



	Chile
Años	1997-2000



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1997 World Press Freedom Review

The Chilean press, long shackled by military dictatorships, is far freer today. However, the 1980 Constitution - written by the iron-fisted regime of General Augusto Pinochet, who ruled from 1973 to 1990 - is still in force, as are a number of laws which censor the media. The debate over censorship was revived in February, when the Supreme Court upheld a 1989 ban on Martin Scorsese's film, "The Last Temptation of Christ," which was considered blasphemous. The discussion hotted up in March when the Rock and Pop private television channel was threatened with sanctions for jokes about the Bible and the national flag. The station was taken to task for a comedy programme which parodied the Bible, made jokes about Chile's national anthem and portrayed Barbie dolls as transvestites. Law-makers demanded an end to "cultural authoritarianism."

A Socialist senator, Ricardo Nunez, told reporters: "What is clear that in our country, cultural authoritarianism still lingers on. Part of the discussion is how to eliminate authoritarianism in Chile, not only in the political sense and in values, but fundamentally in culture." Another Socialist senator, Carlos Ominani, agreed: "Every democratic society must guarantee [an outlet for] people's sense of humour and allow a certain space for irreverence. Any country which loses this, risks returning to authoritarianism." Censorship clung to the headlines in April, with a row between the government and TV channels over a state Aids campaign. President Eduardo Frei was infuriated when three TV stations - two of which are controlled by the Catholic Church- refused to transmit the government's Aids prevention advertisements. "The behaviour of these channels is surprising," Frei told reporters. "While they censor a campaign which is essential for the health of the population - especially of young people - they regularly include in their programmes scenes which are clearly against the values they say they promote." President Frei also sent a Bill to Congress this year to end film censorship and guarantee



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artistic freedom by eliminating controls in Chile's military-dictated Constitution.

"The press, radio, television and whatever other form of publishing words, text and images are protected by freedom of opinion and information, but this is not so for production and distribution of films," said the President at the signing ceremony on April 14. He added: "Now the moment has arrived to do away with this contradiction ... and put an end to this odious discrimination, which only affects the cinema." The Bill proposes the abolition of a state board which censors films before they are released to cinemas, replacing it with a system of film classification.

On June 20, a Chilean newspaper began using the Internet to skirt a judge's widely criticised gag order in one of the country's most sensational court cases.

In an unprecedented move in Chile, the paper, La Tercera, opened a site on the World Wide Web to give readers the stories it would have published on its front page if a judge had not barred the media from reporting on a money-laundering case. The case involved a businessman, Mario Silva Leiva - known as the Horse Racing Kid because of his penchant for betting on horses - who was accused of leading a multi-million-dollar drug-trafficking and money-laundering ring. Judge Beatriz Pedrals imposed a controversial news blackout on the case in mid-June - three months after Silva's arrest in what police called their biggest blow to date against the drug trade in Chile. (So far, Chile has been spared the violence and corruption associated with drug-trafficking elsewhere in Latin America) Newspapers and politicians condemned the judge's gagging order, accusing her of imposing it only after top court officials had been implicated in the case. President Frei also criticised the move, saying it "only feeds rumours." La Tercera's national editor, Luis Alvarez, said: "The information we are including [on the Web site] is a journalistic coup that would have been splashed over the paper - but that we can't publish because of the gag rule." Alvarez said that the newspaper had had to



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create the Web site through an intermediary in New York to avoid legal tangles. The paper's lawyers believed "that the judge's authority does not go beyond the borders of Chile," he said.

On September 17, the military prosecutor-general presented a new petition to the Supreme Court of Justice which, if approved, would result in impunity for those responsible for human rights violations during the military regime. The petition calls for all appeals court and judges to close legal proceedings into cases of human rights violations, extra-judicial executions and "disappearances."

For the fourth time, a Chilean court has re-opened the investigation into the murder of a British journalist, Jonathan Moyle, found hanging by his shirt in a hotel wardrobe in the capital, Santiago, in 1990. Moyle, 28, editor of the magazine, Defence Helicopter World, had come to Santiago to attend a military air show organised by Chile's air force. He was investigating the sale to Iraq of 50 Bell helicopters and allegations that Chile had obtained secret technology relating to a mine system.

