

PRESENTATION COLUMBIA UNIVERSITY - JURISPRUDENCE CONFERENCE
Global Freedom Of Expression And Information

I would like to start by thanking Columbia University, its President, Lee Bollinger, and Agnes Callamard for generously inviting me to join them here this afternoon. I am also very honored to have these extraordinary panel colleagues.

For this presentation, I will first mention the most important freedom of expression cases of the Inter-American Human Rights protection System from 2015. Next, I will examine some of the most important judgments from the countries in the region.

I. Inter-American Human Rights protection System

With regard to the Inter-American System, I will start with a short introduction looking at some of the trends at the Inter-American Court in 2015.

Since its founding, the Inter-American Court of Human Rights has played a key role on issues of freedom of expression.

The Court's golden age on this issue took place between 2001 and 2008. During that period, the Court made important decisions on a broad range of issues including the prohibition of prior restraint¹ and the prohibition of the crime of slander or *desacato*;² special protection for speech in the public interest and from the disproportionality of criminal defamation;³ the right to access to information as a fundamental right;⁴ and the prohibition on the use of State power and resources to reward or punish media outlets.⁵ In these cases, the Court employed a very sophisticated interpretation of the Convention that included very strict scrutiny of State actions to limit expression on matters of public interest.

¹ Inter-American Court. Case of "The Last Temptation of Christ " (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs. Judgment dated February 5, 2001. Series C No. 73.

² Inter-American Court. Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135.

³ Inter-American Court. Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107; Inter-American Court. Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment dated August 31, 2004. Series C No. 111; Inter-American Court. Case of Kimel v. Argentina. Merits, Reparations and Costs. Judgment of May 2, 2008, Series C No. 177; Inter-American Court. Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs. Judgment dated January 27, 2009. Series C No. 193.

⁴ Inter-American Court. Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151.

⁵ Inter-American Court. Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74.

However, in 2009, the trend at the Court started to change. At first, the change was slight. It was limited to dismissing some pleadings on technicalities⁶ or simply omitting analysis of aspects of the cases related to the right to freedom of expression.⁷ Although this approach did cause the Court to miss opportunities to move forward in defining freedom of expression standards, at least it did not explicitly reverse any of the progress made.

An example of this was the Case of Uzcátegui et al. v. Venezuela. In this case, although the decision was not explicitly regressive, the Court decided to avoid issues of freedom of expression; it declined to reiterate important precedents that were directly applicable; and it neglected to address new problems that could have led to setting innovative and important case law.

Yet, in a split decision in the 2013 case of *Mémoli v. Argentina* (3-4), the Court issued the most regressive judgment on this subject in its history. I will not digress here to explain the whole thing, but I would like to mention at least three of its most preposterous failings:

- (1) First, the Court studied the application of specific criminal laws on defamation, which it had, *per se*, previously found to be in violation of the Convention. In this case, however, it had no objection to the same laws.
- (2) Second, it completely eliminated application of the tripartite test under the Convention by finding that the criminal conviction of a journalist for reporting mismanagement of a public good could only be questioned in an international forum if it was clearly unreasonable, omitting any application of strict scrutiny that characterized these cases in the past.
- (3) Third, it found that the fact that the journalist's property had been seized and held for 16 years did not affect the right to freedom of expression.

The *Mémoli* case was not a politically important case; there was no important organization defending the journalist; and in general, the Inter-American Court does not end up in the Latin American media spotlight.

However, after the Court published the judgment the most important newspapers in the region published devastating articles criticizing the Court. Fifteen media outlets in different countries, including *O Globo* and *Estado de Sao Paulo* from Brazil, *La Nación* of Argentina, *El*

⁶ Inter-American Court. Case of González Medina and relatives v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240.

⁷ Inter-American Court. Case of Uzcátegui et al. v. Venezuela. Merits and Reparations. Judgment of September 3, 2012, Series C No. 249.

Tiempo of Colombia and El Pais in Spain, published articles that were very critical of the judges' actions in the case.

One could argue that this unexpected public reaction is what moved the Court in 2015 to return to the guarantees it abandoned in 2009. Essentially, in 2015, the Court issued important judgments that once again raised freedom of expression standards. Another factor that could have influenced this change is Venezuela's regional decline in 2015 and the corresponding decline in the illiberal current the country had been supporting in the region.

