

Case of “The Last Temptation of Christ” (Olmedo-Bustos *et al.*) v. Chile

Judgment of February 5, 2001
(Merits, Reparations and Costs)

INTRODUCTION OF THE CASE

1. On January 15, 1999, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) submitted to the Court an application against the Republic of Chile (hereinafter “the State” or “Chile”), arising from a petition (No. 11,803), received by the Secretariat of the Commission on September 3, 1997. The Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Articles 32 ff. of the Rules of Procedure in its application. The Commission filed this case for the Court to decide whether Chile had violated Articles 13 (Freedom of Thought and Expression) and 12 (Freedom of Conscience and Religion) of the Convention. The Commission also requested the Court to declare that, as a result of the alleged violations of the said articles, Chile had failed to fulfill Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the Convention.

2. According to the petition, the said violations were committed to the detriment of Chilean society and, in particular, Juan Pablo Olmedo Bustos, Ciro Colombara López, Claudio Márquez Vidal, Alex Muñoz Wilson, Matías Insunza Tagle and Hernán Aguirre Fuentes, as a result of the “judicial censorship of the cinematographic exhibition of the film “The Last Temptation of Christ”, confirmed by the Supreme Court of Chile [...] on June 17, 1997.”

3. The Commission also requested the Court to order the State:

1. To authorize the normal cinematographic exhibition and publicity of the film “The Last Temptation of Christ.”
2. To adapt its constitutional and legal norms to the standards of freedom of expression embodied in the American Convention, [in order] to eliminate prior censorship of cinematographic productions and their publicity.
3. To ensure that, in the exercise of their different powers, public bodies [,] their authorities and officials [effectively] exercise the rights and freedoms of expression, conscience and religion recognized in the American Convention and [...] abstain from imposing prior censorship on cinematographic productions.
4. To make reparations to the victims in this case for the damage suffered.
5. To pay the costs and reimburse the expenses incurred by the victims when litigating this case in both [the] domestic sphere and before the Commission and the Court, as well as reasonable fees for their representatives.

VI EVIDENCE ASSESSMENT (...)

46. In order to proceed to evaluate the evidence provided in this case, it is first necessary to confirm that it was submitted at the appropriate procedural opportunity. In this respect, Article 43 of the Rules of Procedure indicates:

Items of evidence tendered by the parties shall be admissible only if previous notification thereof is contained in the application and in the reply thereto [.] Should any of the parties allege force majeure, serious impediment or the emergence of supervening events as grounds for producing an item of evidence, the Court may, in that particular instance, admit such evidence at a time other than those indicated above, provided that the opposing party is guaranteed the right of defense.

47. In this case, the Commission provided the evidence with the application, which was presented in due time. The State did not contribute any evidence, because its brief answering the application was rejected by the Court because it was submitted after the statutory time limit had expired (*supra* para. 24, 30 and 43).

48. Before examining the evidence in the case file, the Court must define the criteria that it will use.

49. In the first place, it must take into consideration the context of the proceeding before an international court of human rights, which is more flexible and less formal than the proceeding under domestic law.

50. The Court has indicated that the criteria for evaluating the evidence before an international human rights court is broader, because determination of the international responsibility of a State due to the violation of human rights allows the court a greater flexibility in the evaluation of the evidence provided to it on the pertinent facts, in accordance with the rules of logic and based on experience.

51. Mere formalities cannot affect the justice that an individual hopes to obtain by resorting to a procedural system; although attention must always be given to legal certainty and the procedural balance of the parties.

52. It is worth emphasizing that, in this case, the State did not submit any type of evidence in answer to the application at the procedural opportunities indicated in Article 43 of the Rules of Procedure. During the public hearing on the merits of the case, Chile concentrated its defense on the argument that it had submitted a draft reform to article 19(12) of the Constitution in order to modify the norm of internal law that engaged its international responsibilities through its competent organs, and on the fact that everything that the Commission had sought in its application would be covered by the adoption of the constitutional reform, except with regard to reparations.

53. In this respect, the Court considers, as it has in other case, that when the State does not specifically answer the application, the facts about which it keeps silent are assumed to be true, provided that conclusions consistent with this can be inferred from the evidence.

54. The Court will now evaluate the documents, testimonies and expert reports that comprise the pool of evidence in the instant case, according to the rule of sound critical examination that will allow it to ascertain the truth of the alleged facts.

55. With regard to the documentary evidence contributed by the Commission (*supra* para. 42), the Court considers that the documents submitted are valid, as they were not contested or challenged, nor was their authenticity put in doubt.

