

Herrera Ulloa v. Costa Rica

ABSTRACT¹

This case is about freedom of information, and in particular, the chilling effects that slander and libel laws can have on journalists. In this case, a journalist and the director of his newspaper were sued for libel for having reported on news printed in another newspaper in Belgium where it was claimed that a State diplomat was suspected of several crimes. The Court found the burden the State courts placed on the victims (that they had to prove the facts reported by the other newspaper were true) to be unreasonable and, thus, found the State in violation of the American Convention.

I. FACTS

A. Chronology of Events

May 19–21, 1995, and December 13, 1995: Mr. Mauricio Herrera Ulloa, a journalist, publishes articles in *La Nación* newspaper about Mr. Félix Przedborski, a State diplomat to the International Atomic Energy Agency, in Vienna.² The articles reference reports in the Belgian press that associated Mr. Przedborski with serious crimes such as drug trafficking, tax fraud, and fraudulent bankruptcy.³ Additionally, the articles question Mr. Przedborski's suitability to serve as a public official.⁴

November 12, 1999: Mr. Ulloa and *La Nación* newspaper, represented by Mr. Fernán Vargas Rohmoser, are convicted by the State courts for the articles published regarding Mr. Przedborski.⁵ The Criminal Trial Court of the First Judicial Circuit of San José finds Mr. Ulloa guilty on

1. Ava Rubin, Author; Theodore Nguyen, Editor; Kathryn Benson, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Herrera Ulloa v. Costa Rica, Admissibility Report, Report No. 128/01, Inter-Am. Comm'n H.R., Case No. 12.367, ¶¶ 2, 19 (Dec. 3, 2001).

3. Herrera Ulloa v. Costa Rica, Admissibility Report, ¶ 19.

4. *Id.*

5. Herrera Ulloa v. Costa Rica, Admissibility Report, ¶ 2.

four counts of libel for the articles pertaining to Mr. Przedborski.⁶ The criminal court issues a fine of \$1,034.23 for the four offenses.⁷ The civil court orders Mr. Ulloa and Mr. Vargas Rohrmoser to pay \$206,846.40 in compensation to Mr. Przedborski.⁸ Additionally, the civil court orders the judgment against Mr. Ulloa and *La Nación* to be published in *La Nación* in the same section as the allegedly defamatory articles.⁹ Lastly, the court orders that Mr. Ulloa and Mr. Rohrmoser pay \$3.45 for procedural costs and \$13,134.74 for Mr. Przedborski's personal costs.¹⁰

January 24, 2001: The Third Chamber of the Supreme Court of Justice hears the appeal against the judgment and affirms the lower court decision.¹¹

B. Other Relevant Facts

The case of Mr. Ulloa is not unprecedented.¹² Freedom of information has been heavily regulated in Costa Rica.¹³ During the mid-1980s, all journalists must have graduated from the *Colégio de Periodistas* to be able publish.¹⁴ Additionally, the State had many controversial and outmoded restrictions on the freedom of the press.¹⁵ For example, Article 309 of the Criminal Code on *desacato* or "insult" law made it a crime to offend certain public officials.¹⁶ Offenders of the insult law faced up to two years of jail time.¹⁷

On March 26, 2002, the Legislative Assembly eliminated Article

6. Herrera Ulloa v. Costa Rica, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) No. 04, ¶ 1(b) (Sept. 7, 2001).

7. *Id.*; XE (Jan. 5, 2016) <http://www.xe.com/currencytables/?from=CRC&date=1999-11-01> (Providing conversions of colones to U.S. dollars in the year of 1999).

8. *Id.*

9. *Id.* ¶ 1(b).

10. *Id.*; XE (Jan. 5, 2016) <http://www.xe.com/currencytables/?from=CRC&date=1999-11-01> (Providing conversions of colones to U.S. dollars in the year of 1999).

11. Herrera Ulloa v. Costa Rica, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) No. 03, ¶ 1(c) (May 23, 2001).

12. Richard L. Millet, Jennifer S. Holmes, et al., *Latin America Democracy: Emerging reality or endangered species?*, 200 (2009).

