



**ORGANIZATION OF AMERICAN STATES  
WASHINGTON, D.C. 2 0 0 0 6 USA**

February 28, 2013

**Ref.: Case No. 12.828  
Marcel Granier et al. (Radio Caracas Televisión)  
Venezuela**

Sir:

I have the pleasure of writing on behalf of the Inter-American Commission on Human Rights to submit to the jurisdiction of the honorable Inter-American Court of Human Rights case No. 12.828 in respect of the Bolivarian Republic of Venezuela (hereinafter “the State,” “the Venezuelan State,” or “Venezuela”) concerning the decision of the Venezuelan State not to renew the broadcast license for the Radio Caracas Televisión (RCTV) network. As a consequence of that decision, on May 28, 2007, RCTV ceased transmitting as a free-to-air television network, impacting the freedom of expression of its stockholders, executives and journalists. The Commission concluded that the Venezuelan State failed to abide by its substantive and procedural obligations where the allocation and renewal of broadcast licenses was concerned.

As regards procedural aspects, the Commission found that the dispute concerning the nonrenewal of RCTV’s license occurred in a context of legal uncertainty for the network, which lacked clarity as to the applicable legal framework for its license. This situation was incompatible with the State’s obligation to establish a closely regulated broadcast license-renewal process. Furthermore, the decision not to renew RCTV’s license but to grant the concession to a new television network was not the result of an open and transparent process governed by public and impartial criteria. Also, RCTV was not afforded an opportunity to offer evidence and defend itself from supposed legal infractions that a number of officials attributed to it.

As to substantive aspects, the Commission concluded that although the State’s formally declared objective of promoting diversity and plurality is a legitimate public interest, the evidence contained in the record strongly suggests that the decision not to renew RCTV’s license was based on the network’s editorial line. Within this evidence, the Commission highlighted statements made by high-ranking officials and the context in which the events occurred.

Mr.  
Pablo Saavedra Alessandri, Secretary  
Inter-American Court of Human Rights  
Apartado 6906-1000  
San José, Costa Rica

Attachments

Accordingly, the Commission concluded that the decision not to renew the license was a clear act of deviation of power and an indirect restriction incompatible with Articles 13(1) and 13(3) of the Convention.

The Commission also considered that the motive for not renewing the license was the network's political opinions, a conclusion strengthened by the different treatment that RCTV received in comparison with another network whose circumstances related to the concession were the same. The IACHR closely scrutinized the difference in treatment for political reasons and concluded that the State was unable to justify its actions and, therefore, also committed a violation of the right to equality and freedom from discrimination.

Finally, the administrative and judicial proceedings connected with this case failed to meet the provisions contained in Articles 8 and 25 of the Convention. Thus, the Commission concluded that the procedure by which it was decided not to renew the license violated administrative due process, while the petitions for amparo and injunctive relief were not dealt with as promptly as they should have been and, consequently, were not an effective remedy for addressing the violation of the right to freedom of expression. The Commission also found that the motion to vacate in the contentious administrative proceeding was not disposed of in a reasonable time and that in the proceedings for the attachment of assets the right to present a defense was violated. The IACHR also concluded that the delay in resolving an objection presented by RCTV to the precautionary attachment of assets violated the right to judicial protection and, in general, that in these proceedings, the Supreme Court of Justice used formally valid procedures to accomplish the objectives of the executive branch, which constituted a violation of the right to a hearing by an impartial tribunal.

The State ratified the American Convention on Human Rights on August 9, 1977, and acceded to the contentious jurisdiction of the Court on June 24, 1981.

The Commission has designated Commissioner Felipe González; the Special Rapporteur for Freedom of Expression, Catalina Botero; and the Executive Secretary of the IACHR, Emilio Álvarez Icaza, as its delegates. In addition, Elizabeth Abi-Mershed, Assistant Executive Secretary, and Silvia Serrano Guzmán, a lawyer with the Executive Secretariat of the IACHR will serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission encloses herewith a copy of report 112/12, prepared under Article 50 of the Convention, together with a copy of the complete record of the case before the Inter-American Commission (Appendix I) and the documents used in the preparation of report 112/12 (Annexes). The State of Venezuela was notified of the above report on merits in a communication of November 28, 2012, in which it was given two months to provide information on its implementation of the recommendations.

On January 18, 2013, the State of Venezuela presented a brief in which it said that "it [was] prevented by its Constitution from implementing the three recommendations" of the IACHR.

With respect to the recommendation "to initiate proceedings to allocate a free-to-air nationwide television frequency in which RCTV is able to participate, at a minimum, under conditions of equality," the state cited the applicable regulator three framework and in respect of

this particular case said that “the competent authority had acted with absolute legality ... in adopting a decision framed by the powers granted by the law.”

As for the recommendation “to make reparations to the victims for the damages they sustained as a direct result of the due process violations,” the State said that “the extent of the economic benefits from the use and exploitation of public property granted is precisely defined,” and therefore, it was not possible to blame “the authority ... for events that occurred after the respective licenses expired.”

