

OEA/Ser.L/V/II.159  
Doc. 57  
29 November 2016  
Original: Spanish

**REPORT No. 48/16**

**PETITION 12.799**

REPORT ON MERITS (PUBLICATION)

MIGUEL ANGEL MILLAR SILVA ET AL.\*  
(Radio Estrella del Mar de Melinka)  
CHILE

Approved by the Commission at its session No. 2067 held on November 29, 2016.  
159<sup>th</sup> Regular Period of Sessions.

**Cite as:** IACHR, Report No. 48/16, Case 12.799. Merits (Publication). Miguel Angel Millar Silva Et Al. (Radio Estrella del Mar de Melinka).Chile. November 29, 2016.



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**INDEX**

<b>I.</b>	<b>SUMMARY .....</b>	<b>2</b>
<b>II.</b>	<b>PROCESSING BY THE COMMISSION SUBSEQUENT TO ADMISSIBILITY REPORT No. 171/10</b>	<b>3</b>
<b>III.</b>	<b>POSITION OF THE PARTIES .....</b>	<b>3</b>
	A. Position of the petitioners.....	3
	B. Position of the State .....	5
<b>IV.</b>	<b>ASSESSMENT OF THE EVIDENCE.....</b>	<b>5</b>
<b>V.</b>	<b>ESTABLISHED FACTS .....</b>	<b>6</b>
<b>VI.</b>	<b>LEGAL ANALYSIS.....</b>	<b>10</b>
	Articles 13 (Freedom of Thought and Expression) and 24 (Right to Equal Protection), in conjunction with Article 1.1 of the American Convention. ....	10
	1. Powers and obligations of the States in the allocation of public goods and resources necessary for the media to operate under adequate conditions.....	13
	2. Examination of the specific case.....	18
<b>VII.</b>	<b>CONCLUSION .....</b>	<b>22</b>
<b>VIII.</b>	<b>RECOMMENDATIONS .....</b>	<b>23</b>
<b>IX.</b>	<b>PROCEEDINGS SUBSEQUENT TO REPORT No. 2/14 .....</b>	<b>23</b>
<b>X.</b>	<b>ACTIONS SUBSEQUENT TO REPORT No. 77/15.....</b>	<b>25</b>
<b>XI.</b>	<b>ANALYSIS OF COMPLIANCE WITH RECOMMENDATIONS .....</b>	<b>26</b>
<b>XI.</b>	<b>CONCLUSIONS AND FINAL RECOMMENDATIONS .....</b>	<b>26</b>
<b>XIII.</b>	<b>PUBLICATION .....</b>	<b>27</b>

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**I. SUMMARY**

1. This report refers to Petition 578-03, which was initiated before the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission,” “Commission,” or “IACHR”) with the filing of a petition received on August 4, 2003 by Miguel Millar Silva against the Republic of Chile (hereinafter “Chile” or “the State”). On July 27, 2004, with the consent of Mr. Millar Silva, Gustavo Gómez of the Latin American and Caribbean Chapter of the World Association of Community Radio Broadcasters and Francisco Cox of the Center for Justice and International Law (all hereinafter “the petitioners”), joined as co-petitioners. The petitioners allege that the State violated Articles 1.1, 13, and 24 of the American Convention on Human Rights (hereinafter “American Convention”) to the detriment of those who at the time of the alleged acts were journalists, employees, and users of *Radio Estrella del Mar de Melinka*, located in Southern Chile. The following persons were specifically identified as alleged victims: Miguel Millar Silva (director of the radio station), Narciso Nahuelquín Lepío (the radio station’s producer); Patricia Cocq, Luis Jerez, Carolina Leyton, Soledad Lorca, Vanesa Mancisidor, Marcia Paredes, Alejandra Venegas (all journalists with the radio station), Genaro Barría, Eduardo Carimoney, Mabel Chiguay Carimoney, Rodrigo Levicoy, Palmenia Saldivia and Marcos Silva (all members of civil society organizations and labor unions that use the radio to inform the community).

2. The petitioners stated that the radio station *Estrella del Mar de Melinka* is located in a small port village in the southern region of Chile, characterized by its isolation and problems of accessibility and connectedness with the rest of the country. They alleged that Melinka also has serious institutional limitations, which “hinder the satisfaction of the town’s basic needs,” including the provision of electrical power service. They explained that this service is provided by the municipality through electric generator equipment that it owns, and that there are two electrical supply systems: one with an unrestricted schedule that allows for the use of energy free of charge from eight o’clock in the morning until twelve o’clock at night, and one with a restricted schedule that requires payment according to consumption and operates in the evening.

3. According to the petitioners, *Radio Estrella del Mar de Melinka* was excluded from the provision of electrical power services during the unrestricted hours, which are used by the town’s other media outlets. They alleged that this decision was motivated by the animosity of the local mayor toward the radio station’s editorial line, which in their opinion constitutes a violation of Articles 13 (freedom of expression) and 24 (right to equal protection) of the American Convention.

4. On November 1, 2010 the IACHR approved Report No. 171/10, declaring the petition admissible with respect to Articles 13 (freedom of thought and expression) and 24 (right to equal protection) of the American Convention, in conjunction with Article 1.1 thereof.

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

6. Upon examining the evidence presented, the Commission concludes in this report that the State violated Articles 13 and 24 of the American Convention, in conjunction with Article 1.1 thereof, to the detriment of Miguel Ángel Millar, Narciso Nahuelquín Lepío, Patricia Cocq, Luis Jerez, Carolina Leyton, Soledad Lorca, Vanesa Mancisidor, Marcia Paredes, Alejandra Venegas, Genaro Barría, Eduardo Carimoney, Mabel Chiguay Carimoney, Rodrigo Levicoy, Palmenia Saldivia, and Marcos Silva.

## II. PROCESSING BY THE COMMISSION SUBSEQUENT TO ADMISSIBILITY REPORT No. 171/10

7. With the adoption of Admissibility Report No. 171/10, the Commission assigned number 12.799 to the case. On December 15, 2010, the Commission notified both parties of the adoption of the admissibility report, offered to facilitate a process designed to resolve the matter through a friendly settlement, and set a three-month deadline for the petitioners to present their observations on the merits.

8. On March 15, 2011, the petitioners presented additional observations on the merits, On October 4, 2011, the IACHR forwarded to the State the information provided by the petitioners, granting it one month to send its observations. On August 26, 2013, the Commission reiterated its communication to the State in order for it to submit its observations to the petition. The State did not reply to the IACHR's request.

## III. POSITION OF THE PARTIES

### A. Position of the petitioners

9. The petitioners explained that *Radio Estrella del Mar de Melinka* serves a small island population of around 1400 inhabitants in southern Chile. According to the petitioners, Melinka has issues in terms of its accessibility and connectedness to the rest of the country. In this respect, they indicated that the island on which Melinka is located is more than six hours away from the nearest port by boat, a trip that the barge "Alejandrina" makes once a week. They further alleged that Melinka has serious institutional limitations as a result of its isolation, with a virtual absence of bodies of the Central Government and the Judicial Branch, which makes the local authority (Municipality of Las Guaitecas) "omnipresent" and "unchecked." This, in the opinion of the petitioners, makes it difficult for the "basic needs of the population" to be met.

10. The petitioners explained that *Radio Estrella del Mar* was founded by the Diocese of the Bishop of Ancud and is operated by the *Radio Estrella del Mar* Foundation. They stated that at the time of the events the radio station had an FM sound broadcasting license issued in the name of the diocese, which was granted by means of decree 234 of 1994 of the Office of the Undersecretary of Telecommunications of the Chilean Ministry of Transportation and Telecommunications. They reported that at the time of the events, *Radio Estrella del Mar* had a team of 42 employees, 9 of whom appear as alleged victims in this matter, including the radio station's director Miguel Ángel Millar. They also indicated that *Radio Estrella del Mar* not only plays the same informative role as other media outlets but also is an effective communications channel for different leaders and members of local organizations, including six alleged victims identified in this case, who turn to the radio station to disseminate and communicate their opinions, activities, and information to their members and to the rest of the community.

11. The petitioners asserted that, because of Melinka's isolated condition, the population's electrical power supply is provided through generators owned and managed by the municipality. They explained that there are two systems for electrical power service. First, there is a restricted allocation service during the extended hours of eight o'clock in the morning to midnight, which supplies public services and a limited number of public servants' homes and community service institutions. This service is provided free of charge by the municipality. There is also a power distribution service that provides broad coverage but is available only during restricted hours, covering all of the residential homes in Melinka from six o'clock in the evening until midnight.<sup>1</sup> This service is billed to the consumers.

12. The petitioners alleged that in October of 1999, on the instructions of the municipality, *Radio Estrella del Mar* was disconnected from the free, extended-hours system, while the other media outlets in Melinka remained connected to that system. They explained that this decision meant that while the local

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<sup>1</sup> The facts in the case file indicate that the provision of electrical power under this system would begin at 5:00 p.m (*infra párr.* 30).

municipality provides the National Television Channel, the channel of the Catholic University of Chile, and the municipal radio station with the necessary electrical power to broadcast from 8:00 a.m. to 12:00 midnight, *Radio Estrella del Mar* and those who exercise their right to freedom of expression through it, are only allowed access to the power supply in the evening. The petitioners are of the opinion that the decision was made for political reasons. They complained that these events took place in the context of a series of acts of harassment against members of the radio station, as well as the illegal occupation of its facilities by a municipal employee in September of 1999, the interference in its broadcasts by a television channel evidently operating without the respective permits from the municipality, and threats received by employees of the radio station in October 2000, among other things.

13. The petition also contains transcripts of parts of a February 2001 interview with Mayor Luis Miranda de Chiguay by journalist Víctor Godoy in the context of an investigation ordered by the radio station's legal representative in relation to the possible reasons for one of the attacks against the station. According to the petitioners, the mayor had reportedly stated in that interview that *Radio Estrella del Mar de Melinka* was conspiring to "shake things up," and that "there are two groups, left and right. The radio station is on the other side, in a very sleazy, very dirty position; it's sad." According to the allegations, the mayor also reportedly said that the radio station's director has a "hostile and ill-intentioned" attitude, and he asked the Bishop to "take measures to curb Mr. Millar's pernicious attitude." In short, the petitioners consider that the exclusion of *Radio Estrella del Mar* from the power supply during the free, extended-hours schedule was an arbitrary act of discrimination on the part of public servants who disagreed with the station's editorial line.

14. The petitioners indicated that on September 16, 2002, the director of the radio station sent a letter to the mayor of Las Guaitecas asking for access to electrical power to be reestablished during the extended-hours schedule, the same way it worked for the other media outlets in Melinka. They alleged that the mayor did not formally reply to the request. They indicated that the radio station director filed an appeal for constitutional relief [*recurso de protección*] before the Court of Appeals of Coyhaique against the municipal authority, and that on December 26, 2002, the Court of Appeals dismissed the appeal and declared it inadmissible on the grounds that the municipality's decision was made "in the performance of duties that are inherent to it and therefore within its exclusive authority." The petitioners indicated that the decision was appealed to the Supreme Court of Justice. On February 5, 2003, the Court affirmed the decision, notwithstanding the dissenting opinions of two justices, who "were in favor of [...] overturning the judgment on appeal because the challenged act is arbitrary, in view of the background of the case, as it discriminates without any apparent reason against the appellant in relation to the rest of the media, to which it provides electrical power from the free system."

