**Summary and Outcome**

The Constitutional Court of Colombia ruled that a newspaper violated the fundamental rights of a journalist to a life free from violence, non-discrimination against women, the right to work and the right to petition, after she was allegedly sexually harassed by a co-worker. Through its actions and omissions, the newspaper failed in its duties to prevent, investigate and punish the violence that she suffered, as they did not afford her a clear support route with a gender perspective. The Court analyzed the phenomenon of sexual violence against women journalists and its impact on self-censorship. For the Court, the State and individuals have clear obligations to prevent, investigate, prosecute and punish violence and/or discrimination based on gender, particularly in the field of journalism and the media.

**Facts**

The journalist Claudia Vanesa Restrepo worked for *El Colombiano* newspaper since 2015. In 2019, Restrepo was victim of sexual assault allegedly committed by one of her co-workers, currently under investigation by the criminal justice system. She explained the situation to the general director and the director of human resources of the newspaper and requested to adopt measures such as the creation of a protocol of action and a standard operating procedure to deal with similar situations arising in the future. As the perpetrator was a co-worker, she had to see him daily in the office and this caused anxiety, discomfort and was a cause of concern for her.

A group of employees supported Restrepo and submitted a request to the newspaper to take a set of measures for dealing with sexual abuse and/or sexual harassment in the institution. The measures included the creation of a protocol focused on prevention and intervention, including an attention route for the victims. After this, she filed an information request to the newspaper for following up on the results of her colleague’s request. The newspaper gave a partial reply where they made a recount of the training, the projects and, in general, the actions they had carried out.

For this reason, Restrepo filed a *Tutela* (an application for the protection of constitutional rights) against the *El Colombiano* newspaper for the violations of her rights to equality, non-discrimination against women, to live a life free of violence and the right to petition.

The newspaper said that they were not competent to judge and decide on the guilt of the alleged aggressor and argued that it was an issue sub judice. They also claimed that the incident had occurred after working hours and for that reason they did not have a margin of action to intervene. It would be discriminatory and illegal to impose disciplinary sanctions or carry out dismissals. Still, they took measures to prevent the plaintiff from meeting her alleged aggressor.

Restrepo invoked the constitutional rights of equality, non-discrimination against women, to live a life free of violence and the right to petition on the action of *tutela*, as per articles 13, 43 and 23 of the Colombian Constitution. She requested an order for the newspaper to implement a prevention and care protocol in cases of sexual abuse and harassment. The first instance rejected the petition on the grounds that the plaintiff did not prove the violation of these rights. The tribunal confirmed the first instance ruling.

The Decree 2591/91, which regulates *tutela*, establishes that once the regular proceeding is concluded every *tutela* file should be sent to the Constitutional Court, which may or may not choose to select it for a special review. Accordingly, this case was chosen by the Constitutional Court for its review.

**Decision Overview**

Judge Cristina Pardo Schlesinger delivered the opinion of the Court.

The main issue before the Court was if the newspaper should have acted under the principles of joint responsibility and due diligence, despite the fact that the events denounced by the plaintiff occurred outside the newspaper's facilities. The Court was also concerned with whether the analysis of sexual assault cases against women should be done from a neutral perspective on the parties in conflict or from a differential and gendered perspective. Additionally, the Court was also asked tasked with examining if the right of petition presented by the plaintiff was fully answered. Finally, the Court had to decide on whether the resignation of the plaintiff from the newspaper was voluntary and spontaneous.

The Court analysed women’s right to not be subject to discrimination under the Colombian law and international human rights. It established that this right has to be guaranteed not only by the state but also by the individuals and the private sector. “The obligation of not to discriminate is not only in hands of the state authorities at all levels and hierarchies, but, in view of the asymmetry of power generated by actions based on gender stereotypes, it also covers those in the private sphere - for example, in the work field–, they are in the possibility of affecting the rights of women, causing them unequal treatment, without any legal justification". [para. 3.4.17].

For the Court, employers cannot be apathetic, careless or neutral towards these kinds of acts, and must adopt protocols and routes to support the victims. In addition, they must provide guarantees of prevention and non-repetition in cases of violence and/or discrimination based on gender. The victims should not be forced to confront their alleged perpetrator, or to alter their place of work or working hours. “Workspaces cannot turn into scenarios of neutrality or tolerance for behaviours related to gender violence. Employers are obliged to adopt concrete measures to support victims of this type of violence, among them, the prohibition of the aggressor from entering the workplace, advising on the route of attention to cases of violence or encouraging complaints of the facts” [para. 3.5.13].

The court also analysed the importance of freedom of expression for democracy. “Freedom of expression fulfils the following functions in a democratic society: i) allows seeking the truth and developing knowledge; ii) makes possible the principle of self-government; iii) promotes personal autonomy; iv) prevents abuses of power; and iv) acts as an 'escape valve' that stimulates peaceful confrontation of unshared state or social decisions”. [para. 3.8.1].

The Court discussed the relation between freedom of expression and gender equality as well. "Freedom of expression without gender equality would remain reduced in its scope and meaning for democracy, since it would put aside the voices and understanding of more than half of the people who inhabit the world." [para.3.8.3].

Afterwards, the court considered the different types of discrimination/violence that women journalists suffer due to their gender. For the Court, self-censorship is one of the most harmful consequences. "The harassment of women journalists due to their gender results in them not finding safe spaces and, therefore, opting for self-censorship, silencing their voice, messages and critical judgment or withdrawing from their profession". [para. 3.8.27].

For the Court, it was necessary to adopt a set of measures that aim to transform the role of women, and help in eradicating stereotypes and prejudices that cause or perpetuate violence and discrimination against women journalists.

The Court resultantly declared that there was a violation of Restrepo’s fundamental rights and ordered to protect the fundamental rights to a life free of violence and discrimination, the right to work and the right to petition, invoked by the journalist Restrepo before *El Colombiano* newspaper. For the Court, the newspaper failed to comply with its duties to prevent, investigate and punish the violence that the plaintiff suffered. This had deprived her of having a clear and reliable support route with a focus on gender, and prevented her from enjoying a dignified work environment without revictimizations. Consequently, the Court ordered to implement a pedagogical action, an internal protocol for sexual abuse cases and ordered a monetary reparation for the plantiff.