

## Radical Radio et al. v. Chirilagua

### Background

1. The Federal Republic of Chirilagua is classified economically as an upper middle-income State. Its capital is Cedulópolis. Chirilagua was established as an autonomous State at the beginning of the XIX Century when 18 former Spanish and English colonies gained their



10. On March 10, 2008 the parliamentary elections were held, and the inclusion of the Democracy Ballot was permitted. The government coalition won a broad victory, but only 30% of eligible voters turned out to vote. Disturbances arose again in several areas of the country. Again, the most violent events took place in San Pedro de los Aguados, where three people died as a result of confrontations between pro-government and opposition groups.

The involvement of Radio Su Versión and Radical Radio in the events

-- Radcal Radio (formerly Radio Cadena Básica)

11.

VWXG\ RI WKH WHOHYLVLRQ FKDQQHOV ¶ 2008 Supermarket DQG J R elections and found a serious imbalance in the coverage of the different candidates. While candidates belonging to parties of the governing coalition were reported on for an average of 20 minutes during prime time, candidates from opposition parties were covered for approximately 2 minutes. From that point on, the network began a series of programs called *The Invisible*, to which several opposition candidates were invited to discuss their platforms.

15. Radical Radio V W L P H V O R W Z L W K W K H O D U J H V W M D X S G L H Q F H news and political humor. The program is hosted by commentator, journalist and impersonator William Garra. The most controversial figure on the program (impersonation by Garra) is <sup>3</sup>) D W L O L R ( V W E D D Q F D H W X U H R I W K H L Y S I D I L E L O A T H E Q W G R A R L V F R F D O O H G D <sup>3</sup> I H X G E C Q P R W K L H Q U I F D J O R R X V Y R U D F L R X V D Q G F I of the public have accused the program of promoting class hatred and social conflict over land disputes. The radio station responded to this criticism with the argument that this figure is fictional and that any resemblance to reality is pure coincidence.

16. Radical Radio was the first mass medium in Chile that echoed the Facebookazo initiative. 7 K H V W F D W H O R Q G V J o i n e d t h e g r o u p a n d h a d a d a i l y c o u n t d o w n t o t h e m a r c h i n i t s s t a t u s u p d a t e . I n i t s r a d i o b r o a d c a s t s i t d e d i c a t e d s e v e r a l o p i n i o n p r o g r a m s t o c o m m e n t o n a n d p r o m o t e t h e i n i t i a t i v e , a n d i t a l s o u s e d a d v e r t i s i n g s p a c e t o p r o m o t e p a r t i c i p a t i o n i n i t .

17. On one of those programs, a few days prior to the march, the issue of the day focused on the groups from the social networking site Facebook that made reference to President Escalante. Those groups were different in nature from the protest march group and their content was generally aggressive and critical of the President. Different listeners called in to the station to show their support of W K H J U R X S V T H E F I R S T M A D E Q U E R Y a t t a c k s o n t h e p r e s i d e n t a n d h i s p o l i c i e s . T h e p r o g r a m e n d e d w i t h a n i n v i t a t i o n t o t a k e p a r t i n t h e p r o t e s t m a r c h o n M a r c h 3 . A s a f o r m o f s y m b o l i c p r o t e s t , t h e c o m m e n t a t o r i t e d t h e p r o t e s t o r s t o t a k e b a g s f u l l o f d i r t w i t h t h e m t o t h r o w h a n d f u l s o f i t i n t h e p u b l i c s q u a r e , c a r r y i n g s i g n s s u c h a s <sup>3</sup> K H U H a n d W K H \ R X Q H H G Q R Z J L Y H X V E D F N R X U U L J K W V .

18. On March 3, 2008, Radical Radio dedicated its programming of the day to coverage of the Facebookazo. William Garra was reporting on the events of the march and informed listeners that members of the Federal Police had been sent to block the Facebookazo in San Pedro and that the landowners had hired people from outside the community to stage marches that were supposedly in support of the Government. In his broadcast, Garra asked the participants to not allow the march to be disrupted. He maintained that the citizens had rights that were not being U H V S H F W H G D Q G K H H Q F R X U D J H G W K H S H R S O H <sup>3</sup> W R G H

19. On March 10, 2008, Radical Radio covered the elections and reported that it had information that electoral fraud could be committed in several cities. In particular, it started that it had information from confidential sources indicating that in response to the events of the previous week, the government of Georgia planned to perpetrate a monumental fraud in the HOHFWLRQV<sup>3</sup> LQ RUGHU WR NHHS WKH SUHVLGHQW LQ SRZH ORQJ \HDUV RI DEXVH DQG H[FOXVLRQV \KHF 5WG JHRQDJ DDOG the citizens of the State of Georgia not to let themselves be intimidated and to protect their constitutional rights.

