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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3267/2018*, **

Communication submitted by:	Carlos Eduardo Pérez Barriga, César Enrique Pérez Barriga and Carlos Nicolás Pérez Lapenti (represented by counsel, Xavier Valverde and Carlos Ayala)
Alleged victims:	The authors
State party:	Ecuador
Date of communication:	23 February 2016 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 21 November 2018 (not issued in document form)
Date of adoption of Views:	26 October 2022
Subject matter:	Penalty proceedings against a newspaper for news published
Substantive issues:	Restrictions on freedom of expression; right to an effective remedy; due process and equality before the law
Procedural issues:	Exhaustion of domestic remedies; lack of standing to file a complaint (*locus standi*); matter being examined under another procedure of international investigation or settlement
Articles of the Covenant:	2 (3), 14, 19 and 26
Article of the Optional Protocol:	2 and 5

1. The authors of the communication are Carlos Eduardo Pérez Barriga, César Enrique Pérez Barriga and Carlos Nicolás Pérez Lapenti, nationals of Ecuador. They submit the communication in their capacity as directors and shareholders of the newspaper *El Universo*. They claim that the State party has violated their rights under articles 2 (3), 14, 19 and 26 of

* Adopted by the Committee at its 136th session (10 October–4 November 2022).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The authors are represented by counsel.

Factual background

2.1 On 21 February 2011, the then President of Ecuador called a referendum with the aim of amending the Constitution to prohibit the directors and shareholders of private media companies from owning or holding shares in non-media companies. At the referendum, held on 7 May 2011, amendments to the Constitution, including the amendment of article 312,[1] were approved. Consequently, shareholders in private media companies were obliged to dispose of their shares in companies engaged in other economic activities within one year.[2]

2.2 The Organic Act on Communication, which made communication a public service, was adopted on 14 June 2013. Article 10 of the Act established ethical standards, defined as minimum standards applicable to the media, infringements of which would be punishable.

2.3 The Act also established the Office of the Superintendent of Information and Communication, led by a Superintendent selected from a shortlist proposed by the President. The Office's functions included investigating and resolving complaints filed by natural and legal persons against the media and imposing penalties on the media. It also wielded powers to monitor, oversee and order compliance with provisions related to rights of communication (Organic Act on Communication, art. 56).

2.4 The authors state that the Organic Act on Communication indirectly allowed the Office of the Superintendent of Information and Communication to impose content on the media and to impose penalties and fines through the application of rules establishing the "subsequent liability of the media" (arts. 20 and 21), ethical standards, rules relating to the rights of correction and reply (arts. 23[3] and 24[4]) and article 66 (7) of the Constitution, which enshrines the right of any person aggrieved by an inaccurate or unsubstantiated report to a correction, reply or response. The authors cite the following cases, which they claim illustrate how the State party forced them to publish replies and thus imposed content, in an attack on the editorial line of *El Universo*.

2.5 (a) The "Bonil 1" case. On 15 January 2014, the Office of the Superintendent of Information and Communication initiated ex officio penalty proceedings against the cartoonist Bonil, who had published a cartoon about a raid on the home of an opposition lawmaker who had denounced cases of corruption in the Government. On 31 January 2014, the Office of the Superintendent fined *El Universo* the equivalent of 2 per cent of its average monthly turnover during the previous three months (approximately US$ 93,000), upon finding that the cartoonist had not verified whether the purpose of the raid had been to remove documents related to the corruption cases.[5] *El Universo* challenged the decision before the Office of the Superintendent, arguing that an administrative authority did not have the power to restrict rights and that judicial remedies were ineffective because compliance with the Office's decisions was mandatory until such time as a judge revoked them. On 6 March 2014, the Office of the Superintendent rejected the appeal. The authors[6] filed a suit with the Administrative Court of Guayaquil, reiterating their arguments and alleging the violation of

[1] "National private media companies, their directors and principal shareholders, may not own, either directly or indirectly, shares or interests in companies other than those engaged in financial or media activities."

[2] Twenty-ninth transitional provision: "National private media companies, their directors and principal shareholders, shall dispose of any shares or interests that they hold in companies in other sectors within one year of the approval by referendum of this amendment."

[3] Anybody has the right to have the media correct published information when there are "deficiencies in the verification, checking and accuracy of information of public relevance", or when their right to honour or constitutional rights are violated.

[4] Any person or group that has been directly referred to by the media in a manner that affects their rights to dignity, honour or reputation has the right to have the medium in question publish their reply within 72 hours, failing which it will be liable to fines or other penalties.

[5] The text accompanying the cartoon read "*Policía y Fiscalía allanan domicilio de X y se llevan documentación de denuncias de corrupción*" (Police and Prosecution Service raid X's home and remove documents related to corruption claims).

[6] The domestic remedies described in these cases were pursued by the editor on behalf of *El Universo*.

their freedom of expression. On 23 August 2017, the Administrative Court of Guayaquil declared the decision of the Office of the Superintendent null and void for lack of reasoning. On 6 October 2017, the Superintendent of Information and Communication filed an appeal in cassation against this judgment, which as of October 2022 was still pending.

2.6 (b) The "SECOM 2" case. *El Universo* published a news story concerning a debt owed by the State to the Ecuadorian Social Security Institute (IESS).[7] On 17 April 2015, the Secretariat of Communication of the Office of the President (SECOM) requested the newspaper to publish a reply, providing the text and layout that should be used.[8] On 19 April 2015, the newspaper published the reply, using the text and layout provided, but removing certain phrases considered insulting to the newspaper. Neither did it publish the requested headline,[9] which it deemed to be a political slogan.[10] On 28 April 2015, SECOM reported the newspaper to the Office of the Superintendent of Information and Communication because the published reply did not conform to that which had been ordered. On 11 June 2015, the Office of the Superintendent declared that the newspaper was in breach of article 24 of the Organic Act on Communication and ordered it to publish the reply sent by SECOM. It also ordered the editor of the newspaper to issue a public apology to the persons affected, to be published on the home page of the newspaper's website for seven days. Since this was considered a repeat offence, the newspaper was ordered to pay a fine equivalent to 10 per cent of the average turnover of the previous three months, in accordance with article 23 (3) of the Organic Act on Communication. On 18 June 2015, *El Universo* appealed the decision to the Office of the Superintendent, requesting as a precautionary measure that its application be suspended until a judge could rule on the matter, given that it would cause irreparable harm. On 17 August 2015, the Office of the Superintendent rejected the authors' claims and upheld its previous decision, considering that all *El Universo* had had to do was reproduce the reply.

