

REPORT No. 112/12
CASE 12,828
MERITS
MARCEL GRANIER ET AL.
VENEZUELA

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November 9, 2012

I. SUMMARY

1. On March 1, 2007, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition lodged 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 violating the human rights of Mr. Marcel Granier and 22 other shareholders, executives and/or journalists of *Radio Caracas Televisión* (RCTV) (hereinafter "the alleged victims"). After conducting a preliminary analysis, on October 16, 2007 the Commission informed the petitioners that it would not be possible to process the petition, given that it was not possible to determine whether domestic remedies had been exhausted. On October 18, 2010, the petitioners once again submitted a petition reiterating and updating the information presented, and introducing new allegations.

2. According to the petitioners, the State's decision not to renew RCTV's concession to operate as a television station was calculated to silence the media outlet in retaliation for broadcasting news and opinions critical of the government. They also point out that through a court proceeding to which the alleged victims were not party, the State decided to confiscate 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, constitutes 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 in conjunction with the general obligations enshrined in articles 1(1) and 2 thereof. The petitioners request, as a result, a number of reparations measures.

3. The State argues that the petition should be declared inadmissible because domestic jurisdictional remedies have not been exhausted, as the contentious administrative remedy of nullification against the ruling to not renew RCTV's license is still pending. With regard to the merits, it denies the violations alleged by the petitioners. The State argues that the nonrenewal simply corresponds to the legal expiration of a concession that the State decided not to renew under its discretionary authority to administer public property like the broadcast spectrum. The State alleges that RCTV was involved in the *coup d'état* in April 2002 and that it violated domestic broadcasting law, though that law "was not applied." It indicates that the nonrenewal of RCTV's concession was not carried out to silence the media outlet but for the reasons set forth in communication O424 of the People's Power Ministry on Telecommunications and Information. Specifically, it indicates that this Ministry decided to set aside the signal being used by RCTV to fulfill the constitutional requirement to guarantee public television services with the purpose of allowing universal access to information pursuant to the National Telecommunications, Information Technology and Postal Services Plan. The State argues that the renewal of the concessions of several other free-to-air television broadcasters at the same time that the RCTV concession was not renewed allows it to be established that there was no violation of the right to equality before the law. Additionally, it argues that the seizure of RCTV property guarantees collective interests and the general interest of the Venezuelan population, and that it is not true that the equipment has been damaged while in State hands. Finally, the State argues that the Supreme Tribunal of Justice has

not delayed ruling on the contentious administrative remedy of nullification against the decision not to renew RCTV's license.

4. On July 22, 2011, the IACHR approved Report No. 114/11, declaring the petition admissible with respect to the alleged violations of articles 8 (due process), 13 (freedom of thought and expression), 21 (right to private property), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention, in conjunction with articles 1(1) and 2 thereof.

5. The Commission concludes that the State is responsible for violating the rights recognized in articles 8, 13, 24 and 25 of the American Convention, in conjunction with Article 1(1) thereof. The Inter-American Commission finds that the Venezuelan State did not violate the right to private property, protected under Article 21 of the Convention.

II. PROCESSING WITH THE IACHR SINCE APPROVAL OF ADMISSIBILITY REPORT No. 114/11

6. Once admissibility report No. 114/11 was approved, the Inter-American Commission classified this as case number 12,828. On July 26, 2011, the Inter-American Commission notified both parties of the admissibility report's approval, offered its good offices with a view to facilitating a possible friendly settlement of the matter, and set three months as the deadline for the petitioners to submit any additional observations they might have regarding the merits.

7. On August 1, 2011, the petitioners submitted their arguments on the merits. These were forwarded to the State on August 4, 2011, with the request that it present its observations within three months and that it supply a copy of the records of some of the domestic proceedings.

8. In a communication dated November 2, 2011, the Venezuelan State requested a deadline extension of 30 days for the submission of its observations on the merits. On November 7, 2011, the IACHR granted the State an extension of the deadline until December 4, 2011, pursuant to the provisions of Article 37(2) of the Rules of Procedure of the IACHR.

9. On November 30, 2011, the Venezuelan State requested an additional extension of three days for the submission of its observations on the merits. On December 1, 2011, the IACHR informed that State that, pursuant to the provisions of Article 37(2) of the Rules of Procedure of the Commission, it was not possible to grant the requested extension.

10. On December 4, 2011, the Commission received the observations of the Venezuelan State.

III. THE POSITIONS OF THE PARTIES

A. The petitioners' position

11. The petitioners contend that the alleged victims were shareholders, executives and/or employees of Radio Caracas Televisión (RCTV), C.A. They assert that RCTV is a media outlet that operated as a free-to-air VHF (very high frequency) television station broadcasting news and airing opinion-based programs nationwide. 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." They further assert that members of the station's Board of Directors had a voice –some more than others, depending on their functions- 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 invested part of their capital to establish and capitalize the station –an essential tool for 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 impart information and ideas of all kinds.

12. The petitioners contend that, under Decree No. 1,577 of May 27, 1987, the State had granted RCTV a concession to operate as 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 in possession of the concession would be given preferential treatment. The petitioners report that under the Organic Telecommunications Law [*Ley Orgánica de Telecomunicaciones* (LOTEL)] of June 12, 2000, the State established a new system to which concessions would have to conform. They explain, however, that under Article 210 of LOTEL,¹ in the case of concessions or licenses already granted the “lifetime” stipulated in Decree No. 1,577 would be honored. The petitioners state that as required under LOTEL, RCTV applied to have the terms of its concession transformed to conform to the requirements of the new system, and to that end filed an application with the *Comisión Nacional de Telecomunicaciones* (CONATEL) on June 5, 2002. They assert that CONATEL disregarded the transformation application and proceeded to enforce, in the case of RCTV, the new system of regulations and requirements instituted under LOTEL. The petitioners point out that had the provisions of LOTEL Article 210 been applied in conjunction with Article 3 of Decree No. 1,577,²

¹ Article 210 of LOTEL establishes:

The National Telecommunications Commission shall, by a resolution, set up special schedules for transforming the concessions and licenses granted under the previous legislation, into the administrative authorizations, concessions or notification obligations or registrations established under this law. While that adjustment process is underway, all rights and obligations acquired under the previous legislation shall remain in full force, under the same terms and conditions established in the respective concessions and licenses.

The transformation of the legal titles shall take place within two years following the publication of this law in the Official Gazette, shall be mandatory and shall be done in accordance with the following principles:

- 1) Transparency, good faith, equality and speed;
- 2) The rights given by concession to use and exploit legally granted frequencies shall remain fully in force.
- 3) This does not imply the granting of greater capacity to provide services to the public than that which the operators of telecommunications already enjoy, according to their respective legal titles.
- 4) The purpose, coverage and lifetime of the concessions or licenses in effect at the time the present law enters into force shall be respected. Subsequent renewals of the administrative authorizations or concessions provided for in this law shall be done according to the general rules contained herein.
- 5) The operators that currently have obligations with regard to standards of quality, development, expansion and maintenance of their networks, according to their respective licensing contracts, must comply with those obligations.
- 6) The only limitations that may be established are those that are compatible with the principles of this Law and the elaboration of those principles that the respective regulations may establish.
- 7) The transformation of legal title to which this article refers must be requested by the interested party within the time period established by the National Telecommunications Commission, which shall not be shorter than sixty (60) business days. Once the time period referred to in this section has expired, the National Telecommunications Commission will publish, in at least one newspaper with national circulation, a list of the concession holders that have not responded to the call to transform their titles, granting them an additional period of five (5) business days in which to do so, with the understanding that if such request is not made, it will be interpreted as a renouncement of the concessions or licenses that were obtained prior to the publication of this Law in the Official Gazette.

The transformation of the current titles in no way means that telecommunications operators in existence prior to the date on which this law enters into force are to follow the general procedure for granting administrative authorizations or for cancellation, revocation or suspension of concessions or licenses under the previous legislation.

² Article 3 of Decree No. 1,577 establishes:

At the end of the concession, the parties in possession of the concession who, during the period specified in Article 1, have complied with the provisions of the Telecommunications Law, the Radio Communications Regulations and other legal provisions, shall be given preferential treatment if they are seeking an extension of the concession for another twenty (20) year period.

RCTV's concession would have come up for renewal on June 12, 2002, and would have been good for 20 years, and would expire on June 12, 2022. They observe that, on the other hand, had Decree No. 1,577, which predated LOTEL, been strictly observed, RCTV's concession would have to be extended for another 20 years, starting on May 27, 2007, and would expire on May 27, 2027. The petitioners also argue, in the alternative, that assuming RCTV was not entitled to have its concession extended, the State was nonetheless required to pursue a transparent administrative procedure, governed by the rules of due process, to determine who the next station operator would be. The petitioners argue that in that process RCTV would be entitled to participate on a preferential basis or, at the very least, under the same conditions.

13. The petitioners maintain that as far back as 2003, independent television stations or channels in Venezuela faced the threat of losing the concessions or licenses they needed to operate. They contend that back in June 2006, agents of the State stepped up the threats against RCTV because of its editorial line. The petitioners 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 the operating licenses or concessions granted to television stations "that supported the *coup*" would have to be reviewed. They recount how that same day, the Minister of Communications and Information (MINCI), William Lara, 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, in which the head of state referred to RCTV as a "channel whose owners have declared themselves to be enemies of the Government", and said that the State was under no obligation to grant the station a concession.

14. The petitioners 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. The petitioners submit a series of transcripts of speeches allegedly made by agents of the State between December 28, 2006 and January 19, 2007, in which they stated that RCTV's concession would not be renewed, describing it as "fascist", "irresponsible", "venomous", "a backer of the coup" and a "lying" broadcasting station. The petitioners point out that the official discourse also accused RCTV of violating a number of broadcasting laws, but nothing was ever found to support those allegations and no penalty was ever ordered for RCTV for serious breaches of the laws regulating television broadcasting.

15. 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 the concession to the truth... RCTV... Don't renew [the license] for lying. The people have the power! (Bolivarian Government of Venezuela. Ministry of the People's Power for Communications and Information)."³ It also published the "*Libro Blanco sobre RCTV*" [the White Book on RCTV]. They thus maintain that according to existing evidence 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.

16. The petitioners assert that on January 24, 2007, in response to claims made by State agents, RCTV wrote to CONATEL demanding that the latter acknowledge that RCTV's concession was good for the period specified in LOTEL and corresponding laws. The petitioners maintain that RCTV also argued that the decision announced by the President of the Republic was discriminatory, disproportionate and retaliatory in nature. The petitioners further assert that in

³ Communication received from the petitioners on February 18, 2011, p. 29.

response to that request, on March 29, 2007 the Minister of the People's Power for Telecommunications and Information Technology (MPPTI) and Director of CONATEL, Jesse Chacón Escamillo, sent RCTV Communication No. 0424. The petitioners contend that the communication in question confirmed 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 transform RCTV's legal titles, and iii) there was no need to examine the evidence presented by RCTV. The petitioners contend that the decision disregarded the provisions of the Organic Telecommunications Law and, moreover, applied some provisions of Decree No. 1,577 but not others. They maintain 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 policies-, Minister Escamillo declared that the application for transformation of RCTV's legal titles had lapsed because the application no longer served any purpose; with that the corresponding administrative procedure was extinguished.

17. However, the petitioners contend that this plan was never proposed or publicly discussed, and had never before been cited as grounds for declining RCTV's application for renewal of its concession. They maintain that other frequencies were available that would have served the State's alleged 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 shares of their frequencies. The petitioners emphasized the fact that other television stations had concessions that were good until May 27, 2007, but were not restricted in any way. They specifically mention that *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.

18. The petitioners also allege that on May 22, 2007, members of audience groups unaffiliated with RCTV filed a joint petition of *amparo* with the Constitutional Chamber of the Supreme Court seeking injunctive relief against the MPPTI and other state entities (Case No. 07-0720). The petitioners maintain that the petition asked the Court to order the National Executive to take the necessary measures to ensure that the coverage of the Venezuelan Public Television Foundation (*Fundación Televisora Venezolana – TVes*), which was set to begin broadcasting on May 28, 2007 on the frequency once assigned to RCTV, would be the same as the coverage of RCTV. The petitioners contend that on May 25, 2007, the Constitutional Chamber agreed to hear the petition, which it described as a suit seeking "protection of diffuse and collective interests." Also, in response to the petitioners' request, the Chamber ordered injunctive relief under which the use of the broadcasting assets owned by RCTV and its shareholders, specifically transmission stations, antennas, repeaters and other equipment throughout the national territory, would be temporarily assigned to CONATEL. According to the petitioners, these assets are currently being used by TVes.

19. The petitioners maintain that on May 24, 2007, a second group of persons, also unrelated to RCTV, filed a suit for protection of collective and diffuse interests (Case No. 07-0731) against the President of the Republic and the MPPTI, because of their decision not to renew RCTV's concession. They contend that the purpose of this suit was to ensure that RCTV's broadcasting was not interrupted, so as to safeguard the Venezuelan citizenry's right to freedom of expression and information. The petitioners maintain that on May 25, 2007, the Constitutional Chamber agreed to examine the suit, but declared it inadmissible with respect to President Chávez. The Constitutional Chamber also decided to grant injunctive relief on its own initiative, under the same terms established in the case classified as Record No. 07-0720. According to the petitioners, the Constitutional Chamber decided to join cases No. 07-0731 and No. 07-0720. They emphasize the fact that those decisions directly affected the assets owned by RCTV, even though it was not a party to those cases and was not formally notified of the decisions.

20. Given the aforementioned government and court orders, the petitioners point out that on May 27, 2007, the court authorities executed the injunctive relief, and RCTV's assets were assigned to CONATEL. The petitioners allege that, in addition to the equipment listed in the injunctions, the State also seized other assets that were inside RCTV's facilities. They also point out that on May 28, 2007, RCTV's signal went silent; immediately thereafter, TVes started broadcasting its programming on the channel once used by RCTV.

21. The petitioners allege that reacting to the threats that RCTV's concession 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, on April 2, 2007, following the adoption of Resolution No. 002 and issuance of Communication No. 0424, the alleged victims reframed their original petition seeking *amparo* relief with a view to refuting the terms of Resolution No. 002. The petitioners assert that in a May 17, 2007 ruling, the Supreme Court's Constitutional Chamber declared the petition seeking *amparo* relief to be inadmissible, on the grounds that *amparo* was an extraordinary remedy and that the proper means to challenge the administrative decision would be a remedy under administrative law seeking nullification of the resolution. The Court wrote that the administrative-law petition could be coupled with a request seeking injunctive relief. According to the petitioners, the reasons or grounds for the decision were not stated and the legal deadlines for deciding petitions of *amparo* were not observed.

22. The petitioners assert that between May 10 and 24, 2007, another ten petitions of constitutional *amparo* were filed by RCTV, its executives, journalists, employees, and by third parties such as nongovernmental organizations. They allege that those petitions sought to keep RCTV operating as a television channel. The petitioners assert that nine of the ten petitions were delayed by the Constitution Court, after which it declared all ten to be inadmissible *in limine litis*, before any proceedings ever got underway and before any examination of the merits of the petitions.

23. 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 in order to ensure that RCTV would continue broadcasting under the same conditions until the merits of the petition were examined. The petitioners observe that on May 22, 2007, the Political-Administrative 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. They further contend that in this decision, the Political-Administrative Chamber: i) proceeded to threaten to penalize the attorneys representing RCTV and the petitioners on the grounds that their suit contained statements that were insulting to and disrespectful of high-ranking officials, among them the President of the Republic, and ii) made observations *obiter dictum* on the possibility that the broadcast station's equipment might revert to the State once the concession had expired. The petitioners contend that on October 9, 2007, the evidentiary phase of the proceedings got underway, and was still in progress in August 2011.

24. The petitioners also state that in the context of the remedy filed under administrative law, on June 5, 2007 the Political Administrative Chamber ordered that a separate case file be

opened for the request seeking unspecified injunctive relief, which it then proceeded to declare out of order on July 31, 2007. The petitioners contend that when new facts came to light, the alleged victims filed new petitions on November 29, 2007, May 27, 2008 and May 21, 2009, seeking unspecified injunctive relief. The Political Administrative Chamber declared the first two petitions inadmissible; in the case of the third petition, as of August 2011 the Political-Administrative Chamber had not yet opened the corresponding separate case file.

25. The petitioners assert that on May 31, 2007, RCTV filed its objection to the injunctive relief that the Constitutional Chamber had ordered on May 25, 2007 in Case 07-0720, and asked that the injunctive relief be revoked. The petitioners claim the following with respect to the action taken on this petition: i) on June 13, 2007, RCTV filed a brief presenting evidence in the special evidentiary hearing regarding the objection; ii) on May 22, 2008, RCTV petitioned the Court to declare that there was no longer an interest in pursuing the proceedings, to revoke the injunctive relief, and to close the case; iii) on May 22, 2008, the complainants requested that a date be set for a preliminary hearing, and iv) on June 12, 2008, RCTV confirmed its petitions asking the Court to declare that there was no longer an interest in pursuing the proceedings; it also confirmed its objection to the injunctive relief and asked that a decision be made with respect to that injunctive relief before the preliminary hearing. According to the petitioners, as of August 2011, the Constitutional Chamber had not yet decided any of the petitions filed by RCTV and had not convened the hearing requested by the complainants. As for the second suit seeking protection of collective and diffuse interests (Case No. 07-0731), the petitioners contend that RCTV also filed an objection and, on May 31, 2007, a request that evidence be produced; as of June 2011, that request had not yet been decided. The petitioners also assert that on May 28, 2007, the parties who filed this second suit dropped their claim and that on June 1, 2007, the Constitutional Chamber refused to give its approval to the request to drop the case, on the grounds of public interest. In that same decision, the Constitutional Chamber decided to join Case No. 07-0731 and Case No. 07-0720.

26. The petitioners contend that the proceedings that resulted in the seizure of RCTV's facilities and equipment were complex and unprecedented. For that reason, on December 10, 2007 the attorneys for 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 Preliminary Examining Court of First Instance of 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 with the Supreme Court's Chamber of Criminal Cassation to challenge the ruling, which was also dismissed on May 7, 2009.

27. The petitioners also point out that on April 10, 2007 Marcel Granier filed a complaint with the Office of the Superior Prosecutor of the Caracas Metropolitan Area, asking for an investigation into facts that would constitute the crimes of embezzlement, malfeasance of funds and abuse of office. They assert that the complaint, which was assigned to the Unit of the Sixth Prosecutor in the Public Prosecutor's Office, with full nationwide jurisdiction, concerns the offenses and wrongs that officials of the national government committed against RCTV, its employees and attorneys, stemming from the public messages issued in July 2006 in connection with the review of RCTV's concession and operating license. As of August 2011, that Prosecution Unit had not taken any measures to shed light on the facts denounced.

28. The petitioners also assert that between June 8, 2007 and May 26, 2009, RCTV presented five requests to CONATEL, asking, *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* (TVES). Their contention is that CONATEL never responded to RCTV's requests.

29. Finally, the petitioners contend that since RCTV's broadcasts stopped on May 28, 2007, it has sustained financial losses totaling US\$1,042,508,988 (one billion, forty-two million, five hundred and eight thousand, nine hundred eighty-eight United States dollars).

30. For all the foregoing reasons, the petitioners are alleging that the Venezuelan State is responsible for violations of the rights protected under articles 8, 13, 21, 14 and 25 of the American Convention, in conjunction with the general obligations set forth in articles 1(1) and 2 thereof. They are, therefore, seeking a number of measures of reparation, among them that the State: fully restore the rights of the victims and of RCTV as a licensed concessionaire to operate as a television station; that the alleged victims be fully compensated for the pecuniary and non-pecuniary damages they have allegedly sustained; that the shareholders' right to property ownership be fully redressed, and that the domestic legal system on the subject of termination and renewal of concessions to broadcasting outlets be adapted to conform to international human rights obligations.

B. The State's position

1. Legal framework

31. To provide context, the State lays out the chronological development of the telecommunications concessions regimen in Venezuela starting with the concessions provided for in the Telegraph and Telephone Act of 1918 through the 2000 Organic Telecommunications Law, in force at the time of the facts of this case.⁴ It indicates that the latter allows for administrative authorization of the use and exploitation of the broadcast spectrum, which can include: broadcasting, general use, orbital resources, and associated portions of the broadcast spectrum. It argues that the establishment and exploitation of telecommunications networks, as well as the provision of telecommunications services, is an activity in the general interest for whose exercise an administrative authorization and concession is necessary in keeping with the law. It argues that the LOTEL establishes in its articles 76 and 77 that in order to carry out telecommunications activities, the National Telecommunications Commission "will abide by the principles of equality, transparency, publicity, efficiency, reasonableness, plurality of audience, competency, technological development, and incentivizing initiative, as well as the protection and guarantee of the users.

32. The State indicates that the duration of the concessions (prior to entry into force of the Organic Telecommunications Law and its regulations) was set by the 1987 Regulations on Concessions for Broadcast Television. It indicates that they were later regulated by the LOTEL, which establishes that the transformation of titles shall respect the purpose, coverage and period of validity of the concessions existing at that moment. In light of the fact that the 1987 Regulations on Concessions for Television and Radio Broadcasters established a period of 20 years for the duration of use concessions for television and radio broadcasters, with their expiration date being May 27, 2007, the State indicated that the concessions granted once LOTEL took effect "shall not exceed 25 years," pursuant to its Article 21. It holds that the State has established - through CONATEL - that the period of validity for the concessions is five years.

⁴ The State holds forth on laws and regulations such as the Foreign Cable Communications Act of 1927, the Telecommunications Services Regulations of 1932, broadcasting regulation 194, the 1936 telecommunications law, the 1937 broadcasting regulations, the 1941 Radio Communications Regulation, and regulations on Concessions for Television and Radio Broadcasters of 1987, among others.

33. The State argues that RCTV owns several permits granted to operate as a television station. Among them, they highlight the contents of Official Letter No. 1685 of September 20, 1952, authorizing the installation of a television station in the Caracas Metropolitan area. It indicates that the permit was granted under the regimen of the 1940 Telecommunications Act without any period of validity having been established. It indicates that the time period of 20 years was established with the publication of the Regulations on Concessions for Television and Radio Broadcasters through Presidential Decree No. 1577 of May 27, 1987.

34. The State argues that therefore, RCTV's operating permits were valid through May 27, 2007 - that is, 20 years from the enactment of the Regulations on Concessions for Television and Radio Broadcasters pursuant to Article 210 of the LOTEL, which recognizes the rights granted to the providers of radio and television services and the obligations they acquire through that Decree.

35. The State argues that the legal situation at issue in this case is the "simple legal expiration of a concession (operating permit) that the State decided not to renew under its discretionary authority to administer public property, in this case the broadcast spectrum." It argues that the State decided to set aside the television channel to fulfill the constitutional requirement expressed in Article 108⁵ to guarantee public television services with the purpose of allowing universal access to information pursuant to the National Telecommunications, Information Technology and Postal Services Plan. (PNYIySP) 2007-2013.

36. The State indicates that the National Communications Plan establishes a series of general guidelines, which are subsequently divided into strategies, which are further broken down into policies. In particular, it highlights strategic guideline number five on the "Inclusive Communication Model." It indicates that this course of action seeks to democratize and guarantee the plurality of Venezuelan communication and establish the need to activate citizen participation in it; promote the creation of more and better community media; foster the growth of public service television and radio, promoting the decentralization of media properties; foment national independent production (NIP); take advantage of new means of distribution; and develop economically sustainable alternatives for the production and distribution of content.

37. In this sense, the State considers that "the alleged victims' statements with regard to the nonexistence of a National Telecommunications Plan as of the moment the Venezuelan State made its decision to not renew RCTV's concession is totally false."

2. Pleadings on the request for transformation of RCTV titles

38. Regarding the request for the issuing of new titles (concession and administrative authorization) submitted by the alleged victims and their alleged right to preference, the State responds that the right of preference is not established in any Venezuelan legal instrument, for which reason it cannot be claimed. It indicates that in response to that request, the People's Power Ministry on Telecommunications and Information Technology responded in a communication dated March 28, 2007, explaining to RCTV its legal situation subsequent to May 27, 2007. It indicates that the administrative response was provided in a timely and prudent fashion so that all available remedies could be exercised. It argues that Resolution No. 002 was also issued. That Resolution

⁵ The State cites the following: Article 108 of the Constitution: "Social, public, and private media outlets shall contribute to citizen education. The State will guarantee public radio and television services, as well as library and information technology networks, in order to allow universal access to information. Education centers must incorporate the knowledge and application of new technologies and innovation, according to the requirements established by law."

concluded the administrative proceeding open by RCTV on the May 6, 2002, with regard to the transformation of its concession.

3. Pleadings on RCTV and the *coup d'état*

39. The State alleges that on April 11 to 13, RCTV was involved in an attack on the constitutional and legal order, as well as on the collective right of users to receive timely, objective and true information from the media.

40. The State alleges that Article 108 of the Constitution establishes that "public and private media must contribute to educating the citizenry (...)," for which reason they have the duty to provide plural and diverse information that allows citizens to identify themselves as members of society. Likewise, it cites articles 57 and 58 of the Constitution establishing a prohibition on censorship and the right "to timely, true and impartial information, without censorship," respectively. It also makes reference to prohibitions on anonymity, war propaganda, discriminatory messages and messages promoting religious intolerance, and censorship by public officials in order that matters under their responsibility can be revealed, all established in Article 57. Regarding this, it holds that several international NGOs are of the opinion that Venezuelan media "clearly sympathize with the opposition parties, act to defend their positions and have led the political activism in opposition to the government of President Hugo Rafael Chávez Frías."

41. The State indicates that a week after the aforementioned *coup d'état* took place, in a speech given before his government's Federal Council on April 19, 2002, the President of the Republic stated that, "This *coup d'état* would not have been possible without the support of the media. If the media, especially television stations, want to continue feeding this and we allow it, they are going to pull us into a war."

42. The State argues that RCTV left explicit evidence of its participation in the *coup d'état*, not only in the widely distributed image showing that its general director, Marcel Granier, was present in Miraflores Palace during the unconstitutional swearing-in of Pedro Carmona, "the illegitimate president of Venezuela, but also through its editorial stances, the distribution of false information and political propaganda, and the application of censorship."

43. The State argues that a series of actions taken by RCTV between April 10 and 11, 2002, violated laws in force at the time. It alleges that on April 13 and 14, 2002, RCTV imposed a news blackout with which it censored the marches calling for the return of President Hugo Chávez. It indicates that "after a three-day bombardment of constant news broadcasts, RCTV changed its programming and began broadcasting cartoons and movies like *The Jungle Book*, *Fast and Furious*, *El espía del deseo*, *Hoguera de pasión*, among others."

44. The State argues that the journalists that remained in RCTV headquarters during the April incidents did receive information from international news agencies. It alleges that according to the testimony of Andrés Izarra, former Communication and Information minister, who was working as news editor with the news program "El Observador" at that time, RCTV banned distribution of the news of the illegal detention of President Hugo Chávez, as broken by channel Telemundo, as well as the news that several countries were upset with the designation of Pedro Carmona as president.⁶

⁶ In support of its argument, the State cites the statements of Andrés Izarra found in the book *Chávez and the Mass Media* (2002).

45. It argues that Article 171 of the LOTEL establishes a penalty - depending on the case - for those stations "that use or allow for the use of telecommunication services for which they are authorized to abet the commission of crimes; (...)."

46. The State alleges that RCTV stated its approval of the unlawfully declared "transition government" upon broadcasting the following message:

The yellow, blue and red flag waves today with the spirit of democracy, moved this time, for all time, by the winds of liberty. On this historical day, the Venezuelan people took charge of raising the glorious standard as high as their will was strong not to give in to the designs of a dark regime. Perhaps from now on, the yellow will represent not only the riches of nature but also the treasure of national dignity. Perhaps as of this moment, the blue represents an ocean of hope and the red, which evokes the proud memory of the blood of the heroes who forged our emancipation, will forever remind us of this day's martyrs, watering the earth with their example of struggle and honor. Starting now, a torrent of peace, stability, order and respect will return to fill the riverbed of the Constitution and reinstate the autonomy of the branches of government and the proper role of each entity, of each person. And for those of us with the mission to inform, once more and with greater determination we assume this commitment, sacred for the country's future.

47. The State alleges that on having used the television signal in a way that conflicts with the uses assigned by law, RCTV violated the communication regulations in force in 2002 and 2003 as established in Article 208 of the LOTEL. In this regard, it holds that the distribution of these messages meant an alleged infraction of the Broadcasting Regulation of 1984 - repealed by the Social Responsibility in Radio and Television Act of 2004 - in force in 2002. It highlights that in addition to establishing risible fines for these alleged infractions, it also provided for the penalty of a temporary or definitive suspension of broadcasting, which was not applied.

48. It indicates that once Pedro Carmona stepped down and then Vice President Diosdado Cabello assumed the presidency, RCTV complied with the obligation to air the official broadcast of this act and broadcast images of the return of the President of the Republic, Hugo Chávez. It indicates that thereafter, confrontations and challenges from service providers - RCTV especially - did not stop but rather intensified, as for example during the petroleum strike that the opposition called eight months later that the media very obviously supported.

4. Pleadings on the State decision not to renew RCTV's concession

49. The State rejects the arguments presented by the representatives of the victims with regard to the judicial *ex officio* proceeding for the temporary transfer of certain RCTV property. Regarding this, it argues that the judicial proceeding in which certain RCTV property was transferred to CONATEL is the result of the implementation of an Action for Collective and Diffuse Interests brought by a number of User Committees in order to guarantee the right to freedom of expression and access to information.

50. The State argues that the revocation of RCTV's concession was not carried out to silence the media outlet, as the petitioners allege. It argues that the expiration of the time period for which the concession for the use and exploitation of a portion of the broadcast spectrum to RCTV was granted is not the result of a penalty, but rather the effect of the passage of time and its resulting legal effects as established in Article 1 of the Regulations on Concessions for Television and Radio Broadcasters of May 27, 1987 (hereinafter "Decree No. 1577"). The State transcribes a significant portion of Communication 0424 of the Ministry of the People's Power for Telecommunications and Information Technology to set forth the reasons for not renewing the concession.

51. According to Communication 0424 cited by the State, there is no violation of due process. Regarding this, it holds that because what is at issue is the expiration of the period of a concession's validity, there is no standing for opening an administrative proceeding to verify the passage of time; for this reason, no violation of the right to due process can have taken place. It argues that the passage of time does not merit the opening of an administrative proceeding. As an example, it indicates that "an administrative proceeding does not have to be opened to determine whether the sun will rise tomorrow," for which reason it finds the petitioners' allegation with regard to the violation of due process manifestly inadmissible.

52. With regard to the expiration of RCTV's concession period, on May 27, 2007, Communication 0424 cited by the State indicates that in accordance with the provisions of articles 11 and 4 of Decree No. 1577, the concessions that were granted for the establishment and operation of television stations prior to May 27, 1987 (the date on which it entered into force), would be considered valid for the term of 20 years. Thus after 34 years in operation, as of that date the RCTV concession was extended for 20 years, with the extension concluding on May 27, 2007, at 12 p.m. legal time in the Bolivarian Republic of Venezuela.

53. According to Communication 0424 cited by the State, the petitioners' pleading that the entry into force of the LOTEL "extended" the concession for 20 more years is not true. The State holds that the only interpretation in keeping with the process of debate over the draft, bill and LOTEL itself in its subparagraph 4 of Article 210 is that the period of validity is what remains of the 20-year period that began as of the entry into force of Decree No. 1577. It argues that this interpretation was admitted at one time by the very attorneys of RCTV, who participated in the consultation process in the drafting of the LOTEL.

54. Communication 0424 cited by the State indicates that the argument of the petitioners with regard to their legitimate trust in the provisions of Article 210 of the LOTEL has no basis. Regarding this, the State recalls that during LOTEL's public consultation process, the Venezuelan Chamber of the Broadcasting Industry asked the National Telecommunications Commission to maintain the "status quo" of the concessions that were in force in the year 2000, meaning that the meaning and scope of the provisions contained in Article 210 of the LOTEL was always clear to all operators.

55. According to Communication 0424, RCTV does not have a preferential right for the extension of its concession for a period of another 20 years counting from May 27, 2007, because that "right to preference" is enshrined in neither the Constitution nor in the law regulating the subject. In this regard, the State highlights that the system established in Decree 1577 was replaced by the LOTEL system, which does not enshrine any right to preference. Likewise, it indicates that even in areas in which the right to preference is established by law, it cannot contradict the owner of the property (the broadcast spectrum), in this case the State. It argues that a third party (private party) cannot exercise a right to preference on the use and operation of State property because the State has decided to use and exploit directly the portion of the broadcast spectrum that was to be available as of May 27, 2007.

56. According to Communication 0424 cited by the State, the request for the transformation of RCTV's titles made in 2002 has no standing due to the elimination of the purpose of the request. In this regard, it argues that the request ceased to have a purpose as a result of the State's sovereign decision as owner of the property (broadcast spectrum) - as expressed in the National Telecommunications Plan - to reserve the use and operation of that portion of the broadcast spectrum in order to comply with the obligation imposed by Article 108 of the Constitution. It indicates that that elimination of purpose was declared by the Ministry of the

People's Power for Telecommunications and Information Technology through Resolution 002 of March 28, 2007, which closed the transformation proceeding.

