

INTER-AMERICAN COURT OF HUMAN RIGHTS

**ADVISORY OPINION OC-7/85
OF AUGUST 29, 1986**

**ENFORCEABILITY OF THE RIGHT TO REPLY
OR CORRECTION (ARTS. 14(1), 1(1) AND 2
AMERICAN CONVENTION ON HUMAN RIGHTS)**

REQUEST BY THE GOVERNMENT OF COSTA RICA

Present:

Thomas Buergenthal, President
Rafael Nieto-Navia, Vice President
Rodolfo E. Piza E., Judge
Pedro Nikken, Judge
Héctor Fix-Zamudio, Judge
Héctor Gros Espiell, Judge
Jorge R. Hernández Alcerro, Judge

Also present:

Charles Moyer, Secretary, and
Manuel Ventura, Deputy Secretary

THE COURT,

composed as above,

gives the following Advisory Opinion:

1. By note of October 1, 1985, the Government of Costa Rica (hereinafter "the Government" or "Costa Rica") submitted to the Inter-American Court of Human Rights (hereinafter "the Court") an advisory opinion request regarding the

interpretation and scope of Article 14(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") in relation to Articles 1(1) and 2 of that instrument.

2. In a note of October 31, 1985, the Secretariat of the Court, acting pursuant to Article 52 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), requested written observations on the issues involved in the instant proceeding from the Member States of the Organization of American States (hereinafter "the OAS") as well as, through the Secretary General, from the organs listed in Chapter X of the Charter of the OAS.

3. The President of the Court directed that the written observations and other relevant documents be presented in the Secretariat before January 10, 1986 in order to be considered by the Court during its Fourteenth Regular Session, which was held January 13-21, 1986.

4. Responses to the Secretariat's communication were received from the Government of Costa Rica.

5. Furthermore, the following non-governmental organizations submitted an **amici curiae** brief: the Inter-American Press Association, World Press Freedom Committee, American Newspaper Publishers Association, Federation International des Editeurs de Journaux, The Copley Press, Inc., The Miami Herald, Newsweek, USA Today, The Wall Street Journal and The International Herald Tribune.

6. A public hearing was held on Thursday, January 16, 1986 to enable the Court to receive the oral arguments of the Member States and the OAS organs on the issues raised in the request.

7. At this public hearing the Court heard the following representatives:

For the Government of Costa Rica:

Carlos José Gutiérrez, Agent and Minister of Foreign Affairs,

Manuel Freer Jiménez, Agent and Legal Adviser of the Ministry of Foreign Affairs

For the Inter - American Commission on Human Rights:

Edmundo Vargas Carreño, Executive Secretary, by virtue of the representation conferred on him by the President of the Commission.

8. The Court continued its study of the instant request at its Fifteenth Regular Session, held April 26-May 9, 1986, and at its Fifth Special Session, held August 25-29, 1986.

I ADMISSIBILITY

9. This request for an advisory opinion has been submitted to the Court by the Government of Costa Rica, which is a State Party to the Convention and a Member State of the OAS. Under Article 64 of the Convention any Member State of the OAS may seek an "interpretation of this Convention or of any other treaties concerning the protection of human rights in the American states." The Costa Rican request deals with the interpretation of Article 14(1) of the Convention in relation to Articles 1(1) and 2 of that instrument and, as such, falls within the purview of Article 64.

10. The request of the Government seeks an advisory opinion under Article 64(1) of the Convention rather than under Article 64(2). This conclusion may be deduced from the fact that the request of the Government refers expressly to Article 49 of the Rules of Procedure, which deals with proceedings filed under Article 64(1), and not to Article 51 of the Rules which is applicable to advisory opinion requests filed under Article 64(2) of the Convention. Moreover, the Government does not seek an opinion of the Court regarding the compatibility of any of its laws with the Convention; instead, the object of the request is the interpretation of Article 14(1) in relation to Articles 1(1) and 2 of the Convention.

11. The mere fact that a request for an advisory opinion is filed by a Member State of the OAS and that it invokes, expressly or by implication, the provisions of Article 64(1) does not mean that the Court has jurisdiction, **ipso facto**, to deal with the questions submitted to it. If the Court were asked to respond to questions concerned exclusively with the application or interpretation of the domestic law of a Member State or which involved issues unrelated to the Convention or the other treaties referred to in Article 64, the Court would lack jurisdiction to render the opinion.

