

XV Inter-American Human Rights Competition
 Answers to questions on the case
RADICAL RADIO VS. CHIRILAGUA

Question	Answer
<p>Could there be an inconsistency between paragraphs 33 and 8 regarding the number of deaths on the day of the Facebookazo – March 3? Paragraph 8 discusses 6 dead and 15 wounded and paragraph 33 discusses 3 dead (2 civilians and 1 policeman).</p>	<p><i>The information requested is clear in the facts of the case (see paragraphs 8 and 26).</i></p>
<p>Paragraph 27 of the case states that a group of young people attempted to set the ballot boxes on fire. Were they opponents of the government?</p>	<p><i>According to information from the press, the youths were opposed to the referendum.</i></p>
<p>Was Mr. William Garra at the scene of the events that took place in the city of San Pedro de los Aguados on March 3, 2008, where five civilians and a policeman were killed?</p> <p>During the Facebookazo demonstrations, was William Garra, journalist from Radical Radio, broadcasting the event from the streets or from the radio studios?</p>	<p><i>He was at the premises of Radical Radio.</i></p>
<p>Paragraph 26 speaks of riots on the day of Facebookazo. Later, there is talk of legal proceedings against journalists covering and inciting the event. Are there also domestic legal proceedings against the police and the protesters that caused the deaths and injuries?</p> <p>Regarding the six deaths that occurred during the Facebookazo, three were attributed to William Garra. Were the six deaths properly investigated, and were the other three deaths attributed to someone else?</p>	<p><i>Because of the acts of violence that occurred, criminal and disciplinary ex proprio motu investigations were initiated by the State. The identity of those who attempted to take the lives of the protesters is still under investigation. The criminal investigation therefore remains open.</i></p>
<p>Prior to celebrating the Facebookazo, and under the imminent danger of the event, were provisional measures requested from the IACHR in benefit of the protesters of March 3?</p>	<p><i>No.</i></p>
<p>On what date did Chirilagua recognize the contentious jurisdiction of the Inter-American Court of Human Rights?</p>	<p><i>Chirilagua ratified the ACHR and recognized the jurisdiction of the Inter-American Court on April 9, 1980.</i></p>

Since when is the State a part of the American Convention on Human Rights?

Did the State of Chirilagua recognize the binding jurisdiction of the Inter-American Court of Human Rights, and if so, when?

Our clarification question from the hypothetical case is in relation to Paragraph 41 line 1 where it was stated that the commission admitted the petition on 15th December **2008**, while in line 3 of same paragraph. It states that the State of Chirilagua replied to the petition on 15th January **2008**.

The last sentence of paragraph 41 mentions that “an invitation to bid” was issued in January 2009. If the answer to the petition was submitted in January 2009 and not 2008 (see question number 1), could it be that the author

change is regarding the name of one of the litigating parties.

Therefore this decision does not affect or change the course of the Competition. The intention of the organizers is to reflect the recent change implemented in the system due

<p>Do the "legal entities" mentioned in paragraph 41 refer to the radio stations or the Inter-American Federation of Media for Democracy?</p>	<p><i>The information available is limited to the facts in the hypothetical case.</i></p>
<p>What is the justification of the COFERETEL for not approving ACOSINTI's bid, given that it was the only radio station operating in the region of San Pedro, and considering the right to equal opportunity and media pluralism, cited in the Constitution of Chirilagua? (paragraph 20). Pursuant to paragraph 21 of the facts of the</p>	<p><i>The information available is limited to the facts in the hypothetical case.</i></p>