57. Communication No. 0424 indicates that RCTV does not have an 'acquired' right to the automatic renewal of the concession of the use and exploitation of the broadcast spectrum because: (1) the right to automatic renewal of concessions of this type of service is established neither in the Constitution nor by law; (2) concessions are privileges granted for limited periods of time, pursuant to Article 113 of the Constitution and Article 73 of the LOTEL; (3) a general legal principle is that privileges are to be interpreted restrictively; and (4) automatic renewal would put at risk the plurality of use of the broadcast spectrum and the broadcast spectrum's status as public property of the Bolivarian Republic of Venezuela.

58. Communication 0424 cited by the State holds that the broadcast spectrum is public State property whose use and exploitation require the corresponding concession, and because what is at issue is the exploitation of natural resources that are the property of the Nation, the State shall grant concessions for a specific period of time, always ensuring the existence of considerations or counterparts that are adequate to the public interest. In this sense, it considers that the concept of "automatic renewal or extension" of a public concession is clearly contrary to the status of the broadcast spectrum as public property and the time limits that the Constitution establishes for public concessions, and would make them nugatory.

59. With regard to the non-renovation of the RCTV concession, Communication 0424 cited by the State holds that although Article 73 and 210 (4) of the LOTEL establish the possibility of renewing any concession of the use of the broadcast spectrum, this constitutes an optional authority, not an obligation for the State. It alleges that the State, as owner of the property, can always reserve the use and exploitation of it for itself, as it has in this case. It indicates that in compliance with Article 108 of the Constitution, as part of the definition and implementation of new public policies for the telecommunications sector put forth in the National Telecommunications Plan, it decided to promote a new model for managing free-to-air television under the scheme of public service television, in order to permit the democratization of the use of over-air broadcast media and a plurality of messages and content. It indicates that this required a frequency that would allow it to have a free-to-air television network with national scope, like the one that became available upon the expiration of RCTV's concession.

60. Communication 0424 indicates that RCTV brought requests for two reports to be submitted as evidence in its request for renewal. The first was a request to the "Ministry of Infrastructure" for a certified copy of all free to air television and radio broadcasting titles that have been transformed under Article 210 of the LOTEL in order to prove that "(...) the Ministry of Infrastructure failed to fulfill the obligations established in Article 210 of the LOTEL." This evidentiary measure was ruled inadmissible because it was attempting to prove a fact that had not been contested. It explains that the fact that RCTV's concession has not been transformed is a fact that does not require any evidence given that it has not been contested.

61. According to Communication 0424 cited by the State, the second evidentiary request sought for CONATEL to provide a certified copy of all requests for the transformation of free-to-air television and radio broadcasting titles, and a certified copy of all penalties applied to free-to-air television and radio stations for violations of LOTEL and the Radio and Television Responsibility Act. It was sought in order to demonstrate that the refusal to transform RCTV's titles or to extend or renew its concession had the status of a penalty or would be the result of the application of the penalty. The State argues that this argument was not valid given that the case addresses the expiration of the period of validity of the RCTV concession due to the passage of time.

5. Pleadings on the rights alleged to have been violated by the State

62. The State indicates that on April 17, 2007, a group of RCTV executives sought a constitutional writ of nullification before the Contentious Administrative Court against Resolution No. 002 and Communication No. 0424, together with an injunction. It indicates that the remedy was admitted but the injunction was not. It indicates that the Court ruled on the alleged violation of the right to freedom of expression by the State against the executives, employees and journalists of RCTV, finding that, "the freedom of expression of the alleged victims was not violated as there are other media through which the journalists can express their ideas."

63. The State indicates that the contentious administrative writ of nullification is still before the Political Administrative Court of the Supreme Tribunal of Justice. In this regard, it argues that there has been no unjustified delay, as only four years have passed since it was submitted. It indicates that constitutional doctrine establishes that a case that has been before the Supreme Tribunal of Justice for four years cannot be considered to be experiencing judicial delay.

64. With regard to the alleged violation of the rights of the journalists to freedom of expression, it finds that they are working for other media outlets in the country. With regard to the alleged financial damages caused to RCTV shareholders, it argues that they know that concessions come to an end, and that in the 50 years during which RCTV was operating commercially, its shareholders saw many millions in earnings.

65. The State argues that on May 25, 2007, the Supreme Tribunal of Justice granted the injunction sought by a group of user committees against RCTV. It indicates that this ruling seeks to protect the collective and diffuse interests of users of television services, guaranteeing their constitutional and legal rights to receive objective, timely and true information through the media. For this reason, the situation of RCTV's property is under very special judicial protection with which collective interests and the general interest of the Venezuelan population are guaranteed. With regard to the alleged material losses, the State says it is false that any equipment has been damaged while in its possession, as the State is using this equipment currently to broadcast Televisora Venezolana Social. Likewise, it indicates that the Compañía Red de Transmisiones de Venezuela (REDTVC.A.) is in charge of maintaining the broadcasting systems of the Venezuelan Public Media Network.

66. As far as the allegation that RCTV was treated differently than Venevisión by the State because of its editorial stance, the State argues that a violation of the right to equality cannot be argued because in addition to Venevisión, the State also decided to renew the concessions of Televen and VTV.

IV. FACTS ESTABLISHED

A. *Radio Caracas Televisión RCTV, C.A., its shareholders, executives and journalists*

67. RCTV operated as a free-to-air, VHF (very high frequency) television station with nationwide coverage since 1953.⁷ The station carried entertainment, news and opinion programs whose editorial line was critical of the government of President Chávez. RCTV has been singled out by high government officials as one of the private television stations that played an active political role in national upheavals in Venezuela, such as the *coup d'état* and the work stoppage in April and

⁷ Annex 2, License authorizing RCTV to operate as a free-to-air VHF television station, issued by the Office of the Director of Telecommunications of the Ministry of Communications. Communication from the petitioners received on February 18, 2010, Attachment 22.

December 2002, respectively.⁸ Before it went off the air, it was the only television channel with nationwide coverage whose editorial line was critical of the Venezuelan government.⁹ At the time it went off the air as a free-to-air television station, it was broadcasting its news program “*El Observador*” three times a day.¹⁰

68. The main objective of RCTV as a business is “to engage in commercial activities related to the radio and television industry,” as well as other activities.¹¹ Its principal organ is the General Assembly of Shareholders, which is endowed with broad authorities to direct and manage the corporate business.¹² According to the petitioners, in an argument undisputed by the State, on May 27, 2007, the date on which the channel stopped broadcasting and the use of its property was turned over to the State, the following persons, alleged victims in the present case, were shareholders of the company: Marcel Granier, Peter Bottome, Jaime Nestares, Jean Nestares, Fernando Nestares, Alicia Phelps de Tovar and Francisco J. Nestares.¹³

69. RCTV also has a Board of Directors appointed by the General Assembly of Shareholders. The Board of Directors is in charge of running the company and its functions include that of establishing the communications policy for the media outlets under its control.¹⁴ Every year, the General Assembly of Shareholders examines and, if appropriate, “approves the Report of the Board of Directors on the corporate activities during the last fiscal period.”¹⁵ At the time of the events in this case, the following shareholders were on the Board of Directors: Marcel Granier, Chairman; Peter Bottome, Vice Chairman, and Jaime Nestares, one of the Board members.¹⁶ In their capacities as directors and shareholders, Marcel Granier, Peter Bottome and Jaime Nestares

⁸ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009, Series C No. 194, paragraph 128; IACHR, Report on the Situation of Human Rights in Venezuela, paragraphs 79, 81, 372 and 373. Transcript of the program “Aló Presidente”, No. 107, June 9, 2002, page 19, available at: http://www.alopresidente.gob.ve/materia_alo/25/1663/?desc=alo_presidente_107_desde_el_chivo_zulia_venezuela.pdf; IACHR, Application in the *Case of Ríos et al. vs. Venezuela*, April 20, 2007, para. 72.

⁹ Annex 1, Communication from the petitioners received on February 18, 2010, p. 7. A fact not contested by the State.

¹⁰ Annex 1, Communication from the petitioners received on February 18, 2010, p. 7. A fact not contested by the State.

¹¹ Annex 3, Minutes of the Special General Assembly of Shareholders of RCTV C.A., August 4, 2006, Articles of Incorporation and Statutes, Article 3, Original petition received from the petitioners on March 1, 2007, Attachment A-1.

¹² Annex 3, Minutes of the Special General Assembly of Shareholders of RCTV C.A., August 4, 2006, Articles of Incorporation and Statutes, Article 3, Original petition received from the petitioners on March 1, 2007, Attachment A-1.

¹³ Annex 4-13, Minutes of the General Assemblies of Shareholders of RCTV, March 23, 1998, March 10, 1999, March 16, 2000, March 12, 2001, March 11, 2002, March 17, 2003, March 15, 2004, December 11, 2006, March 19, 2007, and March 10, 2008. Attachments 2, 3, 4, 5, 6, 7, 8, 10, 11 and 12 of the petitioners’ communication received on August 5, 2011. Annex 14, Articles of Incorporation of the companies S.A. Guaiti, *Radio Caracas Televisión* RCTV C.A., Alcatracia S.A., Bemana C.A., and YAVI S.A., Communication from the petitioners received on February 18, 2010, Attachments 1 to 13. Communication of the petitioners received on March 22, 2010 and Annexes. Annex **, Certifications of ownership of RCTV shares, Attachment 1 to the petitioners’ communication, received on August 5, 2011.

¹⁴ Annex 3, Minutes of the Special General Assembly of Shareholders of RCTV C.A., August 4, 2006, Original petition received from the petitioners on March 1, 2007, Attachment A-1, Articles of Incorporation and Statutes of RCTV, Article 27(5).

¹⁵ Annex 4-13, Communication from the petitioners received on August 1, 2011, Unnumbered attachments, Minutes of the General Assemblies of Shareholders of RCTV, dated March 23, 1998; March 10, 1999; March 16, 2000; March 12, 2001; March 11, 2002; March 17, 2003; March 15, 2004; March 21, 2005; December 11, 2006; March 19, 2007, and March 10, 2008.

¹⁶ Annex 3, Minutes of the Special General Assembly of Shareholders of RCTV C.A., August 4, 2006, Original petition received from the petitioners on March 1, 2007, Attachment A-1, Articles of Incorporation and Statutes of RCTV, Article 43.

participated in the ordinary meetings of the General Assembly of Shareholders in 2000, 2001, 2002, 2003, 2004, 2006, 2007 y 2008.¹⁷

70. Finally, RCTV had the following executives and journalists (hereinafter, "employees"), who are among the alleged victims in the present case:

- a) Eladio Lárez, Executive President, whose functions included that of ensuring implementation of the media policy established by the Board of Directors;¹⁸
- b) Daniela Bergami, General Manager, who, *inter alia*, decided, with the Board of Director's approval, what RCTV's programming would be;¹⁹
- c) Isabel Valero, Executive Secretary, who advised the shareholders and the Board of Directors and kept the organization's archives of legal records in order and up to date;²⁰
- d) Edgardo Mosca, Vice President for Engineering, who was in charge of designing, planning and executing the activities involved in taping and broadcasting the programs; designing and providing manufacture and production support services; and planning and executing the construction and maintenance work at the stations;²¹
- e) Anani Hernández, Vice President in charge of Human Resources, whose role was to craft the organizational structure needed for the channel's productions by selecting the human on-screen talent and the talent for the production and services areas;²²
- f) Inés Bacalao, Vice President of Programming, whose main job was to direct the station's Programming Guide;²³

¹⁷ Annex 4-13, Minutes of the General Assemblies of Shareholders of RCTV, March 23, 1998, March 10, 1999, March 16, 2000, March 12, 2001, March 11, 2002, March 17, 2003, March 15, 2004, December 11, 2006, March 19, 2007, and March 10, 2008. Attachments 2, 3, 4, 5, 6, 7, 8, 10, 11 and 12 of the petitioners' communication received on August 5, 2011.

¹⁸ Although his name does not appear on the list of executives issued by RCTV on February 27, 2007, the petitioners did list Eladio Lárez among the alleged victims and listed him as an executive in the original administrative-law petition filed on April 17, 2007 seeking nullification, and the certification of employment that RCTV issued on July 29, 2011. Annex 16, Administrative-law Petition for Nullification, filed with the Political-Administrative Chamber of the Supreme Court on April 17, 2007, Communication from the petitioners received on February 18, 2010, Attachment 110. Annex 3, Minutes of the Special General Assembly of Shareholders of RCTV C.A., August 4, 2006, Original petition received from the petitioners on March 1, 2007, Attachment A-1, Articles of Incorporation and Statutes of RCTV, Article 27(5). Annex 17, Certification of Employment of the Executives of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-2. Annex 15, Certification of positions and activities approved by RCTV's Board of Directors on July 29, 2011, Communication from the petitioners received on August 5, 2011, Attachment 1.

¹⁹ Annex 17, Certification of Employment of the Executives of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-2. Communication received from the petitioners on August 1, 2011. Annex 3, Minutes of the Special General Assembly of Shareholders of RCTV C.A., August 4, 2006, Articles of Incorporation and Statutes, Article 28(7), Original petition from the petitioners received on March 1, 2007, Attachment A-1.

²⁰ Annex 17, Certification of Employment of the Executives of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-2. Communication received from the petitioners on August 1, 2011. Annex 3, Minutes of the Special General Assembly of Shareholders of RCTV C.A., August 4, 2006, Articles of Incorporation and Statutes of RCTV, Articles 30, 43, Original petition from the petitioners received on March 1, 2007, Attachment A-1.

²¹ Annex 17, Certification of Employment of the Executives of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-2. Communication received from the petitioners on August 1, 2011.

²² Annex 17, Certification of Employment of the Executives of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-2. Communication received from the petitioners on August 1, 2011.

²³ Annex 17, Certification of Employment of the Executives of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-2. Communication received from the petitioners on August 1, 2011.

- g) José Simón Escalona, Vice President of Drama, Comedy and Variety Shows, whose job was to plan, coordinate, control and supervise all the administrative and logistical processes necessary to generate content in these areas;²⁴
- h) Odila Rubin, Vice President for Data Processing, who was in charge of the technological infrastructure and the information technology solutions that supported the production of the content shown on RCTV;²⁵
- i) Oswaldo Quintana, Vice President for Legal Affairs, who function was to handle the legal issues involved in program production and broadcasting;²⁶
- j) Eduardo Sapene, Vice President for News and Opinion, whose was in charge of directing the planning and execution of projects in these two areas;²⁷
- k) Miguel Ángel Rodríguez, Manager for International Affairs and host of the opinion program "*La Entrevista*";²⁸
- l) María Arriaga, Manager of the News Division, who mapped the strategy and guidelines for the production of informative programs, newscasts, special reports, short documentaries, and others;²⁹
- m) Soraya Castellano, News Manager, who mapped the strategies and guidelines for the production of informative programs, newscasts, special reports, short documentaries, and others;³⁰ and
- n) Larissa Patiño, Editorial and Morning Programming Manager, who arranged the production and broadcasting of the program "*La Entrevista*".³¹

71. In the case of Carlos Lamas and Grilva Delgado, both presented as victims in the present case, in its admissibility report the IACHR observed that unlike the other alleged victims, these two were not party to the petition seeking nullification of the decision not to renew RCTV's concession.³² Subsequent to the admissibility report, the petitioners confirmed that these two persons were victims, and pointed out that Carlos Lamas was Vice President of RCTV Administration and Finances, and Grilva Delgado was the channel's Vice President of Media Research.³³ Nevertheless, the petitioners did not specify the dates on which the two began working

²⁴ Annex 17, Certification of Employment of the Executives of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-2. Communication received from the petitioners on August 1, 2011.

²⁵ Annex 17, Certification of Employment of the Executives of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-2. Communication received from the petitioners on August 1, 2011.

²⁶ Annex 17, Certification of Employment of the Executives of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-2. Communication received from the petitioners on August 1, 2011.

²⁷ Annex 17, Certification of Employment of the Executives of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-2. Communication received from the petitioners on August 1, 2011.

²⁸ Annex 17, Certification of Employment of the Staff of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-3. Communication received from the petitioners on August 1, 2011.

²⁹ Annex 17, Certification of Employment of the Staff of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-3. Communication received from the petitioners on August 1, 2011.

³⁰ Annex 17, Certification of Employment of the Staff of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-3. Communication received from the petitioners on August 1, 2011.

³¹ Annex 17, Certification of Employment of the Staff of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-3. Communication received from the petitioners on August 1, 2011.

³² IACHR, Report No. 114/11 (Admissibility), Marcel Granier *et al.*, Venezuela, July 22, 2011, paragraph 30.

³³ Annex 18, Communication from the petitioners received on August 5, 2011, p. 9.

in their respective posts; the list of 14 executives that RCTV issued on February 27, 2007 shows that Francisca Castro was then in the post of Vice President of RCTV Administration and Finances, while the Office of Vice President of Media Research was held by Pablo Mendoza.³⁴ Lamas and Delgado are also not on the list of the approximately 168 RCTV employees as of February 27, 2007.³⁵ Furthermore, as previously observed, these two persons were not among the plaintiffs in the Administrative Law Petition seeking Nullification, filed on April 17, 2007,³⁶ and were not among those who filed the Petition of *Amparo* on February 9, 2007.³⁷ Hence, the Commission does not have the evidence to enable it to conclude that on the date the administrative decision not to renew RCTV's concession was executed, Carlos Lamas and Grilva Delgado were working as either executives or employees of RCTV.

B. The concession granted to RCTV

72. Through Decree No. 1,577 of May 27, 1987, the State renewed RCTV's concession to operate as a free-to-air television station. Based on Articles 1 and 4 of that decree, the channel could use its frequency on the radio spectrum for 20 years, in other words, until May 27, 2007. Furthermore, Article 3 of the decree stipulated that at the end of that 20-year period, the company in possession of the concession would be given preference for purposes of an extension of another 20 years.³⁸

73. On June 12, 2000, the State adopted the Organic Telecommunications Law (LOTEL). Under Article 210 of that law, the National Telecommunications Commission (CONATEL) was to set up special schedules to transform the concessions granted under the previous legislation into the administrative authorizations, concessions, notification obligations or registrations established in the new law. The transformation was to take place within two years of enactment of LOTEL. Until the new law entered into force, "all rights and obligations acquired under the previous legislation shall remain in full force, under the same terms and conditions established in the respective concessions and licenses." Article 210 also provided that the purpose, coverage and lifetime of the concessions or licenses in effect at the time the present law [LOTEL] enters into force shall be respected, and emphasized that subsequent renewals of the administrative authorizations or

³⁴ Annex 17, Certification of Employment of the Executives of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-2.

³⁵ Annex 17, Certification of Employment of the Staff of RCTV, issued by the Office of the Vice President for Human Resources on February 27, 2007, Original petition received from the petitioners on March 1, 2007, Attachment A-3.

³⁶ Annex 16, Administrative-law petition seeking nullification, filed with the Political-Administrative Chamber of the Supreme Court, April 17, 2007, Communication from the petitioners received on February 18, 2010, Attachment 110.

³⁷ Annex 19, Petition seeking *amparo* relief filed with the Constitutional Chamber of the Supreme Court, February 9, 2007, Communication from the petitioners received on February 18, 2010, Attachment 107.

³⁸ Annex 20, Official Gazette of the Republic of Venezuela No. 33,726, Decree No. 1,577 of May 27, 1987. Communication from the petitioners received on February 18, 2010, Attachment 24:

Article 1. Concessions granted to establish and operate television and radio stations shall be for a period of twenty (20) years.

[...]

Article 3. At the end of the concession, the parties in possession of the concession who, during the period specified in Article 1, have complied with the provisions of the Telecommunications Law, the Radio Communications Regulations and other legal provisions, shall be given preferential treatment if they are seeking an extension of the concession for another twenty (20) year period.

Article 4. Concessions granted prior to the date on which this decree enters into force, shall be considered valid for the period established in Article 1.

concessions provided for in the new law were to be done according to the general rules specified in LOTEL.³⁹

74. On June 5, 2002, in keeping with the schedule established by CONATEL, RCTV formally applied to have its concession transformed to conform to the new legal regime under LOTEL.⁴⁰ However, CONATEL did not examine the application for transformation within the two-year time period stipulated in Article 210 of LOTEL.⁴¹

C. The statements of State officials prior to the decision not to renew RCTV's concession

75. Starting in 2002, agents of the State, among them the President of the Republic, Hugo Rafael Chávez Frías (hereinafter "President Chávez"), went on record stating that the concessions of certain private media outlets in Venezuela were not going to be renewed. Some of these statements were cited by the Commission in Merits Report No. 119/06 and in the application filed with the Inter-American Court in the *Case of Ríos et al.*:

a) The statement made by President Chávez on June 9, 2002, during his program "*Aló Presidente*", in which he said the following: "Even when they are privately owned, television and radio stations are only operating under a concession. The State is the owner [...] the State authorizes a group of businessmen who ask for permission to use them as operators, so that they can send images down that pipe; but the State reserves the right to grant that permission. It's like someone who wants to use a water pipe that belongs to the State to distribute water to a town, and the State gives them permission. [...] Let's suppose that [...] we give them permission to use the water pipe [...] [and] they start to poison the water [...] immediately their permission would not only be revoked, they'd also be thrown in jail. They

³⁹ Annex 21, Organic Telecommunications Law, Article 210, published in Official Gazette No. 36.920, of March 28, 2000, Communication from the petitioners received on February 18, 2010, Attachment 25:

ARTICLE 210.- The National Telecommunications Commission shall, by a resolution, set up special schedules for transforming the concessions and licenses granted under the previous legislation, into the administrative authorizations, concessions or notification obligations or registrations established under this law. While that adjustment process is underway, all rights and obligations acquired under the previous legislation shall remain in full force, under the same terms and conditions established in the respective concessions and licenses.

The transformation of the legal titles shall take place within two years following the publication of this law in the Official Gazette, shall be mandatory and shall be done in accordance with the following principles: [...]

2) The rights given by concession to use and exploit legally granted frequencies shall remain fully in force. [...]

4) The purpose, coverage and lifetime of the concessions or licenses in effect at the time the present law enters into force shall be respected. Subsequent renewals of the administrative authorizations or concessions provided for in this law shall be done according to the general rules contained herein. [...]

The transformation of the current titles in no way means that telecommunications operators in existence prior to the date on which this law enters into force are to follow the general procedure for granting administrative authorizations or for cancellation, revocation or suspension of concessions or licenses under the previous legislation.

⁴⁰ Annex 22, Application for Transformation No. 941, filed by RCTV with CONATEL on June 5, 2002. Communication from the petitioners received on February 18, 2010, Attachment 26. Annex 23, CONATEL Resolution No. 93, dated December 4, 2001, published in the Official Gazette of Venezuela No. 37.342, of December 10, 2001, Communication from the petitioners received on February 18, 2010, Attachment 119.

⁴¹ Annex 24, Request filed with CONATEL, January 24, 2007, Communication from the petitioners received on February 18, 2010, Attachment 27, Annex 25, Ministry of the People's Power for Telecommunications and Information, Communication No. 0424 of March 28, 2007, Communication from the petitioners received on February 18, 2010, Attachment 28.

are poisoning the people and exactly the same thing happens, it's the same logic, the same explanation with a television channel [...]"⁴²;

b) The statement that President Chávez made on December 8, 2002, on his program "*Aló Presidente*", where he said the following: "All the private television companies, without exception, the big television networks at the service of a destabilization plan [...] are playing the same reckless, coup-plotting role as they were in April, led by people who seem to have lost all capacity for dialogue [...] for making amends, for awareness of the tremendous responsibility they have when the State grants them a concession to [...] direct or manage a television network [...] and if they engage in reckless lies, campaigns, editorializing [...] it is a frenzy of sick activity that causes serious psychological harm to the Venezuelan people [...] it is a terrorist's plan. Using all the technology at their command, their journalists, editors, production teams [...] sowing shock and outrage in a population that is sometimes defenseless, vulnerable [...] We can't permit the population to be abused like that"⁴³;

c) The January 12, 2003 statement that President Chávez made on his program "*Aló Presidente*", where he said the following: "The same goes for these television network owners and radio station owners; they, too, have a concession from the State, but the signal does not belong to them. The signal belongs to the State. I want to make that very clear, I wanted it clearly understood because if the owners of these television networks and radio stations remain bent on their irrational aim to destabilize our country, to give subversion a foothold, because it is subversion, without question, [...] In this case it is fascist subversion egged on by the media, by those gentlemen whom I have mentioned and others whom I will not. So I am letting Venezuela know. I have ordered a review of all the legal procedures by which these gentlemen obtained concessions. We are reviewing them and if they do not resume their normal use, if they continue to use the concessions to try to disrupt the country, or overthrow the government, then I would be compelled to revoke their concessions to operate television networks."⁴⁴;

d) The statement that President Chávez made on his program "*Aló Presidente*" that aired on November 9, 2003, in which he said the following: "I will not let you do it again. [...] Globovisión, Televén, Venevisión, and RCTV, [...] I have ordered [Minister] Jesse Chacón: you must have a team of analysts and observers watching all the networks simultaneously, around the clock. And we must be clear, I am clear, about the line that they must not cross, and they should know; it is the line of the law [...] The moment they cross the line of the law they will certainly be closed down to keep the peace in Venezuela, to preserve order in Venezuela."⁴⁵

⁴² Transcript of the program "*Aló Presidente*" No. 107 that aired on June 9, 2002, page 19, available at: http://www.alopresidente.gob.ve/materia_alo/25/1663/?desc=alo_presidente_107_desde_el_chivo_zulia_venezuela.pdf; IACHR, Application filed in the *Case of Ríos et al. v. Venezuela*, April 20, 2007, para. 72.

⁴³ Transcript of the program "*Aló Presidente*" No. 130 that aired on December 8, 2002, pages. 4 and 20, available at: [http://www.alopresidente.gob.ve/materia_alo/25/1685/?desc=alo_presidente_130_palacio_de_miraflores_caracas_domingo_8_de_diciembre_de_2002\[1\].pdf](http://www.alopresidente.gob.ve/materia_alo/25/1685/?desc=alo_presidente_130_palacio_de_miraflores_caracas_domingo_8_de_diciembre_de_2002[1].pdf); IACHR, Application filed in the *Case of Ríos et al. v. Venezuela*, April 20, 2007, para. 75.

⁴⁴ Transcript of the program "*Aló Presidente*" No. 135 that aired on January 12, 2003, Año 16 # 008-23/04/07, Depósito Legal PP-88-153, pages. 6-7, IACHR, Application in the *Case of Ríos et al. v. Venezuela*, April 20, 2007, Annex 47.

⁴⁵ Transcript of the program "*Aló Presidente*" No. 171 that aired on November 9, 2003, page 79, available at: http://www.alopresidente.gob.ve/materia_alo/25/1551/?desc=alo_presidente_171.pdf; IACHR, Application in the *Case of Ríos et al. v. Venezuela*, April 20, 2007, Annex 47, and I/A Court H.R., *Case of Ríos et al. v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of January 28, 2009, Series C No. 194, paragraphs 127-128. On May 9, 2004, President Chávez made a statement on his program "*Aló Presidente*" to the following effect: "[t]he ones who violate the right to receive and impart information, the right to freedom of expression, are the owners of the private media organizations -with some exceptions- but especially the big television networks: Venevisión, Globovisión, RCTV [...] The owners of these media organizations are committed to a coup, terrorism, and destabilization, and I can tell you now, because I have no doubt, that we could well declare the owners of these media organizations enemies of the people of Venezuela." Transcript of the program *Aló Presidente* that aired on May 9, 2004, IACHR, Application in the *Case of Ríos et al. v. Venezuela*, April 20, 2007, Annex 47.

76. On June 14, 2006, President Chávez said the following at an event at the Ministry of Defense:

I have ordered a review of the television concessions. Some stations or channels have signaled that they are prepared to change, and it would appear that they intend to obey the Constitution and the law, joining those who supported the 2002 *coup*, which was everyone. We had the chance then to eliminate those concessions. However, we called for dialogue instead. Was it a mistake? I don't think so. Everything in its time [...]

We're going to have to take a second look at concessions granted to television stations that are about to expire. They begin to expire in 2007. 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! [...]

On more than one occasion we've demonstrated that we are neither authoritarian nor arbitrary. We will always prefer to call for unity. Still, there are those who will never hear that calling". [...] We have to act and have to enforce the Constitution [...] to protect our people, to protect national unity, because that is what we are called to do every day. Messages that incite hatred, disrespect for our institutions, doubts about each other, rumors, psychological warfare waged to divide the Nation, to weaken her and destroy her. [...] This is an imperialist plan. These are Trojan horses right under our very noses.⁴⁶

77. That same day, June 14, 2006, Minister William Lara, in charge of the Ministry of Communication and Information (MINCI), said the following at a press conference:

If we examine the behavior of certain television channels on April 11, 12 and 13 [, 2002], which were then openly in support of the *coup d'état*, and compare it to their conduct today, there are qualitative changes in programming, in the news line, the editorial line and –I repeat– their respect for the rights of the viewing audience and their obligation to perform their duties as public service providers. However, there are other cases where no such change, correction, is in evidence; instead, they have stubbornly clung to their conduct as it was on April 11, 12, and 13.⁴⁷

⁴⁶ Annex 26, Speech delivered by President Chávez on June 14, 2006, communication from the petitioners, received on March 1, 2010. Attachment B.3, video recording, fragment; press communiqué from the Ministry of the People's Power for Communications and Information, titled *Presidente Chávez ordena revisión de concesiones a plantas televisoras* [President Chávez orders review of television concessions], June 14, 2006, available [in Spanish] at: <http://www.rnv.gob.ve/noticias/index.php?act=ST&f=2&t=34504>; Annex 27; *El Universal*, report titled *Chávez anunció nuevas compras y cambios en concepción de equipos militares* [Chávez announced new purchases and changes in military equipment planning], June 14, 2006, available [in Spanish] online at: http://www.eluniversal.com/2006/06/14/pol_esp_14A723331.shtml. Communication from the petitioners received on February 18, 2010, Annex 31; *El Universal*, news report titled "*Chávez: He ordenado la revisión de las concesiones de los canales de televisión*" [Chávez: I've ordered a review of the television channels' concessions], June 14, 2006, available [in Spanish] at: http://www.eluniversal.com/2006/06/14/pol_ava_14A722973.shtml; *El Mundo*, report titled *Chávez ordena revisar las concesiones de televisión privada en Venezuela* [Chávez orders review of private television concessions in Venezuela], June 15, 2006, available [in Spanish] at: <http://www.elmundo.es/elmundo/2006/06/15/comunicacion/1150362475.htm>

⁴⁷ Annex 28, *El Nacional*, article titled *Chávez amenazó con revocar concesiones a televisoras en 2007* [Chávez threatened to revoke television concessions in 2007], June 15, 2006. Communication from the petitioners received on February 18, 2010, Attachment 29; Annex 29, *Vive*, article titled *Lara: Hay televisoras y emisoras de radio que violentan los derechos de los usuarios* [Lara: there are television and radio stations that violate the rights of the audience] June 14, 2006, available [in Spanish] at: http://www.vive.gob.ve/imprimir.php?id_not=1825. Communication from the petitioners received on February 18, 2010, Attachment 32; Annex 30, *Radio Nacional de Venezuela*, report titled *Hay televisoras y emisoras de radio que violentan derechos de usuarios* [Some radio and television stations violate listeners' rights], June 14, 2006, available [in Spanish] at: <http://www.rnv.gob.ve/noticias/index.php?act=ST&f=2&t=34518>. Communication from the petitioners received on February 18, 2010, Attachment 120; *Venezuela de Televisión*, report titled *Lara: Hay televisoras y emisoras de radio que violentan los derechos de los usuarios* [Lara: some television and radio stations violate the rights of the audience], June 13, 2006, available [in Spanish] at: http://www.vtv.gov.ve/index.php?option=com_content&view=article&id=6077:Lara:%20Hay%20televisoras%20y%20emi

78. These statements were echoed by other state officials⁴⁸ and by President Chávez himself on a number of occasions, one of which was the opening of an extension of the Caracas metro on November 3, 2006:

To the communications media that continue to rebel and disrupt, [...] I would simply remind you [...] that next year your concessions will expire. On March 27, don't be surprised if I tell you "mmm, mmm [waving his index finger in a gesture signaling 'no'] some television channels will not be getting any more concessions."⁴⁹

79. On December 1, 2006, in an interview with journalist Carlos Croes, President Chávez said the following:

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

Croes: And don't they have a right?

President Chávez: To declare themselves to be enemies of a government?

