

Tristán Donoso v. Panama

ABSTRACT¹

During July 1996, the Attorney General José Antonio Sossa Rodríguez issued an order to have Mr. Tristán Donoso's, a Panamanian attorney, telephone conversation with a client recorded. In the recorded conversation and later at a press conference, Mr. Tristán Donoso, made statements regarding the Attorney General's corrupt behavior. Mr. Tristán Donoso then filed a criminal report against the Attorney General for abuse of power and infringement of his public official duties. The Panamá Republic Supreme Court of Justice rejected the complaint for the lack of evidence supporting the complaint. Later, the Attorney General commenced criminal proceedings against Mr. Tristán Donoso for defamation in retaliation for the accusations Mr. Tristán Donoso made. As a result, the Court found that the State violated the American Convention on Human Rights.

I. FACTS

A. Chronology of Events

July 1996: Mr. Santander Tristán Donoso, a Panamanian attorney, is legal counsel for the Catholic Church.² At the request of the Bishop of Colón, Bishop Carlos Ariz, Mr. Tristán Donoso provides legal services to Mr. Walid Zayed and his family.³ Mr. Walid Zayed is being held in custody, in the course of criminal proceedings, for a money laundering offense.⁴

Early July 1996: Mr. Walid Zayed reports to the police that, while in

1. Raya Marinova, Author; Jennifer Barrera, Elise Cossart-Daly, Sarah Frost, Erika Green, Melissa Kurata, and Shamin Rostami, Editors; Laura Ybarra, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. Tristán Donoso v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 193, ¶ 34 (Jan. 27, 2009).

3. *Id.*

4. *Id.*

custody, he was visited by individuals who had offered to obtain his liberty in exchange for a sum of money.⁵ At the request of Mr. Walid Zayed, a joint operation is set up between the Judicial Technical Police Chief (the "Police Chief") and the Colón Circuit Third Prosecuting Office (the "Prosecutor") to investigate the alleged extortion.⁶ Mr. Walid Zayed personally records the conversations he holds with the alleged extorters at the police station where he is held in custody.⁷

July 7, 1996: *La Prensa*, a Panamanian newspaper, publishes an article which states that two companies that criminal organizations allegedly used to launder money from drug trafficking had allegedly donated money to the 1994 reelection campaign of the Attorney General as a legislator.⁸

July 8, 1996: Mr. Tristán Donoso and Mr. Adel Zayed, Mr. Walid Zayed's father, have a phone conversation about the possible publication of a press report stating that, unlike Mr. Walid Zayed's company, the two companies that had allegedly financed the 1994 reelection campaign of the Attorney General as a legislator had not been investigated for the alleged perpetration of the money laundering offense.⁹

July 9, 1996: *La Prensa* publishes an article stating that the accusations about the alleged improper finance of the campaign of the Attorney General are false.¹⁰

July 10, 1996: In the course of the extortion investigation, the Prosecutor requests leave from the Attorney General to have the telephones at the Zayed family residence taped, and to authorize the Colón National Police to audio and videotape the conversations and meetings between Mr. Walid Zayed and his extorters, but not those with his relatives and defense counsel.¹¹

The Prosecutor also forwards to the Attorney General two tapes and a videotape.¹² One of the tapes and the videotape, made at the request of Mr. Walid Zayed, contains recordings of Mr. Walid Zayed's

5. *Id.* ¶ 35.

6. *Id.*

7. *Id.*

8. *Id.* ¶ 36.

9. *Id.* ¶ 37.

10. *Id.* ¶ 38.

11. *Id.* ¶ 39.