13. *See id.*

14. *Id.*; *see generally* A Vital Ruling in Costa Rica, LA TIMES (Dec. 16, 1985), available at http://articles.latimes.com/1985-12-16/local/me-802_1_costa-rica-s-colegio.

15. *See* Kristin McCleary, *Costa Rica Press, Media, TV, Radio, Newspapers*, PRESS REFERENCE (2000), available at <http://www.pressreference.com/Co-Fa/Costa-Rica.html>.

16. *Id.*

17. *Id.*

309 of the Criminal Code.¹⁸ Nowadays, libel committed in the news media is no longer considered a criminal offense and is now dealt through the civil courts with the purpose of promoting freedom of press and preventing self-censorship.¹⁹ While press censorship may have been reduced, censorship of movies, television shows, and books are still common in Costa Rica.²⁰ The State, through the Censors' Office, continues to ban and block anything considered "harmful to national character."²¹ Episodes of certain reality television series have been blocked and a large swath of the State's citizens backed a law that banned anything that "may constitute a social danger by its . . . pornographic or violent content."²²

II. PROCEDURAL HISTORY

A. Before the Commission

February 28, 2001: Mr. Fernando Lincoln Guier Esquivel, Mr. Carlos Ayala Corao, Mr. Ulloa, and Mr. Vargas Rohmoser ("Petitioners") file a petition with the Inter-American Commission on Human Rights ("the Commission") alleging that the State infringed upon their freedom of expression.²³

March 1, 2001: The Commission receives the petitioners' request for precautionary measures,²⁴ and the case is opened as No. 12, 367.²⁵

March 24, 2001: Dr. Pedro Nikken applies to be a petitioner in the case.²⁶

March 28, 2001: The Commission forwards precautionary measures to

18. *Id.*; see also Special Rapporteurship for the Freedom of Expression, "Desacato" Laws and Criminal Defamation, ORGANIZATION OF AMERICAN STATES (2011), <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=310&IID=1>.

19. Special Rapporteurship for the Freedom of Expression, *supra* note 18.

20. Knight-Ridder Newspapers, *Costa Ricans Defend Censorship*, THE ORLANDO SENTINEL (Oct. 15, 1995), http://articles.orlandosentinel.com/1995-10-15/news/9510160163_1_costa-ricans-censorship-public-spectacles.

21. *Id.*

22. *Id.*

23. *Herrera Ulloa v. Costa Rica*, Admissibility Report, ¶ 1.

24. *Id.* ¶ 5.

25. *Id.* ¶ 4.

26. *Herrera Ulloa v. Costa Rica*, Admissibility Report, ¶ 9.

the Inter-American Court of Human Rights (“the Court”).²⁷ The Commission bases its request for precautionary measures on the fact that the civil damages ordered against Mr. Ulloa and Mr. Rohrmoser are fast approaching.²⁸ Additionally, since the State had disregarded the Commission’s request for a stay of the judgment, the Commission believes precautionary measures are in order so as not to violate the freedom of expression of Mr. Ulloa and Mr. Rohrmoser.²⁹

March 29, 2001: The State informs the Commission that the Secretariat of the Supreme Court of Justice decided not to adopt the Commission’s precautionary measures due to lack of jurisdiction.³⁰

December 3, 2001: The Commission approves Admissibility Report No. 128/01, declaring the case admissible.³¹

October 10, 2002: The Commission approves Report on the Merits No. 64/02.³² The Commission recommends that the State nullify the conviction against the petitioners, remove Mr. Ulloa’s name from the Judiciary’s Record of Convicted Felons, vacate the order to publish the domestic court’s judgment, repair the harm to Mr. Ulloa by paying compensation, and take measures necessary to prevent a recurrence of these events.³³

B. Before the Court

January 28, 2003: The Commission submits the case to the Court after the State fails to adopt its recommendations.³⁴ The Commission requests the Court take into account the provisional measures in favor of Mr. Ulloa and Mr. Rohrmoser.³⁵

27. Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 107, ¶ 7 (July 2, 2004).

28. Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, ¶ 14.

29. *Id.*

30. Herrera Ulloa v. Costa Rica, Admissibility Report, ¶ 7.

31. Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, ¶ 9.

