

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
SEPTEMBER 7, 2001**

**PROVISIONAL MEASURES REQUESTED BY THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
IN THE MATTER OF THE REPUBLIC OF COSTA RICA**

THE "LA NACIÓN" CASE

HAVING SEEN:

1. The brief that the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed on March 28, 2001, wherein it submitted a request seeking provisional measures on behalf of Mauricio Herrera Ulloa, attorney, and Fernán Vargas Rohrmoser, journalist with the Costa Rican newspaper *La Nación*. Specifically, the Commission was petitioning the Court to call upon the State of Costa Rica (hereinafter "the State" or "Costa Rica") to:

- 1) suspend execution of the November 12, 1999 conviction handed down by the San José First Circuit Criminal Trial Court until such time as the Commission has examined the case and, pursuant to Article 50 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), has arrived at a final decision on the merits of the case or, should the Court admit the case, until such time as it has delivered its judgment on the matter;
- 2) refrain for taking any action designed to enter the name of journalist Mauricio Herrera Ulloa in the Costa Rican Judiciary's Record of Convicted Felons, and
- 3) refrain from taking any measure or action that might infringe the right to freedom of expression that journalist Mauricio Herrera Ulloa and the newspaper *La Nación* enjoy;

The Commission based its request on the following:

- a) journalist Mauricio Herrera Ulloa was convicted on four counts of varying degrees of libel because of articles he published in the newspaper *La Nación* that quoted reports carried in a European newspaper about a "controversial" Costa Rican Foreign Service official accredited to the International Atomic Energy Organization, headquartered in Vienna; and
- b) the judgment of the San José First Circuit Criminal Trial Court was: to order a forty-day fine on each of the four counts, at a rate of two thousand five hundred colones per day, for a total fine of 160 days which, when the rule for appearance in court was applied, was reduced to three times the greatest fine, in other words, a fine of 120 days for a total of three hundred thousand colones; to find for the plaintiff in the civil damages suit, ordering Mauricio Herrera Ulloa and the newspaper *La Nación, S.A.*, represented by Fernán Vargas Rohrmoser, as jointly and severally liable, to pay moral damages of sixty million colones as compensatory damages for the stories reported in *La Nación* on May 19, 20 and 21 and December 13, 1995; to order that the court's ruling be published in the newspaper *La Nación*, in the

same section where the articles were printed -the section titled "*El País*"- using the same size and typeface used in the articles against which the suit was brought, all at the expense of Mauricio Herrera Ulloa as the author of the crimes committed; to order *La Nación* S.A. to break the existing link that exists online at *La Nación Digital* between the surname Przedborski and the articles that prompted the complaint, and that a link be established connecting those articles to the operative part of the judgment. The court also ordered the civil defendants to pay court costs of one thousand colones, and the sum of three million eight hundred ten thousand colones in personal expenses;

2. The Order that the President of the Court (hereinafter "the President") delivered on April 6, 2001, after conferring with all other judges on the Court, to the following effect:

1. To grant the Inter-American Commission on Human Rights and the State of Costa Rica until May 12, 2001, to submit the information referred to in considering paragraph 4 of this order.

2. To convene the Inter-American Commission on Human Rights and the State of Costa Rica to a public hearing to be held at the seat of the Inter-American Court of Human Rights on May 22, 2001, at 10:00 a.m., so that the Court may hear their points of view on the facts and circumstances that motivated the request for provisional measures.

3. To request the State, as an urgent measure, to abstain from executing any action that would alter the *statu quo* of the matter until this public hearing has been held and the Court is able to deliberate and decide on the admissibility of the provisional measures requested by the Commission;

3. The submission of Mr. Félix Przedborski Chawa, dated April 23, 2001, wherein he asks the Court to "hear [his] attorneys," Francisco Castillo González and Gonzalo Facio Segrega, at the public hearing to be held in San José;

4. The May 21, 2001 note from the Secretariat of the Court (hereinafter "the Secretariat"), sent on instructions from the Inter-American Court of Human Rights, wherein it informed Mr. Félix Przedborski Chawa that no provision in "the American Convention on Human Rights, the Court's Statutes or its Rules of Procedure allows third parties interested in a matter that the Court has under consideration to intervene in the matter" and that "since those conditions are not met, the Court decide[d] that it cannot accede to your request";

5. The Commission's submission of May 10, 2001, presented in response to the President's Order (*supra*, paragraph 2.1 under *Having Seen:*);

6. The State's May 16, 2001 submission, presented in response to the President's Order (*supra*, paragraph 2.1 under *Having Seen:*);