15. The petitioners stated that during the proceedings for the appeal for constitutional relief the mayor maintained that the exclusion of *Radio Estrella del Mar* was due to technical reasons. The petitioners stated that "even if there were technical limitations, it is difficult to understand what logical and reasonable motive could be offered to specifically exclude *Radio Estrella del Mar* from the benefit given to other media outlets." They insist that "this arbitrary discrimination coincides with the mayor's very low opinion of the work of *Radio Estrella del Mar*, which he has expressed publicly." For the petitioners the Mayor's opinion has its origins in "the critical, pluralist and power challenging editorial position" that characterizes the radio that it is viewed by the "municipal power as a political position of opposition."

16. They further indicated that in February 2003 the director of the radio station contacted the Secretary General of Government and the Office of the Undersecretary of Telecommunications. The latter responded on April 4, 2003, saying that the events complained of do not involve "interference with the telecommunications regulations, which is the legal framework to which this Office of the Undersecretary must limit the exercise its legal authority, as the resolution of the issue in question is the sole responsibility of the high courts of justice." Accordingly, it declined to intervene in the case.

17. With respect to Article 24 of the American Convention, the petitioners asserted that the rights to equal opportunity and nondiscrimination of the station director, the producer, and the journalists who exercised their right to freedom of expression through *Radio Estrella del Mar de Melinka* were violated, as were the rights of all the other people who used the radio station to inform the community or receive

information. According to the petition, by providing electrical power services under conditions different from those applied to the other media outlets, the State created discriminatory conditions that benefitted those media and violated the right to equal opportunity.

18. In relation to Article 13 of the American Convention, the petitioners maintained that the State's conduct directly restricts the expression of ideas, thoughts, and opinions of all of the individuals who work at *Radio Estrella del Mar* as journalists. They also were of the opinion that the State's action restricts the right to freedom of expression of the local social organizations and leaders who use the radio to inform the community, "because the television media do not provide airtime to broadcast local events, but instead are limited to broadcasting national programming, and *Estrella del Mar* is the only local media outlet that is independent of the government." They further alleged that discrimination in the access to electrical power is a mechanism of government control over the media and an indirect restriction on freedom of expression. To this point, they alleged that "the abuse of municipal powers to curtail the expression of ideas and opinions disseminated through *Radio Estrella del Mar* is in fact intended to silence it." They indicated that this can be inferred from the opinion expressed by the mayor regarding the work of the employees of *Radio Estrella del Mar* (*supra*, para. 13), in which the radio station "is treated as a political rival, more than as a media outlet with which there are editorial differences that should be respected."

19. Finally, the petitioners asserted that the alleged violations were committed against Miguel Ángel Millar as the radio station's director, Narciso Nahuelquín Lepío as the radio station's producer, and Patricia Cocq, Luis Jerez, Carolina Leyton, Soledad Lorca, Vanesa Mancisidor, Marcia Paredes, and Alejandra Venegas as journalists working for the radio station, all of whom were censored in their journalistic work. In addition, they identified the following persons as alleged victims: Palmenia Saldivia (President of the Melinka Neighborhood Association), Eduardo Carimoney (President of the Repollal Alto Neighborhood Association), Mabel Chiguay Carimoney (President of the Repollal Bajo Neighborhood Association), Genaro Barría, Rodrigo Levicoy, and Marcos Silva (Provisional Board of Directors of the Union of Independent Artisanal Fishing Workers of Melinka), in their capacity as local civic organizations and labor unions, insofar as their right to use the radio to inform the community and to receive information was infringed.

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

20. The State did not present its observations in this matter, in spite of the fact that the IACHR resent the pertinent observations (*supra*, para. 8).

#### **IV. ASSESSMENT OF THE EVIDENCE**

21. The Commission, in application of Article 43.1 of its Rules of Procedure (hereinafter, "IACHR Rules of Procedure"), will examine the allegations and the evidence provided by the parties, and shall take account of information that is public knowledge,<sup>2</sup> including laws, decrees, and other regulatory acts in force at the time of the events at issue in this case.

22. The Commission notes, however, the State has not presented observations to admit or contest the allegations and evidence submitted by the petitioners in this matter, in spite of the requests for information sent during the time the petition has been in process. In view of the State's silence, Article 38 of the IACHR's Rules of Procedure gives the Commission the authority to consider the facts alleged, "as long as other evidence does not lead to a different conclusion."<sup>3</sup> In the exercise of this authority, the IACHR will

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<sup>2</sup> Article 43.1 of the IACHR's Rules of Procedure: The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

<sup>3</sup> Article 38 of the IACHR's Rules of Procedure: The facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the period set by the Commission under the provisions of Article 37 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion.

examine this matter taking account of all of the evidence available to it to establish the truth of the events, in the exercise of its responsibility for the protection of human rights.

## V. ESTABLISHED FACTS

### The Estrella del Mar de Melinka radio station

23. *Radio Estrella del Mar* operates in the town of Melinka, a small port community located on an island in the Guaitecas Archipelago, in the southern region of Chile. In 2012 the community reached nearly 1,800 inhabitants.<sup>4</sup> It is a geographically isolated area that has minimal infrastructure services and communication with the rest of the country, where most of the population works in artisanal fishing.<sup>5</sup> Melinka is the capital of the Municipal District of Las Guaitecas.

24. The station is part of a radio network created on March 25, 1982 by the Diocese of the Bishop of San Carlos de Ancud, “with local facilities in different cities” in southern Chile, including Melinka.<sup>6</sup> With a “social/pastoral” emphasis, the radio station defines itself as a media outlet “that is in tune with the needs of the entire community, which it makes clear in its programming.”<sup>7</sup> At the time of the events in question, *Radio Estrella del Mar de Melinka* was operating under the direction of Miguel Ángel Millar, and Narciso Nahuelquín Lepío coordinated its production. At least the following journalists were working on its programming: Patricia Cocq, Luis Jerez, Carolina Leyton, Soledad Lorca, Vanesa Mancisidor, Marcia Paredes, and Alejandra Venegas. In addition to providing informational services to the community, according to the information provided by the petitioners (which was not contested by the State), the radio station was used as a means of communication and information by neighborhood and trade organizations in the area (*supra*, para. 10).

### Acts of intimidation and harassment of employees of the radio station surrounding municipal elections

25. According to the information provided, which was uncontested by the State, the employees of *Radio Estrella del Mar de Melinka* were the victims of acts of intimidation and harassment, starting in September of 1999<sup>8</sup> and continuing throughout 2000, in relation to the municipal elections to be held in October of that year.

26. According to the allegations, during the initial months of 2000, prior to the beginning of the election period, the municipality facilitated the operation of an unlicensed television station. The signal

<sup>4</sup> Library of the National Congress of Chile. Municipal Statistical Reports 2012. Projected population for 2012 by the National Institute of Statistics. Available in Spanish at: [http://reportescomunales.bcn.cl/2012/index.php/Guaitecas#Poblaci.C3.B3n\\_total\\_2002\\_y\\_proyectada\\_2012\\_INEI](http://reportescomunales.bcn.cl/2012/index.php/Guaitecas#Poblaci.C3.B3n_total_2002_y_proyectada_2012_INEI); Patagonia Aysén Regional Government. Information on the Municipal District of Las Guaitecas. Available in Spanish at: <http://www.goreaysen.gov.cl/goreaysenwebneo/index.aspx?channel=6090>; *Integración de Territorios Aislados: Diagnóstico y Propuestas* [Integration of Isolated Territories: Diagnostics and Proposals], Ministry of Interior, SUBDERE, LOM Ediciones, Santiago (1999), p. 29. Available in Spanish at: [http://www.subdere.gov.cl/sites/default/files/documentos/articulos-66382\\_recurso\\_1.pdf](http://www.subdere.gov.cl/sites/default/files/documentos/articulos-66382_recurso_1.pdf).

<sup>5</sup> *Cfr.* Library of the National Congress of Chile. Municipal Statistical Reports 2012. Available in Spanish at: [http://reportescomunales.bcn.cl/2012/index.php/Comuna\\_de\\_Guaitecas](http://reportescomunales.bcn.cl/2012/index.php/Comuna_de_Guaitecas); *Integración de Territorios Aislados: Diagnóstico y Propuestas* [Integration of Isolated Territories: Diagnostics and Proposals], Ministry of Interior, SUBDERE, LOM Ediciones, Santiago (1999), p. 29. Available in Spanish at: [http://www.subdere.gov.cl/sites/default/files/documentos/articulos-66382\\_recurso\\_1.pdf](http://www.subdere.gov.cl/sites/default/files/documentos/articulos-66382_recurso_1.pdf); Annex 6, General Accounting Office, Office of the Comptroller of Aysén del General Carlos Ibáñez del Campo, Legal Unit, No. 00189, January 28, 2002.

<sup>6</sup>*Cfr.* Diocese of San Carlos de Ancud. Information regarding the Radio Estrella del Mar Foundation. Available in Spanish at: <http://www.obispadodeancud.cl/tadio.html>.

<sup>7</sup> *Cfr.* *Radio Estrella del Mar*. Information on the Mission of the Radio Station. Available in Spanish at: [http://www.radioestrelladelmar.cl/index.php?option=com\\_content&view=article&id=91&Itemid=86](http://www.radioestrelladelmar.cl/index.php?option=com_content&view=article&id=91&Itemid=86)

<sup>8</sup> In their brief the petitioners alleged that in September of 1999 *Radio Estrella del Mar de Melinka's* facilities and signal were unlawfully occupied by a municipal employee “who was assigned, as part of his workday, to broadcast from the radio station during this episode.”



caused interference with the broadcasting of *Radio Estrella del Mar*. Accordingly, the director of the radio station filed complaints before the competent authorities, and this resulted in the television channel having to suspend its operations,<sup>9</sup> which reportedly upset the mayor and his partisans. According to the mayor, that channel had been set up to counteract the opinions of *Radio Estrella del Mar* (*infra* para. 28)

27. According to the information available, the radio station's producer Narciso Nahuelquín Lepío was reportedly confronted by some individuals who, after insulting him and blaming him for the channel's closure, threatened to physically attack him.<sup>10</sup> An appeal for constitutional relief was therefore filed on October 20, 2000 before the Court of Appeals of Coyhaique on behalf of Narciso Nahuelquín,<sup>11</sup> but was subsequently denied. On the night of October 26-27, 2000, two days before the municipal elections, the coaxial cable that links the transmitter to the radio antennas was cut. During the investigations requested by the Bishop of Ancud following this act, it was reportedly determined that the attack was perpetrated by one of the mayor's supporters.<sup>12</sup>

28. Regarding these events, in February of 2001 the mayor reportedly stated in an interview<sup>13</sup> that *Radio Estrella del Mar* "is not providing services the way it should, it is not helping to bring people together in peaceful coexistence; instead, it is throwing things out there to shake things up [...] if you ask a neighbor you meet in the street what *Radio Estrella del Mar en Melinka* is good for [...] he will tell you that it's to divide people, to create confusion—never to help find the truth and do good things." He also stated that, "Over in Melinka there are two groups, left and right. The radio station is on the other side, in a very sleazy, very dirty position; it's sad." He is additionally reported to have said that, "the [election] campaign of the other sectors, Christian Democrats, independents, and socialists, went very hard against the mayor, to try to knock him down [...]. They took people to the radio station specially [...] arranged against the mayor, everything, everything. The radio station worked only for that side, they never did an interview with us." In this respect, he emphasized that since "they [did not] have any coverage on the radio, we got Father Ronchi's television station going."

