

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF DECEMBER 6, 2001**

**PROVISIONAL MEASURES
IN THE MATTER OF THE REPUBLIC OF COSTA RICA**

THE LA NACIÓN NEWSPAPER CASE

HAVING SEEN:

1. The brief of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") of March 28, 2001, in which it submitted a request for provisional measures in favor of Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser, journalist and legal representative of the *La Nación* newspaper of Costa Rica, respectively, so that the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") would request the State of Costa Rica (hereinafter "the State" or "Costa Rica"):

- a) to suspend the execution of the condemnatory judgment delivered by the Criminal Trial Court of the First Judicial Circuit of San José of November 12, 1999, until the Commission had examined the case and, pursuant to Article 50 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), had adopted a final decision on the merits of the matter or, should the case be brought before the Court, the latter had delivered the corresponding judgment;
- b) to abstain from executing any action aimed at including the journalist, Mauricio Herrera Ulloa, in the Judicial Record of Offenders of Costa Rica, and
- c) to abstain from executing any other act that might affect the freedom of expression of the journalist, Mauricio Herrera Ulloa, and the *La Nación* newspaper.

In brief, the Commission justified this request as follows:

- a) the journalist, Mauricio Herrera Ulloa, was criminally convicted for four libel-related offenses, owing to articles published in the *La Nación* newspaper reproducing publications in a European newspaper, which concerned a "controversial" Costa Rican public official accredited by the Costa Rican foreign service to the International Atomic Energy Agency (IAEA) in Vienna; and
- b) the judgment of the Criminal Trial Court of the First Judicial Circuit of San José ordered: 40 days of fines at two thousand five hundred colones a day for each of the four offenses, for a total of one hundred and sixty days of fines and, in application of the rules for this type of proceeding, the penalty was reduced to three times the highest fine imposed, that is to one hundred and twenty days of fines, which would amount to three hundred thousand colones; the civil action for compensatory damages was declared admissible and Mauricio Herrera Ulloa and *Periódico La Nación, S.A.*, represented by Fernán Vargas Rohrmoser, as the persons jointly liable, were condemned to

pay sixty million colones for the non-pecuniary damage caused by the publications in the newspaper, *La Nación*, on May 19, 20 and 21 and December 13, 1995; publication of the operative paragraphs of the judgment in the same section of the newspaper, *La Nación*, that is, “*El País*”, and with the same typeface as the articles that were the subject of the dispute, under the responsibility of Mauricio Herrera Ulloa, as the person responsible for the unlawful acts that were committed; that *La Nación S.A.* withdraw the link that existed between the last name Przedborski and the disputed articles in *La Nación Digital* on Internet, and that it establish a link between those articles and the operative paragraphs of the judgment. Furthermore, the judgment condemned the defendants to pay one thousand colones towards the procedural costs and the sum of three million eight hundred and ten thousand colones for personal costs.

2. The order issued by the President of the Court (hereinafter “the President”) on April 6, 2001, in consultation with all the judges of the Court, in which he decided:

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 the fourth considering paragraph of the [...] order.

2. To summon 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 a.m., so that the Court [might] hear their points of view on the facts and circumstances that gave rise to 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 Commission’s brief of May 10, 2001, submitted in response to the decisions in the order of the President (*supra* having seen 2(1)).

4. The State’s brief of May 16, 2001, submitted in response to the decisions the order of the President (*supra* having seen 2(1)).

5. The public hearing on this request held at the seat of the Inter-American Court on May 22, 2001, at which the following persons appeared:

For Costa Rica:

Farid Beirute, Prosecutor General
José Enrique Castro, from the Office of the Prosecutor General
Arnoldo Brenes, from the Ministry of Foreign Affairs and Worship
Carmen Claramunt, from the Ministry of Foreign Affairs and Worship

For the Inter-American Commission on Human Rights:

Pedro Nikken, delegate

Carlos Ayala Corao, delegate
Ariel Dulitzky, Principal Specialist of the Secretariat of the Commission
Debora Benchoam, lawyer of the Secretariat of the Commission
Fernando Guier, assistant

Witness proposed by the Inter-American Commission:

Mauricio Herrera Ulloa

6. The statements made by Costa Rica and the Inter-American Commission at the public hearing, and also by Mauricio Herrera Ulloa in his testimony.

