

## CHAPTER VI

### RIGHT TO FREEDOM OF EXPRESSION

#### A. INTRODUCTION

1. Respect for the right to freedom of expression is one of the central concerns of the IACHR, and it has consistently dedicated a special chapter to this issue in its reports on the human rights situation in different countries of the hemisphere.<sup>1</sup> At its 97th session, held in October 1997, the Commission established the Special Rapporteurship on Freedom of Expression in the Americas.<sup>2</sup> Mr. Santiago A. Canton, in his capacity as Special Rapporteur, was part of the Commission's delegation that visited the Republic of Paraguay July 28-30, 1999. The Special Rapporteur has prepared this chapter, at the request of the IACHR, mainly on the basis of information collected during the on-site visit and other information and complaints received since. The Commission approved the text submitted and decided to include it as part of this Report.

2. This Chapter refers first to the fundamental importance of the freedom of expression as a cornerstone of democracy and the rule of law. Second, it refers to the protection accorded by current Paraguayan legislation and international standards to those who exercise this right, engaging in an analysis of various areas recognized to be favorable to the development of full respect for the freedom of expression. Third, an analysis is presented of the situation of the media, followed by a chronology of the information received by the Rapporteur with respect to the various problems that have arisen in connection with the freedom of expression, especially with individuals who work with the media. Finally, a series of conclusions and recommendations are offered.

#### B. FREEDOM OF EXPRESSION AND THE RULE OF LAW

3. Full recognition of the freedom of expression is a fundamental guarantee for ensuring the rule of law and democratic institutions. This has been recognized on several occasions by various sectors of civil society, international organizations, and most of the states.

4. The Inter-American Court of Human Rights has stated that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.<sup>3</sup>

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<sup>1</sup> See IACHR, Report on the Situation of Human Rights in the Dominican Republic, 1999. Third Report on the Human Rights Situation in Colombia, 1999. Report on the Situation of Human Rights in Mexico, and Second Report on the Situation of Human Rights in Peru.

<sup>2</sup> The Inter-American Commission on Human Rights designated Argentine attorney Santiago A. Canton as Special Rapporteur for Freedom of Expression; he assumed the post on November 2, 1998.

<sup>3</sup> I/A Court H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85, November 13, 1985, para. 70.

5. The freedom of expression includes the right of every person to seek, receive, and disseminate information and ideas of all sorts. Accordingly, this right has a dual dimension, both individual and social. In this regard, the Court has said of this dual dimension:

It requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it... implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.<sup>4</sup>

6. The Heads of State and Government of the hemisphere, meeting at the Second Summit of the Americas held in April 1998, in Santiago, Chile, highlighted the importance of the freedom of expression in the hemisphere and stated their support for the creation of the office of the Rapporteur for Freedom of Expression within the IACHR. In the Declaration of Santiago, the Heads of State and Government indicated:

We agree that a free press plays a fundamental role in this area and we reaffirm the importance of guaranteeing freedom of expression, information, and opinion. We commend the recent appointment of a Special Rapporteur for Freedom of Expression, within the framework of the Organization of American States.<sup>5</sup>

7. The plan of action of the Santiago Summit established, among its fundamental objectives, strengthening the exercise of and respect for all human rights and the strengthening of democracy. This includes the fundamental right to freedom of expression and thought, through support for the activities of the Inter-American Commission on Human Rights in this area, in particular the recently-created Office of the Special Rapporteur for Freedom of Expression.

8. For its part, the Declaration of Chapultepec, adopted at the Hemispheric Conference on Freedom of Expression (Mexico City, 1994), sponsored by the Inter-American Press Association (IAPA) and signed by 20 heads of state and government, established basic principles on the freedom of expression.

9. On November 26, 1999, the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), and the Special Rapporteur for the Freedom

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<sup>4</sup> *Id.*, para. 30.

