

Special Collection of the Case Law on  
Freedom of Expression

# **Inter-American System of Human Rights**



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# Overview of the Inter-American Human Rights System

The [Inter-American Human Rights System](#) (“IAHRS”) operates at a regional level within the framework of the [Organization of American States](#) (“OAS”), and it aims to promote and protect human rights in the Americas. After the adoption of the [American Declaration of the Rights and Duties of Man](#) (the “American Declaration”) in 1948, a series of [human rights treaties](#) have been adopted and currently serve as the basis for the IAHRS. For instance, the [American Convention on Human Rights](#) (“ACHR” or “the American Convention”), adopted in 1969, established the [Inter-American Court of Human Rights](#) (“IACtHR” or “the Court”) with the mandate to interpret and apply the American Convention. Similarly, the ACHR further defines the mandate, structure, and attributions of the [Inter-American Commission on Human Rights](#) (“IACHR” or “the Commission”), which was originally established by the [Charter of the Organization of American States](#) under its Chapter XV. The Court and the Commission are the two principal organs of the IAHRS.

The [Inter-American Court of Human Rights](#) is an autonomous organ of the OAS established by the American Convention. The Court, like other international tribunals, exercises both a contentious and advisory [jurisdiction](#). Not every [Member State of the OAS](#) nor all [signatories](#) to the American Convention have accepted the contentious jurisdiction of the Court. Once a State recognizes the contentious jurisdiction of the Court, the Commission can bring cases to the Court on alleged human rights violations perpetrated under its jurisdiction. The Court can only consider a case brought before it by the Commission, once the latter decides the individual petition on the merits.

Additionally, the IACtHR has the power to issue advisory opinions (OC). Through this medium, the IACtHR can respond to inquiries made by the OAS member States concerning the compatibility of internal norms with the ACHR and the interpretation and application of the provisions of the Convention or other human rights instruments of Inter-American concern.

OC-5/85 is the cornerstone for the development of the scope and content of Freedom of Expression in the region. Through OC-5/85, the IACtHR established that freedom of expression has a structural, intrinsic, essential, and instrumental relationship with democracy. Structural, in the sense that freedom of expression is a condition for the existence and effective functioning of a democratic system. It is intrinsic since democracy cannot be consolidated without people bearing the freedom to express their ideas and opinions, deliberate openly over public affairs, and pursue self-determination. It is essential since the precise objective of Article 13 of the ACHR is to strengthen the functioning of pluralistic and deliberative democratic systems by protecting and promoting the free circulation of information, ideas, and expressions of all kinds. Finally, the instrumental nature of freedom of expression derives from its role as a vehicle for exercising multiple rights that fulfill true democracies.

Through OC-7/86, the IACtHR marginally established that for people to exercise freedom of expression in equal conditions, appropriate legal provisions must safeguard the right of reply or correction.

Further, in OC-22/16, the IACtHR recognized that in cases in which damage is caused to a legal entity, such as a media outlet, a claim to protect rights before the IASHR is admissible if proven that a person's right to freedom of expression, linked to the organization, was infringed. Through this Advisory Opinion, the IACtHR established that to determine whether the impact on the communication outlet caused a negative, certain and substantial infringement on the right to freedom of expression of a human being, it is necessary to analyze the role of the latter within the entity, and particularly, the extent of their contribution to the organization's communicational objectives. If such criteria are met, the person affected will be presumed a victim; therefore, may seek protection through the IASHR.

In addition, via OC-24/17, the IACtHR remarked that the right to identity, particularly the manifestation of gender identity, is also protected by freedom of expression.

## Global Perspective

Although existing treaty-bodies and international courts exercise their functions with regards to different human rights treaties, the universal, indivisible, interdependent, and interrelated characteristics of human rights make it appropriate for these bodies and courts to often engage with the decisions of each other. In that sense, in the Inter-American System, it is not uncommon for the Court or the Commission to refer to decisions issued by other human rights courts or treaty-based bodies. This practice is reflected in many of the decisions included in our database. For example, in *Francisco Martorell v. Chile*, the Commission referred to the decision of the European Court of Human Rights ("ECtHR") in *The Sunday Times v. United Kingdom*<sup>1</sup> case to reject the argument that the right to honor could override the right to freedom of expression. Similarly, in *Adriana Beatriz Gallo v. Argentina*,<sup>2</sup> the Commission

On the other hand, the Inter-American Commission on Human Rights is a principal and autonomous organ of the OAS established under the OAS Charter and the American Convention. The work of the IACHR responds to two essential [functions](#): first, the monitoring, promotion, and cooperation on human rights in the region, and second, the assessment of individual petitions. Due to its initial establishment under the OAS Charter, the Commission's mandate to promote the observance and protection of human rights extends to all OAS Member States. This means that the Commission can hear individual [petitions](#) brought against all Member States of the OAS by virtue of the American Declaration or the American Convention. However, once the Commission issues a final report on a petition and finds that the relevant State has not complied with its recommendations, the IACHR can refer the particular case to the Court provided that such State is party to the American Convention and has accepted the contentious jurisdiction of the Court.

addressed the right to freedom of expression of public officials or employees and referred to certain cases before the ECtHR, including *Vogt v. Germany*,<sup>3</sup> *Wille v. Liechtenstein*,<sup>4</sup> and *Ahmed and others v. United Kingdom*.<sup>5</sup> Such cases related to the freedom of expression of certain public officials and employees, including a teacher and a judge.

