

Granier et. al. (*Radio Caracas Televisión*) v. Venezuela

ABSTRACT¹

This case is about the denial of the renewal of the broadcasting concession to Radio Caracas Televisión (RCTV), a privately-owned TV station opposed to President Hugo Chávez. Eventually, the Court found violation of the rights of the station's shareholders and several of its employees.

I. FACTS

A. Chronology of Events

1953: Radio Caracas Televisión (“RCTV”) begins operating as a free-to-air station with nationwide coverage.²

May 27, 1987: The State renews RCTV’s concession for twenty years.³ As part of the concession, RCTV can opt to renew its license for another twenty years on May 27, 2002.

1999: RCTV begins airing news and opinion programs that criticize Hugo Chávez, the new President.⁴

June 12, 2000: The State adopts the Organic Telecommunications Law (“LOTEL”), which provides additional restrictions for telecommunications and radio communication regulations, and requires all existing licenses to comply with the new law.⁵ Article 210 of LOTEL establishes the National Telecommunications Commission

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2. Granier et al. v. Venezuela, Report on Merits, Report No. 112/12, Inter-Am. Comm’n H.R., Case No. 12.828 ¶ 67 (Nov. 9, 2012).

3. *Id.* ¶ 72.

4. *Id.* ¶ 67.

5. *Id.* ¶ 73.

(“CONATEL”), whose purpose is to reconsider concessions granted by the previous legislation to bring them in line with the requirements of LOTEL.⁶

June 5, 2000: RCTV applies to have its concession amended to conform to LOTEL.⁷ CONATEL determines the application was properly submitted within the required two-year limit.⁸

2002: Agents of the State, including President Chávez, declare on the record that the State will not renew concessions of certain media outlets.⁹

April 11, 2002: The Democratic Coordinator [*Coordinadora Democrática*] leads a massive march in protest of the Venezuelan government’s policies in Caracas.¹⁰ The protest converges on the Presidential Palace, demanding Chávez to resign.¹¹ A clash between protestors and supporters of the government results in approximately nineteen deaths and copious injuries.¹²

April 12, 2002: General Lucas Rincon declares that President Chávez has resigned.¹³ The military and civilians form a self-proclaimed government.¹⁴ Mr. Carmona Estanga announces the new government and is declared the new President.¹⁵ President Estanga removes members of the National Assembly and appoints new members to office.¹⁶

April 13 and 14, 2002: RCTV does not report on the marches supporting President Chavez’s return to office.¹⁷

April 14, 2002: President Chávez is reinstated as President.¹⁸

6. *Id.*

7. *Id.* ¶ 74.

8. Granier et al. v. Venezuela, Report on Merits, ¶ 74.

9. Granier et al.v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 293, ¶¶ 49, 50 (June 22, 2015).

10. *Id.*

11. *Id.* ¶ 50.

12. *Id.*

13. *Id.* ¶ 51.

14. *Id.*

15. Granier et al.v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs. ¶ 52.

16. *Id.*

17. *Id.* ¶ 43.

18. *Id.* ¶ 53.

June 9, 2002: President Chávez opines during his program “Aló Presidente” that although Television and Radio Stations are privately held, the State is the true owner because the stations operate under a State concession.¹⁹

December 8, 2002: During his television program, President Chávez denounces criticism from private television companies.²⁰

November 9, 2003: During his television program, President Chávez announces that he ordered Minister Jesse Chacón to set up a team to supervise RCTV.²¹ If the station breaks any laws, its concession will be cancelled.²²

June 14, 2006: President Chávez speaks at the Ministry of Defense warning that the current concessions granted to television stations will expire in 2007, and the State will cautiously renew grants.²³ President Chávez also assures that some stations intend to abide by the laws.²⁴ Minister William Lara, head of the Ministry of Communication and Information (MINCI) speaks at a press conference arguing that some stations who supported the *coup d'état* of April 2002 have made efforts to comply with the law while others continue their anti-governmental conduct.²⁵

November 3, 2006: At the opening of an extension of the Caracas metro, President Chávez further warns that the State might not renew the concessions expiring on March 27, 2007.²⁶

December 1, 2006: Journalist Carlos Croes interviews President Chávez, during which the President states that he is not required to grant concessions to stations, and that the government will analyze each situation and make a decision accordingly.²⁷

December 28, 2006: During the year-end salute to the Armed Forces, President Chávez announces that he has drafted an order to deny the

19. *Id.* ¶ 75.

20. *Id.*

21. Granier et al. v. Venezuela, Report on Merits, ¶ 75.

22. *Id.*

23. *Id.* ¶ 76.

24. *Id.*

25. *Id.* ¶ 77.

26. *Id.* ¶ 78.

27. Granier et al. v. Venezuela, Report on Merits, ¶ 79.

renewal of RCTV's concessions, claiming that RCTV is opposed to the national government and the citizens of the country.²⁸

December 29, 2006: Minister William Lara argues that President Chávez's decision to cancel RCTV was both legal and constitutional.²⁹ Minister Lara further defends President Chávez's decision stating that RCTV has actively disrupted the government and is currently violating provisions of the Law on Social Responsibility in Radio and Television (*Ley RESORTE*).³⁰

January 3, 2007: During an interview on the television program *Contragolpe*, President Chávez states that RCTV did not qualify for another concession from the State, and the decision is irrevocable.³¹

January 13, 2007: President Chávez makes a statement to the National Assembly assuring that RCTV's concessions will only last until May of the same year.³²

January 24, 2007: RCTV's representatives write to CONATEL requesting that the State grant new concessions: (1) based on Article 210 of LOTEL, for 20 years beginning on June 12, 2002; or (2) until June 27, 2027, pursuant to articles 1, 3 and 4 of Decree No. 1,577; or (3) that RCTV's concessions be renewed for 20 years because the government officials abused their power when monitoring the station's content.³³ The station also requests the State to produce: (1) a certified copy of all licenses and applications for "free-to-air" stations that were granted in compliance with Article 210 of LOTEL; and (2) documentation of any penalties that were charged on free-to-air stations for the violations of LOTEL and the Law on Social Responsibility in Radio and Television.³⁴

February 9, 2007: A group of RCTV's employees file a petition for *amparo* relief against the President of the Republic and the Minister of the People's Power for Telecommunications and Information (MPPTI), alleging that their due process and equal protection and non-discrimination rights had been violated by the decision not to renew the

28. *Id.* ¶ 80.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. Granier et al. v. Venezeula, Report on Merits, ¶ 84.

