

## THE PROTECTION OF JOURNALISTS AND FREEDOM OF THE PRESS

Perla Gómez Gallardo

### Introduction

According to Robert Dahl, there are six basic political institutions or components required in any democracy: 1) alternative sources of information; 2) elections for public offices; 3) free, impartial and frequent elections; 4) freedom of expression; 5) freedom of association; and 6) inclusive citizenship.<sup>1</sup>

When people are able to turn to alternative sources of information (that is, information in addition to that produced by the government), it creates a climate for monitoring public authority, allowing for comparison between different views. Similarly, freedom of expression—another essential ingredient of democracy—is not just about the right to issue opinions or disseminate information, but is also about strengthening the process of communicating those views to society and thereby exercising the right to receive information.

Article 19 of the Universal Declaration of Human Rights states: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

This language gives us the basis for laws to protect journalists and freedom of the press, especially in incipient democracies such as ours.

### Progress

However, so far Mexico has seen little progress in the protection of journalists. One of the most notorious areas of inaction is in the decriminalization of “crimes against honor”. Legislative efforts to move forward with this concept have been ignored in almost every state. The panorama in regards to civil laws is very similar; they do not distinguish between harm caused by objective, responsible reporting of the facts, as distinct from abuses of the right to information.

---

<sup>1</sup> Robert Dahl, *La democracia. Una guía para los ciudadanos* (Mexico: Taurus, 1999).

**Table 1**  
**Protection of Journalists: Legislation in the States**

States	Penal codes			Civil Codes	
	Crimes Against Honor			Corresponding Obligation	
	General Slander	Slander Against an Individual	False Accusation	Moral Damage	Moral Reparations
National	Yes	Yes	Yes	Yes	
Aguascalientes	Yes	Yes	Yes		Yes
Baja California		Yes	Yes	Yes	Yes
Baja California Sur	Yes	Yes	Yes	Yes	
Campeche	Yes	Yes	Yes	Yes	
Coahuila	Yes	Yes	Yes	Yes	
Colima		Yes	Yes	Yes	
Chiapas		Yes	Yes		Yes
Chihuahua		Yes	Yes	Yes	
Federal District				Yes	
Durango	Yes	Yes	Yes		Yes
Guanajuato		Yes	Yes		Yes
Guerrero	Yes	Yes	Yes		Yes
Hidalgo		Yes	Yes		Yes
Jalisco	Yes	Yes	Yes	Yes	
State of Mexico	Yes	Yes	Yes	Yes	
Michoacán		Yes	Yes	Yes	
Morelos		Yes	Yes	Yes	
Nayarit	Yes	Yes	Yes	Yes	
Nuevo León	Yes	Yes	Yes		Yes
Oaxaca	Yes	Yes	Yes		Yes
Puebla		Yes	Yes	Yes	
Querétaro		Yes	Yes	Yes	
Quintana Roo		Yes	Yes	Yes	
San Luis Potosí		Yes	Yes	Yes	
Sinaloa		Yes	Yes		Yes
Sonora	Yes	Yes	Yes	Yes	
Tabasco		Yes	Yes	Yes	
Tamaulipas		Yes	Yes	Yes	
Tlaxcala	Yes	Yes	Yes	Yes	
Veracruz		Yes	Yes		Yes
Yucatán	Yes	Yes	Yes	Yes	

However, in Mexico City—the Federal District—the district’s Legislative Assembly took a positive step forward on April 27, 2006, with the passage of the Civil Responsibility Law for Protection of Private Life, Honor and Image.

This law seeks to protect individuals’ rights to privacy and reputation in light of international democratic standards. It decriminalizes slander and false accusation in the Federal District’s laws, and substitutes the concept of moral damage in its Civil Code with a special civil law. The new law thus decriminalizes so-called crimes against honor and creates a speedy, efficient and relevant process to compensate individuals whose rights are infringed upon—but with the overall purpose of strengthening the rights of free expression and access to information.