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.⁵⁰

80. Starting in December 2006, State officials went on to announce the government's decision not to renew RCTV's concession:

a) President Chávez' December 28, 2006 statement, on the occasion of his year-end salute to the Armed Forces, where he said the following: "Your television concession is up in March [...] So you'd best be packing your bags and start thinking about what you'll be doing after March. There'll be no new concession for that *coup*-supporting television channel that calls itself *Radio Caracas Televisión*. [...] The order is already drafted. So go ahead [...] start packing the bags. No media outlet that supports government overthrow, that is against

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[soras%20de%20radio%20que%20violentan%20los%20derechos%20de%20los%20usuarios&catid=49:nacionales&Itemid=102.](#)

⁴⁸ Among the public officials present was the President of the National Assembly, Nicolás Maduro. Annex 31, *El Universal*, report titled *Presidente de la AN apoya revisión de las concesiones a los medios* [President of National Assembly in favor of review of media concessions], June 15, 2006, available [in Spanish] at: http://www.eluniversal.com/2006/06/15/pol_ava_15A723975.shtml. Communication from the petitioners received on February 18, 2010, Attachment 33; Annex 32, *El Nacional*, report titled *William Lara: Se acabó la impunidad* [William Lara: Impunity is finished], June 16, 2006. Communication from the petitioners received on February 18, 2010, Attachment 29; Annex 33, *Aporrea*, article titled *Nicolás Maduro: "En Venezuela el uso del espectro radioeléctrico es feudal"* [Nicolás Maduro: In Venezuela, the use of the radio broadcast spectrum is a feudal system], June 18, 2006, available [in Spanish] at: <http://www.aporrea.org/medios/n79421.html>. Communication from the petitioners received on February 18, 2010, Attachment 34; Ministry of the People's Power for Communications and Information, communiqué titled *No renovar la concesión a Rctv, una Decisión soberana* [Not to renew RCTV's concession is a sovereign decision of the Venezuelan State], May 31, 2007, available [in Spanish] at: http://www.minci.gob.ve/noticias-nacionales/1/14091/no_renovar_la.html.

⁴⁹ Annex 26, Statement made by President Chávez on November 3, 2006. Communication from the petitioners received on March 1, 2010, Attachment B.3, video recording. See also, *Aporrea*, article titled, *Serán revisadas concesiones a televisoras [Television concessions will be revised]*, November 3, 2006, available at: <http://www.aporrea.org/medios/n86035.html>

⁵⁰ Annex 26, December 1, 2006 interview with President Chávez. Communication from the petitioners received on March 1, 2010, Attachment B.4, video recording; Annex 34, Ministry of Communication and Information, Special Program, Interview with the President of the Bolivarian Republic of Venezuela, Hugo Rafael Chávez Frías, Office of the President, Miraflores Palace, November 30, 2006. Communication from the petitioners received on February 18, 2010, Attachment 37.

the people, against the Nation, against national independence, against the dignity of the Republic will be tolerated here" [...]"⁵¹;

b) The statement by Minister William Lara on December 29, 2006, which was aired on the television program *En Confianza* and was drafted by his office to read as follows: "The decision not to renew [RCTV's] concession is in keeping with the terms of the law [LOTEL]', according to the minister [Lara]. 'The law is clear. The concession the State grants for use of the radio spectrum is only good for 20 years and RCTV's concession expires on May 27, 2007.' [...] Lara explained that the decision made by the Head of State was both legal and constitutional; however, he said, it also addresses other, equally important issues, such as, for example, the relentless, uninterrupted campaign of destabilization that RCTV has waged and that is its editorial line. 'RCTV played a decisive role during the events of the 2002 *coup d'état* and engaged in media manipulation during that period [...], that irresponsible attitude on the part of RCTV never changed; it never mended its ways', Lara explained. He also mentioned that a committee determined that RCTV's current programming is in constant violation of a number of provisions of the Law on Social Responsibility in Radio and Television (*Ley Resorte*)."⁵²

c) The statement made by President Chávez during a telephone interview conducted on the television program *Contragolpe* on January 3, 2007, in which he said the following: "Venezuela loses by having media outlets like Radio Caracas Television. And not just Venezuela, [...] good journalism suffers as does freedom of expression. [...] It did not pass the test to receive another concession from a State that is serious, [...] responsible and [...] committed to its people and to its people's respect, dignity [and] freedoms. The decision is irrevocable ."⁵³

⁵¹ Annex 26, Speech by President Chávez on December 28, 2006. Communication from the petitioners received on March 1, 2010, Attachment B.5; Annex 35, *Aporrea*, article titled *Presidente Chávez: 'a RCTV que vayan apagando los equipos'* [President Chávez to RCTV: 'Start packing your bags'], December 28, 2006, available [in Spanish] at: <http://www.aporrea.org/medios/n88454.html>. Communication from the petitioners received on February 18, 2010, Attachment 38; Annex 36, *Globovisión*, report titled *Presidente Chávez anuncia que no renovará concesión de RCTV* [President Chávez announces that RCTV's concession will not be renewed], December 28, 2006, available [in Spanish] at: <http://www.globovision.com/news.php?nid=46142>. Communication from the petitioners received on February 18, 2010, Attachment 38; *El Mundo*, news titled *Chávez cancela la licencia a una televisión privada que tacha de 'golpista'* [Chávez cancels license of private television station that he labels a 'coup supporter'], December 28, 2006, available [in Spanish] at: <http://www.elmundo.es/elmundo/2006/12/28/comunicacion/1167326997.html>; *El Universal*, news report titled *Reporteros Sin Fronteras pide a Gobierno reconsiderar Decision of no renovar concesión a RCTV* [Reporters Without Borders asks Government to reconsider decision not to renew RCTV's concession], December 29, 2006, available [in Spanish] at: http://www.eluniversal.com/2006/12/29/pol_ava_29A819703.shtml.

⁵² Annex 37, *Agencia Bolivariana de Noticias*, news report titled *William Lara: Decision of no renovar concesión a RCTV es legal y constitucional* [William Lara: Decision not to renew RCTV's concession is legal and constitutional], November 29, 2006. Communication from the petitioners received on February 18, 2010, Attachment 44; Annex 38 y 39, *Radio Nacional de Venezuela*, news report titled *"Servicio Público de Televisión Nacional utilizará espectro que dejará Rctv"* [National Public Television Service will use frequency that RCTV will vacate], available [in Spanish] at: <http://www.rnv.gov.ve/noticias/index.php?act=ST&f=2&t=43149> and *Estado actúa apegado al derecho en caso Rctv* [The State's action in the RCTV case is lawful], available [in Spanish] at: <http://www.rnv.gov.ve/noticias/?act=ST&f=&t=43138>, both dated January 26, 2007. Communication from the petitioners received on February 18, 2010, Attachment 103.

Concerning the statements made by Minister Chacón Escamillo, see also: Annex 40, *El Universal*, news report titled *Gobierno considera entregar señal de RCTV al canal 8* [Government considers turning RCTV's signal over to channel 8], December 30, 2006, available [in Spanish] at: http://www.eluniversal.com/2006/12/30/pol_art_129283.shtml. Communication from the petitioners received on February 18, 2010, Attachment 45.; MINCI, communiqué titled *Hasta el 27 de mayo operará señal abierta de RCTV* [RCTV's open signal will operate until May 27], available [in Spanish] at: <http://www.rnv.gov.ve/noticias/?act=ST&f=2&t=42181>; Annex 41, December 29, 2006, and *Analítica*, news report titled *"William Lara precisa que la medida contra RCTV se aplicará en marzo"* [William Lara explains that the measure against RCTV will be enforced in March], December 29, 2006, available [in Spanish] at: <http://www.analitica.com/va/sintesis/nacionales/4704007.asp>. Communication from the petitioners received on February 18, 2010, Attachment 118.

⁵³ Annex 26, *Venezolana de Televisión, Contragolpe* Program, telephone interview with President Chávez on January 3, 2006. Communication from the petitioners received on March 1, 2010, Attachment B.6; Annex 42, MINCI, Continúa...

d) The statement made by President Chávez to the National Assembly on January 13, 2007, in which he said the following: "RCTV's concession is only good through January, February, March, April, and May [of 2007]. They can gripe and stamp their feet all they want, but the concession to that fascist channel [RCTV] is finished [...]"⁵⁴

81. In February 2007, MINCI launched an official campaign to explain why RCTV's concession was not being renewed.⁵⁵ Placements in newspapers, flyers, paintings on walls and posters in government offices displayed RCTV's logo and carried the following message: "Give the concession to the truth... Don't renew the license for lying. The people have the power! Bolivarian Government of Venezuela. Ministry of the People's Power for Communications and Information."⁵⁶ For his part, Minister William Lara justified the decision not to renew RCTV's concession by claiming that the station had supposedly violated the law. He said that "Granier systematically violates the Law on Social Responsibility in Radio and Television by scheduling adult programming in the viewing time reserved for children's programming."⁵⁷

82. The State also published and circulated the *Libro Blanco sobre RCTV*.⁵⁸ According to the claims made in that publication, the decision not to renew RCTV's concession was driven by "the demands of Venezuelan civil society in protest to RCTV's egregious breaches of its social

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Presidente Chávez: Decisión sobre RCTV es irrevocable [President Chávez: decision on RCTV irreversible], January 4, 2007, available [in Spanish] at: http://www.minci.gob.ve/a_r_r/28/11554/presidente_chavezdecision_sobre_prnt. Communication from the petitioners received on February 18, 2010, Attachment 39; *Radio Nacional de Venezuela*, news report titled *Presidente Chávez: Decisión sobre RCTV es irrevocable* [President Chávez: decision on RCTV irreversible], January 4, 2007, available [in Spanish] at: <http://www.rnv.gov.ve/noticias/?act=ST&f=&t=42329>; cf. *Globovisión*, *Presidente Chávez nombró a Jorge Rodríguez como vicepresidente y a Pedro Carreño como ministro de Interior y Justicia* [President Chávez appointed Jorge Rodríguez as Vice President and Pedro Carreño as Minister of Interior and Justice], March 1, 2007. Available [in Spanish] at: <http://www.globovision.com/news.php?nid=46514>.

⁵⁴ Annex 26, Address by President Chávez, January 10, 2007, Communication from the petitioners received on March 1, 2010, Attachment B.8; Annex **, *Agencia Bolivariana de Noticias*, news report titled *Presentación del Mensaje anual del presidente de la República Bolivariana de Venezuela, Hugo Rafael Chávez Frías, ante la Asamblea Nacional* [President of the Bolivarian Republic of Venezuela, Hugo Rafael Chávez Frías, delivers his Annual Address to the National Assembly], Federal Legislative Palace, January 13, 2007. Communication from the petitioners received on February 18, 2010, Attachment 41.

⁵⁵ Annex 44, Communication from the petitioners received on February 18, 2010, Attachment 75; National Assembly of the Republic, *Ministro William Lara: ex trabajadores de RCTV tienen abiertas líneas de crédito para formar cooperativas* [Minister William Lara: former RCTV employees have open lines of credit to form cooperatives], no date. Available [in Spanish] at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=12103&Itemid=63

⁵⁶ Annex 45, Judicial Branch, Ninth Municipal Court of the Metropolitan Caracas Judicial Circuit, Judicial Inspection done on March 14, 2007, photographs attached. Communication from the petitioners received on February 18, 2010, Attachment 46; *Aporrea*, "*Medios Alternativos debaten sobre nuevo modelo de comunicación*" [Alternative Media debate new communications model], February 10, 2007. Available [in Spanish] at: <http://www.aporrea.org/medios/n90460.html>.

⁵⁷ Annex 46, *Agencia Bolivariana de Noticias*, *Trabajadores de RCTV tiene garantizada estabilidad laboral* [RCTV employees guaranteed job stability], April 11, 2007, Communication from the petitioners received on February 18, 2010, Attachment 76. *Voltairenet.org*, *Los Trabajadores de RCTV tiene garantizada la estabilidad laboral* [RCTV employees guaranteed job stability], April 13, 2007, available [in Spanish] at: <http://www.voltairenet.org/Los-trabajadores-de-RCTV-tienen>.

⁵⁸ Annex 47, MINCI, *Libro Blanco sobre RCTV* [White Book on RCTV]. Venezuela: March 2007, First Edition. Communication from the petitioners received on February 18, 2010, Attachment 47. That publication was added to the websites of various state agencies. Annex 48, Ministry of the People's Power for communications and Information, Ministry of the People's Power for Culture, Venezuelan National Radio, Official Portal, main page, including the link "*Libro Blanco sobre RCTV*", Communication from the petitioners received on February 18, 2010, Attachment 48. Available [in Spanish] at: http://www.rnv.gov.ve/noticias/docs/libro_blanco_RCTV-Web.pdf, http://www.fundacenafv.gob.ve/portal/index.php?option=com_content&task=view&id=263&Itemid=2.

responsibility,”⁵⁹ as RCTV had supposedly “served as a stand-in for political actors and manufactured its messages, violated freedom of information, incited civil war and the *coup d’état*, attempted to undermine the balance of powers, established economic cartels, and engaged in other conduct alien to the social responsibility that the State and society demand of it. These are entrepreneurs who are using a portion of the electromagnetic spectrum.”⁶⁰ The decision was also allegedly based on the strategy for “changing the communications model in Venezuela, where the owner of the media outlet is also the owner of all its messages.”⁶¹

83. The publication also states that under Article 108.5 of LOTEL, concessions for use of the broadcast spectrum shall not be granted when serious situations arise that, in the opinion of the President of the Republic, have a bearing on the State’s security and make it ‘inadvisable’ to grant the concession. Therefore, “it [was] ‘inadvisable’ for the Venezuelan State to renew RCTV’s concession, [considering its] conduct during two episodes that threatened democracy and human rights in Venezuela, like the April 2002 *coup d’état* and the work stoppage in the oil industry in December 2002 and January 2003.”⁶²

D. The procedure and the decision not to renew RCTV’s concession

84. On January 24, 2007, representatives of RCTV wrote to CONATEL to request that it issue new concessions to the television station i) based on Article 210 of LOTEL, for a period of 20 years starting on June 12, 2002, the date on which LOTEL entered into force; ii) alternatively, until June 27, 2027, pursuant to articles 1, 3 and 4 of Decree No. 1.577, or iii) alternatively, that the procedure for transforming titles, concessions, licenses, etc., be completed and RCTV’s concession be renewed for another 20 years.⁶³ With that request, RCTV presented transcripts of speeches delivered by State officials, and other evidence to demonstrate that those officials had abused their office in reaction to RCTV’s editorial position and the content of RCTV’s programming. The channel also requested that the following evidence be produced: i) a certified copy of all transformation applications and the respective licenses for free-to-air television and radio granted under Article 210 of LOTEL, specifying which stations were in operation as of May 27, 1987, and ii) the paperwork documenting all the penalties imposed on free-to-air television or radio stations for violations of LOTEL and the Law on Social Responsibility in Radio and Television (*Ley Resorte*).⁶⁴ The documents were intended to show, *inter alia*, that: i) no penalty had ever been imposed on RCTV; ii) other

⁵⁹ Annex 47, MINCI, *Libro Blanco sobre RCTV* [White Book on RCTV]. Venezuela: March 2007, First Edition. Communication from the petitioners received on February 18, 2010, Attachment 47, pp. 9 and 10.

⁶⁰ Annex 47, MINCI, *Libro Blanco sobre RCTV* [White Book on RCTV]. Venezuela: March 2007, First Edition. Communication from the petitioners received on February 18, 2010, Attachment 47, pp. 10-12.

⁶¹ Annex 47, MINCI, *Libro Blanco sobre RCTV* [White Book on RCTV]. Venezuela: March 2007, First Edition. Communication from the petitioners received on February 18, 2010, Attachment 47, p. 54.

⁶² Annex 47, MINCI, *Libro Blanco sobre RCTV* [White Book on RCTV]. Venezuela: March 2007, First Edition. Communication from the petitioners received on February 18, 2010, Attachment 47, p. 55. The book also states that “RCTV left unmistakable evidence of its involvement in the *coup d’état*, not only through the widely circulated image of its director general, Marcel Granier, at Miraflores Palace during the unconstitutional swearing-in of businessman Pedro Carmona as illegitimate president of Venezuela, but also through the various editorial positions it has taken, the false information and false propaganda it has circulated, and the censure,” p. 57.

⁶³ Annex 24, RCTV’s request to CONATEL, dated January 24, 2007, Communication from the petitioners received on February 18, 2010, Attachment 27, pp. 1-2.

⁶⁴ Annex 24, RCTV’s request to CONATEL, dated January 24, 2007. Communication from the petitioners received on February 18, 2010, Attachment 27, pp. 1-2.

operators in the same legal situation as RCTV had been subject to penalties, and iii) those operators were permitted to remain in operation after May 27, 2007.⁶⁵

85. Reacting to RCTV's letter of January 24, 2007, Minister Jesse Chacón Escamillo, in charge of the Ministry of the People's Power for Telecommunications and Information (MPPTI) and Director of CONATEL,⁶⁶ issued Communication No. 0424 of March 28, 2007 in which he announced the decision not to renew RCTV's concession. In that document, Minister Chacón Escamillo observed that his decision was not a penalty; instead, it was the legal effect established in Article 1 of Decree No. 1,577, namely, expiration of a concession. He maintained that because this was a matter of a concession's expiration, there were no grounds to institute any administrative proceeding; hence, there was no violation of due process. He also claimed that the only logical and reasonable interpretation consistent with the consultations and discussions of the preliminary draft, draft and text of the Organic Telecommunications Law, is that under Article 210, the only part of the concession that is to be respected is whatever remains of the 20 years that began on the date that Decree No. 1,577 took effect, in other words, until May 27, 2007. As for the right to preferential treatment that RCTV is claiming, Minister Chacón Escamillo stated that no such guarantee is provided in either the Constitution of the Republic or the Organic Telecommunications Law, and that even in areas where the right of preference exists, it cannot be asserted or challenged against the owner of the property to which the right attaches; in this case, the electromagnetic spectrum belongs to the Venezuelan State, which has decided to use and operate, effective May 27, 2007, the portion once licensed to RCTV.⁶⁷ He also asserted that the transformation application that RCTV had filed in 2002 no longer served any purpose, given the State's sovereign decision, based on the National Telecommunications Plan, to reserve for itself the use and operation of that portion of the electromagnetic spectrum.⁶⁸ Resolution No. 002 of March 28, 2007, also issued by Minister Chacón Escamillo, had declared that the transformation application had lapsed and with

⁶⁵ Specifically, the petitioners point out 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. Annex 50, Empresa *AGB Nielsen Media Research*, Promedio de *Share* de Audiencia 2006 [Average Audience Share 2006], Communication from the petitioners received on February 18, 2010, Attachment 23. Annex 51, *El Nacional*, "Gobierno no pagará por Cantv más de lo que ofreció Carlos Slim" [Government will not pay more than what Carlos Slim offered for Cantv], January 27, 2007, Communication from the petitioners received on February 18, 2010, Attachment 103. Annex 52, *The New York Times*, "Media Mogul Learns to Live With Chávez", July 5, 2007, Communication from the petitioners received on February 18, 2010, Attachment 123. Annex 53, *Revista Producto*, "Jinetes sin Apocalipsis" [Horsemen without the Apocalypse], Edition No. 279, February 2007, Communication from the petitioners received on February 18, 2010, Attachment 124.

⁶⁶ On January 8, 2007, Jesse Chacón Escamillo was named –by a decree issued by President Chávez– to head what was then the new Ministry of the People's Power for Communications and Information (MPPTI), as recorded in Special Official Gazette No. 5,836 of that date. On January 10, he was appointed as the new director of the National Telecommunications Commission (CONATEL), also by a decree issued by President Chávez, available [in Spanish] in Official Gazette 38,600 of January 10, 2007. This latest decree also made CONATEL "an agency of the MPPTI." Therefore, on the date of the events in this case, Minister Jesse Chacón Escamillo was heading two State agencies. See, *Radio Nacional de Venezuela, Ministerio de Telecomunicaciones impulsará nuevo modelo social* [Ministry of Telecommunications will promote new media model], January 11, 2011. Available [in Spanish] at: <http://www.rnv.gov.ve/noticias/index.php?act=ST&f=2&t=42657>; *Radio Nacional de Venezuela, Jesse Chacón toma riendas de Conatel* [Jesse Chacón takes the reins at CONATEL], January 11, 2007. Available [in Spanish] at: <http://www.rnv.gov.ve/noticias/index.php?act=ST&f=2&t=42622>.

⁶⁷ On May 27, 2007, RCTV's concession ended, as did those of four other television stations, *Venezolana de Televisión*, *Venevisión*, *Televisora Andina de Mérida*, and *Amavisión*. But of these five, only RCTV's concession was not renewed. Ministry of the People's Power for Communications and Information. "Conatel procesa renovación de habilitaciones que vencen el 27 de mayo" [CONATEL processes renewals of concessions and licenses that expire on May 27, 2007], available [in Spanish] at: http://www.minci.gob.ve/a/r/r/1/13981/conatel_procesa_renovacion.html.

⁶⁸ Annex 25, MPPTI, Communication No. 0424 of March 28, 2007, Communication from the petitioners received on February 18, 2010, Attachment 28.

that the corresponding administrative procedure was extinguished.⁶⁹ Communication No. 0424 stated that the Venezuelan government's decision was taken in order to "enable democratization of the use of the electromagnetic spectrum and make it available to a wide range of messages and content" by creating a free-to-air public television station.⁷⁰

86. Communication No. 0424 also stated that RCTV did not have an acquired right to automatic renewal of its concession, since: i) the Constitution does not provided for any such right; ii) concessions are a privilege granted for a limited period of time; iii) it is a general principle of law that privileges are to be interpreted narrowly, and iv) automatic renewal would be detrimental to the principle that the electromagnetic spectrum should be open to as wide a cross-section of uses and users as possible and that it is within the public domain. The communication explains that the State had decided to "reserve for itself the use and operation of that portion of the electromagnetic spectrum," so as to thereby "enable democratization of the use of the radio electric spectrum and make it available to a wide range of messages and content," in compliance with the National Telecommunications Plan⁷¹ and Article 108 of the Constitution.⁷² Finally, as for RCTV's request for production of evidence, Minister Chacón Escamillo regarded it as impertinent, because i) the fact that RCTV's concession had not been transformed was an undisputed fact, and ii) the decision not to renew RCTV's concession was neither a penalty nor a consequence of any penalty imposed.⁷³

87. Based on the evidence supplied by the petitioners, and which the State did not contest, the Commission considers that other frequencies were available that would have served the purposes of the National Telecommunications Plan.⁷⁴ The State's broadcasting could reach an audience similar in size to the audiences reached by the major television channels in Venezuela, without having to cancel the concession given to RCTV.

⁶⁹ Annex 49, MPPTI, Resolution No. 002 of March 28, 2007, Communication from the petitioners received on February 18, 2010, Attachment 30.

⁷⁰ Annex 25, MPPTI, Communication No. 0424 of March 28, 2007, p. 11, Communication from the petitioners received on February 18, 2010, Attachment 28. The Constitution of the Bolivarian Republic of Venezuela, available at <http://www.venezuelaemb.or.kr/english/ConstitutionoftheBolivarianingles.pdf>, provides the following in its Article 108:

The communications media, public and private alike, shall educate the citizenry. The State shall guarantee public radio and television services and library and computer networks, with a view to enabling universal access to information. Education centers are to impart knowledge of new technologies and their applications and innovations, as prescribed by law.

⁷¹ See, Ministry of the People's Power for Science, Technology and Intermediate Industries, *National Plan for Telecommunications, Data Processing and Postal Services, PNTlySP 2007-2013*, available [in Spanish] at: <http://www.mcti.gob.ve/Tices/PNTlySP/>. Among the Plan's objectives is "5.1.2 To promote the growth of Public Service television and radio" and "5.1.3 To promote the de-concentration of ownership of the communications media."

⁷² Annex 25, MPPTI, Communication No. 0424 of March 28, 2007, p. 11, Communication from the petitioners received on February 18, 2010, Attachment 28. The Constitution of the Bolivarian Republic of Venezuela, available at <http://www.venezuelaemb.or.kr/english/ConstitutionoftheBolivarianingles.pdf>, provides the following in its Article 108:

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⁷³ Annex 25, MPPTI, Communication No. 0424 of March 28, 2007, Communication from the petitioners received on February 18, 2010, Attachment 28.

⁷⁴ Annex 24, Communication from the petitioners received on February 18, 2010, Attachment 27, RCTV, Request to CONATEL, dated January 24, 2007, pp. 14 and 15; Annex 54, Official Gazette of the Bolivarian Republic of Venezuela, No. 38.417 of April 11, 2006, Ministry of Infrastructure, CONATEL, Administrative Order No. PADS-798 of April 10, 2006, Attachment 105; Annex 55, RCTV, Ing. Carlos Rojas, Manager of Broadcasting and Communications, "Technical Report on the Availability of Radio Band Frequencies that the Venezuelan State currently has for broadcasting nationwide free-to-air television signals in the Bolivarian Republic of Venezuela," April 17, 2007, Communication from the petitioners received on February 18, 2010, Attachment 106.

88. A number of international voices expressed their objection to the decision not to renew RCTV's concession, among them the Secretary General of the Organization of American States,⁷⁵ Human Rights Watch,⁷⁶ Reporters Without Borders,⁷⁷ the Inter-American Press Association,⁷⁸ the World Association of Community Radio Broadcasters (AMARC),⁷⁹ the European Parliament,⁸⁰ and the Senates of Brazil,⁸¹ Chile,⁸², and the United States.⁸³

E. The decisions of the Supreme Court to assign the use of RCTV's assets to the State

89. On May 22, 2007, representatives of the following audience groups: "José Leonardo Chirinos", "Satélite Popular", "27 de Febrero", "Fabricio Ojeda", "Josefa Camejo", "Observación", "Yaracoop", "Yurikli", "La Voz que se Ve", "Ojo Visor" and "AIPO", the CTI Casa de Alimentación and Radio Comunitaria San Bernardino, parties unaffiliated with RCTV, filed a petition of constitutional amparo with the Constitutional Chamber of the Supreme Court, in conjunction with a petition seeking unspecified injunctive relief. These were filed against the MINCI, the MPPTI, and the Venezuelan Public Television Foundation (TVes). The case was registered as No. 07-0720. Because of speeches made by public officials, the parties filing these petitions with the Supreme Court alleged that the new station, which would be broadcasting its programming via the spectrum used by RCTV, did not have the infrastructure, broadcasting equipment and repeaters necessary to ensure nationwide coverage of its broadcasts. Their understanding was that "the National Executive ha[d] not taken all the necessary measures [...] to ensure that all citizens nationwide would be able to enjoy the new public service television station's broadcasts starting on May 28, 2007, as it ha[d] repeatedly announced, creating a legitimate expectation [of] their entitlement to receive quality public service television." The audience groups filing these petitions were asking the Court to protect their fundamental rights to legitimate trust, to nondiscrimination, and to receive a quality public service. Therefore, they requested, *inter alia*, that the Constitutional Chamber issue an injunction to give TVes temporary access to and temporary use and operation of the equipment that

⁷⁵ Annex 56, Organization of American States, *OAS Secretary General Expresses Concern over Decision Not to Renew Broadcasting License of Venezuelan Television Station*, Communication from the petitioners received on February 18, 2010, Attachment 49.

⁷⁶ Annex 57, Human Rights Watch, *Letter sent to the OAS Secretary General*, May 23, 2007, Communication from the petitioners received on February 18, 2010, Attachment 60.

⁷⁷ Annex 58, Reporters Without Borders, *"RCTV Case: Supreme Court Rules RCTV's Appeal against Loss of its License "Inadmissible."* Communiqué of May 21, 2007, Communication from the petitioners received on February 18, 2010, Attachment 56.

⁷⁸ Annex 59, Inter-American Press Association, *IAPA condemns decision of President Chávez not to renew a television network's concession*. Press release of December 29, 2006, Communication from the petitioners received on February 18, 2010, Attachment 59.

⁷⁹ AMARC, *Carta Abierta de AMARC sobre el caso RCTV en Venezuela* [Open letter from AMARC on the RCTV case in Venezuela], April 13, 2007, available [in Spanish] at: <http://legislaciones.amarc.org/07-04-13-AmericaLatCartaAbierta.htm>.

⁸⁰ Annex 60, El Universal, *Parlamento Europeo rechaza Decision ofl Gobierno de no renovar concesión a RCTV* [European Parliament critical of Government's decision not to renew RCTV's concession], May 24, 2007, Communication from the petitioners received on February 18, 2010, Attachment 64.

⁸¹ Annex 61, El Universal, *Senado de Brasil pide a Chávez abrir RCTV* [Brazilian Senate asks Chávez to open RCTV], May 31, 2007, Communication from the petitioners received on February 18, 2010, Attachment 70.

⁸² Annex 62, El Universal, *Senado de Chile insta a Bachelet a insistir en la OEA por RCTV* [Chilean Senate urges Bachelet to fight for RCTV at OAS], June 8, 2007, Communication from the petitioners received on February 18, 2010, Attachment 72.

⁸³ Annex 63, El Universal, *Resolución del Senado de los Estados Unidos de América a favor de RCTV aprobada en Comisión de Política Exterior* [United States Senate Foreign Relations Committee passes resolution in favor of RCTV], May 24, 2007, Communication from the petitioners received on February 18, 2010, Attachment 66.

RCTV had been using to broadcast, and use of the portion of the radio electric spectrum, irrespective of which parties owned or were in possession of it.⁸⁴

90. On Friday, May 25, 2007, the Constitutional Chamber delivered decision No. 956, wherein i) it agreed to hear the petition of *amparo* filed against the three respondents, describing it as an action seeking protection of collective and diffuse interests, and ii) issued a temporary injunction under which the use of assets owned by RCTV –such as “high frequency waves, teleports for broadcasting, transmitters, auxiliary television equipment, auxiliary power and climate control equipment, towers, antennas, broadcasting booths, station booths, perimeter fencing and electrical connections”–would be temporarily assigned to CONATEL.⁸⁵ Under that decision, CONATEL had to agree to use those assets for TVEs. The Constitutional Chamber also ordered that interested parties be notified of its decision by a notification posted in one of the most widely circulated newspapers in Venezuela. The decision emphasized that “because this is an action to protect diffuse interests, intervening parties may only introduce evidence pertaining to the allegations made by the parties with which they side.”⁸⁶

91. Similarly, on May 24, 2007, citizens José Félix Peralta, José Miguel Ferrer Pérez and Jorge Enrique Larrazábal, and the audience group *Oyentes Interactivos de la Radio* [Interactive Radio Listeners] (*OIR*), filed a brief with the Constitutional Chamber of the Supreme Court containing a suit for protection of diffuse and collective interests, in conjunction with a petition for unspecified injunctive relief. The respondents named in the petition were the President of the Republic and the Minister of the People’s Power for Telecommunications and Information, who was also director of CONATEL. The case was registered as No. 07-0731. The plaintiffs alleged that the eventual shutdown of RCTV, which was close at hand judging from the speeches delivered by the respondents, would seriously and unlawfully restrict the public’s right to freedom of expression and information, by denying it one of the television choices that the Venezuelan people have for opinion programming, entertainment and news of their choosing. The plaintiffs argued that “the eventual closing of [RCTV] is unconstitutional, since the order for its closing [...] is a penalty being imposed on that station for including in its broadcasts, messages that the government considers unfriendly.” They therefore asked the Constitutional Chamber to order the injunctive relief necessary to enable RCTV to remain on the air, without interruption.⁸⁷

92. On Friday, May 25, 2007, the Constitutional Chamber issued decision No. 957 in which it agreed to hear the petition, but only with respect to the MPPTI. It also granted an

⁸⁴ Annex 64, Supreme Court of Justice, Constitutional Chamber, Case No. 07-0720, Decision No. 956 of May 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78.

⁸⁵ Annex 64, Supreme Court of Justice, Constitutional Chamber, Case No. 07-0720, Decision No. 956 of May 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78.

⁸⁶ Annex 64, Supreme Court of Justice, Constitutional Chamber, Case No. 07-0720, Decision No. 956 of May 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78. In a separate opinion, Justice Pedro Rafael Rondón Haaz expressed disagreement with the injunctive relief ordered by the Constitutional Chamber. He stated, *inter alia*, the following: i) “the continuity of the [public television] service would have been guaranteed to much greater effect if the injunctive relief would have permitted the current operator of that portion of the radio-electric spectrum to remain in operation on a provisional basis, until the decision on this case is handed down”; ii) the injunctive relief ordered “means that one element of [RCTV’s] right to property (i.e., use) is being taken away in the case of the assets assigned to the State, without explaining the legal grounds for that measure; and iii) although the assignment of the assets to the State is said to be a temporary measure, the length of time is not specified. Dissenting Vote of Justice Pedro Rafael Rondón Haaz to Decision No. 956 of May 25, 2007. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scon/Mayo/956-250507-07-0720..htm>.