2.7 On 18 June 2015, the authors applied to the Administrative Court of Guayaquil for the annulment of the decision of the Office of the Superintendent of Information and Communication. They stated that *El Universo* had done as ordered by the Office of Superintendent, since it had published the arguments of the reply in full and in the same space in which the original story had been published. The authors reiterated their arguments on the ineffectiveness of remedies and claimed violations of due process in relation to the absence of the Superintendent from the hearings held (lack of immediacy) and violations of their right to free expression. The petition was dismissed on 17 August 2015. On 24 September 2015, the authors filed a remedy of full jurisdiction with District Administrative Court No. 2. On 28 May 2019, the Court decided to terminate the judicial proceedings and ordered the case to be closed, in accordance with the Organic Act amending the Organic Act on Communication (see para. 2.5).

2.8 (c) The "SECOM 3" case. On 7 October 2015, *El Universo* published a news item on a decision of the Inter-American Press Association.[11] On 19 November 2015, legal action was taken against the newspaper. On 26 October 2015, SECOM requested that the newspaper publish a reply, providing the text and layout.[12] According to the authors, the requested reply bore no relation to the published news item and expressed a "radical opinion critical of the

[7] The headline read "*Deuda estatal por $ 1.700 millones afecta al sistema de salud del IESS*" ($1.7 billion State debt undermines the IESS health system).

[8] The reply stated that the article had alarmed readers and that the Government had reformed the Ecuadorian Social Security Institute, resulting in the expansion of health system coverage, among other things.

[9] The requested headline read "*El IESS ha progresado y progresará más en los próximos años*" (IESS has made progress and will continue to do so in the coming years).

[10] The published headline read "*Réplica del ministro Patricio Rivera sobre el IESS pedida por la SECOM*" (Reply of Minister Patricio Rivera concerning IESS, as requested by SECOM).

[11] The headline read "*SIP insiste en que Rafael Correa debe consultar a [la Corte Interamericana de Derechos Humanos] por Ley de Comunicación*" (Inter-American Press Association insists that Rafael Correa must consult the Inter-American Court of Human Rights on the Act on Communication).

[12] The headline read "*Resoluciones de la SIP solo obedecen a intereses particulares de dueños de medios de comunicación*" (Decisions of the Inter-American Press Association serve only the private interests of media owners).

Inter-American Press Association". On 28 October 2015, *El Universo* published the reply;[13] however, SECOM took the view that it was not published in full and on 12 November 2015 requested the Office of the Superintendent of Information and Communication to impose any penalties that might be applicable. The authors state that, in view of the precedents, it is possible that they could receive fines in the amount of approximately US$ 700,000.

2.9 (d) The Carlos Ochoa Quezada case. On 8 May 2016, *El Universo* published an opinion column by the architect F.G., in which he expressed the view that buildings in Ecuador were not earthquake resistant because "construction is managed by architects who are ignorant of structural issues". On 9 May 2016, *El Universo* received a letter from the architect Carlos Ochoa Quezada, who invoked his right of reply regarding the article, which he considered insulting to architects. On 16 May 2016, Mr. Ochoa Quezada filed a complaint with the Office of the Superintendent of Information and Communication against the newspaper for failing to publish his reply. On 17 May 2016, the newspaper published the reply. Appearing before the Office of the Superintendent, the authors claimed that article 24 of the Organic Act on Communication did not apply, since the complaint concerned an opinion column, the column had not referred directly to the plaintiff, and the reply had been published. Mr. Ochoa Quezada indicated that the reply had not been published within the period provided for by law.

2.10 On 15 June 2016, the Office of the Superintendent of Information and Communication ruled that the author of the column had made observations on the performance and professionalism of architects and that therefore the column directly referred to them. It also ruled that the column tarnished the reputation of architects and that therefore Mr. Ochoa Quezada was entitled to a reply. Moreover, it stated that the newspaper was in breach of the law because it had published the reply several days after the request and in a different section to the column. The Office of the Superintendent ordered the newspaper to republish the reply, with the same characteristics, within 72 hours, in the same space in which the column had been published. The editor of the newspaper was ordered to issue a public apology. On 20 June 2016, an apology was published.[14]

2.11 On 31 October 2016, the authors filed an administrative appeal for annulment with the Administrative Court of Guayaquil, requesting that it declare the decision of 15 June 2016 null and void. On an unknown date, the Court dismissed the appeal on the grounds that the authors should have filed a remedy of full jurisdiction. On 13 January 2017, the authors filed an appeal in cassation against the decision of 15 June 2016. On 27 January 2017, Administrative Court No. 2 rejected that appeal as time-barred. On 24 February 2017, the authors filed an application for a special protective remedy with the Administrative Court of Guayaquil in relation to the decision of 27 January 2017. On 8 March 2017, the case was referred to the Constitutional Court. In the application for a special protective remedy, the authors claimed that their right to an effective judicial remedy, their right of defence and their right to due process had been violated because the appeal in cassation had been dismissed, leaving them with no possibility of setting out the reasons for which they considered that the decision of the Office of the Superintendent of Information and Communication should be annulled. On 18 April 2017, the Constitutional Court requested the authors to clarify their application, indicating whether all available remedies had been exhausted and which constitutional rights had been violated. The authors provided these clarifications on 3 May 2017. On 20 March 2019, the Constitutional Court dismissed the application for a special protective remedy.

2.12 The authors refer to 18 other cases in which *El Universo* was requested to publish replies and corrections[15] in relation to news on different topics, including factual articles,

[13] The text was preceded by the statement that SECOM "was once again attempting to impose headlines, text and layout on this newspaper".

[14] The apology began as follows: "As ordered by decision … of the Office of the Superintendent of Information and Communication, in the context of the administrative proceedings initiated by … and under protest that said decision is unconstitutional and in violation of human rights, I, … editor of the newspaper … publicly apologize".

[15] They refer to only one case in which correction was requested (the "Citizens' Observatory" case).

opinion columns and cartoons. In none of these cases were domestic remedies exhausted.[16] The authors state that they published the replies or corrections requested by the Office of the Superintendent of Information and Communication, in some cases under protest, in order to avoid further fines that would have threatened the newspaper's economic viability.

