



## **Observatory on the Protection of Taxpayers' Rights**

Below you will find a report prepared by Guzman Ramirez Arrieta, Senior Associate at *Bergstein Abogados* and Reporter of the OPTR Unit for the Inter-American Court.

This report contains a summary of court cases before the Inter-American Court of Human Rights, in which issues regarding the practical protection of taxpayers' rights were discussed and decided in 12 relevant areas, identified by Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone at the 2015 IFA Congress on "The Practical Protection of Taxpayers' Fundamental Rights"

## 2021 Relevant Case Law – Inter-American Court of Human Rights

Minimum Standard Best Practice	Case	Date	ACHR Articles	Facts	Decision	Comments
<p><b>MS 58:</b> Proportionality and <i>ne bis in idem</i> should apply to tax penalties</p>	<p>Mariano Valle Peters v. Nicaragua</p>	<p>January 8, 2021</p>	<p>✓ 13 ("Freedom of Thought and Expression")</p>	<p>On October 9, 2020, the Inter-American Commission on Human Rights received a request for precautionary measures urging the Commission to require that the State of Nicaragua adopts protective measures to guarantee the rights of Mr. Mariano Valle Peters.</p> <p>According to such a request, Mr. Valle Peters is the owner of a corporation, parent company of Channel 12, a television station that opposes the Nicaraguan government. He also is responsible for the general editorial line of Channel 12.</p> <p>The applicant indicated that on September 30, 2020, in order to collect alleged taxes owed by the corporation, a</p>	<p><u>Resolution No. 3/21 on Precautionary Measures, Inter-American Commission on Human Rights</u></p> <p>Having analysed the factual and legal aspects of the request, the Inter-American Commission on Human Rights decided to ask the State of Nicaragua to guarantee that Mr. Valle Peters could continue exercising his right to freedom of expression. Particularly, the State was requested to refrain from carrying out the decision to sell the seized assets.</p> <p>In this sense, the Commission recalled that, in accordance with Article 25 of its Rules of Procedure, the Commission only grants precautionary</p>	<p>Freedom of expression has an individual and social dimension, which not only recognizes the right of each person to express his or her thoughts, ideas, and information through any appropriate means of dissemination, but also that of society to be well informed.</p> <p>The proceeding referred above (aimed at the potential closure or forced sale of Channel 12 on the ground of alleged tax debts) seems to have been used to sanction expressions on matters of public interest, in violation of Article 13 of the American Convention on Human Rights.</p> <p>Such proceeding would have not been justified by an imperative social</p>

				<p>Nicaraguan court upheld a government action to freeze and confiscate the Channel 12 bank account, as well as to seize and sell its television antenna, other of its assets and Mr. Valle Peters' home and personal vehicles.</p> <p>As part of his defence, Mr. Valle Peters alleged that his taxes were duly paid, and that the Government's calculations were clearly wrong. Furthermore, it was alleged that the amounts claimed by the government were much lower than the value of the properties seized and ordered to be sold.</p> <p>The request for precautionary measures filed with the Inter-American Commission on Human Rights stated that it could be a matter of days before the properties of the television station and its owner were to be</p>	<p>measures in those situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm.</p> <p>The Commission considered that, in accordance with the applicable <i>prima facie</i> standard, the existence of a situation of serious and urgent irreparable damage was sufficiently established in the case submitted by Mr. Valle Peters.</p> <p>Indeed, the Commission emphasized that Mr. Mariano Valle Peters was facing serious difficulties in exercising his right to freedom of expression, because of his role within the television medium and within the current context of Nicaragua.</p> <p>In the opinion of the Commission, such a situation would likely have an effect not</p>	<p>interest, and would thus be unnecessary and disproportionate, in contradiction with the minimum standard which requires proportionality from tax penalties.</p> <p>To make things worse, the above tax proceeding not only may directly limit the exercise of Mr. Valle Peters' right to freedom of expression, but also may also generate an indirect restriction through its chilling or inhibiting effects on the free flow of ideas in Nicaraguan society as a whole.</p>
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<p><b>MS 20:</b> No disclosure of confidential taxpayer information to politicians, or where it might be used for political purposes.</p>	<p>Journalists of Digital Newspaper “El Faro” v. El Salvador</p>	<p>February 4, 2021</p>	<ul style="list-style-type: none"> <li>✓ 4 (“<i>Right to Life</i>”)</li> <li>✓ 13 (“<i>Freedom of Thought and Expression</i>”)</li> </ul>	<p>On November 6, 2020, the Inter-American Commission on Human Rights received a request for precautionary measures urging the Commission to request that the State of El Salvador adopts the necessary measures to protect the rights of 34 members of the digital newspaper called “El Faro”.</p> <p>According to the aforementioned request, such journalists were being subjected to threats, harassment, intimidation, as well as criminalization and stigmatization by high government authorities, as a result of their work.</p> <p>Among other actions of alleged censorship, on July 20, 2020, the Attorney General’s Office opened an investigation related to an audit on the</p>	<p><u>Resolution No. 12/21 on Precautionary Measures, Inter-American Commission on Human Rights</u></p> <p>In light of the corresponding context, the Inter-American Commission on Human Rights considered that the information provided by the applicants showed <i>prima facie</i> that not only the freedom of thought and expression, but also the rights to life and personal integrity of the 34 members of the digital newspaper were in a serious and urgent situation.</p> <p>Consequently, and in accordance with Article 25 of the Rules of Procedure, the Commission requested that the State of El Salvador: (a) adopts the necessary measures to preserve the life and personal integrity</p>	<p>Threatening publications in social networks and public statements by government officers calling to discredit the work of journalists, must be avoided at all costs. They put at serious risk their lives, and personal integrity, and harm their honour and reputation.</p> <p>The tenor of the messages publicly spread by the Salvadorian authorities through various media, mainly social networks, makes visible an intention to intimidate the journalists so that they would limit their journalistic work.</p> <p>Moreover, such statements/messages (which should be characterized as an unauthorized disclosure of information covered by the right of privacy) clearly contravenes the tax officials’ responsibility for</p>
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				<p>objectivity and refrain from falling into sensationalism.</p> <p>Along these lines, the Salvadorian State declared that it rejected any claims of it impeding journalistic work and that in such country there is a solid institutional and constitutional framework.</p> <p>Regarding the audit on El Faro, the State asserted that the power for evaluation corresponding to the Ministry of Finance is related to the fulfillment of the formal and substantive obligations that are inherent to tax legislation. The exercise of this power is independent of the subject to whom it is addressed. The State declared to be against the comments referring to the audit on El Faro as arbitrary and malicious.</p>		
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