34. *Id.*

concession.³⁵ RCTV further notes that no penalties have been ordered against it for alleged serious violations of law, and that RCTV has been denied the right to a fair and impartial hearing.³⁶

February 27, 2007: RCTV issues a list of its fourteen executives, identifying Francisca Castro as the Vice President of Administration and Finances, and Pablo Mendoza as the Vice President of Media Research.³⁷ Additionally, Carlos Lamas and Grilva Delgado, RCTV's former Vice President of Administration and Finances and Vice President of Media Research respectively, are not included in the list of 168 RCTV employees.³⁸ Thus, although Lamas and Delgado are victims in the present case, they are not included as the petitioners who are seeking to nullify the State's decision that denied the renewal of RCTV's concessions.³⁹

March 21, 2007: An RCTV representative requests a copy of the administrative case from January 24, 2007, with clarifications regarding the duration of the concessions.⁴⁰

March 28, 2007: Minister Jesse Chacón Escamillo, in charge of the MPPTI and Director of CONATEL, responds to RCTV's letter and states that he will not renew RCTV's concession.⁴¹ Minister Chacón Escamillo argues that the decision is not in violation of any laws and that Article 210 only protects what is left of the original twenty-year concession.⁴² He continues by arguing that an automatic renewal is not granted by the Constitution, but rather, it is a privilege to be interpreted narrowly.⁴³ Moreover, the State owns the electromagnetic spectrum, and the right to the renewal of the concession is not a valid claim against the owner of the property.⁴⁴ Therefore, Minister Escamillo asserts that the State's sovereign decision on December 28, 2006 to reserve the right to operate the electromagnetic spectrum beginning on May 27, 2007 in accordance with LOTEL renders RCTV's 2002 application pointless.⁴⁵

35. *Id.* ¶ 96.

36. *Id.*

37. *Id.* ¶ 71.

38. *Id.*

39. Granier et al. v. Venezuela, Report on Merits, ¶ 71.

40. *Id.* ¶ 110.

41. *Id.* ¶ 85.

42. *Id.*

43. *Id.* ¶ 86.

44. *Id.* ¶ 85.

45. Granier et al. v. Venezuela, Report on Merits, ¶ 86.

April 2, 2007: RCTV amends their brief to include allegations in response to the State's decision to not renew the concession, including: (1) bias of the MPPTI, who signed the decision; (2) a violation of the right of defense because they were prohibited from introducing evidence in relation to their brief on January 24, 2007; (3) a violation of due process, and; (4) the State's unsupported reasoning for their need to use RCTV's frequencies to implement the National Telecommunications Plan.⁴⁶

April 17, 2007: RCTV files an *amparo* petition with the Political Administrative Chamber of the TSJ, seeking to nullify the State's decision not to renew their concessions.⁴⁷

May 17, 2007: The Constitutional Chamber rules on the *amparo* petition, declaring that the demand had become moot.⁴⁸ The Chamber finds the petition against the President of the Republic inadmissible, because CONATEL was solely responsible for determining RCTV's legal status. The Chamber also ruled the petition against Minister Jesse Chacón Escamillo inadmissible, because Article 6(1) of the Organic Law of *Amparo* for Protection of Fundamental Rights and Guarantees provides that the harm must be ongoing. RCTV's petition for *amparo* relief had already been responded, making the harm a matter of the past. The Chamber also recognizes that the administrative petition filed on April 17, 2007 rendered their petition inadmissible under Article 6(5) of the *Amparo Act*, which provides that petitions are inadmissible when an aggrieved party files a complaint in the State's normal court system or uses other existing judicial mechanisms.⁴⁹

May 24, 2007: José Félix Peralta, José Miguel Ferrer Pérez and Jorge Enrique Larrazábel, along with the group *Oyentes Interactivos de la Radio*, file a brief with the Supreme Court for protection of community and individual rights, in concurrence with an injunction from the President of the Republic and the MPPTI.⁵⁰ The brief argues that the cancellation of RCTV would violate the public's right to the freedom of expression and information.⁵¹

46. *Id.* ¶ 97.

47. *Id.* ¶¶ 23, 98, 199.

48. *Id.* ¶ 98.

49. *Id.*

50. *Id.* ¶ 91.

51. Granier et al. v. Venezuela, Report on Merits, ¶ 91.

May 25, 2007: The Constitutional Chamber agrees to hear the petition of *amparo* and issues a temporary injunction, under which RCTV's equipment is assigned temporarily to CONATEL.⁵² The Constitutional Chamber also agrees to hear the petition filed on May 24, 2007, with respect to MPPTI.⁵³ The Constitutional Chamber recognizes that CONATEL is the competent body to decide RCTV's concession.⁵⁴ Article 27 of the State Constitution gives the presiding judge the power to restore the legal right violated, and a duty to the State to maintain universal telecommunication service in operating condition.⁵⁵ Moreover, the public's right to information does not imply access to a specific broadcaster but the opportunity to access that type of service generally.⁵⁶ The Constitutional Chamber granted injunctive relief and allowed CONATEL the right to use RCTV's equipment in order to conduct nationwide broadcasting.⁵⁷ CONATEL had the responsibility of assigning RCTV's assets in compliance with LOTEL.⁵⁸

May 27, 2007: The Constitutional Chamber enforces the injunction and assigns RCTV's equipment to CONATEL.⁵⁹ RCTV is primarily managed by its shareholders.⁶⁰ At the time, the shareholders were Marcel Granier, Peter Bottome, Jaime Nestares, Jean Nestares, Fernando Nestares, Francisco J. Nestares and Alicia Phelps de Tover.⁶¹ Four other television stations' concessions are renewed, one being similar in size to RCTV.⁶²

May 28, 2007: RCTV's stops broadcasting.⁶³ The Constitutional Chamber continues to enforce the injunction and assigns RCTV's equipment to CONATEL.⁶⁴ RCTV's petitioners presented evidence of their loss in profits due to the injunction.⁶⁵

May 31, 2007: RCTV files an objection to the Constitutional Chamber's decision on May 25, 2007, highlighting that RCTV was not a party to the

52. *Id.* ¶ 90.

53. *Id.* ¶ 92.

54. *Id.*

55. *Id.*

56. *Id.*

57. Granier et al. v. Venezuela, Report on Merits, ¶ 93.

58. *Id.*

59. *Id.* ¶ 94.

60. *Id.* ¶ 68.

61. *Id.*

62. *Id.* ¶ 95.