Whatever the reason, the truth is that in the 2015 judgments that I am about to summarize, the Court once again takes up the strong precedents it set toward the end of the 20th century and the beginning of the 21st.

The cases I will be addressing are the case of Marcel Granier et al. (Radio Caracas Televisión) v. Venezuela and the case of López Lone et al. v. Honduras. I will finally make brief mention of the case of Omar Humberto Maldonado et al. v. Chile on the right to access to information.

The case of Radio Caracas Televisión revolves around the State's refusal to renew the license of a television channel for eminently political reasons. Although the State argued it was for technical reasons, the evidence in the case file demonstrated that a clear abuse of office had taken place and that the decision to not renew the television channel's license was intended to punish it for an editorial stance that was critical of the government.⁸

The case establishes important precedent in at least the following three issues:

First, as you know, in contrast to the European system, in the Inter-American system only natural persons—human beings—have standing to bring claims before regional protection bodies.

For example, in 2010, the Court used this argument to reject a request for provisional measures to halt the simultaneous closure of 34 radio stations in Venezuela and the threatened closure of another 400 radio stations there. According to the Court, irreparable damage to the journalists working for the radio stations that were closed had not been proven because they could look for work in other places. At the same time, the damage caused to the media outlet was not a matter under the Court's jurisdiction.

⁸ Botero, Catalina. 2015. "*Es Cuestión de Libertades.*" *Ámbito Jurídico*. Available online at: <http://www.ambitojuridico.com/BancoConocimiento/Constitucional--y-Derechos-Humanos/es-cuestion-de-libertades.asp?Miga=1>

However, in the case of RCTV, the Court allowed that closing the media outlet directly affected the rights of the channel's journalists, workers, and managers. In this case, it seems the Court to a certain extent agreed that there was a connection between closure of the media outlet and the violation of the human rights of the journalists and managers. This somewhat clears the skies—which until now had been very dark—for cases on media outlets in the region.

Second, the Court found that although the State has authority to assign broadcasting licenses, it cannot use this authority to punish or reward media outlets based on their editorial stances. Along these lines, the judgment found that the use of legal authorities to prevent the exercise of freedom of expression constituted a form of indirect censorship, in violation of Article 13 of the American Convention. This is not a minor issue in a region in which some democratically elected governments have used the law to punish critics or dissidents.

Finally, the Judgment found that States have an obligation to issue clear and precise regulations for the process of assigning frequencies that establish objective criteria, avoid arbitrariness and encourage pluralism and diversity.

The second case the Court ruled on in 2015 was the case of *López Lone et al. v. Honduras*. In this case, the Court ruled on a complaint from a number of judges who had been subject to disciplinary proceedings for protesting against the coup d'état that removed the elected president of Honduras from power in 2009. Effectively, with the backing of the Congress and the Supreme Court of Justice of Honduras, members of Honduras's armed forces captured the president and put him on a plane headed out of the country. This situation led to loud citizen protests in certain sectors, which the judges in question in this case joined.

The complaint, brought by the Inter-American Commission, asks for the judgment to recognize the judges' right to publicly criticize institutions as long as these criticisms do not affect the principles of judicial autonomy and independence. The complaint cites the European Court at length on this issue (case of *Kudeshkina v. Russia*).

Nevertheless, after stating obiter dictum on the right of judges to freedom of expression, the Court constructs a kind of innominate right to resistance in contexts of serious institutional upheaval. For the Court, in these borderline situations, it is disproportionate to prevent judges, as citizens, from freely exercising their right to freedom of expression, to assembly, and to political participation.

Along these lines, the Court found that disciplinary processes against judges who expressed themselves against the coup in different venues violated Articles 13, 15, and 23 of the American Convention on Human Rights.

Finally, the Court ruled on a particularly problematic case, the case of Omar Humberto Maldonado et al. v. Chile, which deals with the scope of the right to access to information collected during processes of transitional justice. This case is on the right to access to information contained in truth commission archives on human rights violations.

In its judgment, the Court found that during times of institutional stability, authorities cannot refuse to hand over information on human rights violations to the competent so perpetrators can be tried. However, in the Court's view, when requesting this information from truth commissions, which were created during transitional justice processes, the proportionality principle must be applied. According to the judgment, it is legitimate in these cases to withhold information as long as doing so is based on a legal provision, seeks a legitimate end, and is necessary and strictly proportional for accomplishing that end.