<sup>5</sup> Declaration of Santiago, Second Summit of the Americas, April 18-19, 1998, Santiago, Chile, in "Official Documents of the Miami and Santiago Summits," Vol. I, Office of Summit Follow-up, Organization of American States.

of Expression of the IACHR adopted a joint declaration that establishes basic guidelines to be followed to ensure full respect for the freedom of expression.<sup>6</sup>

10. The American Convention on Human Rights establishes the right to the freedom of expression at Article 13 in the following terms:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
  - a. respect for the rights or reputations of others; or
  - b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group

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<sup>6</sup> The Joint Declaration establishes as follows:

- We recall that freedom of expression is a fundamental international human right and a basic component of a civil society based on democratic principles.
- An independent and pluralistic media is essential to a free and open society and accountable government. Respect for freedom of the media in our Member States, although very different from country to country, leaves much to be desired.
- Certain States have continued to exert and allow impermissible pressure on the media in their respective countries. The levels of harassment might be different but the general aim is the same: to suppress pluralism and open debate on issues of concern to citizens.
- Freedom of expression is not only a fundamental human right in and of itself, but it has ramifications for economic development as well. The media has a "corrective" function by bringing to the public's attention corruption and inequitable practices. The absence of free media can lead to economic stagnation and improper practices by both governments and businesses.
- Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented.
- The media should refrain from any advocacy of national, racial or religious hatred that constitutes incitement to violence or to any other similar action.
- In many countries laws are in place, such as criminal defamation laws, which unduly restrict the right to freedom of expression. We urge States to review these laws with a view to bringing them into line with their international obligations.
- We affirm that States must ensure an effective, serious and impartial judicial process, based on the rule of law, in order to combat impunity of perpetrators of attacks against freedom of expression.

of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

11. In October 2000, the Inter-American Commission on Human Rights, in support of the Special Rapporteur for Freedom of Expression, adopted the Declaration of Principles on Freedom of Expression. (See attached.)

### **C. SITUATION OF THE FREEDOM OF EXPRESSION IN PARAGUAY**

12. The preamble of the Charter of the Organization of American States establishes that “representative democracy is an indispensable condition for the stability, peace and development of the region.” The concept of representative democracy is based on the principle that political sovereignty vests in the people, and that in the exercise of that sovereignty, the people chooses its representatives to exercise political power. The representatives thus carry out a mandate from their constituents, who aspire to have a dignified life, in freedom and democracy.

13. In its 1998 Annual Report, the Commission included a chapter on the human rights situation in Paraguay, analyzing the evolving democratic institutional framework as of the overthrow of the Stroessner dictatorship in 1989. This document highlighted the commitment expressed by president Gen. Andrés Rodríguez to establish a society respectful of the law and human rights. As a conclusion to that report, the Commission notes that “only through the effective exercise of representative democracy can human rights be fully guaranteed.”

14. Protecting the freedom of expression is one of the elements ensuring the consolidation of democratic institutions. This is especially relevant in Paraguay, where democratic institutions are in the process of strengthening.

15. First, the Special Rapporteur notes that in 1998, Paraguay did away the *desacato* laws, thereby complying with the Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights, issued by the Inter-American Commission.<sup>7</sup> In addition, while the Paraguayan Constitution guarantees the exercise of this right, there are also laws and practices that limit the exercise of this right. This chapter presents an analysis of the situation of freedom of expression in Paraguay and some comments on principles that have yet to be incorporated in the domestic legislation, and whose inclusion will considerably bolster protection for the freedom of expression, in keeping with the provisions of the American Convention on Human Rights and the Declaration of Principles on Freedom of Expression.

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<sup>7</sup> IACHR, Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights, OEA/Ser.L/V/II.88, Doc. 9 rev. (1995). The IACHR concluded that the so-called *desacato* laws are restrictive of the freedom of expression and thought and therefore incompatible with Article 13 of the Convention.

## 1. Current law

16. Article 26 of the Paraguayan Constitution establishes the basic principle in relation to the freedom of expression:

### Freedom of Expression and of Press

Free expression and freedom of the press, and of the dissemination of thoughts and opinions, without any type of censorship, and with no more limitations than the ones established by this Constitution, are hereby guaranteed. In consequence, no law is to be passed that restricts or makes these rights unfeasible. There shall be no press crimes; they shall be considered common crimes committed through the press.

Everyone has the right to generate, process, or disseminate information and to use any legal, effective instrument to achieve these goals.

17. In addition, the first part of Article 28, Chapter II, refers to the right to information, when it states that:

Every person has the right to receive accurate, responsible, and even-handed information....