The cases of the IACtHR included in our database reflect that, in addition to the ECtHR, the Court has also cited decisions from the African Commission on Human and Peoples' Rights ("ACmHPR") and the United Nations Human Rights Committee ("UNHRC"). For instance, in *Granier (Radio Caracas Television) v. Venezuela*,<sup>6</sup> the Court referred to the UNHRC's decision in *Singer v. Canada*<sup>7</sup> to conclude that a restriction imposed on a radio affects not only the radio as a company but the individuals who operate it to express themselves.

Similarly, the Court referred to the UNHRC's decision in *Aduayom v. Togo*,<sup>8</sup> *Ricardo Canese v. Paraguay*,<sup>9</sup> and *Herrera-Ulloa v. Costa Rica*.<sup>10</sup> In *Ricardo Canese v. Paraguay*, *Herrera Ulloa v. Costa Rica*, and *Granier (Radio Caracas Televisión) v. Venezuela*, the Court referred to the ACmHPR's decision in *Media Rights Agenda et al. v. Nigeria*,<sup>11</sup> when underscoring the importance of freedom of expression in a democratic society.

The decisions of the ECtHR are the most referred to in the jurisprudence of the Court. Some of the most cited ECtHR cases include *Handyside v. United Kingdom*,<sup>12</sup> *The Sunday Times v. United Kingdom*,<sup>13</sup> *Barthold v. Germany*,<sup>14</sup> *Castells v. Spain*,<sup>15</sup> *Wille v. Liechtenstein*,<sup>16</sup> *Sürek and Özdemir v. Turkey*,<sup>17</sup> and *Mamère v. France*.<sup>18</sup> The judicial dialogue between regional courts and treaty-based bodies amplifies the impact of each decision and advances the protection of freedom of expression and information across the globe.

Judicial interaction between regional human rights systems is also reflected in the Court's test for the allowed restrictions to the right to freedom of expression. For instance, in *Ricardo Canese v. Paraguay*, the Court referred to the decisions of the ECtHR in *The Sunday Times v. United Kingdom* and *Barthold v. Germany*, when it established that restrictions to the right to freedom of expression must interfere as little as possible and be necessary and proportionate to the interests sought. With respect to the necessity requirement, in its Advisory Opinion on the *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*,<sup>19</sup> the Court also alluded to such ECtHR' decisions to conclude that, in order to be "necessary," a restriction must not only be "useful" "reasonable," or "appropriate," but also justified by a "pressing social need."

Moreover, in *Claude Reyes v. Chile*<sup>20</sup> and *Ricardo Canese v. Paraguay*, the Court referred to the ECtHR's decisions in *Feldek v. Slovakia*<sup>21</sup> and *Sürek and Özdemir v. Turkey* to note the reduced margin that restrictions have when dealing with the exercise of freedom of expression for matters of public interest and democratic control. On this matter, in *Ricardo Canese v. Paraguay* and *Herrera Ulloa v. Costa Rica*, the Court quoted the ECtHR's rulings in *Dichand et al. v. Austria*<sup>22</sup> and *Lingens v. Austria*<sup>23</sup> when establishing that limits of acceptable criticism are wider for politicians than private individuals.

Other areas in which the Court has referred to the jurisprudence of the ECtHR are the rights of judges to freedom of expression and broadcast licensing. In *López Lone and others v. Honduras*,<sup>24</sup> the Court alluded to the ECtHR's ruling in *Wille v. Liechtenstein* to establish that restrictions on judges' freedom of expression may be necessary where the impartiality of the judiciary is questioned. Moreover, in *Granier (Radio Caracas Television) v. Venezuela*, the Court recalled the decisions of the ECtHR in *Glas Nadezhda Eood and Anatoliy Elenkov v. Bulgaria*<sup>25</sup> and *Meltex Ltd and Mesrop Movsesyan v. Armenia*,<sup>26</sup> when recalling that decisions on licensing procedures for broadcasting must be duly reasoned and opened to review by competent jurisdictions.