<p>What are the requirements established by the Telecommunications Act or Law 56 of 1976 (Article 92) that radio applicants must meet to access the electromagnetic spectrum?</p> <p>Under the Telecommunications Act of 1976, what are the requirements, conditions and principles that must be met for the State to grant or renew a concession for the use of the electromagnetic spectrum as referred to in footnote 1?</p> <p>What are the “Requirements established under the Act” for the concession for the use of the electromagnetic spectrum mentioned in article 92 of the Telecommunications Act?</p> <p>What are the criteria for awarding radio frequency concessions and in particular for awarding 11 concessions to community radios and 450 concessions to commercial radios?</p> <p>What criteria is normally used by a State to evaluate whether or not to grant concessions for the use of the electromagnetic spectrum?</p>	<p><i>The concessions to commercial stations are awarded through public bidding. The federal government is entitled to charge a fee for the granting of the concession.</i></p> <p><i>According to Article 94 of the Telecommunications Act, the requirements for interested parties to participate in the bidding, include: (i) proof of th</i></p> <p><i>Chirilaguense nationality, (ii) Business plan which should include at minimum: Description and technical specifications, Frequency Coverage Program, Investment Program, Finance Program, and Program on Updates and Technology Development, (iii) Production and Programming Project, (iv) a security provision to ensure the continuation of the proceedings until the concession is granted or denied.</i></p> <p><i>The term of a concession is 30 years and can be extended for periods equal to those originally established.</i></p> <p><i>The selection process for locating and opening stations is complex and includes: (i) purpose of the relevant radio and television, (ii) market conditions of the broadcasting service in the region concerned, and (iii) applications, where appropriate, that have been previously submitted to COFERETEL by the interested parties.</i></p>
<p>What is the scope of the Telecommunications Act and of the radio broadcasting law?</p>	<p><i>The object of the Telecommunications Act or radio broadcasting act is to regulate the use, development and operation of the radio spectrum, telecommunications networks, and satellite communications.</i></p>
<p>Specify whether or not community radio broadcasting laws exist. Explain the terms thereof.</p>	<p><i>The law regulating community and commercial broadcasting is the Telecommunications Act in Articles 70 et seq. Community media is understood as media whose purpose is social and not commercial. The law recognizes the right of nonprofit organizations to own media outlets. The selection procedures are often</i></p>

	<p><i>similar to those for commercial radios, but the requirements tend to be more economic and less technological.</i></p>
<p>Did Radio Su-Version satisfy the necessary requirements to obtain a community sound broadcasting license?</p>	<p><i>In its petitions to COFERETEL, Radio Su-Version attached documentation demonstrating compliance with the requirements established in Article 70 et seq. of the Telecommunications Act.</i></p>
<p>When two radio stations are chains, is their use of the electromagnetic spectrum considered common?</p>	<p><i>Legislation, in this respect, is not clear. The only legal reference, in this regard, is in Article 98 of the Telecommunications Act:</i></p> <p><i>operates retransmitting or permanently linking to another that was not previously received in the locality where it intends to be located shall be considered a new station and, therefore,</i></p>
<p>Did the invitation to bid for licensing under the new Communications Act of Chirilagua, in response to the demand of the IACHR (§ 41) actually take place? Did Radical Radio and Radio Su-Version participate in the process? Did they succeed in obtaining the concessions?</p>	<p><i>Yes, the bid took place. There were over 100 proposals for access to commercial concessions and more than 500 proposals for the opening of community radio stations throughout the country. Neither Radical Radio nor Radio Su-Version submitted a proposal.</i></p> <p><i>The selection process is currently taking place; to be precise, the proposals are currently undergoing their technical review.</i></p> <p><i>The Technical Committee in charge of the bids set as priority areas for licensing concessions for community radios, cities that do not currently have local community media outlets.</i></p> <p><i>By public announcement, the regulatory body reported that it expects to award 100 licenses for commercial stations and 100 community radio licenses.</i></p>
<p>In reference to paragraph 12, what are the requirements established in Law 56 of 1976, concerning the 'legal representative' and the 'concession holder'?</p> <p>In paragraph 13, is it that both the legal representative AND the title holder of the concession listed in the records of</p>	<p><i>In accordance with the law, the electromagnetic spectrum can be requested by natural or legal persons. Concession holders are understood to be the person or persons requesting the concession and that are designated by the relevant authority. The holder or holders shall, for relevant legal purposes, be recognized as legal</i></p>

