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REPORT No. 52/18
PETITION 253-10
REPORT ON ADMISSIBILITY

ALEJANDRO FERNANDO AGUILERA MENDIETA, *ET AL.*
MEXICO

Approved by the Commission at its session No. 2127 held on May 5, 2018
168th Regular Period of Sessions

Cite as: IACHR, Report No. 52/18, Petition 253-10. Admissibility. Alejandro Fernando Aguilera
Mendieta, *et al.* Mexico. May 5, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Fernando M. Toller, C. Ignacio de Casas, Ignacio A. Boulín Victoria
Alleged victim:	Alejandro Fernando Aguilera Mendieta <i>et al.</i> ¹
Respondent State:	Mexico ²
Rights invoked:	Articles 9 (freedom from ex post facto laws) and 13 (freedom of expression) in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention on Human Rights ³ and Articles IV (right to freedom of investigation, opinion, expression and dissemination) and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man ⁴

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	February 26, 2010
Additional information received at the stage of initial review:	March 3, 2010; April 22, 2010; April 22, 2016
Notification of the petition to the State:	May 24, 2016
State's first response:	May 11, 2017
Additional observations from the petitioner:	July 17, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes, in the terms of section VI
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument deposited on March 24, 1981)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 8 (right to a fair trial), 9 (freedom from ex post facto laws), 13 (freedom of expression), and 25 (right to judicial protection) in relation to Articles 1.1 (obligation to respect rights), and 2 (domestic legal effects) of the American Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, August 26, 2009
Timeliness of the petition:	Yes, February 26, 2010

¹ Miguel Ángel Díez García, Ángel Israel Crespo Rueda, Miriam Villanueva Chiapas, Félix José Araujo Ramírez, Raquel Hidalgo Márquez, Radiotelevisora de México Norte S.A. de C.V., Cadena Televisora del Norte S.A. de C.V., and Televimex S.A. de C.V.

² In accordance with Article 17.2.a of the Rules of Procedure of the Commission, Commissioner Joel Hernández García, a Mexican national, did not take part in the debate or decision of this matter.

³ Hereinafter "ACHR" or "American Convention."

⁴ Hereinafter "American Declaration."

⁵ The observations submitted by each party were duly transmitted to the opposing party.

V. FACTS ALLEGED

1. The petition refers to the alleged violation of the right to freedom of expression and the principle of legality to the detriment of three audiovisual media licensees and their executives as a result of penalties (an order to cease the broadcasting of content and a monetary fine) imposed against those licensees in 2009 by the Mexican State “for allegedly having entered into an contract for election advertising and [...] having disparaged certain candidates for elected office and a political party in the midst of elections.” The petitioners maintain that the subsequent liability established in this case for the dissemination of advertisements with political content does not meet the requirements of legality, necessity, and proportionality.

2. The petitioners assert that in June 2009, the publishing company Potros Editora S.A. agreed to run advertisements for its magazine *Impacto* with the television licensees *Radiotelevisora de México Norte S.A. de C.V.* (Channel 22), *Cadena Televisora del Norte S.A. de C.V.* (Channel 2), and *Televimex S.A. de C.V.* (Channel 34, Channel 6+, Channel 10+). They state that *Impacto* is a weekly magazine dedicated to political information and analysis that has been distributed nationally for over 50 years. The petitioners indicate that, pursuant to those advertising contracts, “from June 16 to 30, 2009, and ending five days prior to the July 5, 2009 election day in the State of Nuevo León, the aforementioned channels aired three promotional spots announcing, respectively, that the three most recent editions of the magazine *Impacto* were available at newsstands.” They contend that the commercials announced the magazine’s content and promoted journalistic articles related to corruption cases reportedly involving candidates for elected office in the State of Nuevo León, Mexico, belonging to the National Action Party [*Partido Acción Nacional*] (PAN), which was the national ruling party.

3. According to the petitioners, the content of the three commercials, “in addition to showing the magazine covers, photos of the candidates, and the PAN emblem” was as follows:

- “This week Nuevo Leon is making headlines. Find out how PAN candidate for State governor, Fernando Elizondo, generously lent money when he was the State Treasurer. Don’t miss it! What you want to read is in *Impacto* magazine.”
- “This week the crime municipalities are making headlines. Discover how San Pedro and San Catalina in Nuevo León are two of the municipalities with the fastest-growing crime and impunity rates, and read about the lies behind Fernando Larrazabal’s candidacy for mayor of Monterrey. Don’t miss it! What you want to read is in *Impacto* magazine.”
- This week two stories from Nuevo León are making headlines. Discover how Mauricio Fernández, PAN candidate for mayor of San Pedro, contradicts himself with recordings that reveal his agreement with drug traffickers, and read about gubernatorial candidate Fernando Elizondo’s contradictions throughout his career as a public servant. Don’t miss it! What you want to read is in *Impacto* magazine.”