## III. Decisions of the Inter-American Commission on Human Rights

Through its decisions on the merits of individual petitions, the Inter-American Commission on Human Rights has provided important considerations on the scope and protection of the right to freedom of expression under Article 13 of the American Convention. Rather than being an exhaustive list, the following cases include landmark decisions that the IACHR did not refer to the IACtHR, many of them due to jurisdictional matters. For a further analysis of the case law of the IACHR, it is advisable to review the written submissions presented by the IACHR in each of the cases listed in the IACtHR section of this document. The IACHR's written arguments provide a vast collection of the use of international human rights standards and comparative law for a robust protection of freedom of expression. A great number of the submissions are available in Spanish from the [main briefs of cases](#) on the webpage of the IACHR.

### A. Violence against journalists

***Manoel Leal de Oliveira v. Brazil (2010).*** In this decision, the Commission concluded that Brazil violated the right to freedom of expression of journalist Manoel Leal de Oliveira given the participation of State agents in his murder and the lack of investigation of such crime. The Commission noted that the murder occurred as a result of the articles and material published by the victim in the newspaper *A Região*, with the aim of silencing him and as a form of retaliation for the information disseminated. In that sense, the Commission reiterated the chilling and frightening

effect that the murder of a journalist has on both journalists and other members of society who wish to denounce abuses of power or illegal acts. More info [here](#).

***Víctor Manuel Oropeza v. Mexico (1999).*** In this decision, the Commission concluded that Mexico violated the right to freedom of expression by failing to investigate and punish the perpetrators of the murder of journalist Víctor Manuel Oropeza. The Commission considered that such murder constituted an aggression against any citizen with the intention to denounce arbitrariness and abuses in the society, aggravated by the impunity of the perpetrators. Therefore, the lack of serious and complete investigation of these facts implied the violation of the right to freedom of expression of Víctor Manuel Oropeza and the citizens in general to receive information freely and to know the truth of what happened. More info [here](#).

***Héctor Félix Miranda v. Mexico (1999).*** In this decision, the Commission concluded that Mexico violated the right to freedom of expression by failing to investigate and punish the masterminds of the murder of journalist Héctor Félix Miranda. The Commission noted that, although it was not possible to determine at the domestic level who the masterminds of the murder were, the crime was motivated by the content of Mr. Miranda's press articles. In this sense, the Commission concluded that the lack of serious and complete investigation of the facts implied the violation of the right to freedom of expression of Héctor Félix Miranda and the citizens in general to receive information freely and to know the truth of what happened. More info [here](#).

## B. Prior censorship

***Francisco Martorell v. Chile (1996)***. In this case, the Commission concluded that the Chilean State had censored a book and violated the author's right to freedom of expression. Francisco Martorell's book *Diplomatic Impunity* discussed the circumstances that led a former Argentine ambassador to leave Chile. Although the book was published in Argentina by Editorial Planeta, a Chilean court banned its entry, distribution, and circulation in Chile. The Commission found that the Chilean court's decision violated Article 13 of the American Convention and that prior censorship is not a legitimate restriction on the right to freedom of expression. More info [here](#).

## C. Political expression/ expression of judges

***Adriana Beatriz Gallo v. Argentina (2015)***. In this decision, the Commission considered that, by imposing sanctions on three judges based on their critical statement involving the provincial authorities, Argentina violated their right to freedom of expression. The Commission concluded that due to the ambiguity

and broadness of the law under which they were sanctioned, it did not fulfill the strict legality requirement. Additionally, it found that the application of that law, in this instance, was neither suitable nor necessary to reach the objectives it was formally trying to protect. More info [here](#).

## D. Media regulation

***Miguel Ángel Millar Silva and others (Estrella del Mar de Melinka Radio) v. Chile (2015)***.

The Commission found that discriminatory treatment of two Chilean radio stations by the mayor of the Island of Melinka violated the affected radio station's right to freedom of expression and non-discrimination. From September 1999 and through 2000, the municipality of the Island of Melinka prevented two radio stations from operating by cutting their energy supplies and interfering with their transmission. The mayor of the island justified the municipality's actions by arguing that the radio stations misinformed the public and caused social unrest. However, the Commission held that the differentiated treatment of the radio stations was arbitrary and violated their right to freedom of expression. More info [here](#).

# IV. Decisions of the Inter-American Court of Human Rights

## A. Access to information

The Inter-American Court's jurisprudence has referred to the right to access to information as protected by the right to freedom of expression contained in Article 13 of the American Convention. In the landmark case *Claude Reyes v. Chile*, the Court famously established that, "by expressly stipulating the right to 'seek' and 'receive' 'information', Article 13 of the Convention

protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention." In that sense, the Court has addressed topics such as State-held information of public interest, access to private information, informed consent, access to information for indigenous peoples as well as access to information by victims of serious human rights violations as part of their right to truth. Hereinafter,

the different decisions analyzed and included in our database are listed by specific topics considered by the Court.