63. Granier et al. v. Venezuela, Report on Merits, ¶ 94.

64. *Id.*

65. *Id.* ¶¶ 94, 105.

proceedings despite the court ordering an injunctive relief against it.⁶⁶ RCTV further notes that its right to private property would be violated due to lack of an expropriation hearing.⁶⁷ Moreover, RCTV's right to defense would be violated because they did not have the opportunity to present arguments.⁶⁸ Therefore, RCTV alleged that the injunctive relief violated their right to due process, private property, and defense.⁶⁹

June 8, 2007: RCTV files a request with CONATEL asking for the property not listed in the injunction to be returned, a chance for RCTV to examine its equipment, and provide any records of equipment deliveries that RCTV does not already possess.⁷⁰

September 18, 2007: RCTV requests a certified copy of the administrative files of the concessions given to other stations.⁷¹

December 11, 2007: RCTV files a criminal complaint with the Office of the Superior Prosecutor of the Metropolitan Caracas Judicial Circuit, requesting a criminal investigation for the actions carried against them, and RCTV's property, under the Anti-Corruption Law.⁷² RCTV argues that the injunction granted by the Constitutional Chamber misapplied the law and stripped RCTV of the right to property and possession of assets.⁷³

December 28, 2007: The Prosecution Unit 36 of the Public Prosecutor's Office, in charge of the complaint, asks the Court of Oversight to dismiss the case as the facts do not amount to criminal offenses.⁷⁴

May 7, 2008: RCTV's petition is dismissed.⁷⁵ RCTV requests a hearing to address CONATEL's reasons for the injunction.⁷⁶

May 15, 2008: RCTV again requests a certified copy of the administrative files of the concessions given to the other stations.⁷⁷

66. *Id.*

67. *Id.*

68. *Id.*

69. Granier et al. v. Venezuela, Report on Merits, ¶ 104.

70. *Id.* ¶ 110.

71. *Id.*

72. *Id.* ¶ 106.

73. *Id.*

74. *Id.* ¶ 107.

75. Granier et al. v. Venezuela, Report on Merits, ¶ 108.

76. *Id.* ¶ 110.

77. *Id.*

July 27, 2008: The 51st Preliminary Examining Court of First Instance of the Metropolitan Caracas Criminal Court Circuit approves the request for dismissal and closes the investigation.⁷⁸

August 7, 2008: RCTV files an appeal against the court's ruling to dismiss the case.⁷⁹

October 10, 2008: The Fifth Chamber of the Appellate Court of the Metropolitan Caracas Criminal Judicial affirms the Prosecutor's Office's request to dismiss the case, and declares RCTV's appeal inadmissible.⁸⁰ RCTV files a petition challenging the decision.⁸¹

May 26, 2009: RCTV complains to CONATEL about the poor condition and theft of RCTV's equipment that had been assigned to CONATEL, and asks it to adopt measures to ensure protection of the assets in the future.⁸²

August 2011: CONATEL has yet to respond to RCTV's requests.⁸³

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

February 18, 2010: Carlos Ayala Corao and Pedro Nikken file a petition on behalf of RCTV for the violations of rights protected in Article 8 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas), Article 13(3) (Prohibition of Restriction of Freedom of Expression by Indirect Means), Article 21 (Right to Property), Article 24 (Right to Equal Protection), Article 25 (Right to Judicial Protection), of the American Convention.⁸⁴

78. *Id.* ¶ 107.

79. *Id.*

80. *Id.* ¶ 108.

81. Granier et al. v. Venezuela, Report on Merits, ¶ 108.

82. *Id.* ¶ 110.

83. *Id.* ¶ 111.

84. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2.

July 22, 2011: The Commission approves the Admissibility Report and declares the petition to be admissible.⁸⁵

November 9, 2012: The Commission approves the Merits Report and concludes that Venezuela violated Articles 13 (Freedom of Thought and Expression) and 24 (Right to Equal Protection), in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention to the detriment of Marcel Granier, Peter Bottome, Jaime Nestares, Edgardo Mosca, Anani Hernández, Inés Bacalao, José Simón Escalona, Eladio Lárez, Odila Rubin, Oswaldo Quintana, Eduardo Sapene, Daniela Bergami, Isabel Valerol, Miguel Ángel Rodríguez, Soroya Castellano, María Arriaga and Larissa Patiño.⁸⁶ The Commission further concludes that the State is responsible for the violation of articles 8.1 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection), in relation to Article 1.1 (Obligation of Non-Discrimination), of the American Convention to the detriment also of Jean Nestares, Fernando Nestares, Francisco J. Nestares, and Alicia Phelps de Tovar.⁸⁷ The Commission recommends that the State start a process to assign a nationwide television frequency to RCTV, without discrimination.⁸⁸ The Commission further recommends that the State provides the victims reparations, as well as to adopt measures to ensure that concession renewals comply with the Venezuela's freedom of expression laws.⁸⁹

January 18, 2013: The State presents a written document alleging that the Constitution prevents it from complying with the three recommendations.⁹⁰

B. Before the Court

February 28, 2013: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁹¹

85. *Id.* ¶ 2(b).

86. *Id.* ¶ 2(c).

87. *Id.*

88. *Id.*

89. Granier et al.v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(c).

90. *Id.* ¶ 2(d).

91. *Id.*

1. Violations Alleged by Commission⁹²

Article 13 (Freedom of Thought and Expression)

Article 24 (Right to Equal Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

2. Violations Alleged by Representatives of the Victims⁹³

Article 8 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas)

Article 13(3) (Prohibition of Restriction of Freedom of Expression by Indirect Means)

Article 21 (Right to Property) of the American Convention.

Article 24 (Right to Equal Protection)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention

December 10, 2013: The State submits three preliminary objections: (1) Judge García-Sayán, Judge Ventura Robles, and Secretary of the Court Saavedra Alessandri lack impartiality; (2) the Court is not competent to protect legal persons; and (3) the petitioners failed to exhaust domestic remedies.⁹⁴

The State argues the members of the Court lack impartiality because, in the case of *Uson Ramirez v. Venezuela*, the State was accidentally sent a CD recording of the Court's private deliberations after

92. *Id.* ¶ 2(c).