4. They indicate that, based on the broadcasting of those advertisements, the PAN representative in the State of Nueva León filed a complaint on July 2, 2009 and requested interim relief measures from the Complaints Commission (QCD) of the Federal Electoral Institute [*Instituto Federal Electoral*] (IFE) headquartered in that State, on the grounds that the advertisement violated the rules governing the dissemination of election advertising. They maintain that on July 3, 2009 the IFE ordered the television channels, as an interim measure, to immediately suspend the broadcasting of the promotional spots and conducted a special sanctions proceeding. On July 15, the IFE issued a resolution determining that the commercials in question were election advertising and stated that “although *Impacto* magazine was disseminated in an advertising context, that dissemination was a violation of election rules because it included images, emblems, and expressions designed to influence the citizens of the State of Nuevo León.” The IFE decided to sanction the publisher of *Impacto* magazine (Potros Editores) with a fine of MXN\$ 2 million (approximately US\$ 165,000), licensee *Televimex S.A. de C.V.* with a fine of MXN\$ 4 million (approximately US\$

330,000), and licensees *Radiotelevisora de México Norte S.A. de C.V.* and *Cadena Televisora del Norte S.A. de C.V.* with fines in the amount of MXN\$ 400,000 (approximately US\$ 33,000).

5. The three audiovisual media licensees filed appeals with the Federal Electoral Tribunal [*Tribunal Federal Electoral*] (TRIFE) arguing, inter alia, that the commercials could not be considered to be dissemination of election advertising, because their intent was not to promote registered candidates, but rather to publish a political magazine. On August 26, 2009, the TRIFE upheld the decision of the IFE, but ordered it to state the reasons for the monetary penalty assessed against *Cadena Televisora Norte, S.A. de C.V.* and *Radiotelevisora del Norte SA. De C.V.* and to impose a penalty proportional to their financial capacity. In its decision, the Tribunal found not only that the commercials constituted election advertising sold by unauthorized entities but also that “it was proven in the resolution on appeal that disparaging propaganda was disseminated” against the candidates and political parties. The petitioners assert that after the penalties were imposed by the IFE and the TRIFE, the managing directors of the respective media outlets decided against once again broadcasting advertisements that could give rise to penalties, “even at the cost of ceasing to inform the public about matters of general interes[t].” Later, the IFE reduced the monetary penalties assessed against *Cadena Televisora Norte, S.A. de C.V.* and *Radiotelevisora del Norte SA. De C.V.* (fines of MXN\$ 220,022.00 and MXN\$ 135,027.20, respectively).

6. According to the petitioners, the penalties assessed against the media outlets are derived from the 2007 constitutional reform amending Article 41 of the Mexican Constitution. They maintained that Article 41 of the Constitution, in conjunction with Article 350 of the Federal Code of Electoral Institutions and Procedures, unduly restrict freedom of expression, as, among other things, it restricts “any individual or legal entity from buying radio and/or television advertisements that may influence the electoral preferences of the public, whether for or against political parties or candidates to elected office.” It also provides that “the election advertising disseminated by political parties should avoid speech that denigrates institutions and parties or that malign individuals.” The petitioners similarly state that these provisions prohibit the dissemination of political or electoral advertising, whether paid or free of charge, ordered by persons other than the IFE. They argue that although the regulation of partisan messages and advertising during an election period pursues legitimate aims, the Mexican legal framework is vague and overly broad, and grants an undue margin of discretion to the authorities for its application, such that—as allegedly occurred in this case—the broadcasting of content that is of interest to the public in elections can be restricted and penalized.

7. The petitioners asked the IACHR to admit three legal entities (*Radiotelevisora de México Norte S.A. de C.V.*, *Cadena Televisora del Norte S.A. de C.V.*, and *Televimex S.A. de C.V.*) as alleged victims in this case, as well as six individuals whose rights they claim were violated by the actions of the Mexican State.

8. With respect to the legal entities, the petitioners argue that they are media companies entitled to the right to freedom of expression and deserving of protection from the bodies of the inter-American system. They assert that the right to freedom of expression “must naturally, clearly, and necessarily be held by media outlets, and not just by journalists, independent media workers, or regular citizens,” and that this has been recognized under international human rights law and comparative law. They indicate that there are no individual broadcasting services licensees in Mexico; rather, all of them are legal entities. They add that the work done by the media outlets penalized in this case “cannot practically be provided without the structure and complexity afforded by a mass media outlet.”

9. With regard to the individuals, the petitioners argue that they are members of media organizations that “make decisions regarding the programming content that is disseminated,” and thereby “exercise their own freedom of expression through those news outlets.” They argue that Alejandro Fernando Aguilera Mendieta (Director of Programming and Infrastructure at *Cadenas de Televimex S.A. de C.V.*), Miguel Ángel Díez García (Director of Traffic at *Televimex S.A. de C.V.*), Ángel Israel Crespo Rueda (Legal Coordinator of *Televimex S.A. de C.V.*), Miriam Villanueva Chiapas (Programming Director of *Radiotelevisora de México Norte S.A. de C.V.*), and Felix Araujo Ramírez (Programming Director of *Radiotelevisora de México Norte S.A. de C.V.*) “are the ones who must decide whether—and when and where—to air advertising spots that may be considered violations of the vague and threatening electoral and broadcasting regulations. They are also the ones who sell airtime for commercials and prepare their content, or approve those contracts and broadcasts.”