12. *Id.* ¶ 40.

conversations with the alleged extorters at the Colón National Police Station.¹³ The other tape, also made by private initiative and without leave from the Office of the Public Attorneys, is provided by the Technical Judicial Police and contains phone calls allegedly made from the Zayed family residence.¹⁴

July 12, 1996: The Attorney General issues two orders giving the Prosecutor permission to proceed with the taping, and another order addressed to the National Telecommunications Institute (“NTI”) to tap the telephones at the Zayed family residence for a fifteen-day period.¹⁵

July 16, 1996: The Prosecuting Office Press and Social Communications Department, complying with an order from the Attorney General, sends a copy of the July 8, 1996 tape recording between Mr. Tristán Donoso and Mr. Adel Zayed, along with a transcript of the recording, to the Archbishop of Panama, José Dimas Cedeño.¹⁶ The Archbishop, in turn, forwards it to the Bishop of Colón, Carlos Ariz.¹⁷ Bishop Ariz informs Mr. Tristán Donoso that his phone conversations are being recorded.¹⁸

At the time of judgment, the party who ordered the conversations to be recorded has never been revealed and is currently unknown.¹⁹

Mid-July 1996: Mr. Tristán Donoso and Bishop Ariz visit the office of the Attorney General to clarify the situation and receive an explanation for the recordings.²⁰ The Attorney General, however, receives Bishop Ariz alone, plays the tape of Mr. Tristán Donoso’s phone conversation with Mr. Adel Zayed, and tells him that the matter is a scheme Mr. Tristán Donoso made up against the Office of the Public Attorneys.²¹

July 1996: The Attorney General holds a meeting at the Office of the National Attorney General with members of the Governing Board of the

13. *Id.*

14. *Id.*

15. *Id.* ¶ 41.

16. *Id.* ¶ 42.

17. *Id.*

18. *Id.*

19. *Panama News Briefs: Panama Loses in Inter-American Human Rights Court Again*, THE PANAMA NEWS (Feb. 27, 2009), http://www.thepanamanews.com/pn/v_15/issue_04/news_briefs.html.

20. Tristán Donoso v. Panama, Preliminary Objections, Merits, Reparations, and Costs, ¶ 43.

21. *Id.*

National Bar Association due to a number of complaints the National Bar Association received about the manner agents of the Office of the Public Attorneys are handling matters in the Colón Province.²² At that meeting, the Attorney General plays the tape of Mr. Tristán Donoso's conversation with Mr. Adel Zayed, pointing out to them that such recording is a conspiracy intended to damage either his own image or that of the Office of the Public Attorneys.²³

July 21, 1996: Mr. Tristán Donoso sends a letter to the Attorney General offering to clarify the phone conversation.²⁴ The Attorney General does not respond to the letter.²⁵

March 20, 1999: The Third Judge of the Civil Circuit files a complaint against the Attorney General for illegally interfering with the phone communications of the Court, which has widespread repercussions and is published in several newspapers, and which leads to the intervention of authorities such as the Ombudsman's Office of Panama.²⁶

March 25, 1999: After a number of public challenges to the Attorney General's authority to order the tapping and tape recording of phone calls, Mr. Tristán Donoso holds a press conference where he states that the Attorney General had ordered that Mr. Tristán Donoso's conversation with a client be tapped and tape recorded, and had disclosed the contents to third parties.²⁷

March 26, 1999: Following the press conference, the Attorney General files a criminal complaint against Mr. Tristán Donoso for criminal defamation on the grounds that Mr. Donoso has accused him of illegally tapping and tape recording his phone conversations.²⁸

Mr. Tristán Donoso files a criminal complaint with the Office of the Solicitor for the Administration against the Attorney General for abuse of authority and violation of his duties as a public official.²⁹

22. *Id.* ¶ 44.

23. *Id.*

24. *Id.* ¶ 45.

25. *Id.*

26. *Id.* ¶ 97.

27. *Id.* ¶ 46.

28. Eduardo Andres Bertoni, *The Inter-American Court of Human Rights and the European Court of Human Rights: A Dialogue on Freedom of Expression Standards*, 3 EUR. HUM. RTS. L. REV. 332, 344 (2009); Tristán Donoso v. Panama, Case 12.360, Inter-Am. Comm'n H.R., Application to the Court, ¶ 101 (Aug. 28, 2007).