29. On September 11, 2001, the municipal mayor of Las Guaitecas sent a letter to the Bishop of Ancud, who sponsors the *Radio Estrella de Mar* Foundation (*supra* para. 24), complaining of "Miguel Ángel Millar's repeated hostile and ill-intentioned attitude toward our municipal district and mayor [...]." He indicated that "last year, during the election period, the Medipro television channel was, in bad faith, accused of interfering with the signal of *Radio Madipro de Melinka (Radio Estrella del Mar)*—and I say bad faith because that interference never occurred." He added that, "in order to prevent any friction or problems between both media outlets [...] arrangements were made to change the equipment and build another antenna in another area [...] nevertheless, Mr. Millar intervened once again [...] to create a difficult situation. I do not understand, and I am disturbed by the behavior of this gentleman, whose actions attack our community's long-awaited desire to have another means of communication, culture, recreation, and also

<sup>9</sup> Annex 1, Official Letter 436 of September 11, 2001 from Mayor Luis Miranda Chiguay of the Municipal District of Las Guaitecas to Monsignor Juan Luis Yrsen, the Bishop of Ancud (Attached to the initial petition received on August 4, 2003); Annex 5, *Melinka "El tiempo de la política,"* Víctor Godoi Millán, February 2001 (Attached to the initial petition received on August 4, 2003); Annex 2, Official Letter No. 2667 of October 11, 2001 from the Regional Mayor of Aysén to Ángel Millar Silva (Attached to the initial petition received on August 4, 2003), Annex 3, Official Letter No. 91 of January 9, 2002 from the Regional Secretary of Transportation and Communications of the Eleventh Region, Aysén, to Miguel Ángel Millar Silva (Attached to the initial petition received on August 4, 2003).

<sup>10</sup> Annex 4, Appeal for constitutional relief filed by Miguel Ángel Millar before the Court of Appeals of Coyhaique on October 20, 2000 (Attached to the initial petition received on August 4, 2003); Annex 5, *Melinka "El tiempo de la política,"* Víctor Godoi Millán, February 2001 (Attached to the initial petition received on August 4, 2003).

<sup>11</sup> Annex 4, Appeal for constitutional relief filed by Miguel Ángel Millar before the Court of Appeals of Coyhaique on October 20, 2000 (Attached to the initial petition received on August 4, 2003).

<sup>12</sup> Annex 5, *Melinka "El tiempo de la política,"* Víctor Godoi Millán, February 2001 (Attached to the initial petition received on August 4, 2003).

<sup>13</sup> Annex 5, *Melinka "El tiempo de la política,"* Víctor Godoi Millán, February 2001 (Attached to the initial petition received on August 4, 2003).



attack our feelings and Christian unity.” Finally, he asked him to use “his high office to clarify the situation and provide for the measures to curb Mr. Millar’s pernicious attitude.”<sup>14</sup>

### **Restrictions on Radio Estrella del Mar de Melinka with respect to the provision of electrical power**

30. On September 16, 2002, Miguel Ángel Millar sent a communication to the mayor of the municipality of Las Guaitecas, requesting that *Radio Estrella del Mar de Melinka* be connected to the “free and extended-hours” electrical supply service used for the operation of those media whose signals are broadcast in Melinka.<sup>15</sup> It follows from the evidence that, because of the isolated conditions, the electric power system in Melinka is supplied by a generator owned and managed by the Municipality of Las Guaitecas,<sup>16</sup> and distributed to the general population during restricted hours (from five o’clock in the afternoon to midnight), and billed to the consumers. However, the municipality provides electrical power for public services and State institutions through a free, extended-hour system (from eight o’clock in the morning until midnight).<sup>17</sup> At the time of the events, all of the media outlets in the town (two open-signal television channels and the limited-range radio station operated by the municipality), with the exception of *Radio Estrella del Mar*, were receiving electrical power through the latter system, that is, during extended hours and at no cost.<sup>18</sup>

31. According to the information provided, to which the State did not object, *Radio Estrella del Mar* participated in this free, extended-hour system until October 1999, when it was disconnected on the instructions of the municipal authority and transferred to the restricted system. This change also meant that the station began to be billed for the service.<sup>19</sup>

32. It can be inferred from the information provided by the petitioners that the municipality never responded to the request and *Radio Estrella del Mar* continued to receive electrical power during the restricted hours. Given the municipal authority’s silence, on September 30, 2002, Miguel Ángel Millar filed an appeal for constitutional relief before the Court of Appeals of Coyhaique.<sup>20</sup> He alleged that the municipality had committed an arbitrary act of discrimination against *Radio Estrella del Mar de Melinka*, in violation of the right to equal protection and the prohibition against arbitrary discrimination contained in Articles 19.2 and 22 of the Chilean constitution, respectively.<sup>21</sup> He indicated that the mayor had not formally replied to his

<sup>14</sup> Annex 1, Official Letter 436 of September 11, 2001 from Mayor Luis Miranda Chiguay of the Municipal District of Las Guaitecas to Monsignor Juan Luis Yrsen, the Bishop of Ancud (Attached to the initial petition received on August 4, 2003).

<sup>15</sup> Annex 2, Letter of September 16, 2002 from Miguel Ángel Millar to Mayor Luis Miranda Chiguay (Attached to the initial petition received on August 4, 2003); Annex 7, Appeal for constitutional relief filed by Miguel Ángel Millar before the Court of Appeals of Coyhaique on September 30, 2002 (Attached to the initial petition received on August 4, 2003).

<sup>16</sup> Annex 8, Answer filed by Mayor Luis Miranda Chiguay to the Court of Appeals of Coyhaique on December 14, 2002 (Attached to the initial petition received on August 4, 2003); Annex 7, Appeal for constitutional relief filed by Miguel Ángel Millar before the Court of Appeals of Coyhaique on September 30, 2002 (Attached to the initial petition received on August 4, 2003); Annex 11, Appeal for constitutional relief filed by Miguel Ángel Millar Silva on January 24, 2003 (Attached to the initial petition received on August 4, 2003).

<sup>17</sup> Annex 8, Answer filed by Mayor Luis Miranda Chiguay to the Court of Appeals of Coyhaique on December 14, 2002 (Attached to the initial petition received on August 4, 2003); Annex 7, Appeal for constitutional relief filed by Miguel Ángel Millar before the Court of Appeals of Coyhaique on September 30, 2002 (Attached to the initial petition received on August 4, 2003).

<sup>18</sup> Annex 8, Answer filed by Mayor Luis Miranda Chiguay to the Court of Appeals of Coyhaique on December 14, 2002 (Attached to the initial petition received on August 4, 2003); Annex 7, Appeal for constitutional relief filed by Miguel Ángel Millar before the Court of Appeals of Coyhaique on September 30, 2002 (Attached to the initial petition received on August 4, 2003).

<sup>19</sup> Annex 13, Invoices from the Municipal Electric Company of Melinka for electrical power service for the month of November 2002 (Attached to the initial petition received on August 4, 2003).

<sup>20</sup> Annex 7, Appeal for constitutional relief filed by Miguel Ángel Millar before the Court of Appeals of Coyhaique on September 30, 2002 (Attached to the initial petition received on August 4, 2003); Annex 9, December 26, 2002 decision of the Court of Appeals of Coyhaique (Attached to the initial petition received on August 4, 2003).

<sup>21</sup> Article 19.2 of the Chilean Constitution establishes that: “Equality before the law. In Chile there are no privileged groups or persons. In Chile there are no slaves, and he who sets foot upon its territory Women and men are equal before the law. Neither the law nor any authority may establish arbitrary differences.” Article 19(22) of the Constitution establishes “The prohibition of arbitrary discrimination with respect to the treatment that has to be granted by the State and its entities must provide in economic matters,” and provides that “only by virtue of a law, and provided that it does not entail such discrimination, may specific direct or indirect benefits to a

[continues ...]

written request, and that it was an act of discrimination, since all of the other media outlets continued to receive electrical power free of charge during the extended-hour schedule. In this regard, he stated that “it is completely arbitrary to deprive *Radio Estrella del Mar de Melinka* of this service when the television channels and the limited-range radio station continue to receive it. He alleged that “although the mayor stated that this decision was owing to technical reasons determined by the personnel responsible for operating the generator equipment, the personnel reiterated at all times that the determination had been made and communicated by the mayor himself, and that they were unaware of the reasons for the measure.”

33. On December 14, 2002 the municipal mayor filed his answer, in which he alleged that the change in the power supply system was due to technical reasons.<sup>22</sup> He stated:

Due to the geographical location of the city of Melinka, the Municipal District of Guaitecas has had, for years now, an electrical power generator with which [...] electrical power is provided to individuals and entities of the city during a schedule that, for reasons of cost, runs from approximately 17:00 hours to 0:00 hours.

At the same time, considering what is necessary for the proper functioning of the Municipal District of Las Guaitecas and the community radio station it manages, there is an electrical power generator that is smaller than the previous one, which is used on a different schedule from the one specified in the above paragraph. It provides electrical power to the offices of other State bodies that operate in the city and—because television is essential for being connected to the world—to the National Television Channel and the Pontifical Catholic University of Chile. In any case, there are contributions that provide for the maintenance of the equipment.

[...] Given the capacity of this second generator, the electrical power that can be provided is limited, for reasons related to the equipment itself and to the investment made and its effects over time. Therefore, it is not in a position to satisfy the requirements of *Radio Estrella del Mar de Melinka*, since technical considerations make it impossible.

With respect to the alleged violation of the guarantee or right established in Article 19(2) of the Constitution [...] it is not true, given that the generator they want to use to provide electrical power to *Radio Estrella del Mar* is for restricted rather than general use; therefore, treating the station the same as all the other inhabitants of the city of Melinka, does not create any inequality.

34. On December 26, 2002 the Court of Appeals of Coyhaique handed down its judgment, denying the appeal for constitutional relief.<sup>23</sup> The Court of Appeals found that the municipality’s decision was made “in the performance of duties that are inherent to it and therefore within its exclusive authority; furthermore, it can be inferred that the situation enjoyed by the radio station was the result of the generosity of the municipality,” and therefore it did not have the right to demand that it be maintained.

35. On January 8, 2002, Miguel Ángel Millar filed an appeal, asking the Supreme Court of Chile to declare the unlawfulness and arbitrariness of the municipality’s conduct, overturn the judgment of the Court

[... continuation]

particular sector, activity, or geographical zone be authorized, or special taxes that affect certain parties or others be established. In the case of tax exemptions or indirect benefits, their estimated cost must be included annually in the Budget Act.” Available in Spanish at: <http://www.leychile.cl/Navegar?idNorma=242302>

<sup>22</sup> Annex 9, Answer filed by Mayor Luis Miranda Chiguay to the Court of Appeals of Coyhaique on December 14, 2002 (Attached to the initial petition received on August 4, 2003); Annex 9, December 26, 2002 decision of the Court of Appeals of Coyhaique (Attached to the initial petition received on August 4, 2003).

