

ANNUAL REPORT 1998 OFFICE OF THE SPECIAL RAPPORTEUR FOR
FREEDOM OF EXPRESSION OF THE INTER-AMERICAN COMMISSION ON
HUMAN RIGHTS

B. Laws of Compulsory Membership in a Professional Association

On November 13, 1985, the Inter-American Court of Human Rights issued advisory opinion OC-5 in which it stated that the compulsory membership of journalists in a professional association represented a restriction of freedom of expression. The Court reached the following conclusions on the subject:

From the foregoing considerations, it follows that a law requiring journalists to belong to a professional association, and that prevents journalists who are not members of the association from practicing journalism and limits access to the profession to graduates with a specific university degree is not compatible with the Convention. Such a law would contain restrictions to freedom of expression which are not authorized by Article 13.2 of the Convention and would therefore be in violation of both the right of every person to obtain and impart information and ideas through any medium of their choice, and the right of the community in general to receive information without restraint.

Further, in its analysis it had the following to say:

The Court observes that as a rule the organization of professions in professional associations is not per se contrary to the Convention, but it is a method for regulating and controlling legal authority

and public morals through the action of associates. Therefore, if the concept of public order is considered in the sense that it was referred to earlier, namely as the conditions that ensure the harmonious and normal functioning of institutions on the basis of a coherent system of values and principles, then it is possible to conclude that the organization of professions is implied in that order.

The Court, however, considers that the same concept of public order demands that, in a democratic society, the widest possible circulation of news, ideas, and opinions be guaranteed, as well as the greatest access to information by society as a whole. Freedom of expression is part of the underlying primary public order of democracy, which is inconceivable without open public debate and without dissident opinions being fully entitled to be heard. In this sense, the Court adheres to the ideas put forward by the European Commission of Human Rights which stated as follows, on the basis of the preamble of the European Convention: that in approving the Convention, it was not the intention of the High Contracting Parties to grant reciprocal rights and obligations with a view to satisfying their national interests, but rather ... to establish a common public order of free European democracies for the purpose of safeguarding their common heritage of political traditions, ideals, freedoms and rights. ("Austria vs. Italy," Application No. 788/60, European Yearbook of Human Rights, Vol. 4, 1961, page 138).

It is also important to democratic public policy, as it is conceived in the American Convention, to ensure scrupulous respect for the right of every human being to express himself freely and the right of society as a whole to receive information.

It has been argued that compulsory membership of journalists in a professional association is an attempt to protect a remunerated trade and that it is not contrary to the exercise of freedom of expression, provided that no compensation is involved and that, in this respect, it refers to something different from what is contemplated in Article 13 of the Convention. This argument is based on a contrast between professional journalism and the exercise of freedom of expression, which the Court cannot agree to. According to this line of reasoning, freedom of expression is one thing, and the professional practice of journalism is another. This is not accurate, however, and it can lead to serious dangers if it is taken to its ultimate consequences. The practice of professional journalism cannot be differentiated from freedom of expression. On the contrary the two are obviously intertwined, since a professional journalist neither is nor could be anything other than a person who has decided to exercise his freedom of expression on a continuous, steady, and remunerative basis. Moreover, to regard the two as different activities could lead one to the conclusion that the guarantees contained in Article 13 of the Convention do not apply to professional journalists.

Furthermore, the argument commented on in the previous paragraph does not take into account the fact that freedom of expression includes giving and receiving information, it has a dual, individual and collective, dimension. Because of this circumstance, the issue of whether this right is or is not exercised as a remunerated profession cannot be regarded as one of the restrictions referred to in Article 13.2 of the Convention, because, without disregarding the fact that a trade union is entitled to seek the best working conditions, this does not have to be done by depriving society of other possible sources of information.

The Court therefore concludes that the public policy arguments, which are valid in support of obligatory membership in a professional association for other professions, cannot be invoked in the case of journalism, since they would entail a permanent restriction of the right to make full use of the powers recognized for all human beings in Article 13 of the Convention, to the detriment of journalists who are not members of a professional association, and this would constitute a violation of the primary principles of democratic public policy on which the Convention is founded.