32. *Id.* ¶ 11(1).

33. *Id.*

34. Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, ¶ 13.

35. *Id.* ¶ 14.

1. Violations Alleged by Commission³⁶

Article 13 (Freedom of Thought and Expression)

in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims³⁷

Same Violations Alleged by Commission, plus:

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

April 6, 2001 – December 6, 2011: The Court issues six separate orders in response to the Commission’s Request for Provisional Measures on March 28, 2001.³⁸ The Court bases its order for provisional measures on Article 63.2 of the Convention, which establishes that in cases of extreme gravity and urgency, the Court will adopt provisional measures it deems necessary to avoid irreparable damage to persons.³⁹ Additionally, Article 25.1 of the Rules of Procedure expressly provides that the Court, upon the request of a party or on its own motion, may order provisional measures it deems necessary to avoid irreparable damage.⁴⁰ On April 6,

36. *Herrera Ulloa v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2. Mr. Evelio Fernández, Mr. Santiago A. Canton, Ms. Lilly Ching, Ms. Marisol Blanchard, and Ms. Martha Braga served as representatives of the Commission. *Id.* ¶ 28.

37. *Id.* ¶ 137. Mr. Pedro Nikken, Mr. Carlos Ayala Corao, and Mr. Fernando Guier served as representatives of Mr. Herrera Ulloa. *Id.* ¶ 50.

38. *Herrera Ulloa v. Costa Rica*, Provisional Measures, Order of the President, Inter-Am Ct. H.R. (ser. E) No. 01, “Having Seen” (Apr. 6, 2001); *see also* *Herrera Ulloa v. Costa Rica*, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) No. 02 (May 21, 2001); *Herrera Ulloa v. Costa Rica*, Provisional Measures, Order of the Court (May 23, 2001); *Herrera Ulloa v. Costa Rica*, Provisional Measures, Order of the Court (Sept. 7, 2001); *Herrera Ulloa v. Costa Rica*, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) No. 05 (Dec. 6, 2001); *Herrera Ulloa v. Costa Rica*, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) No. 06 (Aug. 26, 2002).

39. *Herrera Ulloa v. Costa Rica*, Provisional Measures, Order of the President, “Considering” ¶ 2.

40. *Id.* “Considering” ¶ 3.

2002, however, the Court requests that the Commission and the State provide more information on the urgency of the situation and the probability of irreparable damage to the alleged victims before it could order provisional measures.⁴¹ On September 7, 2001, the State agrees to adopt measures necessary to suspend Mr. Herrera Ulloa's name from the Judiciary's Record of Convicted Felons until a decision is made regarding his case.⁴² Additionally, the Court orders the State to suspend the order for La Nación to publish a portion of the decision handed down by the San José First Circuit Criminal Trial on November 12, 1999.⁴³ On December 6, 2011, the Court issues another order calling upon the State to continue to apply the measures ordered by the Court.⁴⁴

III. MERITS

A. *Composition of the Court*⁴⁵

Sergio García Ramírez, President
Alirio Abreu Burelli, Vice President
Oliver Jackman, Judge
Antônio A. Cançado Trindade, Judge
Cecilia Medina Quiroga, Judge
Diego García-Sayán, Judge
Marco Antonio Mata Coto, Judge *ad hoc*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

March 24, 2003: Costa Rica designates Mr. Marco Antonio Mata Coto as judge *ad hoc*.⁴⁶

41. *Id.* "Considering" ¶ 4.

42. Herrera Ulloa v. Costa Rica, Provisional Measures, Order of the Court, "Resolves" ¶ 1 (Sept. 7, 2001); Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 17.

43. Herrera Ulloa v. Costa Rica, Provisional Measures, Order of the Court, "Resolves" ¶ 2 (Sept. 7, 2001).

44. Herrera Ulloa v. Costa Rica, Provisional Measures, Order of the Court, "Decides" ¶ 2. (Dec. 6, 2011).

45. Judge Manuel E. Ventura Robles, a Costa Rican national, was not a member of the bench because by the time he was sworn in as a member of the court, the State had already designated a judge *ad hoc*. Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, n.*.