<sup>23</sup> Annex 9, December 26, 2002 decision of the Court of Appeals of Coyhaique (Attached to the initial petition received on August 4, 2003).

of Appeals of Coyhaique, and order that *Radio Estrella del Mar de Melinka* be given access to the electrical power supply system during the extended hours, “whether free of charge or for a fee.”<sup>24</sup> In his brief, he reiterated that, unlike the rest of the media outlets, the radio station is in a state of “mandatory silence” during a large part of the day, and that there are no reasons to justify this difference in treatment. He argued, “it should be subject to the same treatment given to the other media outlets and not, as the mayor asserts, to the same treatment given to the rest of the town’s inhabitants.” He insisted that the alleged technical reasons offered by the municipality “do not exist,” and that the manipulation of the power supply “is due solely to the exclusive will of the municipal authority.” He indicated that it is likely that the “arbitrary discrimination is due to the mayor’s very low opinion of the work of *Radio Estrella del Mar*, which he has expressed publicly.” Finally, he argued that “the constitutional law sets a clear limit on the exercise of administrative powers, based on the general guarantee of the right to equal protection and the general prohibition that bars the legislature, or any other authority, from establishing arbitrary differences,” adding that, “this is true even in the case of discretionary authority.”

36. On February 5, 2003, the Supreme Court ruled, without stating the grounds for its decision, to uphold the challenged decision.<sup>25</sup> Justices Alberto Chaigneau and Nivaldo Segura dissented from the majority. They held that “the appellee’s action, in view of the background of the case, is arbitrary, as it discriminates without apparent reason against the appellant in relation to the rest of the media, to which it provides electrical power from the free system. Therefore, the challenged action infringes the guarantee enshrined in Article 19(2) of the Constitution, which is among the guarantees enumerated in Article 20 therein, and therefore the requested action for a provisional remedy should be allowed.”<sup>26</sup>

## VI. LEGAL ANALYSIS

### **Articles 13 (Freedom of Thought and Expression) and 24 (Right to Equal Protection), in conjunction with Article 1.1 of the American Convention.**

37. In accordance with its admissibility report in this case, the Commission will examine below whether Articles 13 and 24 of the American Convention have been violated, in conjunction with Article 1.1 of the Convention, to the detriment of journalists, employees, and users of *Radio Estrella del Mar de Melinka*.

38. Article 13 of the American Convention establishes, *inter alia*, that:

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.

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,

<sup>24</sup> Annex 11 Appeal filed by Miguel Ángel Millar Silva on January 24, 2003 (Attached to the initial petition received on August 4, 2003).

<sup>25</sup> Annex 12, Judgment of the Supreme Court of Chile, February 5, 2003 (Attached to the initial petition received on August 4, 2003).

<sup>26</sup> Annex 12, Judgment of the Supreme Court of Chile, February 5, 2003 (Attached to the initial petition received on August 4, 2003).

or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

[...]

39. Article 24 of the Convention establishes that “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.”

40. The right to freedom of thought and expression, according to the protection granted under Article 13 of the American Convention, envisages the right of individuals to express their own thoughts as well as the right to seek, receive, and disseminate information and ideas of all kinds. This right is vitally important to the personal development of each individual, for the exercise of his or her autonomy and other fundamental rights, and, finally, for the consolidation of a democratic society.

41. The Commission and the Inter-American Court have held that freedom of expression has two dimensions: an individual dimension and a societal dimension.<sup>27</sup> The individual dimension of freedom of expression consists of the right of every person to express his or her own thoughts, ideas, and information, and it is not exhausted by the theoretical acknowledgement of the right to speak or write; rather, it includes, inseparably, the right to use any appropriate medium to disseminate one’s thoughts and have them reach the greatest number of recipients. The second dimension of the right to freedom of expression—the collective or societal dimension— consists of society’s right to seek and receive any information, to know other people’s thoughts, ideas, and information, and to be well-informed. In this respect, the Court has established that freedom of expression is a means for the exchange of ideas and information among individuals; it includes their right to communicate their point of view to others, but it also entails the right of all persons to freely learn of opinions, accounts, and news of all kinds.<sup>28</sup>

42. The right to freedom of expression is also an essential basis for the existence of democratic societies, due to its indispensable structural relationship to democracy.<sup>29</sup> The very objective of Article 13 of the American Convention is to strengthen the workings of pluralist and deliberative democratic systems

<sup>27</sup> Cfr. 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. 31, available at: [http://www.corteidh.or.cr/docs/opiniones/seriea\\_05\\_ing.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_05_ing.pdf); I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177, para. 53; I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006. Series C No. 151, para. 75; I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 163; IACHR. Arguments before the Inter-American Court in the Case of Herrera Ulloa v. Costa Rica. Transcribed in: I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 101.1 a); I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 108; I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, para. 146; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 77; *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 64; 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. 30; 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; 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.

<sup>28</sup> Cfr. 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. 110. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_107\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_107_ing.pdf); 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. 79. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_111\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_111_ing.pdf); I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile*. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73, para. 66. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_73\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_73_ing.pdf).

<sup>29</sup> Cfr. I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006. Series C No. 151, para. 85; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 116; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 86; 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. 70.

through the protection and encouragement of the free circulation of information, ideas, and expressions of all kinds.<sup>30</sup> In this respect, the Court has held 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.<sup>31</sup>

43. In this context, the Court has emphasized the role of journalists and the media in the materialization of freedom of expression in its two dimensions. In the opinion of the Court, “journalism is the primary and principal manifestation of freedom of expression of thought,”<sup>32</sup> and the media can be “true instruments of freedom of expression.”<sup>33</sup> For its part, the Commission has recognized that the media make it possible for directors, editors and journalists to exercise their right to freedom of expression as individuals. In the Commission’s opinion, 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.<sup>34</sup>

44. Based on the evidence, the IACHR has verified that the electrical power supply in Melinka is provided through generators owned and managed by the Municipality of Las Guaitecas, under two methods or systems: a limited-hours system (from five o’clock in the evening to midnight) through which the general population receives electricity at a specific cost, and a free, extended-hour system (from eight o’clock in the morning until midnight) that supplies power to a restricted group of State services and institutions, as well as to the local media, with the exception of *Radio Estrella del Mar*.

45. The facts of this case indicate that *Radio Estrella del Mar de Melinka* was excluded from the power supply system that the municipality provided to the rest of the media, allowing them to receive power during the extended hours, that is, from eight o’clock in the morning until midnight. The result of this decision was that the radio station could only broadcast its signal from five o’clock p.m. to midnight, thus placing it in an unequal situation vis-à-vis the other media outlets in Melinka that operate throughout the day.

46. The petitioners alleged that there are no objective reasons on which such a decision could reasonably be based, and that the true motive lies in the mayor’s animosity toward the radio station. They therefore maintained that the decision was seriously prejudicial to the operation of *Radio Estrella del Mar*, and that it violated the right to freedom of expression of the journalists who work at the radio station and of those persons for whom it is their sole means of communication.

<sup>30</sup> IACHR. Arguments before the Inter-American Court in the Case of Ivcher Bronstein v. Peru. Transcribed in: I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, para. 143. d); IACHR. Arguments before the Inter-American Court in the Case of “The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile. Transcribed in: 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. 61. b).

<sup>31</sup> Cfr. 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. 70.

<sup>32</sup> Cfr. 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. 71.

<sup>33</sup> I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, paras. 149-50.

<sup>34</sup> IACHR, Report No. 114/11 (Admissibility), Marcel Granier et al., Venezuela, July 22, 2011, para. 39; IACHR, Report No. 112/12 (Merits), Marcel Granier et al., Venezuela, November 9, 2012, para. 118.



47. Throughout the domestic proceedings, the municipal authorities indicated that there were “technical considerations” that kept it from satisfying *Radio Estrella del Mar’s* requirements. They stated that the capacity of the generator that provides electrical power free of charge during the extended hours is limited “due to considerations related to the equipment itself.” As such, only the municipality de Las Guaitecas, the radio station that it manages, and other government offices that operate in the city have access to this service mode. As for the National Television Channel and that of the Pontifical Catholic University of Chile, the authorities indicated that these media receive the benefit because “television is essential for being connected to the world.”

48. The courts held that the decision of the municipal authority was made in the in the performance of duties that are within its exclusive authority, and in the exercise of simple generosity, and therefore the radio station did not have the right to demand that it be maintained.

49. The Commission must decide, then, whether subjecting *Radio Estrella del Mar* to a power supply schedule that is different from the one that applies to the other media outlets in Melinka was a measure compatible with the international obligations of the State, or whether, on the contrary, it violated the rights to freedom of expression and/or the right to equal protection of the alleged victims in this case. In doing so, the IACHR will first examine whether, in light of Articles 13 and 24 of the Convention, the allocation of scarce public goods and services necessary for the media to operate under adequate conditions can be based on discretionary criteria, and second, whether the decisions challenged in the petition are consistent with the above-cited provisions of the Convention.

### **1. Powers and obligations of the States in the allocation of public goods and resources necessary for the media to operate under adequate conditions**

50. In the present matter, the State authorities assert that the electrical power supply in Melinka is a scarce public good. The IACHR does not have any evidence before it to reliably demonstrate what technical conditions might prevent the broad provision of this service to the entire population. However, upon examining the evidence and arguments presented, it finds it reasonable to acknowledge that in an area characterized by the aforementioned geographic isolation and poverty (*supra* para. 23) the State’s ability to provide the service is limited. That is, in the opinion of the IACHR, the argument of the municipal authorities is plausible in the sense that there are in fact objective limits to the scope of provision of this service.

51. The allocation of scarce public goods and resources necessarily entails imposing limitations that could involve distinctions among people in the provision of benefits or services. In these circumstances, as discussed below, their administration must be governed by at least two types of obligations: formal or procedural obligations that require clear, objective, and transparent criteria and procedures for the allocation of resources; and substantive obligations marked by the principles of equality and nondiscrimination and by the prohibition of arbitrariness.

52. In the particular case of the media, the Inter-American Commission has held that the control and allocation of public goods and resources that affect, or could affect, their operation is a decision that has a clear impact on the right to freedom of expression in its dual dimension: the right of the persons who use such media to express themselves freely, and the right of society as a whole to receive diverse ideas and opinions. These types of decisions can determine both the opportunity of the media to express themselves and the right of the entire society to receive diverse information in the terms set forth in Article 13 of the American Convention.<sup>35</sup>

<sup>35</sup> IACHR, Report No. 112/12 (Merits), Marcel Granier et al., Venezuela, November 9, 2012, para. 121. Similarly, *cf.* IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V (Principles on the Regulation of Government Advertising in the Inter-American System for the Protection of Human Rights). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Paras. 9 & 10. Available at: [http://www.cidh.oas.org/annualrep/2010eng/RELATORIA\\_2010\\_ENG.pdf](http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf); IACHR. 2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression Standards for Free and Inclusive Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paras. 60-61. Available at: <http://www.cidh.org/pdf%20files/Annual%20Report%202009.pdf>.



53. By providing electrical power to the media on different schedules, as in the instant case, the State decides which voice the public can hear during certain hours of the day, and thereby defines, among other things, the sources of information available for each person to make informed decisions regarding matters of general interest, and their respective life plans.<sup>36</sup> The goods at stake demonstrate that the allocation of this basic service cannot be based solely on a discretionary power of the respective public officials, beyond all oversight or regulation. On the contrary, in such matters the principle of equality, the right to freedom of expression, and the prohibition against arbitrariness impose limits on the exercise of State powers in order to ensure that they are not used for purposes of pressuring and punishing or rewarding and favoring journalists and media outlets according to the information they provide.

