

# Press Release

Inter-American Court of Human Rights

I/A Court H.R.\_PR-15/2023 English

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## I/A Court H.R. Protecting Rights

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### **CHILE IS RESPONSIBLE FOR THE VIOLATION OF THE RIGHT TO FREEDOM OF EXPRESSION FOR CRIMINALIZING STATEMENTS AGAINST PUBLIC OFFICIALS RELATED TO THE ILLEGAL FELLING OF THE PATAGONIAN CYPRESS**

*San José, Costa Rica, February 28, 2023.* In the Judgment notified today in the Case of Baraona Bray v. Chile, the Inter-American Court of Human Rights found the State of Chile internationally responsible for the violations of the rights to freedom of thought and expression, to the principle of legality and judicial protection, to the detriment of Carlos Baraona Bray. This resulted from the criminal proceedings and the sentence imposed for the crime of serious insults for statements issued by Mr. Baraona Bray in May 2004 regarding the actions of a senator, in his capacity as a public official, related to illegal logging of the alerce (Patagonian Cypress) tree.

View the official summary of the Judgment [here](#) and the full text of the Judgment [here](#).

The case began in late 2003 and early 2004, when the public discussion regarding the illegal felling of the Patagonian Cypress included complaints of alleged illegal actions by public officials who facilitated this crime.

In May 2004, Carlos Baraona Bray made various statements to the media, in which he referred to the fact that a senator from the Los Lagos Region was exerting political pressure on the authorities in charge of conservation of the Patagonian Cypress to support illegal occupation on a property in that region and that illegal logging was not stopped.

On May 14, 2004, as a consequence of the statements made, the aforementioned senator filed a criminal complaint against Carlos Baraona Bray for the alleged commission of the crimes of slander and serious insults with publicity. Through a judgment dated June 22, 2004, the Guarantee Court of Puerto Montt convicted Carlos Baraona Bray as the perpetrator of the crime of serious insults through social media, to the detriment of the senator. On August 1, 2005, the full and permanent dismissal of the case was decreed.

The Court recalled in its judgment that the definition of the category of human rights defenders is broad and flexible due to the very nature of this activity, including, of course, environmental defenders. In this particular case, regardless of his status as a human rights defender, the Court found that Mr. Baraona Bray's statements made reference to the illegal felling of Patagonian Cypress, an issue that is related to environmental protection and that constituted a debate of public interest at the time of the events. In this regard, the Court considered that respect for and guarantee of freedom of expression in environmental matters is an essential element to ensure citizen participation in processes related to such matters and, with it, the strengthening of the democratic system through the validity of the principle of environmental democracy.

In this case, the Court considered it necessary to continue to protect the right to freedom of

expression recognized in Article 13 of the American Convention on Human Rights. It pointed out that, when it comes to crimes against honor that involve offenses and attribution of offensive acts, the prohibition of criminal prosecution should not be based only on the possible classification of public interest of the statements that gave rise to subsequent responsibility, but on the status of public official or public authority of the person whose honor has allegedly been affected. Thus, it concluded that in such cases recourse to criminal proceedings is not appropriate.

The Court added that, in this way, the chilling effect caused by the initiation of criminal proceedings would be avoided, as well as its repercussions on the enjoyment of freedom of expression, and the weakening and impoverishment of the debate on matters of public interest. With this, the right to freedom of expression is effectively safeguarded, since immediately ruling out the possibility of initiating criminal proceedings avoids this being used as a means to inhibit or discourage dissenting voices or complaints against those in public office.

As regards the criminal proceedings against Mr. Baraona, the Court noted with concern that the sanction imposed on him had a chilling effect and was disproportionate to the purpose pursued. In addition, the Court concluded that the regulations applied in the case did not strictly delimit the conduct classified as serious insult, violating the principle of legality.

Due to these violations, the Court ordered various measures of reparation.

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The composition of the Court for the issuance of this Judgment was as follows: Judge Ricardo C. Pérez Manrique, President (Uruguay), Judge Humberto Antonio Sierra Porto, Vice President (Colombia), Judge Eduardo Ferrer Mac-Gregor Poisot (Mexico), Judge Nancy Hernández López (Costa Rica), Judge Verónica Gomez (Argentina) and Judge Rodrigo Mudrovitsch (Brazil). Judge Patricia Pérez Goldberg, a Chilean national, did not participate in the deliberation of this judgment in accordance with the provisions of Article 19 of the Rules of Court's Rules of Procedure.

Judges Ricardo C. Pérez Manrique, Eduardo Ferrer Mac-Gregor Poisot and Rodrigo Mudrovitsch announced their joint concurring opinion. Judge Humberto Antonio Sierra Porto and Judge Nancy Hernández López announced their concurring and partially dissenting opinion.

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