Finally, with respect to the recommendation “to adopt the measures necessary to guarantee that the process whereby radio and television frequencies are granted and renewed comports with the Venezuelan State’s international obligations vis-à-vis freedom of expression, as established in this report,” the State cited its Constitution and referred in general terms to the institutional objective of democratizing the radio spectrum.

Accordingly, the Commission hereby submits this case to the jurisdiction of the Inter-American Court in light of the need for the victims to obtain justice, given the failure to implement the recommendations.

The Inter-American Commission submits to the Court all the facts and human rights violations described in Report on Merits 112/12. In that regard, the Commission requests that the Court find and declare that the Venezuelan State bears international responsibility for having violated the rights of the victims—employees of RCTV,<sup>1</sup> as well as the shareholders and executives thereof, Marcel Granier, Peter Bottome, and Jaime Nestares—enshrined in Articles 13 and 24 of the American Convention, taken in conjunction with the general obligations set forth in Article 1(1) thereof, in the terms set out in its report. The Commission further requests that the Court find and declare that the State violated the rights enshrined at Articles 8(1) and 25 of the Convention, taken in conjunction with the general obligations set forth in Article 1(1) thereof, to the detriment of the victims, who are shareholders, executives and employees of RCTV.<sup>2</sup>

Based on the foregoing, the Commission asks the Inter-American Court to order the following:

1. Initiate proceedings to allocate a free-to-air nationwide television frequency in which RCTV is able to participate, at a minimum, under conditions of equality. The process should be open, independent and transparent, apply clear, objective and reasonable criteria, and avoid any political consideration that discriminates on the basis of a media outlet’s editorial stance, in keeping with the standards set forth in this report;
2. Make reparations to the victims for the damages they sustained as a direct result of the due process violations; and

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<sup>1</sup> Edgardo Mosca, Anani Hernández, Inés Bacalao, José Simón Escalona, Odila Rubin, Oswaldo Quintana, Eduardo Sapene, Eladio Lárez, Daniela Bergami, Isabel Valero, Miguel Ángel Rodríguez, Soraya Castellano, María Arriaga, and Larissa Patiño.

<sup>2</sup> Marcel Granier, Peter Bottome, Jaime Nestares, Jean Nestares, Fernando Nestares, Alicia Phelps de Tovar, Francisco J. Nestares, Edgardo Mosca, Anani Hernández, Inés Bacalao, José Simón Escalona, Eladio Lárez, Odila Rubin, Oswaldo Quintana, Eduardo Sapene, Daniela Bergami, Isabel Valero, Miguel Ángel Rodríguez, Soraya Castellano, María Arriaga, and Larissa Patiño.

3. Adopt the measures necessary to guarantee that the process whereby radio and television frequencies are granted and renewed comports with the Venezuelan State's international obligations vis-à-vis freedom of expression, as established in this report.

In addition to the need to see justice done for the victims, the IACHR points out that the instant case raises issues of inter-American *ordre public*.

Specifically, this case will allow the Court to pronounce an opinion for the first time on the twin dimensions of the infringements of the right to freedom of expression caused by the decisions of the State with respect to the allocation of radio and television licenses. In the decision in this case, the Court is called upon to determine which are the substantive and procedural safeguards necessary to ensure that these procedures do not become mechanisms for indirectly restricting freedom of expression that, despite having a veneer of legality, are designed to pressure, punish, reward, or grant privileges to journalists and mass media outlets depending on their editorial line.

This case will also provide the court with an opportunity to further develop its case law on the principle of equality and nondiscrimination, specifically when states accord differential treatment based on public opinion. The Court is requested to state its opinion on the scrutiny warranted in such circumstances, as well as the probative parameters and substantive criteria that should be taken into account in order to determine whether or not a difference in treatment of this nature is compatible with the Convention.

Since these matters significantly affect the inter-American *ordre public*, pursuant to Article 35(1)(f) of the Rules of Procedure of the Inter-American Court, the Commission wishes to offer declarations by the following experts:

**Domingo García Belaúnde**, who will declare on the concept of indirect curbs on freedom of expression and the parameters that should be taken into account in order to determine whether or not an actual situation is consistent with that concept. The expert will refer to this subject matter, taking into consideration the standards developed by other systems for protection of human rights as well as in comparative law.

**Eduardo Cifuentes Muñoz**, who will declare on the decisions of the State with respect to the award or renewal of radio and television licenses as well as the substantive and procedural safeguards that should be observed to ensure that procedures and decisions in relation to such licenses do not become mechanisms for indirectly restricting freedom of expression. The expert will refer to this subject matter, taking into consideration the standards developed by other systems for protection of human rights as well as in comparative law.

The *curricula vitae* of the proposed experts will be included in the attachments to report on the merits No. 112/12.

The Commission hereby provides the Court with the following information on the persons who have acted as petitioners throughout this proceeding:

Pedro Nikken



Carlos Ayala Corao



I would like to take this opportunity to convey my very highest regards.

Sincerely,

*Signed in the original*

Emilio Álvarez Icaza L.  
Executive Secretary