2.13 On 28 June 2013, a member of the National Assembly filed an application for constitutional review regarding several articles of the Organic Act on Communication on the grounds that it restricted freedom of expression. On 18 September 2014, the Constitutional Court ruled on that application and two others on the same subject, rejecting the claims for several reasons, namely that the Organic Act on Communication does not provide for penalties for the expression of opinions; that freedom of expression is subject to limitations imposed by the rights of others or reasons of public order; and that the right of reply is constitutional because it is based on the principle of human dignity.

2.14 On 3 December 2015, other constitutional amendments entered into force, including an amendment to article 384 of the Constitution, which referred to "communication as a public service". On 1 August 2018, the Constitutional Court ruled on an application for constitutional review concerning these amendments. The Court decided, inter alia, that communication could not be regarded as a public service, but as a right.

2.15 On 18 December 2018, the National Assembly adopted several amendments to the Organic Act on Communication, abolishing the Office of the Superintendent of Information and Communication, repealing the ethical standards and introducing the principle of media self-regulation. The amendments stipulated that any administrative penalty proceedings in progress on the date of the amendments' entry into force would be terminated and any unpaid fines cancelled, bringing to an end to all pending administrative and judicial proceedings. The amendments entered into force in February 2019.

The complaint

3.1 The authors – directors and shareholders of the newspaper *El Universo* – claim that a series of constitutional and legislative amendments concerning the media affected them in a disproportionate, discriminatory and arbitrary manner. They maintain that, in addition to *El Universo*, they had owned radio, cable television and tourism companies, revenue from which had helped them to sustain the economic viability of the newspaper, guaranteeing its independence. They assert that they were obliged to sell their shares in these companies by a certain date, which affected their market price.[17] They also state that the monitoring bodies established by the Organic Act on Communication were subject to the discretionary oversight of the executive branch. They claim that this regulatory design was criticized by the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights and by several non-governmental organizations.[18]

[16] The authors state that they contested eight decisions of the Office of the Superintendent of Information and Communication – including the four cases described in paragraphs 2.5, 2.6, 2.8 and 2.9 – through administrative proceedings, and that they filed appeals with the administrative courts against three decisions (in the "Bonil 1", "Bonil 2" and "SECOM 1" cases). Two of these appeals to the administrative courts were decided in the authors' favour (the "Bonil 1" case on 13 May 2014 and the "SECOM 1" case on 19 December 2018), but both are still pending a final judgment owing to appeals filed by the Superintendent. On 28 May 2019, the "SECOM 2" case was closed in view of the amendment that year of the Organic Act on Communication. The Carlos Quezada Ochoa case ended on 20 March 2019 with the Constitutional Court's dismissal of the authors' application for a special protective remedy. According to the information provided, the authors challenged the decisions of the Office of the Superintendent through the administrative channel in 4 of the 18 additional cases mentioned: the "Bonil 2", "Citizens' Observatory", "SECOM 1" and "Radio City" cases. All of these challenges were rejected.

[17] The authors state that they had to sell the shares in the most profitable of their companies (a tourism company) two weeks before the final deadline, which caused them a significant financial loss.

[18] See the Human Rights Watch world reports from 2013 to 2016, available at https://www.hrw.org/; Freedom House, *Freedom in the World 2014: Ecuador* (2014), available at https://www.refworld.org/docid/5399505914.html; and International Press Institute, "IPI releases 2013 Ecuador press freedom report on heels of controversial new media law", press release, 21 May 2013.

3.2 The authors claim that their rights under articles 2 (3), 14, 19 and 26 of the Covenant have been violated. With regard to articles 14 and 2 (3) (a) of the Covenant, they contend that on 18 September 2014, the Constitutional Court rejected several challenges to the constitutional amendments that were the source of the alleged rights violations, and that the legislature passed these amendments on 3 December 2015. Although a remedy of constitutional interpretation was available, this was an extraordinary remedy that was ineffective and carried no expectation of success.[19] Consequently, the authors consider that their rights under article 2 (3) were violated owing to the lack of an effective remedy in the legal system by which they could have asserted their rights. The authors note that, according to the Committee's jurisprudence, in order to invoke a violation of this article it is necessary to have established a breach of another right; however, the Committee has also stated that the guarantee contained in article 2 (3) (b) of the Covenant would be void if it were not available where a violation had not yet been established.[20] The authors point out that by denying them the possibility of challenging the constitutional amendments, the State party violated their right to due process, since, according to the Committee's jurisprudence, the notion of equality before the courts and tribunals encompasses the very access to the courts.[21]

3.3 The authors also claim that their right to due process was violated in administrative proceedings. They refer to the Committee's general comment No. 32 (para. 16), which indicates that the obligations set forth in article 14 (1) of the Covenant refer to both criminal proceedings and the determination of rights and obligations in a suit at law, a concept that encompasses "equivalent notions in the area of administrative law". Furthermore, the authors refer to a dissenting opinion, in which it is stated that when administrative proceedings impose serious penalties, the interest of the individual subject to such proceedings is similar to that of an individual subject to other legal proceedings, be they criminal or civil in nature.[22] The authors add that various regional human rights systems extend due process protections to administrative proceedings.[23] They therefore consider that the guarantees enshrined in article 14 of the Covenant were applicable to the administrative proceedings against them. They add that, in the proceedings before the Office of the Superintendent of Information and Communication, only a single notification was served, the standard of proof was low and the authority was both judge and party.

3.4 The authors also allege a violation of their rights under article 19 of the Covenant because the amendment of article 312 of the Constitution seriously undermined the economic sustainability of *El Universo*, resulting in a violation of their freedom of expression as shareholders and directors of the newspaper. They add that freedom of expression must be protected in order to guarantee the rights of those who choose to express their opinions through the media, the right of society to be informed, and the possibility of exercising scrutiny over the authorities. According to the authors, the facts of the case do not meet the requirement established by article 19 of the Covenant, under which restrictions of freedom of expression must be provided for by law, must serve certain purposes, such as protecting other rights or public goods, and must be necessary. They add that, since media ownership is a form of exercise of the right to freedom of expression, a disproportionate restriction of the rights of media owners and directors constitutes an indirect, unnecessary and disproportionate restriction of their freedom of expression. The authors submit that the State party has failed to justify either the necessity or the proportionality of the restriction imposed by article 312 and the twenty-ninth transitional provision of the Constitution.[24] They also point out that both the Constitution and the Organic Act on Communication made

[19] *Rodríguez v. Uruguay* (CCPR/C/51/D/322/1988), para. 6.3.

