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| File Number(s): | Report No. 22/94; Case No. 11.012 |
| Session: | Eighty-Seventh Regular Session (19 – 30 September 1994) |
| Title/Style of Cause: | Horacio Verbitsky v. Argentina |
| Doc. Type: | Report |
| Decided by: | Chairman: Professor Michael Reisman; First Vice-Chairman: Dr. Alvaro Tirado Mejía; Second Vice-Chairman: Dr. Leo Valladares Lanza Members: Dr. Patrick Robinson; Dr. Oscar Luján Fappiano; Professor Claudio Grossman; Ambassador John Donaldson |
| Dated: | 20 September 1994 |
| Citation: | Verbitsky v. Arg., Case 11.012, Inter-Am. C.H.R., Report No. 22/94, OEA/Ser.L/V.88, doc. 9 rev. 1 (1994) |
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On May 5, 1992, the Commission received a petition from Mr. Horacio Verbitsky against the Republic of Argentina. Mr. Verbitsky, a journalist, was convicted of the crime of "desacato" for allegedly defaming Mr. Augusto Cesar Belluscio, Minister of the Supreme Court. The Argentine authorities considered that the publication of an article in which the journalist referred to Mr. Belluscio as "asqueroso" (which can mean either disgusting or disgusted) was a crime under Article 244 of the Criminal Code, which establishes the offense of desacato. The petitioner alleged violation of Articles 8 (independent and impartial tribunal); 13 (freedom of thought and expression); and 24 (equal protection before the law).

I. FACTS

1. On March 6, 1988 the petitioner published an article in the *Argentina 12* newspaper, titled "Scars from Two Wars," in which he used the word "disgusting" to describe the Argentine Supreme Court Minister Augusto Belluscio in reference to an interview given by Mr. Belluscio in which the Minister said, among other things, that a proposed reform to expand the Supreme Court with two additional members "disgusted him." The petitioner alleges that he used the word "asqueroso" in the sense of one who is disgusted, just as the Minister had used it in his interview.

2. As a result of this article, Minister Belluscio filed a private libel suit against the petitioner in Federal Criminal Court No. 4 in Buenos Aires. The federal judge ruled that the term used by the journalist Verbitsky went beyond the bounds of honorable treatment of the official and represented an injury to him in the exercise of his function. On the basis of the principle *curia novit lex* the judge decided to change the initial private lawsuit into a public case of "desacato" (desacato laws criminalize expression which offends, insults, or threatens a public functionary in the performance of his or her official duties). The judge convicted Mr. Verbitsky of the intent to defame the minister.

3. On July 13, 1991 the Federal Criminal Appeals Court of Buenos Aires upheld the sentence. Subsequently, the petitioner appealed to the Supreme Court via the Extraordinary Appeal alleging that the

ruling threatened the constitutional guarantee of freedom of the press. The Supreme Court rejected the Extraordinary Appeal on February 25, 1992.

II. PROCEDURE BEFORE THE COMMISSION

4. In a note dated May 27, 1992, the Commission transmitted the relevant parts of the petition to the Argentine government, requesting its observations within a period of 30 days.

5. In a note dated May 5, 1992, the petitioner's representatives, CEJIL and Americas Watch, expressed their interest in having a hearing before the Commission during its 82nd session. The Commission granted the hearing on September 17, 1992 and invited the Government of Argentina to send a representative to it.

6. In a note on July 10, 1992, the petitioner sent the Commission reports submitted by Argentine organizations and jurists, in which they explained why the desacato law violates the Convention. The reports were presented by Dr. Jorge Reinaldo Vanossi, Dr. German Bidart Campos, Dr. Eugenio Zaffaroni, the Bar Association of the Federal Capital, the Association of Argentine Press Groups (ADEPA), the Argentine Federation of Press Workers (FATPREN), and the International Federation of Journalists.

7. In a note on August 31, 1992, the Government of Argentina requested an extension until August 31, 1992 to reply to the request for information on the petition.

8. In a note dated August 31, 1992 the Commission received the response of the Argentine government, arguing that the petition is inadmissible for the following reasons:

i. The government stated that on July 15, 1992 legislation was introduced in Congress by the Executive branch to repeal Article 244 of the Criminal Code. Therefore, congressional action could repeal the desacato law that is the principal element in the petitioner's case.

ii. Even in the event the law were not repealed, the government denies the allegation that the petitioner's rights were violated by reason of partiality of judges, infringement on freedom of expression, and denial of equal protection under law. With regard to the alleged violation of Article 13 of the Convention (freedom of expression), it reasons that since the desacato law predates the Convention's entry into force, the determination of the petitioner's conduct is simply an application of domestic law and has no persecutory intent as implied in the petition. The principle of equal protection under law is not violated because the petitioner has received the same treatment that any other person would.

9. In a note on September 15, 1992, the government sent a copy of the draft law to repeal the desacato law, together with a note that the bill had been approved by the House of Representatives on September 3, 1992.

10. During its 82nd session, in September 1992, the Commission held a hearing with representatives of the petitioner, CEJIL and Americas Watch, and the Government. At that time, the petitioner's representative suggested that it would be appropriate to begin the process of friendly settlement envisioned in Article 48.1.f.

11. In a note of September 21, 1992, the representatives of the petitioner reported to the Commission on the steps that had been taken in the negotiations with the Government and offered the initial guidelines for a settlement. The representatives asked the Commission to formally initiate the process of friendly settlement and designate one of its members to act as mediator in the process. In a note of September 23, the Argentine government also sent the Commission initial guidelines for a settlement.

