

CEJIL GAZETTE

A PUBLICATION OF THE CENTER FOR JUSTICE AND INTERNATIONAL LAW

EDITORIAL

Eduardo Andrés Bertoniⁱ

The conclusion of the 20th Century coincided with an end to authoritarian governments that dominated the Latin American political scene during the last decades. An analysis of the fall of these dictatorial regimes, and the consequent transformation to more or less democratic systems, depending on the time period and the country, is not the purpose of this essay. Instead, it is that the problems which these “new” democracies face in their strengthening efforts, are very much related to practices largely based in the dark years of military governments.

To provide an example, strictly related to this point, the lack of transparency of decisions on public matters was standard practice, almost necessary, to maintain and exercise the power of those who illegitimately held it. It is evident that in order to ensure that all decisions by those in power at the time remained secret, attempts to bring them to light were absolutely rejected: freedom of information and freedom of expression did not fit within the systems of antidemocratic governments. It was too utopian to think that merely because of the dawn of “democracy,” the antidemocratic “impulses” of those who legitimately held power would be automatically overcome: it is much easier to govern without public scrutiny, than to govern before the eyes of the watchful majorities and the minorities that, ultimately, are those that granted them the power.

It has been well noted that every democratic State is sustained by political criticism, but, at the same time, every government feels threatened by this very criticism. This conflict generates one of the fundamental tensions of political life: where to draw the line between democracy and authoritarianism.

So that this line is not crossed, and so that our societies can consolidate themselves as democratic ones, respectful of people’s rights, it is necessary to

FREEDOM OF EXPRESSION AND DEMOCRACY

“fight,” on all fronts possible, against those “antidemocratic” impulses that aspire to restrict free expression and either as a consequence or a precursor, also aspire to inhibit free information. There are two tools which are most often used for such cut-backs: the first, clearly identified with the most detestable practices brought forth during the military dictatorships, is the direct physical elimination of whomever seeks to express their criticisms of those in power or of a particular powerful sector. The murder of journalists continues to be of great concern in the region; one needs only to review quickly the last Report of the Rapporteur for Freedom of Expression, published in the Annual Report of the Inter-American Commission of Human Rightsⁱⁱ, which takes note of the deaths that have occurred in recent years, to see the magnitude of the problem.

The second tool used by those in power to silence their critics is what could be called “judicial harassment.” This practice consists of nothing more than the constant harassment that journalists face through legal action, whether it be based in civil or criminal law, that provokes what some call the effect of paralysis: before being critical, and when faced with the inevitable possibility of a lawsuit that will consume at least time and money, one chooses to remain silent.

To demonstrate that a society respects freedom of expression as an inherent value of democracy, in the face of murder as a practice of silencing the press, the political decision to investigate, find and adequately punish those responsible for the crime is required.

On the other hand, to mitigate “judicial harassment,” the forces should dedicate themselves to restrict, as much as possible, the legal actions that can be initiated in cases involving the criticism of

public figures. In good measure, this path has begun to be taken, above all since the interpretation of the meaning of freedom of expression both by the Court and the Commission. For example, thanks to the system for the protection of human rights within the OAS, Argentinaⁱⁱⁱ repealed the archaic crime of “desacato”^{iv} [slander, insult, or threat made against an authority in the exercise of their office] and currently, its executive branch has committed to sending the National Congress a law modifying the Penal and Civil Code^v, in order to decriminalize the crimes of slander, libel and defamation when the victims are public functionaries or figures. Therefore, the modification would only leave open the civil route for those cases in which there may be actual malicious intent.

Although it is true that this path has begun to be timidly taken, it still remains true that there is much to accomplish within the region. As was stated previously, the Inter-American System can contribute to, and in a certain way push, the necessary legislative reforms; however, it is the local actors, who interact on a daily basis in our societies, who should be absolutely committed to the change.

Those who legitimately hold power should understand, once and for all, that they arrived there by the mandate of the people, and, paraphrasing Madison, “The people, not the government, are the owners of absolute sovereignty.”

Additionally, those who do not hold power should be firmly committed to control it. And in order to control it, one must be informed; and to be informed, there is nothing better than uninhibited robust free expression. And so that this occurs, we should eliminate the possibilities of unjust physical or legal persecutions that only strive to gag citizens.

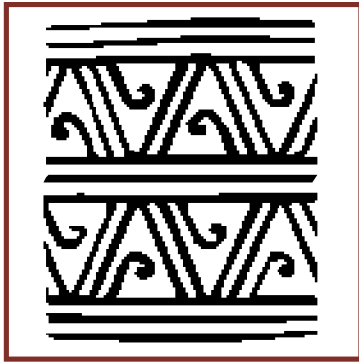
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ⁱⁱOEA/SerL/V/II.111 Doc. 20 Rev. 16 April 2001.