54. The Commission is of the opinion that, in order to prevent the excessive use of a discretionary power by the authorities who make decisions on the allocation of public goods and resources that are necessary for the media to function, the State has the obligation to provide minimum rules that respect the principles of public interest, transparency, accountability, and nondiscrimination. Consequently, in cases such as this one, the decision ordering the allocation of a limited public service among different media outlets must: (i) follow predetermined, objective, and reasonable criteria; (ii) properly and sufficiently state the grounds for the decision; and (iii) be processed through transparent and accessible procedures.

55. Certainly, proper regulations that clearly define reasonable and objective criteria for the allocation of public goods that are necessary for the media to function prevent the arbitrary use of those goods to the detriment of freedom of expression. Best practices, informal mechanisms, or vague criteria are not sufficient to prevent violations of freedom of expression in this area.<sup>37</sup>

56. Where there are clear regulatory guidelines, the competent authorities must properly and sufficiently state the criteria and reasons for the distribution of the public goods or services in question. To that extent, the interested parties as well as the general public can find out how those goods are allocated and the costs involved. In addition, the establishment of transparent and accessible procedures prevents arbitrary decisions and allows for oversight by the interested parties, the community, the Government itself, and other supervisory bodies. In short, it is a matter of establishing minimum criteria that, when implemented, make it possible to disarm any State mechanism capable of exerting pressure on media content.<sup>38</sup>

57. From a procedural perspective, the IACHR has recognized that the State's improper use of its regular powers for purposes of restricting fundamental rights is facilitated to the extent that public servants are given excessive discretion. If those powers are properly regulated, exercised transparently, and subjected to adequate controls, the possibilities for them to become mechanisms of indirect restriction are significantly reduced.<sup>39</sup>

<sup>36</sup> IACHR, Report No. 112/12 (Merits), Marcel Granier et al., Venezuela, November 9, 2012, para. 121. Similarly, *cf.* IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V (Principles on the Regulation of Government Advertising in the Inter-American System for the Protection of Human Rights). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Available at: [http://www.cidh.oas.org/annualrep/2010eng/RELATORIA\\_2010\\_ENG.pdf](http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf); IACHR. 2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression Standards for Free and Inclusive Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Available at: <http://www.cidh.org/pdf%20files/Annual%20Report%202009.pdf>.

<sup>37</sup> See also, IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V (Principles on the Regulation of Government Advertising in the Inter-American System for the Protection of Human Rights). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 36. Available at: [http://www.cidh.oas.org/annualrep/2010eng/RELATORIA\\_2010\\_ENG.pdf](http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf).

<sup>38</sup> IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V (Principles on the Regulation of Government Advertising in the Inter-American System for the Protection of Human Rights). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Paras. 33 *et seq.* Available at: [http://www.cidh.oas.org/annualrep/2010eng/RELATORIA\\_2010\\_ENG.pdf](http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf); IACHR. 2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression Standards for Free and Inclusive Broadcasting). OEA/Ser.L/V/II. Doc. 51. Paras. 58 *et seq.* December 30, 2009. Available at: <http://www.cidh.org/pdf%20files/Annual%20Report%202009.pdf>.

<sup>39</sup> IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V (Principles on the Regulation of Government Advertising in the Inter-American System for the Protection of Human Rights). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Paras. 33 *et seq.* Available at: [http://www.cidh.oas.org/annualrep/2010eng/RELATORIA\\_2010\\_ENG.pdf](http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf); IACHR. 2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression Standards for Free and Inclusive Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Available at: <http://www.cidh.org/pdf%20files/Annual%20Report%202009.pdf>.  
[continues ...]

58. Additionally, from a substantive perspective, the effective allocation of a scarce public good or resource must be guided by the principles of equality and nondiscrimination, and it must be ensured that neither the content of the measure nor its implementation or enforcement can infringe upon those rights. In this respect, the Commission has already acknowledged that the States must abstain from adopting measures that are in any way intended to create, or that have as a direct or indirect result of creating, situations of *de jure* or *de facto* discrimination in the recognition, enjoyment, or exercise of human rights and fundamental freedoms under conditions of equality<sup>40</sup>.

59. The principle of equality is one of the guiding principles of all international human rights law. Indeed, the right to be treated with equal consideration and respect, to not receive discriminatory treatment, and for the State to foster the conditions for equality to be real and effective,<sup>41</sup> is front and center throughout the international *corpus iuris*, given that it is essential for the effective and universal enjoyment of all other human rights.<sup>42</sup>

60. Accordingly, in international law, equality has the dual character of guiding principle and fundamental right.

61. In particular, Article 1.1 of the American Convention establishes that the States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.” Article 24 of the Convention clearly establishes the right of all persons to equal protection under the law. Several of the most relevant State obligations follow from these provisions.

62. The evaluation of State decisions that grant disparate treatment in the allocation of a limited public good or service to two or more persons or groups of persons is governed by some specific guidelines that have been established by the inter-American case law and scholarly opinions.

63. First, in alleging a violation of the right to equality, it is necessary to establish whether, in fact, there is disparate treatment with respect to similarly situated persons or groups of persons. In this respect, it bears recalling that the Commission is of the opinion that the media are vehicles for the exercise of the fundamental rights of a group of people, specifically, the group of people that were working at *Radio Estrella del Mar de Melinka* at the time of the events and are petitioners in this case.

64. In defining the above, it is necessary to identify the relevant comparison factor. Indeed, two people or groups of people can have similar and dissimilar characteristics simultaneously. In this regard, it is essential to establish the relevant criterion for making the comparison (*tercium comparationis*). In other

[... continuation]

for Free and Inclusive Broadcasting). OEA/Ser.L/V/II. Doc. 51. Paras. 58 *et seq.* December 30, 2009. Available at: <http://www.cidh.org/pdf%20files/Annual%20Report%202009.pdf>.

<sup>40</sup> I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, para. 103; I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Judgment of September 8, 2005. Series C No. 130, para. 141; I/A Court H.R., *Case of Artavia Murillo et al (in vitro Fertilization) v. Costa Rica*. Judgment of November 28, 2012. Series C No. 257. para. 286.

<sup>41</sup> In this respect, it is important to mention that the principle of equality and nondiscrimination in many cases requires that the State establish preferences (affirmative actions) in order to guarantee equal opportunities so that the right to equality is, in practice, satisfied. In any case, these preferential measures or affirmative actions, necessary for the attainment of material equality, must have a sufficient and adequate rationale. On this point, *cfr.* I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, para. 104; I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Judgment of September 8, 2005. Series C No. 130, para. 141; I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 80.

<sup>42</sup> *Cfr.* I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, paras. 97-101.

words, at this initial step, we must define the relevant point of view that makes it possible to determine whether, in a given situation, two or more persons who receive disparate treatment from the State are in fact similarly situated. It is incumbent upon the Commission to determine whether in fact the media outlets that broadcast in Melinka were similarly situated for purposes of defining the electrical power supply system.

65. Once it has been determined that the State grants disparate treatment to two similarly situated people or groups of people, the question that must be answered is whether there is sufficient reason to justify or maintain such treatment. In terms of this specific case, what must be determined is whether there are objective and sufficient reasons to provide the public radio station with free and extended-hours electrical power service, while suspending the same benefit to the only private, non-commercial radio station operating in the area.

66. Under these conditions, the Commission must establish whether the disparate treatment is, in fact, reasonable and proportionate—that is, whether it is based on objective criteria and does not entail an unnecessary or disproportionate infringement of a fundamental right.

67. In order to identify whether there are objective reasons to justify the disparate treatment, and to prevent the disproportionate infringement of other rights enshrined in the Convention, the assessment of equality requires determining, first of all, whether the disparate treatment pursues a legitimate aim, and whether it is useful, necessary, and strictly proportionate to the accomplishment of that aim.<sup>43</sup>

68. In this regard, it is important to mention that, as this Commission has already indicated,<sup>44</sup> the assessment of equality must be subject to distinct scrutiny bearing in mind the goods at stake or the criteria used to establish it.

69. Indeed, in order for the assessment of equality required under Article 24 of the Convention to be respectful of each State's legislative powers, the doctrine and the case law have indicated that in certain spheres inherent to democratic deliberation, government authorities have a broader scope. Nevertheless, there are certain spheres in which public decisions not only result in disparate treatment but also, in so doing, can seriously affect goods, values, or rights enshrined in the international human rights treaties. In those cases, the assessment of equality acquires a greater level of intensity. Thus, for example, in determining the pay scale for public employees, the national State has an extremely broad freedom that, in principle, must be respected by the international human rights protection bodies. However, if criteria are established to differentiate pay based on gender or sexual orientation and population groups traditionally subject to exclusion or discrimination are thereby negatively affected, the level of intensity of the assessment of "conventionality" increases substantially.<sup>45</sup>

70. This means that the freedom to adopt policies has a different scope bearing in mind the criteria or differentiation included in the measure in question, the limits of regulation and the potential

<sup>43</sup> I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, paras. 82-96; I/A Court H.R., *Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 57. See also, European Court of Human Rights, *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium* (Merits), July 23, 1968, Volume 6, Series A, para. 10.

<sup>44</sup> *Cfr.* IACHR, Application before the I/A Court H.R. in the case of Karen Atala and Daughters v. State of Chile, September 17, 2010, para. 88, available at: <http://www.cidh.oas.org/demandas/12.502ENG.pdf>; IACHR, *Report on Access to Justice for Women Victims of Violence*, OEA/Ser.L/V/II.Doc. 68, January 20, 2007, para. 80; IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr, October 22, 2002, para. 338. IACHR, 1999 Annual Report. Chapter VI, (Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination) OEA/Ser.L/V/II.106, dic. 3 rev., April 13, 2000, point b.

<sup>45</sup> *Cfr.* IACHR, Application before the I/A Court H.R. in the case of Karen Atala and Daughters v. State of Chile, September 17, 2010, paras. 87-88, available at: <http://www.cidh.oas.org/demandas/12.502ENG.pdf>. Similarly, *cfr.* I/A Court H.R., I/A Court H.R., *Case of Atala Riffo and daughters v. Chile*. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239, para. 127; IACHR. Report No. 4/01 Case 11.625. María Eugenia Morales de Sierra. Guatemala. January 19, 2001, paras. 31 & 36.

infringement of human rights that, under the terms of the Convention, must be guaranteed and respected under conditions of equality for all persons.

