

## CHAPTER V

### “*DESACATO*” LAWS AND CRIMINAL DEFAMATION

#### A. Introduction

1. The Reports of the Rapporteur for Freedom of Expression for 1998 and 2000 included the issue of “*desacato*” laws in force in the Hemisphere.<sup>357</sup> The Rapporteur considers it important to follow up on the recommendations made in the two reports, principally with respect to the need to abolish such laws in order to bring domestic legislation into line with the standards recognized by the inter-American system regarding the exercise of the right to freedom of expression. The Office of the Special Rapporteur intends to continue this follow-up every two years, since that is a prudent time to allow the member states to move ahead with the necessary legislative procedures to make the recommended abolitions or adjustments of their laws.

2. Regrettably, the Office of the Special Rapporteur finds that there has been no significant progress since the publication of the last report on the matter, as very few countries have abolished their *desacato* laws, notwithstanding the fact that there are some initiatives underway in other countries that are in the process of doing so.

3. It is also a source of concern for the Office of the Special Rapporteur that laws on broadly termed “offenses against honor”, which include slander and libel, are used for the same purposes as *desacato* laws. Deficient regulation in this area or arbitrary enforcement could result in the recommended abolition of *desacato* laws being of little use. This affirmation was made in the above-mentioned Reports of the Rapporteur, and yet no progress has been recorded in that connection.

4. On this occasion, the Office of the Special Rapporteur reiterates and updates the arguments in favor of the abolition of *desacato* laws. Following, this report looks closely at a number of considerations to do with offenses against honor, and the importance of legislative reform in that respect, or, at least, the need for judicial reinterpretation as regards their enforcement. Finally, the report lists the countries that have made progress in the abolition of *desacato* laws and describes other initiatives aimed both at the abolition and the amendment of the laws on offenses against honor in each country.

#### B. *Desacato* laws are incompatible with Article 13 of the Convention.

5. The statement in the title of this section dates back a long way. As the Office of the Special Rapporteur mentioned in past reports, the Inter-American Commission on Human Rights undertook an analysis of the compatibility of *desacato* laws with the American Convention on Human Rights in a 1995 report.<sup>358</sup> The Commission found that such laws were not compatible with the Convention because they lend themselves “to abuse, as a means to

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<sup>357</sup> See Annual Report of the IACHR, 1998 Volume III, Chapter IV A. –OEA/Ser.L/V/II.102 Doc.6 rev. 16 April 1999; and Annual Report of the IACHR, 2000 Volume III, Chapter III A.2. –OEA/Ser.L/V/II.111 Doc.20 rev. 16 April 2001.

<sup>358</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., 17 February 1995, 197-212.

silence unpopular ideas and opinions, thereby repressing the debate that is critical to the effective functioning of democratic institutions.”<sup>359</sup> The Commission further stated that *desacato* laws give a higher level of protection to public officials than is offered to private citizens. This is in direct contravention of 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.”<sup>360</sup> Citizens must, therefore, have the right “to criticize and scrutinize the officials’ actions and attitudes in so far as they relate to the public office.”<sup>361</sup> *Desacato* laws ultimately deter critical speech because individuals will not want to subject themselves to imprisonment or monetary sanctions. Even those laws providing a defense if the accused can prove that the statements were true improperly restrict speech because they do not allow for the fact that much criticism is opinion and therefore not susceptible to proof. *Desacato* laws cannot be justified by saying that their purpose is to protect “public order” (a permissible purpose for regulation of speech under Article 13), as this is in contravention of the principle that “a properly functioning democracy is indeed the greatest guarantee of public order.”<sup>362</sup> Moreover, there are other, less-restrictive means besides criminal contempt laws by which governmental officials can defend their reputations from unwarranted attacks, such as replying through the media or bringing a civil action against individuals for libel or slander. For all of these reasons, the Commission concluded that *desacato* laws are incompatible with the Convention and called upon states to repeal these laws.