They maintain that the penalty imposed against the legal entities where they work affects the exercise of their fundamental rights, “because by virtue of that judicial measure they cannot express themselves freely, make decisions on what programs to encourage, what types of issues to deal with, etc., without risking their employment, their own personal liability, and the subsequent liability of the licensee and/or publishing house.” They explained, in turn, that these individuals have had to make the decision to suspend other publications that raise—in this context of legal uncertainty—the possibility that they will be penalized, which “demonstrates the chilling effect on freedom of expression of the violations perpetrated by the State.” They also allege that “their freedom of expression is violated in conjunction with a violation of the principle of legality, given that there are constitutional and legal provisions that are completely vague and overly broad, that make it impossible to know exactly what content and conduct they prohibit.”

10. They ask the IACHR to also recognize Raquel Hidalgo Márquez as an alleged victim in this case. She is a Mexican citizen who believes that her right to receive information about political figures in the election context without undue restrictions has been infringed. They argue that the facts alleged “do not allow her, as a regular citizen, to receive clear, accurate, and complete information about election candidates and issues.”

11. The petitioners state that the domestic legal remedies were exhausted with the decision issued by the TRIFE, of which they received notice on August 27, 2009. They indicate that this decision is final and not subject to judicial appeal in the domestic system. They maintain that these remedies were exhausted by the media outlets (legal entities) through their legal representatives and that the executives were not formally parties to the proceedings, as “they do not have standing at the domestic level to challenge the proceedings and the penalty” against the media outlets. They argue that “if the individuals had been able to take part in the trial at the national level, it would in any case have been a useless formal requirement, as the meaning of the TRIFE’s decision would certainly not have varied.”

12. In particular, the petitioners indicate that the requirement to resort to the figure of the interested third party would be “completely illogical,” given that according to article 12, first paragraph, clause c) of the General Law of the System of Means of Impugnment in Electoral Matter [*Ley General del Sistema de Medios de Impugnación en Materia Electoral*] (LGSMIME), the procedural requirement for this figure is a right incompatible with the actor, which would not be observed in the present situation, because “the natural and the legal entity in the proceedings had exactly the same interest and same right (to freedom of expression) violated.” Then, they affirm that for this specific case this option would be “completely unreasonable,” since it would have been “impossible from the procedural point of view and from the logical point of view” that the natural persons were constituted as third parties interested in the appeal procedure presented by the three companies.

13. Likewise, they point out that the legal procedure for the protection of political-electoral rights, which would be contemplated in article 79 of the LGSMINE, was not an adequate or appropriate remedy to redress a violation of the right to freedom of expression, “because these individual victims suffered injuries to rights of a diverse nature to those who are protected in such legal procedure.” In this regard, they add that the situation that gave rise to the present petition “[i]s the state sanction to the media companies referred to, which constitutes a form of censorship and undue restriction to publicize political content. This situation and the violated right are not possible to be subsumed in any of the situations established by art. 79 of the LGSMIME. The rights of the victims to vote and be voted, to associate individually and freely to participate in a peaceful way in political affairs or to join a political party free were not affected. Nor was the right to integrate state authorities violated.” They affirm that neither any of the situations contemplated in art. 80 would be verified, which would list in its paragraphs the situations in which the citizen can promote the legal procedure established in the aforementioned article 79. In particular, they maintain that, in the present case, the generic assumption contemplated in subparagraph f) of article 80 would not be verified, since “[t]he same refers to any act or resolution of the authority but that violates some political-electoral right of art. 79.”

14. The State provided an account of the facts surrounding this petition that was consistent in relevant part with the facts presented by the petitioners. The State argues that legal entities are not entitled to the rights provided for in the ACHR or subject to the protection of its bodies, citing Advisory Opinion OC-22/16 to support its position. It also underscores that, although the individuals may have “ties to the legal entities

penalized in this case, that does not mean that their human rights were violated.” In this regard, it asks the IACHR to declare that it lacks competence to hear and decide the instant petition because *Televimex S.A. de C.V.*, *Cadena Televisora Norte, S.A. de C.V.* and *Radiotelevisora de México Norte, S.A. de C.V.* are legal entities. The State further argues that is not enough for the individuals “to have a connection to the companies and the punishable actions as employees of those companies, since the intent of those executives and employees was not to express an opinion; the action of the legal entities as licensees authorized to disseminate election advertising was penalized because of the way in which the content was distributed, not because of its substance.” It asserts that “the simple connection between the legal entities and the individuals is insufficient for the penalty assessed exclusively against the former to have repercussions on the human rights of the latter.”