In the case in question, the Court had to rule on whether one of the truth commissions created during Chile's transition to democracy was required to turn over information from its archives to judges investigating the human rights violations committed during the dictatorship. The Court applied the proportionality test and found that the restriction was authorized by law and sought two legitimate ends: the truth commission's ability to complete the task it has been charged with and protection of the individuals who gave testimony before the commission. For the Court, in this case, confidentiality was necessary to be able to reconstruct the historic narrative. It was also proportionate because it had a time limit and the individuals who testified before the Commission could also give their testimony to judges if they so chose. Finally, the Court noted that the State itself was revising its access to information procedures for these cases.

This year, the Court is expected to rule on three cases presented by the Commission in 2015: a case on impunity for the murder of journalist Nelson Carvajal, who was murdered in Colombia; the case of Lagos del Campo, against Peru, on a union leader who was fired for using expressions during a strike that offended the honor of his employers; and the case of I.V. v. Bolivia, on the right to access to information on sexual and reproductive rights.

Unfortunately, among the new judges chosen last year by the OAS General Assembly is one who receives instructions directly from the president of Ecuador, Rafael Correa. Correa is for the region what Erdogan or Viktor Orban represents for Europe. Or worse. It remains to be

seen how the conflicts that are surely to arise with the judges who are independent defenders of the American Convention will be resolved.

A final note on the decisions of the Inter-American system. As you know, this system is a dual system comprising the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights.

In 2015, the Commission published a number of decisions on the merits of the scope of the right to freedom of expression that are worth highlighting. In the case of Miguel Ángel Millar Silva et al. (Radio Estrella del Mar), the Commission found the Chilean State responsible for violating Article 13 of the Convention on having failed to provide reparations to a radio station critical of the government that recently and without justification had its electricity cut off. At the time of the facts, electricity was a scarce good on the small island of Melinka, and reasonable criteria for its distribution were therefore needed. However, the Commission found that the way in which the local government distributed this service unreasonably affected the only radio station that was critical of the mayor. The distribution was openly inequitable and not based on public, objective, and reasonable criteria. Consequently, the Commission found that the right to freedom of expression had been violated indirectly.

The case of Adriana Beatriz Gallo, Ana María Careaga, and Silvia Maluf de Christin v. Argentina was also published in 2015. This is a very important decision on freedom of expression in the judiciary. In this case, the judges, Careaga and Maluf, joined a press release of the Association of Attorneys and Prosecutors of Villa Mercedes that stated an opinion on the situation of the Judicial Power of the Province of San Luis. Shortly after the press release the judges were removed from office. Furthermore, their destitutions were decided by a Jury that did not comply with the requirements of independence and impartiality, that was based on a non-applicable law during the time the acts were committed, and in a complex context of institutional crisis in the Province of San Luis, Argentina. The destitution rulings could not be appealed. The Commission considered the destitutions to be illegitimate, and a clear violation of the right to freedom of thought and expression. This decision was used as precedent by the Commission to bring the complaint of the Lopez Lone et al. v. Honduras case to the Inter-American Court.

II. Some trends and emblematic cases in the region from 2015

Finally, I would like to discuss some of the most important cases in the region in 2015 on two extremely current issues: criminal defamation and regulation of expression on the Internet.

A. Criminal defamation

Regarding criminal defamation, unfortunately a number of cases arose that, on one hand, demonstrate an absence of proper criteria for making such decisions in countries like Chile, and Paraguay, and on the other, demonstrate the use of the justice system to intimidate critics of the government in countries like Venezuela and Ecuador.

Starting with the cases from Venezuela and Ecuador, what is clear here is the arbitrary and discretionary application of open laws on *desacato* and defamation by a judicial branch that answers to the executive in order to eliminate criticism and stop investigations into the government's actions.

In Ecuador now, the president's critics are convicted of crimes with regularity. For example, in 2015, a 17-year-old was convicted of having made an "obscene and insulting" gesture when the president's motorcade passed by. The judgment found that the young man had insulted the president, thereby violating Article 396, Section 1 of the Organic Comprehensive Penal Code. That law punishes "individuals who, in any way, express themselves so as to discredit or dishonor another." Given that the accused was a minor, he was sentenced to 20 hours of community service.