46. *Id.* ¶ 30.

B. Decision on the Merits

July 2, 2004: The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.⁴⁷

The Court found unanimously that Costa Rica had violated:

Article 13 (Freedom of Thought and Expression) in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Mr. Ulloa,⁴⁸ because:

The Court analyzed whether the conviction and repercussion violated the freedom of thought and expression protected by Article 13 (Freedom of Thought and Expression).⁴⁹ The Court described four aspects of importance to Article 13: (1) the content of freedom and thought; (2) freedom of thought and expression in a democratic society; (3) mass media and journalism's role in relation to freedom of thought and expression; and (4) restrictions on those thoughts and expressions in a democratic society.⁵⁰

Freedom of expression has an "individual dimension and a social dimension," so that individuals protected by the Convention have a right to express their thoughts but additionally have a right to "seek, receive and disseminate information."⁵¹ Both dimensions are equally important and should be protected.⁵²

Freedom of expression is a foundational aspect of a democratic society.⁵³ However, freedom of expression is not an absolute right and the Court illustrated certain permissible restrictions on that right.⁵⁴ Article 13(2) (Prohibition of A Priori Censorship) of the American Convention provides for "the possibility of establishing restrictions on freedom of expression where it states that abusive exercise of the right to freedom

47. Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs.

48. *Id.* ¶ 135.

49. *Id.* ¶ 106.

50. *Id.* ¶ 107.

51. *Id.* ¶ 108.

52. *Id.* ¶ 110.

53. *Id.* ¶ 116.

54. *Id.* ¶ 120.

of expression shall be subject to subsequent imposition of liability."⁵⁵

However, the Court noted that, while there are certain instances where freedom of thought and expression should be limited, such as when reporting on public officials and topics of public interests, certain latitude should be given.⁵⁶ This is essential for the functioning of a truly democratic society.⁵⁷ Those individuals who influence public interest have voluntarily opened their activities to public scrutiny and are subject to a larger risk of criticism.⁵⁸

In regards to Mr. Ulloa's article, the journalist was intrigued by information in the Belgian Press about diplomat Mr. Przedborski and reproduced a portion of that article in La Nación.⁵⁹ The State court ruled that Mr. Ulloa's defense failed to prove that the facts he attributed to Mr. Przedborski were true.⁶⁰ Mr. Ulloa was only able to show that there were questions raised "in the European press about the party filing the criminal complaint."⁶¹

This standard of proof, that is to say the requirement that Mr. Ulloa prove the facts attributed to Mr. Przedborski were true, was excessive and an infringement on the freedom of thought and expression protected by Article 13 (Freedom of Thought and Expression) of the American Convention.⁶² The standard of proof used by the State court was inconsistent with Article 13 of the American Convention since it had a deterrent and chilling effect on all those who practiced journalism, by forcing them to prove the veracity of facts they publish.⁶³ The Court pointed out that punishment of a journalist who is solely assisting in disseminating information to the public is not in line with Article 13.⁶⁴ Therefore, the Court found that the State violated the right to freedom of thought and expression protected by Article 13, in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention.⁶⁵ The Court did

55. *Id.*

56. *Id.* ¶ 128.

57. *Id.*

58. *Id.* ¶ 129.

59. *Id.* ¶ 131.

60. *Id.* ¶ 132.

61. *Id.*

62. *Id.*

63. *Id.* ¶ 133.

64. *Id.* ¶ 134.

65. *Id.* ¶ 135.

*not discuss nor validate the Commission's and alleged victims' representatives claim that Article 2 (Domestic Legal Effects) of the Convention was violated.*⁶⁶

Article 8(2)(h) (Right to Appeal to a Higher Court) in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the Convention to the detriment of Mr. Herrera Ulloa,⁶⁷ because:

*Every state is internationally responsible for any interaction or omission done by its branches of power in violation of an internationally recognized right.*⁶⁸ *In order for the Court to adjudicate on any infringement, it must sometimes look to domestic proceedings done in that State.*⁶⁹