ⁱⁱⁱThe two cases that are mentioned were brought before the IACHR by the Argentine journalist, Horacio Verbitsky, supported by CELS/CEJIL.

^{iv}In the regional arena, the impact of the case was formally important, as the IACHR established that the crime of “desacato” is incompatible with Article 13 of the Pact of San José.

^vThe text of the proposed law was elaborated by the *Asociación Periodistas-Argentina*- and can be consulted in the Report of the Special Rapporteur for Freedom of Expression of the OAS from the year 1999.



OPINION

THE WORK OF THE COMMITTEE TO PROTECT JOURNALISTS IN THE YEAR 2001

Marilyn Smeets^{vi}

This year the Committee to Protect Journalists (CPJ) celebrated its twentieth anniversary. The CPJ was founded to combat abuses against the press and to promote freedom of expression throughout the world.

The CPJ Americas Program manages some 80 cases of attacks against the press each year. In general, the cases focus on instances of violence against journalists; however, we have also taken cases of legal harassment and in some of these we have requested protective measures from the IACHR.

An example of this is the case of Pablo López Ulacio. The severity of this case was one of the reasons why I traveled to Caracas a year ago. During meetings with Venezuelan authorities—among them the then Minister of Foreign Relations, José Vicente Rangel—I expressed CPJ's concerns with this case. Based on my mission, I wrote a special report, where I highlighted the challenges that Venezuelan journalists confront. In the report, I put a lot of emphasis on this case. The CPJ also has expressed its preoccupation with respect to this case before various authorities of the IACHR.

The case of Alejandra Matus is another example. This year alone, we have distributed five press releases about this case. On March 23, we presented an amicus curiae before the IACHR. The brief was prepared on our behalf by the New York law firm, Debevoise & Plimpton, where James Goodale, a member of our council and a prominent expert on free of expression, works.

THE INTER-AMERICAN SYSTEM

RECENT ADVANCES

Declaration of Principles on Freedom of Expression

The “Inter-American Declaration of Principles on Freedom of Expression” was born out of the recognition of the necessity of developing a legal framework that would regulate the effective protection of freedom of expression in the Americas and would incorporate basic doctrines that are widely recognized and established in various international instruments.

The “Declaration of Principles on Freedom of Expression,” adopted in October of 2000 by the IACHR, constitutes the most important instrument for the interpretation of the Inter-American Declaration and Convention. It has incorporated the jurisprudence and the doctrine of the Court and the Commission, as well as international standards for the effective protection of freedom of expression.

Jurisprudence of the Inter-American Court

In 2001, the Inter-American Court released three important decisions concerning the right to freedom of expression and information: “*The Last Temptation of Christ*” vs. *Chile*, *Ivcher Bronstein Case vs. Peru*, and provisional measures on behalf of Mauricio Herrera Ulloa, in “*La Nación*” vs. *Costa Rica*. In the first case, CEJIL acted as an advisor to the IACHR during the process before the Court, per the request of the Association for Civil Rights, representatives of the victims. In *Ivcher Bronstein vs. Peru*, we took on the role of representatives of the victim along with Dr. Alberto Borea.

In the first case mentioned, “*The Last Temptation of Christ*” vs. *Chile*, the judiciary of Chile prohibited the showing of the film after determining that it “soiled” the beliefs of others. This is the first case against Chile before the Inter-American Court; moreover, it is the first case in which the Court deals with freedom of expression and, in particular, censorship. In this sentence, the Court reaffirmed a principle established in its own doctrine as well as in the jurisprudence of the European Court of Human Rights and the Supreme Court of the United States: freedom of expression is the cornerstone of democratic society.⁷ Free debate of ideas, conflicts of opinion, and distinct views of the world are fundamental to the development of a democratic State. For these very reasons, the American Convention of the Rights and Duties of Man prohibits censorship.⁸ As a result of this sentence, the Chilean government modified its Constitution, eliminating the article that allowed for the use of censorship.

In the second case, *Ivcher Bronstein vs. Peru*, the Fujimori regime demonstrated its twisted creativity for silencing dissenting voices. In effect, the government deprived a Peruvian citizen, Ivcher, of his nationality in order to remove him from control of a television station which aired reports that denounced the existence of human rights violations and corruption in Fujimori's administration.