⁸⁷ Annex 65, Supreme Court of Justice, Constitutional Chamber, Case No. 07-0731, Decision No. 957 of May 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78.

injunction on its own initiative.⁸⁸ The Constitutional Chamber observed that the competent body to rule on the legality of RCTV's concession is CONATEL, which is why it declared the case against the President of the Republic to be inadmissible. It also held that under Article 27 of the Venezuelan Constitution, the judge presiding over proceedings on a claim for constitutional protection shall have the power to restore immediately the legal right violated or the closest possible equivalent; that the State has the duty to guarantee universal telecommunications service by maintaining the system in sufficient or adequate operating condition; accordingly, the Administration can make temporary use of assets needed to deliver that service, for the sake of properly protecting the users' rights to a quality public service. The Constitutional Chamber also held that the audience's right to access to and enjoyment of a universal public telecommunications service did not mean access to a specific broadcaster, but rather "the opportunity for users to effectively access such a service, under conditions of equality, and provided the services is maintained at the minimum standard of quality appropriate for such a service, irrespective of whether a specific private operator exists or has a license or concession."⁸⁹

93. Reasoning that the TVEs might not have the infrastructure necessary for nationwide broadcasting, the Constitutional Chamber ordered injunctive relief similar to what was ordered in decision No. 956 delivered in Case No. 07-0720. Therefore, as a "temporary measure calculated to ensure that a universal public service runs without interruption," the Constitutional Chamber assigned to CONATEL the right to use the equipment necessary for nationwide broadcasting. Under that decision, it was CONATEL's responsibility and its discretion to assign the use of those assets to the operator selected in accordance with the provisions of LOTEL. Finally, the Constitutional Chamber ordered that a notice be published inviting those interested to become intervening parties supporting one side or the other in the case, or representing their own rights and interests. However, the Constitutional Chamber held that the intervening parties could only make arguments and introduce evidence in support of the party with which they sided.⁹⁰

94. The injunctive relief measures were enforced on May 27 and 28, 2007, when the assets specified in the corresponding decisions and other objects not named in those decisions were assigned to CONATEL.⁹¹ With the decision not to renew RCTV's concession, announced in

⁸⁸ Annex 65, Supreme Court of Justice, Constitutional Chamber, Case No. 07-0731, Decision No. 957 of May 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78.

⁸⁹ Annex 65, Supreme Court of Justice, Constitutional Chamber, Case No. 07-0731, Decision No. 957 of May 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78.

⁹⁰ Annex 65, Supreme Court of Justice, Constitutional Chamber, Case No. 07-0731, Decision No. 957 of May 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78. In a separate opinion, Justice Pedro Rafael Rondón Haaz expressed disagreement with the injunctive relief ordered by the Constitutional Chamber. He stated, *inter alia*, the following: i) "the continuity of the [public television] service would have been guaranteed to much greater effect if the injunctive relief would have permitted the current operator of that portion of the radio-electric spectrum to remain in operation on a provisional basis, until the decision on this case is handed down"; ii) the injunctive relief ordered "means that one element of [RCTV's] right to property (i.e., use) is being taken away in the case of the assets assigned to the State, without explaining the legal grounds for that measure; and iii) although it was agreed that TVEs might not have the necessary legal infrastructure for its broadcasts to reach a nationwide audience, CONATEL was authorized to reach an agreement with any operator to use RCTV's assets ; and iv) although the assignment of the assets to the State is said to be a temporary measure, the length of time is not specified. Dissenting Opinion of Justice Pedro Rafael Rondón Haaz on Decision No. 957 of May 25, 2007. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scon/Mayo/957-250507-0731.htm>.

⁹¹ The evidence supplied shows that in addition to the assets named in the injunctions, other assets not included in the injunctions issued on May 25, 2007, were also seized. Annex 64, Supreme Court of Justice, Constitutional Chamber, Case No. 07-0720, Decision No. 956 of April 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78. Annex 65, Supreme Court of Justice, Constitutional Chamber, Case No. 07-0731, Decision No. 957 of April 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78. Examples of assets not itemized in the injunctions but nonetheless seized include, in the case of Cerro Copey-Carabobo, one bed with mattress, three lockers, three desks, one refrigerator, one electric stove with four plates, one water cooler. Annex 66, Record of Execution

Communication No. 0425 of the MPPTI, RCTV's signal was cut off at 00:00 on May 28, 2007. TVEs began broadcasting its programming on channel 2 of the free-to-air television system.⁹² The petitioners presented evidence to show how the value of RCTV's share capital had declined as a result of these events.⁹³

95. On May 27, 2007, the concessions of four television stations expired, in addition to that of RCTV, and all four were renewed⁹⁴. Among them was Venevisión, a private, broadcast television network which operated in VHF, covered almost all of the national territory, and had an audience share very similar to that of RCTV⁹⁵.

F. Remedies under domestic law

Petitions seeking constitutional amparo relief

96. On February 9, 2007 a group of executives, journalists and other staff of RCTV filed a petition with the Constitutional Chamber of the Supreme Court seeking *amparo* relief against the President of the Republic and the Minister of the People's Power for Telecommunications and Information, Jesse Chacón Escamillo,⁹⁶ given the "imminent, immediate and very real threat" that their rights to freedom of expression, to due process and to equal protection and non-discrimination would be violated. The petition was classified as Case No. 07-0197. The parties filing the petition underscored the fact that by February 9, 2007, the respondents had already decided not to renew RCTV's concession and, moreover, sought to justify their action by claiming supposed violations of

...continuación

of Supreme Court Judgment and Inventories of Assets, Communication from the petitioners received on February 18, 2010, Attachment 79, Cerro Copey-Carabobo, by Tarsus Bautista Sánchez, Attachment 79 of the petitioners' communication of February 18, 2010. At Alta Vista-Puerto Ordaz, the following were seized: one water cooler, one refrigerator, one stove, one vacuum cleaner, 1 set of tools (screwdrivers, hammers, paint brushes, etc.), one flashlight, one desk, five lockers, two filing cabinets, two sets of blinds, one chair, one blackboard, etc. Annex 67, Record of Execution of Supreme Court Judgment and Inventories of Assets, Alta Vista Puerto-Ordaz, by Ricardo Soler, May 27, 2007, Communication from the petitioners received on February 18, 2010, Attachment 79. In Guigüe-Carabobo, the following were seized: one vacuum cleaner, one set of tools (hammers, screwdrivers, wire cutters, etc.), three shelves, etc. Annex 68, Record of Execution of Supreme Court Judgment and Inventories of Assets, Guigüe-Carabobo, by Francisco Seijas, May 27, 2007, Attachment 79 of the petitioners' communication of February 18, 2010. In Ciudad Bolívar, the following were seized: one blender, one couchette, one dinette, one set of tools. Annex 69, Record of Execution of the Supreme Court Judgment and Inventories of Assets, Ciudad Bolívar, by Gerardo Mantilla, May 27, 2007, Attachment 79 of the petitioners' communication of February 18, 2010.

⁹² Annex 70, CONATEL, Record of the Inspection of free-to-air VHF Radio Caracas Televisión, done on May 27 and 28, 2007, Communication from the petitioners received on February 18, 2010, Attachment 79, photographs attached.

⁹³ On March 22, 2010, the petitioners presented a report on the "Economic effect of the silencing of RCTV's free-to-air television signal." Annex 71, Report on the "Economic Effect of the Silencing of RCTV's free-to-air television signal. Communication from the petitioners received on March 22, 2010, Attachment. This report concludes that "the financial losses that RCTV sustained as a result of the non-renewal of its concession amount to \$1,042,508,.988".

⁹⁴ Ministry of Popular Power for Communication and Information. "Conatel renews licenses that expire on May 27", May 26, 2007, available at: http://www.minci.gob.ve/arr/1/13981/conatel_procesa_renovacion.html. Annex 72, State's communication received December 4, 2011.

⁹⁵ Annex 1, Petitioners' Communication of February 18, 2010, pp. 194-97. Facts not contested by the State. See also information on Venevisión at: http://www.venevision.com/el_canal/?utm_source=Home_Venevisión&utm_medium=Barra_Navegación&utm_campaign=El_Canal, as well as information from AGB Nielsen regarding audience shares for 2006, indicating a national share of 28% for RCTV and a share of 27% for Venevisión. Available at: <http://www.agbnielsen.com.ve/libro2006/share/1.htm>.

⁹⁶ Annex 73, Petition of *Amparo* filed with the Constitutional Chamber of the Supreme Court on February 9, 2007. Communication from the petitioners received on February 18, 2010, Attachment 107. Among those filing the petition was RCTV, representing its shareholders, as well as the following alleged victims: Marcel Granier, Daniela Bergami, Edgardo Mosca, Anani Hernández, Inés Bacalao, José Simón Escalona, Isabel Valero, Odila Rubin, Oswaldo Quintana, Eduardo Sapene, Miguel Ángel Rodríguez, Soraya Castellano, María Arriaga and Larissa Patiño

the Criminal Code, LOTEL, and the Law on Social Responsibility in Radio and Television.⁹⁷ The plaintiffs argued that under Article 242 of the Constitution and Article 58 of the Organic Public Administration Law, the ministries are directly answerable to the President of the Republic; thus, the decisions of the National Executive Branch materialize through the legal measures taken by the ministries. They also observed that the National Executive had been unable to show that any definitive decision ordered a penalty imposed on RCTV for allegedly serious violations of those laws; that there had never been any criminal or administrative-law proceeding to penalize or discipline RCTV, and that the decision will be enforced by officials who have already made public statements about the case, even about the grounds for the decision. Therefore, the respondents had denied RCTV i) the right to a hearing to freely set forth its arguments; ii) administrative due process, and iii) its right to obtain a decision on its request for an extension or renewal of its concession, delivered by an impartial body on the basis of law. The plaintiffs also argued that RCTV was in the same situation as all other free-to-air television and radio stations in existence as of May 27, 1987. Finally, they requested the admission of a number of pieces of evidence, including that CONATEL be required to show: i) all applications for transformation of free-to-air television and sound radio broadcasting that it had received pursuant to Article 210 of LOTEL, and ii) all the penalties imposed on free-to-air television and sound radio broadcasters for violations of LOTEL and the Law on Social Responsibility in Radio and Television.

97. The decision on the petition seeking *amparo* relief was still pending on March 28, 2007, the date on which CONATEL issued Communication No. 0424 and Resolution No. 002. On April 2, 2007, the plaintiffs reframed their original petition seeking *amparo* relief to rebut the terms of the government's decision not to renew RCTV's concession.⁹⁸ In that brief, they alleged, *inter alia*: i) bias on the part of the Minister of the People's Power for Telecommunications and Information, who had signed the decision and who had previously stated his opinion on the merits of the matter submitted to the court; ii) a violation of the right of defense by virtue of the fact that they were not permitted to introduce the arguments and evidence made in the brief presented to CONATEL on January 24, 2007; iii) a violation of due process by being denied access to the administrative record in the lead-up to the adoption of the decisions contained in Resolution No. 002 and Communication No. 0424,⁹⁹ which prevented them from making arguments and introducing evidence in their own defense, and iv) the reasoning given in the decisions included extemporaneous and untruthful matters, particular the question of the need to use RCTV's frequencies to carry out the National Telecommunications Plan. They also pointed out that the decision on the petition of *amparo* had been pending for 23 days.

98. On May 17, 2007, the Supreme Court issued its decision on the petition of *amparo*.¹⁰⁰ In that decision, the Constitutional Chamber declared that it was competent to examine the petition. However, it found the petition to be inadmissible with respect to the President of the Republic, since it was CONATEL alone that decided RCTV's legal status. It also ruled that the petition was inadmissible with respect to Minister Jesse Chacón Escamillo because, under Article 6(1) of the Organic Law of *Amparo* for Protection of Fundamental Rights and Guarantees, in order for the petition to be admissible with respect to Minister Chacón Escamillo, the grievance or harm

⁹⁷ Annex 73, Petition of *Amparo* filed with the Constitutional Chamber of the Supreme Court on February 9, 2007, Communication from the petitioners received on February 18, 2010, Attachment 107, pp. 11-12.

⁹⁸ Annex 74, Amendment to the Petition of *Amparo*, filed with the Constitutional Chamber of the Supreme Court on April 2, 2007, Communication from the petitioners received on February 18, 2010, Attachment 108.

⁹⁹ See in this regard, Annex 75, RCTV, Request to CONATEL dated March 21, 2007, Communication from the petitioners received on February 18, 2010, Attachment 104.

¹⁰⁰ Annex 76, Supreme Court of Justice, Constitutional Chamber, Case No. 07-0197, Inadmissibility decision dated May 17, 2007, Communication from the petitioners received on February 18, 2010, Attachment 109.

had to be current. The Constitutional Chamber deemed that, in the case it had under consideration, the complaint alleged an omission on the part of the MPPTI; “however, during the processing of the petition seeking *amparo* relief, the alleged offender produced the response that had heretofore been omitted, which meant that [...] the grievance or harm denounced was a matter of the past.”¹⁰¹ The Chamber also declared the petition to be inadmissible by virtue of Article 6(5) of the *Amparo* Act, which provides that the petition will not be admitted “[w]hen the aggrieved party has opted to work through the regular court system or has made use of pre-existing judicial avenues [...].” According to the Constitutional Chamber, the aggrieved parties had another suitable judicial avenue to pursue to challenge the administrative acts in question, such as an administrative-law remedy seeking nullification, which they could have exercised in combination with a petition for injunctive relief. In effect, the Chamber pointed out that RCTV had already filed that petition with the Political-Administrative Chamber of the Supreme Court on April 17, 2007, and observed that “there is nothing in the case record to suggest that a *de facto* situation exists from which some unavoidable disadvantage could accrue to the plaintiffs or that the grievance or harm denounced might have become irreparable had they pursued and exhausted the administrative-law avenue first.”¹⁰²

99. As for the other petitions seeking *amparo* relief based on facts related to RCTV and filed with the Constitutional Chamber between May 10 and 24, 2007, the Commission observes that IACHR’s case file does not contain copies of the petitions filed in those proceedings. However, from the decisions adopted and published by the Constitutional Chamber, it is apparent that only one of those petitions could involve alleged victims in this case: the petition of *amparo* that RCTV filed on May 10, 2007, and that was decided on May 24, 2007.¹⁰³ Through this petition, classified as Case No. 07-0647, the RCTV commercial enterprise requested that implementation of the National Plan for Telecommunications, Information Sciences and Postal Services 2007-2013 be halted until the State formally adopts it. On May 24, 2007, the Constitutional Chamber declared this petition to be inadmissible based on Article 6(5) of the *Amparo* Act mentioned earlier, because of the administrative-law remedy seeking nullification that RCTV had filed with the Political-Administrative Chamber on April 17, 2007.¹⁰⁴ Furthermore, despite the fact that the petition seeking *amparo* relief in Case No. 07-0679 was brought by RCTV employees, those employees are not among the alleged victims in the case with the Inter-American Commission.¹⁰⁵ In the other

¹⁰¹ In his concurring opinion, Justice Pedro Rafael Rondón Haaz observed, *inter alia*, that: the complaint filed regarding the administrative proceeding underway at the time the petition seeking *amparo* relief was filed, alleged a violation of the right of access to one’s natural judge in terms of impartiality since, as they tell it, the entity in charge of processing and deciding the matter had already advanced an opinion in that regard; the complaint did not allege a failure on the part of the administrative authority to respond. The threat that is the subject of the complaint is that a biased institution would make the decision, which in fact appears to be what happened as the response came from the Minister whose subjective competence was called into question.” Annex 76**, Supreme Court of Justice, Constitutional Chamber, Case No. 07-0197, Inadmissibility decision of May 17, 2007, Concurring Opinion of Justice Pedro Rafael Rondón Haaz, Communication from the petitioners received on February 18, 2010, Attachment 109.

¹⁰² Annex 76, Supreme Court of Justice, Constitutional Chamber, Case No. 07-0197, Inadmissibility decision of May 17, 2007. Communication from the petitioners received on February 18, 2010, Attachment 109.

¹⁰³ Supreme Court of Justice, Constitutional Chamber, Case No. 07-0647, Decision of May 24, 2007; Case No. 07-0674, Decision of May 24, 2007; Case No. 07-0679, Decision of May 24, 2007; Case Nos. 07-0721, 07-0722, 07-0723 y 07-0724, Decision of May 22, 2007; Case No. 07-0726, Decision of July 17, 2007; Case No. 07-0725, Decision of May 22, 2007; Case No. 07-0727, Decision of July 17, 2007; Case No. 07-0717, Decision of June 25, 2007; Case No. 07-0747, Decision of July 17, 2007, and Case No. 07-0739, Decision of August 3, 2007. Available [in Spanish] at: http://www.tsj.gov.ve/decisiones/sala.asp?sala=005&ano_actual=2007&nombre=SalaConstitucional.

¹⁰⁴ Supreme Court of Justice, Constitutional Chamber, Case No. 07-0647, Decision No. 951 of May 24, 2007. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scon/Mayo/951-240507-07-0647.htm>.

¹⁰⁵ Supreme Court of Justice, Constitutional Chamber, Case No. 07-0679, Decision No. 952 of May 24, 2007; Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scon/Mayo/952-240507-07-0679.htm>.

petitions seeking *amparo* relief, the aggrieved parties named were persons unaffiliated with RCTV.¹⁰⁶

Administrative-law petition seeking nullification

100. On April 17, 2007, a group of executives, journalists and other employees of RCTV filed an administrative-law petition seeking nullification of the administrative decision in Resolution No. 002 and Communication No. 0424.¹⁰⁷ The plaintiffs alleged that the decisions being challenged were unconstitutional, constituted violations of the right to freedom of thought and expression, the right to due process, the right of defense and the right to a hearing by an impartial authority; the right to the guarantee of the non-retroactivity of the law; the right to equality; the right to economic freedom and the right to private property. They argued that the administrative decisions were fatally flawed and unlawful by virtue of: i) a violation of the principle of the hierarchy of laws and the singular non-derogability of regulations; ii) violation of general principles of law; iii) subjective lack of competence; iv) an unlawful purpose; v) a false premise; vi) abuse of power; vii) a complete and absolute absence of procedure; and viii) a violation of the legal obligation set forth in Article 210 of LOTEL to transform RCTV's license and concession. In their brief, the plaintiffs also requested injunctive relief or, failing that, unspecified protective injunctions. Specifically, they asked the competent court to order the MPPTI: i) to refrain from taking any decision that might prevent RCTV from broadcasting its programming until such time as a definitive decision on the merits was taken, and ii) to take the necessary measures to ensure that the station continue to operate at the same frequencies nationwide, until a definitive decision had been delivered on their petition.

101. On May 22, 2007, the Political-Administrative Chamber of the Supreme Court agreed to hear the petition seeking nullification, but declared the petition seeking injunctive relief to be inadmissible and did not address the request for an unspecified protective injunction. The decision to dismiss the petition seeking injunctive relief held that freedom of thought and expression "is not absolute, since it must be exercised within the boundaries of certain values and constitutional principles." The Court wrote that "under Article 113 of the Constitution, in the case of the exploitation of natural resources which are the property of the Nation –as in the case of the radio electric spectrum- [...] the State may grant concessions for a certain period, in all cases ensuring the existence of adequate consideration or compensation to serve the public interest." As the Chamber observed, "in principle, plaintiffs may exercise their right to freedom of thought and expression using the radio electric frequency assigned to RCTV only for as long as the concession is in effect [...] which in no way implies a supposed violation of that right, since plaintiffs are free to impart their ideas, opinions and information through the many other media outlets." The Chamber also observed that: i) to examine the alleged violations of the rights to due process, to defense, to the non-retroactivity of the law, to private property and to economic freedom, the Chamber would have to do a detailed examination of the administrative procedures whose decisions are being challenged, which would be part of the merits phase of the petition for nullification; ii) plaintiffs

¹⁰⁶ Supreme Court of Justice, Constitutional Chamber, Case No. 07-0674, Decision of May 24, 2007; Case Nos. 07-0721, 07-0722, 07-0723 y 07-0724, Decision of May 22, 2007; Case No. 07-0726, Decision of July 17, 2007; Case No. 07-0725, Decision of May 22, 2007; Case No. 07-0727, Decision of July 17, 2007; Case No. 07-0717, Decision of June 25, 2007; Case No. 07-0747, Decision of July 17, 2007, and Case No. 07-0739, Decision of August 3, 2007. Available [in Spanish] at: http://www.tsj.gov.ve/decisiones/sala.asp?sala=005&ano_actual=2007&nombre=SalaConstitucional.

¹⁰⁷ Annex 16, Administrative-law petition seeking nullification, filed with the Supreme Court's Political-Administrative Chamber, April 17, 2007, Communication from the petitioners received on February 18, 2010, Attachment 110. Among those filing the petition was RCTV, representing its shareholders, as well as the following alleged victims: Marcel Granier, Eladio Lárez, Daniela Bergami, Edgardo Mosca, Anani Hernández, Inés Bacalao, José Simón Escalona, Isabel Valero, Odila Rubin, Oswaldo Quintana, Eduardo Sapene, Miguel Ángel Rodríguez, Soraya Castellano, María Arriaga and Larissa Patiño.

have to demonstrate the alleged violation of the principle of presumption of innocence, as the decisions that plaintiffs are challenging did not impose any penalty on RCTV; and iii) as for the alleged violation of the right to equality and non-discrimination, RCTV failed to demonstrate the equality of circumstances it claimed to have vis-à-vis the other operators or the discrimination it claimed to suffer. That interlocutory decision added an *obiter dictum* to the effect that “once the concession has expired, the relationship is extinguished and it is normal that the assets directly or indirectly used to provide the public service that operates on the basis of that concession should revert to the State.” The Political-Administrative Chamber also observed that the brief with which the petition was filed contained “notions that could be considered offensive to and disrespectful of persons and public institutions [...] referring to messages of hate and repudiations of the communications media and journalists.” However, Chamber stated that for the sake of ensuring access to justice, it would not take those remarks into account for purposes of the petition’s admissibility.¹⁰⁸

102. On May 24, 2007, the plaintiffs filed a brief with the Political-Administrative Chamber underscoring the urgency of the case and requesting a decision on their request for unspecified injunctive relief.¹⁰⁹ The latter was declared inadmissible by the Court on July 31, 2007.¹¹⁰ On November 29, 2007, May 27, 2008 and May 21, 2009, the plaintiffs filed new petitions seeking unspecified injunctive relief and alleging new facts. The Political-Administrative Chamber declared the first two petitions inadmissible in decisions dated March 26, 2008 and July 30, 2008, respectively.¹¹¹ According to the petitioners’ allegations, which the State has not contested,¹¹² as of August 2011 no separate case file had been established for the third petition.

103. On October 9, 2007, in an order issued by the Trial Court of the Political-Administrative Chamber, the evidentiary phase of the proceedings got underway. On March 6, 2008, that Court issued its decision on the admissibility of the evidence offered.¹¹³ On May 7 and June 10, 2008, the alleged victims and the State, respectively, filed appeals challenging this most recent decision. On June 19, 2008, the Court agreed to hear the appeals and referred the case files to the Political-Administrative Chamber. Between August 12, 2008 and October 22, 2009, the alleged victims submitted eight petitions asking that the presiding magistrate issue a decision on the appeals. As of August 2011, the petitioners report and the State does not contest¹¹⁴ that the decision on the appeals had not yet been delivered, which meant that the trial was still in the

¹⁰⁸ Annex 77, Supreme Court of Justice, Political-Administrative Chamber, Case No. 07-0411, Decision of May 22, 2007, Communication from the petitioners received on February 18, 2010, Attachment 111.

¹⁰⁹ Annex 78, Sworn affidavit attesting to the urgency of the Administrative-law Petition seeking nullification (Case No. 07-0411), filed with the Political-Administrative Chamber of the Supreme Court, May 24, 2007, Communication from the petitioners received on February 18, 2010, Attachment 112.

¹¹⁰ Supreme Court, Political-Administrative Chamber, Case No. 07-0411, Decision No. 1,337 of July 31, 2007. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/spa/Julio/01337-31707-2007-2007-0411.html>.

¹¹¹ Supreme Court, Political-Administrative Chamber, Case No. 07-0411, Decision No. 342 of March 26, 2008. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/spa/Marzo/00342-26308-2008-2007-0411.html>; Supreme Court, Political-Administrative Chamber, Case No. 07-0411, Decision No. 883 of July 30, 2008. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/spa/Julio/00883-30708-2008-2007-0411.html>.

¹¹² Annex 79, Report on the procedural status of the petitions and requests filed by RCTV, July 28, 2011, Communication from the petitioners received on August 5, 2011, Attachment 13. Information not contested by the State.

¹¹³ Supreme Court, Political-Administrative Chamber, Case No. 07-0411, Decision No. 107 of March 6, 2008. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/jspa/Marzo/107-6308-2008-07-411.html>.

¹¹⁴ Annex 79, Report on the procedural status of the petitions and requests filed by RCTV, July 28, 2011, Communication from the petitioners received on August 5, 2011, Attachment 13. Information not contested by the State.

evidentiary phase. In December of 2011, the contentious administrative writ of nullification was still pending before the Political Administrative Court of the Supreme Tribunal of Justice.¹¹⁵

Objection to the decisions on the petitions for injunctive relief filed in conjunction with the petition for protection of diffuse and collective interests

104. On May 31, 2007, RCTV, a commercial enterprise, filed an objection to decision No. 957, issued by the Constitutional Chamber on May 25, 2007, within the framework of the petition for protection of collective and diffuse interests (Case No. 07-0731).¹¹⁶ In its objection, the radio station pointed out that the court had ordered injunctive relief with respect to its assets, even though RCTV was not a party to the proceeding and had not been summoned or notified. It also asserted that the only juridical mechanism through which an organ of the judicial branch can assign the government the right to use private property is the mechanism of prior occupancy, which is part of an expropriation proceeding. No such expropriation proceeding had been instituted against RCTV. It also pointed out that under the court's decision, if it wanted to appear in the proceedings in response to the public notice inviting interested parties to attend, RCTV could not present its own arguments; the only role it could play would be to support the position of the parties with which it sided. Thus, its right of defense would be violated. The station alleged that the injunctive relief ordered by the court was in violation of the rights to due process, to private property and to defense. It therefore petitioned the Constitutional Chamber to reverse its rulings.

105. In the proceeding registered as Case 07-0731, on May 28, 2007 the plaintiffs filed a petition with the Constitutional Court asking that the case be dropped. On June 1, 2007, the court decided to refuse the request to drop the case, and instead decided to join cases No. 07-0720 and No. 07-0731.¹¹⁷

Criminal complaints

106. On December 11, 2007, RCTV filed a criminal complaint with the Office of the Superior Prosecutor of the Metropolitan Caracas Judicial Circuit, requesting that a criminal investigation be launched into crimes against property and other crimes criminalized under the Anti-Corruption Law.¹¹⁸ In its complaint, RCTV alleged that, through the injunctive relief measures ordered in the petitions filed for protection of collective and diffuse interests (Cases No. 07-0720 and No. 07-0731), the Constitutional Chamber had stripped RCTV of its right to property and possession of assets. The station had been left completely defenseless, since the court of last resort within the Venezuelan judicial system had indefinitely restricted its use, enjoyment and disposition of its own property, which was a blatant violation of fundamental rights as a consequence of a procedural fraud of immense proportions. In its complaint, RCTV argued that, by distorting the purposes of the injunctive relief sought by the aggrieved parties, the Constitutional Chamber had misapplied the law, with the result that RCTV's assets were seized and handed over to new operators of the free-to-air signal. In RCTV's view, the court had "committed an 'autonomous procedural fraud' that was detrimental to [RCTV's] rights and interests. It was an intentional fraud,

¹¹⁵ Annex 72, State Communication received on December 4, 2011.

¹¹⁶ Annex 80, RCTV, Objection to the injunctive relief ordered by the Constitutional Chamber in Decision No. 957 delivered on May 25, 2007, filed on May 31, 2007, Communication from the petitioners received on June 16, 2011.

¹¹⁷ Supreme Court of Justice, Constitutional Chamber, Case No. 07-0720/07-0731, Decision No. 1.075 of June 1, 2007; Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scon/Junio/1075-010607-07-0720.htm>.

¹¹⁸ Annex 81, RCTV, Complaint alleging procedural fraud, filed with the Office of the Superior Prosecutor of the Metropolitan Caracas Judicial Circuit on December 11, 2007, Communication from the petitioners received on February 18, 2010, Attachment 80.

inasmuch as the Constitutional Court's own case law on the subject of procedural fraud condemns the conduct of judges who, through procedure and deceptive maneuvers, inflict harm that always involve violations of fundamental rights." In its complaint, RCTV not only asked that an investigation be launched, but also that the condition of the physical installations, equipment and other assets assigned to the State be checked through court-ordered inspections.

107. On December 28, 2007, the Prosecution Unit 36 of the Public Prosecutor's Office, with jurisdiction nationwide ("the Prosecutor's Office"), which was in charge of the complaint, asked the court of oversight to order the case dismissed, alleging that the facts that prompted the filing of the complaint were not criminal offenses. On July 28, 2008, the 51st Preliminary Examining Court of First Instance of the Metropolitan Caracas Criminal Court Circuit admitted the request for dismissal filed by the Prosecutor's Office and decided to close the investigation.¹¹⁹ On August 7, 2008, RCTV filed an appeal against this latest court ruling.¹²⁰

108. On October 10, 2008, the Fifth Chamber of the Appellate Court of the Metropolitan Caracas Criminal Judicial Circuit confirmed the reasons given by the Prosecutor's Office in its request to have the case dismissed, and declared that the appeal filed by RCTV was inadmissible. RCTV filed a petition of cassation with the Supreme Court's Chamber of Criminal Cassation to challenge that decision, but, according to information in the public domain, its petition was dismissed on May 7, 2009.¹²¹

109. As for the criminal complaint that Marcel Granier was said to have filed on April 10, 2007, with the Office of the Superior Prosecutor of the Metropolitan Caracas Area requesting an investigation into events that would qualify as the crimes of embezzlement, malfeasance of funds and abuse of office, the petitioners did not file a copy of the documents pertaining to this complaint. Although the State has not refuted these facts, the IACHR does not have evidence with which to prove these facts.

Requests made to CONATEL

110. RCTV filed a number of requests with CONATEL concerning the status and condition of the equipment and facilities it owned and that were assigned to CONATEL, and concerning administrative procedures related to RCTV:

a) On March 21, 2007, an RCTV representative requested a copy of the administrative case instituted on January 24, 2007, in which clarifications had been requested concerning the duration of its concession. The attorney for the station was denied access to that case file;¹²²

b) On June 8, 2007, RCTV filed a request with CONATEL asking that: i) the property not listed in the injunctions issued by the Constitutional Court –including personal property belonging to the station- be returned; ii) it coordinate with the competent state

¹¹⁹ Annex 82, RCTV, Appeal filed with the 51st Preliminary Examining Court of First Instance of the Metropolitan Caracas Criminal Court Circuit, Case No. 370-08, August 7, 2008, Communication from the petitioners received on February 18, 2010, Attachment 81. Supreme Court, Criminal Cassation Chamber, Case No. C09-005, Decision No. 195 of May 7, 2009. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scp/Mayo/195-7509-2009-C09-005.html>.

¹²⁰ Annex 82, RCTV, Appeal filed with the 51st Court of First Instance with Oversight over the Metropolitan Caracas Criminal Court Circuit, Case No. 370-08, August 7, 2008, Communication from the petitioners received on February 18, 2010, Attachment 81.

¹²¹ Supreme Court, Criminal Cassation Chamber, Case No. C09-005, Decision No. 195 of May 7, 2009. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scp/Mayo/195-7509-2009-C09-005.html>.

¹²² Annex 75, RCTV, Request to CONATEL dated March 21, 2007, Communication from the petitioners received on February 18, 2010, Attachment 104.

agencies to arrange a mechanism that would give RCTV access to its equipment and enable it to inspect that equipment; and iii) it provide any records of equipment deliveries that were not already provided to RCTV, and other measures.¹²³

c) On September 18, 2007, and May 15, 2008, RCTV requested a certified copy of the administrative file through which the concession was awarded to TVes, so that RCTV might take whatever legal measures it deemed pertinent;¹²⁴

d) On May 7, 2008, the station requested a hearing with CONATEL's legal consultant to explain its concerns and legal thinking about the situation of the property taken in the injunctive relief ordered;¹²⁵ and

e) On May 26, 2009, RCTV notified CONATEL of the poor state of repair and of the theft of the RCTV equipment that had been assigned to CONATEL; it asked that the necessary measures be taken to ensure that the property in question was properly secured.¹²⁶

111. As of August 2011, according to the petitioners' assertions -not contested by the State-¹²⁷ CONATEL had not answered RCTV's requests.

V. ANALYSIS OF LAW

112. Pursuant to its report on admissibility in the present case,¹²⁸ the Commission will now analyze whether articles 8, 13, 21, 24, and 25 of the American Convention—in relation to articles 1(1) and 2 of the Convention—have been violated in this case. The Commission will not analyze the State's pleadings on the admissibility of the petition in this case because they are time-barred, with the pleadings having been submitted after the aforementioned report on admissibility.

A. Articles 13 (Freedom of Thought and Expression) and 24 (Equal Protection) with regard to articles 1(1) and 2 of the American Convention.

113. Article 13 of the Convention establishes the following in its relevant parts:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public order, or public health or morals.

¹²³ Annex 83, RCTV, Request to CONATEL dated June 8, 2007, Communication from the petitioners received on February 18, 2010, Attachment 82.