*In the present case, the only remedy to challenge a criminal conviction is a "writ of cassation," which is regulated by Articles 443 to 451 of the Code of Criminal Procedure.*⁷⁰ *Writs of cassation were filed during the criminal case against Mr. Ulloa.*⁷¹ *On January 24, 2001, the Third Chamber of the Costa Rican Supreme Court dismissed the two relevant writs of cassation, and subsequently, Mr. Ulloa's judgment became final.*⁷²

*Article 8(2)(h) (Right to Appeal to a Higher Court) of the American Convention provides that a person has a right to appeal "the judgment to a higher court."*⁷³ *Appeals processes must be accessible and guarantee a "full review of the decision being challenged."*⁷⁴

*The Court held that although a higher court exists than the one that tried Mr. Ulloa, the right to appeal is not automatic under Article 8(2)(h) (Right to Appeal to a Higher Court).*⁷⁵ *The right to appeal to a*

66. *Id.* ¶ 136.

67. *Id.* ¶ 137.

68. *Id.* ¶ 144.

69. *Id.* ¶ 146.

70. *Id.* ¶ 149.

71. *Id.* ¶ 154.

72. *Id.* ¶ 156.

73. *Id.* ¶ 157.

74. *Id.* ¶¶ 164–65.

75. *Id.* ¶ 159.

*higher court must be effective, provide results to the end they were intended to serve, and provide a full review of the decision being challenged.*⁷⁶

*The State court's reviews of the writs of cassation were cursory and not thorough.*⁷⁷ *The review of Mr. Ulloa's charges was solely that of the formal and legal aspects of the conviction.*⁷⁸ *Mr. Ulloa was denied the right to a complete review of his sentence, and thus, the Court found that the State had violated Article 8(2)(h) (Right to Appeal to a Higher Court) of the American Convention, in combination with Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects).*⁷⁹ *Moreover, the State violated Article 8(2)(h) (Right to Appeal to a Higher Court) of the American Convention in combination with Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) since the writs of cassation filed to challenge the 1999 conviction were not given a liberal remedy that would have permitted a higher court to do a truly thorough examination on the merits.*⁸⁰

Article 8(1) (Right to be Heard by an Impartial Tribunal or Judge), in relation to Articles 1(1) (Obligation to Respect Rights) of the Convention to the detriment of Mr. Herrera Ulloa,⁸¹ because:

*Any person subject to a proceeding before a tribunal must be guaranteed the impartiality of that tribunal.*⁸² *Only through that guarantee trust and confidence in the judicial system can be built.*⁸³

*In the case of Mr. Ulloa, the judges who denied his first writ of cassation were the same who denied his second and third.*⁸⁴ *Therefore, the Court concluded that the judges of the Third Chamber of the Costa Rican Supreme Court did not meet the impartiality requirement in deciding multiple writs of cassation at different time periods throughout the*

76. *Id.* ¶ 164.

77. *Id.*

78. *Id.* ¶ 166.

79. *Id.* ¶ 167.

80. *Id.*

81. *Id.* ¶ 169.

82. *Id.*

83. *Id.* ¶ 171.

84. *Id.* ¶ 172.

conviction process.⁸⁵ For this reason, the State violated Article 8(1) (Right to be Heard by an Impartial Tribunal or Judge) of the American Convention.⁸⁶

The Court found unanimously that Costa Rica had not violated:

Article 8(2) (Right to be Presumed Innocent) of the Convention, to the detriment of Mr. Herrera Ulloa,⁸⁷ because:

*Given the circumstances of the case, the violation must be examined in light of Article 13(Freedom of Thought and Expression) of the Convention.⁸⁸ In the 1999 judgment of the Criminal Court of the First Judicial Circuit of San José, the court required Mr. Ulloa to prove the “veracity of the news published in the Belgian newspapers and then reproduced in ‘La Nación’”.*⁸⁹

The Court dismissed the allegations that the State violated the right to a presumption of innocence protected under Article 8(2) (Right to Be Presumed Innocent) of the American Convention, in combination with Article 1(1) (Obligation to Respect Rights).⁹⁰ The representatives of the alleged victims argued that the State courts established a presumption of guilt and reversed the burden of proof, all to the disadvantage of Mr. Ulloa.⁹¹

The Court found that the representatives of the alleged victims did not meet the burden of proving that the State violated Article 8(2) (Right to be Presumed Innocent) of the Convention.⁹²

The Court did not rule on:

Article 25 (Right to Judicial Protection) of the American Convention,⁹³ because:

85. *Id.* ¶ 175.