### **i. Access to information of public interest**

***Claude Reyes v. Chile (2006)***. In this decision, the Court emphasized the State's duty to provide information and the principle of maximum disclosure of information by the State. In particular, the Court pointed out that the right to access information imposes a positive obligation on the State to provide the requested information of public interest or an answer including a justification for an access restriction. For the Court, restrictions on the right to access information must be established by law, respond to one of the purposes allowed by the American Convention, and be necessary and proportional. Similarly, the Court considered that, in case of denial, the State must guarantee a simple and effective recourse to determine whether the right to access information has been violated. More info [here](#).

### **ii. Access to information by victims of serious human rights violations**

***Omar Humberto Maldonado v. Chile (2015)***. In this case the Court affirmed the standards to determine the legitimacy of measures restricting access to information collected by the National Commission on Political Imprisonment and Torture involving human rights violations perpetrated during the dictatorship in Chile. More info [here](#).

***Álvarez et al. (Diario Militar) v. Guatemala (2012)***. In this case, the Court held that the enforced disappearances of 26 individuals from 1983-1985 during a period of internal armed conflict in Guatemala violated the constitutional rights to life, personal integrity, personal liberty, and juridical personality of the victims. However, the Court dismissed a violation of the right to access information on the grounds that the victims

did not request specific information to the State. While the decision recognizes the intrinsically related nature of freedom of expression and freedom of association, the Court concluded that the evidence was insufficient to declare an autonomous violation to freedom of expression. More info [here](#).

***Gomes Lund v. Brazil (2010)***. The Court held that Brazil violated the right to information under Article 13 by failing to disclose information about a disappeared member of the Araguaia Guerrilla movement to their relatives. The Court stressed that the right to information has a prominent nature when it concerns victims of human rights violations, including enforced disappearances. It clarified that the burden to prevent the public from accessing documents falls on the State and they can only do so in cases that comply with Article 13.2. More info [here](#).

### **iii. Access to personal information and informed medical consent**

***Poblete Vilches and others v. Chile (2018)***. In this case, the Court found that Chile violated an elderly patient's right to access information and healthcare without discrimination, which resulted in his death. While the victim was admitted twice to the hospital, his family was not fully informed about his medical conditions, and procedures were undertaken without their informed consent. Similarly, medical services were not provided due to his advanced age. The Court declared that Chile violated the victim's right to obtain an informed consent by proxy as well as the right to access healthcare information, to the detriment of Mr. Poblete and his family. The Court reiterated that informed consent is an integral part of accessibility of information, which is one of the basic standards for accessibility of healthcare and, consequently, of the right to health. Therefore, access to information is instrumental in guaranteeing the right to health. More info [here](#).

***I.V. v. Bolivia (2016)***. In this case, the Court held Bolivia responsible for the forced sterilization of a Peruvian refugee, and recognized the importance of personal autonomy as a constitutive element of personality. This was the first time that the Court analyzed the foundations of the right to informed consent. For the Court, the informed consent rule is associated with the right of access to information in the field of health because a patient can only give their informed consent if they have received and understood sufficient information that enables them to make a full decision. More info [here](#).

#### **iv. Access to information for indigenous peoples**

***Pueblos Kaliña and Lokono v. Surinam (2015)***. The Court held that the State violated the right to judicial protection in relation to the right of access to information of the members of the community given the lack of delivery of information to the Suriname public records office, which placed the community in a situation of disadvantage and unawareness *vis-à-vis* third parties claiming ownership of part of their land. The decision not only highlights the obligation to provide the requested information but also that the State has the obligation to provide a reasoned response in the event of a refusal based on a legitimate restriction permitted by the Convention. In this case, the Court's position regarding the recognition of the particular violation of Article 13 differs from other cases concerning indigenous communities and access to information. Previously, in *Pueblo Indígena Kichwa de Sarayaku v. Ecuador*, the Court did not find a violation of Article 13 on the grounds that the facts had already been sufficiently analyzed and conceptualized under the rights to communal property, consultation, and identity of the community in question. In turn, in *Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina*, decided after the present case, the Court reached the same conclusion, considering that it did not have specific elements to determine

a violation of the right to access information under Article 13, in addition to the violation of the right to participation. More info [here](#).

## **B. Freedom of expression**

The Court has developed important standards for the protection of freedom of expression. In that sense, it has not only highlighted the importance and function of freedom of expression but has also referred extensively to the scope of Article 13. For instance, it has elaborated on the dual dimension of this right, the specially protected speech, the forms of expression protected, and the circumstances under which certain limitations to the right of freedom of expression may be admissible. The jurisprudence of the Court has been consistent with respect to the prohibition of censorship and indirect restrictions, as well as with respect to the exercise of freedom of expression by public officials. The following cases available in our database shed light on how the Court has addressed and delineated several aspects of this right.