29. Tristán Donoso v. Panama, Preliminary Objections, Merits, Reparations, and Costs, ¶ 47.

December 3, 1999: The Panama Supreme Court of Justice rejects the complaint, and acquits the Attorney General of the crimes of abuse of authority and violating his duties as a public official.³⁰

June 27, 2000: The Ninth Criminal Court of the First Judicial Circuit dismisses the Attorney General's complaint against Mr. Tristán Donoso without prejudice on the ground that it was not proven that Mr. Tristán Donoso was aware that his statements were false.³¹

July 12, 2000: Public Prosecutor No. Four of the First Circuit Court appeals the dismissal without prejudice.³²

August 31, 2001: The Second Superior Court reverses the appellate decision.³³

October 26, 2001: The Attorney General files in the Ninth Criminal Court of the First Judicial Circuit an ancillary action for damages against Mr. Tristán Donoso for 1,100,000 balboas³⁴ (approximately \$1,100,000 USD).³⁵

January 15 and March 7, 2002: Public Prosecutor No. Four of the First Circuit Court requests that the Ninth Criminal Court of the First Judicial Circuit file a communication with INTERPOL in the United States and Canada to locate Mr. Tristán Donoso and his wife, and serve him the notice of the indictment issued in the proceedings against him.³⁶ Mr. Tristán Donoso and his wife had emigrated to Canada.³⁷

May 23, 2002: The petitions above are granted.³⁸

January 16, 2004: The Ninth Criminal Court of the First Judicial Circuit acquits Mr. Tristán Donoso of the defamation crime against the

30. *Id.* ¶ 50.

31. *Id.* ¶ 102.

32. *Id.* ¶ 103.

33. *Id.*

34. *Id.* ¶ 104.

35. *The World Factbook: Panama*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/pm.html> (last visited Mar. 13, 2014).

36. Tristán Donoso v. Panama, Preliminary Objections, Merits, Reparations, and Costs, ¶ 105.

37. *Id.* ¶ 183.

38. *Id.* ¶ 105.

Attorney General, and rejects the claim for damages.³⁹

February 11, 2004: The Panama First Court Circuit Public Prosecutor No. Four appeals the judgment.⁴⁰

2004: The Constitution is amended to allow private communications to be wiretapped or recorded only pursuant to an order issued by a judicial authority.⁴¹

April 1, 2005: The Second Superior Court of Justice reverses the acquittal and sentences Mr. Tristán Donoso to imprisonment for eighteen months and disqualification to hold public office for an equal term.⁴² The Court substitutes the imprisonment imposed by a 750 balboas, or \$750 USD, fine.⁴³ The Court also grants the Attorney General pecuniary and non-pecuniary damages.⁴⁴

B. Other Relevant Facts

At the time of the events, Article 29 of the State's Political Constitution provides that "private telephone calls are privileged and cannot be taped."⁴⁵ However, there are laws allowing the Attorney General to grant leave to tape and videotape conversations and phone calls, subject to Article 29 of the Political Constitution, where there are indications that a serious crime has been committed and where the conversations are related to the offense.⁴⁶

II. PROCEDURAL HISTORY

A. Before the Commission

July 4, 2000: The *Centro de Asistencia Legal Popular* ("CEALP") and

39. *Id.* ¶ 106.

40. *Id.* ¶ 107.

41. *Id.* ¶ 204.

42. *Id.*

43. *Id.*; *The World Factbook: Panamá*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/pm.html> (last visited Mar. 13, 2014).

44. *Id.*; Eduardo Andres Bertoni, *The Inter-American Court of Human Rights and the European Court of Human Rights: A Dialogue on Freedom of Expression Standards*, 3 EUR. HUM. RTS. L. REV. 332, 344 (2009).