6. At the same time as, and in the wake of this fundamental opinion of the IACHR, international organizations and NGOs around the world have uniformly expressed the need to abolish such laws, which limit free speech by punishing speech that shows disrespect towards public officials. Many of these expressions have been cited in past reports of the Office of the Special Rapporteur. To summarize:

7. In March 1994, the Inter-American Press Association (IAPA) held a hemispheric conference on freedom of the press at Chapultepec Castle in Mexico City. The Declaration of Chapultepec has been signed by the Heads of State of 21 of the region’s States and is widely regarded as a model standard for freedom of expression<sup>363</sup>. On the matter of *desacato* laws, Principle 10 of the Declaration provides that, “No news medium nor journalist may be punished for publishing the truth or criticizing or denouncing the government.”

8. On November 26, 2000, Abid Hussain, the then UN Special Rapporteur on Freedom of Opinion and Expression, Freimut Duve, OSCE Representative on Freedom of the Media, and Santiago Canton, the then Rapporteur for Freedom of Expression of the IACHR, issued a joint declaration that included the following statement: “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 in line with their international

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<sup>359</sup> *Id.* at 212.

<sup>360</sup> *Id.* at 207.

<sup>361</sup> *Id.*

<sup>362</sup> *Id.* at 209.

<sup>363</sup> The Heads of State of the following governments have signed the Declaration of Chapultepec, pledging themselves to abide by its terms: Argentina, Bolivia, Belize, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Puerto Rico, United States, Uruguay.

obligations.” At another joint meeting in November of 2000, the Rapporteurs adopted another joint declaration, which elaborated on the problem of *desacato* and criminal defamation laws. In this Declaration, the Rapporteurs advocated the replacement of criminal defamation laws with civil laws and stated that the State, objects such as flags or symbols, government bodies and public authorities should be banned from bringing defamation actions.

9. In July 2000, Article XIX, the global nongovernmental organization which takes its name from the Universal Declaration of Human Rights’ article protecting freedom of expression, promulgated a set of Principles on Freedom of Expression and Protection of Reputation.<sup>364</sup> Principle 4(a) states that all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.<sup>365</sup> Principle 8, regarding public officials, states that, “Under no circumstances should defamation law provide any special protection for public officials, whatever their rank or status.”

10. In October 2000, the IACHR approved the Declaration of Principles on Freedom of Expression,<sup>366</sup> promulgated by the Office of the Special Rapporteur for Freedom of Expression. The Declaration is meant to be a definitive interpretation of Article 13 of the Convention. Principle 11 deals with *desacato* laws.<sup>367</sup>

11. In his January 2000 report, the UN Special Rapporteur on Freedom Opinion and Expression also spoke out against criminal defamation laws and, in particular, laws providing special protection for public officials.<sup>368</sup>

12. As mentioned, these positions were summarized in past reports of the Office of the Special Rapporteur. In this report, the Rapporteur underscores that the near-universal agreement on the need to repeal *desacato* laws remains in effect, as can be observed from the following examples:

13. The World Bank’s World Development Report 2002<sup>369</sup> devotes a chapter to the importance of the media in this area. On the specific issue of *desacato* laws, the report says, “*Particularly restrictive are insult laws, protecting select groups such as royalty, politicians, and government officials from criticism. Usually, insult laws make it a criminal offense to injure the “honor and dignity” or reputation of these selected individuals and institutions, regardless of truth. A study of 87 countries found such laws to be surprisingly prevalent, particularly in defamation suit. In Germany and the United States are rarely, if ever, invoked. Yet in many developing countries, they are the primary means of harassing journalists.*”

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<sup>364</sup> “Defining Defamation: Principles on Freedom of Expression and Protection of Reputation”, Article 19, London, July 2000.

<sup>365</sup> *Id.*, Principio 4(a).

<sup>366</sup> See “Annual Report of the IACHR, 2000”, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (OEA/Ser.L/V/II.111 Doc.20 rev. 16 April 2001).

<sup>367</sup> “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>368</sup> *Civil and Political Rights Including the Question of Freedom Of Expression*, UN Doc. No. E/CN.4/2000/63, January 18, 2000.

<sup>369</sup> The World Development Report 2002 at: [www.wds.worldbank.org/servlet/WDS\\_IBank\\_Servlet?pcont=details& eid =000094946\\_01092204010635](http://www.wds.worldbank.org/servlet/WDS_IBank_Servlet?pcont=details& eid =000094946_01092204010635).

