.

⁴ Communication received from the petitioners on February 18, 2010, p. 23.

⁵ Communication received from the petitioners on February 18, 2010, p. 24.

⁶ Communication received from the petitioners on February 18, 2010, pp. 25 and 26.

⁷ Communication received from the petitioners on February 18, 2010, p. 26.

Communications and Information).”⁸ It also published the “*Libro Blanco sobre RCTV*” [the White Book on RCTV]. They thus maintain that the real reason why the State refused to renew RCTV’s concession was to punish it for its opposition and to silence the only free-to-air television signal with nationwide coverage that was reporting information and ideas of every sort.

14. The petitioners assert that on January 24, 2007, due the statements made by State agents, RCTV wrote to CONATEL demanding that the latter recognize that the RCTV concession was good for the period specified in the Organic Telecommunications Law and corresponding laws, arguing that the decision announced by the President of the Republic was discriminatory, disproportionate and retaliatory in nature. The petitioners further assert that in response to that request, on March 29, 2007 the Minister of the People’s Power for Telecommunications and Information Technology (MPPTI) and the Director of CONATEL, Jesse Chacón Escamillo, sent RCTV Communication No. 0424, confirming the decision not to extend RCTV’s concession, citing the following reasons, among others: i) RCTV was not entitled to preferential treatment for extension of the concession; ii) there were no grounds to adapt RCTV’s licenses to the new system of LOTEL; and iii) there was no need to examine the evidence presented by RCTV. The petitioners contend that the decision did not take the provisions of the LOTEL into account and, moreover, applied some provisions of Decree No. 1,577 but not the provision allowing extension of the concession. The petitioners argue that in order to clothe his decision in legal trappings, Minister Escamillo claimed that it was based on the new National Telecommunications Plan. They observe that through Resolution No. 002 of March 28, 2007 –purportedly based on the State’s new telecommunications policy–, Minister Escamillo declared that the application for renewal of RCTV’s licenses had lapsed for failure to state a purpose; he therefore put an end to the corresponding administrative procedure.

15. However, the petitioners contend that this so-called plan was never proposed or publicly discussed, and had never been cited as grounds for refusing to renew RCTV’s concession. They maintain that other frequencies were available that the State could have used to accomplish its stated purposes; that it could have used the three television stations it already had or resorted to the extreme of requiring that the existing concessionaires hand over equal shares of their frequencies. The petitioners observe that the concessions of other television stations were set to expire on May 27, 2007, but they were not subjected to any type of restriction. They mention in particular that channel Venevisión was the same type of business as RCTV, with the same technical operating capability and legal status. However, because Venevisión had changed its editorial line, the State renewed its concession.

16. The petitioners also allege that in May 2007, persons unaffiliated with RCTV filed a petition with the Constitutional Chamber of the Supreme Court seeking *amparo* relief and injunctive relief against the MPPTI and other state entities, because of the decision not to renew RCTV’s frequency. The purpose of that legal action was to ensure that RCTV’s broadcasting was not interrupted. The legal action was brought for the sake of protecting the Venezuelan citizenry’s right to freedom of expression and information. The petitioners state that at 6:00 p.m. on May 25, 2007, the Constitutional Chamber agreed to admit the case “for protection of diffuse and collective interests” and to order injunctive relief *ex officio*. The petitioners point out that the Constitutional Chamber believed that it had to guarantee continuity in the use of RCTV’s frequency, while preserving the clarity and coverage of the transmissions. To that end, in those injunctions, the Court ordered that use of the broadcasting assets owned by RCTV and its shareholders, specifically its transmission stations, antennas and repeaters throughout the national territory, be temporarily turned over to CONATEL. According to the petitioners, these assets were to be used by Venezuelan Social Television Foundation [*Fundación Televisora Venezolana Social* (TEVES)], which would begin broadcasting its programming on May 28, 2007, using the frequency assigned to RCTV. The petitioners underscore the fact that the decision was delivered without having heard from the affected parties. They state further that this same injunction was ordered in two other *amparo* cases to protect diffuse and collective interests, cases filed on May 22 and 24, 2007 by persons unrelated to RCTV. Those two cases were also filed to avoid the station’s shutdown. On May 27, 2007 the judicial authorities carried out the injunction order and the RCTV assets were turned over to CONATEL. The

⁸ Communication received from the petitioners on February 18, 2010, p. 29.

petitioners allege that in addition to the equipment specifically mentioned in the injunctions, the State also seized other RCTV assets that were located in its facilities.

