

PANEL: LITIGATION DEVELOPMENTS IN LATIN AMERICA IN 2015

Intervention - Catalina Botero

THE INTER-AMERICAN HUMAN RIGHTS PROTECTION SYSTEM

THE COURT'S GOLDEN AGE (2001 – 2008)

During that period, the Court made important decisions on:

- The prohibition of prior restraint – *The Last Temptation of Christ* ” (Olmedo Bustos et al.) v. Chile
- The prohibition of the crime of slander or *desacato* – *Palamara Iribarne v. Chile*

- Special protection for speech of public interest and the disproportionality of criminal defamation – *Kimel v. Argentina*
- The right to access to information as a fundamental right - *Claude Reyes et al v. Chile*
- The prohibition on the use of State power and resources to reward or punish media outlets – *Ivcher Bronstein v. Peru*

DECLINE IN THE COURT'S DECISIONS

In 2009, the trend at the Court started to change. At first, the change was slight. It was limited to dismissing some pleadings on technicalities or simply omitting analysis of aspects of the cases related to the right to freedom of expression. An example of this was the Case of Uzcátegui et al. v. Venezuela.

In 2013, there was one of the most preposterous failings of the Court. The *Mémoli v. Argentina* Case.

THE MÉMOLI V. ARGENTINA CASE

Three main failings:

- Disregarded the Court's own precedent on criminal defamation laws of Argentina.
- Dissolved the application of the tripartite test in a simple reasonability test in matters regarding criminal defamation.
- Disregarded the implications for freedom of expression of a grave and disproportionate civil and/or criminal process.

REACTION TO THE MEMOLI CASE

The public opinion and the media had a uncommon, huge negative reaction to the Court's decision.

At least 20 media outlets published news about this, including the following newspapers:

- O Globo & Estado de Sao Paulo of Brazil
- La Nación of Argentina
- El Tiempo of Colombia
- El Pais of Spain

INTER-AMERICAN COURT OF HUMAN RIGHTS CASES ON FREEDOM OF EXPRESSION OF 2015

After the strong public reaction to its judgment, the Court resumed its elevated standards in the following cases:

- Marcel Granier et al. (Radio Caracas Televisión) v. Venezuela
- López Lone et al. v. Honduras
- Omar Humberto Maldonado et al. v. Chile

MARCEL GRANIER ET AL. (RADIO CARACAS TELEVISION) V. VENEZUELA

This case revolved around the State's refusal to renew the license of a television channel for eminently political reasons.

It established important precedent in at least three issues.

- 1) The Court established that closing the media outlet would directly affect the rights of the channel's journalists, workers, and managers.
- 2) The Court found that the State cannot use its authority to punish or reward media outlets based on their editorial stances.
- 3) The Judgment found that States are obligated to issue clear and precise regulations for the process of assigning frequencies, establish objective criteria that avoid arbitrariness, and encourage pluralism and diversity.

LÓPEZ LONE ET AL. V. HONDURAS

In this case the Court ruled on a complaint from judges who had been subject to disciplinary proceedings for protesting against the coup d'état that removed the elected president of Honduras from power in 2009.

In this Judgment, the Court constructs a kind of innominate right to “resistance in contexts of serious institutional upheaval.” This right to resistance is derived from the right to freedom of expression and freedom of assembly.

OMAR HUMBERTO MALDONADO ET AL V. CHILE

This Judgment deals with the scope of the right to access to information collected during processes of transitional justice.

The Court found that during times of institutional stability, State officials cannot refuse to hand over information on human rights violations to the competent authorities so perpetrators can be tried.

When requesting this information, the proportionality principle must be applied. It is only legitimate to withhold information as long as doing so is: I) based on a legal provision; II) seeks a legitimate end; and III) is necessary and strictly proportional for accomplishing that end.

CASES PUBLISHED BY THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS IN 2015

- Miguel Angel Millar Et Al (Radio Estrella De Mar) v. Chile
- Adriana Beatriz Gallo, Ana María Careaga, And Silvia Maluf De Christin v. Argentina

MIGUEL ANGEL MILLAR ET AL (RADIO ESTRELLA DE MAR) V. CHILE

In this case, the Commission found that the way in which the local government distributed electricity, unreasonably affected the only radio station that was critical of the mayor. The distribution was openly inequitable and not based on public, objective, and reasonable criteria. Because of this, the Commission considered there was an indirect violation of the right to freedom of expression.

ADRIANA BEATRIZ GALLO, ANA MARÍA CAREAGA, AND SILVIA MALUF DE CHRISTIN V. ARGENTINA

In this case, the judges, Careaga and Maluf, joined a press release of the Association of Attorneys and Prosecutors of Villa Mercedes that stated an opinion on the situation of the Judicial Power of the Province of San Luis. Shortly after the press release the judges were removed from office. The Commission considered the destitutions to be illegitimate, and a clear violation of the right to freedom of thought and expression.

SOME TRENDS AND EMBLEMATIC CASES IN
THE REGION FROM 2015 ON CRIMINAL
DEFAMATION AND ON FREEDOM OF
EXPRESSION ON THE INTERNET

CRIMINAL DEFAMATION

Ecuador:

- 17 year old boy convicted for “dishonoring” the president.
- US\$140,000 fine for “judicial defamation against the president.”
- US\$40,000 fine for making “twisted references to the president’s sexual orientation and accusing him of abusing women.”
- 15 days in prison for using Twitter to “discredit and dishonor” a minister’s niece.
- Order to appear at a preliminary hearing for suggesting corruption of a previous government official.
- Processes against a cartoonist for cartoons that were considered offensive and discriminatory.

CRIMINAL DEFAMATION

Venezuela:

- Injunctions issued banning directors and board members of three newspapers from leaving the country, for mentioning an article of the newspaper ABC of Spain that linked the president of the Assembly of Venezuela with drug-trafficking.
- Sentencing of an editor for publishing allegations of corruption at a State mining company.

CRIMINAL DEFAMATION

Brazil:

- The Fourth Criminal Chamber of the Region of the Capital of Santa Catarina, ruled inadmissible the charge of *desacato* brought by a Public Prosecutor against an individual who had “offended” a group of police officers. According to the judge of the case, the crime of *desacato* is not compatible with democracy. The provisions of Article 13 of the American Convention on Human Rights, along with the highest standards of the Inter-American system on the issue were cited. The judge found that application of the *desacato* law as found in the Criminal Code should be suspended based on Article 13 of the Convention.

INTERNET: JURISDICTION, RESPONSIBILITY OF INTERMEDIARIES AND THE RIGHT TO BE FORGOTTEN IN MEXICO, COLOMBIA, CHILE AND BRAZIL IN 2015

México:

The National Institute for Transparency, Access to Information and Personal Data Protection (INAI), found that Google was subject to legal requirements on personal information and therefore had to eliminate links of information protected by the law. The precedent of the Costeja case was embraced.

Colombia:

The Constitutional Court found that although intermediaries were not responsible for third-party content, the media that published information on individuals involved in criminal proceedings did have specific obligations.

- First the individual referred to in the article on a criminal proceeding who was not convicted at trial, has the right for the media to update the original article on their webpages.
- Second, the individual has the right to request the use of technical tools (such as robots.txt) so the article cannot be found through the simple search of his or her name in Internet search engines.

The Costeja case was explicitly rejected.

Chile:

The Supreme Court of Justice found that regarding the media, individuals have the right to “prevent dissemination of past personal information that having served its purpose, could be damaging.” In this case, the precedent of the Costeja case was adopted.

Brazil:

An order from a Judge of the *Central de Inquéritos da Comarca de Teresina*, Piauí, found that telephone companies must suspend access to the instant messaging service WhatsApp until the company complies with a series of orders from the State Civilian Police. The Piauí Tribunal of Justice overturned this decision, arguing that it was not reasonable because it affected millions of people in Brazil who had nothing to do with the investigations.

In sum, this was a brief overview of the current situation regarding freedom of expression in Latin American and the Inter-American Human Rights Protection System.

Thank you for your attention!