12. The manner in which a request is drafted may require the Court, in exercising its functions under Article 64 of the Convention, to define or clarify and, in certain cases, to reformulate the questions submitted to it in order to ascertain what, precisely, is being asked. This is particularly true when, as in the instant case, the request, notwithstanding the form in which the questions are articulated, seeks the Court's opinion with regard to issues that the Court believes fall within its jurisdiction. In this connection, the Court should emphasize that, in general, when an advisory opinion request contains questions whose analysis and interpretation fall within its jurisdiction, the Court is called upon to give its answer even though the request might contain issues outside the scope of its jurisdiction, unless these

extraneous issues are completely inseparable from the former or unless there are other reasons which would justify a decision by the Court to abstain from rendering its opinion.

13. The first question reads as follows:

Can it be assumed that the full and free exercise of the right protected by Article 14 of the American Convention on Human Rights is already guaranteed to all persons under the jurisdiction of the State of Costa Rica by virtue of the obligations assumed by our country under Article 1 of that Convention?

14. The Court is of the opinion that the question, as formulated, contains two different issues which are clearly distinguishable. The first concerns the interpretation of Article 14(1) of the Convention in relation to Article 1(1), while the second deals with the application of Article 14(1) in the internal legal system of Costa Rica. The Court shall address only the first issue with reference to Article 64(1) of the Convention which, as has been stated, is the relevant provision. The second issue, as it has been set out, falls outside the advisory jurisdiction of the Court.

15. The Court consequently concludes that this question, understood in the sense indicated above, is admissible since it concerns the interpretation of the Convention, and the Court so holds.

16. The second question reads as follows:

If the preceding question is answered in the negative, does the State of Costa Rica have an international obligation under Article 2 of the American Convention on Human Rights to adopt, in accordance with its constitutional processes, the legislative or other measures that may be necessary to give effect to the right of reply or correction set out in Article 14 of the Convention?

The interpretation given to the first question eliminates the causal tie that links the second question to the first. The above question, therefore, seeks to determine what obligations, if any, Article 2 of the Convention imposes on Costa Rica to give effect to the right which Article 14(1) guarantees. It furthermore calls on the Court to interpret the Convention and, consequently, is admissible.

17. The third question reads as follows:

If it is decided that the State of Costa Rica is under the obligation to adopt the legislative or other measures that may be necessary to give effect to the right of reply or correction set out in Article 14 of the Convention, would it be proper to conclude that the term "law," which appears at the end of the first paragraph of said Article 14, is used in its broadest sense so as to encompass provisions of a regulatory type promulgated by executive decree, keeping in mind the instrumental character of such legal provisions?

To the extent that this question seeks an interpretation of the meaning of the word "law," as that concept is used in Article 14(1) of the Convention, it is admissible for the reasons indicated above.

18. Having ruled that the three questions presented in the Costa Rican application are admissible insofar as they concern the interpretation of the Convention, and considering that no other reasons justify a decision to abstain from rendering the advisory opinion requested pursuant to what the Court has expressed in its jurisprudence ("**Other treaties**" **Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights)**, Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 2, para. 3; **Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)**, Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 21; **The Word "Laws" in Article 30 of the American Convention on Human Rights**, Advisory Opinion OC-6/86 of May 9, 1986.

Series A No. 6, para. 11), the Court will now proceed to an examination of the merits of the application.

II MERITS

19. The first question seeks a determination concerning the legal effect of Article 14(1), given the obligations assumed by a State Party under Article 1(1) of the Convention.

20. Article 14 reads as follows:

1. Anyone injured by inaccurate or offensive statements or ideas* disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.
2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.

*- The word "ideas" does not appear in the Spanish, Portuguese or French texts of this provision, which refer to "informaciones inexactas o agraviantes," "informações inexactas ou ofensivas" and to "données inexactes ou des imputations diffamatoires"

Article 1(1) declares:

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.

21. The foregoing provisions must be interpreted using

the rules of interpretation set out in the Vienna Convention, which may be deemed to state the relevant international law principles applicable to this subject (**Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights**), Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 48)."

These rules are spelled out in Article 31(1) of the Vienna Convention on the Law of Treaties, which reads as follows:

A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

Under Article 32 of the Vienna Convention, recourse may be had to other sources of interpretation only when the interpretation resulting from the application of Article 31 "a) leaves the meaning ambiguous or obscure; or b) leads to a result which is manifestly absurd or unreasonable."