[20] *Faure v. Australia* (CCPR/C/85/D/1036/2001), para. 7.2.

[21] *Oló Bahamonde v. Guinea Ecuatorial* (CCPR/C/49/D/468/1991), para. 9.4.

[22] *D'Amore v. Argentina* (CCPR/C/111/D/2071/2011), individual opinion of Mr. Yuval Shany (dissenting), para. 1.

[23] Inter-American Court of Human Rights, *Constitutional Court v. Peru*, judgment of 31 January 2001, para. 71; and European Court of Human Rights, *Albert and Le Compte v. Belgium*, judgment of 10 February 1983, para. 39.

[24] *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.8; and *Bodrožic v. Serbia and Montenegro* (CCPR/C/85/D/1180/2003).

communication a public service, excessively regulating the right to express oneself freely through "any medium that a person chooses".[25]

3.5 The authors add that the obligation to publish replies, imposed by bodies that were not impartial, seriously undermined their freedom of expression, as they were forced to publish content that differed from the newspaper's editorial line, including content that was false and that sometimes included defamatory comments about *El Universo*. Particularly serious is the fact that this obligation was imposed, on several occasions, when the newspaper had criticized public officials or discussed matters of public interest. The consequence of all this was that the authors self-censored in order to avoid penalties and fines.

3.6 With respect to article 26 of the Covenant, the authors maintain that the aforementioned constitutional amendments were a discriminatory and arbitrary measure[26] that disproportionately restricted their rights as media owners, but not the rights of persons engaged in other economic activities. The authors argue that, although the Covenant does not cover the right to property, arbitrary and discriminatory restrictions of that right may extend to the right of freedom of expression and the right to due process, as is confirmed by the Committee's jurisprudence, according to which, the fact that property is at issue does not preclude a breach of another right protected by the Covenant.[27] For the authors, then, there is a direct relationship between the right to property and the right to freedom of expression, since a restriction of the former – by making the economic operation of *El Universo* unviable – resulted in an indirect restriction of the latter. According to the authors, the media must be financially viable if they are to maintain their independence, and therefore the constitutional ban on ownership of non-media companies was discriminatory, arbitrary and unreasonable. The legitimate aim pursued by the State party, namely, that of democratizing access to the media, could have been achieved through less harmful means.

3.7 The authors claim to have exhausted all available domestic remedies, as there was no way of challenging the institutional architecture that they described. They reiterate that, on 18 September 2014, the Constitutional Court rejected several applications for constitutional review. As for the administrative proceedings, the authors state that, although a judicial remedy was available against the decisions of the Office of the Superintendent of Information and Communication, that remedy did not have suspensive effect and was therefore was not effective in preventing irreparable harm. Furthermore, the administrative acts whereby fines were imposed constituted enforceable instruments. The authors also argue that the available domestic remedies entailed unjustified delays, since several cases had taken between two and four years to resolve, after the harm had already occurred. They add that they had initially made an effort to challenge decisions ordering them to publish replies (see paras. 2.5 to 2.12), but had later decided to cease doing so, since it was obvious that the outcome would be negative, taking into account the precedents in both administrative and judicial proceedings and the detrimental consequences for the economic sustainability of the newspaper. The authors refer to the Committee's jurisprudence to justify their claims.[28]

3.8 With regard to jurisdiction *ratione personae*, the authors submit that they are direct victims in their capacity as natural persons, despite the complaint's referring to several legal persons, in particular *El Universo*. They add that, as owners and directors of this newspaper, they exercised their right to freedom of expression through it and through their other media businesses – a website and a radio station – and that by investing their assets in the establishment, sustenance, organization and management of the newspaper and other businesses, they were exercising their freedom to seek, receive and impart ideas of all kinds, through the media of their choice. The authors add that the fact that the amendment to article 312 of the Constitution expressly referred to the shareholders and owners of media companies

[25] Inter-American Commission on Human Rights, *2013 Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, available at https://www.oas.org/en/iachr/expression/docs/reports/annual/2014_04_22_IA_2013_ENG_FINALweb.pdf.

[26] Human Rights Committee, general comment No. 18 (1989), para. 12.

[27] See *Simunek et al. v. Czech Republic* (CCPR/C/54/D/516/1992).

[28] *Barzhig v. France* (CCPR/C/41/D/327/1988), para. 5.1; and *Vargas Más v. Peru* (CCPR/C/85/D/1058/2002), para. 5.3.

confirms that they experienced the aforementioned violations in their capacity as natural persons.

State party's observations on admissibility

4.1 The State party submitted its observations on 21 January 2019, indicating that it deems the communication inadmissible because the Committee does not have jurisdiction *ratione personae*, the authors have not exhausted domestic remedies and the matter has been examined by the Inter-American Commission on Human Rights.

4.2 The State party submits that the Committee does not have jurisdiction because the alleged victim of the violations is a legal person and the authors have not proved the existence of a direct relationship between themselves and the legal person.[29] The State party points out that Committee may only receive communications from individuals[30] and adds that the administrative proceedings were initiated against *El Universo*, which was found to bear responsibility. According to the State party, the allegation that the authors' rights were undermined by a financial loss relates to the assets of the newspaper, and thus falls outside the scope of the Covenant. The State party adds that the domestic remedies were pursued in the newspaper's name.

4.3 The State party submits that, if the authors considered that the constitutional amendments and the Organic Act on Communication were unconstitutional, they could have filed an application for constitutional review in respect of those provisions that had not been considered by the Constitutional Court in other cases. It adds that this remedy would have been appropriate, as the Court could have examined and invalidated the provisions in question.

4.4 Regarding the proceedings initiated by the Office of the Superintendent of Information and Communication,[31] the State party contends that the authors had the opportunity to challenge the Office's decisions before the Superintendent, and that they could have appealed the Superintendent's decision to the Administrative Court of Guayaquil, even without having exhausted administrative remedies.[32] The State party asserts that, as of the date of initial submission (February 2016), domestic remedies had not been exhausted in any of the proceedings in which a penalty decision had been issued against *El Universo*, since all of them were still pending.[33]

4.5 The State party affirms that, in several of the cases mentioned in the communication, no penalty proceedings were initiated, since *El Universo* complied with the request to publish replies or corrections.[34] The State party considers that the authors' explanation of why they failed to exhaust domestic remedies in these cases is not valid, since the mere assumption that a remedy will be ineffective does not absolve them of the obligation to exhaust it.