17. The petitioners state that as a result of these administrative and court orders, RCTV's signal went silent on May 28, 2007. They contend that immediately thereafter, TEVES began transmitting its programming on the channel previously used by RCTV.

18. The petitioners allege that in reaction to the threats that RCTV's license would not be renewed, on February 9, 2007 a group of executives, journalists and other staff of the television station filed a petition with the Constitutional Chamber of the Supreme Court seeking *amparo* relief against the President of the Republic and the MPPTI. The parties filing the petition alleged that their rights to freedom of expression, due process, equality and nondiscrimination were in jeopardy. According to the petitioners, when the MPPTI adopted Resolution No. 002 and issued Communication No. 0424, the petition seeking *amparo* relief had not yet been decided. Therefore, on April 2, 2007, the alleged victims reframed their original petition seeking *amparo* relief with a view to refuting the terms of Resolution No. 002. They state that in a May 17, 2007 ruling, the Supreme Court declared the petition seeking *amparo* relief inadmissible. The petitioners report that according to the Supreme Court's ruling in this matter, *amparo* was an extraordinary remedy; hence, the proper means to challenge the administrative decision would be a remedy under administrative law seeking nullification of the resolution ("Recurso Contencioso Administrativo de Nulidad"). That remedy could be coupled with a request seeking injunctive relief. According to the petitioners, the legal grounds for the decision were not stated and the legal deadlines for deciding petitions seeking *amparo* relief were not observed.

19. The petitioners allege that on April 17, 2007, a group of RCTV executives, journalists and staff filed a remedy under administrative law seeking nullification of the administrative decision delivered in Resolution No. 002 and Communication No. 0424. That remedy was brought in conjunction with a petition for injunctive relief or, failing that, an unspecified protective measure, and asked that until such time as a final decision was delivered on the merits of the complaint, the MPPTI should: i) refrain from taking any decision that would prevent RCTV from broadcasting its programming, and ii) take the necessary measures to ensure that the channel remains in operation on the same frequencies nationwide. The petitioners observe that on May 22, 2007, the Political-Administrative Law Chamber of the Supreme Court agreed to hear the petition seeking nullification of Resolution No. 002 but dismissed the petition for injunctive relief; it did not even address the petition seeking an unspecified protective measure. The petitioners' contention is that the decision held, *inter alia*, that the alleged victims' freedom of expression had not been violated, since there were other media outlets through which the journalists could express their ideas and opinions and from which the public could obtain the corresponding information. The petitioners contend that the discovery phase of the suit began on October 9, 2007, and was still in progress in February 2010. Their contention is that this remedy has thus not been effective in ensuring court protection of the alleged victims' rights, especially given the unwarranted delay in delivering a decision on the matter. This delay is the justification for applying the exception allowed under Article 46(2)(c) of the American Convention.

20. The petitioners allege further that on May 31, 2007, RCTV challenged the Constitutional Chamber's decision of May 25, 2007, whereby it assigned CONATEL the right to use RCTV's facilities and equipment. On June 13, 2007, RCTV filed a brief in which it asked to present arguments and evidence at the evidentiary hearing on the challenge. Nevertheless as of February 2010, the Supreme Court had not delivered any ruling on either the challenge or the request to offer evidence. Given the situation, the petitioners are alleging the presence of an unwarranted delay in that proceeding. They also point out that the executives, shareholders and other staff of RCTV were not summoned to appear in the proceedings in which the seizure of the station's property was ordered; they were not even summoned to appear in the case of the possible challenge to the injunctions, and were prevented from participating in those proceedings as individual natural persons. They further maintain that only the legal person of RCTV, by virtue of its ownership of the seized assets, could challenge the corresponding injunction. They contend that because the interlocutory decrees and final judgments of the Supreme Court's Constitutional Chamber cannot be appealed, the alleged victims had no way of filing an appeal or exercising any other remedy against the so-called injunctive relief.

