**Summary and Outcome**

The Federal Chamber of Mar del Plata revoked the charges against journalist Daniel Santoro for the alleged offences of attempted coercion and attempted extorsion in relation to his association with a source also processed for coercion and extorsion. The Chamber decided on an appeal filed by Santoro’s defense against an order from the Federal Judge of Dolores, which had charged Santoro for participating in the crimes as a result of his relationship with Marcelo D’Alessio, the co-defendant. D’Alisseio, on the other hand, was being charged for impersonating a DEA agent and for purportedly having strong connections with Santoro for the publication of damning news articles to coerce and extort two businesspersons involved in a corruption scandal. The Chamber considered that there was not enough evidence of Santoro’s participation in the criminal offences and concluded that different conversations between the defendants were related to their source-reporter relationship and enjoyed protection, regardless of their ill-intended use by D’Alessio.

**Facts**

On August 6, 2019, The Federal Judge of Dolores charged Marcelo D’Alessio and Daniel Santoro for coercion and attempted extorsion.

By the time the resolution was handed by the Judge, Marcelo D’Alessio was detained, pending trial for the alleged crimes of creating an illegal association for committing espionage and other crimes. Nevertheless, the Judge’s decision was limited to the alleged coercion attempted against businessman Brusa Dovat and the attempted extorsion against businessman Mario Victor Cifuentes. According to the Judge, there was enough evidence to consider the commission of the crimes by D’Alessio as proven and to determine with a sufficient degree of probability, although not with certainty, of Santoro’s participation in them. According to the Judge, the press and Santoro’s role as a journalist had been instrumental for D’Alessio’s plans.

While D’Alessio was charged for the direct perpetration of the crimes, Santoro’s charges referred to his alleged participation in them as per articles 42, 45, 55, 149 bis and 168 of the Criminal Code.

The Federal Judge’s decision concluded that there was enough evidence to determine Santoro’s participation in the plans and the ends of D’Alessio’s association. The Judge said that, although there were more complexities for determining if Santoro had acted with knowledge, meaning intention, there was sufficient proof of it.

The Judge considered that Santoro had used his professional standing to participate in a criminal association dedicated to illegal spying and extorting and influencing judicial decisions through the illegal or unethical procurement of testimonies, all with a high likelihood of having political and legal implications.  The Judge also concluded that Santoro and D’Alessio had a friendly relationship, which included moments in which Santoro presented D’Alessio to judges, legislators and other journalists as a DEA representative.

According to the Federal Judge, if the facts were seen in isolation, there could be a conclusion that Santoro’s involvement in the facts was a matter of casualty, a mistake, or D’Alessio’s abuse of his relationship with him. However, the Judge concluded that there was a reiterative conduct that demonstrated a clear link between both individuals as well as their acts or omissions.

An example given by the Judge was that on April 4, 2018, just before the airing of TV show “Animales Sueltos” in which Santoro participated, D’Alessio had told Cifuentes, who worked at the company OPS, to watch the program at the same time that he was asking him to hand USD 1,200,000 to clean the name of his company from the Federal Taxation Agency or otherwise face the publication of a damning article by Santoro in newspaper Clarín, where he worked as the editor on law enforcement. Few hours after, Santoro was talking on the TV show about the company OAS, investigated by corruption in Argentina, but said OPS instead. Said mistake happened on another airing of the show after a second call from D’Alessio to Cifuentes on April 5, 2018. The next day, Santoro published an article about Dovat in Clarín.  In addition to this, the Judge considered that there was a link between information given by D’Alessio to Santoro and his publications related to OPS, which showed Santoro’s participation in the criminal association.

Further, the Judge examined the case of Dovat by referring to WhatsApp messages between D’Alessio and other individuals’, including Santoro, in which D’Alessio talked about “softening” and “panicking” Dovat in order to make him give an interview and to make a criminal complaint related to Venezuelan company PDVSA, where he had worked at previously. The Judge considered that this was relevant when determining Santoro’s knowledge of the crime.

This interview took place on January 30, 2019. Few minutes afterwards, D’Alessio messaged Santoro to tell him he was looking for information on Dovat and that he wanted him to “crack” before the prosecutor of the case he was involved in. In a further message on February 2, 2019, D’Alessio told Santoro that he would let him know if he had more information of Dovat as he was panicking. The interview was published by Clarín on February 3, 2019 and Santoro sent information on Dovat recovered from a credit scoring database on February 4, 2019.

The Judge gave more context by referring to other three cases in which Santoro had allegedly participated in with a similar modus operandi. The Judge also underpinned that he was not analyzing Santoro’s journalistic work or his sources, but instead an alleged participation in criminal activities. If it was proven that Santoro was deceived by D’Alessio, said the judge, that would have been an undermining of freedom of the press.

The Judge ordered the Provincial Commission on Memory to issue a report to determine if Santoro’s journalistic activities could be considered as psychologic operations against the victims of the crime. In addition to that, the Judge ordered the seizure of Santoro’s assets for a sum equivalent to 3 million pesos.

Santoro’s defense appealed the order of processing the journalist, arguing that the charges against him were based on mere conjectures and that there was no evidence of a plot between him and D’Alessio, or of Santoro’s knowledge of the criminal activities.

With respect to the case of Dovat, Santoro’s defense argued that the interview was not forced and that he did not intimidate him during it, showing that there was evidence proving that Santoro didn’t even know who Dovat was before he interviewed him.

Referring to the case of Cifuentes, Santoro’s defense focused on saying that Cifuentes’ first conversations dated way back, before any involvement of Santoro. Furthermore, the defense argued that the publications of Santoro related to OPS were a matter covered widely by the media and that Santoro’s publications could not actually be damning against Cifuentes as the issues were already known by the public. They also refuted the alleged link between D’Alessio’s reports to Santoro and his publications. Referring to the confusion between OPS and OAS in “Animales Sueltos”, the defense submitted that this was normal, since Santoro was covering OPS at that time and making that mistake was understandable. The defense highlighted that even the Federal Judge noted that Santoro did not look for any economic benefit from the alleged extorsion.

Further, Santoro’s defense questioned the decision of requesting a report to the Provincial Commission, as the said authority did not posess the function of issuing that type of documents. They considered that such an order was against the constitutional and international protections to freedom of expression as it was commissioning an authority of a political nature to give an opinion on the rightful exercise of freedom of expression. The defense also argued that the request of seizing Santoro’s assets was against the procedural norms, referring to the hefty sum.

Decision Overview

Judge Eduardo Pablo Jiménez delivered the judgment for the Chamber.

The main issue before the Chamber was to determine whether Santoro’s journalistic activities, in particular those having a link with Marcelo D’Alessio, could be framed as showing the journalist’s participation in coercion and attempted extorsion against the two businessmen.

The Chamber started by saying that the it must exercise extreme caution in order to avoid a judicial decision that directly or indirectly hinders freedom of the press and that imposes sanctions on the protected relationship of an investigative journalist with his source. The Court also clarified that it was not entitled to judge the quality or content of journalistic work, or the relationship between a journalist and his source, since those matters pertained more to ethical or credibility judgments by society [p. 90].

The Chamber referred to Case Law of the Inter American Court of Human Rights, the Argentinian Supreme Court and of the U.S. Supreme Court on right to freedom of expression and the press constituting the core of democratic society and opined that a decision like the one of the Federal Judge of Dolores constituted a real danger to those rights. Furthermore, the Chamber emphasized that the law and judges had a duty of precaution towards the protection of press freedom, which also impliedly included preserving the journalist’s right to keep their sources confidential, subject to specific exceptions that did not apply in Santoro’s case [p. 95].

After referring to said principles, the Chamber concluded that there was not sufficient evidence regarding the alleged participation of Santoro in the coercion against Dovat. In that sense, the Chamber explained that there was no evidence of threats of an imminent and severe outcome from Santoro in order to have the interview with Dovat. The Chamber said that, in any case, the intimidation against Dovat was made by D’Alessio and he was the one who reached out to Santoro in order to arrange the interview. Furthermore, the Chamber highlighted that D’Alessio was the one “softening” Dovat, and not Santoro.

The Chamber also highlighted that Dovat had declared on the case that Santoro had asked him if he wanted to have the interview and Santoro himself said that he made that question twice. The Chamber concluded that it was not possible to consider that as a coercion. It also underpinned a chat that was part of the evidence, in which Santoro responded to a proposal by D’Alessio of taking a photographer to the interview by saying that if Dovat agreed, they would record him with a cell phone. Additionally, the Chamber referred to how Dovat spoke with several journalists about his case, showing that his relationship with the press was not limited to Santoro.

The Chamber reached to the conclusion that there was not enough evidence to prove the participation of Santoro in the case of Cifuentes. The Chamber emphasized the duty of precaution when judging a journalist who was working with confidential sources and enjoyed a careful protection of the right to disseminate information [p. 104].

The Chamber’s focus was on the alleged participation of Santoro in the pressures against Cifuentes through the mistaken mention of OPS instead of OAS in “Animales Sueltos”. The Chamber concluded that there was no evidence to discard the allegations that this was a mistake.

Moreover, the Chamber also emphasised that the article published by Santoro in Clarín was not determinative of extorsion, as the information published was already known by the public and published in other newspapers. When referring to this issue, the Chamber introduced a quote by the IACtHR in the case of Herrera Ulloa v. Costa Rica saying that sanctioning a journalist for the dissemination of information published in other outlets was a violation to freedom of expression [p. 106]. In addition to this, the Chamber also highlighted that some of the information in Santoro’s article matched with what was handed to him by D’Alessio, and was limited to their reporter-source relationship and not to a concertation between them.

The Chamber concluded by reemphasizing the relevance of the press in democratic societies as purveyors of information to the public and said that such importance was grounded in the balancing test applied in its judgment, which meant that there is a preference for freedom of expression. According to the Chamber, “freedom of expression and journalistic investigation must be defended and preserved if there is not sufficient proof to “open that door”, whose content safeguards the structure of democratic government, given that the concerned journalist in the case is not advocating for violence, the violation of laws, or violates themselves, which must in any case be clearly confirmed in order to leave aside such a severe constitutional guarantee”[p. 108]. Furthermore, the Court referred to case laws of the U.S. Supreme Court stating that the protection to freedom of the press should prevail regardless the illegality of the sources, or the seriousness of an intrusion to privacy, notwithstanding the possibility to demonstrate falsehood or ill intention [p. 108].

As such, the Chamber concluded that the premises used by the Federal Judge were mere presumptions or indications that did not meet the threshold for incrimination, especially in a case that could significantly affect freedom of expression.

Judge Alejandro Osvaldo Tazza gave a concurring opinion saying that, regardless of the protection granted to confidential sources and the role of the press in society, such protection did not afford impunity for journalists involved in the perpetration of crimes. In that sense, he considered that the decision of the Federal Judge did not affect the freedom of expression. Ultimately, Judge Tazza considered that there was not enough evidence of Santoro’s participation in the crimes in any case.

As a result, the Chamber revoked the charges against Santoro.