4.6 The State party also argues that there can be no question of excessive delay in the conclusion of proceedings, since, although the administrative proceedings were not complex, the judicial proceedings required the completion of a series of acts and procedural stages, which may have been lengthy. In addition, *El Universo* lodged several appeals with the courts.

4.7 The State party further contends that the matter has already been submitted to another procedure of international investigation, since, on 18 June 2015, the authors submitted a request to the Inter-American Commission on Human Rights for precautionary measures in

[29] Inter-American Court of Human Rights, *Entitlement of legal entities to hold rights under the Inter-American Human Rights System (Interpretation and scope of Article 1 (2), in relation to Articles 1 (1), 8, 11 (2), 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62 (3) of the American Convention on Human Rights, as well as of Article 8 (1) (A) and (B) of the Protocol of San Salvador)*, Advisory Opinion OC-22/16, para. 119.

[30] See *S.M. v. Barbados* (CCPR/C/50/D/502/1992).

[31] The State party refers to the 22 cases mentioned by the authors and 3 additional cases initiated after the submission of the communication.

[32] Administrative Disputes Act of March 1968, in force at the time of the facts.

[33] *Kandem Foumbi v. Cameroon* (CCPR/C/112/D/2325/2013), para. 8.4; and *Šroub v. Czech Republic* (CCPR/C/97/D/1573/2007), para. 8.3.

[34] The State party refers to 14 cases.

relation to the penalty proceedings initiated by the Office of the Superintendent of Information and Communication in four of the cases mentioned in the communication. On 22 June 2016, the Commission rejected the request. Therefore, the facts of the communication have already been examined by the Commission.

4.8 As for the claims related to due process and equality before the law, the State party indicates that all domestic proceedings have been conducted against the legal person of *El Universo*, without affecting the rights of the authors as natural persons. It affirms that the authors have not substantiated that the constitutional amendments were discriminatory towards the owners and directors of media companies, and that they did not suffer any kind of discriminatory treatment in the domestic proceedings.

Authors' comments on the State party's observations on admissibility

5.1 On 1 March 2019, the authors submitted their comments. They reiterate that the Committee has jurisdiction *ratione personae*[35] and that both the constitutional amendments and the administrative penalty proceedings affected the assets of *El Universo* and of the people who sustained it in their capacity as shareholders and directors.[36]

5.2 The authors reiterate that the alleged violations of due process and equality affected their rights as natural persons, even though they were obliged to pursue domestic remedies in the name of *El Universo*.[37]

5.3 Regarding the 2011 constitutional amendments, they claim that any remedy would have had little chance of success because the Constitutional Court had already ruled in this regard when it declared the text of the referendum constitutional.[38]

5.4 In respect of the penalty proceedings, the authors reiterate that the remedies pursued have been ineffective, prolonged and have not repaired the violations.

5.5 As for the argument that the communication has been submitted to other international procedures, the authors contend that the Committee has competence, since the Inter-American Commission on Human Rights rejected the request for precautionary measures.

State party's observations on the merits

6.1 On 21 May 2019, the State party submitted its observations. In respect of article 14, it asserts that the authors were guaranteed the right to a fair and public hearing with due process, before both the administrative and judicial authorities, and that the requirement of a competent, independent and impartial tribunal, established by law, was respected.

6.2 The State party submits that the authors have failed to substantiate their claims under article 19. It asserts that the aim of the constitutional amendments was to prevent monopolies and conflicts of interest among media owners; and that the Constitutional Court found the amendments to be in conformity with the Constitution. The State party reiterates that the authors have failed to demonstrate a link between the purported negative impact of their having to dispose of their shares in other companies on the economic sustainability of *El Universo*, the violation of their right to freedom of expression, and the loss of their personal assets, which, in any case, is not covered by the Covenant.

6.3 The State party indicates that the individual dimension of freedom of expression has not been violated because the authors did not themselves write the articles for which the newspaper was required to publish replies. Nor has the social dimension been violated, as *El*

[35] General comment No. 31 (2004), para. 9; and Inter-American Court of Human Rights, *Granier et al. v. Venezuela*, judgment of 22 June 2015, para. 146.

[36] *Singer v. Canada* (CCPR/C/51/D/455/1991), para. 11.2; European Court of Human Rights, *Groppera Radio AG and Others v. Switzerland*, judgment of 28 March 1990; and Inter-American Court of Human Rights, *Granier et al. v. Venezuela*, para. 157, in which the Court held that the freedom of expression of the directors and shareholders of a television channel had been violated by the State's actions against the channel.

[37] *Osío Zamora v. Bolivarian Republic of Venezuela* (CCPR/C/121/D/2203/2012), para. 8.3; and Inter-American Court of Human Rights, Advisory Opinion No. OC-22/16, para. 136.

[38] See *Simunek et al. v. Czech Republic* and *Carranza Alegre v. Peru* (CCPR/C/85/D/1126/2002).

Universo was not subjected to any form of prohibition; rather, rules of subsequent liability were imposed on it.[39] The State party also contends that, by requiring the publication of replies, it sought to protect the collective right of society to receive truthful information, adding that correction is part of the right to freedom of expression.

6.4 The State party maintains that the authors have failed to substantiate their allegations concerning the right to equality. It refers to the Committee's general comment No. 18 (1989), according to which not every differentiation of treatment constitutes discrimination, if the criteria for such differentiation are reasonable and objective and the aim is to achieve a legitimate purpose. It submits that the Constitutional Court, when conducting a prior review of the constitutional amendments to be voted upon in the referendum,[40] had studied said criteria and found the amendments to be constitutional. The Court held that the restriction of rights established in article 312 and the twenty-ninth transitional provision sought to prevent conflicts between the public interest and the private economic interests of media directors and shareholders, which was a legitimate purpose, and, moreover, that it was a decision of the constituent power.