14. The Tenth General Meeting of the International Freedom of Expression Exchange was held on September 13, in Dakar, Senegal<sup>370</sup>. The declaration signed by the organizations taking part<sup>371</sup> says that laws designed to give special protection from public criticism and press scrutiny to national leaders, high officials, state symbols and nationhood are anachronisms in democracies, and threats to all citizens' rights to full and free access to information about their governments. The declaration urges governments to remove these outmoded laws from their statute books. Finally, it says, "*Normal, reasonable libel, slander and defamation legislation equally available to all members of society is sufficient protection against any unfair attacks. Such laws should be civil, not criminal, in nature and should provide for demonstrable damages only. Public officials are due less--not more--protection from criticism than private citizens. Public bodies, categories of officials, institutions, national symbols and countries should not be immune to spirited comment and criticism within democracies that honor freedom of expression and freedom of the press.*"

15. On December 9, 2002, the UN Special Rapporteur on Freedom of Opinion and Expression, Ambeyi Ligabo, the OSCE Representative on Freedom of the Media, Freimut Duve, and the Special Rapporteur of the IACHR on Freedom of Expression, Eduardo Bertoni, issued a joint declaration in which they said they were, "*Mindful of the ongoing abuse of criminal defamation laws, including by politicians and other public figures*". They added that, "*Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.*"

16. Despite the near-universal condemnation of these laws, they continue to exist in one form or another in the majority of states in the Americas. In addition, many of these states continue to have criminal libel, slander and defamation laws, which are frequently used in the same manner as *desacato* laws to silence governmental critics. The Rapporteur makes a number of observations on this matter in the section below.

### **C. Criminal defamation offenses (slander, libel, etc.)**

17. The Office of the Special Rapporteur for Freedom of Expression mentioned in the abovementioned annual reports that the opinion of the IACHR on *desacato* laws also presents certain implications for the reform of criminal libel, slander, and defamation laws. Recognition of the fact that public officials are subject to a lesser, rather than greater, degree of protection from public scrutiny and criticism means that the distinction between public and private persons must

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<sup>370</sup> IFEX <http://www.ifex.org>, "The International Freedom of Expression Exchange" an NGO based in Toronto, Canada.

<sup>371</sup> Attending that meeting were, inter alia: Alliance of Independent Journalists, Indonesia; ARTICLE 19, South Africa; Association de Journalistes du Burkina; Canadian Journalists for Free Expression, Canada; Center for Human Rights and Democratic Studies, Nepal; Center for Media Freedom and Responsibility, Philippines; Centro Nacional de Comunicación Social, Mexico; Committee to Protect Journalists, USA; Ethiopian Free Press Journalists' Association, Ethiopia; Fédération professionnelle des journalistes du Québec, Canada; Free Media Movement, Sri Lanka; Freedom House, USA; Freedom of Expression Institute, South Africa; Independent Journalism Center, Moldova; Independent Journalism Centre, Nigeria; Index on Censorship, United Kingdom; Instituto Prensa y Sociedad, Peru; International Federation of Journalists, Belgium; International Federation of Library Associations and Institutions (IFLA) – Free Access to Information and Freedom of Expression (FAIFE), International Press Institute, Austria; Journaliste en Danger, Democratic Republic of Congo; Media Institute of Southern Africa, Namibia; Pacific Islands News Association, Fiji Islands; PERIODISTAS, Asociación para la Defensa del Periodismo Independiente, Argentina; Press Union of Liberia; Thai Journalists Association, Thailand; Timor Lorosa'e Journalists Association; West African Journalists Association, Senegal; World Press Freedom Committee, USA.

be made in the ordinary libel, slander and defamation laws as well. The possibility of abuse of such laws by public officials to silence critical opinions is as great with this type of law as with *desacato* laws. The Commission has stated:

[P]articularly in the political arena, the threshold of State intervention with respect to freedom of information is necessarily higher because of the critical role political dialogue plays in a democratic society. The Convention requires that this threshold be raised even higher when the State brings to bear the coercive power of its criminal justice system to curtail expression. Considering the consequences of criminal sanctions and the inevitable chilling effect they have on freedom of expression, criminalization of speech can only apply in those exceptional circumstances when there is an obvious and direct threat of lawless violence.