<p>COFERETEL do not match with the legal representative and title holder that Melanie provides in her request in paragraph 12 OR is it that the name of the legal representative does not match the name of the title holder of the concession that COFERETEL has on file in their records?</p> <p>Can you clarify who was the title holder of the concession, who is or who are the shareholders and who is the legal representative of Radical Radio and if some of these positions were transmitted by inheritance?</p> <p>Was Byron Dayle, in addition to being the legal representative, also the holder of the concession?</p> <p>Who are the legally recognized representatives of Radical Radio?</p> <p>According to what parameters and what legal conditions was the concession for the electromagnetic spectrum granted to Maria Luisa Peroni, in 1965?</p> <p>Which legal entities were given the title of the concession that Radio Cadena Basica used and which was continued to be used by Radical Radio as of 2001, and who were its legal representatives?</p>	<p><i>representatives of the licensed media outlet. Representation may be delegated, but ownership of the concession may not, as established by Article 92 of the Telecommunications Act.</i></p>
<p>Does the Association of Landless Communities of San Pedro de los Aguados (ACOSINTI) have any legal control over Radio Su-Version, the community radio station?</p>	<p><i>al finance and assets balance, Radio Su-Version and all of its assets belong to ACOSINTI.</i></p>
<p>What arguments were used to acquit Mr. Byron Dayle in the proceedings against him for his responsibility in the crimes of “instigation to commit a crime” and “defamation”? And what were the arguments to suspend the judgment in relation to the crime of “theft of state property,” considering that Ms. Melanie Pereira was convicted in the same proceedings and both were representatives of the same</p>	<p><i>The information available is limited to the facts in the hypothetical case.</i></p>

radio station?	
What were the alleged crimes committed by Melanie Pereira, Francis Hoffman and William Garra?	<i>The information available is limited to the facts in the hypothetical case.</i>
Which investigated facts led to the homicide charges brought against Mr .William Garra?	<i>The information available is limited to the facts in the hypothetical case.</i>
Were the domestic criminal and constitutional remedies exhausted?	<i>The information available is limited to the facts in the hypothetical case.</i>
What expressions or specific events committed by Melanie Pereira Peroni and Francis Hoffman, in their capacity as Directors of their respective media outlets, did the criminal judges feel justified charges of "defamation" and "instigation to commit a crime"?	<i>The information available is limited to the facts in the hypothetical case.</i>
What acts or expressions form the basis for each of the charges against William Garra?	<i>The information available is limited to the facts in the hypothetical case.</i>
Francis Hoffman filed a constitutional remedy petition, on May 5, 2008, in the name of Radio Su-Version (paragraph 36), however, the petition refers to ACOSINTI and its affiliates as aggrieved parties. Please, clarify on whose behalf the constitutional remedy petition was brought, ACOSINTI or Radio Su-Version?	<i>The information available is limited to the facts in the hypothetical case.</i>
Based on the principle of equality before the law, what grounds were filed or raised for the Court to dismiss the indictment against Byron Dayle regarding the crime of "theft of state property" and the acquittal of the offenses of "instigation to commit a crime "and of “defamation” against the President of the Republic?	<i>The information available is limited to the facts in the hypothetical case.</i>

How were the criminal proceedings conducted in the State of Chirilagua?	<i>The information available is limited to the facts in the hypothetical case.</i>
Were the procedural due process guarantees offered by the criminal justice system in this country respected?	<i>The information available is limited to the facts in the hypothetical case.</i>
Do criminal proceedings in Chirilagua normally occur as quickly as the proceedings against Melanie Pereira Peroni, Francis Hoffman, William Garra and Byron Dayle?	<i>Yes.</i>
What are the possible remedies and competent courts on criminal matters in the State of Chirilagua?	<i>The information available is limited to the facts in the hypothetical case.</i>

Does the Public Prosecutor in Chirilagua have the function of both an inquisitorial body, according to paragraphs 31 and 32, and a and a

Following the conviction

What are the deadlines of the administrative proceedings brought by Byron Dayle on April 10, 2008?

The proceedings include the regular stages of other proceedings in Chirilagua, ie: the submission of the complaint, registration, the deadline to file a response, the production of evidence, judicial mediation, closing arguments and the sentencing phase. In practice, a process of this nature can take

<p>Who can sue in criminal defamation cases?</p>	<p><i>In criminal defamation cases against public officials or cases that affect public order or national interest, the plaintiff is the person actually affected or the State itself.</i></p>

In paragraph 41 there is a mention of a 'New Communications Act'. When has it been enacted and can you elaborate further on the tripartite fashion in which concessions are regulated?

The new Communications Act seeks to ensure equal access to frequencies as well as diversity of audiovisual media outlets. It establishes a tripartite and equitable system for commercial

What are the provisions of the new Communications Act that promises to provide the necessary conditions to rectify the present situation of the alleged victims in this case? (Para 41).