-- Radio Su Versión

20. The Association of Landless Communities San Pedro de los Aguados (ACOSINTS) a social organization of communities from the municipalities San Jacinto and San Pedro de los Aguados. The purpose of their organization is, among other things, to keep the community regularly informed of State policies, programs and services, as well as the activities that affect their welfare and development. To better accomplish its objectives, the association made the decision to set up a community radio station. Accordingly, they took part in the only two invitations to bid issued by the COFERTEL following the enactment of the radio broadcasting law of 1976, article 70 of which recognizes community radio broadcasting and establishes that community radio shall have the right to a proportional percentage of the frequencies. This provision in D GHYHORS PHQW RI \$UWLFOH RI WKH & RQVWLWX thought and expression is guaranteed fully, in the terms of Article 13 of the American Convention on Human Rights. All persons are free to establish mass communications. The State shall administer the radio frequency taking into account criteria of equity and bearing in mind the principle of equal opportunity and media pluralism.

21. In the two invitations to bid issued since then, a total of 11 community sound broadcasting licenses have been awarded in different municipalities around the country, and 450 commercial radio broadcasting licenses have been granted or renewed. On neither of those occasions was the \$ & 26,17, TV SURSRVDO DSSURYH San Pedro de los Aguados awarded or renewed.

before the First Court for failure to comply with the court order. The motion was denied several days later.

23. In June of 1996, the ACOSINTI YRWHG DW LWV JHQHUDO DVVHPEO PHDVXUHV IRU WKH VDWLVIDFWLRQ Re purchase of repair equipment and the initiation of radio transmissions that would benefit its community. On that

27. On the Sunday of the election, Radio Su Versión again linked up with Radical Radio. Hours after the voting began, a group of approximately 25 youths attempted to take by force several ballot boxes located on the main square of Pedro de los Aguados with the intention of setting them on fire. Several local residents realized what was happening and attacked the youths. A fight then broke out between the two groups, and three of the youths died as a result.

Measures taken by the Government in response to the Facebookazo

28. On March 4, the day following the Facebookazo, the Federal Government blamed the events on the organizers of the protest march and the community broadcasting media for having incited violence and national destabilization. The Government promised to take measures to prevent situations like this from ever repeating themselves in the future, and to punish those responsible to the full extent of the law.

29. On March 5, 2008, the Federal Telecommunications Regulatory Commission (COFERETEL), a body that reports directly to the Ministry of the Interior, initiated a review of radio and television concessions. The Commission stated in a press release that this review was a preliminary measure to shape a policy to guarantee media pluralism and equal opportunity of access to the electromagnetic spectrum. To this end, the COFERETEL requested that information and requirements be updated for all radio and television stations holding concessions granted by the State. On April 2, 2008, the COFERETEL ordered the cancellation of the concessions granted to 40 radio stations in amplitude modulation (AM) and 19 in frequency modulation (FM) that it found to be noncompliant with the operating requirements provided for in the Telecommunications Act. On the same date, those stations were ordered to cease communications immediately. None of these stations was part of Fresa Aliance.

30. Radical Radio was one of the stations whose concession was cancelled. The COFERETEL asserted that the reason for the cancellation was noncompliance with the provisions of Article 92 of the Telecommunications Act. In addition, the COFERETEL ordered the immediate cessation of all known illegal radio stations in the country and the confiscation of their equipment. In a press release, the Commission stated that it took pertinent criminal action for the misuse of the radio spectrum. Pursuant to that decision, on April 19, 2008, COFERETEL authorities seized Radio Su Versión. ¶ V H T X L S P H Q W L Q D V X U S U L V H R

31. On June 25, 2008, the Office of the Public Prosecutor filed criminal complaints against more than 30 individuals, based on information provided by the COFERETEL. As part of these proceedings, Byron Dayle, Melanie Pereira Peron and Francis Hoffman were alleged to have committed W K H R I I H Q V H R I <sup>3</sup> W K H under the charge of laws Sily Appropriating and benefiting from the n D W L R Q ¶ V U D G L R V S H F W U X P

of instigation to commit a crime<sup>3</sup> and defamation.<sup>4</sup> The Prosecutor based the charges on recordings from the radio program that discussed the creation of approximately 50 groups on Facebook that promoted hatred against President Escalante and incited violence against him, as well as on recordings in which people were asked through the station to participate in the Facebookazo



36. On May 5, 2008, in his capacity as legal representative of Radio Versión, Francis Hoffman filed a constitutional remedy petition against the COFERETEL. He alleged that the shutdown of the station and the seizure of its equipment violated the right to expression and information, property, and administrative due process, due to the frustration of the legitimate expectations of the legal entity ACOSINTI as well as of its affiliates individually. On May 26, 2008, the court