71. Therefore, the assessment of equality does not always have the same intensity. In those spheres in which there is the broadest degree of legislative discretion, it is sufficient to ask whether the measure in question is reasonable, does not pursue an aim inconsistent with the Convention, and does not disproportionately infringe upon a right. However, when the implementation of the measure could potentially jeopardize the exercise of a fundamental right, the level of scrutiny applied to the assessment of equality increases considerably, given the express mandate to guarantee such rights for all persons under equal conditions. In those cases, the State must demonstrate that the distinction was necessary to accomplish an aim established in the Convention and that the benefit obtained from the measure outweighs the sacrifice caused by its implementation.<sup>46</sup> Indeed, in addressing the use of suspect categories prohibited by Article 1.1 of the Convention, the bodies responsible for the enforcement of this international instrument must ensure that the measure is necessary to accomplish compelling objectives and that its implementation is substantially more advantageous than the cost borne by the persons who are not benefitted.<sup>47</sup>

72. Finally, another substantial obligation that the States have when they allocate limited public goods necessary for the media to function is the one concerning the prohibition against arbitrariness. As the Commission has previously indicated, according to Articles 13.3 and 30 of the Convention, the examination of such a measure requires ruling out any kind of misuse of State power potentially aimed at restricting freedom of expression through measures that appear legitimate on their face.<sup>48</sup>

73. Thus, when it is alleged that the origin of differential treatment of media outlets that, in principle, in equal circumstances, it is based on the content of the speech expressed through the medium, the State's evidentiary burden increases. The Inter-American Court has held that, "the restrictive method set forth in Article 13(3) is not exhaustive nor does it prevent considering 'any other means' or indirect methods of new technologies (...). In order for there to be a violation to Article 13(3) of the Convention it is necessary that the method or means effectively restrict, even if indirectly, the communication of ideas and opinions."<sup>49</sup>

74. The case law of the inter-American system has on various occasions denounced the adoption of State measures that constitute direct or indirect means of restricting freedom of expression.<sup>50</sup> Thus, for example, it has denounced the requirement that journalists must belong to a professional association in order to practice journalism,<sup>51</sup> and the arbitrary use of the regulatory powers of the State when it has been used to take intimidating action against the directors of a media outlet, or to revoke the nationality of the director of a

<sup>46</sup> *Cfr.* IACHR, Application before the I/A Court H.R. in the case of Karen Atala and Daughters v. State of Chile, September 17, 2010, para. 87-88; IACHR, Report on Access to Justice for Women Victims of Violence, OEA/Ser.L/V/II.Doc. 68, January 20, 2007, para. 80; Similarly, *cfr.* European Court of Human Rights, *Adulaziz, Cabaes and Balkandakli v. United Kingdom*, May 28, 1985, para. 78; European Court of Human Rights, *Inze v. Austria*, November 28, 1987, para. 41; European Court of Human Rights, *Hoffman v. Austria*, June 23, 1993, para. 36.

<sup>47</sup> IACHR, Application before the I/A Court H.R. in the case of Karen Atala and Daughters v. State of Chile, September 17, 2010, para. 88.

<sup>48</sup> IACHR, Report No. 112/12 (Merits), Marcel Granier et al., Venezuela, November 9, 2012, paras. 146 *et seq.*

<sup>49</sup> *Cfr.* 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. 48. See also: I/A Court H.R. *Case of Ríos et al. v. Venezuela*. Judgment of January 28, 2009. Series C No. 194, para. 340.

<sup>50</sup> IACHR. 2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V (Principles on the Regulation of Government Advertising in the Inter-American System for the Protection of Human Rights). OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Paras. 1-9. Available at: [http://www.cidh.oas.org/annualrep/2010eng/RELATORIA\\_2010\\_ENG.pdf](http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf); IACHR. 2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter V (Inter-American Legal Framework regarding Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paras. 153-165. Available at: <http://www.cidh.org/pdf%20files/Inter%20American%20Legal%20Framework%20english.pdf>.

<sup>51</sup> 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. 76.

media outlet as a result of the editorial line of the programs he broadcasts.<sup>52</sup> It has also questioned the statements of public servants when, given the context, they might amount to “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and [dissemination] of their thoughts.”<sup>53</sup> The Inter-American Court has also held that the disproportionate or discriminatory requirement of “accreditations or authorizations for the written media to participate in official events” would be an indirect restriction.<sup>54</sup>

75. The UN, OAS, and OSCE rapporteurs on freedom of expression have also addressed the issue of indirect restrictions on the freedom of expression by the authorities. For example, in their 2002 Joint Declaration, they asserted that “governments and public bodies should never abuse their custody over public finances to try to influence the content of media reporting.”<sup>55</sup>

76. In short, the effective allocation of a scarce public good or resource that affects the ability of the media to operate is limited by the right to freedom of expression on equal footing. The abuse of State power in this regard with the objective of pressuring and punishing or rewarding and favoring journalists and media outlets based on the content of their information is an indirect restriction to freedom of expression prohibited by Article 13.3 of the American Convention and a violation of the principle of equality expressed in Article 24 therein.

## 2. Examination of the specific case

77. As previously explained, this case involves a difference in treatment with regard to the access of the media outlets of Melinka to a public service that is essential to their operation, to wit, electrical power. It has been shown that, unlike the other media outlets that can operate throughout the entire day, the private, non-commercial *Estrella del Mar de Melinka* receives electrical power only between five o'clock p.m. and midnight, and therefore only broadcasts during that time period. In this respect, the disparate treatment had the effect of preventing the radio station from being able to broadcast during a very important part of the day (from eight o'clock a.m. to five o'clock p.m.) under the same conditions as the other media.

78. First, the IACHR must identify whether the media outlets that are subject to disparate treatment are in similar circumstances, or in different circumstances that justify the disparate treatment.

79. In this particular case, the petitioners asserted that the four media outlets broadcasting in Melinka are similarly situated given that they are legally established radio broadcasting media outlets licensed to broadcast their signal throughout the island, in an ongoing and uninterrupted manner. They further indicated that *Radio Estrella del Mar* is in the same circumstances as the municipal radio station because they are the only two stations that broadcast local information, as the open-signal television channels broadcast national programming. Finally, they asserted that account should be taken in their case of the fact that *Estrella del Mar* is the only radio station in Melinka that is private and non-commercial, that is not directly or indirectly managed by the State, and that can broadcast diverse information that is of interest to the island's community.

80. During the proceedings in the appeal for constitutional relief, the mayor asserted that the aforementioned media outlets are not in the same circumstances. Indeed, according to the facts contained in

<sup>52</sup> I/A Court H.R. *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, paras. 158-163.

<sup>53</sup> 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, para. 139; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 151.

<sup>54</sup> 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, para. 346; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 375.

<sup>55</sup> UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 2002. *Joint Declaration on International Mechanisms for Promoting Freedom of Expression*. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=87&IID=1>.



the case file, the municipal authorities offered two reasons for which, in their opinion, the difference in treatment is justified. First, they indicated that the public radio station administered by the municipality receives electrical power during the extended-hours schedule because it is an office of the municipality, and that is what is done with all the other offices of the municipal authority, “considering that it is necessary for their proper functioning.” They also maintained that, in addition to the municipal radio station, two national television stations receive electrical power service throughout the day, because, unlike the local radio station, “television is essential for being connected to the world” (*supra* para. 33).

81. In the opinion of the IACHR, the relevant factor for comparing the recipients of disparate treatment, such as those in the instant case, is the fact that they are legally established media outlets licensed to broadcast throughout the island in an ongoing manner. This characteristic, for purposes of the provision of electrical power, is what places them in equal situations. In this respect, the public or private nature of the radio station or the difference between the coverage provided by the local radio station and the national open-signal television station are not reasons to establish a relevant difference when it comes to the distribution of electrical power or any other service for which the State is responsible and that is necessary for those media to be able to operate.

82. It is also important to note that the measure in question treats differently the only two radio stations that were operating on the island at the time of the events, and which are also the only two radio broadcasting media that cover local information. One of the broadcasters, as previously mentioned, is a public medium administered by the municipal mayor’s office, and the other, *Radio Estrella del Mar*, is a private, non-commercial medium that is independent of the government.

83. In this respect, for purposes of the provision of the goods and services they require in order to function, the two radio stations are in equal conditions. Additionally, the importance of both radio stations is fundamental for the existence of a diverse, vigorous, and open debate so that the community can receive local information with different perspectives. Therefore, for purposes of excluding *Radio Estrella del Mar* from electrical power service during the extended-hours schedule, the fact that it is not a public radio station does not seem relevant, contrary to what the mayor seems to allege. This difference does not justify the unfavorable treatment of *Estrella del Mar* if we consider what is at stake, which is the right to express oneself under conditions of freedom and equality and the right of the community to receive diverse information of all kinds, under the terms of Article 13 of the Convention.

84. Once the disparate treatment with respect to two similarly situated people or groups of people and the impact of that differential treatment on the exercise of a fundamental right like freedom of expression has been identified, the IACHR must proceed to ask whether the disparate treatment is justified by clear, pre-established, and objective criteria; whether the decision was made following a public and transparent proceeding; and whether it pursues an aim established in the Convention and is necessary and proportionate to the accomplishment of that aim. Finally, it must identify whether the case involves, as the petitioners allege, a type of indirect infringement of freedom of expression, pursuant to Article 13.3 of the Convention.

85. First, the Commission confirms that the decision to keep *Radio Estrella del Mar* from accessing the extended-hours electrical power service does not seem to be based on pre-established, objective, and transparent criteria. It also does not appear to have been demonstrated that the decision-making process was transparent or consistent with such criteria. On the contrary, *Radio Estrella del Mar* never received an official explanation of the reasons for the denial, and during the court proceedings the authorities stated that, because it was a limited resource, the determination of who benefits from the provision of electrical power during the extended, free schedule is up to the “generosity” of the mayor, in the exercise of his broad discretionary power. In other words, the decision to exclude *Radio Estrella del Mar de Melinka* from the power supply system available to all the rest of the media and to keep it in that situation was the result of the mere will of a public servant, characterized by a total lack of transparency, rationale, and external oversight.



86. In the court case brought by the director of *Radio Estrella del Mar* to challenge the decision to maintain the disparate treatment of the radio station, the mayor argued that the scarcity of resources prevented him from satisfying the electrical power needs of the entire population under equal conditions. Nevertheless, it is not clear what aim is pursued by including the public radio station during the extended-hours schedule and excluding *Radio Estrella del Mar* from that same schedule. It is also not clear whether the decision to keep *Radio Estrella del Mar* on a different system—which prevents it from broadcasting during most of the day—is necessary for the accomplishment of any legitimate aim. In this respect, from the elements available the Commission considers that the technical arguments offered by the mayor in justifying his decision are insufficient to explain whether, in fact, the town’s equipment absolutely lacks the capacity to provide power to the radio station, or to understand why—in the event that it is necessary—he chose among the available options to eliminate the benefit that the radio station had and keep it on a disadvantageous power supply schedule as compared the schedule available to all the other media outlets<sup>56</sup>.

87. The conditions on the island make it reasonable to establish a differentiation in the electrical supply schedule, given the scarcity of resources at the time of the events in question. However, there is no argument that justifies having the restriction fall to one of the two local radio stations while the other one, and the two open-signal television channels, being in similar conditions, enjoy the extended service. The only explanation provided by the judges in the court of first instance who reviewed this decision was that the “situation enjoyed by the radio station was the result of the generosity of the municipality,” and that the decision was made in the performance of its “exclusive powers.”

88. In this case, the Commission is faced with an administrative decision that resulted in the differential allocation, among the four existing media outlets in Melinka, of a public service that is necessary for them to function. The effect of this administrative decision was that while the three unaffected media outlets were able to broadcast for 16 hours a day, the affected medium was only able to broadcast for approximately 7 hours a day. As we have explained, there is no evidence in the case file to demonstrate that the decision in question was based on pre-established, objective criteria or that it was the result of a transparent process respectful of due process guarantees. The domestic court proceedings also failed to shed light on any argument to justify the disparate treatment, other than what the judges of first instance stated—that it was mere “generosity” on the part of the municipal mayor. For the reasons set forth throughout this decision, the Commission is of the opinion that in this case there was a violation of Articles 13.1 and 24 of the Convention, in conjunction with Article 1.1 thereof, to the detriment of the alleged victims.