15. In addition, the State contends that the individuals failed to exhaust the domestic legal remedies available to them that would have ensured the protection of the political election rights of both the media executives and interested third parties.⁶ It explained that, under Mexican law, “it is possible for an individual or legal entity with a legitimate interest in the case derived from a right that is incompatible with the interest claimed by the challenging party to avail himself or itself of the State’s judicial system.” The State reported that this concept is known as “interested third parties,” and that the courts are required to examine the claims of such parties in order to guarantee the principle of exhaustiveness in their decisions. The State contends that the petitioners had the “ability to appear in their capacity as interested third parties in the challenges filed against the determinations of the IFE, particularly if they are arguing that the substance of the proceeding and the penalties imposed violated their fundamental rights.”

16. Finally, the State alleges that the petitioners have not shown facts that amount to the violation of any of the rights provided in the ACHR. It maintains that the penalty imposed against the licensees was proportionate to the severity of the unlawful act; that it did not affect the petitioners’ freedom of expression or the freedom of commerce of the television stations. It states that there is no prohibition against disseminating election advertising; rather, it is regulated in terms of form, time, and space. Therefore, it argues that the dissemination of the information contained in *Impacto* magazine should have been distributed with the prior authorization of the IFE. The State concludes that, because the regulations in force were not observed, the law authorizes the measure adopted.

VI. COMPETENCE RATIONE PERSONA

17. The Commission finds it appropriate to reiterate that the concept of “person” provided for in Article 1.2 of the American Convention does not include legal entities.⁷ In this regard, the Commission has indicated that the Preamble to the American Convention and Article 1.2 establish that “for the purposes of this Convention, ‘person’ means every human being,” and that the protection granted by the Inter-American Human Rights System is circumscribed to natural persons.⁸ On this basis, the Commission and the Inter-American Court have held that legal entities cannot access the inter-American human rights system as alleged victims in adversarial proceedings.⁹ This does not restrict the possibility that under certain exceptional circumstances,

⁶ Constitution of the United Mexican States, Article 41, Paragraph 2(VI) and Article 99; General Law of the System of Means of Impugment, Articles 12, 17, 4, 45, and 79.

⁷ IACHR, Report No. 72/11, Petition 1164-05, Admissibility, William Gómez Vargas, Costa Rica, March 31, 2011, Para. 32; also I/A Court H.R., *Case Granier and others (Radio Caracas Television) v. Venezuela*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C, No. 293, Para. 19 and 146; and I/A Court H.R., Advisory Opinion 22/16. Entitlement of legal entities to hold rights under the Inter-American Human Rights System (interpretation and scope of Article 1.2 in relation to articles 1.1, 8, 11.2, 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62.3 of the American Convention on Human Rights, in addition to article 8.1.a and b of the Protocol of San Salvador). February 22, 2016. Para. 70.

⁸ IACHR, Report No. 122/10, Petition 475-00, Admissibility, Carlos Arturo Betancourt Estrada and others, Colombia, October 23, 2010. Para. 29.

⁹ I/A Court H.R., *Case Granier and others (Radio Caracas Television) v. Venezuela*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C, No. 293, Para. 107 and 146; and I/A Court H.R., Advisory Opinion 22/16. Entitlement of legal entities to hold rights under the Inter-American Human Rights System (interpretation and scope of Article 1.2 in relation to articles 1.1, 8, 11.2, 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62.3 of the American Convention on Human Rights, in addition to article 8.1.a and b of the Protocol of San Salvador). February 22, 2016. Para. 70. See also IACHR, Report No. 72/11, Petition 1164-05, Admissibility, William Gómez Vargas, Costa Rica, March 31, 2011, Para. 32, and IACHR, Report No. 67/01, Case 11.859, Tomás Enrique Carvallo Quintana, Argentina, June 14, 2001, Para. 54.

the individual exercising his rights through legal entities may resort to the inter-American system to enforce their fundamental rights, even when those rights are covered by a legal fiction or concept created by the legal system.¹⁰

18. In fact, the Inter-American Court has specifically held that the mere act of exercising a right through a legal entity does not necessarily exclude it from the protection of the Convention.¹¹ The Court has observed on this point that, “in general, the rights and obligations attributed to legal entities become the rights and obligations of the individuals that make them up or act in their stead or on their behalf.”¹² Similarly, the IACHR has found that “a system for the effective and material protection of human rights is obliged to examine whether in each concrete case, beyond formal appearances, the allegedly arbitrary acts that affected a legal person also had by extension a material or substantial effect on the human rights of the natural persons related to, associated with, or in any way connected to the legal person. If that were the case, and the other requirements for [the] admissibility of the petition were met, the Commission could not reject the case under the pretext that the violation [...] affected the legal person.”¹³

19. In particular, both the IACHR and the Inter-American Court have rendered decisions on various occasions regarding the right to freedom of expression and its exercise through a legal entity.¹⁴ The IACHR has observed that “these days, a significant amount of journalism is done via media outlets. These media outlets are, in effect, associations of persons who have come together to exercise steadily their freedom of expression. At the same time, it is currently very rare for a media outlet to not have the status of a legal person, meaning that restrictions on freedom of expression frequently take place through State actions that formally [affect] that legal person.”¹⁵ Similarly, the Inter-American Court has recognized that “media outlets serve as mechanisms for the exercise of the right to freedom of expression of those who use them as a means to disseminate their ideas and information,”¹⁶ and has noted that restrictions to the freedom of expression of a media outlet can affect a “number of individuals, such as their shareholders or the journalists they employ, who