One of the most important features of the law is the unprecedented inclusion of the concept of effective malice in cases where the plaintiff is a public figure or servant. In these cases, too, the category of “moral damage” is reconfigured as “damage to moral patrimony”. Finally, the sanctions for damage to moral reputation are shifted from the criminal to the civil realm, diminishing the level of intimidation.

### Limitations and Advances

Except in the case of the Federal District, Mexican laws currently addressing moral suffering do not include concepts of effective or actual malice.

One of the main premises of this doctrine underscores that, “neither factual error nor defamatory content are sufficient to remove the constitutional protection of criticism of public officials.”<sup>2</sup> As well as:

“A representative democracy ceases to exist the moment that public officials are by any means absolved from their responsibility to their constituents; and this happens whenever the constituent can be restrained in any manner from speaking, writing, or publishing his opinions upon any public measure, or upon the conduct of those who may advise or execute it.”<sup>3</sup>

Clearly, what this doctrine does is place the burden of proof on the public official, such that their individual rights are balanced with the rights to freedom of expression

<sup>2</sup> US Supreme Court case on actual malice, *NY Times v. Sullivan*, 1964.

<sup>3</sup> *Ibid.*

when the matter is of public interest. The Federal District’s law makes distinctions in regards to effective malice in cases of harm to the moral reputation of public officials:<sup>4</sup>

Article 28.- Effective malice is pertinent in cases where the plaintiff is a public servant and will be subject to the terms and conditions of this chapter.

Article 29.- Reparation for harm done to public servants as described in this section is prohibited unless it is proven that the illicit act was perpetrated with effective malice.<sup>5</sup>

The law establishes limits on the legal process that parties must follow in this type of court case:

Article 30.- Public servants whose moral reputation has been damaged by opinions and/or information, as outlined in article 33 of the law, disseminated via the media, must prove the existence of effective malice, demonstrating:

- I. That false information was disseminated knowingly;
- II. That the information was disseminated with reckless disregard to whether it was true or false; and
- III. That it was done with the sole intent to harm.

Public servants are obliged to bear the burden of proof, then, as they must demonstrate that all three criteria are met in order for the court to find effective malice. This is the essence of the new law: it seeks to avoid the use of the defense of personal rights as a means of inhibiting freedom of expression.

Article 33.- Public servants will be limited in their rights to honor, private life and image as a consequence of their duties, which will be subjected to public scrutiny.

Here the doctrine of effective malice restricts the actions of public servants, without implying that they are unprotected by the law.

<sup>4</sup> Ley de Responsabilidad Civil para la protección del Derecho a la Vida Privada, el Honor y la Propia Imagen en el Distrito Federal, *Gaceta Oficial del Distrito Federal*, May 19, 2006.

<sup>5</sup> Here and in the other excerpts emphasis is added by the author.

This will avoid frivolous and time-wasting lawsuits. By narrowing the terms in which such trials can be held, it will also open up space in the courts for speedy restitution for those who really do have a case—and for the charges to be dropped quickly against those who are only using their right to free expression.

Another encouraging sign in Mexico was the passage of the Journalist's Confidentiality Law, published June 7, 2006.

Article 3. The journalist has the right to keep secret the identities of any sources who have provided information under conditions, expressly or tacitly, of confidentiality.

To ensure that this law is followed, it also contains measures to apply sanctions if it is violated:

Article 11. Any public servant who violates the resolutions contained in this law will be sanctioned with a prison term from one to six years and with a fine from thirty to three hundred days.

## Perspectives

Lawsuits for defamation and moral damage have become a sophisticated means to inhibit the exercise of free speech, which instead of protecting the rights of the individual, turn into an abuse of the protection of the right itself.

## Conclusions and Recommendations

The main recommendation here is that Mexico should continue to seek the decriminalization of crimes against honor, and, above all, to properly regulate the use of the claim of moral damage in the civil courts, so that it will no longer serve as a legal means of coercion against those who wish to exercise their right to freedom of expression.

Protection of journalists and of freedom of the press is incipient in our country. Due to recent political changes (like the changes in the party in power), the field of journalism has become more diverse and competitive, with more opportunities. These are the first steps in a country where legislation has inhibited these activities and is now faced with a reality that demands legislative change.