The Commission considers that the State's obligation to protect the rights of others is served by providing statutory protection against intentional infringement on honor and reputation through civil actions and by implementing laws that guarantee the right of reply. In this sense, the State guarantees protection of all individual's [sic] privacy without abusing its coercive powers to repress individual freedom to form opinions and express them.<sup>372</sup>

18. In order to ensure that freedom of expression is properly defended, states should reform their criminal libel, slander, and defamation laws so that only civil penalties may be applied in the case of offenses against public officials. In such cases, liability for offenses against public officials should only occur in cases of "actual malice." "Actual malice" means that the author of the statement in question acted with the intention to cause harm, was aware that the statement was false, or acted with reckless disregard for the truth or falsity of the statement. These ideas were welcomed by the IACHR when it

approved the Principles on Freedom of Expression, in particular Principle 10.<sup>373</sup> The foregoing raises the need to revise laws created to protect individuals' reputations (commonly known as libel and slander laws). The kind of political debate encouraged by freedom of expression and information inevitably will generate some speech critical of, or even offensive to, those who hold public posts or are intimately involved in public policymaking. Rather than protecting people's reputations, libel or slander laws are often used to attack, or rather to stifle, speech considered critical of public administration.

19. This reasoning was recently shared by judges and journalists in El Salvador and Costa Rica, who concluded that libel committed in the news media should not be a criminal offense punishable by imprisonment but should be dealt with in the civil courts so as not to curtail press freedom and the people's right to know and to prevent self-censorship. This and other conclusions emerged from national legal forums on press freedom organized by the Inter American Press Association (IAPA) in November 2002 in El Salvador and Costa Rica, within the framework of the Declaration of Chapultepec.<sup>374</sup> While there were opposing views on the role of

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<sup>372</sup> *Id.*, 211

<sup>373</sup> 10. 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.

<sup>374</sup> See IAPA press release at: <http://www.sipiapa.com/pressreleases/chronologicaldetail.cfm?PressReleaseID=839>

the press on respecting a person's good name and privacy, there was agreement that libel should not be a criminal offense punishable by imprisonment of journalists when it refers to issues of public interest. A number of experts referred to how the law views certain offenses, attenuating circumstances and liabilities when the information at issue is not published with intent to offend or to the differing treatments when the information is true or false.

20. In the Plan of Action of the Third Summit of the Americas held in April 2001, in Quebec City, Canada, the Heads of State and Government expressed the need for the States to ensure that journalists and opinion leaders are free to investigate and publish without fear of reprisals, harassment or retaliatory actions, including the misuse of anti-defamation laws.

21. The above conclusions are valid in that, from the point of view of a purely dogmatic analysis of criminal behavior, *desacato* is simply a special type of libel or slander in which the victim is special (a public official). In offenses against honor no such special condition exists. Therefore, the number of individuals against whom it may be directed is larger, which is not to say that that number cannot be restricted, as is explained below, by excluding state officials, public figures, or, in general, where matters of public interest are concerned.

22. Whether we are dealing with the imposition of a punishment as a result of libel, slander, defamation, or *desacato* is irrelevant. One of the key determinants in the conclusions of the organs of the inter-American system that led them to declare *desacato* laws contrary to the Convention has to do with the nature of the criminal penalty, that is, the effects that a repressive punishment has on freedom of expression. Punishments resulting from the application of ordinary criminal law can also have such an effect. In other words, according to the doctrine of the organs of the inter-American system for protection of human rights, it is necessary to decriminalize speech that criticizes state officials, public figures, or, in general, matters of public interest; the foregoing is so because of the paralyzing effect or the possibility of self-censorship<sup>375</sup> caused by the mere existence of laws that provide criminal penalties for those who exercise the right to freedom of expression in such a context.