93. Granier et al. v. Venezuela, Report on Merits, ¶ 2.

94. Granier et al. v. Venezuela, Report on Merits, ¶¶ 6, 15.

the public hearing.⁹⁵ The State opines that the statements made by Judge García-Sayán, Judge Ventura Robles, and Saavedra Alessandri during the private deliberations indicated they lacked impartiality.⁹⁶

February 6, 2014: The Court declares the State's argument that Judge García-Sayán, Judge Ventura Robles, and Saavedra Alessandri lack impartiality is not a preliminary objection but a threshold matter.⁹⁷ The Court found the State's brief contained "a wrongful and unfounded global strike against the Court...accompanied by numerous insulting remarks about the Court and/or some of its members."⁹⁸ The Court rejected the language in the brief, noting it "constitutes an unwarranted injury to the judicial body of the Inter-American system created for the protection of human rights" and "use of insulting language is manifestly inappropriate and inadmissible in any judicial proceeding, and more so before an international tribunal."⁹⁹

The Court further clarified the State's request to recuse members of the Court is not a preliminary objection because preliminary objections attack the ability of the Court to adjudicate a case on the merits.¹⁰⁰ The capacity of a Judge to hear a case is not a preliminary issue.¹⁰¹ Accordingly, the Court found the preliminary objection inadmissible.¹⁰² However, the Court still deemed it necessary to adjudicate the impartiality allegation to continue with the case.¹⁰³

There are three instances in which a Judge must recuse himself: (1) the Judge is directly interested in the outcome of the case; (2) the Judge intervened in his professional capacity before the case reached the Court; and (3) another appropriate reason is determined when looking at the circumstances of the case.¹⁰⁴ The Court found that none of these scenarios exist in the case at hand.¹⁰⁵ The statements of the Court members were made in the ordinary adjudication process, and thus the accusations of lack of impartiality are unfounded.¹⁰⁶

95. *Id.* ¶ 18.

96. *Id.*

97. *Id.* ¶ 4.

98. *Id.* ¶ 6.

99. *Id.* ¶¶ 8-10.

100. Granier et al. v. Venezuela, Report on Merits, ¶ 11.

101. *Id.*

102. *Id.*

103. *Id.* ¶ 12.

104. *Id.* ¶ 15.

105. *Id.* ¶ 19.

106. Granier et al. v. Venezuela, Report on Merits, ¶ 20.

III. MERITS

A. *Composition of the Court*

Humberto Antonio Sierra Porto, President
Roberto F. Caldas, Vice-President
Mannuel E. Ventura Robles, Judge
Diego García-Sayán, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

June 22, 2015: The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.¹⁰⁷

The Court decided unanimously:

To dismiss the exhaustion of domestic remedies preliminary objection filed by the State,¹⁰⁸ because:

The State must allege the exhaustion of domestic remedies during the admissibility procedure before the Commission.¹⁰⁹ The State failed to raise the preliminary objection in a timely manner because it did not raise the objections during the admissibility phase.¹¹⁰ Accordingly, the Court dismissed this preliminary objection.¹¹¹

The Court decided by six votes to one:

To dismiss the incompetence of the court for the protection of legal persons preliminary objection filed by the State,¹¹² because:

107. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs.

108. *Id.* ¶ 419.

109. *Id.* ¶ 28.

110. *Id.* ¶ 31.

111. *Id.*

112. *Id.* ¶ 419.

The Court recognized that the rights established by the Convention correspond to human beings, and the alleged violations here, are correlated to the effects on shareholders and workers as natural persons.¹¹³ Although a legal entity is involved in the case, the violations are related to the workers and shareholders of RCTV.¹¹⁴ Accordingly, the Court dismissed the State's preliminary objection.¹¹⁵

The Court found by six votes to one that Venezuela had violated:

Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas) and 13(3) (Prohibition of Restriction of Freedom of Expression by Indirect Means), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Marcel Granier, Peter Bottome, Jaime Nestares, Inés Bacalao, Eladio Lárez, Eduardo Sapene, Daniela Bergami, Miguel Ángel, Rodríguez, Soraya Castellano, María Arriaga and Larissa Patiño,¹¹⁶ because:

The Court divided its analysis into three sections: (1) the right to freedom of expression; (2) the right to automatic renewal or extension of the concession; and (3) the validity of the State's indirect restrictions.¹¹⁷

(i) *Right to Freedom of Expression*

The freedom of expression functions in both an individual and collective capacity.¹¹⁸ Individually, it protects the right of every individual to disseminate ideas, opinions, and information through all appropriate means to reach the greatest number of people.¹¹⁹ Collectively, the right entitles the public to hear stories, news, and opinions of third parties.¹²⁰ A State radically violates Article 13 (Freedom of Thought and Expression) when it uses its authority to "prevent the free circulation of information, ideas, opinions, or news."¹²¹

In regards to journalism, Article 13 (Freedom of Thought and Expression) protects the right of journalists to research and disseminate

113. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 19.

114. *Id.*

115. *Id.* ¶ 22.

116. *Id.* ¶¶ 199, 419.

117. *Id.* ¶ 133.

118. *Id.* ¶ 136.

119. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 136.

120. *Id.*

121. *Id.* ¶ 137.

information.¹²² However, journalists are saddled with the duty to reasonably verify facts, diligently research sources, and perform their jobs in an ethical and responsible way.¹²³ They must accurately and objectively report to the public without sensationalizing information.¹²⁴ Additionally, Article 13 (Freedom of Thought and Expression) requires that the State protect news organizations from restriction and provide access to free communication, as these organizations are fundamental to democracy due to their essential role in disseminating information and opinions to the public.¹²⁵ As journalists use legal entities to communicate, restrictions on legal entities can restrict the rights of natural persons.¹²⁶

Here, the Court determined that several journalists and shareholders of RCTV were fundamental to disseminating communications to the public.¹²⁷ Therefore, their rights are effected by restrictions on RCTV.¹²⁸ Next, the Court emphasized that Article 13(3) (Prohibition of Restriction of Freedom of Expression by Indirect Means) forbids the State from indirectly restricting the freedom of expression by controlling which organizations may disseminate information.¹²⁹ To prove an Article 13(3) (Prohibition of Restriction of Freedom of Expression by Indirect Means) violation, communications of ideas and opinions must be restricted.¹³⁰ Thus, although a State is entitled to use licenses to regulate broadcasting, it must do so in an objective manner to ensure diverse opinions and information.¹³¹

(ii) *The right to renew or extend concessions*

Although the Court refused to determine which State law regulated concessions, it noted that none of the State's laws granted the right to automatically renew or extend concessions.¹³² Furthermore, there is no international law obliging the State to renew a broadcasting

122. *Id.* ¶ 138.

123. *Id.* ¶ 139.

124. *Id.*

125. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 141-142.

126. *Id.* ¶¶ 151-152.

127. *Id.* ¶¶ 153-154.

128. *Id.* ¶ 157.

129. *Id.* ¶ 161.

130. *Id.*

131. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 170-171.