¹⁰ I/A Court H.R., *Case Granier and others (Radio Caracas Television) v. Venezuela*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C, No. 293, Para. 146; I/A Court H.R., *Case Cantos v. Argentina*. Preliminary Exceptions. Judgment of September 7, 2001. Series C, No. 85, Para. 27 and 29; IACHR, *Case Perozo and others v. Venezuela*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C, No. 195. Para. 399, and I/A Court H.R., Advisory Opinion 22/16. Entitlement of legal entities to hold rights under the Inter-American Human Rights System (interpretation and scope of Article 1.2, in relation to articles 1.1, 8, 11.2, 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62.3 of the American Convention on Human Rights, in addition to article 8.1.a and b of the Protocol of San Salvador). February 22, 2016. Para. 70. See also IACHR, Report No. 72/11, Petition 1164-05, Admissibility, William Gómez Vargas, Costa Rica, March 31, 2011, Para. 32, and IACHR, Report No. 67/01, Case 11.859, Tomás Enrique Carvallo Quintana, Argentina, June 14, 2001, Para. 54, which states that “in principle, shareholders cannot claim to be victims of interference with the rights of a company absent a showing of direct effect on their rights”.

¹¹ I/A Court H.R., *Case Cantos v. Argentina*. Preliminary Exceptions. Judgment of September 7, 2001. Series C, No. 85, Para. 29; IACHR, Advisory Opinion 22/16. Entitlement of legal entities to hold rights under the Inter-American Human Rights System (interpretation and scope of Article 1.2, in relation to articles 1.1, 8, 11.2, 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62.3 of the American Convention on Human Rights, in addition to article 8.1.a and b of the Protocol of San Salvador). February 22, 2016. Para. 111. See also: IACHR, Report No. 72/11, Petition 1164-05, Admissibility, William Gómez Vargas, Costa Rica, March 31, 2011, Para. 32.

¹² I/A Court H.R., *Case Granier and others (Radio Caracas Television) v. Venezuela*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C, No. 293, Para. 107, and I/A Court H.R., Advisory Opinion 22/16. Entitlement of legal entities to hold rights under the Inter-American Human Rights System (interpretation and scope of Article 1.2, in relation to articles 1.1, 8, 11.2, 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62.3 of the American Convention on Human Rights, in addition to article 8.1.a and b of the Protocol of San Salvador). February 22, 2016. Para. 111.

¹³ IACHR, Report No. 72/11, Petition 1164-05, Admissibility, William Gómez Vargas, Costa Rica, March 31, 2011, para. 32.

¹⁴ I/A Court H.R., *Case Granier and others (Radio Caracas Television) v. Venezuela*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C, No. 293, Para. 148; I/A Court H.R., Advisory Opinion 22/16. Entitlement of legal entities to hold rights under the Inter-American Human Rights System (interpretation and scope of Article 1.2, in relation to articles 1.1, 8, 11.2, 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62.3 of the American Convention on Human Rights, in addition to article 8.1.a and b of the Protocol of San Salvador). February 22, 2016. Para. 111. See also: IACHR, Report No. 72/11, Petition 1164-05, Admissibility, William Gómez Vargas, Costa Rica, March 31, 2011, Para. 32; and IACHR, Report No. 112/12, Case 12.828, Merits, Marcel Granier and others, Venezuela. Para. 128.

¹⁵ IACHR, Report No. 112/12, Case 12.828, Merits, Marcel Granier and others, Venezuela. Para. 128.

¹⁶ I/A Court H.R., *Case Granier and others (Radio Caracas Television) v. Venezuela*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C, No. 293, Para. 148; I/A Court H.R., Advisory Opinion 22/16. Entitlement of legal entities to hold rights under the Inter-American Human Rights System (interpretation and scope of Article 1.2, in relation to articles 1.1, 8, 11.2, 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62.3 of the American Convention on Human Rights, in addition to article 8.1.a and b of the Protocol of San Salvador). February 22, 2016. Para. 111. See also: IACHR, Report No. 72/11, Petition 1164-05, Admissibility, William Gómez Vargas, Costa Rica, March 31, 2011, Para. 32.

carry out acts of communication through [the media outlet] and whose rights can also be violated.”¹⁷ In this regard, the IACHR has stated that “journalists or, in the case of a television channel, those appearing on the screen, are not the only ones expressing themselves through media outlets. There are multiple roles within a media outlet in which a professional can contribute to the communicative mission of an organization and in this way exercise freedom of expression.”¹⁸

20. In these types of cases, the IACHR and the Inter-American Court have established that to determine whether a government action that affected a media outlet as a legal entity also had, because of the connection between them, a certain and substantial negative impact on the freedom of expression of individuals, it is necessary to examine the role played by the alleged victims within the respective media organization and, in particular, the way in which they were contributing to the channel’s communications mission.¹⁹ In this regard, although the licensee companies *Radiotelevisora de México Norte S.A. de C.V.*, *Cadena Televisora del Norte S.A. de C.V.*, and *Televimex S.A. de C.V.* cannot be considered the alleged victims, the issue that the IACHR must decide in this matter is whether the imposition of a subsequent penalty against a media outlet based on the publication of specific information may have affected the freedom of expression of its employees.