21. The petitioners argue that the proceedings that resulted in the seizure of RCTV's facilities and equipment were complex and rare. For that reason, on December 11, 2007 RCTV filed a criminal complaint with the Office of the Superior Prosecutor for the Metropolitan Caracas Area, requesting that a criminal investigation be instituted for property crimes and other offenses criminalized under the Anti-Corruption Law. On July 28, 2008, the 51st Court of First Instance with Oversight over the Metropolitan Caracas Criminal Court Circuit ordered the investigation closed on the grounds that the acts being investigated were not criminal in nature. RCTV filed an appeal of this decision, which the Fifth Chamber of the Appellate Court of the Metropolitan Caracas Criminal Court Circuit dismissed on October 10, 2008. According to the petitioners, RCTV filed a petition of cassation before with the Supreme Court's Chamber of Criminal Cassation to challenge the ruling, which was also dismissed on May 7, 2009.

22. The petitioners also assert that between June 8, 2007 and May 26, 2009, RCTV filed five petitions before with CONATEL, requesting *inter alia*: i) that the property not affected by the Constitutional Chamber's injunctions be handed over to RCTV; ii) that a mechanism be created to allow the television station to inspect its equipment, and iii) that it be provided a certified copy of the administrative record under which the concession was awarded to Televisora Venezolana Social (TEVES). Their contention is that CONATEL never responded to their petitions.

23. On the matter of the Commission's competence *ratione personae*, the petitioners argue that the impact of work done by journalists relies on the availability of media outlets to effectively report the news the journalists uncover. They further assert that whenever necessary, members of the Board of Directors had a voice in the decisions taken on how RCTV was operated and its general orientation, and in the discussion of issues related to its editorial line. They also maintain that the shareholders put in their capital to establish and capitalize a media outlet that is essential to the exercise of freedom of expression in a democratic society and in so doing chose a medium through which to exercise their right to receive and disseminate information and ideas of all kinds. According to the petitioners, the company in which the shareholders have a stake, either directly or indirectly; can no longer perform the social function for which it was created. For these reasons, the petitioners contend that the alleged victims' right to freedom of expression has been seriously violated as a result of the closing of RCTV. They further contend that the shareholders' right to private property was also violated by the loss of share capital they sustained as a result of the channel's shutdown and the seizure of its tangible assets. For all the foregoing reasons, they contend that by virtue of the facts alleged, the Venezuelan State is responsible for violations of the rights recognized in articles 8, 13, 21, 24 and 25 of the American Convention, in relation to the general obligations undertaken in articles 1(1) and 2 thereof.

B. The State

24. As of the date of adoption of this report, the State has not presented its response to the petition.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

25. Under Article 44 of the American Convention and Article 23 of the Commission's Rules of Procedure, the petitioners have *locus standi* to submit petitions to the Inter-American Commission. With regard to the State, Venezuela is party to the American Convention and therefore internationally answerable for violations of that instrument. The alleged victims are natural persons whose rights under the American Convention the State pledged to ensure. The Commission therefore has competence *ratione personae* to examine the complaint.

26. The Commission also has competence *ratione materiae* because the petition concerns alleged violations of human rights protected under the American Convention. Furthermore, because the facts as alleged in the present petition were said to have occurred subsequent to the date on which the Venezuelan State ratified the American Convention on August 9, 1977, the Commission also has

competence *ratione temporis* to examine this petition. Finally, the Commission has competence *ratione loci* to examine the petition because the human rights violations alleged were said to have occurred within Venezuelan territory

B. Exhaustion of domestic remedies

27. Article 46(1)(a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally accepted principles of international law. In furtherance of that article and in accordance with Article 31(3) of the Commission's Rules of Procedure, when the petitioner contends that he or she is unable to prove compliance with this requirement, it is up to the State in question to show to the Commission that the remedies under domestic law have not been exhausted. In the instant case, Venezuela has not responded to the petition.

28. Article 46(2) of the American Convention provides that the rule requiring exhaustion of domestic remedies shall not apply when: a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them, or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. Thus, the Commission must examine whether domestic remedies were exhausted or whether one of the exceptions under Article 46(2). Here, the Commission recalls that an alleged victim need not exhaust every domestic remedy available; he need only exhaust those that are suitable for remedying his legal situation and redressing the harm done; in other words he need only exhaust the proper remedies for any given case.

