

**AMPARO EN REVISIÓN: 1359/2015 - AMPARO CONTRA OMISIÓN DE LEGISLAR EN MATERIA DE PUBLICIDAD OFICIAL**

We, the undersigned media freedom organisations, are writing to ask the Supreme Court of Justice to consider international freedom expression standards in the case of *amparo* against the absence of legislative action on official advertising. We believe that this case, initiated by ARTICULO 19 Mexico and Central America, is an important opportunity for the Supreme Court to affirm the duty of the state, under international standards on freedom of expression, to create a legal and regulatory environment that allows all media operators to develop their activities in the service of democracy without any interference in their editorial freedom.

We understand that the Supreme Court will base its decision on the interpretation of the domestic constitutional law. However, we submit that the Supreme Court should also consider the international human rights standards in this area. International standards establish a positive obligation for states to adopt a legislative framework that fosters a favourable environment for freedom of expression for everyone without fear or retaliation. States should create an enabling legal and regulatory environment that allows the development of a free, diverse and pluralistic media landscape where all media operators can fulfil their role of seeking and imparting the broadest possible diversity of information and ideas, in particular on questions of public interest, in order to enable individuals to act as informed citizens.

We note that this positive obligation concerns not only electoral periods but creates a duty of the state to facilitate, through laws and regulations, the exercise of freedom of expression at all times.

Over the years, research by the main claimant in this case and partner organisations demonstrated that the lack of appropriate legal regulation of public advertising in Mexico results in the exercise of pressures on media outlets and journalists through biased, opaque allocation of subsidies and public advertising. In the absence of precise and clear rules, federal and local governments use official advertising to shape editorial lines and push partisan agendas.

We find this situation to be in violation of international law on freedom of expression, as the opaque and arbitrary allocation of official advertising and public subsidies negatively affects pluralism, impoverishes diversity and restrains editorial freedom. We therefore urge the Supreme Court to consider the following international standards when reviewing the case.

International and regional freedom of expression standards

We recall that the General Comment No. 34 explains that Article 19 of the International Covenant on Civil and Political Rights (ICCPR) implies that

The State should not have monopoly control over the media and should promote plurality of the media. Consequently, States parties should take appropriate action, consistent with the Covenant,

to prevent undue media dominance or concentration by privately controlled media groups in monopolistic situations that may be harmful to a diversity of sources and views.<sup>1</sup>

In their 2002 Joint Declaration, the international and regional freedom of expression mandates (including the Special Rapporteur for Freedom of Expression of the Organisation of American States) outlined that

Governments and public bodies should never abuse their custody over public finances to try to influence the content of media reporting.<sup>2</sup>

The regional human rights bodies have made similar recommendations. The Inter-American Commission on Human Rights clearly stated that:

The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans, the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.<sup>3</sup>

The Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, in the Principles on the Regulation of Government Advertising and Freedom of Expression,<sup>4</sup> highlighted the need for specific legal rules on public advertising to prevent the arbitrary use of public funds.

Similarly, the European Court of Human Rights has repeatedly stressed that Article 10 (which guarantees the right to freedom of expression) of the European Convention on Human Rights creates a positive obligation for States to enact a legal and regulatory framework that safeguards pluralism and allows every person to exercise their right to freedom of expression.<sup>5</sup> Article 11 of the European Union Charter of Fundamental Rights also explicitly provides that ‘freedom and pluralism of the media shall be respected.’<sup>6</sup>

### Best practices

ARTICLE 19 has also summarised the relevant international standards and best practices in this area in a policy brief on State Aid to Print Media<sup>7</sup> that took into consideration notably the ICCPR, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression, and Resolution 1636 (2008) of the Parliamentary Assembly of the Council of Europe.

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<sup>1</sup> UN Human Rights Committee, General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, para 40; available at: <http://bit.ly/2wGHOAZ>.

<sup>2</sup> The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, Joint Declaration on freedom of expression and the administration of justice, commercialisation of freedom of expression and criminal defamation, December 2002; available <http://bit.ly/2w1I9Bm>.

<sup>3</sup> See Declaration of Principles on Freedom of Expression, 2012, Principle 13.

<sup>4</sup> See Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), Principles on the Regulation of Government Advertising and Freedom of Expression, 2012, available at: <http://bit.ly/2wGGBcZ>.

<sup>5</sup> See IviR, Study of fundamental rights limitations for online enforcement through self-regulation, December 2015; available at <http://bit.ly/2uTOAD1>.

<sup>6</sup> See also, for EU countries, the Media Pluralism Monitor; available at <http://bit.ly/2w1uwCi>.

<sup>7</sup> ARTICLE 19, Regulation on State Aid to Print Media, Dec. 2012, available at <http://ow.ly/biAP30fZ8DH>.