### **i. Violence against journalists**

***Bedoya Lima v. Colombia (2021)***. The case concerns the abduction, kidnapping, and sexual abuse of the female journalist Jineth Bedoya, who reported a confrontation between paramilitaries and other armed groups within a Colombian prison. Considering the particular risks faced by women journalists, the Court recalled that States must identify and investigate these risks with due diligence and implement a gender-based approach when adopting measures to protect them. The Court concluded that the State violated its duty of care, for failing to provide measures to prevent the imminent risk faced by Ms. Bedoya. Additionally, considering that the attack against her could not have been committed without the State's participation, the Court held Colombia responsible for breaching the applicant's right to personal freedom and integrity, in relation

to the prohibition against torture and gender-based violence. Given the punishment and intimidation she suffered, the Court held the State responsible for violating the journalist's right to freedom of thought and expression, which together with the lack of effective guarantees, caused a chilling effect entailing the loss of relevant women's voices. More info [here](#).

***Carvajal Carvajal v. Colombia (2018)***. The Court held Colombia internationally responsible for the death of journalist Nelson Carvajal Carvajal and for the failure to guarantee his right to freedom of expression. The Court found that Carvajal was killed in retaliation for his work as a journalist, and that the lack of a proper criminal investigation into his murder constituted a violation of the State's obligation to guarantee his right to life. For the Court, both the homicide and the lack of investigation constituted a violation of the right to free expression. It emphasized that the combination of violence and impunity has a twofold negative effect: first, a chilling effect on other journalists covering similar stories, and second, on the community that will no longer receive complete information. More info [here](#).

***Luis Gonzálo "Richard" Vélez Restrepo v. Colombia (2012)***. The Court held that Colombia violated Article 13 of the American Convention when military officers assaulted a journalist who was covering an anti-government demonstration. The Court found that the attack was meant to silence the journalist, which could have a chilling effect on other journalists. Similarly, the Court established that Article 13 encompasses both an individual right to seek and impart information, including its mass dissemination, and a collective social right to receive information provided by others. More info [here](#).

***González Medina and family v. Dominican Republic (2012)***. In this decision, the Court reaffirmed that when the enforced disappearance of a person has the objective of impeding the exercise of another right protected by the Convention, this in turn

constitutes an autonomous violation of that right. However, the Court refrained from addressing freedom of expression allegations after concluding that it lacked temporal jurisdiction over the facts. In that sense, the Court rejected the Commission's argument regarding the continuous nature of the alleged violation of the right to freedom of expression as a motive for the enforced disappearance. More info [here](#).

***Ríos v. Venezuela (2009)***. In this case, the Court found that Venezuela violated the right to freedom of expression of several persons linked to the television channel Radio Caracas Televisión (RCTV) after they suffered a series of acts of harassment, persecution, and physical and verbal attacks between 2001 and 2005 for exercising their freedom of expression. Additionally, several Venezuelan government officials made intimidating statements about these persons and the television station's journalistic activities. The Court found that all these acts constituted ways of obstructing, interfering, and intimidating the exercise of the professional activities of RCTV journalists. It also noted that, due to the context in which the senior officials' statements were issued, the individuals connected to RCTV were put in more vulnerable circumstances and, additionally, the lack of diligence in the investigations constituted a breach of the State's obligation to prevent and investigate the facts. More info [here](#). This decision is very similar to *Perozo et al. v. Venezuela (2009)* available [here](#).

## ii. Freedom of association, assembly, protest

***Lagos del Campo v. Peru (2017)***. In this case, the Court held that Peru violated Article 13 of the American Convention by validating a second-degree judgment that qualified as legal and justified the dismissal of the workers' leader due to the statements he made against his employer. In its decision, the Court afforded a reinforced protection to the expressions that have the purpose of defending the rights and interests of workers by qualifying them as expressions



of public interest. Likewise, it granted special protection to demonstrations carried out by workers' representatives in the exercise of their functions of vindicating labor rights. The Court recalled the State's duty to take positive actions to protect freedom of expression, including in the private sphere. More info [here](#)

***Yarce v. Colombia (2016)***. The Court found that Colombia had breached, amongst others, the right to freedom of association of four female human rights defenders. The five women were subjected to harassment and intimidation for their human rights defense in the context of the Colombian armed conflict. The Court concluded that Colombia had failed to guarantee the necessary means for the four women to exercise their work freely as human rights defenders. In relation to Mrs. Yarce, the Inter-American Court held that Colombia failed to guarantee her right to life. More info [here](#).

***Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (OC-5/85)***. In its fifth advisory opinion, the Court considered that the compulsory licensing of journalists restricts the capacity of non-associated journalists to freely express themselves. The Court concluded that the public order reasons that justify compulsory association or licensing for other activities could not be invoked in the case of journalism. It reasoned that freedom of expression requires that no person or group of persons be previously excluded from accessing the media. This is the first decision in which the Court comprehensively addresses the scope of Article 13 and the close relation between freedom of expression and democracy. More info [here](#).

### iii. Political expression/expression of public officials

***Grijalva Bueno v. Ecuador (2021)***. The case concerns the administrative and criminal military processes followed against Lieutenant Vicente Aníbal Grijalva, who had publicly denounced the arbitrary detentions, tortures, enforced disappearances, and

killings committed by members of the Ecuadorian Navy. The Court found that the violations of the applicants' right to a fair trial, which were transferred to the criminal military process, could have produced a chilling and intimidating effect on the freedom of expression of Lieutenant Grijalva, as well as on other members of the armed forces willing to denounce human rights violations. The Court thus ruled that the State had breached the victims' right to freedom of expression as enshrined in Article 13.1 of the Convention. More info [here](#).

***Urrutia Laubreaux v. Chile (2020)***. In this case, the Court found that Chile violated a judge's freedom of expression as a result of a disciplinary process that culminated in a sanction of censorship against him for submitting an academic work to the Supreme Court of Justice criticizing its actions during the Chilean military regime. The Court considered that although the freedom of expression of persons who exercise jurisdictional functions may be subject to greater restrictions than that of others, this does not imply that any expression of a judge can be restricted. The Court determined that it is not in accordance with the American Convention to sanction expressions made in an academic work on a general topic and not a specific case. More info [here](#).

***San Miguel Sosa v. Venezuela (2018)***. In this case the Court found that Venezuela violated the rights to political participation and freedom of expression of three public servants who had their contracts with the government terminated after their names were published in a list of persons who had signed a petition calling for a recall election of then-President of Venezuela, Hugo Chavez. The Court held that the State abused its power and that the dismissal of the public servants constituted retaliation against them for exercising their rights by signing the petition. Similarly, it held that this constituted a prohibited form of political discrimination and a violation of the public servants' rights to freedom of expression and political participation. More info [here](#).

***López Lone and others v. Honduras (2015).***

In this case, the Court held that Honduras violated the right to freedom of expression, association, and assembly of four judges who were subjected to disciplinary measures for expressing their opposition against the overthrow of President Manuel Zelaya. The Court emphasized that expression in favor of democracy should be protected at all times by the State, and that judges are equally entitled to exercise their rights to freedom of expression and peaceful assembly, but in a way that does not affect the impartiality and independence of the judiciary. In that sense, it deemed that there are certain situations where a judge, as a common citizen, considers it his or her moral duty to express different opinions. More info [here](#).

***Manuel Cepeda Vargas v. Colombia (2010).***

In this case, the Court found that Colombia violated the right to freedom of expression, freedom of association, and the political rights of Mr. Cepeda Vargas who was victim of a politically motivated murder linked to his role as senator member of the opposition and as a journalist. The Court considered, amongst others, that the assassination of Cepeda had chilling and intimidating effects for those who were members of his political party, as well as for the readers of his column in the journal, for the members of his party and their voters. More info [here](#).

***Apitz Barbera and others v. Venezuela (2008).***

This case relates to a series of violations of the right to judicial guarantees of three judges in Venezuela. Although no specific violation to freedom of expression was alleged, the Court addressed the causal link between various statements of the president of Venezuela and senior officials with the disciplinary process and subsequent dismissal of the judges. In that context, the Court referred to certain limitations to which State authorities are subject in the exercise of their freedom of expression so that it does not violate fundamental rights or affect judicial independence. More info [here](#).

Other relevant cases on these topics are *Usón Ramírez v. Venezuela* (2009), *Palamara Iribarne v. Chile* (2005), and *Ricardo Canese v. Paraguay* (2004). However, they have been included in other sections of this paper.

#### **iv. Freedom of the press, content regulation, and indirect methods or means of censorship**

***Granier (Radio Caracas Television) v. Venezuela (2015).***

The Court found that Venezuela violated the right to freedom of expression of the representatives of Radio Caracas Television (RCTV) when it denied RCTV its license renewal request because of their critical views towards the government. The Court established that the government abused its power when denying RCTV its license. It added that the abuse of power had an immediate negative effect on the exercise of freedom of expression and deprived the people of Venezuela of the editorial policy which characterized RCTV. The Court found that the real reason behind the government's behavior was to silence critical voices in society. More info [here](#).