18. While Article 26 of the Constitution establishes a broad and unlimited protection for the freedom of expression, the first part of Article 28 imposes a requirement on the right to information that seriously hampers the freedom of expression. The constitutional qualifiers of information--“accurate, responsible, and even-handed,” are contrary to Article 13 of the American Convention, which explicitly establishes that the freedom of expression and information should not be subject to any prior conditions. Both Article 13 of the Convention and the Declaration of Principles on Freedom of Expression,<sup>8</sup> as well as Article 19 of the International Covenant on Civil and Political Rights and Article 19 of the Universal Declaration of Human Rights refer to freedom of expression, information, and opinion. The right protected in each of them is access to all information, not only such information as can be considered accurate, responsible, and even-handed.

19. The Inter-American Court has referred to this issue in Advisory Opinion OC-5/85 on Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism:

The two dimensions mentioned [individual and collective] of the right to freedom of expression must be guaranteed simultaneously. One cannot legitimately rely on the right of a society to be honestly informed in order to put in place a regime of prior censorship for the alleged purpose of eliminating information deemed to be untrue in the eyes of the censor.<sup>9</sup>

20. The Rapporteur referred to this requirement in his 1999 report, in which he expressed concern over limitations on freedom of expression in several countries of the hemisphere. This doctrine has precisely the opposite effect of what its promoters argue as the basis for its application. In other words, the search for truth in information is seriously limited

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<sup>8</sup> The Declaration of Principles on Freedom of Expression was approved by the Inter-American Commission on Human Rights in October 2000.

<sup>9</sup> See, I/A Court H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights), Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5, para. 33.

when its free flow is impeded as the result of an arbitrary value judgment. In any event, under the international standards and the more advanced case law, only information that proves to be both erroneous and produced with actual malice may be sanctioned. Indeed, in this case such a sanction must be the result of subsequent action, and in no case may an effort be made to pre-condition it.<sup>10</sup>

### 1.a *Habeas Data*

21. The writ of *habeas data* is designed as the action establishing the right of all persons to access to information about oneself or one's property in an expeditious and non-costly manner, whether it is contained in data bases, public records, or private records, and, if necessary, to have it updated, rectified, and/or amended.<sup>11</sup>

22. The Constitution of Paraguay establishes this action in its Article 135:

Every person may have access to information and data about oneself, or one's property, that appear in official or private records that are public, and to learn of the use made of such information, and its purpose. Every person may request of a judge with jurisdiction that such information be updated, rectified, or destroyed, if erroneous or if it unlawfully has a detrimental effect on one's rights.

23. Similarly, Article 136 provides:

No competent judge may refuse to hear the actions or remedies described in the previous articles. If he does so without legal cause, he will stand trial, and if appropriate, he will be removed from office.

In his ruling, the judge must also pass judgment on the responsibilities of those officials who committed the illegal action, and if there is *prima facie* evidence of the perpetration of a crime, he will order the suspension or arrest of those found to be responsible as well as any appropriate preventive measure aimed at ensuring a more effective compliance with these responsibilities.

Additionally, if it falls within his jurisdiction, he will order the respective pretrial inquest and will hear the opinion of the prosecuting attorney. If it does not fall within his jurisdiction, he will refer the case files to a competent judge.

24. The procedure for bringing this action in Paraguay is regular, in keeping with the Code of Civil Procedure. According to the information collected, from October 20, 1998 to March 31, 2000, a total of 1,038 petitions were presented writs of *habeas data*; none has been denied.

25. In addition, the writ of *habeas data* in Paraguay is exempt from the payment of judicial fees.

26. The Rapporteur wishes to emphasize the progress that the establishment of this action represents for Paraguayan society, while highlighting that Paraguay is one of the few countries of the hemisphere that has complete legislation regarding the writ of *habeas data*.

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<sup>10</sup> See, Annual Report of the Inter-American Commission on Human Rights, Volume III, Annual Report of the Special Rapporteur for Freedom of Expression, p. 31.

<sup>11</sup> See Declaration of Principles on Freedom of Expression.

### **1.b. Access to information in the hands of the government**

27. The right of access to information in the hands of the government is a fundamental individual right, as it is one of the most effective instruments for citizen oversight of the actions taken by the authorities, and for strengthening democracies in the hemisphere.