In September 1991, a judge ruled that Moyle had not committed suicide but had been murdered. However, the case had already been closed three times for lack of evidence - the last time as recently as July of this year. However, on November 20, Santiago's appeals court decided that the probe's lines of inquiry had not been exhausted.



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The Chilean media – long shackled by General Augusto Pinochet's military dictatorship - maintains its independence, criticises the Government, and covers issues sensitive to the military, including human rights. In 1998, newspapers and broadcasting stations were able to operate without any particular restrictions. Exceptions to the rule were lawsuits involving the magazine *Cosas* and the newspaper *La Tercera*. Pinochet's arrest in his London hospital room in October resulted in at least one incident where the former dictator's supporters vented their ire on reporters.

On January 21, Paula Coddou and Rafael Gumucio, reporters for *Cosas* magazine and the *Rock & Pop* television channel, respectively, were tried and sentenced to jail on charges of libelling Supreme Court Justice Servando Jordán López in an article that described the judge as “an ugly old man with a murky past”, IAPA and *Reuters* reported. Their indictment stemmed from a complaint filed under the State Security Law, which makes defamation, libel or slander of officials, including Supreme Court judges, a criminal offence. The editions of *Cosas* magazine containing the allegedly libellous articles were confiscated.

On January 28, Jordán López withdrew his formal complaint against the journalists, who were freed, but the wide-ranging State Security Law - which was passed during the 1973-1990 military dictatorship of General Augusto Pinochet - remained cause for concern.

In another legal case involving Jordán - who as chief justice of Chile's Supreme Court barely survived an impeachment vote in 1996 for alleged corruption - the director of the Santiago newspaper *La Tercera*, Fernando Paulsen, and José Ale, the reporter who wrote the story analysing Jordán's two-year tenure as chief justice, were jailed on September 16 on charges of defamation, *AP* reported. Ale wrote that during Jordán's tenure “the prestige of Chile's judiciary fell to one of its lowest levels ever.” The two



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journalists were released on bail the next day and the newspaper appealed to the Supreme Court.

In addition to their concern over the State Security Law, the Chilean media also protested against the continuing existence of Article 25 of the Law on Advertising Abuses, which grants judges discretionary power to ban the dissemination of information, without setting any time limit, and expressed concern about the restrictive provisions contained in the proposed new Criminal Procedures Code.

On November 25, in an incident connected to the arrest on October 16 of Gen. Pinochet in London on a warrant from Spain, pro-Pinochet activists in Santiago vented their anger on reporters covering the reaction to a British court ruling denying the former dictator immunity from prosecution for murder, torture and genocide during his 17 years in power. Gathered at the Pinochet Foundation, the outraged supporters pushed, jeered and shouted at the journalists. At least one cameraman was hospitalised.



1999 World Press Freedom Review

Long shackled by General Augusto Pinochet's military dictatorship, the Chilean print and broadcast media were generally able to operate freely in 1999, although there were exceptions to the rule – most notably the intimidation of journalist Paula Afani, a reporter for *La Tercera* and *La Hora*. The threat of legal action – including the use of the State Security Law (LSE), under which it is a criminal offence to besmirch the honour of state institutions and symbols – continues to hang over the media. Consequently, self-censorship and a lack of investigative reporting are a problem.

On January 18, Paula Afani was detained for six hours by the police, who wanted her to reveal her sources for a story that appeared in two dailies, *La Tercera* and *La Hora*, in June 1998. The story concerned alleged links between a shipping magnate, Manuel Losada, and others, to a drug-trafficking network known as “Operation Ocean.” Investigators also raided Afani's home and the offices of the two newspapers in the Consorcio Periodístico de Chile. This was not the first time that the State Defence Council (CDE) had attempted to silence the media's reporting on “Operation Ocean.” Six months earlier, the CDE had proposed information restrictions which were rejected by the Valparaíso Court of Appeals.