We believe that international law requires that public aids are never used to control, influence or otherwise restrict the editorial independence and freedom of any media actor organisation. Under international standards on freedom of expression, public support to media should necessarily pursue at least one legitimate objective of general interest of media policy, such as:

- the protection and promotion of pluralism and diversity, including cultural and linguistic diversity;
- support to accurate and reliable journalism;
- the respect, development and promotion of professional ethics, including the elaboration of internal charters of ethics, the creation of committees on ethics inside media companies, and participation in self-regulation mechanisms;
- the promotion of gender equality in the media;
- the promotion of equality, including a fair representation of minorities and vulnerable groups in the media;
- the development of innovative journalistic practices and support to lifelong education for media professionals and other social communicators;
- the adaptation to digital technologies, including online distribution; and
- support for media literacy.

It is in that perspective that we recommend that all forms of public support to private media, including the allocation of public advertising, comply with the following conditions:

- There needs to be a clear legal basis for every form of state/public support to the media;
- The relevant legislation must make clear that public support pursues one or various objectives of general interest, such as, but not limited to, the promotion of pluralism and diversity, support to professional ethics, support to accurate and reliable journalism, promotion of equality, innovative journalistic practices, adaptation to the digital age, or media literacy;
- The legislation must include all applicable criteria that will preside over the allocation of public support, as well as clear information and guidelines on the applicable procedures and deadlines;
- Time limits on the duration of state aids should be clearly set out. These limits should be sufficient to provide beneficiaries with reasonable foreseeability of resources and plan their businesses accordingly, while also allowing for a periodical verification that public aid serves its purposes;
- The legislation must explicitly state that the allocation of public support will take place on the basis of fair and neutral criteria, that it will never be used to promote official figures, that it will be non-discriminatory and will never be based on political content or viewpoints expressed by media actors;
- The legislation should also include a formal statement that public support shall never be used to undermine the editorial independence of media actors, as well as provide for sanctions for public officials who would violate this principle;
- The legislation must provide for an independent body to be responsible for the allocation and oversight of direct subsidies to individual media actors;
- Individual decisions on the allocation of public subsidies must be amenable to judicial review;
- There must be transparency on the definition of public policy on state support to private media as well as on the allocation of public funds to media actors. Media stakeholders and civil society organisations need to be consulted during the elaboration of public policy on

state aid. Public authorities, including independent bodies in charge of allocating direct subsidies, must publish annual reports on the use of public funds to support media actors;

- Media outlets that receive state subsidies should be audited annually and make their audited accounts public.

### Conclusions

An enabling environment for freedom of expression includes laying down clear and objective criteria for the allocation of government advertising funds, and ensuring that advertising is not withdrawn or withheld from publishers because they are critical of the government. We, therefore, invite the Supreme Court to seize the opportunity provided by the present case to affirm the duty of the State under international law on freedom of expression to adopt the appropriate legal and regulatory framework related to public advertising and other forms of subsidies.

Thank you for your consideration.

Yours sincerely,

Thomas Hughes,  
Executive Director, ARTICLE 19

Jesper Højberg  
Executive Director, International Media Support (IMS)

Andrew Heslop, Director, Press Freedom, World Association of Newspapers and News Publishers (WAN-IFRA)

### **Information about the undersigned organisations**

- ARTICLE 19, established in 1987, is an international human rights organisation, with offices in London, Bangladesh, Brazil, Tunisia, Kenya, Mexico and Senegal, which defends and promotes freedom of expression and freedom of information all over the world. ARTICLE 19 frequently engages in processes to develop law by providing amicus curiae briefs or other forms of interventions to provide expertise on the state of international law, in cases before national and international courts. ARTICLE 19's interventions are based on relevant international human rights law and comparative standards and aim to assist courts to elaborate the specific meaning of freedom of expression and permissible limitations in the context of the particular case in a manner which best protects this fundamental human right. For more information, see [www.article19.org](http://www.article19.org).
- International Media Support (IMS) is a non-profit organisation working to support local media in countries affected by armed conflict, authoritarian rule and political transition. Across four continents, IMS helps to promote press freedom, strengthen professional journalism and ensure that media can operate in challenging circumstances. We support the production and distribution of media content that meets internationally recognised ethical standards and work to ensure safe media environments with sound laws for journalists. We do this because citizens and leaders need information they can trust to make decisions that develop their societies in a peaceful and democratic way. IMS' headquarters are based in Copenhagen with field offices currently in Iraq, Tunisia, Kenya/Somalia, Myanmar, Ukraine and Pakistan. For more information, visit [www.mediasupport.org](http://www.mediasupport.org).
- WAN-IFRA, based in Paris, France and Frankfurt, Germany, and with subsidiaries in Singapore, India and Mexico, is the global organisation of the world's newspapers and news publishers. It represents more than 18,000 publications, 15,000 online sites and over 3,000 companies in

more than 120 countries. Its core mission is to defend and promote press freedom, quality journalism and editorial integrity as well as the development of prosperous media businesses. More information at [www.wan-iffra.org](http://www.wan-iffra.org).