¹²⁴ Annex 84, RCTV, Request to CONATEL dated September 18, 2007, Communication from the petitioners received on February 18, 2010, Attachment 85, Annex 85, RCTV Request to CONATEL, May 15, 2008, Communication from the petitioners received on February 18, 2010, Attachment 86.

¹²⁵ Annex 86, RCTV, RCTV, Request to CONATEL dated May 7, 2008, Communication from the petitioners received on February 18, 2010, Attachment 84.

¹²⁶ Annex 87, RCTV, Request to CONATEL dated May 26, 2009, Communication from the petitioners received on February 18, 2010, Attachment 83.

¹²⁷ Annex 79, Report on the procedural status of the petitions and requests filed by RCTV, Communication from the petitioners received on August 1, 2011, Attachment 13. Information not contested by the State.

¹²⁸ IACHR, Report No. 114/11 (Admissibility), Marcel Granier et al., Venezuela, July 22, 2011.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

[...]

114. For its part, Article 24 of the Convention establishes the following:

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

115. According to the protection granted by Article 13 of the American Convention, the right to freedom of thought and expression includes both the right of individuals to express their own thoughts and the right to seek, receive, and disseminate information and ideas of all kinds.¹²⁹ This right is crucially important for the personal development of every individual, for the exercise of their autonomy and other fundamental rights, and, finally, for the consolidation of a democratic society.¹³⁰

116. In this sense, the Commission and the Inter-American Court have held that freedom of expression includes two dimensions: an individual dimension and a social dimension. The individual dimension of freedom of expression consists of the right of all individuals to express their own thoughts, ideas, and information. This is not exhausted with the theoretical recognition of the right to speak or write; rather, it inseparably includes the right to use any appropriate media for disseminating thought and delivering it to the largest number of people possible.¹³¹ The second dimension of the right to freedom of expression, the collective or social dimension, consists of society's right to procure and receive any information; to hear outside thoughts, ideas, and information; and to be well informed.¹³² In this sense, the Court has established that freedom of expression is a means for the exchange of ideas and information between persons; it includes their

¹²⁹ IACHR, Report No. 82/10, Case 12.524, Merits, Jorge Fontevecchia and Hector d'Amico, Argentina, July 13, 2010, para. 86. Available at: <http://www.cidh.oas.org/demandas/12.524Esp.pdf>.

¹³⁰ IACHR, Report No. 82/10, Case 12.524, Merits, Jorge Fontevecchia and Hector d'Amico, Argentina, July 13, 2010, para. 85.

¹³¹ Cf. Inter-American Court, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 31.

¹³² Inter-American Court, Case of Kimel v. Argentina. Merits, Reparations and Costs. Judgment of May 2, 2008, Series C No. 177, para. 53; Inter-American Court, Case of Claude Reyes et al v. Judgment of September 19, 2006. Series C No. 151, para. 75; Inter-American Court, Case of López Álvarez v. Honduras. Judgment of February 1, 2006. Series C No. 141, para. 163; IACHR. Pleadings before the Inter-American Court in the case of Herrera Ulloa v. Costa Rica. Transcripts available at: Inter-American Court, Case of Herrera Ulloa v. Costa Rica. Judgment of July 2, 2004. Series C No. 107, para. 101(1)(a); Inter-American Court, Case of Herrera Ulloa. Judgment of July 2, 2004, Series C No. 107, para. 108; Inter-American Court, Case of Ivcher Bronstein v. Peru. Judgment of February 6, 2001. Series C No. 74, para. 146; Inter-American Court, Case of Ricardo Canese v. Paraguay. Judgment dated August 31, 2004, Series C No. 111, para. 77; Case of "The Last Temptation of Christ " (Olmedo Bustos et al.) v. Chile. Judgment dated February 5, 2001. Series C No. 73, para. 64; Inter-American Court, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30; IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" laws with the American Convention on Human Rights. Section III. OAS/Ser. L/V/II.88. doc. 9 rev. February 17, 1995, IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza. Mexico. November 19, 1999, para. 51; IACHR. Report No. 11/96, Case No. 11.230. Francisco Martorell. Chile. May 3, 1996. Para. 53.

right to try to communicate their points of view with others, but also implies the right of all to hear - liberally - opinions, stories, and news of all kinds.¹³³

117. The right to freedom of expression also constitutes a fundamental element on which the existence of democratic societies is based due to its indispensable structural relationship with democracy.¹³⁴ The objective itself of Article 13 of the American Convention is to strengthen the functioning of pluralist and deliberative democratic systems by protecting and fomenting the free circulation of information, ideas, and expression of all kinds¹³⁵. In this sense, the Court has found that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.¹³⁶

118. In this context, the Court has emphasized the role of journalists and the media in making freedom of expression effective in both of its dimensions. For the Court, "Within this context, journalism is the primary and principal manifestation of freedom of expression of thought"¹³⁷ and the media can be "true instruments of freedom of expression."¹³⁸ The Commission has recognized that it is through the communications media that directors, editors and journalists are able to exercise their right to freedom of expression as individuals. According to the Commission, 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.¹³⁹

¹³³ Cf. Inter-American Court, Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 110. Inter-American Court, Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment dated August 31, 2004. Series C No. 111, para. 79. Case of "The Last Temptation of Christ " (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs. Judgment dated February 5, 2001. Series C No. 73, para. 66.

¹³⁴ Cf. Inter-American Court, Case of Claude Reyes et al. Judgment of September 19, 2006. Series C No. 151, para. 85; Inter-American Court, Case of Herrera Ulloa v. Costa Rica. Judgment of July 2, 2004. Series C No. 107, para. 116; Inter-American Court, Case of Ricardo Canese v. Paraguay. Judgment dated August 31, 2004. Series C No. 111, para. 86; Inter-American Court, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70.

¹³⁵ IACHR. Pleadings before the Inter-American Court in the case of Ivcher Bronstein v. Peru. Transcripts available at: Inter-American Court, Case of Ivcher Bronstein v. Peru. Judgment of February 6, 2001. Series C No. 74, para. 143(d); IACHR. Pleadings before the Inter-American Court in the Case of "The Last Temptation of Christ " (Olmedo Bustos et al.) v. Chile. Transcripts available at: Inter-American Court, Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Judgment dated February 5, 2001. Series C No. 73, para. 61(b).

¹³⁶ Cf. Inter-American Court, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70.

¹³⁷ Cf. Inter-American Court, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 71.

¹³⁸ Inter-American Court. *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, paras. 149-50.

¹³⁹ IACHR, Report No. 114/11 (Admissibility), Marcel Granier *et al.*, Venezuela, July 22, 2011, para. 39.

119. In this case, the Commission has ruled it proven that on May 28, 2007, RCTV ceased broadcasting as a free-to-air television station as the result of the State's decision not to renew that channel's concession. The petitioners allege that this decision constituted an arbitrary and discriminatory abuse of office intended to punish RCTV for an editorial stance that was critical of the Venezuelan government in violation of the freedom of expression and the right to equal protection of the channel's shareholders, management, and employees. They indicate that "revoking or denying the granting, extension, or renewal of a concession of a television or radio station for the reasons indicated constitutes an indirect and illegitimate measure restricting the right to expression and to communication and circulation of ideas and opinions, something that is expressly prohibited by Article 13(3) of the American Convention."¹⁴⁰ For its part, the Venezuelan State stands behind what the Supreme Tribunal Justice ruled to the effect that "the freedom of expression of the alleged victims was not violated as there are other means through which the journalists can express their ideas and opinions."¹⁴¹ It also argues that freedom of expression has two dimensions and that "the perspective of the individual [...] can under no pretext take precedence over the collective perspective of that rights [*sic*]."¹⁴² Finally, the State insists that "the non-renewal of RCTV's concession was not carried out to silence the media outlet."¹⁴³ In this regard, the State transcribes the official notification of the decision not to renew RCTV's concession, which indicates that this decision is not a form of punishment, but rather simply a legitimate action that is part of the government's communication policy intended to "promote a new model for managing free-to-air television that will coexist with other existing management models in the country under the scheme of public service television, in order to permit the democratization of the use of over-air broadcast media and a plurality of messages and content."¹⁴⁴

120. Thus, the Commission must resolve whether the decision not to renew the RCTV concession was a legitimate decision of the Venezuelan government or if, on the contrary, it violated the rights to freedom of expression and/or equal protection of the RCTV shareholders, management, and workers appearing as alleged victims in this case. The Commission recalls in this sense that Article 13(3) of the American Convention prohibits direct restrictions on freedom of expression, including the "abuse of government [...] controls over [...] radio broadcasting frequencies." For its part, Article 24 establishes that all persons "are entitled, without discrimination, to equal protection of the law," while Article 1(1) guarantees enjoyment of the rights guaranteed in the Convention "without any discrimination" for reasons of, *inter alia*, "political opinion." In order to resolve the question of the possible violation of articles 13 and 24 in this case, the IACHR will proceed to analyze the following issues: 1) the authority and obligations that States have when deciding whether to renew the concession of a radio or television frequency; 2) the relationship between a media outlet and its shareholders, management, and journalists; 3) circumstances of the failure to renew the RCTV concession; and 3) whether the nonrenewal of the RCTV concession complied or not with the Venezuelan State's obligations under the Convention.

1. On the allocation and renewal of radio and television licenses

121. The allocation of radio and television licenses is a decision with a definite impact on the right to freedom of expression in both its dimensions: the right of everyone to express themselves freely and the right to receive a diversity of ideas and opinions. Both the access of the

¹⁴⁰ Annex 1, Communication of the petitioners received on February 18, 2010, p. 9.

¹⁴¹ Annex 72, State Communication received on December 4, 2011.

¹⁴² Annex 72, State Communication received on December 4, 2011.

¹⁴³ Annex 72, State Communication received on December 4, 2011.

¹⁴⁴ Annex 72, State Communication received on December 4, 2011. Annex 25, MPPTI, Communication No. 0424 of March 28, 2007, p. 11, Communication from the petitioners received on February 18, 2010, Annex 28.

media outlets owned by those requesting access to the frequencies and society's right to receive a plurality of information pursuant to Article 13 of the American Convention depend on this decision. Effectively, on allocating frequencies, the State decides which voice the public will be able to hear in the years to come. As a consequence, this process defines, among other things, the conditions under which the democratic debate necessary for the informed exercise of political rights will be carried out, as well as the sources of information that will allow each person to make informed decisions on their personal preferences and prepare his or her life plan.¹⁴⁵

122. The rights in play demonstrate the enormous importance of the process of allocating licenses. It should be recalled that both the Convention in Article 13(3) and the Declaration of Principles on Freedom of Expression of the IACHR in its Principal 13 make explicit reference to the need to prevent this process from becoming a mechanism for the indirect restriction of freedom of expression. Regarding this, the Declaration of Principles establishes the following:

The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression¹⁴⁶.

123. For this reason, the process of allocating and renewing concessions must be strictly regulated by law, characterized by transparency¹⁴⁷, and guided by standards that are objective, impartial, clear, public, and compatible with a democratic society.¹⁴⁸ Likewise, the proceeding for awarding a license must be surrounded by sufficient guarantees against arbitrariness, including the obligation to provide justification for a decision granting or denying the request, as well as to provide adequate judicial oversight of the decision.¹⁴⁹

¹⁴⁵IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting* OEA/Ser.L/V/II IACHR/RELE/INF. 3/09. December 30, 2009, paras. 60-61. Available at: <http://www.cidh.org/pdf%20files/Estandares%20para%20radiodifusion%20includyente.pdf>

¹⁴⁶ IACHR. Declaration of Principles on Freedom of Expression, Principle 13. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=26&IID=2>. Underline added.

¹⁴⁷ Joint Declaration on Diversity in Broadcasting. December 12, 2007. In the same sense, the Committee of Ministers of the Council Of Europe found that, "13. One of the essential tasks of regulatory authorities in the broadcasting sector is normally the granting of broadcasting licences. The basic conditions and criteria governing the granting and renewal of broadcasting licences should be clearly defined in the law." And that: "14. The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity. Council of Europe. Committee of Ministers. *Appendix to Recommendation Rec(2000)23 of the Committee of Ministers to member states*. Rules 13-14. December 20, 2000. Available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2000\)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2000)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75).

¹⁴⁸In this sense, the Committee of Ministers of the Council of Europe has recommended that the "regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity." Recommendation Rec(2000)23. Committee of Ministers of the Council of Europe. December 20, 2003. para 14.

¹⁴⁹IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II IACHR/RELE/INF. 3/09. December 30, 2009, paras. 60-61. Available at: <http://www.cidh.org/pdf%20files/Estandares%20para%20radiodifusion%20includyente.pdf>. In the same way, the European Court of Human Rights has understood that as "regards licensing procedures in particular, the Court reiterates that the manner in which the licensing criteria are applied in the licensing process must provide sufficient guarantees against arbitrariness, including the proper reasoning by the licensing authority of its decisions denying a broadcasting licence."

124. From a substantive perspective, the Commission recalls that article 1.1 of the American Convention prohibits any discrimination in the enjoyment of the rights enshrined therein based on, *inter alia*, "political or other opinion". In addition, the Inter-American Commission and Court have consistently held that speech on matters of public interest enjoys heightened protection under article 13 of the Convention¹⁵⁰. Nonetheless, freedom of expression is not absolute,¹⁵¹ and in rare circumstances such as those contemplated in article 13.5 of the Convention, restrictions may be deemed permissible even if the speech in question is political in nature.¹⁵²

125. In addition, the jurisprudence of the IACHR,¹⁵³ the Inter-American Court,¹⁵⁴ and the European Court of Human Rights¹⁵⁵ demonstrates that once an interference with the right to freedom of expression has been established, it is the State which carries the burden of proving that this interference was permissible, that is, that the restriction on freedom of expression was established by law and necessary to ensure a legitimate objective¹⁵⁶. As explained below (see paragraphs 156 and 164, *infra*), in the instant case, the State did not avail itself of the opportunity to establish that the restriction met the aforementioned criteria.

126. In sum, the granting of radio and television broadcast frequencies with the objective of putting pressure on and punishing or rewarding and providing privileges to social communicators and media outlets because of the information they provide constitutes an indirect restriction of

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Meltex Ltd. & Mesrop Movsesyan v. Armenia. Judgment of June 17, 2008, para. 81. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Meltex&sessionid=39882418&skin=hudoc-en>.

¹⁵⁰ I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 83; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 125; I/A Court H.R., *Case of Ivcher-Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. para. 155; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. February 17, 1995. Chapter V; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Herrera Ulloa v. Costa Rica*, cited in I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 101.2).c).

¹⁵¹ I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177, para. 54; *Case of Fontevecchia y D`Amico v. Argentina*. Merits, Reparations and Costs. Judgment of November 29, 2011. Series C No. 238, para. 43.

¹⁵² Citing international doctrine and jurisprudence, the IACHR has stated that sanctions for incitement to violence are appropriate when "actual, truthful, objective and strong proof" demonstrates "the clear intention of committing a crime and the actual, real and effective possibility of achieving this objective." IACHR, Special Rapporteur for Freedom of Expression. "The Inter-American Legal Framework regarding the Right to Freedom of Expression." OEA/Ser.L/V/II IACHR/RELE/INF. 2/09. December 30, 2009, para. 58. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/INTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>. Regarding the distinction between protected political speech and incitement to violence, see also ECHR, *Case of Incal v. Turkey*, Application No. 22678/93, Judgment of June 9, 1998; *Case of Sürek y Özdemir v. Turkey*, Judgment of July 8, 1999, Application No. 23927/94, 24277/94; *Case of Arslan v. Turkey*, Judgment of July 8, 1999, Application No. 23462/94.

¹⁵³ See, e.g., IACHR. Report No. 82/10. Case No. 12.524. Jorge Fontevecchia and Héctor D'Amico (Argentina). July 13, 2010, paras. 112-172.

¹⁵⁴ See, e.g., I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, paras. 95-108; *Case of Fontevecchia y D`Amico v. Argentina*. Merits, Reparations and Costs. Judgment of November 29, 2011. Series C No. 238, paras. 51-75.

¹⁵⁵ ECHR, *Case of Cumpănă and Mazăre v. Romania*, Application no. 33348/96, Judgment of December 17, 2004, paras. 85-89; *Case of Ukrainian Media Group v. Ukraine*, Application no. 72713/01, Judgment of December 10, 2005, paras. 44-62; *Case of Otegi Mondragón v. Spain*, Application 2034/07, Judgment of March 15, 2011, paras. 28-39.

¹⁵⁶ American Convention, art. 13.2.

freedom of expression as prohibited by Article 13(3) of the American Convention. It also has the effect of silencing other media outlets, which severely impacts the social dimension of freedom of expression.

2. On the relationship between a media outlet and its shareholders, directors, and journalists

127. As previously mentioned, the Inter-American Court has found that “journalism is the primary and principal manifestation of freedom of expression [and] of thought”¹⁵⁷ and that in this sense, the media can be “true instruments of freedom of expression”¹⁵⁸. In this context, the Commission finds it relevant to submit some additional considerations on the role of the media in contemporary society; on the role of the owners, management, and employees in those media outlets; and on the persons submitted as alleged victims in this case.

128. First, the Commission observes that these days, a significant amount of journalism is done via media outlets. These media outlets are, in effect, associations of persons who have come together to exercise steadily their freedom of expression. At the same time, it is currently very rare for a media outlet to not have the status of a legal person, meaning that restrictions on freedom of expression frequently take place through State actions that formally effect that legal person. In these cases, the Commission has established that in order to understand the impact on freedom of expression, the role of the alleged victims within the media outlet must be analyzed in order to determine if the State action affecting the media outlet as a legal person also by extension had a negative, certain, and substantial impact on the freedom of expression of natural persons¹⁵⁹.

129. In this sense, it is important to take two additional elements into account. First, there are different types of property owners of a media outlet. Some have made an economic investment in the company but do not have real power to make decisions regarding it, nor do they play any role in defining, producing or disseminating its content. In other cases, in contrast, they have contributed part of their patrimony to create a company that allows them to disseminate ideas and share information, and they exercise their authority to influence the definition, production and issuing of content by the media outlet. Second, journalists or, in the case of a television channel, those appearing on the screen are not the only ones expressing themselves through media outlets. There are multiple roles within a media outlet in which a professional can contribute to the communicative mission of an organization and in this way exercise freedom of expression.

130. Based on these considerations, the Commission will proceed to analyze the role that the alleged victims in this case played in the operation of the television channel RCTV. First, the alleged victims include seven persons who the petitioners presented as RCTV shareholders¹⁶⁰ of which three are also board members at the channel.¹⁶¹ In addition to being shareholders who participated regularly in the Shareholders General Assemblies, Marcel Granier, Peter Bottome and

¹⁵⁷ Cf. Inter-American Court, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 71.

¹⁵⁸ Inter-American Court. *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, paras. 149-50.

¹⁵⁹ IACHR Report No. 114/11 (Admissibility), Marcel Granier et al., Venezuela, July 22, 2011. 40; Report No. 72/11, Petition 1164-05, William Gómez Vargas, Costa Rica, March 31, 2011, para. 36.

¹⁶⁰ Marcel Granier, Peter Bottome, Jaime Nestares, Jean Nestares, Fernando Nestares, Alicia Phelps de Tovar and Francisco J. Nestares.

¹⁶¹ Marcel Granier, Peter Bottome and Jaime Nestares.

Jaime Nestares were, at the time the events in this case took place, also members of RCTV's Board of Directors. The functions and authorities of the Board of Directors include naming and removing the General Manager, complying with the decisions of the Shareholder's General Assembly and ensuring compliance with them, and approving "the company's programming" proposed by the General Manager.¹⁶² As a result, in addition to their authority as shareholders, these individuals also had an active role in making decisions on central RCTV issues, including on its communication policies. The IACHR thus finds that they exercised permanent and real control over RCTV, including ultimately of its editorial content, and that they decided to maintain the broadcaster's editorial stance even after the statements of President Chávez regarding their ability as owners to change an editorial stance that the government considered unacceptable.¹⁶³ With regard to the other shareholders submitted as victims - Jean Nestares, Fernando Nestares, Alicia Phelps de Tovar and Francisco J. Nestares - there is no evidence that they were involved in any activity that could influence RCTV's reporting or management. The case file indicates that they did not participate directly in the Shareholders Meetings but rather through representatives. Therefore, the Commission will not analyze the alleged violation of articles 13 and 24 of the Convention with regard to these four individuals, without prejudice to later consideration of the possible violation of other of their rights.

131. Finally, the alleged victims in this case include 14 professionals who were working in different positions in RCTV, all with significant levels of responsibility.¹⁶⁴ Three of them - Eladio Lárez, Daniela Bergami, and Isabel Valero - were senior officials with the company with general management responsibilities at RCTV in their respective capacities as executive president, general manager, and executive secretary. The others - Edgardo Mosca, Anani Hernández, Inés Bacalao, José Simón Escalona, Odila Rubin, Oswaldo Quintana, Eduardo Sapene, Miguel Ángel Rodríguez, Soraya Castellano, María Arriaga and Larissa Patiño - contributed directly to the communicative mission of RCTV, participating in the production of the broadcaster's programming, or indirectly, by providing essential services such as maintenance of the technical infrastructure, the hiring of journalists, and legal support.

132. The Commission thus considers that shareholders and executives Marcel Granier, Peter Bottome and Jaime Nestares, as well as the 14 RCTV professionals who appear as alleged victims in this case, were exercising their freedom of expression through RCTV's television channel, a right that was affected when RCTV's concession was not renewed and the channel went off the air. The Commission will determine below whether those effects are compatible with the American Convention.

3. The circumstances of the non-renewal of the RCTV concession

133. In this case, the petitioners argue that, "The right of free-to-air television concessionaires to continue operating and to obtain the renewal of their concessions is a general principle of telecommunications concessions administrative law" and that "the Venezuelan government neither had nor has discretionary authority to deny, purely and simply, the extension or

¹⁶² Annex 3, Minutes of the Special Shareholders General Meeting of RCTV C.A., of August 4, 2006, initial petition from the petitioners received on March 1, 2007, Annex A-1, Articles of Incorporation of RCTV, Article 22.

¹⁶³ See for example, Transcription of the program "Aló President" dated January 14, 2003, IACHR, Complaint in *Case of Ríos et al v. Venezuela*, April 20, 2007, Annex 47, and Inter-American Court, *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs, Judgment dated January 28, 2009. Series C No. 194, paras. 127-128

¹⁶⁴ 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.

renewal of a free-to-air television station's concession."¹⁶⁵ They argue that the government's decision not to renew RCTV's concession was "an arbitrary act that translates into an indirect and illegitimate measure for restricting the right to expression and communication," in violation of Article 13(3) of the Convention¹⁶⁶.

134. The petitioners allege that in accordance with Venezuelan law, the RCTV concession should have been extended beyond May 27, 2002. They indicated that because CONATEL did not resolve the request to transform the RCTV concession within the time period established by the LOTEL, there was certain ambiguity regarding which legal regime applied to the renewal of the concession. According to the petitioners, however, the concession should have been extended under either of the two legal regimes possible. They allege that on having applied the provisions of Article 210 of the LOTEL in conjunction with Article 3 of Decree No. 1.577¹⁶⁷, the RCTV concession should have been renewed on June 12, 2002, for a period of 20 years, with which it would have expired on June 12, 2022. If, on the other hand, Decree No. 1.577 predating the LOTEL were to be strictly applied, the RCTV concession should have been extended by another 20 years as of May 27, 2007, with which it would have expired on May 27, 2027.¹⁶⁸

135. The petitioners allege, in the alternative, that even were it the case that RCTV had no right to an extension of its concession, the State was obligated to carry out a transparent administrative proceeding subject to the rules of due process in order to determine who would be the next concessionaire. According to their argument, in that proceeding RCTV would have had a right to participate under preferential conditions, or at a minimum under equal conditions.¹⁶⁹

136. Thus according to the petitioners, RCTV had a right to the extension of its concession, or at a minimum a right to participate in a transparent administrative process intended to determine the next concessionaire. They hold that the actions of the Venezuelan government that failed to recognize this right and led to the expiration of RCTV's concession constituted an abuse of office intended to punish the station for an editorial stance that was critical of the government. As evidence of this, they make reference to the repeated statements of senior Venezuelan government officials (see *supra*) - including, principally, President Chávez - to the effect that "RCTV should go off the air because its editorial and informational stances were understood by the government to be critical of its administration."¹⁷⁰ They also allege that the discriminatory nature of the decision is evidenced by the fact that the concession of another television station facing a situation similar to that of RCTV was indeed renewed.

137. For its part, the Venezuelan State argued that "the legal situation at issue in this case is the simple legal expiration of a concession (operating permit) that the State decided not to renew under the Venezuelan State's discretionary authority to administer public property, that being

¹⁶⁵ Annex 1, Communication from the petitioners received on February 18, 2010, p. 117.

¹⁶⁶ Annex 1, Communication from the petitioners received on February 18, 2010, p. 117.

¹⁶⁷ Annex 20, Official Gazette of the Republic of Venezuela No. 33,726, Decree No. 1,577 of May 27, 1987. Communication from the petitioners received on February 18, 2010, Attachment 24:

Article 3. At the end of the concession, the parties in possession of the concession who, during the period specified in Article 1, have complied with the provisions of the Telecommunications Law, the Radio Communications Regulations and other legal provisions, shall be given preferential treatment if they are seeking an extension of the concession for another twenty (20) year period..

¹⁶⁸ Annex 1, Communication from the petitioners received on February 18, 2010, p. 121.

¹⁶⁹ Annex 1, Communication from the petitioners received on February 18, 2010, p. 123.

¹⁷⁰ Annex 1, Communication from the petitioners received on February 18, 2010, p. 45.

in this case the broadcast spectrum."¹⁷¹ It indicated that "the nonrenewal of RCTV's concession was not carried out to silence the media outlet, this being evidenced by communication 0424, [which] explains clearly and precisely the reasons why RCTV's concession was not renewed."¹⁷² Although the State argued that RCTV committed "alleged violations of the communication regulations in force in 2002 and 2003," the State also recognized that the "Broadcasting Regulations" that "provide for the penalty of a temporary or definitive suspension of broadcasting [...] were evidently not applied."¹⁷³ In this sense, the official explanation for the nonrenewal of RCTV's concession offered by the Venezuelan State, both domestically and in the proceeding before the IACHR, is the one contained in the aforementioned Communication No. 0424.¹⁷⁴ Specifically, it indicated that this Ministry decided to set aside the signal used by RCTV to fulfill the constitutional requirement to guarantee public television services with the purpose of allowing universal access to information pursuant to the National Telecommunications, Information Technology and Postal Services Plan. Through the aforementioned Communication No. 0424, amply transcribed by the State in its observations on the merits, the Venezuelan State informed RCTV that it did not have "an '*acquired*' right to the automatic renewal of the concession of the use and exploitation of the broadcast spectrum."¹⁷⁵ That communication, which represented the only official explanation that RCTV received of the reasons for the nonrenewal of the concession, indicates that the State needs "a frequency that allows it to have a free to-air-television network with national reach like the one that will be available on the expiration of RCTV's concession" in order to "allow for the democratization of the use of broadcast media and the plurality of messages and content," as well as to comply with the provisions of Article 108 of the Constitution.¹⁷⁶ As mentioned, subsequent to May 27, 2007, the public television station TVEs begin showing its programming on the free-to-air television frequency that had previously been assigned to RCTV.

138. Thus, there is a dispute between the parties in this case with regard to the rights held by RCTV (and the corresponding State obligations) with regard to the renewal of its concession, as well as with regard to whether the Venezuelan State violated these rights by not renewing the concession.

4. The the non-renewal of the RCTV concession and the Venezuelan State's obligations under the Convention

139. As mentioned, it is clear to the Commission that the State has the authority to manage the broadcast spectrum and to establish beforehand the terms of the duration of concessions, ruling on their renewal or nonrenewal at the conclusion of those time periods.¹⁷⁷ However, this power must be exercised taking into account the international obligations assumed by

¹⁷¹ Annex 72, State Communication received on December 4, 2011.

¹⁷² Annex 72, State Communication received on December 4, 2011.

¹⁷³ Annex 72, State Communication received on December 4, 2011.

¹⁷⁴ Annex 72, State Communication received on December 4, 2011.

¹⁷⁵ Annex 25, MPPTI, Communication No. 0424 of March 28, 2007, p. 8, Communication from the petitioners received on February 18, 2010, Annex 28.

¹⁷⁶ Annex 25, MPPTI, Communication No. 0424 of March 28, 2007, p. 11, Communication of the petitioners received on February 18, 2010, Annex 28. The Constitution of the Bolivarian Republic of Venezuela, available at <http://www.tsj.gov.ve/legislacion/constitucion1999.htm>, establishes the following in Article 108:

Social, public, and private media outlets shall contribute to citizen education. The State will guarantee public radio and television services, as well as library and information technology networks, in order to allow universal access to information. Education centers must incorporate the knowledge and application of new technologies and innovation, according to the requirements established by law.

¹⁷⁷IACHR Press Release No. 29/07, "IACHR concerned about freedom of expression in Venezuela," May 25, 2007.

the State, which include the obligation to guarantee the right to express ideas and thought of all kinds through diversity of media outlets and without taking direct or indirect measures that restrict the exercise of the right to freedom of expression as established in Article 13 of the American Convention, particularly the Article 13.3 prohibition on indirect restrictions such as the abuse of the authority to regulate and administer broadcasting frequencies.

140. In this regard, as mentioned previously, States have two types of obligations in this area: minimal procedural obligations and substantive obligations. First, they have procedural obligations which require that the process of revoking, granting or renewing broadcasting concessions must be carried out in strict accordance with the law, be transparent and impartial¹⁷⁸, and be guided by objective, clear, public, and democratic objectives.¹⁷⁹ Indeed, as the State pointed out, the 2000 Organic Telecommunications Law, in effect at the time of the events in this case, establishes in Articles 76 and 77 that the conduct of broadcasting activities by the National Telecommunications Commission “will be subject to the principles of equality, transparency, publicity, efficiency, rationality, plurality of aspirants, competition, technological development and encouragement of initiative, as well as the protection and guarantee of users”.

141. Second, States have a series of substantive obligations destined to prevent the occurrence of the actions proscribed by the aforementioned Article 13.3 as well as other guarantees in the Convention such as those stemming from Article 1.1. This latter norm prohibits discrimination in the enjoyment of the human rights enshrined in the Convention on grounds, *inter alia*, of the “political or other opinion” of the person affected. In this regard, any content-based decision by the State regarding the allocation or renewal of a broadcasting license should be subjected to the strictest of scrutinies by this Commission. The Commission proceeds to analyze whether in the instant case the State of Venezuela complied with these procedural and substantive obligations.

142. From a procedural perspective, the Commission first observes that the dispute over the nonrenewal of RCTV's concession took place in the context of legal uncertainty for the station as a result of the lack of clarity regarding the legal framework applicable to its concession. As has been mentioned, on June 12, 2000, the State passed the organic telecommunications law, legislation that established a period of two years for the “transformation of current concessions and permits granted under the previous legislation,” clarifying that “while this adjustment takes place, all the rights and obligations acquired under the previous legislation will remain fully in force.”¹⁸⁰ Pursuant to this provision, RCTV requested the transformation of its concession. However, the State did not rule on the request within the period of two years established in the LOTEL, and the request was still unresolved when RCTV formally requested the renewal of its concession in

¹⁷⁸ Joint Declaration on Diversity in Broadcasting, December 12, 2007. The Council of Europe's Committee of Ministers stated that: “13. One of the essential tasks of regulatory authorities in the broadcasting sector is normally the granting of broadcasting licences. The basic conditions and criteria governing the granting and renewal of broadcasting licences should be clearly defined in the law” and that “14. The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity.” Council of Europe. Committee of Ministers. *Appendix to Recommendation Rec(2000)23 of the Committee of Ministers to member states*. Rules 13-14. December 20, 2000. Available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2000\)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2000)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75).

¹⁷⁹ In this regard, the Committee of Ministers of the Council of Europe has recommended that “The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity.” Council of Europe. Committee of Ministers. *Appendix to Recommendation Rec(2000)23 of the Committee of Ministers to member states*. Rules 13-14. December 20, 2000, paragraph 14.

¹⁸⁰ Annex 21, LOTEL, art. 210.

January of 2007.¹⁸¹ Meanwhile, "CONATEL continually and peacefully applied the new LOTEL legal regime to RCTV."¹⁸²

143. The petitioners argue that notwithstanding the ambiguity regarding the applicable legal framework, RCTV's concession should have been extended, as a rigorous application of the LOTEL would have required extending the concession until June 12, 2022, while a strict application of aforementioned decree No. 1577 would imply an extension until May 27, 2027.¹⁸³ Regarding this, the Commission observes that its task in this case is not to determine which domestic law should have been applied and which interpretation of it is the correct one. It is enough to observe that RCTV had, as a minimum, the right to a clear and objective proceeding strictly regulated by law, and that at the moment of requesting renewal of its concession, it was not clear to the broadcaster which legal framework was applicable in this process. Given the State's failure to comply with the legal mandate to transform RCTV's concession, a situation of a lack of legal certainty exists that is inconsistent with the Venezuelan State's obligation to establish a process for renewing concessions that are strictly regulated by law.