21. The Commission observes that according to the petitioners’ allegations, which have not been disputed by the State, Alejandro Fernando Aguilera Mendieta, Miguel Ángel Diez García, Ángel Israel Crespo Rueda, Miriam Villanueva Chiapas, and Félix José Araujo Ramírez were the individuals responsible for deciding to air the content disseminated by those media outlets and penalized by the Mexican authorities; they are also the people who were subsequently responsible for deciding what to air and what not to air in order to prevent future sanctions. In other words, they contributed directly to the communications mission of the media outlets, by directing the production and airing of content, or indirectly, by providing essential services such as legal support. To that extent, the Commission finds it plausible to suggest that in this case, given the role of these individuals as media executives, the penalties imposed against the outlets where they worked—which also stemmed from their programming decisions—could potentially affect their right to freedom of expression by virtue of their connection to the outlet. The arguments and evidence about how these individuals exercised the rights allegedly violated through the respective media outlets will be analyzed specifically at the merits stage.²⁰ This is not the case in relation to Raquel Hidalgo Márquez, who, it is alleged, was adversely affected by the sanctions in terms of her right as a Mexican citizen to receive information in election contexts. The IACHR finds that the petitioners failed to provide sufficient evidence of Raquel Hidalgo’s relationship with the penalized media outlets, the role she played in them, and the potential infringement of her human rights as a result of the facts of this case.

22. Based on the foregoing reasons, the IACHR finds that the alleged victims in this matter are: Alejandro Fernando Aguilera Mendieta, Miguel Ángel Diez García, Miriam Villanueva Chiapas, and Félix José Araujo Ramírez, individuals with respect to whom the State agreed to guarantee the rights enshrined in the ACHR. Therefore, the Commission concludes that it has competence *ratione personae* to examine the complaint referred to in this report.

VII. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

23. In this case, the IACHR notes that on July 15, 2009, the IFE sanctioned the media outlets for the alleged dissemination of prohibited election advertising. The three companies appealed the decision, and

¹⁷ I/A Court H.R., *Case Granier and others (Radio Caracas Television) v. Venezuela*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C, No. 293, Para. 151; and I/A Court H.R., Advisory Opinion 22/16. Entitlement of legal entities to hold rights under the Inter-American Human Rights System (interpretation and scope of Article 1.2, in relation to articles 1.1, 8, 11.2, 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62.3 of the American Convention on Human Rights, in addition to article 8.1.a and b of the Protocol of San Salvador). February 22, 2016. Para. 117.

¹⁸ IACHR, Report No. 112/12, Case 12.828, Merits, Marcel Granier and others, Venezuela. Para. 128.

¹⁹ I/A Court H.R., *Case Granier and others (Radio Caracas Television) v. Venezuela*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C, No. 293, Para. 151; and IACHR, Report No. 72/11, Petition 1164-05, Admissibility, William Gómez Vargas, Costa Rica, March 31, 2011, Para. 32.

²⁰ I/A Court H.R., *Case Granier and others (Radio Caracas Television) v. Venezuela*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C, No. 293, Para. 22.

on August 26, 2009, the TRIFE affirmed the IFE's decision. Therefore, the IACHR finds, and the State admits, that the media outlets filed and exhausted the available remedies to challenge the penalty that was imposed.

24. The State argues, nevertheless, that the alleged victims failed to exhaust the domestic remedies as individuals. The State asserts that the Electoral Tribunal of the Federal Judiciary can hear and decide challenges concerning acts and resolutions that violate the political electoral rights of citizens. Those remedies, it stresses, are recognized in Articles 42, 45, and 79 of the General Law for the Settlement of Electoral Disputes [*Ley General del Sistema de Medios de Impugnación en materia electoral*]. It further adds that Article 12 of the same law provides for the concept of "interested third party," which would allow individuals to join the proceedings against the legal entity in order to ensure the protection of their political electoral rights as citizens.

25. The IACHR has understood that the fact that domestic remedies have been exhausted in the name of a legal entity, does not automatically exclude the possibility of ruling on the effects on the rights of natural persons as a consequence of acts or omissions that affect the legal entity. It is then necessary to evaluate, in each case, whether the natural person had - effectively and in front of the specific state act or omission - the remedies to claim as such the violation of their human rights. When judicial remedies could only be exhausted in the name of the legal entity, the Commission has paid special attention to the coincidence of arguments at a domestic level with respect to those raised before the Commission."²¹