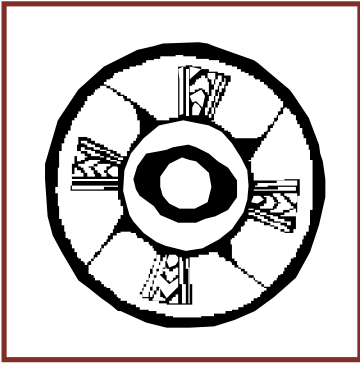
The Court distinguished the two dimensions of freedom of expression in light of the American Convention: individual and social. It analyzed the facts determining that “the resolution that rendered Mr. Ivcher's title of nationality invalid constituted an indirect means by which to restrict his freedom of expression, as well as that of the journalists that worked and investigated for the program *Contrapunto* (Counterpoint) of Peruvian television's Channel 2. By separating Mr. Ivcher

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⁷ Inter-American Court of Human Rights, “*The Last Temptation of Christ*” Case, Judgment of February 5, 2001, paragraph 68.

⁸ *Ibid.* paragraph 70.

⁹ Inter-American Court of Human Rights, *Ivcher Bronstein Case* (Brauch Ivcher Bronstein vs. Peru) Judgment of February 6, 2001, paragraphs 162 and 163.



from control of Channel 2, and excluding the journalists of *Contrapunto*, the State not only restricted their right to circulate news, ideas, and opinions, but also the right of all Peruvians to receive information; in this way limiting their freedom to exercise political options and develop fully into a democratic society.”⁹ As a result of this sentence, Mr. Ivcher regained management of the television station.

In the third case, on May 23, 2001, the Court granted provisional measures for Mr. Mauricio Herrera Ulloa and Mr. Fernán Vargas Rohmoser in “*La Nación*” vs. *Costa Rica*. The journalist Mauricio Herrera Ulloa was convicted of four different offenses in the gamut of defamation, because of reports published in *La Nación*. These reports reiterated what had already been reported in the European Press concerning a Costa Rican public functionary accredited in the Foreign Service of Costa Rica before the International Organism of Atomic Energy, headquartered in Vienna. With respect to a petition received on March 1, 2001, the Commission adopted precautionary measures on behalf of the journalist. Due to the State’s nonfulfillment of the precautionary measures, the IACHR submitted a request for provisional measures before the Court, that resolved to, “require that the State of Costa Rica abstain from taking any action to alter the status quo of the issue until the required report is presented and the Tribunal can deliberate and decide on the same during the next ordinary period of sessions.” This resolution constitutes the first time that the Court has adopted provisional measures for the protection of freedom of expression and information.

Violations of Freedom of Expression

CEJIL litigates various cases before the Inter-American System, seeking to safeguard the full respect of the freedom of information and expression of all the inhabitants of the hemisphere. The litigation of the cases is done in the role of a co-petitioner, with prestigious human rights organizations, social leaders, and attorneys in the region. In the following sections we enumerate cases that illustrate the salient aspects of the problematic issue of freedom of expression in the region.

1. Threats and Executions

Julio César Pineda is a journalist for Radio Progress in Honduras. In 2000, he was the victim of an attempt on his life, during which he suffered a gunshot wound to his head. In July 2000, precautionary measures were requested; however, the State has not ordered any protective action, nor has it attempted to clarify the facts and punish those responsible (co-petitioners: Comité de Familiares de Detenidos Desaparecidos de Honduras-COFADEH).

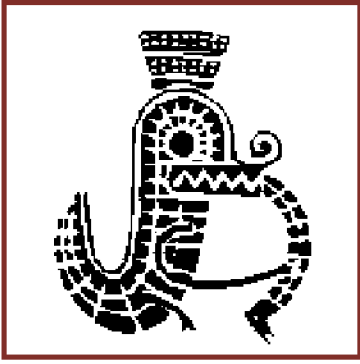
Brigadier General José Francisco Gallardo denounced the multiple acts of corruption and violations of human rights in the Mexican Army. He was harassed and finally condemned to 25 years in prison by a military tribunal. The General was liberated on February 7, 2002, in fulfillment of a resolution adopted by the Inter-American Commission (co-petitioners: Comisión Mexicana de Defensa y Promoción de los Derechos Humanos).

Jorge Carpio Nicolle, Juan Vicente Villacorta, Alejandro Avila Guzmán and Rigoberto Rivas were extrajudicially executed on July 3, 1993. They were part of a delegation on a campaign trip for the Unión del Centro Nacional, for which Mr. Carpio Nicolle was the presidential candidate. The judicial process in Guatemala for this case, corrupt from the beginning, ended in 1999, with a sentence absolving all of the accused. The case before the Commission is in the admissibility and merits phase (co-petitioners: Mrs. Martha Carpio and Karen Fisher).

2. Slander, Libel, and Defamation

Ricardo Canese, a candidate for President in Paraguay, denounced another presidential candidate, Wasmosy, for acts of corruption. Associates of Wasmosy, who was President of Paraguay at the time, presented a lawsuit against Canese for defamation and slander. As a result, Canese was condemned on each count to four months in prison and a fine. The case is in the merits stage before the Commission (co-petitioners: Sindicato de Periodistas del Paraguay and the Sindicato de Trabajadores de la ANDE- Administración Nacional de Electricidad).

Bruce Harris is the Regional Director of Covenant House in Guatemala. In November of 1997, he accused the spouse of one of the ministers of the Supreme Court of Guatemala of using her influence to speed up the process of the foreign adoptions that she managed. She initiated a case against him for slander and defamation, crimes established in Guatemala’s Penal Code as punishable with a prison term. The criminal proceedings are still pending. The case before the Commission is in the admissibility phase (co-petitioners: Casa Alianza and ODHAGUA-Oficina de Derechos Humanos del Arzobispado of Guatemala-).



▶ Eduardo Kimel is an Argentine journalist who investigated the murder of five Catholics that occurred during the military dictatorship, and then published the book, *La Masacre de San Patricio*. A judge brought a criminal complaint of slander after considering certain paragraphs of the publication, which questioned the efficacy of the investigation, offensive. Kimel was convicted of slander and condemned to one year in prison and sentenced to pay court costs. In the context of a friendly settlement mediated by the Commission, the Argentine state, within a group of cases, presented a proposed law to decriminalize slander and defamation (co-petitioners: Centro de Estudios Legales y Sociales-CELS-, Eduardo Bertoni, Santiago Felgueras, and Alberto Bovino).

Pablo López Ulacio is a journalist and lawyer, who is the director of the Venezuelan weekly, *La Razón*. Since February of 1999, the weekly has published a series of investigative reports that uncovered serious acts of corruption involving well-known Venezuelan political figures. As a result of these publications, López Ulacio, his family, and his lawyer have suffered constant threats. Moreover, one of the persons implicated by the reports filed a criminal complaint against the journalist. The complainant is one of the principal financial backers of the President, and his close associates include the Minister of the Interior and the Minister of Justice as well as other high-level political figures. This, combined with the lack of independence of the Venezuelan judicial system, has resulted in serious abnormalities in the criminal process. The Commission requested that the State implement precautionary measures; thus far, it has not complied. (Co-petitioner: Omar Estacio)

3. Repression and Criminalization of Social Protest

Argentina: A great number of the unemployed have decided, in the last few years, to use roadblocks as a means of struggle and protest against the deterioration of the socioeconomic system. The response to this practice has been the criminalization of social protest and in some cases, the physical repression of protestors. A hearing before the Commission in March 2001 was requested, and the Commission committed itself to studying the matter (co-petitioners: Centro de Estudios Legales y Sociales-CELS- and the Comité de Acción Jurídica-CAJ).

Oziel Alves Pereira et al., El Dorado de Carajas: In 1996, 1,500 landless rural workers in Brazil decided to march from Curianópolis to Belém, the capital of the state of Pará, demanding the expropriation of a hacienda for the creation of a settlement for workers' families. The workers blocked the road, demanding buses and food so that they could reach Belém. At 3 p.m. on April 17, the workers were approached by 200 armed police officers on one side of the road and 200 civilians on the other side. All of the police wore their uniforms without their identification. The massacre lasted one hour, and 19 people were killed. Three police officials were absolved of wrong doing in 1999; the charges against the rest of the police are still pending. The case is in proceedings before the Commission and the government is required to report on the advances of their investigations every 45 days (co-petitioners: HRW/Américas and MST-Movimiento de los Trabajadores Rurales sin Tierra-).

4. Intercepted Telephone Calls

Ana Elena Townsend, journalist and Peruvian congresswoman, along with other journalists and public figures discovered that the Peruvian National Intelligence Service (SIN), was systematically intercepting the telephone communications of opposition politicians and journalists critical of the government during the Fujimori regime. This information was systematically utilized to harass, persecute, and threaten them. Since the transition to the new government, the case has been in the friendly settlement process before the Commission (co-petitioners: Ana Elena Townsend Díez- Canseco and Prensa Libre).