132. *Id.* ¶ 174.

concession.¹³³ Thus, the Court concluded the State did not restrict the freedom of expression by failing to simply renew RCTV's concession.¹³⁴

(iii) *Validity of the State's indirect restrictions*

The State argued that it decided not to renew RCTV's concession because it wanted to ensure diverse opinions and content were disseminated through radio broadcast.¹³⁵ However, President Chávez made several statements attacking RCTV and declared multiple times that he refused to renew the organization's concession.¹³⁶ Thus, the Court determined that the State's true reason for denying RCTV's concession was that President Chávez ordered CONATEL and the Ministry of Telecommunication not to do so after RCTV refused to change its broadcasting to appease the State.¹³⁷

Therefore, the Court found that the State abused its power by forcing RCTV to align broadcasts with the government's interests.¹³⁸ The Court reasoned that the abuse of power to silence the station's criticism of the government impacted the ability to exercise freedom of expression for both, RCTV and its listeners, who were deprived of access to the station.¹³⁹ Furthermore, the State prevented RCTV from participating in the administrative procedures that would have renewed RCTV's concessions by not allowing the introduction of evidence and rebuttal of claims brought against them.¹⁴⁰ Accordingly, the State violated Articles 13(1) (Right to Seek, Receive, and Impart Information and Ideas) and 13(3) (Prohibition of Restriction of Freedom of Expression by Indirect Means) of the American Convention.¹⁴¹

Article 13 (Freedom of Thought and Expression), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Marcel Granier, Mr. Peter Bottome, Mr. Jaime Nestares, Mr. Inés Bacalao, Mr. Eladio Lárez, Mr. Eduardo Sapene, Ms. Daniela

133. *Id.* ¶ 179.

134. *Id.* ¶ 180.

135. *Id.* ¶ 187.

136. *Id.* ¶¶ 190-191.

137. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 194.

138. *Id.* ¶ 197.

139. *Id.* ¶ 198.

140. *Id.* ¶ 199.

141. *Id.*

Bergami, Mr. Miguel Ángel, Mr. Rodríguez, Ms. Soraya Castellano, Ms. María Arriaga and Ms. Larissa Patiño,¹⁴² because:

The Court determined that the editorial line of a news organization reflects the political opinions of its workers and managers and is therefore protected under Article 1(1) (Obligation of Non-Discrimination).¹⁴³ An editorial line is carefully crafted by specific people as the message and mission of an organization, and accordingly is a reflection of the views of those individuals.¹⁴⁴

The Court reemphasized that the State decided not to renew RCTV's concession because of its political position.¹⁴⁵ The Court declared that when a State discriminates based on their favor or disfavor of a station, a "disincentive, frightening, and inhibiting effect" results.¹⁴⁶ It signals to the listeners and other stations that behaving like RCTV is not acceptable.¹⁴⁷ That jeopardizes democracy because it stifles debates on topics of public interest.¹⁴⁸ Accordingly, the State violated Article 13 (Freedom of Thought and Expression) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention.¹⁴⁹

The Court found unanimously that Venezuela had violated:

Article 8(1) (Right to a Hearing Within Reasonably Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention to the detriment of Marcel Granier, Peter Bottome, Jaime Nestares, Jean Nestares, Fernando Nestares, Alicia Phelps de Tovar and Francisco J. Nestares,¹⁵⁰ because:

A state's procedures regarding the granting or renewal of concession or licenses must comply with safeguards to ensure the State is not abusing its authority to restrict the freedom of expression. Here, LOTEL and other State laws provide the regulations for transforming titles and renewing

142. *Id.* ¶¶ 235, 419.

143. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 224.

144. *Id.* ¶ 225.

145. *Id.* ¶ 231.

146. *Id.* ¶ 234.

147. *Id.*

148. *Id.*

149. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 235.

150. *Id.* ¶¶ 253, 419.

concession. Under these laws, the State was required to renew or deny RCTV's concession within ninety days.

The Court concluded that although RCTV's attorneys had properly initiated the process for the renewal of the concession in accordance with Venezuelan regulations, the State had refused to grant the renewal to silence the station.¹⁵¹ The Court found that the State directly contradicted the guarantees provided for in Article 8 (Right to a Fair Trial) of the Convention by closing the administrative processes, failing to provide a fair and impartial administrative process.¹⁵²

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention to the detriment of Marcel Granier, Peter Bottome, Jaime Nestares, Jean Nestares, Fernando Nestares, Alicia Phelps de Tovar, Francisco J. Nestares, Edgardo Mosca, Anani Hernández, Inés Bacalao, José Simón Escalona, Eladio Lárez, Odila Rubin, Oswaldo Quintana, Eduardo Sapene, Daniela Bergami, Isabel Valero, Miguel Angel Rodriguez, Soraya Castellano, María Arriaga and Larissa Patiño,¹⁵³ because:

The Court determined that no evidence indicates the administrative processes to renew a concession are so complex as to warrant a seven-year delay.¹⁵⁴ There were excessive delays in the various administrative processes, particularly the evidentiary stage.¹⁵⁵ The appeal for annulment was presented on April 17, 2007, but the stage of collecting evidence was delayed from October 23, 2007 to March 6, 2008, and has been pending since June 26, 2008 due to additional appeals.¹⁵⁶ Between August 12, 2008 and October 22, 2009, the victims petitioned the judicial body in charge of the administrative process eight times, but never received a response.¹⁵⁷ Moreover, the State failed to prove that the authorities were not responsible for the ongoing seven-year delay.¹⁵⁸ Therefore, the Court concluded that the State failed to provide a hearing within a reasonable time in contravention of Article 8(1).¹⁵⁹

151. *Id.* ¶¶ 251, 252.

152. *Id.* ¶ 252.

153. *Id.* ¶ 419.

154. *Id.* ¶ 261.

155. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 70.

156. *Id.* ¶ 269.

157. *Id.* ¶ 265.

158. *Id.* ¶ 270.

159. *Id.* ¶ 276.