28. This right is contained in the provisions of Article 13(1) of the American Convention on Human Rights, insofar as it establishes the freedom to seek information. In addition, the Declaration of Principles on Freedom of Expression expressly provides:

Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

29. The Paraguayan Constitution, at Article 28 of Chapter II, On Liberty, recognizes this right in the following terms:

... Public sources of information are free to all. The law shall regulate the modalities, time periods, and sanctions to which they are subject to ensure that this right is effective.

30. While Article 28 of the Constitution establishes the general principle of access to information in the possession of the State, there is no law that regulates public access to information in the possession of the State. In addition, no clear criteria are established for classifying the information that is not public. As the general principle is that information should be public, and since it is a subject of such importance to society, the criteria for exceptions must be explicitly established by law. The Special Rapporteur supports the principles adopted by the non-governmental organization Article XIX regarding legislation on access to information.

31. The Special Rapporteur has said that guaranteeing people access to information in the hands of the state is a mechanism for transparency, review, and evaluation that enables citizens to learn about government policies and the activities of public officials, which helps strengthen democratic institutions.

32. The practices and values of a democratic society include having procedures that guarantee citizens access to information in the possession of the state, as a means of keeping a check on the public administration. Access to information is one of the most effective mechanisms for fighting corruption and impunity.

33. In a representative system, public officials are accountable to the citizens, who entrusted in them their political representation and the power to decide on public matters. The person in whom the right to information vests is the individual who delegated the management of public affairs in the representatives. In addition, the information that the state uses and produces is obtained with funds from taxes paid by the citizens.

34. In this regard, it is necessary to clearly establish the principle that administrative acts should be public, and rapid and effective procedures should be put in place to ensure that this right is effectively exercised. In addition, the administrative obstacles that make it difficult to

obtain information should be eliminated, and easy-access, simple, and low-cost (to the petitioner) systems for requesting information should be implemented.

### 1.c. Defamation, Slander, and Libel

35. As indicated, the right to freedom of expression and information is one of the main mechanisms available to society for exercising democratic control over those who are entrusted with matters of public interest. Consequently, when the freedom of expression and information is restricted, citizen oversight of public employees is hindered or limited, and democracy is transformed into a system in which authoritarianism finds fertile ground for imposing itself on the will of society.

36. The Special Rapporteur wishes to highlight that Paraguay does not have what are known as *desacato* laws in its legislation. This is a major stride forward in Paraguayan legislation that is a model for the other countries of the region. *Desacato* laws criminalize offensive expression directed at public officials.<sup>12</sup>

37. Nonetheless, the Special Rapporteur was informed of several provisions that may well work to the detriment of the free exercise of the freedom of expression.

38. One of these is Article 151(3) of the same Code, which would define criminal defamation in broad and vague terms indicating that expression must “not exceed the bounds of acceptable criticism,” which could give rise to interpretations restrictive of the freedom of expression.<sup>13</sup> In seeking the protection of a democratic society, the free debate of ideas must impose the least possible restrictions on freedom of expression, and the protection of the reputation must be guaranteed exclusively by civil sanctions in the case of a public official or public figure. In addition, the restrictions should be exceptional and specifically set forth in the law.

39. Similarly, Paraguayan legislation does not distinguish adequately between public and private figures when addressing image, honor, or reputation of persons.<sup>14</sup> The lack of such a distinction runs to the detriment of research on and dissemination of information of public interest.

40. Representative democracy requires that public officials, or all those who have an interest in public affairs, be accountable to the men and women they represent. The individuals

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<sup>12</sup> Principle 11 of the Declaration of Principles on Freedom of Expression provides: “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘desacato laws,’ restrict freedom of expression and the right to information.”

<sup>13</sup> The Paraguayan State, in its observations on this report, stated as follows: “On this point, the major responsibility is on the judges to lay down case law that guarantees the freedom of expression, investigation, and dissemination of information of public interest and to limit the misuse of these criminal laws by public officials who allege violations of their rights to honor and reputation.”