144. In addition, the Commission observes that the decision not to renew RCTV's concession and grant it to a new television station was not the result of an open and transparent process guided by clear, public and impartial criteria. As established, officials with responsibility for the decision announced that RCTV would not have the right to renewal given that it had violated the law. On this point, RCTV requested evidence from the State designed to prove the falsity of these affirmations. As discussed below, however, the evidence was denied.

145. RCTV was not allowed access to the administrative case file on its proceeding when it requested as much from CONATEL.¹⁸⁴ Nor did the RCTV request to present evidence in that proceeding receive a response until after the nonrenewal decision had been made, and at that time, the evidence was rejected for being inadmissible and time-barred.¹⁸⁵ One of these pieces of evidence sought to establish that "no definitive sanction [had] been imposed for serious violations of the Law on Social Responsibility in Radio and Television,"¹⁸⁶ highly relevant evidence given that certain statements of public officials had justified the nonrenewal of the RCTV concession by alluding to alleged infractions of broadcasting laws.¹⁸⁷ The only formal and public action in this

¹⁸¹ The request for transformation was finally rejected on March 28, 2003, through Resolution No. 002 of the Ministry of the People's Power for Telecommunications and Information Technology, Annex 49.

¹⁸² Cf. Communication from the petitioners received on February 18, 2010, p. 12. Fact not challenged by the State.

¹⁸³ Annex 1, Communication from the petitioners received on February 18, 2010, p. 121.

¹⁸⁴ Annex 75, Request to CONATEL, March 21, 2007, Communication from the petitioners received on February 18, 2010, Annex 104

¹⁸⁵ Annex 25, MPPTI, Communication No. 0424 of March 28, 2007, pp. 11-13, Communication of the petitioners received on February 18, 2010, Annex 28.

¹⁸⁶ Annex 25, MPPTI, Communication No. 0424 of March 28, 2007, p. 12, Communication of the petitioners received on February 18, 2010, Annex 28.

¹⁸⁷ For example, on December 29, 2006, Mr. William Lara stated that RCTV "constantly violates various articles of the Social Responsibility in Radio and Television Act." Annex 37, *Agencia Bolivariana de Noticias*, news item headlined *William Lara: Decision to not renew RCTV concession is legal and constitutional*, dated December 29, 2006. Communication of the petitioners received on February 18, 2010, Annex 44; Annex 38, *Radio Nacional de Venezuela*, news item headlined *"Servicio Público de Televisión Nacional will use the frequency left open by RCTV,"* available at:<http://www.rnv.gov.ve/noticias/index.php?act=ST&f=2&t=43149> and Annex 39, *State acts in accordance with law in case of RCTV*, available at:<http://www.rnv.gov.ve/noticias/?act=ST&f=&t=43138>, both dated January 26, 2007. Communication of the petitioners received on February 18, 2010, Annex 103.

With regard to the statements of Minister Chacón Escamillo, also see: Annex 40, *El Universal*, news item headlined *Government considers turning over RCTV frequency to channel 8*, December 30, 2006, available at:<http://www.eluniversal.com/2006/12/30/pol art 129283.shtml>. Communication of the petitioners received on February 18, 2010, Annex 103. Continúa...

process was the March 28, 2007, notification indicating that the concession would not be renewed.¹⁸⁸ That is, the decision not to renew the RCTV license and grant it to another station was the result of a closed process characterized by a total lack of transparency. In this process, RCTV itself was denied the opportunity to take part by providing evidence and receiving a hearing, even to respond to and eventually invalidate the statement of the Communication and Information Minister that the broadcaster had violated radio and television laws. All this was in violation of the Venezuelan State's procedural obligations. Nor was RCTV allowed to participate in a transparent and impartial process whereby, in accordance with the rules of administrative due process, a new licensee was selected in conformity with articles 76 and 77 of the Organic Telecommunications Law.

146. Having analyzed the Venezuelan State's compliance with its procedural obligations, the Commission will now move to analyze State compliance with its substantive obligations upon deciding not to renew RCTV's concession. The Commission recalls that this analysis consists of determining whether the decision to not renew the concession was based on objective and impartial criteria, in conformity with articles 13.3 and 1.1 of the American Convention. The Commission observes in this sense that Article 30 of the Convention establishes that, "The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established."

147. In order to determine if the non-renewal of the RCTV concession was compatible with the State's substantive obligations, the Commission must first identify the criteria employed by the State in making this decision. The Commission must then determine whether these criteria were compatible with the Venezuelan State's obligations under the Convention.

148. As indicated, the petitioners in this case allege that the decision not to renew RCTV's concession was illegitimate retaliation on the part of the Venezuelan government for the broadcaster's editorial stance critical of the government. As evidence of this, as also has been mentioned, the petitioners make reference to statements of senior Venezuelan officials including the President of the Republic, Hugo Chávez, and the Minister of Communication and Information, William Lara. The petitioners alleged that the Venezuelan government's official explanation for not renewing RCTV's license hides the true motives behind this decision. As evidence of this, they indicate that the National Telecommunications Plan¹⁸⁹ mentioned in Communication No. 0424 "was devised subsequently"¹⁹⁰ and that in any case there other frequencies were available for achieving the objectives of that plan.¹⁹¹

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18, 2010, Annex 45.; MINCI, communication headlined *Free to air signal of RCTV will operate until May 27*, available at: <http://www.rmv.gov.ve/noticias/?act=ST&f=2&t=42181>, dated December 29, 2006, and Annex 41, *Analítica* news item headlined "William Lara specifies that measure against RCPV will be applied in March," dated December 29, 2006, available at: <http://www.analitica.com/va/sintesis/nacionales/4704007.asp>. Communication of the petitioners received on February 18, 2010, Annex 118.

¹⁸⁸ Annex 49, MPPTI, Resolution No. 002 of March 28, 2007, pp. 11-13, Communication of the petitioners received on February 18, 2010, Annex 30.

¹⁸⁹ See Ministry of the People's Power for Science, Technology, and Intermediate Industries, *National Telecommunications, Information Technology, and Postal Services Plan*, PNTlySP in its Spanish acronym, 2007-2013, available at: <http://www.mcti.gob.ve/Tices/PNTlySP/>.

¹⁹⁰ Communication from the petitioners received on February 18, 2010, p. 78.

¹⁹¹ Communication from the petitioners received on February 18, 2010, pp. 127-28 indicated that:

It is necessary to keep in mind that the National telecommunications Commission ("CONATEL" in its Spanish acronym) declared that all the VHF frequencies that have been assigned initially to TVN Canal 5 and later to VALE TV were available, except for the frequency in the Caracas Metropolitan Area. Therefore, there are frequencies available in the VHF

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149. The State for its part has indicated that the nonrenewal of the concession was not related to the editorial slant of the station. In effect, as mentioned, Communication No. 0424 of the Ministry of the People's Power for Telecommunications and Information Technology¹⁹² represents the official explanation for the nonrenewal of the RCTV license. This resolution explains the decision of the Venezuelan government by making reference to the "National Telecommunications Plan" and the need to take possession of the portion of the spectrum assigned to RCTV in order to "allow for the democratization of the use of the broadcasting medium and the plurality of messages and content" through the creation of a free-to-air public TV channel.¹⁹³ The Commission must therefore analyze whether the explanation offered by the State can be corroborated by other pieces of evidence.

150. The Commission has expressed that a comprehensive policy on the subject of freedom of expression must incorporate measures that aim to foment diversity and pluralism in democratic debate. As a result, regulation of broadcasting can contemplate the allocation of the spectrum for a system of diverse media outlets that represent, on the whole, a diversity and plurality of ideas, opinions and cultures in a society. Public media outlets that are independent of the government are similarly useful for this purpose. In this sense, the Commission agrees with the State that the promotion of diversity and pluralism is a legitimate public interest which can justify decisions in the area of broadcasting.¹⁹⁴ In any case, the Commission considers that when the State adopts a decision regarding the allocation of a frequency, the decision should be based on a law that establishes quotas, procedures and sufficient reasons to support this action, in order to avoid discrimination and the creation of public monopolies. In situations in which an adequate legal framework in this area exists, it should furthermore be verified that there is no other frequency that would serve to meet the aims pursued without affecting the possibility that the existing media outlets continue to operate normally.

151. The evidence in the file before the Commission, which was not disputed by the State, represents strong proof that the State's decision not to renew RCTV's concession was taken with regard to the editorial slant of the station. Indeed, the Commission observes that since 2003,

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band, to say nothing of all the frequencies available in the UHF band. As far as the rest, the government also has a VHF free-to-air television station, VTV, as well as four free-to-air UHF television channels, Vive TV, TELESUR, ANTV and CMT.

¹⁹² Annex 25, MPPTI, Communication No. 0424 of March 28, 2007, Communication of the petitioners received on February 18, 2010, Annex 28.

¹⁹³ Annex **, MPPTI, Communication No. 0424 of March 28, 2007, p. 11, Communication of the petitioners received on February 18, 2010, Annex 28. The Constitution of the Bolivarian Republic of Venezuela, available at <http://www.tsj.gov.ve/legislacion/constitucion1999.htm>, establishes the following in Article 108:

Social, public, and private media outlets shall contribute to citizen education. The State will guarantee public radio and television services, as well as library and information technology networks, in order to allow universal access to information. Education centers must incorporate the knowledge and application of new technologies and innovation, according to the requirements established by law.

¹⁹⁴ See, IACHR, Office of the Special Rapporteur for Freedom of Expression, A Hemispheric Agenda for the Defense of Freedom of Expression. OEA/Ser.L/V/II/CIDH/RELE/INF.4/09. February 25, 2009, paras. 99-109. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/Hemispheric%20%20Agenda%20Eng%20FINAL%20portada.pdf>; IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09. December 30, 2009, paras. 224-238. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/INTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>; IACHR, Office of the Special Rapporteur for Freedom of Expression, Freedom of Expression Standards for Free and Inclusive Broadcasting. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, para. 53. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/Broadcasting%20and%20freedom%20of%20expression%20FINAL%20PORTADA.pdf>.

these officials have effectively given public statements on the government's authority to renew or not renew the concessions of television stations, at times linking this decision with the content of the information broadcast by the stations.¹⁹⁵ In December 2006, President Chávez and Minister Lara announced directly the non-renewal of the RCTV concession, once again linking this decision with the broadcaster's editorial stance. On announcing that "the measure is already drafted," for example, President Chávez expressed that "no media outlet will be tolerated that is at the service of a pro-coup philosophy, against the people, against the nation, against national independence, against the dignity of the Republic."¹⁹⁶ Later, the MINCI, of which Minister Lara is in charge, carried out an official campaign to explain the reason for not renewing the RCTV concession with messages like "don't renew the lie" and assertions that RCTV "fabricated its messages," once again making reference to the content of the information broadcast by RCTV as justification for not renewing its license. These repeated incidents took place in the context of "a progressive deterioration of the exercise of freedom of expression in Venezuela," caused, *inter alia*, by an "environment of intimidation" fostered by statements of senior State officials against independent media outlets,¹⁹⁷ as well as "rhetoric from government officials discrediting journalists and the launching of administrative proceedings that could result in the suspension or revocation of concessions for providing radio and television services."¹⁹⁸ They also took place in the context of retaliation against functionaries who made decisions contrary to the interests of the government.¹⁹⁹

152. On the contrary, no evidence was presented which would serve to establish that the National Telecommunications Plan used by the State to justify the need to retake the frequency was adopted and published prior to the issuance of Communication No. 0424, by which the government announced its decision not to renew the concession. Similarly, the file contains no evidence whatsoever that explains why not renewing RCTV's frequency was necessary to satisfy the aims of this plan, rather than looking to other frequencies that, according to evidence that was not questioned by the State, were available. Nor is there any explanation that justifies the decision not to renew RCTV's license while other concessions that expired on the same day were being renewed, and without calling (if it was in reality strictly necessary not to renew a frequency) for a public auction in which the interested parties could compete in conditions of equality in order to obtain one of the available frequencies in light of its expiration.

153. The Commission therefore finds, in view of the repeated statements by the highest officials of the Venezuelan State that RCTV's franchise would not be renewed because of its stance on the news, that the alternative explanation given by the State is unconvincing in light of the available evidence. The Commission finds it has been proven, therefore, that the nonrenewal of RCTV's franchise was motivated not by the presumptively legitimate reasons officially given by the

¹⁹⁵ See, for example, Annex 26, Speech of President Chávez dated June 14, 2006, Communication of the petitioners received on March 1, 2010, Annex B.3, video recording, clip two Annex 28, *El Nacional*, news item headlined "Chávez threatens to revoke television concessions in 2007," dated June 15, 2006, Communication of the petitioners received on February 18, 2010, Annex 29. Annex 27, *El Universal*, news item headlined "Chávez announces new purchases and changes in focus of military equipment," dated June 14, 2006, Communication of the petitioners received on February 18, 2010, Annex 31.

¹⁹⁶ Annex 26, Speech of President Chávez dated December 28, 2006, Communication of the petitioners received on March 1, 2010, Annex B.5. Annex 35, *Aporrea*, "President Chávez: 'RCTV should be shutting down its equipment,'" December 28, 2006, Communication of the petitioners received on February 18, 2010, Annex 38. Annex 36, *Globovisión*, "President Chávez announces that he will not renew RCTV concession," December 20, 2006, Communication of the petitioners received on February 18, 2010, Annex 38.

¹⁹⁷ IACHR Press Release No. 29/07, "IACHR concerned about freedom of expression in Venezuela," May 25, 2007. IACHR. *Democracy and Human Rights in Venezuela*. OEA/Ser.L/V/II.Doc.54, December 30, 2009, para. 419.

¹⁹⁸ IACHR. *Report on the human rights situation in Venezuela*. OEA/Ser.L/V/II.118, October 24, 2003, para. 384.

¹⁹⁹ Cf. IACHR. *Democracy and Human Rights in Venezuela*. OEA/Ser.L/V/II.Doc.54, December 30, 2009, para. 301.

State but by the Venezuelan Government's disagreement with the station's editorial stance; therefore it constitutes a clearly act of abuse of power and a violation of Article 13.3 of the Convention²⁰⁰.

154. In this case, the petitioners have further alleged that the decision not to renew the RCTV franchise constituted an act of discrimination that violated Article 24 of the American Convention. The Commission recalls that Article 24 provides that all persons "are entitled, without discrimination, to equal protection of the law," while Article 1.1 guarantees enjoyment of the rights guaranteed in the Convention "without any discrimination" for reasons that include "political or other opinion." The Court has established in this regard that "[t]here is an inseparable connection between the obligation to respect and guarantee human rights and the principle of equality and non-discrimination"²⁰¹, but that, under Article 24, the general prohibition of discrimination set forth in Article 1.1 "extends to the domestic law of the States Parties"²⁰². For the Court, while the general obligation under Article 1.1 refers to the duty of the State to respect and guarantee "without discrimination" the rights set forth in the American Convention, Article 24 protects the right to "equal protection of the law." That is, Article 24 of the American Convention prohibits discrimination, *de jure* or *de facto*, in respect not only of the rights enshrined in that instrument but of all laws enacted by the State and of their application²⁰³.

155. The petitioners have alleged, and the State has not contested their allegation, that another television channel was operating in similar circumstances to RCTV and whose concession was renewed at the same time that RCTV's application was denied. The IACHR observes that, in fact, RCTV's concession ended on May 27, 2007, as did the concession of other television channels, among them *Venevisión*, a private free-to-air, VHF television station, with a viewing audience similar to that of RCTV and with almost nationwide coverage.²⁰⁴ However, while RCTV's concession was not renewed, the concessions of *Venevisión* and the other television stations were renewed.²⁰⁵ The Commission observes that if the Venezuelan government felt it necessary not to renew the frequency, it could have held a competition among the stations that were similarly situated to determine which frequency it would not renew. However, none of the available evidence suggests that the Venezuelan State ever considered the possibility of using another

²⁰⁰ The IACHR has called the diversion of power "the use of technically valid procedures to mask an unlawful practice." IACHR petition to the I.A. Court H.R.. Case of Ana María Ruggeri Cova, Perkins Rocha Contreras, and Juan Carlos Apitz ("First Court of Administrative Disputes") against the Bolivarian Republic of Venezuela. Case 12.489, November 29, 2006. Para. 128. See also: Constitutional Court of Colombia, ruling C-456-98, defining diversion of power as a concept of administrative law "in which the authority attributed to a state body for an administrative function is used for a purpose other than to meet the public aims for which it was granted." See also: European Court of Human Rights, Case of Gusinskiy v. Russia, Judgment of May 19, 2004, paras. 71-78.

²⁰¹ I.A. Court H.R., "Juridical Condition and Rights of Undocumented Migrants." Advisory Opinion OC-18/03, September 17, 2003. Series A, No. 18, para. 85.

²⁰² I.A. Court H.R., "Juridical Condition and Human Rights of the Child." Advisory Opinion OC-17/02, August 28, 2002. Series A, No. 17, para. 44.

²⁰³ I.A. Court H.R., Case of Atala Riffo and Children v. Chile. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C, No. 239, para. 82.

²⁰⁴ Communication from the petitioners received on February 18, 2010, pp. 194-197. Facts not contested by the State. See, also, information on *Venevisión*, available [in Spanish] at http://www.venevision.com/el_canal/?utm_source=Home_Venevision&utm_medium=Barra_Navegacion&utm_campaign=El_Canal, and information from AGB Nielsen on audience shares in 2006, which found that RCTV had an audience share of 28% nationwide, and *Venevisión* 27%. Available [in Spanish] at: <http://www.agbnielsen.com.ve/libro2006/share/1.htm>.

²⁰⁵ Ministry of the People's Power for Communication and Information. "*Conatel procesa renovación de habilitaciones que vencen el 27 de mayo*" [CONATEL processing renewals of concessions that expire on May 27], May 26, 2007, available [in Spanish] at: http://www.leyresorte.gob.ve/noticias/1/13981/conatel_procesa_renovacion.html. Annex 72, State Communication received on December 4, 2011.

frequency to achieve the objectives spelled out in Communication No. 0424. The IACHR is left to ask why these two channels, which were similar in nature, were treated differently.

156. This distinction might have been reasonable if, for example, RCTV had violated the law or the Constitution. Indeed, as the Commission and Court have consistently recognized, freedom of expression is not an absolute right.²⁰⁶ Article 13 of the American Convention provides expressly—in paragraphs 2, 4 and 5—that it can be subject to certain limitations, and establishes the general framework of the conditions required for such limitations to be legitimate.²⁰⁷ Article 13.2 in particular expressly foresees the possibility of imposing subsequent liability for the abusive exercise of freedom of expression.²⁰⁸ Meanwhile, Article 13.5 of the Convention identifies forms of speech that are not protected by freedom of expression, such as propaganda for war and advocacy of hatred that constitute incitements to lawless violence, direct and public incitement to genocide, and child pornography²⁰⁹. Nonetheless, such a violation of the law by RCTV would have to have been established in a proceeding conducted in accordance with due process norms and respect for the right of defense; there is no evidence to suggest that this happened in the present case.

157. The State for its part limited itself to indicating that the renewal of the concessions of several other free-to-air television broadcasters in addition to that of Venevisión shows that there was no violation of the right to equality before the law.²¹⁰ However, the State did not respond to the petitioners' argument that out of all the television broadcasters, "there were two free-to-air television stations - Radio Caracas Televisión and Venevisión - whose legal, technical and commercial conditions were identical and which the Venezuelan Government treated differently."²¹¹ The State's explanation would serve to justify the creation of a public television channel, but not the differential treatment with respect to two stations in identical conditions. The only explanation for this distinction that appears in the case file is the editorial position or political opinion of the two channels. Specifically, at the time of the events in this case, RCTV was critical of the government, whereas *Venevisión's* editorial line was favorable to the government.²¹² The IACHR observes that

²⁰⁶ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 54; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 79; I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 120; I/A Court H. R., *Case of Tristán Donoso Vs. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. para. 110; I/A Court H. R., *Case of Ríos et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. para. 106; I/A Court H. R., *Case of Perozo et al. Vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. para. 117; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

²⁰⁷ I/A Court H. R., *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. para. 120; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. para. 35; IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996. para. 55; IACHR, Arguments before the Inter-American Court of Human Rights in the *Case of Ricardo Canese v. Paraguay*, cited in I/A Court H. R., *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. para. 72.a)

²⁰⁸ I/A Court H. R., *Case Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 3, 2008. Series C No. 177. para. 54; I/A Court H. R., *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. para. 79; IACHR. Report No. 11/96. Case 11.230. Merits. Francisco Martorell. Chile. May 3, 1996. para. 58; IACHR, Annual Report 1994. OEA/Ser.L/V.88. Doc. 9 rev. 1. 17 February 1995. Chapter V.

²⁰⁹ CIDH. Relatoría Especial para la Libertad de Expresión. Marco Jurídico Interamericano sobre el Derecho a la libertad de expresión. OEA/Ser.L/V/II CIDH/RELE/INF. 1/09. 30 de diciembre de 2009, párrs. 57-60.

²¹⁰ Annex 72, State Communication received on December 4, 2011.

²¹¹ Annex 1, Communication from the petitioners received on February 18, 2010, p. 199.

²¹² Cf. European Union Election Observation Mission, Final Report, Presidential Elections Venezuela 2006, p. 33, available at: http://eas.europa.eu/human_rights/election_observation/venezuela_2006/final_report_en.pdf, where it wrote

the case file contains statements made by high-ranking officials of the Venezuelan government to the effect that some stations had changed their editorial line and would, therefore, have their concessions renewed;²¹³ for others, however, that had not “mended their ways,” “there would be no new concession.”²¹⁴

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that *Venevisión* devoted 84% of its political information to the *oficialista* position during the 2006 election campaign. Also instructive is the statement made by President Chávez on June 14, 2006, where he said in part “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 2002 *coup*, which was everyone.”

²¹³ Annex 28, *El Nacional*, article titled *Chávez amenazó con revocar concesiones a televisoras en 2007* [Chávez threatened to revoke television concessions in 2007], June 15, 2006. Communication from the petitioners received on February 18, 2010, Attachment 29; Annex 29, *Vive*, article titled *Lara: Hay televisoras y emisoras de radio que violentan los derechos de los usuarios* [Lara: there are broadcasters that violate the rights of the audience], June 14, 2006, available [in Spanish] at: http://www.vive.gob.ve/imprimir.php?id_not=1825. Communication from the petitioners received on February 18, 2010, Attachment 32; Annex 30, *Radio Nacional de Venezuela*, report titled *Hay televisoras y emisoras de radio que violentan derechos de usuarios* [Some radio and television stations violate listeners’ rights], June 14, 2006, available [in Spanish] at: <http://www.rnv.gob.ve/noticias/index.php?act=ST&f=2&t=34518>. Communication from the petitioners received on February 18, 2010, Attachment 120; *Venezuela de Televisión*, report titled *Lara: Hay televisoras y emisoras de radio que violentan los derechos de los usuarios* [Lara: some television and radio stations violate the rights of the audience], June 13, 2006, available [in Spanish] at: http://www.vtv.gov.ve/index.php?option=com_content&view=article&id=6077:Lara:%20Hay%20televisoras%20y%20emisoras%20de%20radio%20que%20violentan%20los%20derechos%20de%20los%20usuarios&catid=49:nacionales&Itemid=102.

²¹⁴ Annex 37, *Agencia Bolivariana de Noticias*, article titled *William Lara: Decisión de no renovar concesión a RCTV es legal y constitucional* [William Lara: Decision not to renew the RCTV concession is legal and constitucional], December 29, 2006. Communication of the petitioners received February 18, 2010, Annex 44; Annex 38, *Radio Nacional de Venezuela*, article titled “Servicio Público de Televisión Nacional utilizará espectro que dejará Rctv” [National Television Public Service will use the spectrum left by RCTV], available at: <http://www.rnv.gov.ve/noticias/index.php?act=ST&f=2&t=43149> and *Estado actúa apegado al derecho en caso Rctv* [State obeys the law in the RCTV case], available at: <http://www.rnv.gov.ve/noticias/?act=ST&f=2&t=43138>, both from January 26, 2007. Communication from the petitioners received on February 18, 2010, Annex 103.

With respect to the statements of Minister Chacón Escamillo, see also, Annex 40, *El Universal*, article titled *Gobierno considera entregar señal de RCTV al canal 8* [Government considers transferring RCTV signal to channel 8], December 30, 2006, available at: http://www.eluniversal.com/2006/12/30/pol_art_129283.shtml. Communication from the petitioners received on February 18, 2010, Annex 45; Ministry of the People’s Power for Communication and Information (MINCI), article titled *Hasta el 27 de mayo operará señal abierta de RCTV* [RCTV’s open signal will operate until May 27], available at: <http://www.rnv.gov.ve/noticias/?act=ST&f=2&t=42181>, December 29, 2006, and Annex 41, *Analítica*, article titled “William Lara precisa que la medida contra RCTV se aplicará en marzo” [William Lara clarifies that the measure against RCTV will be applied in March], December 29, 2006, available at: <http://www.analitica.com/va/sintesis/nacionales/4704007.asp>. Communication of the petitioners received on February 18, 2010, Annex 118. Annex 26, Speech by President Chávez, December 28, 2006. Communication from the petitioners received on March 1, 2010, Annex B.5; Annex 35, *Aporrea*, article titled *Presidente Chávez: ‘a RCTV que vayan apagando los equipos’* [President Chávez: ‘RCTV should start turning off its equipment’], December 28, 2006, available at: <http://www.aporrea.org/medios/n88454.html>. Communication from the petitioners received on February 18, 2010, Annex 38; Annex 36, *Globovisión*, article titled *Presidente Chávez anuncia que no renovará concesión de RCTV* [President announces that RCTV concession will not be renewed], December 28, 2006, available at: <http://www.globovision.com/news.php?nid=46142>. Communication from the petitioners received on February 18, 2010, Annex 38; *El Mundo*, article titled *Chávez cancela la licencia a una televisión privada que tacha de ‘golgipista’* [Chávez cancels the license of a private television station deemed ‘subversive’], December 28, 2006, available at: <http://www.elmundo.es/elmundo/2006/12/28/comunicacion/1167326997.html>; *El Universal*, article titled *Reporteros Sin Fronteras pide a Gobierno reconsiderar decisión de no renovar concesión a RCTV* [Reporters without Borders asks Government to reconsider the decision not to renew RCTV’s concession], December 29, 2006, available at: http://www.eluniversal.com/2006/12/29/pol_ava_29A819703.shtml; MINCI, communication titled *Presidente Chávez anunció que no será renovada concesión de Radio Caracas Televisión* [President Chavez announces that RCTV concession will not be renewed], December 28, 2006, available at: http://www.minci.gob.ve/noticias_prensa/28/11513/presidente_chavez_anuncique.html.

158. The IACHR therefore reaffirms that there is sufficient evidence of the political motive behind the decision not to renew the RCTV franchise and the resulting differential treatment applied to two similarly situated television stations based on their political opinions.

159. Notwithstanding the above, the Inter-American Court has noted that “not all differences in treatment are in themselves offensive” but, rather, only such distinction as “lacks objective and reasonable justification.”²¹⁵ The Court has established the difference between “distinctions” and “discrimination”; the former are differences compatible with the American Convention, because they are reasonable and objective; the latter are arbitrary distinctions that are detrimental to human rights.²¹⁶

160. The Commission therefore must determine whether the differential treatment given by the Venezuelan State in not renewing RCTV’s franchise was objective and reasonable. The IACHR recalls in that regard that Article 1.1 of the Convention stipulates specifically that the rights enshrined in that treaty must be guaranteed “without any discrimination for reasons of...political or other opinion.” The specific criteria according to which discrimination is prohibited, under Article 1.1, are not an exhaustive or restrictive list, but merely explanatory;²¹⁷ they do illustrate suspect categories in which differential treatment should be given particularly strict scrutiny.²¹⁸ In practical terms, this means that, the burden of proof falls on the State and the reasons given to justify the distinction are evaluated according to heightened standards, so it is not enough for a State to claim that a legitimate purpose exists; the objective pursued by way of the differential treatment should be a particularly important aim or a pressing social need. Also, it is not sufficient that the measure be applicable, that there exist a logical causal relationship between the measure and the objective pursued; it must be strictly required in order to achieve that aim, in the sense that no less harmful alternative exists. Lastly, compliance with the proportionality criterion requires proof of an appropriate balance of interests, in terms of level of sacrifice and level of benefit.²¹⁹

161. In this case, as we have seen, high officials of the Venezuelan State issued in advance, as grounds for nonrenewal of the RCTV franchise, repeated claims of its alleged role in destabilizing Venezuelan democratic institutions. President Chávez, for example, in referring to the channel, said it was “poisoning people,” that it was “at the service of lies, at the service of subversion, at the service of terrorism, at the service of destabilization,” and that it was “at the service of treason, against the people, against the nation.”

162. The Inter-American Court has stated that “[r]epresentative democracy is a determinant factor of the entire system of which the Convention forms part,” and constitutes “a ‘principle’ reaffirmed by the American States in the OAS Charter, a basic instrument of the Inter-American system.”²²⁰ For the IACHR, then, protecting a country’s democratic institutions is without

²¹⁵ I.A. Court H.R., “Juridical Condition and Human Rights of the Child.” Advisory Opinion OC-17/02, August 28, 2002. Series A, No. 17, para. 46.

²¹⁶ I.A. Court H.R., Case of Castañeda Gutman v. Mexico. Preliminary Exceptions, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C, No. 184, para. 211, citing I.A. Court H.R., “Juridical Condition and Rights of Undocumented Migrants.” Advisory Opinion OC-18/03, September 17, 2003, Series A, No. 18, para. 84.

²¹⁷ I.A. Court H.R., Case of Atala Riffo and Children v. Chile. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C, No. 239, para. 85.

²¹⁸ Cf. IACHR, Petition before the I.A. Court H.R. in the case of Karen Atala and Children v. the State of Chile, September 17, 2010, para. 88, available at: <http://www.IACHR.oas.org/demandas/12.502SP.pdf>.

²¹⁹ Cf. IACHR, Petition before the I.A. Court H.R. in the case of Karen Atala and Children v. the State of Chile, September 17, 2010, para. 89, available at: <http://www.IACHR.oas.org/demandas/12.502SP.pdf>.

²²⁰ I.A. Court H.R., Case of Castañeda Gutman v. Mexico. Preliminary Exceptions, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C, No. 184, para. 141.

doubt a pressing social need that could justify a differential treatment, although under strict scrutiny.

163. Nevertheless, the Court has indicated that when a State intends to justify differential treatment of this sort, it is not sufficient for the state simply to invoke a legitimate aim in the abstract; it must also prove a relationship between the state action and the aim invoked. For example, when in the case of *Atala Ruffo and Children v. Chile* the Chilean State invoked the best interest of the child as the legitimate aim pursued through differential treatment on the basis of sexual orientation, the Court observed that “‘the child’s best interest’ being considered as a legitimate goal, in abstract terms, the mere reference to this purpose, without specific proof of the risks or damage to the girls that could result from the mother’s sexual orientation, cannot serve as a suitable measure to restrict a protected right.”²²¹

164. In this case, the State has not presented an argument or proof demonstrating a relationship between the legitimate aim of protecting the country’s democratic institutions, invoked publicly by the President of the Republic and other high officials, and the State’s nonrenewal of the RCTV franchise for reasons of political opinion. If the information broadcast by RCTV was merely disagreeable or inconvenient to the State officials, they were obliged to tolerate it, since freedom of expression should be guaranteed in terms of the dissemination not only of ideas or information that are favorably received or deemed inoffensive or unimportant but also of ideas and information that offend, shock, disturb, are disagreeable, or upset the State or any sector of the population.²²² That is what pluralism, tolerance, and a spirit of openness entail, and without these a democratic society cannot exist.²²³ If, on the contrary, the owners or staff of RCTV in fact violated Venezuelan law, the State was obliged to show that through a judicial ruling stemming from a proceeding under due process. In this case, on the contrary, there is no evidence of any punishment of persons associated with RCTV for actions that could constitute a threat to the country’s democratic stability. In this sense, the Commission finds that, while the protection and preservation of democracy constitutes, in the abstract, a social imperative, in this case there is no evidence that the differential treatment of RCTV was connected with the aim publicly invoked by the State. Therefore, the IACHR finds that the differential treatment to which RCTV was subjected was discriminatory and arbitrary, in violation of Articles 1.1 and 24 of the Convention.

165. On the basis of the foregoing considerations, the Commission concludes that the nonrenewal of RCTV’s franchise under the circumstances described constituted an indirect curtailment of the freedom of expression of the aforementioned shareholders, directors, and staff of

²²¹ I.A. Court H.R., Case of *Atala Ruffo and Children v. Chile*. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C, No. 239, para. 110.