56. As to the testimonies given in the instant case, which were not contradicted or contested, the Court admits them and grants them full probative value.

57. In the case of the expert reports, the Court admits them, inasmuch as they relate to the experts' knowledge of national or comparative law and its application to the facts of the case.

58. The 1980 Constitution of Chile is considered useful to make a decision in this case, and it is therefore added to the pool of evidence, in application of the provisions of Article 44(1) of the Rules of Procedure.

59. The annexes submitted by the Commission in its brief of January 8, 2001 (*supra* para. 44), on the expenses incurred are considered useful to make a decision in this case, and the Court incorporates them into the pool of evidence, based on the provisions of Article 44(1) of the Rules of Procedure.

VII PROVEN FACTS

60. After examining the documents, the statements of the witnesses and expert witnesses and the declarations of the State and the Commission during the proceeding, the Court considers that the following facts have been proved:

- a. Article 19(12) of the 1980 Constitution of Chile establishes a "system of censorship for the exhibition and publicity of cinematographic productions.
- b. Decree Law No. 679 of October 1, 1974, authorizes the Cinematographic Classification Council to supervise cinematographic exhibition in Chile and classify films. The Regulation to this law is contained in the Supreme Decree on Education No. 376 of April 30, 1975. The Cinematographic Classification Council is part of the Ministry of Education.
- c. On November 29, 1988, the Cinematographic Classification Council refused to allow the exhibition of the film "The Last Temptation of Christ", following a petition submitted by United International Pictures Ltd. The company appealed the Council's decision, but it was confirmed by a court of appeal, in a judgment of March 14, 1989.

- d. On November 11, 1996, following a further petition by United International Pictures Ltd., the Cinematographic Classification Council reviewed the prohibition to exhibit the film “The Last Temptation of Christ” and, in session No. 244, by a majority of votes authorized its exhibition for an audience of 18 years of age or more.
- e. Following a remedy for protection filed by Sergio García Valdés, Vicente Torres Irarrázabal, Francisco Javier Donoso Barriga, Matías Pérez Cruz, Jorge Reyes Zapata, Cristian Heerwagen Guzmán and Joel González Castillo, for and in the name of Jesus Christ, the Catholic Church and themselves, on January 20, 1997, the Court of Appeal of Santiago admitted the remedy for protection and annulled the administrative decision adopted by the Cinematographic Classification Council in session No. 244, on November 11, 1996.
- f. After an appeal of the judgment of the Court of Appeal of Santiago, of January 20, 1997, filed by Claudio Márquez Vidal, Alex Muñoz Wilson, Matías Insunza Tagle and Hernán Aguirre Fuentes, the Supreme Court of Justice of Chile confirmed the decision appealed against on June 17, 1997.
- g. On April 14, 1997, the President of the Republic, Eduardo Frei Ruiz-Tagle, addressed a message to the Chamber of Deputies in which he submitted a draft constitutional reform to article 19(12) of the Constitution that intended to eliminate cinematographic censorship and substitute it by a system of classification that embodied the right to free artistic creation.
- h. On November 17, 1999, the Chamber of Deputies adopted the draft constitutional reform that intended to eliminate prior censorship of the exhibition and publicity of cinematographic production by 86 votes in favor, no votes against and six abstentions.
- i. Up until February 5, 2001, the date on which this judgment was delivered, the steps for the adoption of the draft constitutional reform had not been completed.
- j. As a result of the facts of this case, the victims and their representatives submitted elements to justify the expenses incurred while processing the different domestic and international procedures, and the Court reserves the authority to evaluate these.

VIII

ARTICLE 13

FREEDOM OF THOUGHT AND EXPRESSION

(...)

Considerations of the Court

63. Article 13 of the American Convention establishes that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a. Respect for the rights or reputation of others;
 - b. The protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or nay any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

64. With regard to the content of the right to freedom of thought and expression, those who are protected by the Convention not only have the right and the freedom to express their own thoughts, but also the right and freedom to seek, receive and impart information and ideas of all kinds. Consequently, freedom of expression has an individual and a social dimension:

It requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.

65. With regard to the first dimension of the right embodied in the said article, the individual one, freedom of expression is not exhausted in the theoretical recognition of the right to speak or write, but also includes, inseparably, the right to use any appropriate method to disseminate thought and allow it to reach the greatest number of persons. In this respect, the expression and dissemination of thought and information

are indivisible, so that a restriction of the possibilities of dissemination represents directly, and to the same extent, a limit to the right to free expression.