<sup>14</sup> On this point, the Paraguayan State highlighted that Article 151(4) provides that “the affirmation or dissemination shall not be penalized when, weighing the interests and the duty of inquiry of the author with the circumstances, it is a proportional measure for defending public or private interests.” The State further noted that “the admission of evidence of the truth in this case is guaranteed, pursuant to section 5 of the same article.” Nonetheless, these measures are not sufficient for distinguishing between public figure and private figure adequately to limit to a minimum any restriction on the freedom of expression. As indicated in paragraph 38, one’s reputation should be protected through civil sanctions alone in the case of public officials or public figures. In addition, it may be impossible to prove the veracity of the statements, since value judgments admit of no proof. See paragraph 48 *infra*.

who make up a democratic society delegate to representatives the administration of matters of interest to the entire society. Nonetheless, persons with a vested interest in these matters continues to be society as a whole, which should have a broad right to monitor, with the least possible restrictions, the conduct of public affairs by the representatives.

41. The need for complete and effective control over the management of public affairs, as a guarantee of the existence of a democratic society, requires that the individuals in charge of managing public affairs have a different protection than that enjoyed by any private individual not involved in matters of public interest.

42. The Inter-American Commission has said:

The use of *desacato* laws to protect the honor of public functionaries acting in their official capacities unjustifiably grants a right to protection to public officials that is not available to other members of society. This distinction inverts the fundamental principle in a democratic system that holds the Government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers. If we consider that public functionaries acting in their official capacity are the Government for all intents and purposes, then it must be the individual and the public's right to criticize and scrutinize the officials' actions and attitudes in so far as they relate to the public office.<sup>15</sup>

43. It has also established:

Moreover, the Commission notes that, contrary to the rationale underlying *desacato* laws, in democratic societies political and public figures must be more, not less, open to public scrutiny and criticism. The open and wide-ranging public debate, which is at the core of democratic society necessarily involves those persons who are involved in devising and implementing public policy. Since these persons are at the center of public debate, they knowingly expose themselves to public scrutiny and thus must display a greater degree of tolerance for criticism.<sup>16</sup>

44. An interpretation of Article 13 of the American Convention and of the doctrine just cited suggests the need to review mainly the laws whose purpose is to protect the honor of individuals (commonly known as slander and libel laws). On many occasions these laws are used to attack or silence any discourse considered critical of the public administration.

45. In this respect, the American Commission has established that:

The sort of political debate encouraged by the right to free expression will inevitably generate some speech that is critical of, and even offensive to those who hold public office or are intimately involved in the formation of public policy. A law that targets speech that is considered critical of the public administration by virtue of the individual who is the object of the expression, strikes at the very essence and content of freedom of expression.<sup>17</sup>

46. And the Commission adds:

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<sup>15</sup> IACHR, Report on the Compatibility of "Desacato" Laws and the American Convention on Human Rights, OEA/Ser.L/V/II.88, Doc. 9 rev. (1995), pp. 210 to 223.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*, pp. 218-219.

particularly in the political arena, the threshold of State intervention with respect to freedom of expression is necessarily higher because of the critical role political dialogue plays in a democratic society.<sup>18</sup>

47. The criterion to be used, under the Declaration of Principles on Freedom of Expression, is that protection of one's reputation should be guaranteed through civil sanctions alone, in those cases in which the offended person is a public official or public or private figure who has voluntarily become involved in matters of public interest. In addition, in these cases, it should be proven that in disseminating news, the journalist or reporter had the intent to inflict harm or had full awareness that false news was being disseminated or conducted himself or herself with manifest negligence in respect of the truth or falsity of the same. This position is known as the doctrine of "actual malice."<sup>19</sup>

48. In addition, opinions that are not factual assertions in respect of public figures must not be punished. In this respect, the Commission has established that this is especially the case of the political arena, where the criticism is often through value judgments or not through statements based exclusively on facts. In this regard, it may be impossible to demonstrate the veracity of the statements, since no evidence can be offered as to value judgments. The laws that criminalize such expression raise the possibility of one who criticizes the government in good faith being sanctioned for his or her criticism.

## **2. Situation of the communications media and journalists**

49. The existence of a free press is one of the most important pillars of a full democracy. Respect for the freedom of expression has been described as an essential means of protection and development of democratic societies. It must be highlighted that those who work in the media take the lead where it comes to providing information and fostering public debate, which is so necessary for strengthening our institutions.