In a different case, three people originally convicted in 2013 and sentenced to two years in prison and to pay US\$140,000 for "judicial defamation" against the president were again brought before a court for failing to pay the US\$140,000. Journalist Fernando Villavicencio, one of the three individuals, is being subjected to a number of legal processes, one of which started with the publication of a book that was critical of the government's management of the economy and relations with China.

Likewise, a journalist was convicted and sentenced to pay US\$40,000 in moral damages to president Correa over the publication of a series of articles that, according to the judgment, make twisted references to the president's sexual orientation and accuse him of abusing women. A politician was convicted and sentenced to 15 days in prison for using his Twitter account to "discredit and dishonor" a minister's niece. Also, a well-known political analyst was ordered to appear at a preliminary hearing on having suggested that a senior official was corrupt during his time in government. Finally, individuals associated with the government have brought a number of processes against one of the country's most famous cartoonists, arguing that his cartoons have committed a number of violations and crimes, including the crime of "discrimination." The cartoonist had already previously been sentenced to "correct" a cartoon, while his newspaper was ordered to pay high fines for "allowing publication" of the drawing.

Using criminal law to intimidate critics is common in Venezuela as well. For example, in 2015, a series of injunctions were issued banning the directors and board members of three newspapers from leaving the country, after their newspapers mentioned an article in Spanish newspaper ABC that said Legislative Assembly President Diosdado Cabello was being investigated in the United States for drug trafficking. When Cabello sued the newspapers' directors following the publications, a judge ordered them to remain in the country while the criminal proceeding ran its course.⁹

Also, toward the beginning of March of this year, a criminal court judge sentenced the editor of one of the country's few remaining independent newspapers to four years in prison for publishing allegations of corruption at a State mining company.¹⁰

Although it is State policy in the aforementioned countries to criminalize dissidence and journalism that is critical of the State using defamation laws, other countries have seen similar cases that, while isolated, are nonetheless cause for concern.

For example, in Chile, the Supreme Court of Justice upheld the decision of a guarantee judge in Santiago who convicted the directors of a media outlet for publishing a report suggesting that a deputy had committed illegal acts (Articles 416, 417, 418, and 422 of the Penal Code). For the judge, the "slandering" publication was even more serious for having taken place during an election. The Supreme Court upheld the judgment. It found that the judgment was legitimate because the newspaper's directors had not shown due diligence in confirming the veracity of the damaging publications.

In Paraguay, the chief justice of the Constitutional Chamber of the Supreme Court of Justice filed a complaint against a journalist for slander and a complaint for serious disciplinary infraction against the attorney and legal representative of a non-governmental organization (Tierraviva a los Pueblos Indígenas del Chaco) for saying in a press release that the judge had violated her legal duties.

On the other hand, there were two positive cases in Brazil that are worth highlighting. Although it is true that Brazil has a long history of totally disproportionate rulings against local media and journalists,¹¹ in 2015 there were at least two positive decisions. First, at the beginning of the year, the Supreme Federal Tribunal suspended the decision of the Tribunal

⁹CPJ press release. "Venezuelan court bars media executives from leaving country". Available online at: <https://cpj.org/2015/05/venezuelan-court-bars-media-executives-from-leavin.php>

¹⁰CPJ press release. "Venezuelan editor sentenced to 4 years in prison for criminal defamation". Available online at: <https://cpj.org/2016/03/venezuelan-editor-sentenced-to-4-years-in-prison-f.php>

¹¹ IACHR, Office of the Special Rapporteur for Freedom of Expression, Annual Report 2010.

of Justice in the State of Ceará sentencing a media group to pay 250,000 Reais to a business for having criticized its management.¹²

But the most important decision for the purposes of this review was issued by the judge of the Fourth Criminal Chamber of the Region of the Capital of Santa Catarina, which ruled inadmissible the charge of *desacato* brought by the Public Prosecutor against an individual who had “offended” a group of police officers. According to the judge in the case, the crime of *desacato* is not compatible with valid democracy. In support for his reasoning, the judge cited the provisions of Article 13 of the American Convention on Human Rights, along with the highest standards of the inter-American system on the issue. After making the corresponding application of the American Convention on Human Rights, the judge found that application of the *desacato* law as found in the Criminal Code should be suspended based on Article 13 of the Convention. The decision is being appealed.¹³

Finally, I would like to make a brief note on the area of civil defamation. Several news outlets in Argentina¹⁴ and Panama¹⁵ were ordered to pay civil damages for broadcasting live accusations against a mayor or publishing an investigation into misappropriation of public resources.