66. Regarding the second dimension of the right embodied in Article 13 of the Convention, the social element, it is necessary to indicate that freedom of expression is a way of exchanging ideas and information between persons; it includes the right to try and communicate one's point of view to others, but it also implies everyone's right to know opinions, reports and news. For the ordinary citizen, the knowledge of other people's opinions and information is as important as the right to impart their own.

67. The Court considers that both dimensions are of equal importance and should be guaranteed simultaneously in order to give total effect to the right to freedom of thought and expression in the terms of Article 13 of the Convention.

68. As the cornerstone of a democratic society, freedom of expression is an essential condition for society to be sufficiently informed.

69. The European Court of Human Rights has indicated that:

[The] supervisory function [of the Court] signifies that [it°] must pay great attention to the principles inherent in a 'democratic society'. Freedom of expression constitutes one of the essential bases of such a society, one of the primordial conditions for its progress and for the development of man. Article 10(2) [of the European Convention on Human Rights] is valid not only for the information or ideas that are favorably received or considered inoffensive or indifferent, but also for those that shock, concern or offend the State or any sector of the population. Such are the requirements of pluralism, tolerance and the spirit of openness, without which no 'democratic society' can exist. This means that any formality, condition, restriction or sanction imposed in that respect, should be proportionate to the legitimate end sought.

Also, those who exercise their freedom of expression assume 'obligations and responsibilities', the scope of which depends on the context and the technical procedure used.

70. It is important to mention that Article 13(4) of the Convention establishes an exception to prior censorship, since it allows it in the case of public entertainment, but only in order to regulate access for the moral protection of children and adolescents. In all other cases, any preventive measure implies the impairment of freedom of thought and expression.

71. In the instant case, it has been proved that, in Chile, there is a system of prior censorship for the exhibition and publicity of cinematographic films and that, in principle, the Cinematographic Classification Council prohibited exhibition of the film "The Last Temptation of Christ" and, reclassifying it, permitted it to be exhibited to persons over 18 years of age (*supra* para. 60 a, c and d). Subsequently, the Court of Appeal of Santiago decided to annul the November 1996 decision of the

Cinematographic Classification Council, owing to a remedy for protection filed by Sergio García Valdés, Vicente Torres Irarrázabal, Francisco Javier Donoso Barriga, Matías Pérez Cruz, Jorge Reyes Zapata, Cristian Heerwagen Guzmán and Joel González Castillo, “for and in the name of [°] Jesus Christ, the Catholic Church and themselves”; a decision that was confirmed by the Supreme Court of Justice of Chile. Therefore, this Court considers that the prohibition of the exhibition of the film “The Last Temptation of Christ” constitutes prior censorship in violation of Article 13 of the Convention.

72. This Court understands that the international responsibility of the State may be engaged by acts or omissions of any power or organ of the State, whatsoever its rank, that violate the American Convention. That is, any act or omission that may be attributed to the State, in violation of the norms of international human rights law engages the international responsibility of the State. In this case, it was engaged because article 19(12) of the Constitution establishes prior censorship of cinematographic films and, therefore, determines the acts of the Executive, the Legislature and the Judiciary.

73. In the light of the foregoing considerations, the Court declares that the State violated the right to freedom of thought and expression embodied in Article 13 of the American Convention, to the detriment of Juan Pablo Olmedo Bustos, Ciro Colombara López, Claudio Márquez Vidal, Alex Muñoz Wilson, Matías Insunza Tagle and Hernán Aguirre Fuentes.

IX
ARTICLE 12
FREEDOM OF CONSCIENCE AND RELIGION

(…)

Considerations of the Court

76. Article 12 of the American Convention establishes that:

1. *Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one’s religion or beliefs, and freedom to profess or disseminate one’s religion or beliefs, either individually or together with others, in public or in private.*
2. *No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.*
3. *Freedom to manifest one’s religious and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.*
4. *Parents or guardians, as the case may be, have the right to provide for religious and moral education of their children or wards that is in accord with their own convictions.*

77. In the instant case, the Commission believes that prohibiting the exhibition of the film “The Last Temptation of Christ”, which, in their opinion, is a work of art with religious content, violated Article 12 of the Convention. This prohibition was based on a series of consideration that interfere improperly with freedom of conscience and

religion. The State believes that the right embodied in this article was not affected, since it considers that the right of individuals to maintain, change, profess and disseminate their religions or beliefs was not violated by prohibiting the exhibition of the film. The Court must determine whether Article 12 of the Convention was violated by prohibiting the exhibition of this film.

