

REMARKS BY DARIO MILO

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Yes, certainly, and thank you for the opportunity. The major development that the Panel was involved in by invitation from the Inter-American Court was to submit an expert *amicus* brief in the *El Universal* case, which was winding its way through the Inter-American Court system, and just before Christmas last year, the Inter-American Court ruled. This was a case that involved the heart of political speech. It was criticism in the form of an opinion by a journalist working for *El Universal*, of the then president of Ecuador. So it really was the *locus classicus* of political speech in a democracy.

The Ecuadorian courts had sentenced the journalist and the directors of the publication to three years imprisonment, a 30 million U.S. dollar fine, a staggering amount, and also a civil penalty of a civil damages of 10 million U.S. dollars, so really quite egregious sanctions visited upon them. The journalist sought asylum in America where I believe he currently works.

As I said, the High Level Panel submitted the expert *amicus* brief. The court ruled in December last year and effectively not only endorsed the existing jurisprudence of the Inter-American Court, which is essentially that there needs to be exceptional reasons for there to be criminal consequences for speech, and that is, of course, a very good proposition. But, actually, our interpretation of the judgment is that the court said that in the context of an opinion about a public official expressed by a journalist, there is no place for criminal sanction. It will automatically be a disproportionate restriction on freedom of expression, and that certainly seems to catapult the law quite significantly forward.

The Inter-American Court is in quite good company here, of course, Can, because the African Court of Human Rights, the Court of Justice for West African States, the Court of Justice for East Africa, and in addition, the Human Rights Committee have all commented on the undesirability of criminal sanctions in a defamation or an insult context.

So we regard this as yet another further international law nail in the criminal defamation context.

CAN YEGINSU

Thank you very much, Professor Milo. You are absolutely right. I was counsel in the *FAJ v. Gambia* case, which has been cited with approval now by multiple regional human rights courts, not only in Africa, but all around the world.

I want to switch now from a focus on litigation before international courts to litigation before domestic courts and turn to Karuna Nundy. Karuna, you are one of India's most prominent supreme court advocates. Could you tell us a little about the Supreme Court of India's approach to international law in landmark media freedom cases, please?

REMARKS BY KARUNA NUNDY

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Thank you, Can. Since 1997, the Supreme Court has taken the approach that where domestic law is silent, international law should fill the lacuna. In constitutional cases, we argue international law. We argue comparative law. But what I have found is that it is constitutional law that mostly occupies the field. One of the cases I argued along with other counsel in 2005 is still the definitive case on online free speech regarding the striking down of a provision of the Information Technology Act that governs the internet. The actual words of the law are quite intriguing—any language that was