86. *Id.*

87. *Id.* ¶ 176.

88. *Id.* ¶ 177.

89. *Id.*

90. *Id.* ¶ 178.

91. *Id.* ¶ 176.

92. *Id.* ¶ 177.

93. *Id.* ¶ 140.

*The Court found the allegation was made belatedly by the alleged victims' representatives and did not fit the facts of this case.*⁹⁴

Article 50 (The Commission's Report) of the American Convention,⁹⁵ because:

*The Commission did not plead a violation of this article.*⁹⁶ *The representatives of the alleged victims argued that the State did not comply with the recommendations of the Commission prepared under Article 50 (The Commission's Report) and that is a per se violation of the article.*⁹⁷ *However, it is not the Court's obligation to determine the State's responsibilities if the case is not submitted to the Court.*⁹⁸ *There must be a finding of responsibility before the case can be submitted for a decision from the Court.*⁹⁹ *Therefore, since the case was not submitted to the Court, it was not within the Court's discretion to determine the international responsibilities that the State had incurred.*¹⁰⁰

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Sergio Garcia Ramirez

In a separate concurring opinion, Judge Ramirez agreed with the Court.¹⁰¹ Judge Ramirez discussed how the violations of freedom and expression occur not only in authoritarian regimes but also in flourishing democracies, as is the case of Mr. Ulloa.¹⁰²

Judge Ramirez also agreed with the Court regarding the importance of the mass media in disseminating information to the public.¹⁰³ He emphasized that freedom of expression has two aspects: (1) a fundamental right, which is connected to other basic rights; and (2) a

94. *Id.*

95. *Id.* ¶ 179.

96. *Id.*

97. *Id.* ¶ 180(a).

98. *Id.* ¶ 187.

99. *Id.*

100. *Id.*

101. *Herrera Ulloa v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Sergio Garcia Ramirez, Inter-Am. Ct. H.R. (ser. C) No.107, ¶ 1 (July 2, 2004).

102. *Id.*

103. *Id.* ¶ 2.

“functional” right, in providing a certain service to the guarantee of rights and freedoms.¹⁰⁴

While the freedom of expression is an undeniable right, there are certain limitations that must be accounted for.¹⁰⁵ Judge Ramirez noted that these limitations and restrictions must be “understood and applied by a narrow criterion and by the strictest standards of reasonableness, opportunity and moderation.”¹⁰⁶ While keeping with those restrictions, the right to freedom of expression underlined in Article 13 (Freedom of Thought and Expression) may conflict with other rights, like the right to privacy.¹⁰⁷

Judge Ramirez then questioned whether criminal law and the accompanying codes are best suited to this issue.¹⁰⁸ Potentially, civil law courts may be used to achieve the same results.¹⁰⁹ Judge Ramirez mentioned a proposed Senate bill regarding freedom of expression and the press that would introduce changes to the penal code.¹¹⁰ This bill highlighted certain provisions regarding freedom of expression needing amendment.¹¹¹

Lastly, Judge Ramirez agreed that public officials, while still retaining privacy, open themselves up to a degree of invasion since the public has an interest in the acts of their officials.¹¹² The “umbrella of protection,” Judge Ramirez pointed out, is smaller for a public official than for an ordinary citizen.¹¹³

IV. REPARATIONS

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

104. *Id.* ¶ 4.

105. *Id.* ¶ 7.

106. *Id.* ¶ 8.

107. *Id.* ¶ 11.

108. *Id.* ¶ 17.

109. *Id.*

110. *Id.* ¶ 21.

111. *Id.*

112. *Id.* ¶ 27.

113. *Id.* ¶ 26.