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<sup>375</sup> This idea has, in part, been explained in a concrete and concise manner by Germán Bidart Campos in an old article entitled "*La autocensura en la libertad de expresión*" [Self-censorship in freedom of expression] (*El Derecho* magazine Vol. 83 p.895, Buenos Aires, Argentina): "Constitutional law has gone to great lengths to eradicate measures that are restrictive of freedom of expression. In the case of Argentina, the Constitution took the precaution of prohibiting prior censorship [...]. In spite of that, today we believe that in many contemporary societies we are witnessing a phenomenon that is much more difficult to control with laws because it occurs spontaneously, and, in most cases, it is not possible to detect an individual culprit on whom personally to impose a duty to take action. We refer to self-censorship. There are societies that at certain times pass through a critical period in which, for different reasons, people suppress the desire to express ideas freely through the media. In some cases, this may be prompted by prudence, and in others cowardice, satisfaction with the government, or fear of repression. In a nutshell, the phenomenon has to do with the fact that people prefer to keep quiet, dissemble their opinion, silence a criticism, not to voice a doctrine or an opinion. Privately, these people would like to express themselves, but they contain or postpone their expressions for one of the reasons mentioned above. It is not so much out of apathy or indifference [...] but because there are diffuse or direct social pressures that compel people to choose the alternative of silence. And that is pathological; it denotes social sickness, insofar as the stimuli that induce people not to express themselves come from the social milieu [...] We said that generally speaking the person responsible for this situation is not discovered. But sometimes the culprit is the government. If, for instance, journalists become victims of coercion, persecution, obstacles that prevent them from performing their function, repression, or other forms of restrictive conduct, the collective atmosphere dramatically suppresses the possibility of people expressing themselves. The climate is not propitious, and people choose the safety of avoiding exposure to probable injury, over challenge by publicly airing an opinion. Things can go "ill" for those who choose the path of bold expression, and it is unlikely that their response capacity will enable them to overcome the pressure of a hostile environment. Therefore, shut up. There has not been any censorship in the strict sense, but there has been coercion. It can take the form of threat, risk, fear, or a host of other things. And that is what is pathological."

23. Generally speaking, the criminal classifications of slander, libel and defamation refer to the false imputation of criminal offences or of expressions that damage the honor of a person. Undoubtedly, it would be fair to say that these classifications tend to protect rights guaranteed by the Convention. The right to have one's honor respected is protected in Article 11,<sup>376</sup> so it could scarcely be said that the criminal classifications of slander and libel, in abstract, violate the Convention. However, when the criminal punishment sought through the application of these classifications targets statements regarding matters of public interest, it would be fair to say, for the reasons described, that the right enshrined in Article 13 is violated, either because there is no pressing social interest to justify criminal punishment, or because the restriction is out of proportion or constitutes an indirect restriction.

24. Offenses against honor emerged as an "expropriation" by the government of conflicts between private individuals: an infringement on the honor or dignity of a person was traditionally settled by a duel between the persons involved. However, this practice began to be regarded negatively, to the point where it was made a punishable criminal act. However, at the same time, so as not to leave besmirched honor "unprotected," it was made a matter for criminal law. That is why the abolition, plain and simple, of offences against honor may not be acceptable at our cultural stage.

25. However, if the argument were used that for the same reasons why the abolition of *desacato* laws is sought, it is necessary to create a mechanism whereby the use of libel or slander laws may not be used in their stead, then, it might be possible, without entirely abolishing offences against honor, to incorporate an absolute excuse in criminal laws that "lifts" punishability when the injured party is a state official or a public figure,<sup>377</sup> or a private citizen involved in a matter of public interest. The systematic place given to impunity rules of this type is of no concern; however, it is quite common for countries in the region to have criminal policy reasons to decide not to penalize certain deeds. And it is not a question simply of nullifying crimes against honor; it merely means that in certain specific cases, the deed is not punishable. It should be recalled that grounds for punishment are grounds that give substance to the criminal policy of States. Societies choose when, in certain cases, given values make it preferable not to impose criminal punishment, even though rights are potentially injured. When a criminal code provides that perpetrators of crimes against property are not liable for punishment by reason of kinship,<sup>378</sup> it does not mean that the larceny, robbery or fraud is

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<sup>376</sup> With respect to the right to have one's honor respected, it has always been a complicated matter to determine precisely what that entails. Cesare Beccaria, in the mid-1700s, included a chapter on "Honor" in his work "Of Crimes and Punishments". He says, "Honour is a term which has been the foundation of many long and brilliant reasonings, without annexing to it any precise or fixed idea." (Translated from the French by Edward D. Ingraham. Second American edition). At all events it is not relevant in this case to develop this issue.