The arguments to the effect that professional membership is the way to guarantee that society has objective and true information provided through a system of professional responsibility and ethics were based on the common good. But in reality, as has been demonstrated, the common good requires a maximum amount of information, and it is the full exercise of freedom of expression that

favors that circumstance. Thus it is contradictory in principle to call for a restriction on freedom of expression as a means of guaranteeing it, because this would be ignoring the primary, basic nature of this right as inherent in every human being taken as an individual, even though it is also an attribute of society as a whole. A system for controlling the right to express oneself freely on the pretext that this would supposedly guarantee the correctness and truth of the information that society receives is a potential source of major abuses and, in the final analysis, is in violation of that same society's right to information.

It has also been argued that the compulsory professional association of journalists is a method for strengthening unions and thus a guarantee of the freedom and the independence of these professionals and a requirement for the common good. The Court is well aware that the free circulation of ideas and information can take place only in a situation where there are many sources of information and respect for the information media. It is not enough, however, that the right to establish or run public opinion agencies is guaranteed, but it is also necessary for journalists and, in general, all the persons professionally involved in the mass media, to be able to work with sufficient protection of the freedom and independence that this trade requires. So this is an argument based on a legitimate interest of journalists and the community in general, especially in situations where the truth of events can and is known to be manipulated as a result of decisions made by certain government or private news organizations.

Consequently, the Court is of the opinion that the freedom and independence of journalists is a common good that needs to be protected and guaranteed. Nevertheless, according to the terms of the Convention, the authorized restrictions of freedom of expression must be those "necessary to ensure" that certain legitimate purposes are met. In other words, it is not enough that the restriction is useful (see 46 above) to meet the purpose of question, that is, the purpose that can be achieved by means of the restriction, but rather that it must be necessary, or in other words that it cannot be reasonably achieved by any other means less restrictive of a right protected by the Convention. In this regard, the compulsory membership of journalists in a professional association is not consistent with the requirements of Article 13.2 of the Convention, because it is perfectly conceivable to establish a law that protects the freedom and independence of all persons who practice journalism, without any need to allow only a restricted group in the community to practice journalism.

The Rapporteur lists below those States that still have laws on their books that establish obligatory membership in a professional association for journalists and that prevent persons not affiliated with those associations from practicing journalism.

BOLIVIA

Various legislative provisions in Bolivia establish the requirement of professional association or licensing to practice journalism, including the following:

Law 494 of 1979:

Article 1. The profession of journalism is recognized and established for those citizens who have obtained the relevant academic degree from a Bolivian University and those citizens who fulfill the requirements established by this law because of their skills and experience acquired from the extended practice of journalism.

Article 6. The National Register of Journalists is established under the Ministry of Education and Culture, and the degrees conferred by the Bolivian University or by the Executive Branch of government shall be entered in it. When this requirement is fulfilled, the Bolivian Federation of Press Workers shall issue the single journalist identification card.

Organic Statute of Bolivian Journalism

Article 27. None of the mass media, including dailies, newspapers, weekly publications, magazines with a permanent circulation, radio stations, television channels, or correspondents of national or international news agencies, may employ for specifically journalistic work any persons who do not have a professional degree and are not registered with the National Register of Journalists.

Article 31. Journalism is considered illegal when it is practiced by persons who do not have a national degree in journalism.

BRAZIL

Decree No. 83284

Article 4. In order to practice journalism, persons must be previously registered with the regional office of the Ministry of Labor. To register, persons must present the following documents:

- I. Proof of Brazilian nationality;
- II. Proof of never having been accused or convicted of practicing an illegal act pursuant to criminal law.
- III. A diploma from an advanced course in journalism or the media, accreditation in journalism, provided by a recognized school pursuant to the law, for the functions listed in items I to VII of Article 11;

HONDURAS

Organic Law of the Association of Journalists

Article 3. The following are members of the Honduran Association of Journalists:

- a) Graduates in journalism from a university in the country;
- b) Graduates in journalism from a foreign university whose degree has been recognized by the National Autonomous University of Honduras;
- c) Graduates in related professions who meet the requirements established by the Association, and can so demonstrate.