7. The order of the Court of May 23, 2001, in which it decided:

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 the 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 *statu 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.

8. The State's report of August 16, 2001, on the nature and scope of the Judicial Record of Offenders.

9. The Commission's brief of August 24, 2001, in which it submitted its observations on the State's brief of August 16, 2001.

10. The note of the Secretariat of the Court (hereinafter "the Secretariat") of August 28, 2001, in which, following the instructions of the plenary of the Court, it advised the parties that:

[a]fter examining and considering [the] certifications [issued by the Judicial Record of Offenders, one contributed by the State and the other by the Commission], the Court observe[d] that the contents of these certifications are contradictory and, consequently, request[ed] the State to clarify whether or not Mauricio Herrera Ulloa [was] registered in the Judicial Record of Offenders and, if appropriate, to indicate on what date he was registered, as well as the scope and effects of such a registration and of the entry according to which "suspension of the execution of the judgment and decisions was ordered", "in compliance with order issued by the Inter-American Court".

The State of Costa Rica was granted until September 1, 2001, without the possibility of an extension, to present this information, so that the Court could deliberate and take a decision during its LII regular session.

11. The Commission's brief of August 29, 2001, in which it requested the Court to send it the brief presented by the State in answer to the Secretariat's note of August 28, 2001, "in the understanding that [...] it reserved the right to make the comments that it deemed appropriate within 24 hours of receiving this document."

12. The State's brief of August 31, 2001, presenting the report requested by the Secretariat on August 28 that year (*supra* Having Seen 10), and which indicated that:

[o]wing to a regrettable internal administrative error when preparing [the certification requested by Mauricio Herrera Ulloa for work-related matters], it was noted that there were no entries in [his] name, whereas the contents of the certification opportunely issued to the Office of the Prosecutor General were correct.

[...] in these circumstances, there has been no action which could cause adverse effects to either MAURICIO HERRERA ULLOA, or to the Office of the Prosecutor General, because [...] it was a case of a internal administrative error, which is very rare in this office.

[...] the judgment of the Criminal Court of the First Judicial Circuit of San José against MAURICIO HERRERA ULLOA was duly recorded in the files of this Registry on March 1, 2001, and the entry, according to which suspension of the execution of the judgment and decisions is ordered, in compliance with the order issued by the Inter-American Court, is dated April 26, 2001.

13. The Secretariat's note of August 31, 2001, in which, on the instructions of the Court, it granted the Commission until September 1, 2001, to present its observations on the State's report of August 31, 2001.

14. The Commission's brief of September 1, 2001, in which it presented its observations on the State's brief of August 31, 2001. In summary, it said that:

a) the mere inconsistency of the State underscores the situation of insecurity and lack of legal certainty of Mauricio Herrera Ulloa and corroborates the appropriateness of the provisional measures requested by the Commission; and

b) the fact that, before the Court, Costa Rica attempts to resolve the matter of the serious contradiction between two effective and binding State acts by stating that one of them was not "valid", owing to an internal administrative error committed by the senior authority of the Judicial Record of Offenders, is, in itself, an impairment of the right to defense and due legal process of Mauricio Herrera Ulloa, established in the American Convention.

15. The order of the Court of September 7, 2001, in which it decided:

1. To call on the State of Costa Rica to adopt, without delay, all necessary measures to annul the registration of Mauricio Herrera Ulloa in the Judicial Record of Offenders until the case has been decided finally by the organs of the inter-American human rights system.

2. To call on the State of Costa Rica to suspend the order to publish the "operative paragraphs" of the condemnatory judgment delivered by the Criminal Trial Court of the First Judicial Circuit of San José on November 12, 1999, in the *La Nación* newspaper, and to suspend the order to establish a link in *La Nación Digital* between the articles in dispute and the operative paragraphs of that judgment.