***Ivcher Bronstein v. Peru (2001).*** In this case, the Court found that the decision to strip a naturalized Peruvian citizen of his citizenship with the objective that, in this way, he would lose control of a television channel that presented very critical information about the government, constituted a violation of their right to freedom of expression, amongst other fundamental rights. The Court ordered the restoration of the victim's rights. More info [here](#).

#### **v. Prior censorship**

***Palamara Iribarne v. Chile (2005).*** This case concerned a retired military officer who had received a conviction from the military criminal justice system for attempting to publish a book that criticized the Navy and for a series of comments to the media while the proceedings against him were ongoing. As part of

the criminal proceedings, he was ordered to withdraw from circulation all physical and electronic copies of the book. The Court concluded both that the actions of the Chilean State amounted to prior censorship and that the military criminal justice rule on contempt that was applied to Palamara Iribarne imposed disproportionate penalties. More info [here](#).

***The Last Temptation of Christ v. Chile (2001)***. In this case, the Court considered that the prohibition by the Chilean State to show the film *The Last Temptation of Christ*, based on Article 19 number 12 of its Constitution -which established the possibility of prior censorship-, constituted a violation of the right to freedom of thought and expression. It thus established that the State had the duty to adapt their domestic legal system in order to guarantee the rights and freedoms recognized in the ACHR. More info [here](#).

## **vi. Subsequent liability/civil and criminal defamation**

***Palacio Urrutia and others v. Ecuador (2021)***. The case concerns the criminal process followed against the journalist Emilio Palacio and three executives of the *El Universo* journal, who published an article criticizing the actions taken by President Rafael Correa after a confrontation during his visit to National Police premises. The Court concluded that the State violated the applicants' right to freedom of expression, given that the speech concerning incumbent public officials is specially protected, and criminal law's application in retaliation is contrary to the Convention. The Court also considered that the victims' conviction provoked a chilling effect that inhibited third parties from the circulation of ideas, opinions, and information. For the Court, the State's actions against Mr. Palacio, who was not awarded with guarantees of due process or protection from threats against himself and his family, made the journalist leave his job and flee to the United States, thereby violating Mr. Palacio's rights to work and his freedom of movement and residence. More info [here](#).

***Álvarez Ramos v. Venezuela (2019)***. The Court found that Venezuela violated, amongst others, the right to freedom of expression, political participation, and freedom of movement of Mr. Tulio Alberto Álvarez Ramos. This was based on the criminal proceedings against him and the resulting conviction, due to Mr. Álvarez's publication of an opinion article on alleged irregularities in the management of the Savings Bank of the National Assembly of Venezuela. In addition to the prison sentence, his political disqualification was ordered. The Court considered that the published article that had served as the basis for the conviction constituted information of public interest, since the person in question was a public official at the time of the events, and the subject discussed was of public relevance. In this regard, the Court concluded that the conduct of Mr. Tulio Álvarez could not be considered criminally prohibited as a crime against honor. More info [here](#).

***Norín Catrimán v. Chile (2014)***. In this case, the Court held that Chile violated the right to freedom of expression by imposing an ancillary penalty on three people who served as traditional authorities of Mapuche communities. The ancillary penalty consisted of the disqualification for fifteen years from exploiting a social communication medium or being director or administrator of the same or to perform functions related to the issuance or dissemination of opinions or information. The Court not only considered this sanction disproportionate but also highlighted the intimidating effect on the exercise of freedom of expression that the fear of being subjected to an unnecessary or disproportionate criminal or civil sanction in a democratic society can cause. More info [here](#).

***Mémoli v. Argentina (2013)***. In this case the Court found that Argentina was not responsible for the violation of freedom of expression, principles of legality, and retroactivity of Carlos and Pablo Mémoli, who were convicted for the crime of slander in relation to different expressions in which they denounced irregularities in the management of an Italian Cultural

and Creative Mutual Aid Association. The Court considered, by a majority, that the protection of the right to honor and reputation of the plaintiffs constituted a legitimate framework for the proceedings against Carlos and Pablo Mévoli and held that the reasoning put forward by the judicial authorities to establish subsequent liability did not violate the American Convention. However, the Court declared the State responsible for the violation of the judicial guarantee of reasonable time and the right to private property, recognized in Articles 8(1) and 21 of the American Convention, respectively. More info [here](#).

***Uzcátegui and others v. Venezuela (2012).***

This case concerns the murder of Néstor José Uzcátegui by members of the Venezuelan security forces and the subsequent acts of harassment, intimidation, and threats received by his family as a result of their seeking justice. In this context, a criminal defamation lawsuit was filed against his brother Luis Enrique, a human rights defender, after he accused a General Commander of the Armed Police Forces of being responsible for the murder. The Court considered that given the situation of uncertainty in which Luis Enrique was kept and the high rank of the plaintiff, the criminal proceeding could have generated an intimidating or inhibiting effect on the exercise of his freedom of expression, contrary to the State's obligation to guarantee the free and full exercise of this right in a democratic society. Consequently, the Court found that Venezuela did not adopt reasonable and necessary measures to guarantee the effective enjoyment of the rights to personal integrity and freedom of thought and expression of Mr. Uzcátegui. More info [here](#).

