

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 demonstrators hasn't been clarified. 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>

<p>Since when is the State a part of the American Convention on Human Rights?</p> <p>Did the State of Chirilagua recognize the binding jurisdiction of the Inter-American Court of Human Rights, and if so, when?</p>	
<p>What was the question that established the additional ballot for the persons who opted to add it in the parliamentary elections of March 10, 2008 and what was its result?</p>	<p><i>The information available is limited to the facts in the hypothetical case.</i></p>
<p>Was the absence of 70% of the population in the Chirilagua elections due to the acts of violence committed at the "Facebookazo"?</p>	<p><i>The information available is limited to the facts in the hypothetical case.</i></p>
<p>Specify what percentage of Chirilagua is rural and what percentage is urban.</p>	<p><i>40% of the population is concentrated in urban areas.</i></p>
<p>How are the judicial bodies of Chirilagua structured in terms of State courts, Federal courts, Supreme Court, Constitutional Court; what hierarchy exists between them and what subject matter and territorial jurisdiction does each one have?</p> <p>What are the judicial bodies exercising constitutional review in the State of Chirilagua?</p>	<p><i>Judicial power is vested in the nation's Supreme Court of Justice, in the Constitutional Court and in a series of lower and specialized courts. The Supreme Court of the Nation is divided into six chambers— Political, Administrative, Electoral, Civil, Criminal, Social and the Plenary Chamber. The lower courts are responsible for resolving conflicts governed by federal law throughout the country.</i></p> <p><i>Constitutional review via amparo is decentralized and vested in any judge or court of the republic.</i></p>
<p>Are there other specific remedies available in Chirilagua to protect rights, in addition to the constitutional remedy?</p>	<p><i>There are many remedies and actions available in domestic law. However, according to analysts, the constitutional remedy was the most appropriate action for the protection of the rights described in the facts.</i></p>
<p>Was the democracy ballot used after the elections to modify the Constitution of Chirilagua or was it only used as a popular consultation?</p>	<p><i>Subsequently, the government coalition in Congress passed constitutional reform (according to the current reform process) basing itself on the results of the consultation. The results are considered to have had significant political rather than legal value.</i></p>
<p>In paragraph 41, 2nd sentence, it says "in its reply, dated January 15, 2008." Shouldn't it say "in its reply, dated January 15, 2009"?</p>	<p><i>The correct date is January 15, 2009.</i></p>

<p>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.</p>	
<p>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 meant to say that the invitation to bid for licenses was issued in January 2010 and not 2009?</p>	<p><i>The correct date is 2010.</i></p>
<p>Are the victims’ representatives alleging the same facts and articles referenced in paragraph 42 of the facts of the case?</p>	<p><i>The information available is limited to the facts in the hypothetical case.</i></p>
<p>According to what is laid out in fact 44 of the case, and taking into account that the regulations of the Court and the Commission were amended in December 2009, should it be understood that the petitioners insist on alleging that Radical Radio and Radio Su-Version stations must be presumed as victims?</p> <p>Taking into consideration the changes to the Rules of the Court in November 2009, does paragraph 44 of the hypothetical case remain unaltered with regards to the inclusion of Radical Radio and Radio Su-Version as alleged victims?</p> <p>According to the recent modification inherent to the functioning of the Inter-American system, are the victims limited to invoking the articles that the Commission has found to be violated (8, 13 and 15 in relation to 1.1)?</p>	<p><i>The Competition’s Technical Committee seeks to clarify the announcement posted on the Competition website and sent via email on 20th January stating that the teams representing the Commission must understand that they are taking on the role of representatives of the victim.</i></p> <p><i>The teams which have up until now received the role of Commission must introduce themselves during the oral rounds and in the written memorials as the representative of the victim and not the Commission.</i></p> <p><i>For the purpose of the Competition, the Commission will have no role in the litigation.</i></p> <p><i>This decision is final and any rumors or information contrary to this must be disregarded.</i></p> <p><i>We would like to take this opportunity to clarify that, for the purpose of this Competition, throughout the past 14 years, the Commission has always defended the victim. In addition, there have always been two opposing parties: State and Commission (defending the victim). In 2010, there will still be two litigating parties: State and Victim. The only</i></p>