45. Tristán Donoso v. Panama, Preliminary Objections, Merits, Reparations, and Costs, ¶ 50.

46. *Id.* ¶ 53.

the Center for Justice and International Law (“CEJIL”) present a petition on behalf of Mr. Tristán Donoso to the Inter-American Commission of Human Rights.⁴⁷

October 24, 2002: The Commission declares the petition admissible.⁴⁸

The State alleges the petition is inadmissible because Mr. Tristán Donoso did not exhaust domestic remedies.⁴⁹ The State first alleges that this case is subject to an administrative investigation that resulted in dismissal with prejudice by the Panama Supreme Court.⁵⁰ The Commission disagrees because Mr. Tristán Donoso’s complaint against the Attorney General was dismissed with prejudice.⁵¹ As a result, the Commission finds that Mr. Tristán Donoso exhausted this remedy.⁵²

The State also alleges that the domestic remedies have not been exhausted since criminal proceedings by the Attorney General against Mr. Tristán Donoso have not concluded and the corresponding appeals are pending.⁵³ The Commission, however, finds that the State did not explain why the criminal proceedings against Mr. Tristán Donoso were an adequate and effective remedy for the alleged violation of Article 13 (Freedom of Thought and Expression) of the American Convention.⁵⁴

Therefore, the Commission finds that Mr. Tristán Donoso exhausted domestic remedies.⁵⁵

October 26, 2006: The Commission adopts Report on Merits No. 114/06,⁵⁶ finding a violation of Articles 8 (Right to a Fair Trial), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), and 25 (Right to Judicial Protection), all in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.⁵⁷

The Commission recommends that the State: publically acknowledge international responsibility for violating Mr. Tristán

47. Tristán Donoso v. Panama, Admissibility Report, Report No. 71/02, Inter-Am. Comm’n H.R., Case No. 12.360, ¶ 1 (Oct. 24, 2002).

48. Tristán Donoso v. Panama, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

49. Tristán Donoso v. Panama, Inter-Am. Comm’n H.R., Admissibility Report, ¶ 12.

50. *Id.*

51. *Id.* ¶ 18.

52. *Id.*

53. *Id.* ¶¶ 14, 19.

54. *Id.* ¶ 22.

55. *Id.*

56. Tristán Donoso v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 193, ¶ 1 (Jan. 27, 2009).

57. Tristán Donoso v. Panama, Inter-Am. Comm’n H.R., Application to the Court, ¶ 17.

Donoso's human rights; conduct a complete, impartial, effective, and immediate investigation in order to establish the circumstances in which the phone conversation was intercepted and its contents divulged, identify the persons who participated, begin criminal proceedings, and apply appropriate sanctions; grant Mr. Tristán Donoso adequate reparations for violating his rights, including setting aside the judgment of the Second Chamber of the Panama Supreme Court of Justice, entered on April 1, 2005, that sentenced him for criminal defamation of State official; and adapt its criminal legal system to comply with Article 13 (Freedom of Thought and Expression) of the Convention.⁵⁸

B. Before the Court

August 28, 2007: The Commission submits the case to the Court, after the State failed to adopt its recommendations.⁵⁹

1. Violations Alleged by Commission⁶⁰

Article 8 (Right to a Fair Trial)

Article 11 (Right to Privacy)

Article 13 (Freedom of Thought and Expression)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) and

Article 2 (Domestic Legal Effects) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁶¹

Same violations alleged by Commission, plus:

Article 9 (Freedom from Ex Post Facto Laws)

in relation to

Article 1(1) of the American Convention.

February 5, 2008: The State submits a preliminary objection on the

58. *Id.* ¶ 18.

59. Tristán Donoso, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

60. *Id.* ¶ 3.

61. Viviana Krsticevic, Marcela Martino, and Gisela De León, of the Center for Justice and International Law ("CEJIL") represented the victim. *Id.* n.3, ¶ 4.

grounds that the Court partially lacked subject matter jurisdiction.⁶² The State objects to the reparation measure requested by the Commission, i.e., that the State adapt its criminal legal system to comply with Article 13 (Freedom of Thought and Expression) of the Convention.⁶³ The State argues that the demand to review its domestic legislation could not be enforced in an adjudication proceeding.⁶⁴

January 27, 2009: The Court unanimously dismisses the preliminary objection, finding that the State's claim that the Court lacked jurisdiction to order a reparation measure did not qualify as a proper preliminary objection.⁶⁵ Such objection had neither the purpose, nor the ability to prevent the Court from considering the merits of the case.⁶⁶

III. MERITS

A. Composition of the Court

Cecilia Medina-Quiroga, President
Diego García-Sayán, Vice-President
Sergio García-Ramírez, Judge
Manuel E. Ventura-Robles, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu-Blondet, Judge

Pablo Saavedra-Alessandri, Secretary
Emilia Segares-Rodríguez, Deputy Secretary

B. Decision on the Merits

January 27, 2009: The Court issues its Judgment on Preliminary Objection, Merits, Reparations, and Costs.