12. In a note to the government on September 29, 1992, the Chairman of the Commission formally recognized the process of friendly settlement in the case, and stated that "as requested by the parties in item 4 of the initial guidelines, the Commission will decide on the compatibility or incompatibility of the Pact of San Jose, Costa Rica with the current Argentine Criminal Code by issuing the report stipulated in Article 49 of the Convention." By note of October 2, 1992, the same note was sent to the petitioner's representatives.

13. On October 14, 1992 the permanent representative of Argentina to the OAS sent a note to the Commission in which he stated that the Commission's note of October 2 gives narrower scope to point 4 of the guidelines than the parties had agreed. The parties want the Commission's analysis of the compatibility or incompatibility of the desacato law with the Convention to include an opinion on whether States Parties to the Convention must harmonize their domestic legislation in accordance with Article 2 of the Convention.

14. On June 4, 1993, the Commission received a note from the Government transmitting the relevant part of a presidential speech on the repeal of the desacato law, as well as a copy of the law repealing Article 244 of the Criminal Code with an explanation and background information.

15. In a note on January 5, 1994 the petitioner's representatives, CEJIL and Americas Watch reported to the Commission on the developments in the case.

16. During its 85th session, the Commission heard the representatives of the petitioner and the Government. They reported on progress in the case and what remained to be settled.

III. FRIENDLY SETTLEMENT

A. The agreement

17. After several meetings the parties agreed upon a text with the guidelines for a possible friendly settlement. On September 21, 1991 they signed a joint proposal for friendly settlement. The initial guidelines of the agreement between the parties were:

i. The petitioner requests the Argentine state to commit itself to repeal of Article 244 of the Criminal Code, which established the criminal offense of desacato.

ii. The petitioner requests that once the new law repealing the desacato law is approved, it be applied in his case with a view to reversing his sentence and cancelling all its effects in accordance with Article 2 of the Criminal Code. The representatives said this would be applied in the present case, as is done in all cases.

iii. The petitioner requests fair compensation for the damages and injury suffered because of the judicial action. The petitioner expressly waives any indemnization for moral damages. The lawyers involved expressly waive any claim for honoraria in the case.

iv. The parties request that when the Commission prepares the report referred to in Article 49 of the Convention, it comment on the compatibility or incompatibility of the desacato law in the Argentine Criminal Code with the provisions of the Pact of San Jos , Costa Rica, including an opinion on whether States Parties to that instrument must harmonize domestic legislation in accordance with the Convention's Article 2.

v. The parties agree to request the Commission to supervise and monitor the settlement.

B. Compliance with the Agreement

18. On June 8, 1993, Mr. Verbitsky presented an appeal to Court I of the Federal Tribunal in Buenos Aires concerning its sentence convicting him of desacato.

On July 1, 1993 the Court's prosecutor proposed that the appeal be granted and Mr. Verbitsky be exonerated, including revocation of the damages he had been ordered to pay. On July 26, Mr. Verbitsky accepted the prosecutor's proposal.

On August 4, 1993, Minister Belluscio notified the Federal Court in writing that he had asked the National Criminal Appeals Court to assume jurisdiction, removing the case from the Federal Court, because under the new Criminal Code (Law 23,984) the National Court is charged with hearing the appeals. As to the substantive issues, he asks that the appeal be denied because the sentence has been complied with, and that the compensation not be revoked because he had already received it and it is part of his assets as an acquired right.

19. In a decision issued on February 24, 1994, the National Criminal Appeals Court resolved:

- i. To accept the appeal lodged by Mr. Verbitsky and cancel the suspended sentence of one month in prison for desacato.
- ii. To state that it need not rule on the restitution of the compensation for moral damages and costs, since Mr. Verbitsky has expressly renounced it.

20. In view of the foregoing, the Commission considers that the points of the agreement for friendly settlement have been fulfilled.

- i. The Commission placed itself at the disposal of the parties as provided in Article 48.1.f of the Convention.
- ii. The law of desacato was repealed by Law 24,198.
- iii. The conviction of Mr. Verbitsky was reversed and all its effects cancelled.
- iv. Because of Mr. Verbitsky's express renouncement, the restoration of costs that he initially sought is no longer required.

21. The Commission, in accord with Article 49 of the Convention, has reviewed the content of the friendly settlement for its consistency with the Convention. The abrogation of the statutory basis for the action of desacato, in the present case, brings Argentine law into conformity with the Convention, for it removes a theretofore potential legal basis for the governmental restriction of the freedom of expression guaranteed in the Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

22. To express its appreciation to the Government of Argentina for repealing the desacato law, thereby complying with Article 2 of the American Convention on Human Rights, to which Argentina has been a party since September 5, 1984; and its appreciation to Mr. Verbitsky for having facilitated the friendly settlement by accepting the decision of the National Criminal Appeals Court.

The Commission notes that in the event a law is found to be incompatible with the Convention, the State Party is obligated, under Article 2, to adopt such legislative or other measures as may be necessary to give effect to the rights and freedoms guaranteed in the Convention.

23. To express its profound satisfaction with the successful completion of the friendly settlement, and note that it was carried out to the full satisfaction of the parties and the Commission, in accordance with

Articles 48.b and 49 of the American Convention and Article 48 of the Commission's Regulations.

24. To publish this report in the Annual Report to the General Assembly.