5. Censorship

Alejandra Matus, a Chilean journalist, published a report titled, *El libro negro de la justicia chilena* [The Black Book of Chilean Justice], in 1999. Applying Article 6b of the Law of Internal Security of the State, a Supreme Court Justice, Servando Jordán, ordered the recall of all the books in circulation and prohibited its sale. Additionally, an arrest warrant was issued against the journalist as part of the proceedings against her for slander. Precautionary measures were ordered for Ms. Matus and the publishers of the book. During the time of the proceedings, a new journalism law was instituted in June of 2001, which repealed the article. It was requested that the internal lawsuit be dismissed (co-petitioner: Clínica de Acciones de Interés Público de la Universidad Diego Portales).

Humberto Antonio Palamara Iribarne is the author of the book, *Ética y Servicios de Inteligencia* [Ethics and Intelligence Services]. According to the internal regulations of the military, due to his position as a civilian employee of the Chilean Armed Forces and the subject matter of the text, he was required to request authorization from the respective authorities for the book's publication. Authorization was denied and he was ordered to turn over all the copies of the book. Upon refusing to turn over the books, a complaint was filed before a military tribunal for the crimes of disobeying military duties and disobedience, both established in the Code of Military Justice. As a result, the military judge ordered the confiscation of all the copies and original manuscripts of the book, and the preventive detention of Mr. Palamara. The case before the Commission is currently in the merits stage (co-petitioner: Clínica de Acciones de Interés Público de la Universidad Diego Portales).

IMPORTANT NOTES

CEJIL has developed a Manual for members of the media. This manual contains the procedures for urgent action, and the Inter-American Commission and Court's established parameters of protection for freedom of expression and information. The publication of the manual is anticipated in the first trimester of 2002.

In September 2000, CEJIL SUR/ CHILE and the Clínicas de Acciones de Interés Público initiated a project designed to promote the Inter-American System for the Protection of Human Rights and the Public Interest, sponsored by the British Embassy in Chile. The objective of the project was to train nongovernmental organizations, based in the northern and southern regions of Chile, on the mechanisms for litigation at the national and international level, and the general functions of both the Inter-American Commission and Court on Human Rights. These seminars were carried out in Arica and Temuco. In April 2001, a seminar was held in Santiago, in which the former President of the

Inter-American Commission, Mr. Claudio Grossman, and Mr. Juan E. Méndez, its current President, participated. In addition, CEJIL's representative in Chile and the Director of the Department of Human Rights of the Ministry of Foreign Affairs participated in the first panel. More than 100 people attended the seminar who actively participated and took advantage of this opportunity to express their concerns about the attitude of the Chilean government toward the Inter-American System of Human Rights.

CEJIL's office in Chile continued to work in coordination with the Swiss Embassy, in a seminar entitled, "Freedom of Expression and Association, Discrimination, and the Promotion of the Rights of Minorities." The primary idea of this project is to form a network of human rights organizations in charge of keeping the organizations of northern and southern Chile informed of the developments of the Inter-American System for the Protection of Human Rights.

The office of CEJIL SUR/ Chile together with the Centro de Justicia Criminal of the Facultad de Derecho de la Universidad Diego Portales, is organizing a project, sponsored by the Embassy of Great Britain in Chile, named "Justicia Criminal, Derechos Humanos y la Reforma Procesal Penal" [Criminal Justice, Human Rights, and Reform of the Penal Process]. The objective of the project is to investigate topics, such as torture, prison conditions, and juvenile delinquency, for the later elaboration of court briefs and establishment of space to publicly discuss these themes, and thus evaluate the achievements and potential problems of the new penal procedures that are being implemented in the pilot regions.



The activities of CEJIL are made possible thanks to the financial support of Amnesty International, Sweden; Covenant House; Acción Ecuémica Sueca, Diakonia of Central America; Canadian Embassy, Chile; British Embassy, Chile; Dutch Embassy, Costa Rica; United Nations Voluntary Fund for Victims of Torture; Norwegian Human Rights Fund; Ford Foundation; General Service Foundation; HIVOS, Regional Office Central America; International Center for Human Rights and Democratic Development; John Merck Fund; McCormack Tribune Foundation; MISEREOR; National Endowment for Democracy; Norwegian Ministry of Foreign Affairs; Olaf Palme Memorial Fund; Open Society Institute; PRODECA, Royal Danish Ministry of Foreign Affairs; Stewart R. Mott Charitable Trust; Stichting Kinderpostzegels Nederland, SKN.

CEJIL's Gazette is published periodically in Spanish, English, and Portuguese. A subscription costs US\$20 per year. To subscribe, send your check to CEJIL at the following address:



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