78. The judgment of the Court of Appeal of Santiago of January 20, 1997, confirmed by the Supreme Court of Justice of Chile on June 17, 1997, indicated that:

In the film, the image of Christ is deformed and diminished, to the utmost. In this way, the problem is posed of whether it is possible, in the name of freedom of expression, to destroy the sincere beliefs of a great many people. The Constitution seeks to protect the individual, his institutions and his beliefs, because these are the most central elements for the individual to participate and coexist harmoniously in a pluralist world. Pluralism does not mean denigrating and destroying the beliefs of others, whether they are a majority or a minority, but assuming them as a contribution to the interaction of society, which is based on respect for the essence and context of the ideas of others.

No one doubts that the greatness of a nation can be measured by the attention it gives to the values that allowed it to exist and grow. If these are neglected [or] abused, as the image of Christ is deformed and abused, the nation is endangered, because the values on which it is based are disregarded. Attending to the need for information or expression is closely related to the truth of the facts and, consequently, the historical distortion of a fact or a person ceases to be information or expression. Accordingly, the judges believe that the right to emit an opinion is the right to describe a reality but never to deform it, reinventing it.

It was based on these considerations that this Court of Appeal, in a judgment confirmed by the Supreme Court of Justice, prohibited the exhibition of the film “The Last Temptation of Christ”.

79. According to Article 12 of the Convention, the right to freedom of conscience and religion allows everyone to maintain, change, profess and disseminate his religion or beliefs. This right is one of the foundations of democratic society. In its religious dimension, it constitutes a far-reaching element in the protection of the convictions of those who profess a religion and in their way of life. In this case, however, there is no evidence to prove that any of the freedoms embodied in Article 12 of the Convention have been violated. Indeed, the Court understands that the prohibition of the exhibition of the film “The Last Temptation of Christ” did not impair or deprive anyone of their right to maintain, change, profess or disseminate their religion or beliefs with total freedom.

80. In view of the foregoing, the Court concludes that the State did not violate the right to freedom of conscience and religion embodied in Article 12 of the American Convention.

X
**NON-COMPLIANCE OF ARTICLES 1(1) AND 2
OBLIGATION TO RESPECT RIGHTS
AND DOMESTIC LEGAL EFFECTS**

(...)

Considerations of the Court

83. Article 1(1) of the American Convention establishes that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

84. While Article 2 of the Convention establishes that:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

85. The Court has indicated that the general obligations of the State, established in Article 2 of the Convention, include the adoption of measures to suppress laws and practices of any kind that imply a violation of the guarantees established in the Convention, and also the adoption of laws and the implementation of practices leading to the effective observance of the said guarantees.

86. The Court observes that, in accordance with the findings of this judgment, the State violated Article 13 of the American Convention to the detriment of Juan Pablo Olmedo Bustos, Ciro Colombara López, Claudio Márquez Vidal, Alex Muñoz Wilson, Matías Insunza Tagle and Hernán Aguirre Fuentes, because it has failed to comply with the general obligation to respect the rights and freedoms recognized in the Convention and to guarantee their free and full exercise, as established in its Article 1(1).

87. In international law, customary law establishes that a State which has ratified a human rights treaty must introduce the necessary modifications to its domestic law to ensure the proper compliance with the obligations it has assumed. This law is universally accepted, and is supported by jurisprudence.²¹ The American Convention establishes the general obligation of each State Party to adapt its domestic law to the provisions of this Convention, in order to guarantee the rights that it embodies. This general obligation of the State Party implies that the measures of domestic law must be effective (the principle of *effet utile*). This means that the State must adopt all measures so that the provisions of the Convention are effectively fulfilled in its domestic legal system, as

Article 2 of the Convention requires. Such measures are only effective when the State adjusts its actions to the Convention's rules on protection.

88. In this case, by maintaining cinematographic censorship in the Chilean legal system (article 19(12) of the Constitution and Decree Law 679), the State is failing to comply with the obligation to adapt its domestic law to the Convention in order to make effective the rights embodied in it, as established in Articles 2 and 1(1) of the Convention.