3. To call on the State of Costa Rica to advise the Inter-American Court of Human Rights, within 30 days of notification of the [...] order, of the measures that it has adopted to comply with it, and on the Inter-American Commission on Human Rights to present its observations on this report within 30 days of receiving it.

16. The State's brief of October 5, 2001, in which it advised that "it had ordered that execution of the judgment delivered against Mauricio Herrera Ulloa should remain suspended until the Inter-American Court of Human Rights [had] made the

corresponding final decision.” Costa Rica also indicated that the registration in the Judicial Record of Offenders had been suspended.

17. The Commission's brief of November 8, 2001, in which it stated that “it [had] no objections to make to the information provided by the State” and that “it [would] remain attentive to the evolution of the situation in order to inform the Court of any change that might arise.”

18. The Commission's brief of November 30, 2001, in which it indicated that “in flagrant disregard of the provisional measures decided by [the] Court, in a certification dated November 29, 2001, the original of which is attached, it was once again certified, also by the official, Hernán Esquivel Salas, and in the same words as those that preceded the provisional measures decided unanimously” by the Court, that the following entry appears against Mauricio Herrera Ulloa: “the Criminal Court of the First Judicial Circuit, November 12, 1999, sentenced him to one hundred and twenty days of fines for the offense(s) of publication of offenses in the form of libel... .”

19. The Secretariat's note of December 3, 2001, in which, on the instructions of the Court, it granted the State until December 5, 2001, to present its observations on the Commission's brief of November 30, 2001.

20. The State's brief of December 4, 2001, in which it advised that “[o]wing to an erroneous interpretation [...] there has been some confusion when certifying the criminal record of Mauricio Herrera Ulloa.” It added that “the Judicial Files and Records Department has already taken the necessary measures to terminate once and for all the uncertainty surrounding the situation of Mr. Herrera Ulloa and ensure [...] that, as of this date, such a situation with regard to the certifications issued will never, in any circumstances, be repeated.”

CONSIDERING:

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

2. That Article 63(2) of the Convention establishes 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, in this regard, Article 25(1) of the Rules of Procedure of the Court stipulates that:

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, in international human rights law, the nature of provisional measures is not only preventive in the sense that they preserve a juridical situation, but fundamentally protective, because they protect human rights. Provided the basic

requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met, provisional measures become a genuine jurisdictional guarantee of a preventive nature.

5. That the Court, in the order of September 7, 2001 (*supra* Having Seen 15), called on the State to adopt the necessary measures to annul the registration of Mauricio Herrera Ulloa in the Judicial Record of Offenders until the case had been decided finally by the supervisory organs of the American Convention.

6. That, owing to existing circumstances, this Court deems it is necessary to clarify that it adopted provisional measures and ordered the State to annul the registration of Mr. Herrera Ulloa in the Judicial Record of Offenders, so that the entry concerning the judgment delivered by the Criminal Trial Court against the above mentioned journalist would be eliminated from this Record – until the case had been finally decided by the organs of the inter-American human rights system. Consequently, when a certification of the criminal record of Mauricio Herrera Ulloa is requested, it should not contain any entry relating to the facts and acts that gave rise to these provisional measures.

7. That the brief presented by the State on December 4, 2001 (*supra* Having Seen 20) indicates that the necessary measures to comply with the decisions of this Court have now been adopted and, consequently, the registration of Mauricio Herrera Ulloa in the Judicial Record of Offenders has been annulled.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its powers under Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure,

DECIDES:

1. To take note of the information contained in the State of Costa Rica's note of December 4, 2001.

2. To call on the State of Costa Rica to continue to apply the provisional measures ordered by the Inter-American Court of Human Rights in the order of September 7, 2001, and, in particular, to maintain the annulment of the registration of Mauricio Herrera Ulloa in the Judicial Record of Offenders.

Antônio A. Caçado Trindade
President

Máximo Pacheco-Gómez

Hernán Salgado-Pesantes

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Caçado Trindade
President

Manuel E. Ventura-Robles
Secretary