	<p><i>change is regarding the name of one of the litigating parties.</i></p> <p><i>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 to the modification of the Court's rules of procedure, which gives the victim a more prominent role.</i></p> <p><i>Finally, the fact that the Court's new rules of procedure have become effective in January 2010 and that the hypothetical case refers to circumstances prior to this date is irrelevant for the purpose of this Competition.</i></p>
What are the recommendations by the Commission to the State of Chirilagua, with which the latter did not comply?	<i>This is not relevant for solving the case.</i>
Are the People of Chirilagua a party to the case before the Inter-American Human Rights Court?	<i>The information available is limited to the facts in the hypothetical case.</i>
Is it possible for an applicant to submit questions to the Court which the Commission has found inadmissible?	<i>See the American Convention and the regulations of the Court and Commission.</i>
Does the mention of "person" in Article 92 of the Telecommunications Act refer to "natural" persons or "legal" person?	<i>The information available is limited to the facts in the hypothetical case.</i>
What are the arguments used by the COFERETEL to declare the noncompliance of Radical Radio with the provisions of Article 92 of the Telecommunications Act (para. 30)?	<i>The information available is limited to the facts in the hypothetical case.</i>
Before the death of Maria Luisa Peroni, who was the holder of the concession for electromagnetic spectrum used by Radio Cadena Básica?	<i>The information available is limited to the facts in the hypothetical case.</i>

<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).</p>	<p><i>The information available is limited to the facts in the hypothetical case.</i></p>
<p>Pursuant to paragraph 21 of the facts of the case, what were the reasons why ACOSINTI's proposal was not approved in the two invitations to bid made by COFERETEL?</p>	<p><i>The information available is limited to the facts in the hypothetical case.</i></p>
<p>What were the legal underpinnings of the First Court to deny the motion for contempt for failure to comply with the court order?</p>	<p><i>The Court argued that a substantial response to the request for information was provided through COFERETEL's communications.</i></p>
<p>In regard to the communication sent to COFERETEL by Melanie about the proper procedure to clarify the apparent inconsistencies (mentioned in paragraph 13), should the lack of response from the authority be considered an affirmative or negative denial?</p>	<p><i>As this is a question and not a direct appeal, the administrative rules do not consider the lack of response a negative or affirmative response that generates rights. Given the lack of response from a government agency the citizens of Chirilagua can turn to the constitutional remedy (amparo) alleging violations of the fundamental right to petition.</i></p>
<p>Did Ms. Melanie Pereira Peroni sign the cooperation agreement with Radio Su-Version, set forth in paragraph No. 24?</p>	<p><i>Yes.</i></p>
<p>Were the measures adopted in paragraph 30 of the hypothetical case, such as the immediate closure and confiscation of the radio stations equipment, provided for by law? Is COFERETEL the relevant organ to order these measures?</p>	<p><i>Yes.</i></p>
<p>What is the Community Sound Broadcasting Service, as mentioned at paragraph 22? By this we mean, is it part of COFERETEL and is it a State or Federal organism?</p>	<p><i>Yes, it is part of COFERETEL.</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 the applicant’s (or of 51% of the partners’, in the case of a legal person) 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>

	<i>similar to those for commercial radios, but the requirements tend to be more economic and less technological.</i>
Did Radio Su-Version satisfy the necessary requirements to obtain a community sound broadcasting license?	<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>
When two radio stations are chains, is their use of the electromagnetic spectrum considered common?	<i>Legislation, in this respect, is not clear. The only legal reference, in this regard, is in Article 98 of the Telecommunications Act: "The installation of a radio broadcaster that 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, must fulfill all respective requirements."</i>
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?	<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> <i>The selection process is currently taking place; to be precise, the proposals are currently undergoing their technical review.</i> <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> <i>By public announcement, the regulatory body reported that it expects to award 100 licenses for commercial stations and 100 community radio licenses.</i>
In reference to paragraph 12, what are the requirements established in Law 56 of 1976, concerning the 'legal representative' and the 'concession holder'? In paragraph 13, is it that both the legal representative AND the title holder of the concession listed in the records of	<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>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>According to ACOSINTI's official 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>

<p>How were the criminal proceedings conducted in the State of Chirilagua?</p>	<p><i>The information available is limited to the facts in the hypothetical case.</i></p>
<p>Were the procedural due process guarantees offered by the criminal justice system in this country respected?</p>	<p><i>The information available is limited to the facts in the hypothetical case.</i></p>
<p>Do criminal proceedings in Chirilagua normally occur as quickly as the proceedings against Melanie Pereira Peroni, Francis Hoffman, William Garra and Byron Dayle?</p>	<p><i>Yes.</i></p>
<p>What are the possible remedies and competent courts on criminal matters in the State of Chirilagua?</p>	<p><i>The information available is limited to the facts in the hypothetical case.</i></p>
<p>Does the Public Prosecutor in Chirilagua have the function of both an inquisitorial body, according to paragraphs 31 and 32, and a prosecutorial body according to paragraphs 37 and 38 of the hypothetical?</p> <p>Is the Public Prosecutor responsible for carrying out investigations and prosecuting criminal conduct before judges in the State of Chirilagua, as follows from the facts in paragraphs 31, 32, 33, 37, 38 and 39?</p>	<p><i>Yes.</i></p>
<p>Was the lawsuit, mentioned in paragraph 34, brought before a judicial or administrative court?</p> <p>Can the Judiciary modify the rulings issued by the Administrative Court?</p>	<p><i>The Administrative Court is the <u>judicial</u> body of first instance to resolve disputes between citizens and the State. The second instance is the responsibility of the political administrative chamber of the Supreme Court.</i></p>
<p>Paragraph 37 states that the prison sentence of Melanie Pereira and Francis Hoffman can be commuted upon payment of a fine equivalent to \$US 200,000.00, and paragraph 38 states that the sentence for the crimes of defamation and instigation to commit a crime could be commuted upon payment of a fine equivalent to \$US15,000.00. Were the penalties in fact commuted?</p>	<p><i>Melanie Pereira paid the fine and for that reason was exempted from the prison sentence. Mr. Hoffman argued that he did not have the money to pay the fine and for that reason the prison sentence penalty was applied.</i></p>