22. In the instant case, the expression "Anyone... has the right," found in Article 14(1), must be interpreted in good faith in accordance with its ordinary meaning. The Convention guarantees a "right" to reply or correction, which explains why paragraphs (2) and (3) of Article 14 are so categorical when they speak of "the legal liabilities" of those who make inaccurate or offensive statements and of the requirement that someone be responsible for such statements. This interpretation is not ambiguous or obscure nor does it lead to a manifestly absurd or unreasonable result.

23. The argument that the phrase "under such conditions as the law may establish," used in Article 14(1), merely empowers the States Parties to adopt a law creating the right of reply or correction without requiring them to guarantee it if their

internal legal system does not provide for it, is not consistent with the "ordinary meaning" of the terms used nor with the " context " of the Convention. It is worth noting, in this connection, that the right of reply or correction for inaccurate or offensive statements disseminated to the public in general is closely related to Article 13(2) on freedom of thought and expression, which subjects that freedom to the "respect of the rights and reputations of others" (See **Compulsory Membership of Journalists**, *supra* 18, paras. 59 and 63); to Article 11(1) and 11(3), according to which

1. Everyone has the right to have his honor respected and his dignity recognized.

3. Everyone has the right to the protection of the law against such interference or attacks.

and to Article 32(2) which states that

The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

24. The obligations of the States Parties set out in Articles 1(1) and 2 of the Convention are applicable to the right of reply or correction. It could not be otherwise, since the purpose of the Convention is to recognize individual rights and freedoms and not simply to empower the States to do so (American Convention, Preamble; **The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75)**, Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 33).

25. The fact that the right of reply or correction (Art. 14) follows immediately after the right to freedom of thought and expression (Art. 13) confirms this interpretation. The inescapable relationship between these articles can be deduced from the nature of the rights recognized therein since, in regulating the application of the right of reply or correction, the States Parties must respect the right of freedom of expression guaranteed by Article 13. They may not, however, interpret the right of freedom of expression so broadly as to negate the right of reply proclaimed by Article 14(1) (**Compulsory Membership of Journalists**, *supra* 18, para. 18). It is appropriate to recall that Resolution (74) 26 of the Committee of Ministers of the Council of Europe based the right of reply on Article 10 of the European Convention, which deals with freedom of expression.

26. Having concluded that the Convention guarantees a right of reply or correction, the Court will now turn its attention to the consequences of the above.

27. Article 14(1) does not indicate whether the beneficiaries of the right are entitled to an equal or greater amount of space, when the reply once received must be published, within what time frame the right can be exercised, what language is admissible, etc. Under Article 14(1), these conditions are such "as the law may

establish," a phrase that employs a wording that, unlike that used in other articles of the Convention ("shall be protected by law," in accordance with the law, "expressly established by law, " etc.), requires the establishment of the conditions for exercising the right of reply or correction by "law." The contents of the law may vary from one State to another, within certain reasonable limits and within the framework of the concepts stated by the Court. This is not yet the moment to address the question of what is meant by the word "law" (*infra* 33).

28. The fact that the States Parties may fix the manner in which the right of reply or correction is to be exercised does not impair the enforceability, on the international plane, of the obligations they have assumed under Article 1(1). That Article contains an undertaking by the States Parties "to respect the rights and freedoms " the Convention recognizes and " to ensure to all persons subject to their jurisdiction the free and full exercise of these rights and freedoms..." If for any reason, therefore, the right of reply or correction could not be exercised by "anyone" who is subject to the jurisdiction of a State Party, a violation of the Convention would result which could be denounced to the organs of protection provided by the Convention.

29. The soundness of this conclusion gains added support from the language of Article 2 of the Convention, which reads:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights and freedoms.

30. This Article, which is referred to in the second question, codifies a basic rule of international law that a State Party to a treaty has a legal duty to take whatever legislative or other steps as may be necessary to enable it to comply with its treaty obligations. In the context of the Convention, this conclusion is in line with Article 43, which reads:

The States Parties undertake to provide the Commission with such information as it may request of them as to the manner in which their domestic law ensures the effective application of any provisions of this Convention.

31. The Court is now in a position to address the third question contained in the Costa Rican request. It seeks the Court's opinion on the meaning of "law" as that concept is used in Article 14(1).