Article 8. Only members of the Honduran Association of Journalists may practice the profession of journalism in the country. For the offices of director, assistant director, chief editor, and information chief, persons must also be Honduran by birth. To provide the intellectual, political, and administrative direction of printed, radio, or television news, persons are required only to be Honduran by birth. Press officers and persons who are working in public relations or in information offices in public and private institutions must be members of the Association. The office of press attaché in Honduran diplomatic missions abroad shall be held by journalists who are members of the Association.

Article 45A. Persons who practice professional journalism and are not members of the Honduran Association of Journalists shall be punished with a fine of five hundred lempiras. In the case of a second offense, the fine shall be imposed on the party responsible for this violation.

Article 59. Permanently employed and part-time columnists and commentators, either salaried or not, may perform their functions freely, and are not required to be members of the Association. Their scope of action, however, will be limited to those jobs, and they may not work as a specialized or nonspecialized reporter.

Article 61. Only persons who are registered as members of the Association and are duly identified in their work shall be regarded as journalists vis-à-vis the national authorities.

PANAMA

Law No. 67, “Regulating Practice of the Profession of Journalism in the Republic of Panama”

Article 2. The following persons shall be recognized as eligible to practice journalism:

- a) Persons with the appropriate academic degree (Master's degree in communications or the equivalent) conferred by a university in the country or by foreign universities and revalidated by the University of Panama; or
- b) Persons who can prove that they have been practicing journalism continuously for no less than five years prior to the valid date of this law; or
- c) Persons who, at the time this law takes effect, have been practicing journalism for at least three continuous years and have continued to work in a professional capacity up to a period of five years.

Article 4. To demonstrate that the foregoing requirements are fulfilled and obtain the qualifying certificate issued by the Technical Journalism Board, the following requirements must be met:

- a) Presentation of the duly registered national university diploma with the specialty in journalism; or
- b) Presentation of the revalidated degree in journalism issued by a foreign university; or
- c) Written proof from the director or directors of the information media or the employers for whom the candidate has worked for five years while engaged in the professional practice of journalism, or written proof from legally established journalism organizations that the applicant has been a member of the union for five years.

Article 6. The following positions may be held only by journalists:

National or regional director of the information media and national or regional directors of information offices and heads of the information section in public relations offices of public or private agencies, head of a newspaper, editorialists, columnists, reporters, editors or writers, press photographers, title editors, diagrammers, correspondents, revisers or editors of the written information media; directors, assistant directors, chief editors, graphic reporters of radio, television, or film information programs.

Article 17. Persons who practice journalism without being legally authorized to do so shall be punished with a fine of one hundred to five hundred balboas. The fine imposed on a violator will be doubled in the event of a second offense.

A natural or legal entity that contracts the professional journalism services of a person who is not legally authorized as a journalist shall incur the same penalty.

Venezuela⁶⁵

⁶⁵ The Venezuelan Supreme Court of Justice is expected to hand down a ruling on an appeal to nullify, on grounds of unconstitutionality, certain provisions contained in the Law on the Practice of Journalism. The Court's ruling could annul the
(Continued...)

Article 2. To practice the profession of journalist, a person must have a university degree in journalism, a university degree in the information media, or an equivalent degree issued in the country by a University, or a legally revalidated degree, and must be affiliated with the National Association of Journalists [*Colegio nacional de Periodistas (CNP)*] and with the Journalists Welfare Institute [*Instituto de Previsión Social del Periodista (IPSP)*]. Only citizens who meet the requirements established in this provision shall be authorized to use the title of professional journalist.

Article 39. Persons who practice the profession of journalism illegally shall be punished with imprisonment of three to six months. The criminal courts have jurisdiction to hear and decide such cases, and the legal procedure shall be ex officio, by complaint, or at the request of a party.

The Rapporteur observes that the legislation of some States still require belonging to a particular association or having a specific university degree in order to work as a journalist, neither of which is compatible with the American Convention.

Regarding the latter point, the Rapporteur will continue observing the situation of freedom of expression. The Inter-American Court has established those requirements such as compulsory membership or university degrees constitute a limitation to freedom of expression.