The Court found unanimously that the State had violated:

Articles 11(1) (Right to Honor and Dignity) and 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home,

62. *Id.* ¶ 11.

63. *Id.* ¶ 12.

64. *Id.*

65. *Id.* ¶ 16.

66. *Id.*

Correspondence, and of Unlawful Attacks on Honor, and Dignity), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Tristán Donoso,⁶⁷ because:

*The phone conversation between Mr. Tristán Donoso and Mr. Adel Zayed was private and subject to professional confidentiality, and neither of the parties had consented to its disclosure to third parties.*⁶⁸

*The disclosure did not meet the standards of the American Convention, because it was not contemplated in legislation, did not serve a legitimate purpose, and was not suitable, necessary, and proportionate.*⁶⁹ *The disclosure was without proper authorization and was statutorily punished.*⁷⁰

*The Attorney General's disclosure of the tape to the National Bar Association and to the Catholic Church authorities, along with his comments that Mr. Tristán Donoso's statements were part of a defamation scheme, negatively affected the honor and reputation of Mr. Tristán Donoso.*⁷¹

*As such, the Court found that the State violated Articles 11(1) (Right to Honor and Dignity) and 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity).*⁷²

Article 13 (Freedom of Thought and Expression), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Tristán Donoso,⁷³ because:

*Mr. Tristán Donoso's criminal conviction, based on Mr. Tristán Donoso's statements, was unnecessary.*⁷⁴ *True statements of fact regarding a public official in relation to a public interest matter are expressions protected by the American Convention.*⁷⁵ *Anything that bears on the performance of a public official or has an impact on*

67. *Id.* "Declares" ¶ 3.

68. *Id.* ¶ 75.

69. *Id.* ¶ 76.

70. *Id.* ¶ 79.

71. *Id.* ¶ 82.

72. *Id.* "Declares" ¶ 3.

73. *Id.* "Declares" ¶ 5.

74. *Id.* ¶ 130.

75. *Id.* ¶ 124.

*general interests or rights is of public interest.*⁷⁶

*Mr. Tristán Donoso's expression regarding the Attorney General's responsibility in the recording and disclosure of the tape was not groundless, in light of the following, inter alia: (1) the Attorney General was the only official legally authorized to order wiretapping; (2) the Attorney General was in possession of the tape; (3) his office had forwarded the tape and its transcript to the Catholic Church authorities; (4) the tape was played to members of the National Bar Association and to the Archbishop of Panama at the Attorney General's office; and (5) Mr. Adel Zayed denied having recorded the conversation.*⁷⁷

*The Court, therefore, found that the State violated Mr. Tristán Donoso's freedom of expression, enshrined in Article 13 of the Convention, by criminally charging him for true statements he made about the Attorney General.*⁷⁸

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Tristán Donoso,⁷⁹ because:

*The Panama Supreme Court of Justice failed to explain why it decided Mr. Tristán Donoso's case in favor of the Attorney General.*⁸⁰ *The State thus failed to fulfill its duty to guarantee due process, since giving the grounds for a Court's decision constitutes "due guarantees" within the meaning of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).*⁸¹

The Court found unanimously that the State had not violated:

Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity), in relation to Articles 1(1) and 2 of the American Convention, to the detriment of Mr. Tristán Donoso,⁸² because:

76. *Id.* ¶ 120.

77. *Id.* ¶ 125.

78. *Id.* "Declares" ¶ 5.