Authors' comments on the State party's observations on the merits

7.1 On 2 July 2019, the authors submitted their comments. They reaffirm their previous arguments, namely: (a) that there is no effective remedy for reviewing the constitutionality of laws modified by constitutional amendment; (b) that all applications for constitutional review in respect of the Organic Act on Communication were rejected; and (c) that the remedies pursued in relation to the proceedings initiated by the Office of the Superintendent of Information and Communication were ineffective, prolonged, stood no chance of success and did not fully repair the alleged violations. They also contend that, despite the repeal in February 2019 of certain provisions of the Organic Act on Communication, there are no appropriate mechanisms through which to obtain reparation for rights violations suffered as a result of those provisions.

7.2 Regarding the proceedings before the Office of the Superintendent of Information and Communication and the cases that were taken to the administrative courts, the authors reiterate that they decided to cease challenging the Office's decisions owing to a systematic pattern of rejection, as well as undue delays, adding that the judiciary lacked independence and that the mere fact of challenging decisions and refusing to publish replies would lead to the imposition of fines. The authors also reiterate that, in those cases in which they challenged the decisions of the Office of the Superintendent, they encountered difficulty in exercising their right of defence and in one case had not even been permitted to request or present evidence.[41] The authors submit that by taking, on average, more than two years to rule on the administrative proceedings, and more than three years to rule on the judicial proceedings, the State party violated their rights under articles 2 (3) and 14 of the Covenant. They add that the State party has not demonstrated that the cases were complex or that the judicial proceedings could have caused delays. They contend that due process guarantees should extend to administrative proceedings.

7.3 The authors reiterate that *El Universo* was a medium through which they exercised their freedom of expression; therefore, the fact that the State party has caused them pecuniary losses through an arbitrary, disproportionate and discriminatory measure, in an attempt to make it economically unviable, constitutes a violation of their freedom of expression. Regarding the proceedings instituted by the Office of the Superintendent of Information and Communication, the authors reiterate their arguments and add that the Office directly linked them to the infringements, since orders to publish replies were addressed to them and they were the ones who had to make public apologies, which demonstrates the violation of their right to freedom of expression as natural persons.

7.4 The authors also reiterate their argument that the State party violated article 26 of the Covenant by prohibiting them from owning shares in non-media companies. They add that

[39] Inter-American Court of Human Rights, *Kimel v. Argentina*, judgment of 2 May 2008, para. 54.

[40] Opinion No. 001-11-DRC-CC of 15 February 2011.

[41] The "Bonil 2" case.

such a prohibition served no legitimate purpose and was unnecessary in a democratic society. The State party has failed to show that this measure was necessary to uphold the public interest. Nor has it shown that the restriction was reasonable, since the stated purpose of preventing conflicts of interest was not valid, taking into account that it was an absolute restriction that applied only to media shareholders and directors, which threatened the functioning of the media. The authors add that it was an extremely burdensome measure that was disproportionate to the end pursued, which could have been achieved by less harmful means that did not undermine other rights. As for the State party's argument that it was a decision of the constituent power, the authors point out that the fact that the amendment was approved by referendum does not mean that it meets international human rights standards.[42]

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee takes note of the State party's argument that the communication is inadmissible under article 5 (2) (a) of the Optional Protocol, as the authors submitted a request for precautionary measures to the Inter-American Commission on Human Rights, which was rejected on 22 June 2016. The Committee also takes note of the authors' argument that the Committee is competent to receive the communication precisely because the Commission rejected the request. The Committee refers to its jurisprudence on the matter[43] and considers that, as the matter is not being examined under another procedure of international investigation or settlement, the Committee is not precluded under article 5 (2) (a) of the Optional Protocol from considering the present communication.

8.3 The Committee notes the State party's argument that the Committee does not have jurisdiction *ratione personae*, as the alleged victim of the violations is a legal person. It also notes the State party's assertion that, in the penalty proceedings against *El Universo*, the newspaper was found to bear responsibility, resulting in the imposition of penalties, and that the authors have not demonstrated that these proceedings have caused them personal pecuniary losses. Furthermore, the Committee takes note of the State party's assertion that the domestic remedies were pursued in the newspaper's name. The Committee also takes note of the authors' claim that, as shareholders and directors of the newspaper, they exercise their right to freedom of expression through that medium, by investing their assets in its establishment, sustenance, organization and management.

8.4 The Committee recalls that, according to paragraph 9 of its general comment No. 31 (2004), the fact that the competence of the Committee to receive and consider communications is restricted to those submitted by or on behalf of individuals (article 1 of the Optional Protocol) does not prevent such individuals from claiming that actions or omissions that concern legal persons and similar entities amount to a violation of their own rights. The Committee notes that the authors submit the communication in their individual capacity and that they allege a violation of their Covenant rights in relation to certain constitutional and legislative provisions that directly affected them, and as a direct consequence of the penalty proceedings against *El Universo*, of which they are the shareholders and directors. The Committee also notes that remedies were pursued in the newspaper's name because penalty proceedings were initiated against it, but that this involved the authors in their capacity as directors and shareholders of the newspaper. The Committee further notes that the penalties imposed by the Office of the Superintendent of Information and Communication included the issuance of public apologies by the

[42] Inter-American Court of Human Rights, *Gelman v. Uruguay*, judgment of 24 February 2011, para. 238.

[43] *Rodríguez Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.3.

newspaper's editor. The Committee is therefore of the view that article 1 of the Optional Protocol is not an obstacle to the admissibility of the communication.[44]

8.5 With regard to article 5 (2) (b) of the Optional Protocol, the Committee takes note of the State party's arguments that the authors could have: (a) filed an application for constitutional review in respect of amendments to the Constitution and the Organic Act on Communication that had not been considered by the Constitutional Court in other cases; and (b) filed appeals with the Office of the Superintendent of Information and Communication and then before the administrative courts. On the first point, the Committee takes note of the authors' claim that the 2011 and 2014 constitutional amendments and the amendments to the Organic Act on Communication had already been reviewed by the Constitutional Court, and that, therefore, an application for constitutional review by the same court would have had no chance of success. Similarly, the Committee takes note of the authors' argument that the repeal in 2018 of several constitutional and legislative provisions has had no useful effect, since the violations of the authors' rights had already been committed. The Committee points out that, according to its jurisprudence, domestic remedies need not be exhausted if they objectively have no prospect of success, and that this occurs where under applicable domestic laws the claim would inevitably be dismissed or where jurisprudence of the highest domestic tribunals would preclude a positive result.[45] The Committee notes that the Constitutional Court conducted a prior review of the 2011 amendments and found them to be constitutional; and that the Court ruled on the constitutionality of the 2014 amendments and on several provisions of the Organic Act on Communication in the context of several applications for constitutional review. The Committee also notes that the 2018 amendments did not remedy the violations of the authors' rights, which had already been committed. The Committee further notes that the State party did not provide any examples of applications for the review of constitutional amendments or the Organic Act on Communication that had been admitted by the Constitutional Court. Consequently, the Committee considers that there were no effective remedies that the authors could have pursued to challenge the constitutional amendments and the Organic Act on Communication.