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

1. Nullify the November 12, 1999 Judgment Against Mr. Ulloa

The State must nullify the judgment, including any measures it ordered, which includes but is not limited to fines imposed on Mr. Ulloa and Mr. Rohrmoser, the order to *La Nación* to replace the allegedly defamatory article with the operative judgment, and the order entering Mr. Ulloa's name on the judiciary's Record of Convicted Felons.¹¹⁴

2. Respect and Ensure the Right to Freedom of Thought and Expression

The State must respect and protect the right to freedom of thought and expression, as illustrated in the terms of Article 13 (Freedom of Thought and Expression) of the American Convention.¹¹⁵

3. Conform the Domestic Legal System to Comply with International Standards

The State must conform its domestic legal system to fit within the provisions of Article 8(2)(h) (Right to Appeal to a Higher Court) of the American Convention.¹¹⁶

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court stated that the Judgment in itself is a form of reparation for Mr. Ulloa and covers the issue of pecuniary damages.¹¹⁷

114. *Herrera Ulloa v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 195.

115. *Id.* ¶ 197.

116. *Id.* ¶ 198.

117. *Id.* ¶ 200.

2. Non-Pecuniary Damages

The Court awarded \$20,000.00 to Mr. Ulloa for non-pecuniary damages he sustained.¹¹⁸

3. Costs and Expenses

The Court awarded Mr. Ulloa \$10,000.00 for costs and expenses incurred in litigating his defense before the Court.¹¹⁹

4. Total Compensation (including Costs and Expenses ordered):

\$30,000

C. Deadlines

The State must comply with the measures of reparation and reimbursement of expenses within six months of the date of notification of the Judgment.¹²⁰ The State must comply with the other reparations ordered within a reasonable period of time.¹²¹

Within six months of the notification of the judgment, the State must submit to the Court a report on the measures taken to comply with the Judgment.¹²²

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

April 28, 2006: To comply with the obligation to conform the domestic legal system to the provisions of Article 8(2)(h) (Right to Appeal) of the American Convention,¹²³ the State's Legislative Assembly enacted Law

118. *Id.*

119. *Id.* ¶ 202.

120. *Id.* ¶ 204.

121. *Id.*

122. *Id.* ¶ 206.

123. *Herrera Ulloa v. Costa Rica*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Considering" ¶ 19 (July 9, 2009).

No. 8503, eventually published on June 6, 2006 in the official gazette.¹²⁴

September 22, 2006: The Court verified that the State had complied with payment of non-pecuniary damages and reimbursement of expenses, leaving only the payment of interest on arrears to be paid.¹²⁵

The Court found that the State had partially complied with its obligation to nullify the Judgment issued by the Criminal Court of the First Judicial Circuit of San José.¹²⁶ The Court decided to keep the proceeding open to ensure that the State would nullify the judgment of the Criminal Court.¹²⁷ Additionally, the Court wanted to ensure that the State would adjust its domestic legal system to conform to the Convention, and to ensure that the State pays the accrued interest for the late payment of non-pecuniary damages and expenses for Mr. Ulloa.¹²⁸

Thus, the Court requested that the State submit a report specifying the measures adopted in compliance with the reparations by January 19, 2007.¹²⁹

July 9, 2009: The Court determined that the State had successfully made the payment of the interests on the delayed payments to Mr. Ulloa.¹³⁰ However, the Court concluded that Law No. 8503, adopted on April 28 2006, was a *bona fide* attempt to comply with the Judgment, it still provided no guarantee that the highest State courts would carry out a comprehensive review of all the issues presented.¹³¹ Therefore, the Court decided that this law was not, *per se*, in compliance with the Judgment.¹³²

The Court determined that it would keep monitoring compliance to ensure that the State adjusts its domestic legal system to satisfy the Judgment and fully repeal the judgment issued by the Criminal Court for the First Judicial Circuit of San José.¹³³ Additionally, the Court required the State to submit a report illustrating the measures adopted by

124. *Id.*

125. Herrera Ulloa v. Costa Rica, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Considering" ¶ 9 (Sept. 22, 2006).

126. *Id.* "Declares" ¶ 1.

127. *Id.* "Declares" ¶ 2(a).

128. *Id.* "Declares" ¶¶ 2(b)–(c).

129. *Id.* "And Decides" ¶ 2.