26. In addition, the Inter-American Court of Human Rights has declared that, for the purpose of the admissibility of the petition, "if it is proven that the remedy exhausted by the legal entity protects the individual rights of the natural persons who intend to avail themselves of the inter-American system, that remedy could be understood to be a suitable and effective remedy."²² On this point, the Inter-American Court underscored that, in these types of matters, "domestic remedies must be understood to have been exhausted in compliance with Article 46.1.a) of the Convention when: i) it is proven that the available, suitable, and effective remedies for the protection of an individual's rights have been filed, regardless of whether they have been filed and decided in favor of a legal entity, and ii) it is demonstrated that the claims asserted by the legal entity in the domestic proceedings coincide with the alleged violations argued before the inter-American system."²³

27. With regard to the remedies that the State argues that should be exhausted by the alleged victims in this case, the IACHR notes that according to Article 12, first paragraph, subparagraph c)²⁴, of the General Law of the System of Means of Impugnment in Electoral Matter [*Ley General del Sistema de Medios de Impugnación en Materia Electoral*] (LGSMIME), a "citizen" could be part of an electoral dispute procedure as "interested third party" when he has a "[l]egitimate interest in the case derived from a right incompatible with the one intended by the actor." Likewise, it observes that, according to article 79²⁵ of the LGSMIME, the legal

²¹ In this sense, see IACHR. Report No. 72/11, Petition 1164-05, Admissibility, William Gómez Vargas, Costa Rica, March 31, 2011.

²² I/A Court H.R., Advisory Opinion 22/16. Entitlement of legal entities to hold rights under the Inter-American Human Rights System (interpretation and scope of Article 1.2, in relation to articles 1.1, 8, 11.2, 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62.3 of the American Convention on Human Rights, in addition to article 8.1.a and b of the Protocol of San Salvador). February 22, 2016. Para. 134.

²³ I/A Court H.R., Advisory Opinion 22/16. Entitlement of legal entities to hold rights under the Inter-American Human Rights System (interpretation and scope of Article 1.2, in relation to articles 1.1, 8, 11.2, 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62.3 of the American Convention on Human Rights, in addition to article 8.1.a and b of the Protocol of San Salvador). February 22, 2016. Para. 136.

²⁴ **General Law of the System of Means of Impugnment in Electoral Matter [*Ley General del Sistema de Medios de Impugnación en Materia Electoral*] (LGSMIME): "Article 12: 1. The following are parties to the dispute procedure: (c) The interested third party, which is the citizen, the political party, the coalition, the candidate, the organization or the political or citizen group, as appropriate, with a legitimate interest in the cause derived from a right incompatible with the one claimed by the actor."** Available for consultation: http://www.diputados.gob.mx/LeyesBiblio/pdf/149_190118.pdf

²⁵ **General Law of the System of Means of Impugnment in Electoral Matter [*Ley General del Sistema de Medios de Impugnación en Materia Electoral*] (LGSMIME): "Article 79: 1. The legal procedure for the protection of political-electoral rights, will only proceed when the citizen by himself and individually or through their legal representatives, assert alleged violations of their rights to vote and be voted in popular elections, to associate individually and freely to participate in a peaceful way in political affairs and to affiliate freely and individually with political parties. In the case provided for in paragraph e) of paragraph 1 of the following article, the claim shall be filed through whoever holds the legitimate representation of the aggrieved organization or political group; 2. Likewise, it will be appropriate to challenge the acts and resolutions by those who, having a legal interest, consider that their right to integrate the electoral**

procedure for the protection of the political-electoral rights “will only proceed when the citizen by himself and individually or through his legal representatives, makes use of presumed violations to their rights to vote and be voted in popular elections, to associate individually and freely to participate in a peaceful way in political affairs and to affiliate freely and individually with political parties.” Article 80²⁶, in turn, establishes that this legal procedure could be promoted by citizens when “an act or resolution of the authority is in violation of any other political-electoral rights referred to in the previous article.”

28. The Commission observes that it is not clear from the reading of this regulation that the alleged victims were procedurally qualified to file them or that they would be effective in redressing the violations of the right to freedom of expression and the principle of legality alleged in the present case. The figure of interested third party is limited to those who support “a right incompatible with the one intended by the actor,” which would not apply in this case. The alleged victims have not alleged the violation of political-electoral rights linked to the right to elect and be elected, which would prevent them from bringing a legal procedure for the protection of those rights, in accordance with the situations of the legislation. The State also failed to present sufficient and relevant elements to demonstrate that, in accordance with practice and jurisprudence, these remedies could have been declared admissible and effective. The judgments of the electoral tribunals presented to the IACHR also do not demonstrate that the regulations cited have been interpreted in such a way as to include the type of claims of the alleged victims. In this regard, the Commission reiterates that a State that alleges the lack of exhaustion of these remedies is obliged to prove that there are domestic remedies not yet exhausted and that they are effective.²⁷ Although the Inter-American Court of Human Rights has stated that it cannot be rashly presumed that a State Party to the Convention has failed to comply with its obligation to provide effective domestic remedies,²⁸ the availability and effectiveness of these remedies, including its scope, application and reasonable prospects of success, must be clear enough in the legislation and confirmed in practice.²⁹