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Marcel Granier, Peter Bottome, Jaime Nestares, Jean Nestares, Fernando Nestares, Alicia Phelps de Tovar, Francisco J. Nestares, Edgardo Mosca, Anani Hernández, Inés Bacalao, José Simón Escalona, Eladio Lárez, Odila Rubin, Oswaldo Quintana, Eduardo Sapene, Daniela Bergami, Isabel Valero, Miguel Angel Rodriguez, Soraya Castellano, María Arriaga and Larissa Patiño,¹⁶⁰ because:

The Court reasoned that the amparo petition is a speedy action that must be resolved within a reasonable time.¹⁶¹ The Court further reasoned that: (1) the precautionary measure was not complex enough to warrant the ongoing seven-year delay, because it only restated previous arguments and requested RCTV's situation remain unchanged; (2) the victims were not responsible for the delay; (3) the authorities did not have a justification for taking over three months to resolve the matter; and (4) that the precautionary measure ordered could not effective because RCTV had already stopped transmitting two months before the precautionary measure order was issued.¹⁶² Thus, the Court concluded that the term of over three months to adjudicate the injunction violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).¹⁶³

Article 8(1) (Right to a Hearing within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Marcel Granier, Peter Bottome, Jaime Nestares, Jean Nestares, Fernando Nestares, Alicia Phelps de Tovar, Francisco J. Nestares,¹⁶⁴ because:

The Court noted that the representatives of RCTV could not intervene in the judicial process when the State seized their property.¹⁶⁵ Additionally, the representatives of RCTV were merely notified of this occurrence.¹⁶⁶ The Court reasoned that not being able to intervene constitutes a

160. *Id.* ¶¶ 287, 419.

161. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 282.

162. *Id.* ¶ 286.

163. *Id.*

164. *Id.* ¶¶ 308, 419.

165. *Id.* ¶ 306.

166. *Id.*

violation of the right to defense.¹⁶⁷ The Court also recognizes that RCTV's opposition against the precautionary measure is still pending to date, and their property is continued to be used by the State.¹⁶⁸ Furthermore, the State failed to provide a justifiable excuse for the undue delay.¹⁶⁹ Accordingly, the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).¹⁷⁰

The Court found unanimously that Venezuela did not violate:

Article 8 (Right to a Fair Trial), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of the representatives of the victims,¹⁷¹ because:

*RCTV filed a criminal complaint that was reviewed and dismissed by the State within two years.*¹⁷² *The Court found that RCTV's complaint was analyzed by various internal agencies that allowed them to file an appeal at any stage.*¹⁷³ *The Court further reasoned that it does not have evidence to conclude whether the administrative and investigative processes were conflicting with the duty to investigate.*¹⁷⁴ *Therefore, the Court concluded that the matter pertaining to the application of domestic law is unrelated to international human rights, and is therefore outside of the Court's jurisdiction.*¹⁷⁵

Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Marcel Granier, Peter Bottome, Jaime Nestares, Jean Nestares, Fernando Nestares, Alicia Phelps de Tovar, Francisco J. Nestares,¹⁷⁶ because:

*The Court reasoned that the Supreme Court of Justice taking a little over three months to respond to the appeal was not excessive enough to affect the efficiency of the State's judicial processes.*¹⁷⁷ *Moreover, the amparo*

167. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 306.

168. *Id.* ¶ 307.

169. *Id.*

170. *Id.* ¶ 308.

171. *Id.* ¶ 295.

172. *Id.* ¶¶ 292-293.

173. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 294.

174. *Id.*

175. *Id.*

176. *Id.* ¶¶ 318, 323.

177. *Id.* ¶ 317.

injunction was implemented simultaneously with the appeal.¹⁷⁸ Therefore, the elapsed time did not impact the protections of the victims, as the protection was implemented prior to RCTV being terminated.¹⁷⁹

The Court found by five votes to two that Venezuela did not violate:

Article 8(1) (Right to Independence and Impartiality), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of the representatives of the victims,¹⁸⁰ because:

The Court reiterated that it does not have sufficient evidence to determine that there was conduct contrary to the duty to be impartial.¹⁸¹ Furthermore, the Court considered the specific allegations that are related to a lack of independence and impartiality, deciding that they are relative to the Constitutional Chamber of the Supreme Court of Justice.¹⁸² The Court found that the allegations could be attributable to the Constitutional Chamber of the Supreme Court of Justice.¹⁸³ Therefore, the petitioners failed to prove that the lack of independence and impartiality was attributable to the judiciary.¹⁸⁴

Article 8(1) (Right to Independence and Impartiality) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, in regard of the administrative process of nullification,¹⁸⁵ because:

The Court found that the representatives did not present sufficient evidence to prove a violation of duty of independence and impartiality.¹⁸⁶ The Court further highlighted that a general reference is not sufficient to conclude that the violation existed, and that there were no concrete facts presented that could lead to a conclusion that the right to independence and impartiality had been violated.¹⁸⁷

178. *Id.* ¶ 322.

179. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 323.

180. *Id.* ¶ 419.

181. *Id.* ¶ 305.

182. *Id.*

183. *Id.*

184. *Id.*

185. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 419.

186. *Id.* ¶ 278.

187. *Id.*

Article 21 (Right to Property), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Marcel Granier, Peter Bottome, Jaime Nestares, Jean Nestares, Fernando Nestares, Alicia Phelps de Tovar, and Francisco J. Nestaras,¹⁸⁸ because:

The Court recognized that there was no right to an automatic renewal or extension of the concession.¹⁸⁹ Moreover, the economic benefits that the shareholders receive from the concession renewal are not part of the equity of the partners, and cannot be protected by Article 21 (Right to Property).¹⁹⁰ Furthermore, the Court refused to analyze the potential violation of the right to property as a consequence of the seizure, because RCTV is a legal person and the Court's jurisdiction is limited to the violation of the rights of individuals, namely the owners of the station.¹⁹¹ Therefore, although the Court recognized that RCTV had an economic right from their concession, the Court did not analyze whether Venezuela interfered with the exercise of that right.¹⁹²

C. Dissenting and Concurring Opinions

1. Separate Opinion of Judge Roberto De Figueiredo Caldas

In a separate opinion, Judge De Figueiredo Caldas accepted the preliminary objection of lack of competence that was raised by the State.¹⁹³ Judge De Figueiredo Caldas recognized that the workers of RCTV, who exercised their right, can be considered victims.¹⁹⁴ However, he also concluded that indirect investors only have an equity interest and therefore cannot be protected by the right to freedom of expression.¹⁹⁵ Moreover, fair compensation should be given to the victims rather than a legal entity.¹⁹⁶ The reinstatement of the concessions does not affect the right of the victims or the company.¹⁹⁷ The relief sought, namely to continue working, is outside of the Court's jurisdiction and "contradicts

188. *Id.* ¶¶ 358, 419.

189. *Id.* ¶ 343.

190. *Id.*

191. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 343.

192. *Id.* ¶ 352.

193. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Roberto de Figueiredo Caldas, Inter-Am. Ct. H.R. (ser. C) No. 293, ¶ 16 (June 22, 2015).

194. *Id.* ¶ 12.

195. *Id.* ¶ 13.

196. *Id.* ¶ 18.

197. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Roberto de Figueiredo Caldas, ¶ 72.

the defense of democratization and the pluralism, so dear to the values protected by the American Convention.”¹⁹⁸

2. Partially Dissenting Vote of Judge Eduardo Ferrer Mac-Gregor Poisot

In a partially dissenting vote, Judge Mac-Gregor Poisot concurs with the Court in finding the violation of the rights to Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas) and 13(3) (Prohibition of Restriction of Freedom of Expression by Indirect Means), Article 24 (Right to Equal Protection) in relation to Article 13 (Freedom of Thought and Expression), and Article 8 (Right to a Fair Trial).¹⁹⁹ However, Judge Mac-Gregor Poisot dissents from the Court on three points in relation to the freedom of expression and the “deviation of power.”²⁰⁰ He believes that Jean Nestares, Fernando Nestares, Alicia Phelps Tovar and Francisco J. Nestares should be enjoy the freedom of the expression because their essential role in RCTV is clear.²⁰¹ Although not members of RCTV’s Board of Directors, they were shareholders and therefore, were significantly involved in the project.²⁰² The shareholders were responsible for managing and directing RCTV and were the primary organ of its operation.²⁰³ Judge Mac-Gregor Poisot highlighted that the protected rights of natural persons can also be claimed by members, or shareholders, who are acting on its behalf.²⁰⁴

Furthermore, Judge Mac-Gregor Poisot reflected that the freedom of expression must be guaranteed especially when it is contrary to the State’s or society’s interests.²⁰⁵ A society must be adequately informed to exercise their freedoms.²⁰⁶ Consequently, where a society is not adequately informed, a violation of the freedom of expression may result.²⁰⁷

Judge Mac-Gregor Poisot opined the Court should have found a violation of the right to private property, and that such a right should be

198. *Id.*

199. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C) No. 293, ¶ 11 (June 22, 2015).

200. *Id.* ¶ 12.

201. *Id.* ¶ 13.

202. *Id.* ¶¶ 46, 59, 60.

203. *Id.* ¶ 59.

204. *Id.* ¶¶ 54, 55, 59.

205. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, ¶ 28.

206. *Id.* ¶ 31.

207. *Id.* ¶ 31.

analyzed in relation to the right to freedom of expression.²⁰⁸ Judge Mac-Gregor Poisot highlighted that Article 13(3) (Prohibition of Restriction of Freedom of Expression by Indirect Means) of the Convention grants protection to instruments used in the dissemination of information, such as RCTV's assets in question.²⁰⁹ Moreover, the radio spectrum is considered a public good, and therefore cannot be considered the property of the State.²¹⁰ The Supreme Court of Justice deprived RCTV of the use and enjoyment of their assets, and significantly impacted the value of the company's shares.²¹¹ Additionally, it is not the rights of the shareholders in question, but the destruction of the property that resulted from the precautionary measures, that violates the freedom of expression.²¹² More importantly, while the Court has held that a precautionary measure involving the disposition of property cannot be carried out definitively, Judge Mac-Gregor Poisot urged that they should also not be made indefinitely.²¹³

Lastly, Judge Mac-Gregor Poisot declared the Court should have found a violation for the guarantees of independence and impartiality, and the right to a hearing within a reasonable time.²¹⁴ The government had already decided to cancel RCTV concession before the administrative procedures, solely due to RCTV's editorial line opposing the government.²¹⁵ Therefore, the Supreme Court of Justice violated the guarantees of independence and impartiality by contributing to the government's seizure of RCTV's assets.²¹⁶

3. Dissenting Vote of Judge Manuel E. Ventura Robles

Judge Ventura Robles disagreed with the Court's decision regarding the guarantees of judicial independence and impartiality and the right to private property.²¹⁷ He highlighted: (1) the decision to seize RCTV's assets was in regard to Constitutional protection and demands for which precautionary measures were requested; (2) televisions provided the capability of nationally transmitting data; (3) RCTV had no opportunity

208. *Id.* ¶ 14.

209. *Id.* ¶ 15.

210. *Id.* ¶ 67.

211. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, ¶ 90.

212. *Id.* ¶ 91.

213. *Id.* ¶ 119.

214. *Id.* ¶ 127.

215. *Id.* ¶ 129.

216. *Id.* ¶ 137.

217. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Dissenting Opinion of Judge Manuel E. Ventura Robles, Inter Am. Ct. H.R. (ser. C) No. 293, ¶ 2 (June 22, 2015).

to participate in the legal processes because the representatives were never notified; and (4) the precautionary measures that permit the State to use RCTV's equipment to broadcast nationwide continue to be enforced.²¹⁸

More importantly, the Supreme Court of Justice contributed to the creation and continuation of RCTV, and misused its power by cooperating with the decisions taken by the government to implement the precautionary measures.²¹⁹ Judge Ventura Robles reasoned that Supreme Court of Justice's actions show lack of independence and impartiality,²²⁰ and Venezuela had violated the right to private property by taking over RCTV's assets.²²¹

4. Individual Concurrent Vote of Judge Eduardo Vio Grossi

In an individual concurring opinion, Judge Vio Grossi addresses the right to freedom of thought and expression.²²² He reminded that the respect for human rights and fundamental freedoms are an essential element of an effective democracy.²²³ The coup d'état did not justify the violation of human rights, much less their ongoing violation for seven years.

Judge Vio Grossi noted that 80 percent of the judiciary involved in the present case were provisional or temporary judges, raising questions about their independence,²²⁴ since temporary judges are appointed at the State's discretion, often without an open competition.²²⁵

5. Concurring Opinion of Judge Diego Garcia-Sayán

In a concurring opinion, Judge Garcia-Sayán reiterated the three principles at the core of the freedom of expression: (1) freedom of expression must be exercised in harmony with other rights; (2) journalists and media communication have duties; and (3) media and information must be plural.²²⁶ Judge Garcia-Sayán concluded that Venezuela's

218. *Id.* ¶ 6.

219. *Id.* ¶¶ 7, 8.

220. *Id.* ¶ 9.

221. *Id.*

222. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 293, "Introduction" (June 22, 2015).

223. *Id.* ¶ B1.

224. *Id.* ¶ B2.