32. In its Advisory Opinion **The Word "Laws"** (*supra* 18), the Court has provided an extensive analysis of the meaning of " law " as that concept is used in Article 30 of the Convention. In that opinion the Court notes that the word "laws" is not necessarily used throughout the Convention to express one and the same

concept and that, consequently, its meaning has to be ascertained on a case- by -case basis, drawing on the relevant international law standards for the interpretation of treaties. In that Opinion, the Court stated the following:

The question before us does not go beyond inquiring as to the meaning that the word "laws" has in Article 30 of the Convention. It is, therefore, not a question of giving an answer that can be applied to each case where the Convention uses such terms as "laws", "law", "legislative provisions", "provisions of the law", "legislative measures", "legal restrictions", or "domestic laws." On each occasion that such expressions are used, their meaning must be specifically determined.

In another of its advisory opinions, the Court declared that:

whenever an international agreement speaks of "domestic laws" without in any way qualifying that phrase, either expressly or by virtue of its context, the reference must be deemed to be to all national legislation and legal norms of whatsoever nature, including provisions of the national constitution. (**Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica**, Advisory Opinion OC-4/ 84 of January 19, 1984. Series A No. 4, para. 14).

33. The Court has already determined that Article 14(1) establishes a right of reply or correction and that the phrase "under such conditions as the law may establish" refers to the various conditions related to the exercise of that right. That phrase has reference, consequently, to the effectiveness of that right on the domestic plane and not to its creation, existence or enforceability on the international plane. This being so, it is relevant to look to Article 2 because it deals with the obligations of the States Parties "to adopt... such legislative or other measures as may be necessary to give effect to those rights or freedoms." If Article 14(1) is read together with Articles 1 and 2 of the Convention, any State Party that does not already ensure the free and full exercise of the right of reply or correction is under an obligation to bring about that result, be it by legislation or whatever other measures may be necessary under its domestic legal system. This justifies the conclusion that the concept "law," as used in Article 14(1), includes all those measures designed to regulate the exercise of the right of reply or correction. If, however, those measures restrict the right of reply or correction or any other right recognized by the Convention, they would have to be adopted in the form of a law, complying with all of the conditions contained in Article 30 of the Convention (**The Word "Laws"**, *supra* 18).

34. In any case, in regulating those conditions the States Parties have an obligation to ensure the enjoyment of the guarantees necessary for the exercise of the rights and freedoms, including the rights to a fair trial and to judicial protection (Arts. 8 and 25 of the Convention).

35. **Therefore**

THE COURT

1. With respect to the admissibility of the advisory opinion request presented by the Government of Costa Rica,

DECIDES

By four votes to three, to **admit the request.**

Dissenting:

Judges Buergethal, Nieto - Navia and Nikken.

2. With respect to the questions contained in the request submitted by the Government of Costa Rica regarding the interpretation of Article 14(1) of the American Convention on Human Rights in relation to Articles 1(1) and 2 of that instrument,

IS OF THE OPINION

Unanimously

A. That Article 14(1) of the Convention recognizes an internationally enforceable right to reply or to make a correction which, under Article 1(1), the States Parties have the obligation to respect and to ensure the free and full exercise thereof to all persons subject to their jurisdiction.

Unanimously

B. That when the right guaranteed by Article 14(1) is not enforceable under the domestic law of a State Party, that State has the obligation, under Article 2 of the Convention, to adopt, in accordance with its constitutional processes and the provisions of the Convention, the legislative or other measures that may be necessary to give effect to this right.

By six votes to one

C. That the word "law," as it is used in Article 14(1), is related to the obligations assumed by the States Parties in Article 2 and that, therefore, the measures that the State Party must adopt include all such domestic measures as may be necessary, according to the legal system of the State Party concerned, to ensure the free and full exercise of the right recognized in Article 14(1). However, if any such measures impose restrictions on a right recognized by the Convention, they would have to be adopted in the form of a law.

Dissenting:

Judge Piza Escalante.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this twenty - ninth day of August, 1986.

Thomas Buergenthal
President

Rafael Nieto-Navia

Rodolfo E. Piza E.

Pedro Nikken

Héctor Fix-Zamudio

Héctor Gros Espiell

Jorge R. Hernández Alcerro

Charles Moyer
Secretary