50. Over the last 20 years, citizens from all countries of the region have left behind oppressive and authoritarian regimes to receive more open governments chosen through elections. Nonetheless, in order to achieve participatory and stable democratic development, not only are a series of elections necessary, but also the development of other elements particular to democratic societies, such as respect for and recognition of human rights; independent and effective judiciaries and legislatures; a system of political parties that facilitate fluid communication between citizens and their leaders; a participatory civil society; and, above all, broad freedom of expression based on free access to information to ensure the existence of a citizenry well-informed so as to be able to make its decisions.

51. Among the requirements for a stable and participatory democracy, the freedom of expression is of paramount importance, since without it, it is impossible to develop the other

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<sup>18</sup> *Id.*, p. 222.

<sup>19</sup> Principle 10 of the Declaration of Principles of Freedom of Expression establishes: "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."

elements for strengthening democracy. Hence, in several instances the freedom of expression has been considered the cornerstone for the existence of a democratic society.

52. This chapter will address the situation of the communications media, especially what are called alternative or community radio stations and the situation of journalists.

### **2.a Community radio**

53. During its visit, the Special Rapporteur received and has continued receiving information regarding the problematic situation affecting community radio stations in Paraguay. According to the information received, the vast majority of the radio stations that operate in Paraguay have obtained their licenses based solely on economic criteria. On several occasions the Rapporteur has said that the assignment of radio and television frequencies should consider democratic criteria that guarantee equal opportunity in access to them for all sectors of society.<sup>20</sup> Auctions that consider solely economic criteria are incompatible with democratic government and with the right to freedom of expression and information guaranteed in the American Convention on Human Rights.

54. The Rapporteur has also learned of a new UNESCO initiative to seek solutions that permit an understanding between the community and commercial radio stations. This UNESCO initiative is supported by the Office of the Rapporteur and includes the participation of the International Association of Radio Broadcasting and the World Association of Community Radio Broadcasters.

### **2.b Situation of persons who work in the media**

55. The Rapporteur would like to express his concern over the situation that some journalists are facing in Paraguay.

56. Considerable information has been received on attacks on journalists. The Rapporteur totally rejects such acts and reiterates to the Paraguayan State its duty to prevent human rights violations and, once they occur, its duty to investigate and punish the persons responsible.

57. The Special Rapporteur received information on the failure to follow up on the murder of journalist Santiago Leguizamón in April 1991. The Special Rapporteur urges the Paraguayan authorities to speed up the effective investigation into the assassination, and to punish the persons who turn out to be responsible for this crime, as appropriate. The Commission has said that the assassination of a journalist is the most brutal means of clamping down on the freedom of expression. This practice has two specific objectives. First, it seeks to eliminate those journalists who undertake investigations into attacks, abuses, irregularities, or unlawful acts of all sorts, carried out by public officials, organizations, or private persons generally, to keep them from concluding their investigations, to keep them from generating the public debate they deserve, or in reprisal for such investigations. In addition, it is used as a means of intimidation to send a clear message to all those engaged in investigative tasks.

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<sup>20</sup> Principle 12 of the Declaration establishes: "The concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals."

58. The threats and attacks on persons who work in the media reported in Paraguay are a matter of concern for the Rapporteur. The large number of reports received is a clear sign of the difficult situation they face.

59. Intimidation of journalists through verbal or written acts of aggression and physical assaults on their person and/or property has an intimidating effect on the entire society, as the primary and principal expression of this right is being violently gagged. These mechanisms are used as part of an effort to silence the criticism of governments, limit the debate and undermine the bases of a democratic institutional framework.<sup>21</sup>

60. Under international law, the State has the duty to ensure human rights. Accordingly, the international responsibility of the states is triggered whenever they fail to adopt the measures necessary to prevent violations of fundamental rights, or, once the violations have been consummated, when they fail to investigate, prosecute, and punish the persons responsible.<sup>22</sup> In this respect, the Inter-American Court has said:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.<sup>23</sup>

61. The Special Rapporteur expresses his concern over the information received indicating that several journalists have suffered a direct negative impact due to the climate of political instability experienced during the May 18, 2000 coup attempt against Paraguay's democratic and constitutional order, and other attacks following those events. The following is some of the information received:<sup>24</sup>

- On May 18, six men in military uniform, and armed, entered the broadcast booth of *Radio Cardinal* and the television studios of *Canal 13*. They left when berated by the journalists. Two of the persons responsible were detained.
- On May 18, approximately six men in military uniform forcibly entered the studios of Radio 970 AM. They demanded, with threats, that a pro-coup proclamation be read.
- On May 19, unknown persons entered the studios de *Ybyturuzú* radio station in Villarrica, and destroyed their transmission equipment.