225. *Id.*

226. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Diego Garcia Sayán, Inter-Am. Ct. H.R. (ser. C) No. 293, ¶ 3 (June 22, 2015).

actions decreased media pluralism, which constitutes a violation to the freedom of expression.²²⁷ The State has a duty to guarantee the media pluralism, and must adopt additional or alternative measures in pursuit of media pluralism when necessary.²²⁸ Furthermore, the State attempted to align the media with the government.²²⁹ Finally, Judge Garcia-Sayán opined that there had not been a violation of Article 25 (Right to Judicial Protection) because the Supreme Court of Justice's delay of three months did not affect the efficiency of the administrative processes.²³⁰

6. Partially Dissenting Vote of Judge Alberto Pérez Pérez

In a partially dissenting vote, Judge Pérez Pérez disagreed with the Court's conclusion regarding the freedom of expression.²³¹ Particularly, Judge Pérez Pérez argued that the freedom of expression is not a protected right of the alleged victims because they were members of the senior management,²³² and this right is meant to protect the real owners of RCTV, the seven shareholders.²³³ Moreover, Judge Pérez Pérez recognized that the Judgment stated that RCTV had no right to the renewal of the concession, and radio spectrum ownership cannot be claimed by the alleged victims, because it is a public good.²³⁴ Therefore, the Court's order to the State to renew the concession is unfounded since it had been ruled that RCTV does not have a right to an automatic renewal of the concession, and therefore has no standing.²³⁵

227. *Id.* ¶ 8.

228. *Id.* ¶ 13.

229. *Id.* ¶ 19.

230. *Id.* ¶ 27.

231. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Alberto Pérez Pérez, Inter-Am. Ct. H.R. (ser. C) No. 293, ¶ 1, 2 (June 22, 2015).

232. *Id.* ¶ 6.

233. *Id.* ¶¶ 2, 3.

234. *Id.* ¶ 14.

235. *Id.* ¶¶ 14, 15.

IV. REPARATIONS

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

The Court ruled five votes in favor and two against that the State had the following obligations:

1. Re-establish the Radio Frequency on Channel 2 and Return the Seized Equipment

The Court orders the State to restore the radio frequency Channel 2 to assure the right to freedom of expression and property.²³⁶

2. Grant the Frequency on Channel 2 to the Victims in an Open, Independent, and Transparent Matter

After Channel 2 has been restored, the State must assign it to RCTV in an “open, independent, and transparent” process that complies with LOTEL.²³⁷ The State must guarantee that the measure will be handled in a non-discriminatory matter, and is aimed at strengthening democratic pluralism.²³⁸ Furthermore, the State must give the victims the opportunity to use the radio frequency for RCTV.²³⁹

The Court ruled unanimously that the State had the following obligations:

1. Publish the Judgment Within Six Months

The Court stated that the Judgment constituted a *per se* form of reparation.²⁴⁰ The State must publish the official summary of the Judgment in (1) an official newspaper, and (2) a nationally circulated newspaper; and make the entire Judgment public on the official CONATEL website for one year.²⁴¹

236. Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 380.

237. *Id.* ¶ 382.

238. *Id.*

239. *Id.*

240. “Decides,” ¶ 14.

241. *Id.* ¶ 386.

2. Ensure all Future Allocations and Renewals of Concessions are Made in an Open, Independent, and Transparent Matter

The State must take necessary measures to ensure that all future allocations and renewals of concessions are made in an “open, independent, and transparent” manner.²⁴² The procedures must be non-discriminatory, with the focus of increasing the available information to society while upholding the rights and freedoms of the people.²⁴³

B. Compensation

The Court unanimously awarded the following amounts:

1. Pecuniary Damages

The Court awards \$10,000 as compensation for material and intangible damages to the shareholders Marcel Granier, Peter Bottome, Jaime Nestares, Jean Nestares, Fernando Nestares, Alicia Phelps de Tovar and Francisco J. Nestares.²⁴⁴ The Court also awards \$50,000 for consequential and inconsequential damages to the employees Edgardo Mosca, Anani Hernández, Inés Bacalao, José Simón Escalona, Eladio Lárez, Odila Rubin, Oswaldo Quintana, Eduardo Sapene, Daniela Bergami, Isabel Valero, Miguel Angel Rodriguez, Soraya Castellano, María Arriaga and Larissa Patiño.²⁴⁵

2. Non-Pecuniary Damages

[None]

3. Costs and Expenses

The State must pay a reimbursement for costs and expenses incurred for the legal processes in the amount of \$10,000, that must be delivered to representatives of the victims.²⁴⁶

242. Granier et al.v. Venezeula, Preliminary Objections, Merits, Reparations, and Costs, ¶ 394.

243. *Id.*

244. *Id.* ¶ 403.

245. *Id.* ¶ 404.

246. *Id.* ¶ 410.

4. Total Compensation (including Costs and Expenses ordered):

\$780,000

C. Deadlines

The State must pay the compensation for damages and reimbursement for costs and expenses within one year from the notification of the Judgment.²⁴⁷ If the compensation is not claimed within ten years, the amount will be returned to the State with accrued interest.²⁴⁸ The State must submit a report to the Court on the adopted measures within one year.²⁴⁹

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. \(ser. C\) No. 293 \(June 22, 2015\).](#)

[Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Roberto de Figueiredo Caldas, Inter-Am. Ct. H.R. \(ser. C\) No. 293 \(June 22, 2015\).](#)

247. *Id.* ¶ 411.

248. Granier et al.v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, ¶ 414.

249. *Id.* ¶ 418.

[Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Diego Garcia Sayán, Inter-Am. Ct. H.R. \(ser. C\) No. 293 \(June 22, 2015\).](#)

[Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Alberto Pérez Pérez, Inter-Am. Ct. H.R. \(ser. C\) No. 293 \(June 22, 2015\).](#)

[Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Eduardo Ferrer MacGregor Poisot, Inter-Am. Ct. H.R. \(ser. C\) No. 293 \(June 22, 2015\).](#)

[Granier et al. v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. \(ser. C\) No. 293 \(June 22, 2015\).](#)

3. Provisional Measures

[Granier et al. v. Venezuela, Provisional Measures, Order of the President, Inter-Am. Ct. H.R. \(ser. E\) \(Apr. 14, 2014\).](#)

[Granier et al. v. Venezuela, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Feb. 6, 2014\)](#)

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[Granier et al. v. Venezuela, Admissibility Report, Report No. 4/10, Inter-Am. Comm'n H.R., Pet. No. 664-98 \(Nov. 1, 2010\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Granier et al. v. Venezuela, Report on Merits, Report No. 112/12, Inter-Am. Comm'n H.R., Case No. 12.828 \(Nov. 9, 2012\).](#)

5. Application to the Court

[Granier et al. v. Venezuela, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.828 \(Feb. 28, 2013\).](#)

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[Bernd Debusmann, *Self-Censorship by Venezuela Media Mogul Rewarded*, REUTERS, Jun. 20, 2007, <<https://www.reuters.com/article/us-venezuela-reward/self-censorship-by-venezuela-media-mogul-rewarded-idUSN2020065720070620>>.](#)