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LADB Staff

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Media Problems Rife in Region

by LADB Staff

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The Inter-American Court of Human Rights (IACHR) has vindicated a Costa Rican journalist in a case that may only have cooled the tip of a melting iceberg.

In 1999, La Nacion reporter Mauricio Herrera published four articles that relied on revelations in the Belgian press about the activities of a former Costa Rican diplomat, Felix Przedborski. For his efforts, Herrera soon found himself convicted in a Costa Rican court of a "crime against the honor" of the diplomat, and he received a sentence of 120 days in jail and a nearly US\$200,000 fine (see NotiCen, 2001-02-22). Since that decision, three other reporters have run afoul of the law.

In February and March of 2004, Costa Rica's law on injury, calumny, and defamation have meted out a choice to the three Diario Extra reporters of 10, 30, and 50 days in jail, respectively, or commutation by payment of a specified amount of money for each day. In these cases, the reporters, like Herrera, were quoting others, but were held personally responsible for what was said.

Marco Leandro Camacho reported on a protest against a school principal and quoted members of the student government and their parents. The court found that the reporter had "made the declarations his own," fined the paper, and sentenced Camacho to 30 days in prison. Gabriela Chavez Perez got 10 days for publishing an altered photo, which had been circulated on the street and on the Internet, together with the original photo, illustrating a story about that very subject, the alteration and sale of pictures of models on a TV program.

Jose Luis Jimenez Robleto got 50 days in jail for a story about a public official accused of mismanagement of funds. Months later, the charges were dismissed, the official sued, and the court punished the reporter. Journalists react These events prompted action by the Colegio de Periodistas de Costa Rica. The organization's president Raul Silesky called them restrictions that threaten and hinder the fulfillment of the social responsibilities of journalists. To comply with their duty to society requires the conditions and media necessary for them to act in freedom, he said in an article titled *Respeto y tolerancia*. The article went on to say, "This responsibility is restricted when the exercise of journalism and its pluralistic vocation come up against serious threats and obstacles."

Later, speaking on World Press Freedom Day, Silesky returned to the theme, defining restriction as "when it is about silencing in one way or another, from subtlety to extreme violence." He was strongly advocating for the journalist "who, in difficult circumstances, investigates and documentarily denounces acts of corruption or abuses involving state institutions, persons, companies, or private organizations vested with power."

The comments came two days after the court heard Herrera's suit against the state of Costa Rica. La Nacion followed up by publishing a commentary by Koichiro Matsuura, director general of UNESCO, reading in part, "A free press is not a luxury that can await better times, but part of the

process itself, thanks to which those better times are achieved." The law under which Costa Rica pitches its reporters into prison is the 102-year-old Ley de Imprenta. The archaic rule has been under study since May 2002, when a legislative committee was set up to reform the Code and the Penal Processal Code.

Article 7 of the Ley de Imprenta is also under constitutional review in the Sala Cuarta of the Corte Suprema de Justicia (CSJ), on an action brought by Diario Extra, according to the paper's lawyer Carlos Serrano. Contributing to efforts to keep reporters out of jail, the Miami-based Inter-American Press Association (Sociedad Interamericana de Prensa, SIP), at a March meeting in Mexico, petitioned the Costa Rican administration to adhere to rules of the Sistema Interamericano de Proteccion a los Derechos Humanos, so that a "complete liberty of expression prevail." Among the points SIP raised were that: 1. To punish with imprisonment is unnecessary to protect the reputations of persons in a democratic society 2. Therefore, imprisonment is incompatible with the Convencion Americana de Derechos Humanos (also known as the Pacto de San Jose), and have an inhibitory effect on freedom of expression, inevitably resulting in self-censorship.

Justice breaks their way

Vindication finally came in early August, when the IACHR ruled against the government in the Herrera case. President Abel Pacheco quickly confirmed that his government would comply with the finding condemning the state of Costa Rica for violating the reporter's right to freedom of thought and expression under the provisions of Article 13, Liberty of Thought and Expression, of the Pacto de San Jose, and ordering annulment of his sentence.

Pacheco congratulated Herrera, saying, "I'm very happy that justice was done for Mauricio," whom he referred to as "a great professional." The IACHR also awarded Herrera US\$20,000 in damages and US\$10,000 in defense costs. The state must also "leave without effect in all its extremes" the 1999 decision, and, perhaps most importantly for the Diario Extra defendants, reform Costa Rican law to comply with the requirements of the Pacto de San Jose.

Costa Rica was also found to have been in violation of Article 8 of the Human Rights Convention, Judicial Guarantees, in rejecting Herrera's 2001 appeal of the 1999 conviction. This decision marks the first time the IACHR has condemned Costa Rica since the country recognized its decisions as legally binding in 1980. Herrera told The Tico Times, "This is not only a personal triumph, but a triumph for the responsible practice of journalism. The judges are saying that public functionaries are subject to a greater examination by the citizens of the country...they must accept greater criticism than other citizens."

Former La Nacion editor in chief Alejandro Urbina said the decision, at first glance, appears to give journalists greater freedom to criticize politicians without the fear of legal repercussions that has caused significant self-censorship in newsrooms for years. "Overall, [the ruling] will help us fulfill our primary obligation to provide the necessary information to citizens in a free and democratic society," Urbina said. "I believe that self-censorship, which is quite prevalent, will in the immediate future diminish and that will lead to more bold, yet responsible, publications." Urbina said the ruling would also require the state to change judicial practices, citing Article 175 of the ruling, which

says, "The court concludes that the magistrates of [Sala III], in resolving the appeal to the CSJ, interposed against the condemning sentence, did not fulfill the requirement of impartiality."

Nevertheless, he cautioned, "This ruling helps, but it does not establish, specifically, how press laws should change." A new law now under legislative consideration would take cases like this out of the criminal courts, making them civil matters and curtailing the possibility of jail time. This change would be consistent with an annex to the ruling written by IACHR president Sergio Garcia, which says, "The civil route is the most adequate mechanism to resolve journalistic conflicts."

In 2002, La Nacion surveyed reporters from 18 of the country's news outlets. The study found 62% of respondents said they had omitted material for fear of legal repercussions, and 99% said they believed the press laws were in dire need of reform. Silesky said the decision would force the country to adopt legislation that would bring it into line with international standards, particularly with regard to reprinting material published elsewhere, and to references to such material.

Media problems endemic to the region

While these events relieve the immediate concerns of Herrera and possibly the other reporters, they do not solve endemic media problems elsewhere in the region. There remains the issue of ideological bias based on a culture of cronyism and personal favors stemming from the media's economic dependence on advertising, and the immunity conferred by the media-owning classes.

In El Salvador, Human Rights Ombud Beatrice de Carillo told reporters that her office continues to record violations of journalistic rights and norms. Both her office and the Asociacion de Periodistas de El Salvador (APES) have issued recent reports citing abuses of journalists and of journalism. But in these cases the focus goes beyond archaic law to zero in on factors more deeply embedded in the societal infrastructure the relations of property and class.

Among the abuses of media freedom in El Salvador, APES pointed to the closure of a TV opinion show, Sin Censura, and the government's attempts to put the carrier, Channel 12, out of business for its criticism of the state by means of an advertising boycott. The country has 14 national TV channels, four of which are owned by businessman Boris Esersky, three by businessman Antonio Safie, four by various religious leaders, one by the state, one belongs to the Universidad Tecnologica, and one, channel 12, to Mexican TV Azteca. Of these 14, six air news programs, and only one, channel 12, openly criticizes the government.

On the print side of the Salvadoran media, there are eight national papers and several locals. El Diario de Hoy, Diario El Mundo, and El Mas are owned by the Altamirano family; La Prensa Grafica and El Grafico are the property of the Dutriz family; El Monitor and Desarrollo 21 belong to the Association of Independent Journalists, and Co-Latino, a cooperative with national and international labor and church groups.

According to Central America Report, "With the exception of the leftist Co-Latino, all the other dailies are unequivocally allied with the Salvadoran right." Oscar Picardo Joao, director of

Universidad Francisco Gavidia, has classified the media according to their historical political affiliations. He identified five specific groups: The "pro-government media" works directly with the state and promotes news stories that show the government in a positive light. The "moderate right" openly supportive of the ruling Alianza Republicana Nacionalista (ARENA) party.

The "critical media" sometimes sympathizes with the opposition. The "sensationalist tabloids" focus on human misery and suffering. The "independents" rigorously objective Picardo said that his classifications indicate that the media in El Salvador lacks real journalistic freedom because, for the most part, it is guided by political parties, dominant economic theories, religious groups, or specific interest groups. The relationship between media and politics has therefore forged an alignment of social commentators with the political-business project that controls the state and threatens democratic development.

The Picardo analysis is fleshed out by Universidad de El Salvador journalism professor Mario Alfredo Cantarero, who added that the media is largely in the hands of its financiers, the advertising industry. The ad agencies are linked to the communications monopolies, channeling revenues according to nepotistic ties, rather than market share. Cantarero creates a picture in which the biggest advertisers set news agendas and commodity information, and are immune from press scrutiny. APES president William Melendez completed the narrative of press impediments by recounting regular meetings among editors, media leaders, and government representatives to orchestrate campaigns and slant coverage in favor of the government.

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