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August 12, 2009

Presentation: Inter-American Case Law

If I had to summarize the criteria of the Inter-American Human Rights Court in a few words I would say that the Court has established that freedom of expression is fundamental for the exercise of democracy.

A society that is not well informed could hardly call itself a democratic society. Indications, from this characterization, are not only philosophical but also judicial, from which a jurisdictional body depicts a whole philosophical and political line. From this logic multiple consequences emerge, all of them favoring strict freedom of expression. The individual and social dimension of freedom of expression has been stressed: it is the right that we individuals have to express ourselves through any legal media outlet to transmit our ideas and our points of view.

Not only factual information, but also to express opinions right that we members of the community have to seek and receive information.

Anyone who violates an individual's freedom of expression is at the same violating society's collective right because that prevents reports, comments, ideas, debates and deliberations from reaching society so that it may freely and democratically form its own judgment.

The practice of journalism has been viewed by the Court as more than exercising a profession. There are very strict rules for the practice of professions, mandatory membership in a professional union might be one of them along with others. This is not valid in the case of journalists, the Inter-American Court has said, because what is in play is freedom of expression and this cannot be restricted by regulations that could appear valid or legitimate and even indispensable, necessary, in other cases because in the case of journalists what is involved is the reduction of expression with its consequences, such as the curtailment of democracy. The issue of journalists' social responsibility is not ignored, but neither is the need for the state to provide the fullest protection of the practice of journalism, avoiding undue restrictions. On the contrary, it is stressed.

Subsequent consequences – as I said before – I repeat simply that the journalist is not removed from the political order; he who exercises freedom of expression under the protection of international treaties or national constitutions is not, however, without certain duties or certain obligations. Compliance may even prohibit certain obligations-- not prior ones -- rather they are a consequence of those complied with by some engaging in certain conduct, whether in the criminal or civil ambit. In any event, the restrictions that give rise to this obligation must be clearly established in law, be reasonable, pertinent, the least possible to guarantee the exercise of the right, not to obstruct it, timely and in proportion.