29. In the instant case, a petition seeking constitutional *amparo* and a remedy under administrative law seeking nullification were filed to put a stop to or challenge the decision not to renew RCTV's concession. On May 17, 2007, the Supreme Court declared the petition seeking *amparo* relief inadmissible on the grounds that the proper remedy by which to challenge a government decision was the remedy under administrative law seeking nullification.

30. The remedy under administrative law seeking nullification was filed on April 17, 2007. The Commission notes that the remedy was filed by RCTV, the legal person affected by the decision being challenged, which was also representing its shareholders, and by the natural persons that the petitioners named as alleged victims, in their capacity as RCTV journalists and executives; the only exceptions were two persons who are currently on the company's management team.⁹ The argument made in the administrative law case was that the decision not to renew the concession violated the right to freedom of expression of those persons who used RCTV to express their ideas and opinions, and did so despite the government pressure brought to bear on each and every one. It also argued that the State's decision was based on RCTV's political stance, which made it a retaliatory measure that unlawfully abridged the alleged victims' freedom of expression.

31. From the information in the case file record, the Commission observes that the remedy seeking nullification has been in the discovery phase since October 2007. Indeed the decision on the appeals that both parties to the proceedings filed to challenge the ruling on the admissibility of evidence, is still pending despite the fact that, according to the petitioners, it was to have been delivered by no later than July 25, 2008. That information was not contested by the State.

32. Apart from the decision not to renew the concession, the petitioners argue that the injunctive relief ordered by the Supreme Court, in which it turned over RCTV's tangible assets to CONATEL, violates the alleged victims' basic rights, particularly their right to due process and the

⁹ These executives are Carlos Lamas and Grilva Delgado. Cf. Submission entered with the administrative law remedy seeking nullification, filed with the Supreme Court's Political-Administrative Law Chamber, April 17, 2007 (Communication received from the petitioners on February 18, 2010, Annex 110, pp. 1 to 5), and Communication received from the petitioners on May 20, 2010.

company shareholders' right to property. The petitioners contend that RCTV was not properly notified of the decision not to renew the concession and was not permitted to be a party to the process. On May 31, 2007, RCTV, as owner of the seized assets, challenged the measures taken. Based on the information in the case file, the Supreme Court never delivered its ruling on the challenge and the injunctive relief is still in effect. RCTV was never made a party to the proceedings in the regular courts.

33. Based on these considerations and on the information received, the Commission takes note concludes that the administrative remedy seeking nullification is still in its very early stages and the petition challenging the injunctive relief has not elicited any response from the Supreme Court, even though four years have passed. There is, therefore, *prima facie* an unwarranted delay in deciding these cases and the State has not offered any information to explain the delay. The Commission thus concludes that the petition is admissible based on the exception established in Article 46(2)(c) of the American Convention.

34. Finally, the Commission again observes that the exceptions to the rule requiring exhaustion of domestic remedies are closely linked to the determination of possible violations of certain Convention-protected rights, such as the right to due process (Article 8) and the right to judicial protection (Article 25). However, Article 46(2) of the Convention, by its nature and purpose, has a content that is independent of and separate from the substantive norms of the Convention and hinges on a standard of assessment that is different from the one used to determine whether there has been a violation of Articles 8 and 25 of the Convention. The decision as to whether the exceptions to the requirement for exhaustion of domestic remedies, stipulated in Article 46(2), apply to the case in question must therefore be made prior to and independently of the analysis of the merits, as the Commission is doing by issuing this report. Therefore, the reasons why the remedies under domestic law were not exhausted and the legal effect of the failure to exhaust those domestic remedies will be examined when the Commission studies the merits of the case in order to determine whether Articles 8 and 25 of the Convention were violated.¹⁰

C. Deadline for submitting the petition

35. Article 46(1)(b) of the Convention provides that in order for a petition to be admissible it must be submitted within a period of six months from date on which the interested party was notified of the final decision that exhausted the domestic jurisdiction. However, Article 32(2) of the Commission's Rules of Procedure establishes that in cases in which the exceptions to the requirement of prior exhaustion of domestic remedies apply, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.¹¹