<p>Following the conviction of September 15, 2008, later confirmed by the Court of Appeals, which was referred to in paragraph No. 38, did some of those convicted suffer a prison sentence for effective enforcement?</p>	
<p>In order to commute a prison sentence, what criteria does Chirilagua's criminal code require a judge to consider when calculating the amount of the fine? (for example, gravity of the offense, duration of illegal activity, what types of offenses does this commutation option apply to, etc.)</p>	<p><i>"The Criminal Code establishes general criteria related to the type of crime, its severity, duration, and the vulnerability of its victims."</i></p>
<p>In presenting the case, there are descriptions of various types of offenses. However, there is no description of the offense of "Theft of State Property." What is the description of the offense of "theft of State property" in Chirilagua?</p>	<p><i>Whoever seizes a public good for his or her own benefit or for the benefit of a third party commits this act.</i></p>
<p>What is the definition of "homicide" in the Chirilagua's Criminal Code?</p> <p>How are the terms Murder and Homicide defined in the national legislation of Chirilagua?</p> <p>On November 23, 2008 the Third Criminal Court for Federal Offences convicted William Garra for 12 years prison for his part in the offenses in Instigation to commit a crime, Defamation and Homicide: is there a difference between the crimes of homicide and murder in the State of Chirilagua, and if so, what are the differences between the two in the law? How is the punishment split up?</p>	<p><i>Whoever "causes the death of another" commits homicide. Circumstances that can aggravate the punishment include: extremely violent crime, rewards or promise thereof for homicide and cruelty. While some people call aggravated homicide murder, technically murder is not mentioned under the Criminal Code.</i></p>
<p>In the period between January 15, 2009 and December 25, 2009, what was the procedural activity of Mr. Byron in the proceedings concerning the application for revocation of the administrative decision that ordered the cancellation of the concession granted to Radical Radio (§34)?</p>	<p><i>The proceedings were in the submission and evidence gathering stage.</i></p>

<p>What are the deadlines of the administrative proceedings brought by Byron Dayle on April 10, 2008?</p>	<p><i>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 between 4 and 6 years for the issuance of a decision of second instance.</i></p>
<p>Are the courts of appeal in paragraphs 35-37 the same court?</p>	<p><i>They have the same hierarchical level, but the cases were in different courts.</i></p>
<p>Out of all the constitutional remedies requested over the past two years to declare the administrative decisions invalid, how many have been accepted?</p>	<p><i>There are no official consolidated statistics. Public opinion has known of some cases of high social impact in which they have accepted the claims of the plaintiffs.</i></p>
<p>Is the Federal Tribunal/Appeals Court the last opportunity that Melanie Pereira, Byron Dayle, Francis Hoffman and William Garra have to appeal the convictions?</p>	<p><i>Yes.</i></p>
<p>Does the "constitutional remedy" have the same effect as an "amparo remedy" or "tutela remedy" and in this sense, was there any impediment of fact or impediment of law against criminal judgments under the Chirilagua Criminal Code?</p> <p>What is the legal nature of the constitutional remedy?</p> <p>Given that the jurisprudence has recognized the constitutional remedy against administrative acts, is the remedy also available against judgments of the second instance in criminal matters?</p> <p>Does the constitutional remedy (Paragraph 22 of the hypothetical case) in the State of Chirilagua, meets the function and objectives of the action known in other countries as "amparo remedy" or "tutela remedy" for the effective protection of fundamental individual rights?</p>	<p><i>Yes. The constitutional remedy referred in the facts corresponds to what is known, in some jurisdictions as "amparo" or "tutela" remedy.</i></p> <p><i>The constitutional remedy does not proceed against judicial sentences.</i></p>

Who can sue in criminal defamation cases?	<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?</p> <p>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).</p>	<p><i>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 state and community radios.</i></p> <p><i>It also establishes a new regulatory authority, organized as a collective body within the executive branch, whose management activities are held publicly accountable to Congress on a yearly basis.</i></p>