B. Internet: jurisdiction, responsibility of intermediaries, and right to be forgotten

Several of the region’s courts ruled on this issue in 2015. In sum, as shown in the cases summarized in this paper, the argument that local subsidiaries of Internet intermediary companies like Google or Facebook are not legally responsible in their respective countries because their headquarters are in the United States has been rejected. This has been the case either explicitly or implicitly in Mexico, Brazil, Colombia, Argentina, and Chile.

On the merits of the issue, there are notable differences in the judgments from the aforementioned countries. On one hand, the highest courts in Colombia and Argentina found that the subsidiaries were not responsible for content shared by third parties. However on the other, in Mexico, the entity in charge of defending the right to access to information and

¹² Supreme Federal Tribunal. Reclamação 16,329. Decision of December 17, 2014, published on February 2, 2015; Consultor Jurídico (Conjur). January 5, 2015. Available online at: <http://www.conjur.com.br/2015-jan-05/emissora-nao-condenada-criticas-reportagem>

¹³ Judicial Power of Santa Catarina. 4^a Vara Criminal da Comarca da Capital de Santa Catarina. Proceeding No. 0067370-64.2012.8.24.0023. Available online at: <http://www.tjsc.jus.br/>

¹⁴ Civil and Commercial Judge N^o 1 of the Province of Formosa. May 29 of 2015. *Insfran, Gildo v. Hernandez, Gabriel and others*. Available online at: [http://www.elcomercial.com.ar/images/files/Fallo_Insfran-Hernandez\(2\).pdf](http://www.elcomercial.com.ar/images/files/Fallo_Insfran-Hernandez(2).pdf);

¹⁵ Thirteenth Civil Circuit Judge of the First Judicial Circuit of Panamá. November 25 of 2015. *David Marco Ochy Diez, Daniel Miguel Ochy Diez and Transcribe Trading SA (TCT) v. Corporación La Prensa y Editorial por la Democracia (Newspaper La Prensa)*.

protection of personal information (INAI) found that Google was subject to legal requirements on personal information and was therefore required to eliminate links to information that, according to a Mexican citizen, was protected by law. In doing so, Mexican authorities embraced the precedent of the European Court of Justice from the Costeja case on the so-called “right to be forgotten.”

On this issue (the right to be forgotten) in Colombia, the Constitutional Court found in judgment T-277 of 2015 that although intermediaries were not responsible for third-party content, the media that published information on individuals involved in criminal proceedings had, in principle, two obligations.

First, the individual referred to in the article on a criminal proceeding who was not convicted at trial has the right, according to the Court, for the media to update the original articles on their webpages. Second, the individual has the right to request the use of technical tools (such as robots.txt) so the article cannot be found through the simple search of his or her name in Internet search engines.

A similar case was just resolved in Chile. In this decision, the Supreme Court of Justice found that individuals have the right to “prevent dissemination of past personal information that, having served its purpose, could be damaging.” For the Court, this rule arises from the use of the Internet, of databases, and of weighing habeas data against freedom of expression. Following this rule, the Chilean Court found that maintaining a news item on a criminal conviction that took place 10 years earlier violated the right to be digitally forgotten of the person convicted and ordered the respondent newspaper to eliminate the “registration information of the news that negatively affected the plaintiff within three days.”

In a different case, an order from a judge from the *Central de Inquéritos da Comarca de Teresina*, Piauí, found that telephone companies must suspend access to the instant messaging service WhatsApp until the company complies with a series of orders from the State Civilian Police. The company argued that it could not comply with the orders because its headquarters were in the United States, not Brazil. However, the judge found that it must comply with the order because Article 11 of the Internet Civil Framework indicates that foreign companies that provide Internet services in Brazil are governed by Brazilian law. On February 26, The Piauí Tribunal of Justice [*Tribunal de Justiça de Piauí*] overturned the earlier decision. For the Tribunal, the decision was not reasonable because it affected millions of people in Brazil who had nothing to do with the investigations being carried out.

The following paragraphs of this paper go into more detail on these cases.