79. *Id.* "Declares" ¶ 9.

80. *Id.* ¶ 157.

81. *Id.* ¶¶ 154, 157.

82. *Id.* "Declares" ¶¶ 3, 4.

The parties stipulated that it was not proven that the Attorney General had ordered the tapping and recording.⁸³ In addition, it was impossible to determine that the State was responsible for these actions, as it was not proven that a State agent had ordered the tapping or recorded the conversation, and there was evidence that the tapping and recording were a result of private action.⁸⁴

Furthermore, the victim's representatives did not demonstrate that the State failed to guarantee the right to a private life by assigning a subordinate official to investigate the Attorney General or failing to identify and punish those responsible for the recording.⁸⁵ The investigation was actually conducted by the Solicitor for the Administration who was not subordinate to the Attorney General.⁸⁶

As a result, the Court found that the State did not violate Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity) of the American Convention.⁸⁷

Article 2 (Domestic Legal Effects) of the American Convention, to the detriment of Mr. Tristán Donoso,⁸⁸ because:

It has not been proven that the criminal conviction was a result of deficiencies in the Panamanian rules defining crimes against honor.⁸⁹ Therefore, the State did not fail to comply with the obligation to give domestic legal effects to the American Convention.⁹⁰

Article 9 (Freedom from Ex Post Facto Laws), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Tristán Donoso,⁹¹ because:

The conduct of which Mr. Tristán Donoso was convicted and the corresponding punishment were both defined by criminal statute in

83. *Id.* ¶ 61.

84. *Id.* ¶¶ 64, 66.

85. *Id.* ¶¶ 84, 89.

86. *Id.* ¶ 85.

87. *Id.* "Declares" ¶¶ 3, 4.

88. *Id.* "Decides" ¶ 6.

89. *Id.* ¶ 131.

90. *Id.*

91. *Id.* "Decides" ¶ 7.

force at the time of the events.⁹² Even if the enforcement of such statute is a violation of the American Convention, it does not, per se, violate the legality principle of Article 9 (Freedom from Ex Post Facto Laws).⁹³

Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Tristán Donoso,⁹⁴ because:

*In light of the extensive documentation the Office of the Solicitor for the Administration gathered and considered in Mr. Tristán Donoso's criminal complaint against the Attorney General, there is no evidence to warrant the assumption that the investigation was not conducted diligently.*⁹⁵

*The State did not violate the right to due process, as it was not proven that the prosecutors in the proceedings against Mr. Tristán Donoso acted pursuant to their own interests or motives against the law, or that their decisions were contrary to the law due to influence by senior officials.*⁹⁶

The Court found unanimously that it was unnecessary to consider:

Article 8(2) (Right to Be Presumed Innocent), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Tristán Donoso,⁹⁷ because:

*The Court had already considered the criminal proceedings and the sentence imposed on Mr. Tristán Donoso in relation to Article 13 (Freedom of Thought and Expression), it did not find it necessary to consider Article 8(2) (Right to be Presumed Innocent) of the American Convention.*⁹⁸

92. *Id.* ¶ 139.

93. *Id.*

94. *Id.* "Decides" ¶ 8.

95. *Id.* ¶¶ 147-49.

96. *Id.* ¶¶ 166-67.

97. *Id.* "Decides" ¶ 11.

98. *Id.* ¶ 169.

C. Concurring and Dissenting Opinions

1. Concurring Opinion of Judge Sergio García Ramírez

Judge García Ramírez stressed the principle of legality and the freedom from *ex post facto* laws, noting the requirement for strict specification of punishable conduct and states that it is inadmissible to incriminate conduct that is naturally lawful.⁹⁹

Judge García Ramírez discussed the important role and diverse powers of Public Attorneys, and their duty to respect individual rights and to strictly perform the statutory duties of the institution they represent.¹⁰⁰