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<sup>21</sup> The ninth principle of the Declaration of Principles on Freedom of Expression establishes: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

<sup>22</sup> Article 1(1) of the American Convention on Human Rights establishes: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

<sup>23</sup> I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, para. 176, and Declaration of Principles on Freedom of Expression.

<sup>24</sup> These reports have been made mainly by the *Sindicato de Periodistas de Paraguay*, an IFEX-member organization (International Freedom of Expression Exchange) and by the Inter-American Press Association.

- On May 19, Miguel Fernández and Adriana Fernández, owners of *Radio Asunción*, were detained and the radio station shut down by members of the security forces, who destroyed their transmitters. Both were accused of having supported former General Lino Oviedo.
- On May 20, an arrest warrant was issued for Hugo Ruiz Olazar, of the daily newspaper *ABC Color* and correspondent of *Agence France Press* and the *Diario Clarín* of Buenos Aires, who was accused of supporting former General Lino Oviedo.
- On August 13, *Radio Primero de Marzo* received threats indicating that its facilities would be blown up.
- On August 15, the offices of Radio Ñanduti were attacked by demonstrators from the *Movimiento de Reconciliación Colorada*, who threw stones, glass bottles, and petards. This movement is a sector of the governing Colorado Party. The projectiles broke large windows at the radio station; no one was injured.
- On August 18 and 20, several anonymous threats were received regarding the planting of explosives at *Diario Noticias* and on August 19, at night, several bullets were fired at the home of journalist Marlene Franco.
- On August 20, in the context of the eviction of some landless peasants who were on the Costado route of Caazapá, the *Diario Noticias* correspondent in Caazapá, Albert Robles, was detained along with two peasants.
- On August 21, Cesar Olmedo, a photojournalist with the daily newspaper *La Nación*, was assaulted; he was beaten and his camera destroyed by a policeman from the “anti-riot” group that was trying to break up a workers’ demonstration.
- On August 25, journalist Camilo Cantero, director of *Radio Libertad FM* and correspondent for the daily newspapers *Ultima Hora* in San Ignacio, was detained. According to the information received, his case began with a report he presented to the Trial Jury for Magistrates on alleged less-than-transparent actions by a judge.
- On August 28, Aldo Zucolillo, director of the daily newspaper *ABC Color*, gave testimony before a criminal judge who enjoined him from leaving the country. The proceeding apparently began by an accusation by electoral prosecutors for of publication of supposed “electoral propaganda” outside the time frames allowed by the law. *ABC Color* published two “editorials” supporting one of the candidates for the August 13 vice-presidential elections. The prosecutors for the electoral jurisdiction considered the editorials to constitute “electoral propaganda.”
- On October 3, Omar Jara, correspondent of the daily *La Nación*, in San José de los Arroyos, 100 km to the east of Asunción, reported that he was subjected to threats and verbal assault by two traffic police, due to the fact that he had reported accusations that these officials were seeking bribes from drivers in exchange for not issuing sanctions for supposed traffic infractions.
- On October 5, the Court of Appeals, First Chamber, at Ciudad del Este affirmed a judgment of first instance ordering journalist Héctor Guerin of the local daily newspaper *Vanguardia* to pay a fine of 285 times the daily minimum wage (US\$ 1,650) in a complaint brought by the governor of the department (province) of Alto Paraná, Jotvino Urunaga, on charges of defamation, slander, and libel. The process stemmed from reports published in this paper on alleged administrative irregularities in the governor’s office, based on reports from the General Comptroller of the Republic and reports from members of the departmental assembly.

62. Some of the cases in which judicial or police actions were taken against the press could constitute incitement to violence and therefore would not be protected by Article 13 of the American Convention on Human Rights. Article 13 of the Convention provides as follows in this respect:

... Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons....

63. In these cases, subsequent liability should be determined with respect for due process of law as established in Paraguayan and international law.