8.6 As for the second set of available remedies, the Committee takes note of the State party's argument that the authors failed to challenge the decisions of the Office of the Superintendent of Information and Communication in 14 cases and that, in the remaining cases,[46] in which the authors appealed to the Office of the Superintendent and then to the administrative courts, the proceedings were not unduly prolonged, given that the complexity of the cases justified their lengthy duration. The Committee also takes note of the authors' claim that they did not file appeals in these 14 cases because such appeals would have had no chance of success, given the results of previous appeals, and that, in addition, they experienced unjustified delays. The Committee also notes the authors' claim, which was not contested by the State party, that although a judicial remedy was available against the decisions of the Office of the Superintendent, such remedies did not have suspensive effect, which meant that they were not effective. The Committee notes that, of the 22 cases described, the authors challenged 8 before the administrative body and 5 before the administrative courts (see para. 2.12). All appeals filed with the Office of the Superintendent were rejected, except one that is still pending, despite having been initiated on 19 November 2015. With regard to the appeals to the administrative courts, the Committee notes that in three cases,[47] the Administrative Court of Guayaquil issued a decision more than three years after the authors had filed the appeal, and that the three cases remain pending due to appeals by the parties against said decisions.[48] The Committee also notes that, in one case,[49] the Administrative Court of Guayaquil took almost four years to issue a decision, doing so in May 2019 after

[44] *Osío Zamora v. Bolivarian Republic of Venezuela*, para. 8.3; and *Isaías Dassum and Isaías Dassum v. Ecuador* (CCPR/C/116/D/2244/2013), para. 7.3.

[45] *Young v. Australia* (CCPR/C/78/D/941/2000), para. 9.4; and *Barzhig v. France*, para. 5.1.

[46] The State party refers to 11 cases, including 3 cases relating to the authors that were initiated after the initial submission of the communication.

[47] The "Bonil 1", "Bonil 2" and "SECOM 1" cases.

[48] Appeals were filed by the Office of the Superintendent in the "Bonil 1" and "SECOM 1" cases and by the newspaper in the "Bonil 2" case.

[49] The "SECOM 2" case.

the authors had filed the appeal on 24 September 2015. The Committee reiterates that it is not necessary to exhaust remedies that are not effective or objectively have no prospect of success. The Committee observes that, although the State party has provided information on the conduct of the proceedings, it has not provided any specific explanation as to why the administrative courts took more than three years to rule on the appeals and why the appeals are still pending.[50] The Committee is therefore of the view that article 5 (2) (b) of the Optional Protocol does not constitute an obstacle to the admissibility of the communication.

8.7 The Committee takes note of the authors' claim that their rights under articles 2 (3) and 14 of the Covenant were violated in the course of proceedings before the Office of the Superintendent of Information and Communication, given that this body was led by an official selected by a non-independent entity from a shortlist proposed by the President. It also takes note of the authors' assertion that the authority was both judge and party, that they encountered difficulty in exercising their right of defence, that only a single notification was served and that the standard of proof was low. The Committee notes the State party's argument that the authors enjoyed all judicial guarantees, including the right to a public hearing by a competent, independent and impartial tribunal, established by law. The Committee observes that the decisions of the Office of the Superintendent were subject to judicial review by the administrative courts, so the argument that the Office was not independent is invalid. The Committee also notes that the authors simply allege that in one case they were unable to present arguments (see para. 7.2), without providing details as to why they consider that they had difficulty exercising their right to a defence, both in that specific case and in the other cases to which they refer in their communication. The Committee further notes that the authors do not explain how their rights were affected by the service of a single notification, or why they consider that the standard of proof applied in these proceedings was low. The Committee therefore considers that the authors have not sufficiently substantiated this part of their complaint for the purposes of admissibility and finds it inadmissible under article 2 of the Optional Protocol.

8.8 The Committee takes note of the authors' claims that the constitutional amendments that resulted in the adoption of article 312 and the twenty-ninth transitional provision of the Constitution violated their rights under article 26 of the Covenant, in that they suffered discriminatory treatment, based on their status as media owners, to which persons engaged in other economic activities were not subjected. The Committee also notes the authors' claim that media must be economically viable if they are to maintain their independence, and that the ban on owning shares or interests in companies operating in other sectors served no legitimate purpose and was unnecessary and disproportionate. The Committee notes, on the other hand, the State party's argument that not every difference in treatment is discriminatory if the criteria for differentiation are reasonable and objective, and that the State pursued a legitimate aim, which was to prevent monopolies and conflicts between the public interest and the private economic interests of media directors and shareholders. The Committee further notes that the authors have not explained to what extent the constitutional provisions in question were discriminatory towards persons in situations similar to their own. Nor have the authors indicated the grounds of the alleged discrimination. The Committee therefore concludes that the authors have not sufficiently substantiated this part of their complaint for the purposes of admissibility and finds it inadmissible under article 2 of the Optional Protocol.

8.9 The Committee notes that there is no information in the file as to whether the authors pursued any remedy for the protection of their right to freedom of expression in a personal capacity, for example, a remedy for the protection of constitutional rights. The Committee notes that the State party made no reference to this point in its objections to the admissibility of the communication. The Committee therefore considers that the authors' claims under article 19 of the Covenant, read individually and in conjunction with article 2 (3), have been sufficiently substantiated for purposes of admissibility, declares them admissible and proceeds to their examination on the merits.