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Overturn the Conviction

Because the criminal punishment imposed on Mr. Tristán Donoso affected his right to freedom of expression, the State must set aside the judgment and all its consequences, including: (1) his guilty verdict of criminal defamation; (2) the imposition of an 18-month sentence (later replaced by a fine); (3) his disqualification from holding public office for the same term; (4) civil compensation; and (5) the inclusion of his name in any criminal records.¹⁰¹

2. Publish the Judgment

The State must publish paragraphs 1-5, 30-57, 68-83, 90-130, 152-157, and the operative part of the Judgment in the Official Gazette and in a newspaper of nationwide circulation.¹⁰²

99. Tristán Donoso v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 193, ¶¶ 4, 5, 7 (Jan. 27, 2009).

100. *Id.* ¶¶ 11-12, 14, 17.

101. *Id.* ¶ 195.

102. *Id.* ¶ 197.

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

[None]¹⁰³

2. Non-Pecuniary Damages

The Court awarded \$15,000 to Mr. Tristán Donoso for the invasion of his private life and for the negative damage to his professional reputation flowing from the criminal conviction.¹⁰⁴

3. Costs and Expenses

The Court ordered the State to pay \$15,000 to Mr. Tristán Donoso for reimbursement for costs and expenses incurred during the domestic proceedings and those before the Court.¹⁰⁵ Mr. Tristán Donoso was directed to reimburse CEJIL \$11,610.71 for their representation before the Court.¹⁰⁶

4. Total Compensation (including Costs and Expenses ordered)

\$30,000

C. Deadlines

The State must pay the non-pecuniary damages to Mr. Tristán Donoso, reimburse Mr. Tristán Donoso for costs and expenses, and set aside the judgment against Mr. Tristán Donoso within one year of notification of the Judgment.¹⁰⁷ The State must publish the pertinent parts of the Judgment within six months of notification of the Judgment.¹⁰⁸

103. *Id.* ¶ 185.

104. *Id.* ¶ 191.

105. *Id.* ¶ 216.

106. *Id.* ¶¶ 214, 216.

107. *Id.* ¶¶ 191, 195, 216.

108. *Id.* ¶ 197.

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

September 1, 2010: The State fully complied with its obligation to annul Mr. Tristán Donoso's criminal conviction and its consequences,¹⁰⁹ to pay him the non-pecuniary damages and costs and expenses ordered,¹¹⁰ and to publish the pertinent parts of the Judgment.¹¹¹ The Court declared the case closed as it found the State had fully complied with all its obligations under the Judgment.¹¹²

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[Tristán Donoso v. Panama, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 193 \(Jan. 27, 2009\).](#)

2. Decisions on Merits, Reparations and Costs

[Tristán Donoso v. Panama, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 193 \(Jan. 27, 2009\).](#)

[Tristán Donoso v. Panama, Preliminary Objection, Merits, Reparations, and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 193 \(Jan. 27, 2009\).](#)

3. Provisional Measures

[None]

109. Tristán Donoso v. Panama, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., ¶ 19 (Sep. 1, 2010).

110. *Id.* ¶ 8.

111. *Id.* ¶ 23.

112. *Id.* "Deciding" ¶ 1.

4. Compliance Monitoring

[Tristán Donoso v. Panama, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Sept. 1, 2010\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

Tristán Donoso v. Panama, Petition No. 12.360, Inter-Am. Comm'n H.R. (July 5, 2000).

2. Report on Admissibility

[Tristán Donoso v. Panama, Admissibility Report, Report No. 71/02, Inter-Am. Comm'n H.R., Case No. 12.360 \(Oct. 24, 2002\).](#)

3. Provisional Measures

Tristán Donoso v. Panama, Precautionary Measures, Order of the Commission, Inter-Am. Comm'n H.R., Case No. 12.360 (Sept. 15, 2005).

4. Report on Merits

Tristán Donoso v. Panama, Report on Merits, Report No. 114/06, Inter-Am. Comm'n H.R., Case No. 12.360 (Oct. 26, 2006).

5. Application to the Court

[Tristán Donoso v. Panama, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.360 \(Aug. 28, 2007\) \(Available only in Spanish\).](#)

VIII. BIBLIOGRAPHY

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