64. The Special Rapporteur reminds the authorities that one of the main concerns of his Office is the use of the judicial system as a means of intimidation in several countries of the hemisphere, by imposing imprisonment or fines on journalists, forcing them to turn to the courts time and again and to incur the costs, for their defense, that have a significant detrimental impact on their activities. When this mechanism is used against journalists critical of the authorities, the judicial system is being used as an instrument to limit the freedom of expression, not as a mechanism for sorting out the conflicting interests of the authorities and journalists.

65. The Office of the Rapporteur urges the Paraguayan authorities to take the necessary measures to prevent the journalists from being a target of attacks as a result of the political situation and to protect them to ensure the right to freedom of expression and information of all of Paraguay's inhabitants.

66. One of the Rapporteur's main concerns is the information received, which makes it clear that some media outlets are used as instruments for the attainment of personal interests, not to inform society.

67. During his visit, the Special Rapporteur received information on the concern among independent journalists from press, radio, and television, high-level government authorities, and representatives of civil society organizations with respect to the grave polarization in the media. It is argued that some media are used as tools to defend personal and/or economic interests, without a commitment to the truth, to the detriment of Paraguayan society's right to information.

68. The Special Rapporteur was able to verify the personal enmity between different owners of media outlets and the reports from several sectors that media outlets are being used as instruments to receive economic benefits, or to favor certain political interests, and not as means for informing society. In this respect, and in view of the serious nature of these accusations, the Rapporteur reminds all those persons related to the media that according to the provisions of principle number nine of the Declaration of Chapultepec, adopted by the Inter-American Press Association and signed by several heads of state and government of the hemisphere and thousands of citizens: "The credibility of the press is linked to its commitment to truth, to the pursuit of accuracy, fairness and objectivity and to the clear distinction between news and advertising. The attainment of these goals and the respect for ethical and professional values may not be imposed...."

#### **D. CONCLUSIONS AND RECOMMENDATIONS**

69. The Special Rapporteur wishes to highlight the positive development of the Constitution including the regulation of the writ of *habeas data*, and the establishment of the basic principle that sources of information should be public. In addition, there has been progress in the derogation of *desacato* laws. Nonetheless, the Special Rapporteur is concerned about certain laws and practices that persist under Paraguayan democracy that limit the freedom of expression. The following paragraphs present a summary of these concerns.

70. The Special Rapporteur wishes to highlight the need to regulate in detail and guarantee, in practice, the right of access to information in the possession of the State as it is a tool for strengthening democracy, and as a means of keeping tabs on the authorities so as to combat corruption.

71. In addition, Article 28 of the Constitution could be used restrictively; it imposes the requirement of truth on the right of all citizens to receive information, and it recalls that any type of prior conditioning of the information or expression, directly or indirectly, is a violation of Article 13 of the American Convention.

72. Similarly, there is a need to distinguish between public and private persons when legislating on the provisions that protect honor (slander, libel, and defamation). Incorporating this distinction in Article 151 of the Criminal Code would avoid the possible use of criminalization of opinions critical of public persons to legitimate a policy of silencing public opinion.

73. The Special Rapporteur points out the need to apply democratic criteria to the distribution of licenses to radio and television stations. Those allocations should not be based solely on economic criteria, but also on democratic criteria that guarantee equal opportunity in gaining access to them.

74. The Special Rapporteur expresses his concern over the cases of attacks on journalists. Of special concern is the alleged participation of the police or military authorities in the detention of journalists and/or the shutdown of media outlets.

75. Finally, the Special Rapporteur wishes to express his concern with respect to the propensity of the media to become political and economic tools of the various power sectors to the detriment of its main function, which is to inform society. In addition, the Special Rapporteur wishes to remind those who exercise the freedom of expression that the American Convention on Human Rights prohibits all propaganda for war and any advocacy of national, racial, or religious hatred that constitutes an incitement to violence. It is observed with concern that some of the complaints received may fall into this category.

76. Based on the foregoing, the Special Rapporteur makes the following recommendations to the Paraguayan State:

1. Adopt a law that regulates the right of access to information in the possession of the State.
2. Promote the distinction between public and private persons, decriminalizing slander and libel against public figures.
3. Adopt the necessary measures to ensure the adequate distribution of radio frequencies, in keeping with democratic criteria.
4. Take the necessary measures to protect the physical integrity of persons who work in the media, investigating and punishing the persons responsible for the violations to freedom of expression and for direct attacks on journalists.