On April 14, police raided the warehouse of the publishing company, *Planeta*, and confiscated the entire stock of the book, *El Libro Negro de la Justicia Chilena* (The Black Book of Chilean Justice), an exposé of the Chilean judiciary's abuses of power during the 1973-1990 dictatorship of Gen. Pinochet, which had been launched the previous day. Within hours of the launch, Supreme Court Justice Servando Jordán López had filed a suit against the author, investigative journalist Alejandra Matus Acuna, for violating Article 6b of the State Security Law (LSE). This law, which dates from 1958, makes it a crime against public order to “libel, offend or



slander the President of the Republic, ministers of state, senators or representatives, members of superior courts of law, the attorney general of the republic, the commander-in-chief of the armed forces or the director general of the Carabineros.” The judge to whom Jordán filed his complaint, Rafael Huerta of the Santiago Appeals Court, initiated a prosecution against Matus, ordered the seizure of the entire press run of the book, and banned sales of the book with unusual swiftness. Facing up to five years in prison if convicted, Matus, who covered Chile’s courts as a reporter for five years, fled to Argentina and was granted political asylum in the United States on September 30. She was the fourth author to fall foul of the LSE since 1993. Bartolo Ortíz and Carlos Orellana, chief executive officer and chief editor, respectively, of the *Planeta Publishing House*, were arrested on June 16 and brought to the Court of Appeals to testify before Judge Huerta. The two publishers, who were charged with insulting the judiciary, were released on bail on June 18.

This was not the first case in which Jordán – who barely survived a 1996 impeachment vote for corruption – filed charges against the media. On September 16, 1998, Fernando Paulsen, then director of *La Tercera*, and José Ale, a reporter for the best-selling daily, were jailed for a story analysing Jordán’s tenure as chief justice. The two journalists, who were released on bail the next day, have since been acquitted. Two other journalists, Paula Coddou of *Cosas* magazine and Rafael Gumucio of *Canal 2*, were also jailed overnight in 1998 on charges of libelling Jordán, who withdrew his charges against the journalists following a wave of public criticism.



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2000 World Press Freedom Review

It would appear that in Chile this year all roads led back to the question of how to deal with former dictator General Augusto Pinochet. Try as it might the Chilean government has been unable to avoid confronting this issue and the ensuing litigation has cast a long shadow over the entire country. A central issue is how Chile proposes to deal with its past. Until recently, the Chilean government would have preferred to look forwards rather than backwards but it has now accepted that a re-examination of its violent history may be crucial to hopes for the future.

Once considered untouchable, Pinochet has faced continuous legal action since his return from house arrest in London. In May, a court in Santiago voted to relieve the retired general of his seat in the Senate, thus removing his immunity and opening the way for a successful prosecution on charges of torture and murder. Although an appeal was made to the Supreme Court by Pinochet's lawyers, a prosecutor has been appointed and an investigation has started on his involvement in the human rights abuses of the 1970's. A setback to the successful prosecution of the General occurred when it was decided by the prosecutor in the case that Pinochet's fitness to stand trial should be assessed, these reports are not expected until January 2001. Many people in Chile believe that, at the age of 85, Pinochet will escape prosecution.

One of the most important questions resolved by the Pinochet hearings was whether the Chilean judiciary would be able to deal with this contentious matter in a way that met with international legal standards. Long criticised, especially in the "Black Book of Chilean Justice" written by Alejandra Matus – which unearthed corruption in the judiciary – there were fears that the judiciary would be unable to deal impartially with the former leader. However, this was shown not to be the case and there are now hopes that the Chilean judiciary will apply this renewed attempt at separating law and politics to the cases of journalists facing trial under

the country's restrictive Press Law.

However, despite the hopes resurrected by the legal hearings in the Pinochet case, both the Chilean government and the judiciary have a considerable distance to travel before they can be seen as the impartial arbiters of the media scene in Chile. Freedom of expression in the country is restrained by a number of distinct elements. In particular, there are the repeated attempts by politicians and the judiciary to cut-off sources of news, behaviour that contradicts the Chilean Administrative Probity Act guaranteeing access to information.

In a surprising move against newspapers that are free of charge, Chile's Supreme Court banned the circulation of the free daily *Metro* which has been distributed in Santiago subway stations since 14 January. IAPA protested the action taken by the Supreme Court and, at the request of the Chilean National Press Association, lodged a complaint concerning the violation of *Metro's* constitutional rights.