²²² I.A. Court H.R., Case of *Herrera Ulloa*. Judgment of July 2, 2004. Series C, No. 107, para. 113; I.A. Court H.R., Case of “*The Last Temptation of Christ*” (*Olmedo Bustos et al.*) v. Chile. Judgment of February 5, 2001. Series C, No. 73, para. 69; I.A. Court H.R., Case of *Ríos et al. v. Venezuela*. Preliminary Exceptions, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C, No. 194, para.105; I.A. Court H.R., Case of *Perozo et al. v. Venezuela*. Preliminary Exceptions, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C, No. 195, para. 116; IACHR. 1994 Annual Report. Chapter V: Report on the Compatibility of “*Desacato*” Laws with the American Convention on Human Rights. Title III. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

²²³ I.A. Court H.R., Case of *Herrera Ulloa*. Judgment of July 2, 2004. Series C, No. 107, para. 113; I.A. Court H.R., Case of “*The Last Temptation of Christ*” (*Olmedo Bustos et al.*) v. Chile. Judgment of February 5, 2001. Series C, No. 73, para. 69; I.A. Court H.R., Case of *Ríos et al. v. Venezuela*. Preliminary Exceptions, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C, No. 194, para. 105; I.A. Court H.R., Case of *Perozo et al. v. Venezuela*. Preliminary Exceptions, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C, No. 195, para. 116; IACHR. 1994 Annual Report. Chapter V: Report on the Compatibility of “*Desacato*” Laws with the American Convention on Human Rights. Title III. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

RCTV,²²⁴ in violation of Articles 13.1 and 13.3 of the Convention, as regards Article 1.1 of the same instrument. Because this curtailment arose from a decision based on the channel's political opinion, it also violated the right of equality before the law, enshrined in Article 24 of the Convention, as regards Article 1.1, to the detriment of the same victims.

166. With respect to Article 2 of the Convention, the petitioners alleged the violation of that article, but did not identify what specific aspects of Venezuelan domestic law violated the Convention, or why. The Commission finds, in this instance, that the petitioners have not presented sufficient evidence to enable the IACHR to examine a possible violation of Article 2; therefore it does not find that a violation of that article occurred in this case.

B. Article 21 (Right to Property) taken in conjunction with Article 1(1) of the American Convention.

167. The pertinent part of Article 21 of the American Convention reads as follows:

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

168. The first paragraph of Article 21 of the American Convention recognizes the right to private property, including its use and enjoyment. It also adds a limitation on that right by providing that the law may subordinate the use and enjoyment of that right to the interest of society. In its case law, the Inter-American Court has developed a broad concept of property²²⁵ that encompasses, *inter alia*, the use and enjoyment of property, defined as those material objects that can be possessed, and any rights which may be part of a person's assets. That concept includes all movables and immovables, and all tangible and intangible assets, as well as any other intangible property that can have a value.²²⁶ The Court has also held that Article 21 protects acquired rights, understood as rights that have become part of a person's assets.²²⁷

169. The right to property is not absolute, as Article 21(2) of the Convention provides that the only way a person shall be deprived of his property is upon payment of just compensation, for reasons of public utility or social interest; furthermore, it must be done in the cases and according to the forms established by law.²²⁸

²²⁴ Marcel Granier, Peter Bottome, Jaime Nestares, 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.

²²⁵ Cf. I/A Court H.R., *Case of Chaparro Álvarez and Lapo Iñiguez. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, paragraph 174.

²²⁶ Cf. I/A Court H.R., *Case of the Mayagna (Sumo) Awá Tingni Community v. Nicaragua. Merits, Reparations and Costs*. Judgment of August 31, 2001. Series C No. 79, paragraph 144; *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135, paragraph 102; *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of June 17, 2005. Series C No. 125, paragraph 137; and *Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 15, 2005. Series C No. 124, paragraph 129.

²²⁷ Cf. I/A Court H.R., *Case of the "Five Pensioners" v. Peru.. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, paragraph 102.

²²⁸ Cf. I/A Court H.R., *Case of Chaparro Álvarez and Lapo Iñiguez, supra* note 47, paragraph 174.

170. The Court, for its part, has written that “the restriction must be proportionate to the legitimate interest that justifies it and must be limited to what is strictly necessary to achieve that objective. It should interfere as little as possible with effective exercise of [a] right [...].”²²⁹ The Court has also held that in order for the State to legitimately satisfy a social interest and strike a fair balance with an individual’s interest, it must use proportional means so as to inflict the least harm on the right to property of the person affected.²³⁰ It went to write that within the framework of an abridgement of the right to private property, in particular in the case of an expropriation, the restriction must be in full and faithful compliance with the requirements contained in Article 21(2) of the Convention and be done accordingly.²³¹

171. In the present case, the petitioners have alleged three different violations of the RCTV shareholders’ right to private property.²³² First, they are alleging a violation of the right to property based on the decline in the value of RCTV shares as a result of the decision not to renew RCTV’s concession and license. Second, they are alleging that the “illegitimate deprivation” of RCTV’s concession was itself a violation of the right to property. Third, they are alleging that the seizure of RCTV’s tangible assets is also a violation of the right to property. The Commission will now proceed to examine each of these three allegations, starting with the last.

1. The seizure of RCTV’s tangible assets

172. As has been established, on May 25, 2007, in conjunction with two petitions seeking *amparo* relief in connection with the non-renewal of RCTV’s concession, the Constitutional Chamber of the Supreme Court ordered injunctive relief by temporarily assigning to CONATEL the use of certain assets belonging to RCTV, such as transmitters, antennas and towers.²³³ The Constitutional Chamber reasoned, *inter alia*, that when it took over the frequency previously assigned to RCTV, the TVes “might not have the infrastructure necessary for nationwide broadcasting of the same quality and under the same terms as the service heretofore provided” and that the State had an obligation to ensure delivery of a universal public telecommunications service; it held, therefore, that in exercise of its “broad investigative authorities” and its power to “decide in favor of injunctive relief, it was ordering the “temporary” assignment of RCTV’s equipment to CONATEL.²³⁴ The Chamber clarified that the measures ordered did not imply “an infringement of any property rights that Radio Caracas Televisión, C.A. might have to that infrastructure or equipment.”²³⁵ The injunction was executed on May 27 and 28, 2007, when the assets specified in

²²⁹ Cf. I/A Court H.R., *Case of Herrera Ulloa v Costa Rica. Preliminary Objections, Merits, Reparations and Costs*, Judgment of July 2, 2004, paragraph 123.

²³⁰ Cf. I/A Court H.R. *Case of Salvador Chiriboga v. Ecuador*. Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, paragraphs 63-64.

²³¹ Cf. I/A Court H.R.. *Case of Salvador Chiriboga v. Ecuador*. Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, paragraphs 63-64.

²³² Annex 1, Communication from the petitioners received on February 18, 2010, p. 114.

²³³ Annex 64, Supreme Court, Constitutional Chamber, Case No. 07-0720, Decision No. 956 of April 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78. Annex 65, Supreme Court, Constitutional Chamber, Case No. 07-0731, Decision No. 957 of April 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78.

²³⁴ Annex 64, Supreme Court, Constitutional Chamber, Case No. 07-0720, Decision No. 956 of April 25, 2007, pp. 13, 14, 20, Communication from the petitioners received on February 18, 2010, Attachment 78.

²³⁵ Annex 64, Supreme Court, Constitutional Chamber, Case No. 07-0720, Decision No. 956 of April 25, 2007, p. 20, Communication from the petitioners received on February 18, 2010, Attachment 78.

the court rulings were transferred to CONATEL, along with other objects not mentioned in the ruling.²³⁶ As of the adoption of this report, the property in question is still in the State's possession.

173. The petitioners are alleging that the seizure of the assets was "clearly in violation of the law, as it is not permitted in any legal provision"; they pointed that the "Organic Telecommunications Law of Venezuela does not in any way authorize private property to be impounded, confiscated or to revert back to the State." They contend that the seizure of RCTV's assets was the result of a "judicial ambush" and is "a confiscatory act contrary to the Constitution, to the American Convention and international law in general."²³⁷ The State for its part defends the ruling of the Supreme Tribunal of Justice, indicating that the ruling "seeks to protect the collective and diffuse interests of users of television services, guaranteeing their constitutional and legal rights to receive objective, timely and true information through the media."²³⁸ The State also highlights that "it is false that any equipment has been damaged while in State hands, as the State is using this equipment currently to broadcast Televisora Venezolana Social."²³⁹

174. The Inter-American Commission recalls the finding of the Inter-American Court to the effect that:

In order for the deprivation of the property of a person to be compatible with the right to property embodied in the Convention, it should be based on reasons of public utility or social interest, subject to the payment of just compensation, and be restricted to the cases and according to the forms established by law.²⁴⁰

175. The Court has examined and applied the concept of "deprivation" of property not just in cases of formal expropriation,²⁴¹ but also in cases involving temporary impoundment of assets as part of a criminal investigation²⁴² and even in cases in which the ownership of the property has not been affected but its use and enjoyment have.²⁴³ Nonetheless, in order to find a violation of the right to property, it is necessary that an effect on the personal patrimony of the alleged victims be plainly established. In this way, it is possible to distinguish between State actions that affect the rights of a legal person and those that affect the rights of a natural person²⁴⁴. In the

²³⁶ Annexes 66-69, Records of Execution of Supreme Court Judgment and Inventories of Assets dated May 27 and 28, 2007, in connection with the Constitutional Chamber's Decision No. 956 of May 25, 2007. Communication from the petitioners received on February 18, 2010, Attachment 79.

²³⁷ Annex 1, Communication from the petitioners received on February 18, 2010, 48.

²³⁸ Annex 72, State Communication received on December 4, 2011.

²³⁹ Annex 72, State Communication received on December 4, 2011.

²⁴⁰ 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 128.

²⁴¹ Cf. I/A Court H.R., *Case of Salvador Chiriboga v. Ecuador*. Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, paragraphs 48 *et seq.*

²⁴² I/A Court H.R., *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraphs 183 *et seq.*

²⁴³ Cf. I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, paragraphs 128-130.

²⁴⁴ 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, para. 128, citing International Court of Justice, *Barcelona Traction, Light and Power Company, Limited, Judgment* (February 5, 1970), para. 47. See also International Court of Justice, *Ahmadou Sadio Diallo, Preliminary Objections* (May 24, 2007), paras. 77-94. As the Inter-American Court has noted, this examination should be a careful one and take place on a case by case basis, as "in general, the rights and obligations attributed to companies become rights and obligations for the individuals who comprise them or who act in their name or representation." I/A Court H.R., *Case of Cantos v. Argentina*. Preliminary Objections. Judgment of September 7, 2001. Series C No. 85, para. 27. See also, International Court of Justice, *Elctronica Sicula S.P.A. (ELSI), Judgment* (July 20, 1989).

instant case, the Commission finds that the petitioners have not presented sufficient evidence of a direct effect on the personal patrimony of the shareholders presented as victims as a result of the State's seizure of RCTV's tangible assets.

2. Non-renewal of RCTV's concession and the alleged violation of the right to property

176. As previously observed, the petitioners alleged that the non-renewal of RCTV's concession was itself a violation of the RCTV shareholders' right to property. According to the petitioners, the "preconceived, prejudiced mindset of the government" destroyed "any legitimate expectation that RCTV" might have had of remaining in operation, and "unlawfully stripped it of a property-related subjective public right."²⁴⁵

177. As previously noted, in its case law the Inter-American Court has developed a broad concept of property that encompasses, *inter alia*, the use and enjoyment of property, defined as tangible objects that one can own, as well as any right that has become part of a person's assets.²⁴⁶ Through Article 21 of the American Convention, the Court has protected acquired or vested rights, understood as being those rights that have become part of a person's assets.²⁴⁷ Thus, for example, the Court has deemed Article 21 violated by the harm caused to a party's assets by failure to comply with court rulings that seek to protect the right to a pension,²⁴⁸ and retroactive application of decrees that had the effect of reducing employees' salaries.²⁴⁹ In the cases cited here, the Court held that "acquired or vested rights" that are part of a person's assets, such as pensions, wages, benefits and increases, are protected by the right to property recognized in the Convention.²⁵⁰

178. In the instant case, the Commission must determine whether renewal of RCTV's concession constituted an acquired right and whether that right was part of RCTV shareholders' assets. The Commission finds that, given the uncertainty with regard to the applicable Venezuelan law and its proper interpretation within the framework of Venezuelan domestic law, one cannot conclude in this proceeding that RCTV had a vested or acquired right to automatic renewal of its concession. In the previous section, the Commission established the fact that at the very least RCTV was entitled to participate, under conditions of equality, in an open and transparent renewal process operated by clear, objective and non-discriminatory criteria. The Commission observes, too, that while the Court has developed a broad concept of property, its case law on the subject of acquired or vested rights has been about those things that directly affect a person's assets, such as a pension or salary. In the instant case, while the non-renewal of RCTV's concession would have an effect on the assets of the station's shareholders, it has not been shown that the concession itself

²⁴⁵ Annex 1, Communication from the petitioners received on February 18, 2010, pp. 165-167.

²⁴⁶ Cf. I/A Court H.R., *Case of Ivcher Bronstein v. Peru. Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74, paragraphs. 120-122; *Case of Salvador Chiriboga v. Ecuador. Preliminary Objection and Merits*. Judgment of May 6, 2008. Series C No. 179, paragraph 55.

²⁴⁷ Cf. I/A Court H.R., *Case of Abrill Alosilla et al. v. Peru*. Merits, Reparations and Costs. Judgment of March 4, 2011 Series C No. 223, paragraph 82. *Case of the "Five Pensioners" v. Peru. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, paragraph 102; *Case of Salvador Chiriboga*, *supra* note 76, paragraph 55, and *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller")*, *supra* note 68, paragraph 84.

²⁴⁸ I/A Court H.R. *Case of the Five Pensioners v. Peru*. Merits, Reparations and Costs. Judgment of February 28, 2003. Series C No. 98, paragraphs 115, 121.

Cf. I/A Court H.R. *Case of Abrill Alosilla et al. v. Peru*. Merits, Reparations and Costs. Judgment of March 4, 2011, Series C No. 223, paragraph 84.

Cf. I/A Court H.R., *Case of Abrill Alosilla et al. v. Peru*. Merits, Reparations and Costs. Judgment of March 4, 2011 Series C No. 223, paragraph 83.

was part of their assets. The Commission therefore concludes that non-renewal of RCTV's concession did not constitute a violation of RCTV shareholders' right of property.

3. The decline in the value of RCTV shares

179. The petitioners' third allegation regarding the right to property concerns the loss in the value of RCTV shares. They contend that "a share is protected by the right to property" and that in the instant cases, "the shares, understood as property titles representing the shareholders' investment, were essentially destroyed when, by an unlawful action of the State, RCTV's capital was destroyed."²⁵¹ For the petitioners, "the State's action was intended to unlawfully strip RCTV of its essential asset, without which it had no *raison d'être*; for any television broadcaster, its place on the radio electric spectrum is essential to transmit its signal. To unlawfully destroy the right to the concession will inexorably lead to the destruction of the investment represented by the shares owned by the investors-shareholders."²⁵² The State for its part indicated that "with regard to RCTV corporate shareholders and their economic damages, these shareholders know that concessions expire, and that in the 50 years during which RCTV was operating commercially, its shareholders saw many millions in earnings."²⁵³

180. The Inter-American Court has written that the shares a person owns in a company may be an asset class protected by Article 21 of the Convention. Thus, in the *Ivcher Bronstein* case, the Court wrote that "participation in the share capital could be evaluated and formed part of its owner's patrimony from the moment of its acquisition; as such, that participation constituted a property over which Mr. Ivcher had the right to use and enjoyment."²⁵⁴ Here the Court drew a clear distinction between Mr. Ivcher's rights as a shareholder and the rights of the company itself; its analysis was of Mr. Ivcher's rights as a shareholder.²⁵⁵

181. The Commission observes that in the *Ivcher Bronstein* case, the Court found a violation of Article 21 based on facts that directly affected the "use and enjoyment" of Mr. Ivcher's shares. Specifically, the suspension of Mr. Ivcher's rights as majority shareholder in his company meant that he could no longer direct the news line of the media outlet he owned, could not participate in the meetings of its board of directors, and could not transfer his shares, receive dividends or exercise other rights to which he was entitled as a shareholder.²⁵⁶ In short, Mr. Ivcher completely lost the right to the use and enjoyment of his shares in the company.

182. In the instant case, while the asset class in question –shares in a company- is the same as the asset class at issue in the *Ivcher* case, the damage being alleged is different. The petitioners in the instant case are not claiming that RCTV shareholders have been deprived of their shares in the company, or that they were at any time denied the use and enjoyment of their shares. Instead, they are alleging that, as a result of the decision not to renew RCTV's concession –a decision already found to be unlawful in the preceding section of this report- the value of their shares has been "destroyed".

²⁵¹ Annex 1, Communication from the petitioners received on February 18, 2010, pp. 157, 161.

²⁵² Annex 1, Communication from the petitioners received on February 18, 2010, p. 162.

²⁵³ Annex 72, State Communication received on December 4, 2011.

²⁵⁴ Cf. I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74, paragraph 123.

²⁵⁵ Cf. I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74, paragraph 127.

²⁵⁶ Cf. I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74, paragraph 126.

183. The Commission has already concluded that the decision of the Venezuelan State not to renew RCTV's concession was arbitrary and discriminatory. The Commission also recognizes that the nonrenewal of the concession may have resulted in a loss of economic opportunities for RCTV and its shareholders. However, the Commission observes that although the petitioners submitted a report on the "Economic effect of the closure of RCTV's free to air TV signal,"²⁵⁷ they do not cite this Report in their observations on the issue under examination, nor do they explain how this Report and its annexed documents serve to establish an effect on the value of RCTV's shares as a direct result of this occurrence.

C. Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, taken in conjunction with Article 1(1) thereof

184. Article 8(1) of the American Convention recognizes every person's right to a hearing, before a competent court within a reasonable time:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

185. Article 25 of the American Convention protects every person's right to a simple and prompt recourse to a competent court or tribunal for protection against acts that violate his fundamental rights:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

186. In the case *sub examine*, the petitioners allege a number of violations of the rights protected by articles 8 and 25 of the American Convention. These violations concern: 1) the government decisions not to renew RCTV's concession; 2) the court challenge against the decision not to renew the concession; 3) the court proceeding that ordered that RCTV's property assets be assigned to CONATEL; 4) the criminal complaints filed by RCTV; and 5) the court proceedings on the provisions measures ordered for RCTV employees. The Commission will now examine the arguments made in connection with each of these points.

1. The government decisions not to renew RCTV's concession

²⁵⁷ On March 22, 2010, the petitioners submitted a report on the "Economic effect of the closure of RCTV's free-to-air TV signal," Annex 71, Report on the economic effect of the closure of RCTV's free-to-air TV signal, Communication from the petitioners received on March 22, 2010, Annex. This report concludes that the "negative economic impact on RCTV" of the nonrenewal of the concession "is \$1,042,508,988."

187. The petitioners contend that the administrative process that led to the non-renewal of RCTV's concession was a violation of Article 8 of the Convention. Specifically, they point to a number of due process violations and a lack of impartiality on the part of the authorities who made the decision on the renewal application.

188. The Commission observes in this regard, as has the Court, that while Article 8 of the American Convention is titled "Right to a Fair Trial" its application is not limited to trial rights *stricto sensu*. In effect, in proceedings to determine administrative sanctions and proceedings that determine rights (such as the use of a broadcasting frequency), the State must respect a series of minimum guarantees that are derived from Article 8.²⁵⁸

189. The obligation to respect due process in administrative proceedings fully applies to the procedures through which radio or television concessions are granted since, as previously observed, these decisions have a definitive impact on the right to freedom of expression.²⁵⁹ Therefore, it is worth repeating that the process of granting and renewing concessions must be carried out in strict accordance with the law, and be a transparent process²⁶⁰ guided by criteria that are objective, clear, public, non-discriminatory, and compatible with a democratic society.²⁶¹ Finally, before any decision is taken, a party seeking a decision of this kind must have the right to a hearing and to offer evidence; that party also has a right to a reasoned decision delivered within a reasonable period of time, and to judicial review.²⁶²

190. In the section of this report that concerns freedom of expression and equality before the law, the Commission established that the process that led to the decision not to renew RCTV's concession did not comply with the procedural obligations that arise from the right to freedom of expression. The procedural obligations that follow from Article 13 are dictated by the administrative

²⁵⁸ Cf. I/A Court H.R.. *Case of Baena Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paragraph 124. See also, IACHR. *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*. OEA/Ser.L/V/II.129. September 7, 2007, paragraphs 98-123. Available at: <http://www.cidh.org/countryrep/AccessoDESC07eng/Accessodescindice.eng.htm>

²⁵⁹ IACHR, Office of the Special Rapporteur for Freedom of Expression. *Freedom of Expression, Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, paragraphs 60-61. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/Broadcasting%20and%20freedom%20of%20expresion%20FINAL%20PORTADA.pdf> <http://www.cidh.org/pdf%20files/Estandares%20para%20radiodifusion%20incluyente.pdf>

²⁶⁰ Joint Declaration on Diversity in Broadcasting, December 12, 2007. The Council of Europe's Committee of Ministers stated that: "13. One of the essential tasks of regulatory authorities in the broadcasting sector is normally the granting of broadcasting licences. The basic conditions and criteria governing the granting and renewal of broadcasting licences should be clearly defined in the law" and that "14. The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity." Council of Europe. Committee of Ministers. *Appendix to Recommendation Rec(2000)23 of the Committee of Ministers to member states*. Rules 13-14. December 20, 2000. Available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2000\)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2000)23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75).

²⁶¹ In this regard, the Committee of Ministers of the Council of Europe has recommended that "The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity." Council of Europe. Committee of Ministers. *Appendix to Recommendation Rec(2000)23 of the Committee of Ministers to member states*. Rules 13-14. December 20, 2000, paragraph 14.

²⁶² IACHR, Office of the Special Rapporteur for Freedom of Expression. . *Freedom of Expression, Standards for Free and Inclusive Broadcasting*. OEA/Ser.L/V/II CIDH/RELE/INF. 3/09. December 30, 2009, paragraphs 74-78. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/Broadcasting%20and%20freedom%20of%20expresion%20FINAL%20PORTADA.pdf> .

due process obligations that are enshrined in Article 8.²⁶³ The Commission therefore considers that the State also violated Article 8 of the Convention by conducting an administrative process that had a definitive impact on the right to freedom of expression, without observing due process of law. While it will not revisit all the considerations mentioned earlier, the Commission would point out that this process was conducted in secret, outside the boundaries of the clear framework of laws in place, and RCTV's right to be heard and to offer evidence was not respected. Thus, in keeping with this report's findings in the section on freedom of expression and equality before the law, the Commission finds that the administrative procedure that ended in the decision not to renew RCTV's concession violated the State's obligations under Article 8 of the American Convention, to the detriment of the shareholders, executives and employees of RCTV who are victims in the instant case.²⁶⁴

2. The court challenge of the decision not to renew the concession

191. The petitioners are alleging a number of violations related to the court proceedings instituted to challenge the non-renewal of RCTV's concession or suspend the effects of that decision. They basically recount that the petition of *amparo* filed on February 9, 2007 was not decided within a reasonable period, that the administrative law remedy seeking nullification and the petitions seeking injunctive relief have not been decided within a reasonable period, and that the authority called upon to decide the issue of nullification is neither independent nor impartial.

192. As was shown in the section on established facts, on February 9, 2007, a group of executives, journalists and other employees of RCTV filed a petition seeking *amparo* relief with the Constitutional Chamber of the Supreme Court. The petition was filed against the President of the Republic and the MPPTI,²⁶⁵ and alleged an imminent, immediate and possible violation of their rights to freedom of expression, due process, equality and non-discrimination. The petition of *amparo* alleged that the respondents had prevented RCTV from being able to exercise: i) the right to a hearing to freely state its allegations; ii) administrative due process, and iii) its right to obtain a decision on its request for an extension or renewal of its concession, delivered by an impartial body on the basis of law. The petitioners point out that "the Constitutional Chamber took more than 90 days to decide the question of the petition's admissibility, which is a flagrant violation of domestic law, which sets three days as the deadline for deciding the question of admissibility; it is thus also a violation [...] of Article 25 of the Convention."²⁶⁶

193. The Commission observes that, in fact, the Constitutional Chamber did not rule on the admissibility of the petition seeking *amparo* relief until May 17, 2007,²⁶⁷ more than three months after it was filed. The Commission recalls, as has the Court, that Venezuelan law, specifically the 1988 Organic Law on *Amparo* for Constitutional Rights and Guarantees, provides

²⁶³ See, also, IACHR. *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights.* OEA/Ser.L/V/II.129. September 7, 2007, paragraphs 138-169. Available at: <http://www.cidh.org/countryrep/AccessoDESC07eng/Accessodescindice.eng.htm>

²⁶⁴ 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, Odila Rubín, Oswaldo Quintana, Eduardo Sapene, Eladio Lárez, Daniela Bergami, Isabel Valero, Miguel Ángel Rodríguez, Soraya Castellano, María Arriaga and Larissa Patiño.

²⁶⁵ Annex 73, Petition seeking *amparo* relief filed with the Constitutional Chamber of the Supreme Court on February 9, 2007, Communication from the petitioners received on February 18, 2010, Attachment 107.

²⁶⁶ Annex 1, Communication from the petitioners received on February 18, 2010, p. 180.

²⁶⁷ Annex 76, Supreme Court, Constitutional Chamber, Case No. 07-0197, Inadmissibility decision of May 17, 2007, Communication from the petitioners received on February 18, 2010, Attachment 109.

that a petition for *amparo* relief is a rapid remedy for alleged violations of human rights.²⁶⁸ That law states that it is a “brief, summary and effective” remedy and provides that the courts shall give “preference to processing petitions for *amparo* relief over all other matters.”²⁶⁹

194. In the case *sub examine*, it is clear that the formalities prescribed by Venezuelan law for petitions of *amparo* were not observed. Nor can it be claimed that the decision delivered three months after the petition was filed, was the prompt recourse required under Article 25(1) of the Convention.²⁷⁰ The Court has held that *amparo* remedies will be illusory and ineffective if there is unjustified delay in reaching a decision on them.²⁷¹ Here it is worth noting that in this case the failure to observe the deadline prescribed by law had a real and serious effect, since while the decision on the petition of *amparo* was still pending, in violation of Venezuelan law, the MPPTI issued, on March 29, 2007, Communication No. 0424 in which it announced that RCTV’s concession would not be renewed. As has been shown, this decision was the result of a process that violated even the most fundamental guarantees of due process, wrongs that the petition of *amparo* filed on February 9, 2007 might have prevented. In other words, the delay in deciding the petition of *amparo* was not only a violation of Venezuelan law, but also had the effect of enabling the consummation of the very violations that the petition of *amparo* was intended to prevent. The petitioners indicated that “the Chamber waited until the violation of our rights had been formally consummated and then denied us justice and forced us to file the action seeking nullification of a measure that the writ of *amparo*, had it been granted, should have prohibited.”²⁷² The Commission therefore considers that the delay in deciding the petition of *amparo* violated the right to “simple and prompt recourse [...] for protection against acts that violate [one’s] fundamental rights,” as provided under Article 25(1) of the Convention, to the detriment of the shareholders, executives and employees who jointly filed the petition seeking *amparo* relief.²⁷³

²⁶⁸ Cf. I/A Court H.R.. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraphs 155 and 156. The relevant part of the 1988 Organic Law on *Amparo* for Constitutional Rights and Guarantees, available [in Spanish] at: <http://www.tsj.gov.ve/legislacion/loadgc.html>, reads as follows:

Article 22.- the Court hearing a petition seeking *amparo* relief shall have the authority to restore the violated right, foregoing purely procedural considerations and without any type of preliminary inquiry.

In such a case, the writ of *amparo* shall be reasoned and shall be based on evidence that constitutes a strong presumption of the violation or threat of violation.

Article 23. If the judge opts not to immediately restore the violated right pursuant to the preceding article, he or she shall order the authority, entity, social organization or private parties accused of violating or threatening to violate the constitutional right or guarantee, to file, within forty-eight (48) hours from the time of notification, a report on the alleged violation or threat that prompted the filing of the petition.

Failure to report shall be understood as tacit acceptance of the facts alleged.

Article 26.- Within the ninety-six (96) hours following the presentation of the report by the alleged perpetrator or once the corresponding period has run its course, the judge hearing the petition of *amparo* shall set the date for the parties or their legal representatives to present their respective arguments in oral, public proceedings.

Once that hearing is held, the judge shall have twenty-four (24) hours in which to decide the petition for constitutional *amparo*. That period is not subject to extension.

²⁶⁹ 1988 Organic Law of *Amparo* for Constitutional Rights and Guarantees, arts. 4, 13, available [in Spanish] at: <http://www.tsj.gov.ve/legislacion/loadgc.html>.

²⁷⁰ Cf. I/A Court H.R.. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 156.

²⁷¹ Cf. I/A Court H.R.. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, paragraph 134.

²⁷² Annex 1, Communication from the petitioners received on February 18, 2010, p. 85.

²⁷³ In the petition of *amparo*, RCTV represented the shareholders and all the executives and employees of RCTV who are victims in the present case, with the exception of Eladio Lárez. The victims of this violation are, therefore, the
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195. The Commission applies these same standards in analyzing the petition seeking injunctive relief and, failing that, the petition seeking unspecified injunctive relief that was filed along with the administrative-law petition seeking nullification of the government's decision not to renew RCTV's concession. As has been established, this petition was filed on April 17, 2007, in conjunction with the petition seeking nullification. The Supreme Court's Political-Administrative Chamber declared the petition seeking *amparo* relief to be inadmissible on May 22, 2007; the same court declared the petition for unspecified injunctive relief to be out of order on July 31, 2007.

196. The Commission observes, as did the Inter-American Court, that the Supreme Court's Political-Administrative Chamber has itself written that "the treatment given to the *amparo* action exercised together with the petition for nullification of administrative acts must be reviewed"²⁷⁴ and agreed "to provide similar treatment to that applied in the case of other precautionary measures; therefore, once the main claim is admitted by the Chamber [...] the appealed precautionary measure should be solved forthwith."²⁷⁵ In this connection, the Court wrote that under Venezuelan domestic law, the precautionary nature of the *amparo* petition filed together with the petition for nullification calls for temporary -though immediate- protection, given the nature of the harm caused. These circumstances allow for restoration of the affected legal situation to its status prior to the occurrence of the alleged violation, while a final decision is rendered in the main judicial proceeding.²⁷⁶

197. The petitioners make the point that the precautionary *amparo* or, failing that, the unspecified injunctive relief being sought must, under Venezuelan law, be decided within three working days,²⁷⁷ an argument that the State has not contested. The Commission considers that notwithstanding the importance of meeting the legally-prescribed deadlines, the delay of over one month in deciding the petition seeking precautionary protection of constitutional rights and guarantees did not prejudice the victims' access to justice given that it was resolved before the event it was meant to prevent, that is RCTV being removed from the air. In contrast, the more than three months' delay in ruling on the petition seeking unspecified injunctive relief did strip the measure of any chance of efficacy since, by July 31, 2007, the government decision not to extend RCTV's concession had already been enforced and RCTV was forced off the airwaves. The Commission therefore concludes that the failure to issue a prompt and immediate ruling²⁷⁸ on the petition for unspecified injunctive relief that was filed in conjunction with the administrative-law

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following: 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, Odila Rubin, Oswaldo Quintana, Eduardo Sapene, Daniela Bergami, Isabel Valero, Miguel Ángel Rodríguez, Soraya Castellano, María Arriaga and Larissa Patiño. See Annex 73, Petition of *Amparo* filed with the Constitutional Chamber of the Supreme Court, February 9, 2007, Communication from the petitioners received on February 18, 2010, Attachment 107.

²⁷⁴ Cf. I/A Court H.R.. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 168, citing ruling No. 535 of the Political-Administrative Chamber of April 18, 2007, at 3841.

²⁷⁵ Cf. I/A Court H.R.. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 168, citing ruling No. 535 of the Political-Administrative Chamber of April 18, 2007, at 3842 and 3843 .

²⁷⁶ Cf. I/A Court H.R.. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 169,

²⁷⁷ Annex 1, Communication from the petitioners received on February 18, 2010, p. 182, citing Article 19 of the Organic Law of the Supreme Court and Article 10 of the Code of Civil Procedure.