130. Herrera Ulloa v. Costa Rica, Monitoring Compliance with Judgment, Order of the Court, "Declares" ¶ 1(a) (July 9, 2009).

131. *Id.* "Considering" ¶¶ 19, 22.

132. *Id.*

133. *Id.* "Declares" ¶¶ 2(a)–(b).

October 15, 2009 and to fully adopt all measures by July 2, 2004.¹³⁴

November 22, 2010: The State fully complied with the judgment of the Court by nullifying, in every respect, the judgment of the First Judicial Circuit of San José and by bringing the State's domestic legal system in line with the provisions of the American Convention.¹³⁵ Therefore, the Court found that State had fully complied with the Court's judgment issued on July 2, 2004 and closed the case of Mr. Ulloa.¹³⁶

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. \(ser. C\) No. 107 \(July 2, 2004\).](#)

2. Decisions on Merits, Reparations and Costs

[Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. \(ser. C\) No. 107 \(July 2, 2004\).](#)

[Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Sergio Garcia Ramirez, Inter-Am. Ct. H.R. \(ser. C\) No. 107 \(July 2, 2004\).](#)

3. Provisional Measures

[Herrera Ulloa v. Costa Rica, Provisional Measures, Order of the President, Inter-Am. Ct. H.R. \(ser. E\) No. 01 \(Apr. 6, 2001\).](#)

[Herrera Ulloa v. Costa Rica, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) No. 02 \(May 21, 2001\).](#)

[Herrera Ulloa v. Costa Rica, Provisional Measures, Order of the Court,](#)

134. *Id.* "And Decides" ¶¶ 1–2.

135. *Herrera Ulloa v. Costa Rica*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Declares" ¶ 1(a)–(b) (Nov. 22, 2010).

136. *Id.* "Declares" ¶ 2.

[Inter-Am. Ct. H.R. \(ser. E\) No. 03 \(May 23, 2001\).](#)

[Herrera Ulloa v. Costa Rica, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) No. 04 \(Sept. 7, 2001\).](#)

[Herrera Ulloa v. Costa Rica, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) No. 05 \(Dec. 6, 2001\).](#)

[Herrera Ulloa v. Costa Rica, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) No. 06 \(Aug. 26, 2002\).](#)

4. Compliance Monitoring

[Herrera Ulloa v. Costa Rica, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Sept. 22, 2006\).](#)

[Herrera Ulloa v. Costa Rica, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(July 9, 2009\).](#)

[Herrera Ulloa v. Costa Rica, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 22, 2010\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Herrera Ulloa v. Costa Rica, Admissibility Report, Report No. 128/01, Inter-Am. Comm'n H.R., Case No. 12.367 \(Dec. 2001\).](#)

3. Provisional Measures

[None]

4. Report on Merits

Herrera Ulloa v. Costa Rica, Report on Merits, Report No. 64/02, Inter-Am. Comm'n H.R., Case No. 12.367 (Oct. 10, 2002).

5. Application to the Court

[Not Available]

VIII. BIBLIOGRAPHY

A Vital Ruling in Costa Rica, LA TIMES (Dec. 16, 1985), http://articles.latimes.com/1985-12-16/local/me-802_1_costa-rica-s-colegio.

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, Inter-Am. Ct. H.R. (ser. A) No. 05 (Nov. 13, 1985).

Knight-Ridder Newspapers, *Costa Ricans Defend Censorship*, THE ORLANDO SENTINEL (Oct. 15, 1995), http://articles.orlandosentinel.com/1995-10-15/news/9510160163_1_costa-ricans-censorship-public-spectacles.

Kristin McCleary, *Costa Rica Press, Media, TV, Radio, Newspapers*, PRESS REFERENCE (2000), <http://www.pressreference.com/Co-Fa/Costa-Rica.html>.

Richard L. Millet, Jennifer S. Holmes, et al., *Latin America Democracy: Emerging reality or endangered species?*, 200 (2009).

Special Rapporteurship for the Freedom of Expression, “*Desacato*” *Laws and Criminal Defamation*, ORGANIZATION OF AMERICAN STATES (2011), <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=310&IID=1>.