36. In the instant case, the petition was originally filed on March 31, 2007, after the decision not to renew RCTV's concession was made public. On August 18, 2007, the petitioners reported, *inter alia*, on the execution of the administrative decision not to renew RCTV's concession and the filing of the remedy seeking nullification. On October 16, 2007, the Commission decided not to proceed with the processing of the petition. On February 28, 2010, the petitioners filed a submission updating the content of their petition. The Commission considers that the petition was filed within a reasonable period of time, in keeping with Article 32(2) of its Rules of Procedure. As explained above, this does not constitute a prejudgment regarding the possible violations of Articles 8 and 25 of the American Convention, which the Commission will examine during the merits phase of these proceedings.

D. Duplication of proceedings and international *res judicata*

¹⁰ See IACHR, Report No. 54/01, Case 12.250, Mapiripán Massacre, Colombia, Admissibility, February 22, 2001, paragraph 38; Report No. 65/01, Case 11.073, Juan Humberto Sánchez, Honduras, Merits, March 6, 2001, paragraph 51; Report No. 15/02, Petition 11.802, Ramón Hernández Berrios *et al.*, Honduras, Admissibility, February 27, 2002, paragraph 110.

¹¹ IACHR, Report No. 31/99, Case 11.763, Plan de Sánchez Massacre, Guatemala, Admissibility, March 11, 1999, paragraphs 29 and 30.

37. Nothing in the case file suggests that the subject matter of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously studied by the Commission or by another international human rights body. The requirements established in Articles 46.1.c and 47.d of the Convention have therefore been satisfied.

E. Characterization of the facts alleged

38. For purposes of admissibility, the Commission must decide whether the alleged facts tend to establish a violation of rights protected under the American Convention, as stipulated in Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” as provided in Article 47(c). At this stage of the proceedings, the Commission is called upon to do a *prima facie* analysis, not in order to determine whether violations have been committed but to examine the petition to determine whether it states facts that could constitute violations of rights protected under the American Convention. This examination does not imply any prejudgment or advance any opinion as to the merits of the case.¹²

39. The jurisprudence of the Inter-American System has held that interference in a media outlet could become a violation of the right protected under Article 13 of the American Convention in the case of those persons who use that outlet to express or circulate opinions and information.¹³ According to the Commission, it is through the communications media that directors, editors and journalists are able to exercise their right to freedom of expression as individuals.¹⁴ In effect, just as trade unions are instruments for the exercise of workers’ right to association and political parties are vehicles for the exercise of citizens’ political rights, media outlets are mechanisms that enable the exercise of the fundamental right to freedom of expression by those who use the outlet to disseminate ideas and information. As a result, the Commission has to consider how a measure imposed on a media outlet can affect the fundamental right of its members, while clearly distinguishing these effects from the sanction’s possible impact on other spheres of the outlet’s commercial or corporate activities.¹⁵

40. As the Commission has already established, in cases such as this, in order to determine whether the encumbrance of a media outlet (a legal person) had, by extension, a substantial and real negative impact on the right to freedom of thought and expression of the alleged victims, the following would have to be examined: i) the origin, nature and scope of the action that triggered the restriction; ii) the role that the alleged victims have within the media outlet, and iii) whether in fact the interference in the media outlet could have affected the right to freedom of expression of these persons. Under the Commission’s practices, these criteria provide a frame of reference for distinguishing cases in which the rights of a business are at stake, from those in which a natural person’s human rights have been adversely affected.¹⁶ This analysis must also consider that the communications media are real vehicles for exercising the right to freedom of expression.¹⁷

41. One of the allegations in the instant case is that the decision not to renew RCTV’s concession and to hand over its tangible assets to the State under the conditions herein described, is a retaliatory measure whose effect was to materially punish those who exercised their freedom of expression by way of a media outlet and to prevent them from exercising that freedom in the conditions they had. The petitioners contend that the measure is not a legitimate exercise of the state’s authority;

¹² IACHR, Report No.21/04, Petition 12.190, José Luís Tapia González *et al.*, Chile, Admissibility, February 24, 2004, paragraph 33.