²⁷⁸ Cf. I/A Court H.R.. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 171.

remedy seeking nullification, violated Article 25(1) of the Convention, to the detriment of RCTV's shareholders, executives and employees who are victims in the present case.²⁷⁹

198. Different considerations apply in the case of the nullification remedy which, although filed in conjunction with the petitions seeking precautionary protection, mentioned above, sought different ends. While *amparo* must be a "simple and prompt" recourse under Article 25 (1) of the Convention, the petition for nullification must be decided "within a reasonable time", as provided in Article 8(1) of the Convention.²⁸⁰

199. The administrative law remedy seeking nullification of Resolution No. 002 and Communication No. 0424 was filed with the Political-Administrative Chamber of the Supreme Court on April 17, 2007. According to the information available to the Commission, the decision on that remedy was still pending on the date of adoption of the present report.²⁸¹ To determine whether this period is reasonable, the Commission, like the Court, takes the following criteria into account: i) the complexity of the matter; ii) the procedural activity of the interested party; iii) the behavior of the judicial authorities; and iv) the effect on the legal situation of the persons involved in the process.²⁸²

200. The Commission observes that in principle, it is up to the Venezuelan State to explain –based on the criteria listed above– why the Political-Administrative Chamber has required the time elapsed since April 17, 2007 to adopt a decision on the remedy seeking nullification.²⁸³ The State indicated in this regard that "only four years have passed" and "this is the highest Tribunal of the Republic, which gives preference to collective priorities. The case of RCTV is an individual case, although the executives wish to present it as a collective problem, manipulating journalists."²⁸⁴ The State concludes that "taking into account the number of cases that the Supreme Tribunal of Justice receives, we cannot state that a judicial delay has taken place."²⁸⁵

201. The Commission observes that the State's arguments, which primarily make reference to the Supreme Tribunal of Justice's workload, do not address the four factors that the Commission uses for analyzing the reasonableness of a period of time for resolving a case. The Commission will thus analyze these factors in light of the available evidence. First, as was shown in the section on established facts, the nullification petition that RCTV filed alleges violation of seven constitutional rights and that the decisions were fatally flawed and illegal on eight different grounds.

²⁷⁹ In the filing of the administrative-law petition for nullification and the petitions for precautionary *amparo* and unspecified injunctive relief, RCTV participated as representative of its shareholders and all the executives and employees of RCTV who are victims in the present case. The victims of this violation are, therefore, the following: 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. See Annex 16, Administrative-law Petition for Nullification, filed with the Supreme Court's Political-Administrative Chamber on April 17, 2007, pp. 47-54, Communication from the petitioners received on February 18, 2010, Attachment 110.

²⁸⁰ Cf. I/A Court H.R.. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 170.

²⁸¹ Annex 79, Report on the procedural status of the petitions and requests filed by RCTV, Communication from the petitioners received on August 5, 2011, Attachment 13, p. 9. Information not contested by the State.

²⁸² Cf. I/A Court H.R.. *Case of López Mendoza v. Venezuela*. Merits, Reparations and Costs. Judgment of September 1, 2011 Series C No. 233, paragraph 174. [translation ours].

²⁸³ Cf. I/A Court H.R.. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 172.

²⁸⁴ Annex 72, State Communication received on December 4, 2011.

²⁸⁵ Annex 72, State Communication received on December 4, 2011.

So many allegations undoubtedly involved a certain degree of complexity when the time came to decide the case, although none of the points raised by RCTV would appear to require an especially demanding fact-finding investigation, with the possible exception of the arguments concerning the availability of frequencies other than RCTV's to accomplish the objectives of the National Telecommunications Plan.²⁸⁶ As for the interested parties' procedural activity, the available information does not suggest that the litigants engaged in any activity that would have caused an unwarranted delay in processing the petition.²⁸⁷ Their interventions in the proceedings included the offer of evidence, an appeal of the ruling declaring certain evidence inadmissible, and the filing of three more petitions seeking unspecified injunctive relief.²⁸⁸ While their involvement was active, there is nothing to suggest that it was frivolous. As for the conduct of the judicial authorities, the IACHR observes the long delays in settling the procedural issues necessary for the case to move forward. The court took from October 23, 2007 to March 6, 2008 to deliver its ruling on the admissibility of the evidence offered by the parties. Both parties appealed this ruling; a decision on those appeals has been pending since June 26, 2008; in the meantime, the proceedings have been suspended.²⁸⁹ In the interim, the situation of the persons involved has been continuously affected as they have been unable to express their views over the RCTV free-to-air television channel. Based on these considerations –and, again, lacking any explanation from the State for the more than four years' delay in arriving at a decision on this matter– the Commission declares that the administrative-law petition filed for nullification has not been decided within a reasonable period, in violation of Article 8(1) of the Convention and to the detriment of the RCTV shareholders, executives and employees who are victims in the present case.²⁹⁰

202. Finally, the petitioners are alleging that the body called upon to decide the petition seeking nullification –i.e., the Supreme Court's Political-Administrative Chamber– is neither independent nor impartial. They allege, *inter alia*, that when denying the petition seeking protective *amparo*, the Political-Administrative Chamber had advanced an opinion on the merits of the petition for nullification and had expressed an opinion to the effect that RCTV's property could revert back to the State, a matter that was not even being litigated in the petition for nullification.

203. As for the first point, the Commission observes that when it denied the petition seeking *amparo* relief, the Political-Administrative Chamber declared that non-renewal of the frequency "in no way implies a supposed violation of that right [to freedom of expression], since

²⁸⁶ Annex 16, Administrative-law Petition for Nullification, filed with the Supreme Court's Political-Administrative Chamber on April 17, 2007, pp. 47-54, Communication from the petitioners received on February 18, 2010, Attachment 110.

²⁸⁷ Cf. I/A Court H.R.. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 174; *Case of López Mendoza v. Venezuela*. Merits, Reparations and Costs. Judgment of September 1, 2011 Series C No. 233, paragraph 177.

²⁸⁸ Annex 79, Report on the procedural status of the petitions and requests filed by RCTV, July 28, 2011, Communication from the petitioners received on August 5, 2011, Attachment 13, pp. 9-14.

²⁸⁹ Annex 79, Report on the procedural status of the petitions and requests filed by RCTV, July 28, 2011, Communication from the petitioners received on August 5, 2011, Attachment 13, p. 11. Information not contested by the State.

²⁹⁰ In the filing of the administrative-law petition for nullification and the petitions for precautionary *amparo* and unspecified injunctive relief, RCTV participated as representative of its shareholders and all the executives and employees of RCTV who are victims in the present case. The victims of this violation are, therefore, the following: 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. See Annex 16, Administrative-law Petition for Nullification, filed with the Supreme Court's Political-Administrative Chamber on April 17, 2007, pp. 47-54, Communication from the petitioners received on February 18, 2010, Attachment 110.

plaintiffs are free to impart their ideas, opinions and information through the many other media outlets.”²⁹¹ The IACHR shares the petitioners’ assessment to the effect that this observation advances a partial opinion on the merits of the case. Nevertheless, in this case, the Commission considers that the statement made by the Political-Administrative Chamber occurred in the normal conduct of the business of the court, when it was called upon to decide a petition seeking *amparo* relief filed jointly with the petition for nullification. In effect, as the precautionary protection of freedom of expression was requested, the tribunal had to adopt a position as to whether non-renewal of the concession was a violation of this right that would necessitate precautionary protection; hence, it was inevitable –or at least predictable- that the court would take a position on a matter related to the merits of the petition for nullification. Given the circumstances, the Commission does not consider that the Political-Administrative Chamber’s decision on the petition for precautionary *amparo* evidences a lack of impartiality.

204. In the next section of this report, which concerns the seizure of RCTV’s property, the Commission will address the other point made by the petitioners –i.e., that the Political-Administrative Chamber had allegedly taken a position on the possibility that RCTV’s assets might revert back to the State.

3. The court proceedings on the seizure of RCTV’s property

205. As has been established, on Friday, May 25, 2007, the Supreme Court’s Constitutional Chamber delivered decisions No. 956 and No. 957 wherein it ordered, as injunctive relief, that some of RCTV’s property -transmitters, antennas, towers, etc.- be temporarily assigned to CONATEL to provide the infrastructure necessary to ensure continued “delivery of a universal public telecommunications service” once CONATEL went off the air and was replaced by TVes.²⁹² The injunctions were enforced on May 27 and 28, 2007;²⁹³ on May 31, 2007, RCTV entered an objection to Decision No. 957.²⁹⁴ The cases that resulted from decisions No. 956 and No. 957 were subsequently joined by the Constitutional Chamber.²⁹⁵

206. The petitioners contend that three aspects of the judicial process that resulted in the seizure of RCTV’s property violated articles 8 and 25 of the Convention: the alleged violation of the right of defense in the proceedings that resulted in the injunctions; the alleged delay in issuing a ruling on the objection to the injunction; and the Supreme Court’s alleged lack of impartiality. The Commission will now examine each of these arguments.

207. As for the right of defense, the Commission observes that in that same decision in which RCTV’s property was assigned to CONATEL, the Constitutional Chamber ordered that a notice be published summoning interested parties who wished to intervene in the case, on either

²⁹¹ Annex 77, Supreme Court, Political-Administrative Chamber, Case No. 07-0411, Decision of May 22, 2007, Communication from the petitioners received on February 18, 2010, Attachment 111.

²⁹² Annex 64, Supreme Court, Constitutional Chamber, Case No. 07-0720, Decision No. 956 of May 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78. Annex 65, Supreme Court, Constitutional Chamber, Case No. 07-0731, Decision No. 957, of May 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78.

²⁹³ Annexes 66-69, Records of Execution of Supreme Court Judgment and Inventories of Assets dated May 27 and 28, 2007, in connection with the Constitutional Chamber’s Decision No. 956 of May 25, 2007. Communication from the petitioners received on February 18, 2010, Attachment 79.

²⁹⁴ Annex 80, RCTV, Objection to the injunction issued by the Constitutional Chamber in Decision No. 957 of May 25, 2007, filed on May 31, 2007. Communication received from the petitioners on June 16, 2011.

²⁹⁵ Supreme Court, Constitutional Chamber, Case No. 07-0720/07-0731, Decision No. 1.075 of June 1, 2007, Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scon/Junio/1075-010607-07-0720.htm>.

side or in defense of their own interests; it stated, however, that the intervening parties could only make arguments and offer evidence in support of the position of the party with which the intervening parties sided.²⁹⁶ The petitioners make the point that this severely limited RCTV's opportunities to defend itself, as it was not summoned to intervene in the proceedings that resulted in the injunctions or in any proceedings that might be held to challenge the injunctions. They pointed out that RCTV's intervention could only be as an interested third party, and in that capacity it could only make arguments and offer evidence to support the position of one of the parties, despite the fact that the injunctions mainly concerned RCTV's own property.²⁹⁷

208. The Court has held that the right of defense requires that the State at all times regard the individual as a true subject of the proceeding, in the fullest sense, and not simply as its object.²⁹⁸ While this concept has been examined more frequently in connection with criminal proceedings, the right of defense is one of the fundamental guarantees of due process of law under Article 8 of the Convention and must be observed in any proceeding so that the individual may defend himself against any act of the State that can affect his rights.²⁹⁹ Thus, for example, the IACHR has invoked the right of defense in reference to indigenous peoples' right to participate as parties in proceedings conducted before judicial bodies in which their territorial rights are at stake.³⁰⁰

209. Accordingly, the Commission considers that before ordering that RCTV's property be assigned to the State –or after doing so- the Constitutional Chamber should have taken measures to ensure that the owners of the property in question were able to exercise the right of defense. It is a violation of due process for a court to order seizure of the property essential for a media outlet to operate without even notifying that media outlet beforehand of the existence of the proceeding. The Commission fails to understand how a media outlet could be regarded as nothing more than an interested third party vis-à-vis an injunction that ordered its property assigned elsewhere, and is not given the right to make arguments and offer evidence in defense of and in support of its own interests. For these reasons, the IACHR concludes that in the process that resulted in the seizure of RCTV's property, the right of defense was not observed, in violation of Article 8(1) of the American Convention and to the detriment of RCTV's shareholders.³⁰¹

210. The second allegation that the petitioners made and that the Commission must decide concerns the alleged delay in deciding the objection to the injunction. As previously mentioned, on May 31, 2007, RCTV filed a brief objecting to the injunction that assigned its property to CONATEL and requested that the injunction be revoked.³⁰² The information supplied by

²⁹⁶ Annex 65, Supreme Court, Constitutional Chamber, Case No. 07-0731, Decision No. 957, of May 25, 2007, p. 13, Communication from the petitioners received on February 18, 2010, Attachment 78.

²⁹⁷ Annex 1, Communication from the petitioners received on February 18, 2010, p. 188.

²⁹⁸ Cf. I/A Court H.R.. *Case of López Mendoza v. Venezuela*. Merits, Reparations and Costs. Judgment of September 1, 2011. Series C No. 233, paragraph 117 [translation ours].

²⁹⁹ Cf. 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 102.

³⁰⁰ Cf. IACHR, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II. Doc. 56/09, December 30, 2009, paragraph 367; IACHR, *Access to Justice and Social Inclusion: the road towards strengthening democracy in Bolivia*. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, paragraph 280.

³⁰¹ Marcel Granier, Peter Bottome, Jaime Nestares, Jean Nestares, Fernando Nestares, Alicia Phelps de Tovar, and Francisco J. Nestares.

³⁰² Annex 80, RCTV, RCTV, *Objection to the injunction issued by the Constitutional Chamber in Decision No. 957 of May 25, 2007*, filed on May 31, 2007. Communication received from the petitioners on June 16, 2011.

the petitioners, which the State did not contest, is that on June 13, 2007 RCTV filed a brief to offer evidence, that the Constitutional Chamber set a preliminary hearing for June 17, 2008, and that on June 17, 2008 the Constitutional Chamber postponed the preliminary hearing without setting a new date. According to the information the IACHR has available, as of the date of adoption of this report, the Constitutional Chamber had still not issued a ruling on the objection that RCTV entered regarding the injunction.³⁰³

211. The Commission notes that the proceedings that resulted in the injunctions issued by the Constitutional Chamber were decided within the space of one and three days, respectively,³⁰⁴ in stark contrast to the more than five years that have passed without the Constitutional Chamber issuing its ruling on the objection to those measures. Venezuelan law requires that objections to injunctions be decided “promptly.”³⁰⁵ The Commission, too, believes that this must be a “simple and prompt recourse”, in keeping with Article 25(1) of the Convention. In the instant case, the State has not provided and the Commission does not find any explanation for the long delay in issuing a ruling on the objection to the injunction, an injunction that has remained in place the entire time that the decision on the objection to it has been pending. The Commission therefore finds that the State has violated Article 25(1) of the American Convention, to the detriment of RCTV’s shareholders.³⁰⁶

212. Lastly, the Commission must determine whether the Supreme Court has displayed a lack of impartiality in processing the court cases related to the seizure of RCTV’s property. Specifically, it must examine whether, as the petitioners allege, the Supreme Court “became an essential player in the State’s plan to terminate RCTV’s concession and then hand over its frequency, property and broadcasting equipment to a government-run channel.”³⁰⁷

213. The Commission is reminded that bias or abuse of authority on the part of judges must be proved, especially when they are acting within the authority that the law has vested in

³⁰³ Annex 79, Report on the procedural status of the petitions and requests filed by RCTV, July 28, 2011, Communication from the petitioners received on August 5, 2011, Attachment 13, p. 9. Information not contested by the State.

³⁰⁴ Case 07-0720 was instituted on May 22, 2007 and was decided on May 25, 2007, while Case 07-0731 was instituted on May 24, 2007 and decided on May 25, 2007. Annex 64, Supreme Court, Constitutional Chamber, Case No. 07-0720, Decision No. 956 of May 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78. Annex 65, Supreme Court, Constitutional Chamber, Case No. 07-0731, Decision No. 957, of May 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78.

³⁰⁵ The pertinent part of the Code of Civil Procedure reads as follows:

Article 602

Within three days following enforcement of the preventive measure, if the party against which it was ordered has already been notified or, if not, within three days following said party’s notification, the latter may enter an objection, citing the reasons and the grounds said party is alleging.

Whether or not an objection has been entered, the interested parties shall have eight days to bring their case and offer any evidence they believe serves their interests.

In the cases to which Article 590 refers, no objection will be entered and the eight-day period to which this article refers will not apply, but the party may have the measure suspended as set forth in Article 589.

Article 603

Within no more than two days of the date on which the evidentiary phase of the proceedings has ended, the Court will deliver its ruling, which is subject to appeal.

³⁰⁶ Marcel Granier, Peter Bottome, Jaime Nestares, Jean Nestares, Fernando Nestares, Alicia Phelps de Tovar, and Francisco J. Nestares.

³⁰⁷ Annex 1, Communication from the petitioners received on February 18, 2010, p. 189.

them, as happened in the instant case.³⁰⁸ There must be concrete and direct evidence to establish whether legal procedures were used, not as legitimate means of administering justice but as tools to accomplish unstated purposes.³⁰⁹ A charge of abuse of authority or bias must be based on duly proven objective factors that demonstrate the abusive intent of the party whose conduct is in question, since in principle the personal impartiality of members of a tribunal is to be presumed until there is proof to the contrary.³¹⁰ Here, the Court has set a very high standard of proof to establish abuse of authority on the part of a court.³¹¹

214. Before applying this high standard of proof to the Supreme Court's conduct in the seizure of RCTV's property, the Commission believes that some context might be informative.³¹² In its special report on *Democracy and Human Rights in Venezuela*, published in 2009, the IACHR states that the "lack of judicial independence and autonomy vis-à-vis the political power is, in the IACHR's opinion, one of the weakest points in Venezuelan democracy" and noted "with concern that in some cases, judges were removed almost immediately after adopting judicial decisions in cases with a major political impact."³¹³ The Commission made specific reference to the Supreme Court, and observed that "the provisions for the appointment, removal, and suspension of justices set out in the Organic Law of the Supreme Court of Justice lacked appropriate mechanisms to keep other branches of government from undermining the court's independence."³¹⁴ Under the provisions of that law, "in December 2004, a simple majority of the National Assembly, supportive of the government's interests, appointed 49 new justices [...] the 49 newly-elected justices were reported to be politically sympathetic to the government."³¹⁵

215. The Commission recalls that in the instant case, the highest ranking authorities in the executive branch of the Venezuelan government stated repeatedly, and in no uncertain terms, their opinions toward RCTV and their opposition to renewal of its concession. Among other statements, alluded to earlier, President Chávez said that "There'll be no new concession for that *coup*-supporting television channel that calls itself *Radio Caracas Televisión*. [...] The order is already drafted. So go ahead [...] start packing the bags. No media outlet that supports government overthrow, that is against the people, against the Nation, against national independence and against the dignity of the Republic will be tolerated here."³¹⁶ On another occasion the President said the

³⁰⁸ IACHR, Application filed by the IACHR with the I/A Court H.R.. Case of Ana María Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz ("First Court of Administrative Disputes") against the Bolivarian Republic of Venezuela, Case 12.489. November 29, 2006. Paragraph 124.

³⁰⁹ Cf. IACHR, Application filed by the IACHR with the I/A Court H.R.. Case of Ana María Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz ("First Court of Administrative Disputes") against the Bolivarian Republic of Venezuela, Case 12.489. November 29, 2006. Paragraph 124. On the matter of abuse of power by court authorities, see also European Court of Human Rights, *Case of Gusinskiy v. Russia*, Judgment of May 19, 2004, paragraphs 71-78.

³¹⁰ Cf. IACHR, Application filed by the IACHR with the I/A Court H.R.. Case of Ana María Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz ("First Court of Administrative Disputes") against the Bolivarian Republic of Venezuela, Case 12.489. November 29, 2006. Paragraphs.124-125.

³¹¹ Cf. I/A Court H.R.. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 114.

³¹² Cf. I/A Court H.R.. *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, paragraph 76.

³¹³ IACHR. *Democracy and Human Rights in Venezuela*. OEA/Ser.L/V/II.Doc.54, December 30, 2009, paragraph 15.

³¹⁴ IACHR. *Democracy and Human Rights in Venezuela*. OEA/Ser.L/V/II.Doc.54, December 30, 2009, paragraph 198.

³¹⁵ IACHR. *Democracy and Human Rights in Venezuela*. OEA/Ser.L/V/II.Doc.54, December 30, 2009, paragraph 199.

³¹⁶ Annex 26, Speech delivered by President Chávez on December 28, 2006. Communication from the petitioners received on March 1, 2010, Attachment B.5; Annex 35, *Aporrea*, article titled *Presidente Chávez: 'a RCTV que vayan Continúa...*

following: "The concession to that fascist channel [RCTV] is finished."³¹⁷ For his part, Minister William Lara, in charge of the Ministry of Communications and Information, made similar remarks, and the Ministry under his control waged an official campaign to justify non-renewal of RCTV's concession, which maintained that RCTV "served as a stand-in for political actors and manufactured its messages, violated freedom of information, incited civil war and the *coup d'état*, attempted to undermine the balance of powers, established economic cartels, and engaged in other conduct alien to the social responsibility that the State and society demand of it."³¹⁸

216. Taking into account the context as described, the Commission will now proceed to examine the proceedings and decisions of the Chambers of the Supreme Court in connection with the seizure of RCTV's property and broadcasting equipment. The first relevant decision was taken by the Political-Administrative Chamber of the Supreme Court on May 22, 2007. Having agreed to hear the petition filed by RCTV seeking nullification of the administrative decision not to renew RCTV's concession and having denied the petition seeking injunctive relief that was filed in conjunction with the nullification petition, the Political-Administrative Chamber added an *orbiter dictum* suggesting the possibility that the seized free-to-air television broadcasting equipment might revert back to the property of the State.³¹⁹ The second decision was adopted by the Constitutional Chamber on May 25, 2007, in which it issued a temporary injunction whereby the use of RCTV's property was to be temporarily assigned to CONATEL; it also held that CONATEL should decide to use those assets for the TVEs.³²⁰ The third decision was also one taken by the Constitutional Chamber on May 25, 2007. In response to a petition asking that the necessary injunctive relief be ordered to ensure that RCTV's broadcasting would not be interrupted after May 27, 2007,³²¹ the Constitutional Chamber ordered injunctive relief and again assigned to CONATEL the rights to use RCTV's equipment.³²² As previously mentioned, the Constitutional Chamber's ruling on RCTV's objection to the injunction is still pending.

217. The Commission considers that these proceedings and decisions, when analyzed as a whole and in the context described earlier, reveal that the Supreme Court is using proceedings that are lawful from the purely procedural standpoint, to accomplish the end of the executive branch. These constituted an abuse of power the purpose of which is to ensure that the government's goal of replacing an independent, private station that is critical of the government -

...continuación

apagando los equipos' [President Chávez to RCTV: 'Start packing your bags'], December 28, 2006. Communication from the petitioners received on February 18, 2010, Attachment 38; Annex 36, *Globovisión*, report titled *Presidente Chávez anuncia que no renovará concesión de RCTV* [President Chávez announces that RCTV's concession will not be renewed], December 28, 2006.. Communication from the petitioners received on February 18, 2010, Attachment 38.

³¹⁷ Annex 26, Address by President Chávez, January 10, 2007, Communication from the petitioners received on March 1, 2010, Attachment B.8; Annex 43, *Agencia Bolivariana de Noticias*, news report titled *Presentación del Mensaje anual del presidente de la República Bolivariana de Venezuela, Hugo Rafael Chávez Frías, ante la Asamblea Nacional* [President of the Bolivarian Republic of Venezuela, Hugo Rafael Chávez Frías, delivers his Annual Address to the National Assembly], Federal Legislative Palace, January 13, 2007. Communication from the petitioners received on February 18, 2010, Attachment 41.

³¹⁸ Annex 47, MINCI, *Libro Blanco sobre RCTV* [White Book on RCTV]. Venezuela: March 2007, First Edition. Communication from the petitioners received on February 18, 2010, Attachment 47, p. 12.

³¹⁹ Annex 77, Supreme Court, Political-Administrative Chamber, Case No. 07-0411, Decision of May 22, 2007, Communication from the petitioners received on February 18, 2010, Attachment 111.

³²⁰ Annex 64, Supreme Court, Constitutional Chamber, Case No. 07-0720, Decision No. 956 of May 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78.

³²¹ Annex 65, Supreme Court, Constitutional Chamber, Case No. 07-0731, Decision No. 957, of May 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78.

³²² Annex 65, Supreme Court, Constitutional Chamber, Case No. 07-0731, Decision No. 957, of May 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 78.

RCTV- with a public television channel controlled by the government, is achieved. The Supreme Court is accomplishing this end by assigning use of RCTV's broadcasting infrastructure to the TVEs. Two of the three proceedings mentioned above, that resulted in the seizure of RCTV's equipment, were distorted to achieve ends that were at odds with the objectives of the litigation. In the first case, having agreed to hear a petition on another matter –the non-renewal of RCTV's concession-, the Political-Administrative Chamber had added an *orbiter dictum* on a matter completely at variance with the purpose of that petition, in which it suggested the possibility that RCTV's property might revert back and become the property of the State. In the second, the Constitutional Chamber took advantage of the opportunity offered by a suit directed at keeping RCTV on the air, to assign the use of RCTV's equipment to the State. In response to this latter situation, the original complainants attempted to drop their complaint, a request that the Constitutional Chamber denied by claiming reasons of public interest.³²³ Compounding all this was the Constitutional Chamber's delay of more than four years in issuing its ruling on the objection that RCTV filed back on May 31, 2007. This protracted delay stands in sharp contrast to the one and three days that the Constitutional Chamber took to issue the rulings that led to the seizure of RCTV's equipment. Based on these observations, the IACHR concludes that the Supreme Court violated the RCTV shareholders'³²⁴ right to a hearing by an independent and impartial tribunal protected under Article 8(1) of the American Convention.

4. The criminal complaints filed by RCTV

218. Concerning the criminal complaints filed by RCTV, the Commission recalls that on December 11, 2007, RCTV filed a criminal complaint with the Office of the Superior Prosecutor of the Metropolitan Caracas Judicial Circuit requesting that a criminal investigation be instituted for property-related crimes and other offenses criminalized under the Anti-Corruption Law. The complaint alleged that the Constitutional Chamber had stripped RCTV of its right to property and to ownership of assets.³²⁵ On December 28, 2007, Prosecution Unit 36 of the Public Prosecutor's Office, with full jurisdiction nationwide, petitioned the preliminary examining court to dismiss the case on the grounds that the facts alleged in the complaint were not criminal acts. On July 28, 2008, the 51st Preliminary Examining Court of First Instance of the Metropolitan Caracas Criminal Court Circuit admitted the request for dismissal filed by the Prosecutor's Office, and with that the investigation was closed.³²⁶ On October 10, 2008, the Fifth Chamber of the Appellate Court of the Metropolitan Caracas Criminal Court Circuit confirmed the reasons given by the Public Prosecutor's Office in its request to have the complaint dismissed, and declared the appeal filed by RCTV to be out of order. RCTV filed a petition of cassation with the Supreme Court's Criminal Cassation Chamber to challenge dismissal of its complaint; its petition was denied on May 7, 2009.³²⁷

219. The petitioners allege that the competent authorities "have not fulfilled their duty to investigate facts that violate the right to property [...] classified as crimes prosecuted by the State,"

³²³ Supreme Court, Constitutional Chamber, Case No. 07-0720/07-0731, Decision No. 1.075 of June 1, 2007; Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scon/Junio/1075-010607-07-0720.htm>.

³²⁴ Marcel Granier, Peter Bottome, Jaime Nestares, Jean Nestares, Fernando Nestares, Alicia Phelps de Tovar, and Francisco J. Nestares.

³²⁵ Annex 81, RCTV, Complaint for procedural fraud filed with the Office of the Superior Prosecutor of the Metropolitan Caracas Court Circuit, December 11, 2007, Communication from the petitioners received on February 18, 2010, Attachment 80.

³²⁶ Annex 82, RCTV, Appeal filed with the 51st Preliminary Examining Court of First Instance of the Metropolitan Caracas Criminal Court Circuit, Case No. 370-08, August 7, 2008, Communication from the petitioners received on February 18, 2010, Attachment 81. Supreme Court. Criminal Cassation Chamber, Case No. C09-005, Decision No. 195 of May 7, 2009. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scp/Mayo/195-7509-2009-C09-005.html>.

³²⁷ Supreme Court, Chamber of Criminal Cassation, Case No. C09-005, Decision No. 195 of May 7, 2009. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scp/Mayo/195-7509-2009-C09-005.html>.

in violation of articles 8 and 25 of the Convention.³²⁸ The petitioners, however, did not supply all the records of the criminal case, including the decision of the Public Prosecutor's Office to seek dismissal of the case on the grounds that the facts alleged did not constitute crimes. The information was provided showed that the Prosecutor's Office examined the criminal complaint filed by RCTV almost immediately and that RCTV was able to appeal the Prosecution's decision to seek dismissal of the complaint and even filed a petition of cassation with the Supreme Court, all within the space of five months. From the information available, it cannot be conclusively determined that the Prosecution's decision, upheld by three different courts, was in violation of that right, or inconsistent with the duty to investigate. Hence, the Commission concludes that the State did not violate articles 8 and 25 in relation to the criminal complaints filed by RCTV.

5. The court proceedings related to the provisional measures ordered for the staff of RCTV

220. Finally, the petitioners allege that on May 21, 2007, in executing the provisional measures ordered by the Inter-American Court in the *Matter of Luisiana Ríos et al. regarding Venezuela*, RCTV had petitioned the 33rd Preliminary Examining Court of the Metropolitan Caracas Criminal Court Circuit to request protection for the perimeter of the channel's headquarters and for its staff. The petitioners point out that the protection was ordered on May 24, 2007,³²⁹ but that on May 25, 2007, the alternate judge presiding over the 30th Court was replaced by another judge who immediately decided to revoke the protective measures ordered the previous day.³³⁰ According to what the petitioners are alleging, RCTV was not notified of the decision to revoke the protection until June 6, 2007, which meant that the journalists and employees of RCTV "had, on Sunday, May 27, 2007, the false sense that their physical and moral safety was being protected."³³¹ For the petitioners, the measures meant that "the shareholders, executives, journalists and other employees of RCTV did not have the opportunity to turn to the courts for an independent and impartial decision on their rights."³³²

221. For the Commission, the alleged failure to comply with the provisional measures ordered by the Inter-American Court of Human Rights is extremely disturbing. In the instant case, the allegation made by the petitioners is all the more serious because of the abrupt removal of the judge who ordered the measures of protection for the staff of RCTV, in keeping with what the Inter-American Court had ordered, and her replacement by another judge who immediately revoked the protection. Nevertheless, the Commission observes that these allegations are not part of the crux of the complaint filed with the IACHR in the instant case –i.e. the non-renewal of RCTV's concession– and were thus not included in the characterization of the facts that the IACHR conducted in its admissibility report in the instant case.³³³ The Commission therefore considers that these facts must be discussed within the framework of the compliance with the provisional measures ordered in the *Matter of Luisiana Ríos et al. regarding Venezuela* or in a separate petition. It therefore decides not to issue a finding on this issue at this time.

³²⁸ Annex 1, Communication from the petitioners received on February 18, 2010, p. 189.

³²⁹ Annexes 88-91, Thirty-third Preliminary Examining Court of the Metropolitan Caracas Criminal Court Circuit, Judge Nathali Mariñez Silva, Orders Nos. 575-07, 576-07, 577-07 and 578-07 of May 24, 2007, Communication from the petitioners received on February 18, 2010, Attachment 116.

³³⁰ Annex 92, Thirty-third Preliminary Examining Court of the Metropolitan Caracas Criminal Court Circuit, Judge Erickson Laurens Zapata, Case No 33C-997-02, Decision of May 25, 2007, Communication from the petitioners received on February 18, 2010, Attachment 116.

³³¹ Annex 1, Communication from the petitioners received on February 18, 2010, p. 192.

³³² Annex 1, Communication from the petitioners received on February 18, 2010, p. 193.

³³³ Cf. IACHR, Report No. 114/11 (Admissibility), Marcel Granier *et al.v. Venezuela*, July 22, 2011, paragraph 41.

VI. CONCLUSION

222. Based on the considerations of fact and law contained in this report, the IACHR concludes that the Venezuelan State is internationally responsible for having violated, to the detriment of the victims who were employees of RCTV³³⁴ and the shareholders and board members Marcel Granier, Peter Bottome and Jaime Nestares, the rights enshrined in articles 13 and 24 of the American Convention, together with the general obligations established in Article 1(1) of the treaty, in the terms set forth in this report. The State has also violated, to the detriment of the victims who are RCTV shareholders, board members and employees³³⁵ the rights enshrined in articles 8(1) and 25 of the American Convention, together with the general obligations established in Article 1(1) of the treaty, in the terms set forth in this report. Finally, the Commission finds that the violation of the right set forth in Article 21 of the Convention has not been proven.

VII. RECOMMENDATIONS

223. Based on the analysis done and conclusions reached in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE VENEZUELAN STATE:

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

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.

Done and signed in the city of Washington, D.C., on the 9th day of November, 2012. José de Jesús Orozco Henríquez, President, Tracy Robinson, First Vice-President, Felipe González, Second Vice-President, Dinah Shelton, Rodrigo Escobar Gil (dissenting with regard to article 21), Rosa María Ortiz (dissenting with regard to articles 13, 8 and 25), and Rose-Marie Antoine (dissenting with regard to article 24).

The undersigned, Emilio Álvarez Icaza L., in his capacity as Executive Secretary of the Inter-American Commission on Human Rights and in conformity with article 49 of the Rules of Procedure of the Commission, certifies that this is a faithful copy of the original deposited in the archives of the Secretariat of the IACHR.

³³⁴ 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.

³³⁵ 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.

Emilio Álvarez Icaza L.
Executive Secretary