29. In any case, the Commission finds that Alejandro Fernando Aguilera Mendieta, Miguel Ángel Díez García, Miriam Villanueva Chiapas, and Félix José Araujo Ramírez, as executives of *Radiotelevisora de México Norte S.A. de C.V.*, *Cadena Televisora del Norte S.A. de C.V.*, and *Televimex S.A. de C.V.* exhausted the remedies provided under Mexican law to challenge the penalties imposed against those media outlets. Although those domestic remedies were exhausted on behalf of the companies, the issue of the possible violation of freedom of expression and principle of legality was raised in the domestic proceedings before the IFE and decided by the TRIFE.³⁰ In this regard, the claims asserted in the case that was exhausted at the domestic level coincide with those presented to the IACHR. The Commission therefore finds that the remedies of the national legal system were exhausted in accordance with Article 46(1) (a) of the American Convention.

authorities of the federative entities is unduly affected.” Available for consultation: http://www.diputados.gob.mx/LeyesBiblio/pdf/149_190118.pdf

²⁶ **General Law of the System of Means of Impugnment in Electoral Matter [Ley General del Sistema de Medios de Impugnación en Materia Electoral] (LGSMIME): “Article 80: 1.** The legal procedure may be promoted by the citizen when: a) Having complied with the requisites and corresponding procedures, he/she has not obtained in a timely manner the document required by the respective electoral law to exercise the vote; b) Having duly obtained the document referred to in the preceding paragraph, it is not included in the nominal list of voters of the section corresponding to his/her domicile; c) Consider having been improperly excluded from the nominal list of voters of the section corresponding to his/her domicile; d) Consider that his/her political-electoral right was violated if he/her was voted for when, having been proposed by a political party, he/her was unduly denied his registration as a candidate for a popular election office. In federal electoral processes, if the political party also filed an appeal for review or appeal, as appropriate, for the refusal of the same record, the Council of the Institute, at the request of the competent Chamber, shall send the file to be resolved by this, together with the legal procedure promoted by the citizen; e) Having associated with other citizens to participate in a peaceful way in political matters, according to the applicable laws, consider that they were unduly denied their registration as a political party or political group; f) Consider that an act or resolution of the authority is in violation of any other political-electoral rights referred to in the previous article; and g) Consider that the acts or resolutions of the political party to which it is affiliated violate any of their rights political-electoral. The aforementioned is applicable to pre-candidates and candidates for elected office even when they are not affiliated with the party designated as responsible. (...)” Available for consultation: http://www.diputados.gob.mx/LeyesBiblio/pdf/149_190118.pdf

²⁷ I/A Court H.R., *Case Velásquez Rodríguez v. Honduras*, (Preliminary Objections) Judgment of July 29, 1988.

²⁸ I/A Court H.R., *Case Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988, para. 20.

²⁹ In this sense see, European Court of Human Rights Case of Vernillo v. F, Application no. 11889/85, Judgment, 20 February 1991, para. 27

³⁰ See TRIFE. Expediente SUP-RAP-236/2009 y sus acumulados, Recurso de Apelación, August 26, 2009; and Consejo General del IFE, Exp. SCG/PE/CEENL/CG/247/2009. Resolution of July 15, 2009. Annex to the initial petition of the petitioners received on February 26, 2010

30. In relation to the timeliness of the petition, the final decision that ended the proceedings at the national level was issued by the TRIFE on August 26, 2009, and the petition was filed on February 26, 2010. Accordingly, the Commission notes that it meets the requirements of Article 46.1.b) of the American Convention.

VIII. ANALYSIS OF COLORABLE CLAIM

31. Based on the legal and factual elements presented by the parties and the nature of the matter brought before it, the Commission has decided that it will examine the possible violations of Articles 8, 9, 13 and 25 of the ACHR in relation to Article 1.1 and 2 thereof, with respect to Alejandro Fernando Aguilera Mendieta, Miguel Ángel Diez García, Ángel Israel Crespo Rueda, Miriam Villanueva Chiapas, and Félix José Araujo Ramírez, at the merits stage.

32. With respect to the petitioners' allegation related to the violations of Articles IV and XXVI of the American Declaration, the IACHR finds that the right to freedom of expression and due process are protected in Articles 13 and 8 of the American Convention, and therefore it is unnecessary to refer to violations of the American Declaration in this case.

IX. DECISION

1. To find the instant petition admissible in relation to Alejandro Fernando Aguilera Mendieta, Miguel Ángel Diez García, Ángel Israel Crespo Rueda, Miriam Villanueva Chiapas, and Félix José Araujo Ramírez;

2. To find the instant petition inadmissible in relation to Raquel Hidalgo Márquez, *Radiotelevisora de México Norte S.A. de C.V.*, *Cadena Televisora del Norte S.A. de C.V.*, and *Televimex S.A. de C.V.*;

3. To find the instant petition admissible in relation to Articles 8, 9, 13, and 25 of the American Convention in connection with Articles 1.1 and 2 thereof; and

4. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 5th day of the month of May, 2018. (Signed):
Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli (abstention), Antonia Urrejola, and Flávia Piovesan, Commissioners.