[50] *Osío Zamora v. Bolivarian Republic of Venezuela*, para. 8.4; and *Rajapakse v. Sri Lanka* (CCPR/C/87/D/1250/2004), para. 9.2.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

9.2 The Committee takes note of the authors' claims that the constitutional amendments undermined the economic sustainability of *El Universo* and violated their freedom of expression as shareholders and directors of the newspaper, since media ownership is a form of exercise of the right to freedom of expression. The Committee also takes note of the State party's assertion that the authors have not demonstrated a link between the economic sustainability of the newspaper, the violation of their right to freedom of expression and the personal pecuniary losses that they incurred, which are not covered by the Covenant. The Committee further takes note of the State party's argument that the aim of the constitutional amendments was to prevent monopolies and conflicts of interest among media owners. The Committee notes that the authors have not demonstrated the extent to which their assets were diminished or how this had the effect of making the newspaper, of which they were directors and shareholders, no longer economically sustainable. In this regard, the Committee notes that the authors have not refuted the State party's argument that in several of the cases mentioned in the communication, no penalty proceedings were initiated, since the newspaper agreed to publish replies or corrections (see para. 4.5). Furthermore, the authors have failed to show how the purpose invoked by the State party as justification for the constitutional reforms was incompatible with the Covenant.[51] Consequently, the Committee concludes that the facts before it do not constitute a violation of the authors' rights under article 19 of the Covenant.

9.3 With regard to the penalty proceedings, the Committee takes note of the authors' claim that the obligation to publish replies undermined their freedom of expression, since they were forced to publish content that differed from their editorial line, making it impossible for them to carry out their journalistic activity, with the result that they self-censored in order to avoid penalties and fines. The Committee also takes note of the State party's argument that the individual dimension of freedom of expression was not violated because the authors had not themselves written the articles for which the newspaper was required to publish replies; and nor was the social dimension violated, since *El Universo* continued to operate. The Committee refers to paragraph 13 of its general comment No. 34 (2011), which states that a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. The Committee also points out that, according to its jurisprudence, the freedoms of information and expression are cornerstones in any free and democratic society, and that it is in the essence of such societies that their citizens can inform themselves about political systems and parties other than those in power and can openly and publicly criticize or evaluate their Governments without fear of interference or punishment, within the limits set by article 19 (3).[52] The Committee notes that the authors were the directors and shareholders of a newspaper with an editorial line that differed from the views of the Government during the period in which the events occurred. The Committee notes that the newspaper was the subject of multiple administrative proceedings before the Office of the Superintendent of Information and Communication, in which it was requested to publish replies in accordance with strict criteria set by the Office, and that, in at least three of these proceedings, the authors were penalized with heavy fines.[53] The Committee also takes note of the authors' claim that the executive branch used requests for the publication of replies as a mechanism to force the newspaper to disseminate content determined by the Government, which restricted their freedom of expression. The Committee therefore concludes that the authors' situation falls under the protection of article 19 of the Covenant.

9.4 The Committee must now determine whether, in the present case, the restrictions imposed by the State party are justified under article 19 (3) of the Covenant. The Committee observes that such restrictions are permitted only as provided by law and where necessary:

[51] Human Rights Committee, general comment No. 34 (2011), para. 40.
[52] *Aduayom et al. v. Togo* (CCPR/C/57/D/422/1990), para. 7.4.
[53] The "Bonil 1", "SECOM 2" and "Radio City" cases.

(a) to guarantee respect for the rights and reputation of others; and (b) to protect national security, public order, or public health or morals. The Committee notes that the restrictions were provided for by law, specifically under article 66 (7) of the Constitution and articles 23 and 24 of the Organic Act on Communication. The Committee also notes that in most of the cases mentioned by the authors, the authorities applied article 24 of the Organic Act on Communication, which states that any person who has been directly referred to by the media in a manner that affects his or her rights to dignity, honour or reputation has the right to have the medium in question publish his or her reply.

9.5 The Committee points out that, when a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.[54] The Committee takes note of the State party's arguments that the restrictions were intended to protect the rights and reputation of others, that rules of subsequent liability of the media were applied, and that the right of society to receive truthful information was being protected. However, the Committee notes that the authors have demonstrated – and the State party has not contested – that, on several occasions, they were ordered to publish texts that exceeded the original news item in size and duration of publication, while the person requesting a reply, generally a public authority, provided the text and even the layout that should be used. The Committee also notes that the Office of the Superintendent of Information and Communication broadly interpreted the Organic Act on Communication, for example, by finding that an opinion column containing general statements had the capacity to tarnish the reputation of both specific individuals and an indeterminate group of individuals, based solely on the fact of their belonging to a certain profession.[55] In addition, the Committee takes note of the authors' claim that they were sometimes forced to publish replies containing expressions disparaging to them, under penalty of a fine, which was also not contested by the State party. The Committee observes that the measures taken in relation to the publication of replies were sometimes disproportionate and were not strictly necessary for protecting the reputation of individuals. The Committee therefore considers that the State party has not shown that the measures taken in the context of administrative proceedings against *El Universo* were justified under the criteria established in article 19 (3).[56]

9.6 The Committee takes note of the authors' claims of a violation of their right to an effective remedy in connection with their right to freedom of expression, considering that, although it was possible for them to seek a judicial remedy against any administrative decision issued in the context of penalty proceedings in connection with the publication of replies, such remedies did not have suspensive effect, meaning that domestic law did not prevent irreparable harm effectively or in a timely manner. The State party has not contested that these remedies did not have suspensive effect. The Committee also takes note of the State party's argument that the remedy of appealing to the administrative courts was appropriate and effective. The Committee notes that such appeals could be filed only once the administrative penalty decision had been issued. It also notes that such appeals did not have suspensive effect, that the administrative decision could result in fines whose amount increased in the event of repeat infringements, and the delays that occurred in relation to these appeals. All of this suggests that the filing of appeals with the administrative courts was neither an effective nor an adequate remedy to put an end to the violations of freedom of expression alleged by the authors. Accordingly, the Committee considers that the authors were not guaranteed an effective remedy in relation to the administrative penalty proceedings to which they were subjected. In these circumstances, the Committee finds a violation of article 19, read alone and in conjunction with article 2 (3), of the Covenant.

[54] Human Rights Committee, general comment No. 34 (2011), para. 35; and *Correa Barros et al. v. Bolivarian Republic of Venezuela* (CCPR/C/131/D/2652/2015), para. 7.5.

[55] The Carlos Ochoa Quezada case (see para. 2.9 above).

[56] *Pivonos v. Belarus* (CCPR/C/106/D/1830/2008), para. 9.3.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the State party has violated article 19, read alone and in conjunction with article 2 (3), of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires that full reparation be made to individuals whose rights have been violated. The State party should therefore, inter alia, provide the authors with adequate compensation. The State party is also under an obligation to take measures to prevent similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the State party.