89. This Court recalls that on January 20, 1997, the Court of Appeal of Santiago delivered a judgment in this case, which was confirmed by the Supreme Court of Justice of Chile on April 19, 1997. Because it did not agree with the grounds for these judgments, the Government of Chile submitted a draft constitutional reform to eliminate cinematographic censorship to Congress on April 14, 1997. The Court evaluates and underlines the importance of the Government's initiative in proposing the said constitutional reform, because it may lead to adapting domestic laws to the content of the American Convention with regard to freedom of thought and expression. However, the Court observes that, despite the time that has elapsed since the draft reform was submitted to Congress, the necessary measures have still not been adopted to eliminate cinematographic censorship, as established in Article 2 of the Convention, and thus allow exhibition of the film "The Last Temptation of Christ."

90. Consequently, the Court concludes that the State has failed to comply with the general obligations to respect and guarantee the rights protected by the Convention and to adapt its domestic laws to its provisions, as established in Articles 1(1) and 2 of the American Convention on Human Rights.

XI APPLICATION OF ARTICLE 63(1)

(...)

The considerations of the Court

95. Article 63(1) of the American Convention establishes that:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

96. In the instant case, the Court has established that the State violated Article 13 of the Convention and failed to comply with its Articles 1(1) and 2.

97. With regard to Article 13 of the Convention, the Court considers that the State must modify its legal system in order to eliminate prior censorship and allow the

cinematographic exhibition and publicity of the film “The Last Temptation of Christ”, because it is obliged to respect the right to freedom of expression and to guarantee its free and full exercise to all persons subject to its jurisdiction.

98. With regard to Articles 1(1) and 2 of the Convention, the norms of Chilean domestic legislation that govern the exhibition and publicity of cinematographic production have still not been adapted to the provision of the American Convention that prior censorship is prohibited. Therefore, the State continues to fail to comply with the general obligations referred to in those provisions of the Convention. Consequently, Chile must adopt the appropriate measures to reform its domestic laws, as set out in the previous paragraph, in order to ensure the respect and enjoyment of the right to freedom of thought and expression embodied in the Convention.

99. With regard to other forms of reparation, the Court believes that this judgment constitutes, *per se*, a form of reparation and moral satisfaction of significance and importance for the victims.

100. Regarding reimbursement of expenses, this Court must prudently evaluate what they cover; this includes expenses for the steps taken by the victims before the authorities in the domestic jurisdiction, and also those arising in the course of the proceeding before the inter-American protection system. This evaluation may be carried out based on the principle of fairness.

101. To this end, based on fairness, the Court calculates those expenses in a total amount of US\$ 4.290 (four thousand two hundred and ninety United States dollars), and this should be paid to the appropriate party, through the Inter-American Commission on Human Rights.

102. In accordance with its usual practice, the Court reserves the authority to monitor the integral fulfillment of this judgment. The case will be closed once the State has faithfully complied with the provisions of this decision.

XII OPERATIVE PARAGRAPHS

103. Therefore,

THE COURT

unanimously:

1. Finds that the State violated the right to freedom of thought and expression embodied in Article 13 of the American Convention on Human Rights, to the detriment of Juan Pablo Olmedo Bustos, Ciro Colombara López, Claudio Márquez Vidal, Alex Muñoz Wilson, Matías Insunza Tagle and Hernán Aguirre Fuentes.

2. Finds that the State did not violate the right to freedom of conscience and religion embodied in Article 12 of the American Convention on Human Rights, to the detriment of Juan Pablo Olmedo Bustos, Ciro Colombara López, Claudio Márquez Vidal, Alex Muñoz Wilson, Matías Insunza Tagle and Hernán Aguirre Fuentes.
3. Finds that the State failed to comply with the general obligations of Article 1(1) and 2 of the American Convention on Human Rights in relation to the violation of the right to freedom of thought and expression indicated in decision 1 of this judgment.
4. Finds that the State must amend its domestic law, within a reasonable period, in order to eliminate prior censorship to allow exhibition of the film “The Last Temptation of Christ”, and must provide a report on the measures taken in that respect to the Inter-American Court of Human Rights, with six months of the notification of this judgment.
5. Finds that, in fairness, the State must pay the amount of US\$ 4.290 (four thousand two hundred and ninety United States dollars), as reimbursement of the expenses arising from the steps taken by the victims and their representatives in the domestic proceedings and in the international proceeding before the inter-American protection system. This amount to be paid through the Inter-American Commission on Human Rights.
6. Finds that it will monitor that this judgment is complied with and only then will it close the case.

Judge Cançado Trindade informed the Court of his Concurring Opinion and Judge De Roux Rengifo of his Separate Opinion, which accompany this Judgment.

Done, at San José, Costa Rica, on February 5, 2001 in the Spanish and English languages, the Spanish text being authentic.