According to the IAPA complaint, which was lodged in the record of the court, the decision of the Supreme Court bore a similarity to the position taken by a judge in Argentina, in a case involving the daily newspaper, *La Razón*, which was distributed for free at railway stations. In that particular case, the judge ruled that compensation would have to be paid by *La Razón* to the vendors of other newspapers who suffered a resulting loss of sales. The Argentine decision was heavily criticised both inside and outside the country and led to a review of the case. In the *Metro* case, the Supreme Court decided that a previous Court of Appeals verdict should be annulled.

A criminal defamation action also revealed the convoluted and Kafkaesque approach taken by the Chilean courts when prosecuting a journalist. On 15 February, José Ale Aravena, a journalist with *La Tercera* daily newspaper, was sentenced by the Supreme Court to 541 days imprisonment for "insults" against Servando Jordán, a former president of the Supreme Court. Although Ale was allowed to go free, he is required

to report to prison authorities regularly in order to sign a register.

The action was initiated by Jordán in response to a 7 January 1998 article, published in *La Tercera*, which highlighted the circumstances in which Jordán left his previous judicial position. Although Jordán also filed a charge against Fernando Paulsen, director of *La Tercera*, the Chilean Supreme Court decided not to hear the charges against him.

In total, since the action was first laid down, five judges or courts have examined the case and each one has resolved not to proceed with the charges. On 28 July 1999, Judge Alejandro Solís justified the rejection of the charges against Aravena by noting that there was an incompatibility” between State Security Law and freedom of expression. Aravena does not have the option to appeal the Supreme Court’s decision.

According to *La Tercera*, the decision was received with some “surprise” by other lawyers and judges, as “it contradicts the legal decisions of at least ten magistrates in more than one court who had heard the case and acquitted the journalists”. Aravena stated, “while Jordán continues to work in the court system, any efforts made to improve the judiciary’s image are pointless.”

Cases such as the one brought against Aravena have been made under the State Security Law adopted in 1958. The Security Law provides for sentences of up to five years’ for criminal defamation, injuries or slander of the president, ministers of state, senators, deputies, and members of the supreme court. Such offences may be established regardless of whether the journalist was working within the profession when the damage was committed. Since 1990, 17 journalists have been detained or charged under this law and three of the cases have occurred within the last twelve months.

On 4 March, during riots motivated by the return of Augusto Pinochet, an unidentified news photographer suffered head injuries when crowds fought with the police. Pinochet had been sent back to Chile on the order of the British home secretary after spending 16 months under house



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arrest while he faced a Spanish application for extradition. During his rule from 1973 till 1990 around 3,200 people were murdered or simply disappeared. On 4 April, *HRW* announced that an exiled Chilean journalist, Alejandra Matus, is among the recipients of this year's Hellman-Hammett Awards, given to writers who have been victims of persecution. Matus is the author of *"The Black Book of Chilean Justice"*, an exposé of corruption in the Chilean judiciary, which contains a critique of the judicial system under the dictatorship of Augusto Pinochet.

Upon the release of the book in 1999, a Chilean judge ordered the confiscation of all copies of the book on the grounds that it violated article 6(b) of the Law of State Security. Police subsequently raided the warehouse of the book's publisher as well as bookstores across Santiago, impounding the entire stock. Fearing imminent arrest, Matus fled to Argentina and later to the United States, where she was granted political asylum. The Chilean government has yet to lift the ban on Matus' book.

Plans to introduce a new Press Law were scrapped when the new law was rejected by the country's legislature. Apparently, the reason for the rejection was the removal of protections for politicians against libel charges. WAN has urged Chilean President Ricardo Lagos to use his constitutional powers to resubmit the law to the Lower House.

The rejected law was originally drafted in 1993 by a commission made up of newspaper representatives, the Journalists' Association, Journalism Schools and government employees. The Lower House and the Senate discussed and modified the Press Law over a period of seven years. In 1999, a Joint Committee of Congressmen and Senators was set up to study provisions on which no agreement had been reached and a final report was agreed in May of this year.

Importantly, the recommendations introduced significant advances in the right to rectification and clarification, responsibilities allocated to the Commission on Crimes in the exercise of Freedom of Information and Opinion and the elimination of the privileges granted to authorities by the



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State Security Act. In the vote in the Senate, the Report of the Joint Committee was approved by 38 votes; however, the Lower House rejected the Report by 58 votes to 23.