As mentioned, in Argentina and Colombia, courts have ruled that intermediaries are not responsible for the content that other people post on the Internet. This was how the First Court of the National Criminal and Correctional Appeals Chamber of Argentina ruled on May 5th when it found that the owners of *Taringa!* and *Planeta Sedna* are not responsible for the content shared by their users. The judgment cites an important judgment of the Argentine Supreme Court of Justice from October 28, 2014, according to which intermediaries “do not have a general obligation to supervise or monitor the content uploaded to the web.” According to this judgment, their obligation is to prevent voluntary and illegitimate copying of a third party’s work and remove content that has been flagged as illegal.

The Constitutional Court of Colombia found likewise in judgment T-277 of 2015,¹⁶ ruling on a remedy sought by a woman requesting that certain information be removed from Internet search engines. For the Court, intermediary Internet companies are not responsible for the content shared by third parties. In this sense, it explicitly rejected the application of the precedent set in the Costeja case by the European Court of Justice. For the Court, holding an intermediary responsible for content shared by third parties can end up turning these companies into “censors.” According to the Court, this “could affect the Internet’s architecture through failing to recognize its guiding principles of equal access, non-discrimination, and pluralism. At the same time, the effects of an intervention of this kind on the operations of a media outlet would not be limited to technical ones: it would also affect the right to information of the people using the service, that is, all citizens.”

Regarding the so-called “right to be forgotten,” this judgment is important because although it rejects the precedent of the Costeja case and affirms that the database standard cannot be extended to intermediaries or to the media, it finds that in certain cases, the media outlets themselves are required to filter out information that could disproportionately affect the rights of third parties. In this sense, the Court finds that when a media outlet publishes information on the connection between a person and a criminal process and this person is later acquitted in trial, the person in question has a right to ask the media outlet to update that information. The Court also found that in these cases, technical tools such as “robots.txt” and metatags could be used to prevent Internet search engines from indexing the news item based on the name of the person affected. In the Court’s judgment, the updated news item remains on the Internet, but the rights of the person affected are protected from its impact.

However, for the Court, when “the person at issue is a public figure or public servant, or if the facts found in the news item involve crimes against humanity or serious injury to human rights, access to the information in question should not be restricted, as this is part of the

¹⁶ Constitutional Court of Colombia. Judgment T-277 of 2015. Available online at: <http://www.corteconstitucional.gov.co/relatoria/2015/t-277-15.htm>

process of building national historical memory because its dissemination supersedes the interests of an individual person.”

Finally, in the Mexican case, the rule used by the authority in charge of defending the right to access to information and protecting personal information (INAI) ran contrary to the rule used by the Colombian court. In this case, the INAI applied the precedent of the Costeja case to order Google, under the information protection law, to remove a series of links leading to information on the financial situation of a Mexican businessman. According to this businessman, the publication of the aforementioned information was affecting his business activities.

In this case, the INAI dismissed Google México’s argument that it was a subsidiary operating under its US-based parent company (Google, Inc.). For the INAI, “an Internet search engine service provider is responsible for how it handles the personal information that appears on web pages published by third parties. Therefore, under certain conditions, when a search is made for a person’s name, the list of results provides links to web pages that contain information on that person, and that list can be sent directly to the search engine so that it can eliminate these links from the results.”¹⁷ On finding that the information published was affecting the Mexican citizen, the INAI ordered the search engine to filter out the corresponding links within ten days and started a parallel proceeding against Google for failure to comply with the obligations contained in the law on personal information.

As mentioned in the introduction to this chapter, in a recent case, the Supreme Court of Justice of Chile adopted a decision finding that individuals have the right to “prevent dissemination of past personal information that, having served its purpose, could be damaging.” To reach this decision, the Court cites the protection of personal information in database standards and, specifically, the Costeja case, finding that a rule of this nature allows adequate weighing of the right to freedom of expression against the protection of personal information. The Court indicates that the right to be forgotten on the Internet protects, among other rights, the right to privacy and to the free development of one’s personality. As this remedy had been brought against a newspaper and not against the search engines or other intermediaries, the Court’s judgment applies only to the newspaper, ordering it to “eliminate the record of the news item that negatively affected the plaintiff within three days.”

¹⁷ Federal Institute of Access to and Protection of Information (INAI in its Spanish acronym). Resolution of January 27, 2015. Google México, S de R.L. de C.V. Case File PPD. 0094/14. Available online at: [http://inicio.ifai.org.mx/pdf/resoluciones/2014/PPD 94.pdf](http://inicio.ifai.org.mx/pdf/resoluciones/2014/PPD%2094.pdf)