<sup>377</sup> This could also be proposed as a condition for non-punishability or non-prosecutability. The main thing would be, in the eventuality of a lawsuit, for the foregoing to be examined as a prior objection in order to avoid the criminal trial procedure. On this dogmatic category, see for all, Claus Roxin, *Derecho Penal, Parte General*, Tomo 1, Fundamentos. Editorial Civitas, S.A., Madrid, Section 6.

<sup>378</sup> See, Argentine Criminal Code, Title IV: Crimes against Property, Ch. VIII – General Provisions, Art. 185.- Without prejudice to imposition of civil liability, the following are exempt from criminal liability for larceny, fraud or reciprocal damage caused: 1) spouses, ascendants, descendants and direct lineal blood relatives ...; Criminal Code of Uruguay, Volume I, Titles II, Chapter III: Grounds for impunity, Article 41 (Kinship in crimes against property) "Perpetrators of crimes against property, other than the crimes of violent robbery, extortion, abduction, interruption of possession and any other crimes committed with violence, are exempt from punishment in the following circumstances: 1°. When the crime is committed by one spouse to the detriment of the other, provided they are not permanently or provisionally separated in accordance with the law. 2°. By the legitimate descendants to the detriment of ascendants, or by an illegitimate child legally acknowledged or declared as offspring against his or her parents, or vice versa, or by lineal blood relatives, or adoptive parents or children. 3° By siblings living together as a family. Criminal Code of Nicaragua, Chapter

annulled; rather it is merely affirmed that it is not appropriate to apply criminal punishment in response to such offenses when they are committed within a family group. In the opinion of the Office of the Special Rapporteur, statements concerning matters of public interest should be made non-punishable.

26. Finally, another common argument is that a clause such as the one proposed, means, quite simply, that certain people have no honor. This line of reasoning is flawed: officials or public figures have honor but its possible injury is outweighed by another right to which society, in this case, gives precedence. That other right is freedom of expression in both its dimensions: social and individual. An example removed from this debate sheds light on the problem: if, when a fire breaks out, an individual catches fire and the only way to put it out is to use a valuable rug to cover him, no one would say that the rug held no value for its owner before it was scorched by the operation. Quite the opposite: indubitably, the right of possession of the rug's owner will have been infringed, but this right is prevailed over by another, higher right.

27. In cases that involve the application of the laws on offenses against honor, the IACHR, when it argued in favor of the abolition of the crime of *descato*, considered that the status of freedom of expression outranked opinions on issues of public interest. Furthermore, since state officials and public figures have, generally, easy access to the media to reply to attacks on their honor and reputation, that too is reason to provide less legal protection for their honor.<sup>379</sup> Finally, it should be recalled that the IACHR has found that the State's obligation to protect the rights of others is served by providing statutory protection against intentional infringement on honor and reputation through civil actions and by implementing laws that guarantee the right of reply. Whatever the case, it should be borne in mind that if civil penalties lacked precise limits and could be excessive, they could also be disproportionate under the terms of the Convention.

28. Accordingly, there is no valid objection to decriminalization, albeit partial, of offenses against honor.

#### **D. Final observations: Slim progress in the repeal of *desacato* laws and in legislative reform bills on the offences of libel and slander**

29. As mentioned in the introduction to this chapter, the Office of the Special Rapporteur considers that no significant progress has been made in the hemisphere toward the repeal of *desacato* laws. Barring the exceptions detailed below, this offense remains in the criminal codes of all the countries mentioned in the 2000 Report. It is not necessary to repeat the comments on domestic legislations made on that occasion, comments to which the Office of