7. The public hearing on the present request, held at the Inter-American Court on May 22, 2001, wherein the following persons appeared:

For Costa Rica:

Farid Beirute, Attorney General of the Republic;

José Enrique Castro, from the Office of the Attorney General;
 Arnaldo Brenes, from the Ministry of Foreign Affairs; and
 Carmen Claramunt, from the Ministry of Foreign Affairs;

For the Inter-American Commission on Human Rights:

Pedro Nikken, Delegate;
 Carlos Ayala Corao, Delegate;
 Ariel Dulitzky, Principal Specialist with the Commission's Secretariat;
 Debora Benchoam, attorney from the Commission's Secretariat; and
 Fernando Guier, assistant;

Witness offered by the Inter-American Commission:

Mauricio Herrera Ulloa;

8. The statements made by Costa Rica and by the Inter-American Commission at that public hearing, and the testimony given by Mauricio Herrera Ulloa;

9. The May 23, 2001 Order of the Court, wherein it resolved:

1. To grant the State of Costa Rica until August 16, 2001, to submit the report referred to in the sixth and eighth considering paragraphs of this order.

2. To ratify the order of the President of the Inter-American Court of Human Rights of April 6, 2001, and, consequently, to call on the State of Costa Rica to abstain from executing any action that would alter the *status quo* of the matter until it has submitted the requested report and the Court can deliberate and decide on this during its next regular session;

10. The State's August 16, 2001 report on the nature and ramifications of the Judiciary's Record of Convicted Felons;

11. The Commission's August 24, 2001 observations on the State's August 16, 2001 brief;

12. The Secretariat's August 28, 2001 note whereby, following instructions from the Court *en banc*, it informed the parties that:

[[h]aving studied and considered [the] certifications [from the Judiciary Criminal Records Office –one supplied by the State, the other by the Commission-], the Court note[d] that the two certifications differ[ed] as to their content. It therefore request[ed] the State to clarify whether Mr. Mauricio Herrera Ulloa is or is not listed in the Judiciary's Record of Convicted Felons. If so, the Court request[ed] that the State indicate the date on which his name was entered into that record and the implications and effects of being so listed. It also asked the State to indicate when the notation was entered ordering "suspension of execution of the judgment and orders," "pursuant to the Order of the Inter.-American Court."

Costa Rica was given until September 1, 2001, to submit that information, but with no extensions, in order that the Court might deliberate and reach a decision on the matter at its LII regular session;

13. The Commission's August 29, 2001 brief wherein it requested a copy of any brief the State might file in response to the Secretariat's note of August 28, 2001, "with the understanding that [...] it reserves its right to make the observations it

deems pertinent within the 24-hour period following actual receipt of that transmission”;

14. The State’s August 31, 2001 filing, wherein it presented the report requested by the Secretariat on August 28, 2001 (*supra*, paragraph 12 under *Having Seen:*) and which stated that:

[b]y an unfortunate internal administrative error made when preparing [the certification requested by Mr. Mauricio Herrera Ulloa for employment purposes], the notation states that there are no entries in [that gentleman’s] name; the correct certification is the one issued by the Office of the Attorney General of the Nation.

... no measure has been taken here that could be prejudicial to either MAURICIO HERRERA ULLOA or to the Office of the Attorney General, as [...] this was an internal administrative error uncommon for this office.

... MAURICIO HERRERA ULLOA’s conviction by the San José First Circuit Criminal Trial Court was duly entered into the record on March 1, 2001, and the notation ordering that execution of the judgment and orders be suspended pursuant to the Order of the Inter-American Court, was entered on April 26, 2001.

15. The Secretariat’s August 31, 2001 note where, in accordance with the Court’s instructions, it gave the Commission until September 1, 2001 to present its observations on the State’s August 31, 2001 report.

16. The Commission’s brief of September 1, 2001, wherein it presented its observations on the State’s August 31, 2001 brief. In summation, it stated that:

a) that contradiction by the State itself points up the insecurity and lack of legal certainty that Mauricio Herrera Ulloa is experiencing, which is justification for the provisional measures the Commission seeks; and

b) for Costa Rica even to suggest that this Court settle the matter of an egregious contradiction between two finalized State documents on the strength of its argument that one of the two was supposedly not “valid” because of an internal administrative error committed by no less than the highest authority within the Judiciary Criminal Records Office, is itself an infringement of Mauricio Herrera Ulloa’s right of self defense and to due process of law, upheld in the American Convention, and

CONSIDERING:

1. That Costa Rica has been a State Party to the American Convention since April 8, 1970, and recognized the binding jurisdiction of the Court on July 2, 1980;