89. Finally, the Commission must ask whether there could be a violation of Article 13.3 of the Convention in this case. Indeed, the petitioners did not limit themselves to asserting that the unequal treatment was prejudicial to their right to freedom of expression. They additionally claim that this treatment was based on an arbitrary decision designed to prevent them from freely expressing themselves under conditions of equality, given the mayor’s animosity toward them.

90. The Commission notes that the criterion for favoring the television media and the public radio station over *Radio Estrella del Mar* is based on the mere personal preferences of the government authorities. However, there is also evidence in the case file to indicate that the change in the radio station’s service schedule was made after an election process in Melinka, and that the mayor found the radio station’s coverage of the leftist opposition candidates to be, at the very least, “inequitable” vis-à-vis the coverage of his own party’s candidates. It was also established that the mayor set up a local television channel for purposes of “counterbalancing” the information that *Radio Estrella del Mar* was disseminating, and that he had to shut it down against his will because of the interference it was causing to the radio station. There are statements in the case file in which the mayor reportedly complained of the coverage that the radio station was providing of local events and his administration in particular.

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<sup>56</sup> The IACHR observes that during the proceeding of the protection writ, the Municipality of Guaitecas affirmed, in general terms, that “there are contributions that provide for the maintenance of the equipment” that provides electric energy to media in Melinka. Unfortunately, the IACHR does not have any information to determine what those contributions consist of or who provided them.

91. The absence of objective criteria to justify the disparate treatment and of technical reasons that completely explain that decision, the arguments presented in court, and the facts stated in the above paragraph give rise to serious suspicions of arbitrariness. This suspicion is based especially on the argument that the distinction is based on the content of the speech expressed by the media outlet negatively affected by the measure. In these cases, the decision must be subject to the strictest degree of scrutiny, in accordance with Article 13.3 of the American Convention, in conjunction with Article 1.1 thereof.

92. As mentioned earlier, the IACHR observes that the government authorities provided no argument or evidence that would sufficiently justify the decision examined herein, or that would refute the charges of alleged arbitrariness.

93. The State's explanation that there was merely a lack of technical capacity is insufficient in light of the available evidence. On the contrary, in order to guarantee true pluralism in the dissemination of and access to information and ideas of all kinds, the measure should have affected the operation of *Radio Estrella del Mar*—the only local radio station operating on the island that that does not belong to the State, and which was perceived as excessively critical of the conduct of the authorities—to the least extent possible.

94. Even if the information disseminated by the radio was unpleasant or inconvenient for the public servants of the State, they are obligated to tolerate it because freedom of expression must be guaranteed not only with respect to the dissemination of information and ideas that are received favorably or considered inoffensive or neutral but also with respect to those that are offensive, shocking, disturbing, unpleasant, or upsetting to the State or any sector of the population.<sup>57</sup> This is a requirement of pluralism, tolerance, and the spirit of openness, without which democratic society does not exist.<sup>58</sup> What is not allowed is for indirect censorship and discriminatory measures that punish or pressure a media outlet because of its dissemination of critical opinions of the government to be concealed behind the apparent legitimate exercise of State authority.

95. The petitioners alleged that this is what in fact happened in the instant case, since the measure taken against them was actually motivated by the radio station's critical editorial stance toward the municipal government.

96. The IACHR understands that indirect restrictions are particularly difficult to demonstrate. Therefore, when the arbitrary and discriminatory use of State power to infringe upon the full exercise of the right to freedom of expression is alleged, we must seek access to all evidence necessary to identify whether, in fact, there has been any kind of misuse of power contrary to Articles 13.3 and 30 of the Convention. Particularly important in this respect is the relevant case law, according to which, "when evaluating an alleged restriction or limitation to freedom of expression, the Court should not restrict itself to examining the act in question, but should also examine this act in the light of the facts of the case as a whole, including the circumstances and context in which they occurred."<sup>59</sup>

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<sup>57</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107. 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 Objections, 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 Objections, 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.

<sup>58</sup> I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107. 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 Objections, 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 Objections, 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.

<sup>59</sup> I/A Court H.R. *Case of Baruch Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, para. 154. Similarly, see I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Judgment of January 28, 2009. Series C No. 195.

97. In examining the present matter, the IACHR cannot disregard the opinion reportedly expressed by the mayor (*supra* paras. 28 and 29). The IACHR finds that, given the fundamental importance of freedom of expression for the consolidation and preservation of democracy, the appearance of impartiality is relevant when the executive authority exercises regular powers that limit the free exercise of this right. Similarly to what happens with the courts, the conduct of the administrative authorities must offer certain guarantees that make it possible to eliminate legitimate fears or well-founded suspicions of bias with respect to a population group.

98. The mayor's statements, which were not contested by the State, reasonably lead to the conclusion that his negative opinion of individuals who worked at the radio station and the station's editorial stance could have affected the decision made in this case and discriminatorily violated the alleged victims' right to freedom of expression. Additionally, account is taken of the fact that the decision to change the system for supplying power to the radio station occurred precisely on the eve of an election year and that the mayor's criticism of the radio station was essentially in reference to the station's coverage of the members of his own party.

99. Given the absence of objective reasons for the measure in question, the IACHR finds that the evidence presented is sufficient to prove the existence of a political motivation for the adoption and maintenance of the decision to exclude *Radio Estrella del Mar* from the extended-hours power supply system and the resulting difference in treatment toward the rest of the media outlets that were similarly situated.

100. In sum, the Commission finds that there is no evidence to support the assertion that the differential treatment applied to *Radio Estrella del Mar de Melinka* had a legitimate purpose in a democratic society. Therefore, the IACHR concludes that the disparate treatment experienced by the radio station was discriminatory and arbitrary, in violation of Articles 24, 13.1, and 13.3 of the Convention, in conjunction with Article 1.1 thereof, to the detriment of Miguel Ángel Millar, Narciso Nahuelquín Lepío, Patricia Cocq, Luis Jerez, Carolina Leyton, Soledad Lorca, Vanesa Mancisidor, Marcia Paredes, and Alejandra Venegas as journalists and employees of *Radio Estrella del Mar*, and Palmenia Saldivia, Eduardo Carimoney, Mabel Chiguay Carimoney, Genaro Barría, Rodrigo Levicoy, and Marcos Silva as users of the radio station.

101. The Chilean judicial authorities were informed of these acts by the alleged victims, who requested judicial protection in view of the violation of their rights. Nevertheless, as previously explained, the judges of first instance held that the decision to keep *Radio Estrella del Mar* on a different system was not objectionable, given that it was a mere act of generosity on the mayor's part. Not only did they not ascertain the existence of clear rules that would have justified the decision, or probe the reasons behind it, they also failed to investigate the possible discrimination through, for example, the use of generally accepted practices. In general, the person allegedly harmed by a potentially discriminatory State action only has to present reliable documentation of *prima facie* discriminatory treatment, and it is then up to the State to offer the objective reasons that justify the measure and its necessity. Two of the justices from the Supreme Court did indeed do this, by recognizing in their dissent the arbitrary and discriminatory nature of the measure taken by the authorities in this matter (*supra* para. 36).

102. In this regard, the appeals filed before the courts by Mr. Millar Silva failed to protect the alleged victims' right not to be subject to discrimination in the exercise of the right to freedom of expression under the terms described above.

## VII. CONCLUSION

103. Based on the considerations of fact and of law contained in this report, the IACHR concludes that the Chilean State is internationally responsible for the violation of the rights enshrined in Articles 13 and 24 of the American Convention, in conjunction with Article 1.1 thereof, in the terms set forth in this report, and to the detriment of Miguel Ángel Millar, Narciso Nahuelquín Lepío, Patricia Cocq, Luis Jerez, Carolina Leyton, Soledad Lorca, Vanesa Mancisidor, Marcia Paredes y Alejandra Venegas as journalists and employees of *Radio Estrella del Mar*, and of Palmenia Saldivia, Eduardo Carimoney, Mabel Chiguay Carimoney, Genaro

Barría, Rodrigo Levicoy, and Marcos Silva as users of the radio station.

#### **VIII. RECOMMENDATIONS**

104. Based on the analysis and conclusions of this report,

#### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF CHILE:**

1. In the event that the situation is maintained, to allow *Radio Estrella del Mar de Melinka* to access the electrical power supply during the extended hours enjoyed by the rest of the town's media outlets.
2. Appropriately redress the harm caused to the victims.
3. Take every necessary measure to guarantee that acts like those established in this case do not recur.

#### **IX. PROCEEDINGS SUBSEQUENT TO REPORT No. 2/14**

105. The Commission adopted Merits Report No. 2/14 on March 31, 2014, and transmitted it to the State on April 24, 2014. On May 8, 2014, the IACHR transmitted the pertinent parts of Merits Report to the petitioner.

106. On May 14, 2014, the State of Chile and the petitioners jointly requested an extension to explore the possibility of reaching an agreement on compliance with the IACHR recommendations. This extension was granted by the IACHR on July 24, 2014, for a period of one month. Subsequently, through a communication received on August 14, 2014, the State and the petitioners jointly requested a one-month extension because they were negotiating what they referred to as an agreement for the "implementation of recommendations." The extension was granted by the IACHR until September 24, 2014. Then, through a communication on September 11, 2014, the State and the petitioners requested that the Commission prolong the extension for a period of one month. On September 24, 2014, the Commission advised the parties that the extension had been granted for one more month. Through a communication on October 10, 2014, the State and the petitioners requested that the Commission prolong the extension for a period of two months. On October 24, 2014, the Commission advised the parties that the extension was granted for an additional two months. On February 12, 2015, both parties requested a new two-month extension, which was granted by the IACHR on February 24, 2015.

107. On April 10, 2015, both parties requested a new 40-day extension, with a view to signing the mutual compliance agreement. This extension was granted by the IACHR on April 24, 2015.

108. On June 15, 2015, the petitioners and the State reported that both parties had reached an agreement to comply with recommendations, signed by Miguel Ángel Millar and the representative for the petitioners, Liliana Tojo, on behalf of the petitioners; and by Hernán Quezada Cabrera, Human Rights Director for the Ministry of Foreign Affairs, on behalf of State of Chile. The text of the agreement reads as follows:

#### **Agreement to Comply with Recommendations from the IACHR Merits Report Case: Miguel Ángel Millar Silva et al. vs. Chile**

##### **I. The parties to the present agreement are:**

On the one hand, the State of Chile, represented by the Director of Human Rights for the Ministry of Foreign Affairs of Chile, Mr. Hernán Quezada Cabrera;

And on the other hand, the Center for Justice and International Law (CEJIL), serving as victim representative and represented by Ms. Liliana Tojo; and Mr. Miguel Ángel Millar Silva, serving as a petitioner and victim.

## II. Background

On March 31, 2014, the Inter-American Commission on Human Rights approved its Merits Report for *Case No. 12.799: Miguel Ángel Millar Silva, et al.*, establishing Chile's responsibility for the violations of rights enshrined in Articles 13 and 24 in conjunction with Article 1.1 of the American Convention on Human Rights, and therefore recommended the following to the State: "(1.) *In the event that the situation is maintained, allow 'Radio Estrella del mar de Melinka' to access the electrical power supply during the extended hours enjoyed by the rest of the town's media outlets; (2) Appropriately redress the harm caused to the victims; (3.) Take every necessary measure to guarantee that acts like those established in this case do not recur.*" On May 22, 2014, the IACHR granted both parties' request for an extension of the terms in place, in order to create opportunity for dialogue and enable an agreement on the implementation of the aforementioned recommendations.

In this connection, for the purpose of initiating dialogue with state representatives, the following Proposal for Compliance with the Article 50 Report is submitted. The Proposal is the result of consultations with the victims in the case:

### 1. Monetary Reparation

The 15 victims state that they will consider themselves duly compensated with payment of US\$3,000 to each of them—an amount they consider symbolic—in the form of a check made out to each victim, within a maximum period of three months from the signing of this agreement.

### 2. Guarantees of Non-repetition

This case is characterized by the discriminatory treatment received by a community radio station from the State, and the IACHR also aims to prevent the recurrence of these events through its Recommendations. The victims and petitioners in the case understand that the current scenario offered by the implementation of Law 20.433 on the Creation of Community Radio Broadcasting Service creates an opportunity to design and implement mechanisms and institutions that contribute in this way. To this end, they propose the following measures:

a. A citizen radio broadcasting promotion program in Regions X and XI (with an emphasis on Chiloé and Las Guaitecas) with the participation of the petitioners.

The program to be implemented should include positive action measures to ensure the effective operation of radio stations promoted by civil society. The program should be designed jointly; therefore, a specific working plan should be drawn up beforehand.

b. As part of the normal dissemination activities of the Department of Human Rights of Ministry of Foreign Affairs, the State will cover the costs of a discussion event—with a seminar format—jointly organized by a regional university, with the participation of the petitioning organization, on the implementation of the law based on international standards for free and inclusive radio broadcasting. The parties will ensure that the event includes the Under-Secretariat of Communications of the Chilean Government (SUBTEL), the National Institute for Human Rights, the Ministry General Secretariat of Government, the University of Chile, and the *Estrella del Mar* radio station, among other institutions.

The State pledges to disseminate this event—including its reports—through a publication on the government's website.

c. The establishment of a working group to ensure the rectification of discriminatory processes during the implementation of the law. The parties will work to include the Ministry General Secretariat of Government, SUBTEL, the World Association of Community Radio Broadcasters (AMARC), the National Association of Community and Citizen Radio Broadcasters of Chile (ANARCICH), universities, the Association of Chilean Journalists, and the National Institute for Human Rights.

To accomplish this, the working group will launch a study to assess the benefits of introducing modifications to Article 36(b) of the General Telecommunications Law, No. 18.168.

To facilitate the implementation of the proposed measures in the context of current public policy, a working meeting is proposed between the State and the petitioners.

### **3. Public Nature of the IACHR Report**

The State agrees to allow the IACHR to make the content of Report No. 2/14 public, along with the approval of this Compliance Agreement. Furthermore, it pledges to make the text of the agreement public for a minimum period of six months on the websites of the Ministry of Foreign Affairs, the Ministry of Transportation and Telecommunications, and the Ministry General Secretariat of Government. It further undertakes to write a summary that may be published through a dissemination medium in the location of the events.

In Santiago, Chile, on May 8, 2015, the parties sign this document:

109. Based on the foregoing, the State and the petitioners requested that the Commission publish the report in accordance with Article 51 of the Convention.

### **X. ACTIONS SUBSEQUENT TO REPORT No. 77/15**

110. The Commission adopted its Merits Report No. 77/15 on October 28, 2015 and transmitted it to the parties on 30 October 2015. Having reviewed the information submitted by the parties regarding the compliance its recommendations, the Commission decided not to refer this case to the Inter-American Court of Human Rights.

111. On 26 April 2016, the Commission requested updated information on the implementation of the recommendations.

112. On May 9, 2016, the petitioners reported that in terms of financial compensation, the State had paid the compensation to the victims satisfactorily. At the same time, they noted that it had not been possible for two of the children of Genaro Barria to obtain the compensation because of internal problems with the process to claim the inheritance. Regarding the guarantees of non-repetition, the petitioners indicated that for that date the State had not yet begun implementing the commitments undertaken in the compliance agreement on the matter. However, they indicated that on April 8, 2016, the petitioner Miguel Millar held a meeting with the Foreign Ministry in which the State reiterated its willingness to advance the implementation of the agreement. This information was forwarded to the State.

113. On 11 June 2016, the parties held a working meeting in Chile with the support of the Commissioner Enrique Gil Botero, IACHR Rapporteur for the country, in which the parties agreed on a time frame for the installation of the Working Group.

114. On October 28, 2016, the State submitted a report on the implementation of the recommendations. Regarding the economic compensation for the victims, the State reported that Presidential Decree No. 111 was issued on August 17, 2015, through which the payment of three thousand dollars was ordered in favor of each of the victims. As reported, the payment was made to all victims through



a check, with the exception of the payment of Genaro Barria, since it is necessary that the heirs appoint a trustee to proceed with its collection. In relation to measures of non-repetition, the State indicated that on September 27, 2016, the Working Group was established as set out in the agreement, to promote the study of the relevance of the introduction of amendments to Article 36 b of the General Law of Telecommunications No. 18.168. As agreed, before holding a second meeting that is scheduled for November 2016, participants of the Working Group will work on proposals on the legal framework currently governing community radio; measures to improve the existing infrastructure of community radio; and the objectives, content and financing of the citizen radio broadcasting promotion program in Regions X and XI. In relation to the realization of an event for discussion included in paragraph b of paragraph 2 of the agreement, the State reported that at the next working meeting the parties will decide its content, and announced the proposal submitted by the petitioners, which includes the name of the event, tentatively location, duration, objectives and methodology.

## **XI. ANALYSIS OF COMPLIANCE WITH RECOMMENDATIONS**

115. The Commission notes that by virtue of the Agreement to Comply with Recommendations signed by the parties, the State pledges to do the following: award monetary reparation to each of the victims; offer guarantees of non-repetition through the implementation of Law 20.433 called *Creation of Community Radio Broadcasting Services* and through citizen radio broadcasting promotion programs in Regions X and XI (emphasizing Chiloé and Las Guaitecas); hold a seminar on the implementation of this law based on international standards for access to free and inclusive radio broadcasting, led by the Department of Human Rights of the Ministry of Foreign Affairs, and with the participation of the Under-Secretariat of Communications of the Chilean government, the National Institute for Human Rights, the Ministry General Secretariat of Government, the University of Chile, and *Radio Estrella Mar*, among others; and establish a working group to rectify discrimination in the application of the law. The agreement also includes a clause on public dissemination.

116. Through a communication on June 15, 2015, both the petitioners and the State requested the implementation of this report pursuant to Article 51 of the American Convention, stating as follows: "Considering that the parties have reached this Agreement and that the State pledges to comply fully therewith, we request that the Commission publish the content of Report No. 2/14, pursuant to Article 51 of the American Convention, and that it continue monitoring and following up on the Agreement, and thus, on the recommendations issued by this body."

117. The Commission notes that the parties agreed to request that the IACHR continue with the follow-up process for the agreement.

118. The Commission notes that the State began implementing the agreement for the compliance with the recommendations through the payment of the compensation agreed to Michelangelo Millar, Narciso Nahuelquín Lepio, Patricia Cocq, Luis Jerez, Carolina Leyton, Soledad Lorca, Vanesa Mancisidor, Marcia Paredes and Alejandra Venegas as workers and journalists of Radio Estrella del Mar and Palmenia Saldivia, Eduardo Carimoney, Mabel Chiguay Carimoney, Rodrigo Levicoy, and Marcos Silva. In the same regard, it is observed that the State reiterated its willingness to fulfill the rest of the commitments established in the compliance agreement, for which the Working Group to ensure overcoming discriminatory practices in the implementation process of the Law was installed.

## **XI. CONCLUSIONS AND FINAL RECOMMENDATIONS**

119. Based on the considerations of fact and of law contained in this report, the IACHR concludes that the Chilean State is internationally responsible for the violation of the rights enshrined in Articles 13 and 24 of the American Convention, in conjunction with Article 1.1 thereof, in the terms set forth in this report, and to the detriment of Miguel Ángel Millar, Narciso Nahuelquín Lepío, Patricia Cocq, Luis Jerez, Carolina Leyton, Soledad Lorca, Vanesa Mancisidor, Marcia Paredes y Alejandra Venegas as journalists and employees of *Radio Estrella del Mar*, and of Palmenia Saldivia, Eduardo Carimoney, Mabel Chiguay Carimoney, Genaro Barría, Rodrigo Levicoy, and Marcos Silva as users of the radio station.

120. Pursuant to Article 51(3) of the Convention, in this stage of the process, the IACHR must determine if the State has complied with the issued recommendations. In this regard, the Commission highly values the efforts put forth by both parties to reach an agreement to comply with the recommendations issued in Merits Report No. 2/14. In particular, the Commission highlights the importance of the agreement, in that it redressed harm to victims of human rights violations with guarantees of non-repetition and the publishing of this report, as well as with financial reparation.

121. The IACHR will continue monitoring compliance with the recommendations of this agreement to ensure appropriate reparation to Miguel Ángel Millar, Narciso Nahuelquín Lepío, Patricia Cocq, Luis Jerez, Carolina Leyton, Soledad Lorca, Vanesa Mancisidor, Marcia Paredes, and Alejandra Vanegas, as the workers and journalists of *Radio Estrella del Mar*, and to Palmenia Saldivia, Eduardo Carimoney, Mabel Chiguay Carimoney, Genaro Barría, Rodrigo Levicoy, and Marcos Silva, as users of the radio station, for the abovementioned violations, in accordance with the pledges undertaken in the agreement to comply with the recommendations in the Merits Report signed by both parties.

122. Lastly, the IACHR considers that the State is been complying with the recommendations issued on Merits report No. 2/14. The IACHR takes into consideration the joint request of the parties regarding the publication of the Report, the implementation of the payment of the economic reparation and the willingness of the State to comply with the recommendations; and on the base of the analysis and conclusions of the present report, the Inter-American Commission on Human Rights, reiterates the following recommendations to the Chilean State:

1. In the event that the situation is maintained, to allow *Radio Estrella del Mar de Melinka* to access the electrical power supply during the extended hours enjoyed by the rest of the town's media outlets.
2. Appropriately redress the harm caused to the victims.
3. Take every necessary measure to guarantee that acts like those established in this case do not recur.
4. Adopt necessary measures for the implementation of the points included in the Agreement to Comply with Recommendations signed by the parties.

### **XIII. PUBLICATION**

123. By virtue of the considerations aforementioned and in accordance to article 51 (3) of the American Convention and Article 47 (3) of its Rules of Procedure, the Commission decides to publish this report and to include it in its Annual Report to the General Assembly of the OAS. The Commission, in compliance with its mandate, will continue to evaluate the measures undertaken by the State until the full compliance with the recommendations that have been reiterated in this report.

Done and signed in the city of Panama City, on the 29<sup>th</sup> day of the month of November, 2016. (Signed): James L. Cavallaro, President; Francisco Eguiguren Praeli, First Vice-President; Margarette May Macaulay, Second Vice-President, José de Jesus Orozco, Paulo Vannuchi, Esmeralda Arosemena de Troitiño, and Enrique Gil Botero, Commissioners.