¹³ IACHR, Report No. 72/11, Petition 1164-05, William Gómez Vargas, Costa Rica, March 31, 2011, paragraph 36.

¹⁴ IACHR, Report No. 72/11, Petition 1164-05, William Gómez Vargas, Costa Rica, March 31, 2011, paragraph 35.

¹⁵ IACHR, Report No. 72/11, Petition 1164-05, William Gómez Vargas, Costa Rica, March 31, 2011, paragraph 36.

¹⁶ See IACHR, Report No..67/01, Case 11.859, Tomás Enrique Carvallo Quintana, Argentina, June 14, 2001, paragraph 56; IACHR, Report No. 72/11, Petition 1164-05, William Gómez Vargas, Costa Rica, March 31, 2011, paragraph 36.

¹⁷ See I/A Court H.R., Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, paragraph 149.

instead, it is the product of a discriminatory decision calculated to punish the shareholders, executives and journalists at RCTV because of its editorial line, which they claim is self-evident in the statements made by the highest-ranking government officials when discussing the opinions and information aired by that media outlet and the evidence that disproves the formal reasons given in the document reporting that the concession was not being renewed. The petitioners assert that the government authorities publicly threatened the alleged victims that concession would be revised if they did not change the media outlet's angle on the news and opinions it circulated. In effect, they alleged that two free-to-air television stations, RCTV and Venevisión, were in operation and had the same business model, the same technical capability and the same legal status. However, the State's treatment of the two stations was different because of their editorial lines. They also alleged that the decisions not to renew the concession and to hand over the use of its equipment to the State prevented the alleged victims from being able to exercise their right to freedom of expression; they also sent a powerful message of intimidation to journalists, executives and shareholders with other media outlets.

42. Given these considerations, the Commission finds that if the allegations made are true, then the petition is neither "manifestly groundless" nor "obviously out of order". The Commission considers that there is *prima facie* evidence suggesting that the journalists named as alleged victims in the petition would have reported through RCTV. Furthermore, from their various positions of authority – including that of the station's general director and its vice chairmen-, executives were said to have taken basic decisions about the media outlet's take on the news and its editorial line. Furthermore, through the Shareholders' General Assembly and, in particular, the Board of Directors, the station's shareholders would have been instrumental in shaping its editorial line. The Commission observes that these people may have been using RCTV to express or circulate their ideas or opinions. In the merits phase, the Commission will have to examine the role that each alleged victim had in the station's editorial line; whether their right to freedom of expression was somehow affected; and whether the restriction was in compliance with the requirements of Article 13(2) of the Convention.

43. If the claim that the decisions not to renew the concession and to give CONATEL the right to use RCTV's broadcasting equipment were abuses of authority, motivated by officials' rejection of the opinions and ideas that the alleged victims aired by way of that media outlet or were taken for the purpose of silencing those ideas and opinions, thus controlling the content of the news being broadcast, this may constitute a violation of articles 13 and 24 of the American Convention, under Article 30 of that instrument, which upholds the principle of neutrality. Another issue that would have to be examined in the merits phase is whether handing the use of RCTV's broadcasting equipment over to the State was an arbitrary measure or indirect punishment for the media outlet's editorial line, which may constitute a violation of the right to private property, recognized in article 21 of the American Convention, in addition to the violation of those rights provided in articles 13 and 24. Finally, the problems that supposedly characterized the administrative and judicial proceedings conducted in connection with the present case may constitute violations of articles 8 and 25 of the American Convention. All these violations would also constitute noncompliance with the general obligations the State undertook in Articles 1(1) and 2 of the American Convention.

V. CONCLUSION

44. The Inter-American Commission concludes that it is competent to examine the merits of this case and that the petition is admissible under articles 46 and 47 of the American Convention. Based on the arguments of fact and of law set forth above and without prejudging the merits of this matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition admissible with respect to the alleged violations of the rights protected in articles 8, 13, 21, 24 and 25 of the American Convention, in conjunction with the general obligations undertaken in articles 1(1) and 2 thereof;

2. To notify the parties of this decision and proceed to its analysis of the merits of this matter; and
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 22nd day of July 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Paulo Sérgio Pinheiro, Felipe González, and María Silvia Guillén, Commissioners.