2. That Article 63(2) of the Convention provides that:

In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

3. That Article 25(1) of the Court’s Rules of Procedure stipulates the following in this regard:

At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention;

4. That under international human rights law, provisional measures are not only precautionary, in the sense of preserving a juridical situation; they are also safeguards inasmuch as they protect human rights. When the requisite basic conditions of extreme gravity and urgency are present and when necessary to prevent irreparable harm to persons, provisional measures become a true jurisdictional guarantee that is preventive in nature;

5. That in requesting provisional measures to protect the freedom of expression of "journalist Mauricio Herrera Ulloa and the newspaper *La Nación*", represented by Fernán Vargas Rohrmoser, the Commission is seeking three things: a) that execution of the judgment of conviction delivered by the San José First Circuit Criminal Trial Court on November 12, 1999, be suspended; b) that Mauricio Herrera Ulloa's name not be listed in the Judiciary's Record of Convicted Felons, and c) that the State refrain from taking any measure that would be prejudicial to the right to freedom of expression that Mauricio Herrera Ulloa and the newspaper *La Nación* enjoy.

6. That freedom of expression, recognized in Article 13 of the Convention, 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 *condition 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.¹

7. That an order must be given to suspend *La Nación's* publication of the operative paragraphs of the judgment of conviction that the San José First Circuit Criminal Trial Court delivered on November 12, 1999 and its creation of a "link" at the *La Nación Digital* website between the contested newspaper articles and the operative paragraphs of that judgment, since such a publication and such a link would cause irreparable harm to Mauricio Herrera Ulloa. No irreparable harm would be done, however, if the other operative paragraphs of that judgment were enforced. Execution of those paragraphs should be suspended until the case is finally settled by the organs of the inter-American system for the protection of human rights;

8. That the Court will not rule on the matter of the removal of the link at *La Nación Digital* that connects the surname Przedborski to the contested articles - delinkage ordered in the judgment of the San José First Circuit Criminal Trial Court on November 12, 1999- since the question of delinkage goes to the merits of the petition now before the Inter-American Commission, and is not material to provisional measures;

9. That the entry of Herrera Ulloa's name in the Judiciary's Record of Convicted Felons, created by Law No. 6723 of March 10, 1982, warrants special attention. The

¹ Cfr. *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, paragraphs 70 and 71.

Court observes that it is the State's claim, one not refuted by the Commission, that the name in question was entered into the record on March 1, 2001, which was prior to the date on which the request seeking provisional measures was filed with this Court. This information was supplied to the Court after the public hearing was held;

10. That the profession that journalists practice is the mass media business. The practice of professional journalism is indistinguishable from the exercise of freedom of expression. In fact, the two are inextricably intertwined, for the professional journalist is not, nor can he be, anything but someone who has decided to exercise freedom of expression in a continuous, regular and paid manner;² and

11. That entering his name in the Judiciary's Record of Convicted Felons causes irreparable damage to the journalist Herrera Ulloa, since it is prejudicial to his practice of his journalistic profession and poses an imminent threat of irreparable damage to his reputation. The fact that this matter involves a journalist - someone practicing a profession where credibility is essential to performance - charged with a crime related to the practice of his profession, persuades the Court that his name should not be entered into any such record until such time as the bodies of the inter-American system for the protection of human rights have decided the case, so as to avoid doing damages that are irreparable in nature, as opposed to other damages that are essentially monetary in nature,

NOW, THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority conferred by Article 63(2) of the American Convention and Article 25 of the Court's Rules of Procedure,

RESOLVES:

1. To call upon the State of Costa Rica to adopt forthwith those measures necessary to suspend the entry of Mauricio Herrera Ulloa's name in the Judiciary's Record of Convicted Felons until such time as the bodies of the inter-American system for the protection of human rights have arrived at a final decision on his case.

2. To call upon the State of Costa Rica to suspend the order for *La Nación* to publish the "Now Therefore" portion of the conviction handed down by the San José First Circuit Criminal Trial Court on November 12, 1999, and to suspend the order to create a "link" at the *La Nación Digital* website between the disputed articles and the operative part of that court ruling.

3. To call upon the State of Costa Rica to inform the Inter-American Court of Human Rights, within 30 days of notification of this Order, of the measures it has taken pursuant to the order, and to call upon the Inter-American Commission on Human Rights to submit its observations on that report within 30 days of receiving it.

² Cfr. *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. 74.

Antônio A. Cançado Trindade
President

Hernán Salgado-Pesantes

Oliver Jackman

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary