**“Pando de Mercado, María Cecilia c/ Gente Grossa S.R.L. s/ daños y perjuicios”**

**December 22, 2020**

**Summary and Outcome**

On August 13, 2010, the Argentine magazine *Revista* *Barcelona* published a satirical photomontage of Ms. Pando de Mercado, the wife of a military officer convicted of crimes against humanity, who had chained herself in front of a State building in order to denounce the conditions of her husband's imprisonment. The wife of the convicted officer sued *Revista Barcelona,* considering that the publication had violated her rights to honor, privacy and moral integrity, and requested an injunction to withdraw the magazine from circulation. After the first and second instance rulings sentenced the magazine to pay compensation and to withdraw the copies from circulation, the Supreme Court decided to revoke the sentence. The Court determined that the publication did not violate the right to honor of Ms. Pando de Mercado, since it was a political criticism that did not exceed the limits of freedom of expression.

**Facts**

On August 4, 2010, María Cecilia Pando de Mercado chained herself in front of a State building together with other wives of military men imprisoned for committing crimes against humanity. Her actions had the purpose of denouncing the conditions in which the convicted were imprisoned.

On August 13, 2010, *Revista Barcelona* published on the cover of its 193rd edition a photomontage showing a photo of María Cecilia Pando's face with the bound and naked body of another woman. This photo was accompanied by phrases that satirically referred to the events of August 4.

As a result of this publication, Mrs. María Cecilia Pando de Mercado sued the magazine for the sum of seventy thousand Argentine pesos for damages and requested an injunction to withdraw the magazine from circulation. For the plaintiff, this photo and those phrases of "pornographic content" that were exhibited in thousands of kiosks, damaged her honor and that of her family.

*Revista Barcelona* disputed the arguments invoked in the lawsuit, arguing that the plaintiff was a public figure who exposed her point of view and her body to defend the genocidal Argentine military of the last dictatorship. It also pointed out that the magazine's work is based on taking and "resignifying" a news item with a political intentionality that seeks to lead the reader to reflection and debate. Additionally, it established that there was no erotic or pornographic content in its publications. On the other hand, the defendant referred to the fact that the naked body was not that of the plaintiff, but a photomontage that does not resemble her body. Thus, the magazine established that it did nothing more than publish the news by resorting to satire and parody.

The first instance court affirmed that the defendant injured the plaintiff's honor because she is a private person who in this case voluntarily participated in matters of public interest. For the judge, private persons are not only more vulnerable, but also have fewer possibilities to respond to the falsehoods that have been disclosed about them, compared to the possibilities of clarification that officials or public figures have and, therefore, it is the press who must respond even for the slightest breaches of the duty of care. Finally, regarding the satirical character, the judge considered that the photos and phrases published in the magazine exceeded a mocking tone and made an exaggerated exposure of the plaintiff.

The National Civil Court of Appeals upheld the first instance judgment that sentenced *Revista Barcelona* to compensate the damages caused by the dissemination of the publication, which it considered harmful to the plaintiff's image and honor rights, and raised the amount of the compensation to the sum of seventy thousand Argentine pesos. It differed from the decision of the first instance judge by considering Mrs. Pando de Mercado as a public person whose participation in different events has become of general interest.

Against this pronouncement, *Revista Barcelona* filed an extraordinary appeal before the Supreme Court, which was granted.

**Decision Overview**

The main legal issue that the Supreme Court of Argentina had to resolve was whether the satirical publication of a photomontage of a person of public relevance and the phrases that accompanied it enjoy constitutional protection or whether, on the contrary, the right to honor of the person to whom they refer should prevail.

The Court began by emphasizing that freedom of expression is not an absolute right and that the protection of the right to honor is constitutionally enshrined in Article 33 of the National Constitution and in international treaties that have constitutional hierarchy since the 1994 constitutional reform (Articles 11 and 13.2.a of the American Convention on Human Rights; 17 and 19.3.a of the International Covenant on Civil and Political Rights; V and XXIX of the American Declaration of the Rights and Duties of Man, and 12 of the Universal Declaration of Human Rights), and infra-constitutionally in article 52 of the Civil and Commercial Code. The Court also mentioned that the protection of the private sphere granted by Article 19 of the Constitution includes the right to the protection of one's own image.

The Supreme Court believed that the plaintiff should be considered in her role as a public figure due to her active participation in the public debate on the judicial proceedings and policies adopted regarding the crimes against humanity committed during the last military dictatorship, in her capacity as president of the Association of Relatives and Friends of Political Prisoners of Argentina.

Therefore, for the Court, the origin of the publication had to do with a claim that was made in the public space and that had as an object of complaint the criminal proceedings for crimes against humanity carried out during the last military government and the policies on the issue that were being carried out by the Executive Power.

The Court also considered the characteristics of the context in which the publication took place. It considered that, in a way, the publication anticipates to the reader the “way" with which he should appreciate its content. In this sense, *Revista Barcelona* constitutes a graphic medium that uses satire to convey a message critical of power. Satire, the Court recalled, generates in those who read or observe it the perception that "something" is not true or accurate and concluded that, as a way of expressing ideas, it is not excluded from the constitutional protection of freedom of expression.

The Court pointed out, based on its jurisprudence, that the weighting criteria applicable to value judgments regarding the reputation and honor of third parties in the case of a criticism such as the one in question, must be given by the absence of expressions that are strictly and undoubtedly injurious and unrelated to the ideas or opinions expressed.

Moreover, the Court stated that people who are highly recognized for their participation in matters of public interest are exposed to criticism, even those formulated in an aggressive tone, since this enables a robust debate that is indispensable for the development of the republican and democratic life protected by the National Constitution.

The Supreme Court of Justice concluded that the issue of the *Revista Barcelona* of August 13, 2010, does not violate the right to honor of Mrs. Pando de Mercado, since it constitutes a political criticism that does not exceed the limits of the protection that the Constitution grants to freedom of expression, since it does not constitute a gratuitous insult or an unjustified vexation.

For the aforementioned reasons, the Court reversed the judgment and rejected the claim.

**Direction**

The decision expanded the scope of the right to freedom of expression since, unlike the previous instances, it granted constitutional protection to satire as a form of criticism of matters of public interest. At the same time, it recognized a high threshold for limiting this right: the absence of expressions that are strictly and undoubtedly injurious and unrelated to the ideas or opinions expressed.