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IX, Common Provisions to Preceding Chapters, Art. 296.- The following are exempt from imposition of criminal liability and subject only to civil liability if they are in default of debt or commit usurpation, robbery, fraud, stellionate, unlawful entry, larceny, theft of livestock, or reciprocal injury: 1) Legitimate ascendants and descendants, adoptive parents or children. 2) Legitimate lineal blood relatives. 3) Spouses. 4) Parents and natural children. 5) Legitimate collateral relatives, to the second degree of consanguinity, inclusive. 6) Parents and publicly acknowledged illegitimate children; Criminal Code of the Republic of Paraguay, Law No. 1.160, Title II, Chapter 1: Punishable Crimes against Property, Art. 175 provides that a relative who lives with the author may be exempted from punishment.

<sup>379</sup> See the Draft law to modify the provisions of the National Civil and Criminal Codes of Argentina related to crimes of slander and libel, published in the 1999 Annual Report of the Office of the Special Rapporteur for Freedom of Expression.

the Special Rapporteur refers in this report. All that remains is to explain that the countries mentioned in this section are implementing legislative reform processes in accordance with the recommendations of the Commission and of the Office of the Special Rapporteur, for which reason the states that have not yet embarked on such processes are urged to emulate those initiatives.

30. In 2001 Chile abolished the crime of *desacato* provided in Article 6(b) of the State Security Act. The amendment was introduced by the “Freedom of Opinion and Information and Exercise of Journalism Act” (Act No. 19.733) published in the official gazette on June 4, 2001. Apart from Article 6(b), the Act also repealed other articles of the State Security Act, which dates from 1958; among them, Article 16, which authorized the interruption of publications and broadcasts and the immediate confiscation of publications considered offensive; and Article 17, that extended liability to criminal prosecution to encompass the editors and the printers of the accused publication. Under the new laws, civilian, not military, courts shall hear cases of defamation brought by military personnel against civilians. Furthermore, the 1967 Abusive Publicity Act was abolished. Under this Act a court could prohibit journalistic coverage of a judicial proceeding. The law also guarantees professional confidentiality and protection of sources.

31. Notwithstanding, *desacato* is still recognized as an offense in both the Criminal Code and the Code of Military Justice. The Office of the Special Rapporteur received information that the Executive sent a bill to the Congress design to modify these codes in the matter of *desacato*. The Office of the Special Rapporteur reiterates the observations mentioned in its press release<sup>380</sup> when it concluded its visit to that country: The bill represents further progress but the State is urged rapidly to pass it into law. The Office of the Special Rapporteur also received information that there is a bill in the Congress to reform the criminal classifications of offenses against honor and privacy. That initiative is welcome if it meets the parameters set out hereinabove; it would be advisable for it not to delay the discussion and adoption of the bill that abolishes the offense of *desacato*.

32. Costa Rica abolished the offense of *desacato* in March 2002 (Act 8224), by amendment of Article 309 of the Criminal Code. The amended article reads:

Article 309.—**Threatening a state official.** Anyone who personally or publicly, by written, telegraphic, or telephone communication, or through the hierarchical order, threatens a state official based on the performance of his duties shall be punished with one month to two years of imprisonment.

33. Furthermore, the Office of the Special Rapporteur received information that there is a bill before the Congress of this country to reform the Criminal Code insofar as offenses against honor are concerned. The Office of the Special Rapporteur urges the State to press forward with the necessary amendments in accordance with the considerations mentioned in this report.

34. Finally, the Office of the Special Rapporteur received information also that in Peru several bills to abolish the offense of *desacato* have been presented to the Justice Committee in the Congress. It would seem also that there is a bill to decriminalize slander and defamation, if it

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<sup>380</sup> N° 66/2002

concerns falsehoods or opinions in the press regarding a public official, albeit under certain circumstances.

35. As mentioned at the beginning of this chapter, one can see that little progress has been made since the publication of the 2000 Report. It is encouraging that in the above countries changes have been made or are under consideration. It is hoped that, even taking into account domestic lawmaking processes in each country, these discussions are not delayed and that the bills are rapidly enacted into law. Finally, the Office of the Special Rapporteur urges all the member states to bring their laws into line with the standards to guarantee freedom of expression recognized by the inter-American system for protection of human rights.