***Fontevicchia and D'amico v. Argentina (2011).*** In this case, the Court found that, by imposing subsequent liability of civil nature, Argentina violated the right to freedom of expression of two journalists that published information on the existence of an unrecognized child of the president of Argentina, as well as on his relationship with the child and his mother, and the alleged use of public funds for personal purposes.

The Court reiterated that measures that sanction freedom of expression abuses by imposing subsequent civil liability must meet the requirements of being provided for by law, pursuing a legitimate purpose, and being suitable, necessary, and proportionate. In that sense, the Court considered that, since the case related to the highest elected office in the country, the measure did not meet the "necessary" element required, as public officials must withstand a higher degree of social scrutiny. The Court elaborated on the criteria for resolving the tension between the right to privacy and the right to freedom of expression. More info [here](#).

***Usón Ramírez v. Venezuela (2009).*** In this case, the Court found that Venezuela violated the right to freedom of expression of a retired member of the military when he was sentenced to five years and six months in prison for the crime of slander against the National Armed Force on the basis of his critical opinions of the institution's acts. The Court concluded the criminal statute in question did not comply with the principle of strict legality. It further concluded that, in this case, the use of criminal law was not suitable, necessary, or proportional. More info [here](#).

***Tristán Donoso v. Panama (2009).*** In this case, the Court found Panama responsible for the violation of the freedom of expression of a Panamanian Attorney who was criminally convicted and ordered to pay material and moral damages for publicly alleging that the then-Attorney General illegally tapped and disclosed his private conversations. Particularly, when the official was declared innocent of illegal wiretapping. The Court recalled that, while the right to freedom of expression is not absolute and subsequent liabilities may be derived from its abuse, restrictions must be exceptional, provided for by law, aim a legitimate purpose, and be suitable, necessary, and proportional. For the Court, the criminal penalty imposed on Tristán Donoso for the crimes of false imputation of a crime (*calumnia*) and defamation (*injuria*) was evidently unnecessary, and his fear of being subject to a disproportionate civil penalty had a chilling effect on freedom of expression. The

Court positively noted that, subsequent to the facts of the case, the State introduced legislative reforms to exclude the possibility of imposing prison penalties for the crimes of *calumnia* and *injuria*. More info [here](#).

***Kimel v. Argentina (2008)***. In this case, journalist and historian Eduardo Kimel was given a criminal sentence for criticizing, in one of his books, the manner in which a judge conducted the investigation of a massacre perpetrated during the military dictatorship in Argentina. The Court heard the case and ruled the Argentinian State abused its punitive power when it sentenced Mr. Kimel to a one-year prison term and payment of a sizable monetary fine for the crime of *calumnia* or false imputation of a publicly actionable crime. The Court held the measure was unnecessary and disproportionate and, therefore, violated the journalist's freedom of expression. More info [here](#).

***Ricardo Canese v. Paraguay (2004)***. In this case, the Court found the eight-year-long criminal defamation proceedings brought against a Paraguayan presidential candidate, Ricardo Canese, to be a violation of his right to freedom of expression. Mr. Canese was sentenced to a prison term, payment of a fine, and was subjected to restrictions on leaving Paraguay for the duration of the proceedings. The Court found the proceedings against Mr. Canese for the alleged commission of the crime of slander and *injuria* were unnecessary and excessive despite the fact that he was eventually acquitted. It also highlighted the fundamental importance of freedom of expression during an electoral process as a means of questioning and investigating the suitability of candidates. More info [here](#).

***Herrera-Ulloa v. Costa Rica (2004)***. The Court held that Costa Rica's criminal defamation law violated Article 13 of the American Convention, which guarantees freedom of expression. Journalist Mauricio Herrera-Ulloa published seven articles exposing the corruption of a Costa Rican public official, for which he was convicted of criminal defamation. The Court reasoned that Herrera-Ulloa's actions encompassed

both an individual right and a social protection to freedom of expression. Hence, when Costa Rica required Herrera-Ulloa to prove the statements quoted in his articles, it placed an excessive limitation on his freedom of expression, directly violating Article 13. More info [here](#).

The case *Palamara Iribarne v. Chile (2005)* also deals with subsequent liabilities. However, it was included under the [Freedom of the press, content regulation, and indirect methods or means of censorship](#) section as it also relates to prior censorship.

## vii. Speech that expresses essential elements of personal identity or dignity

### ***Maya Kaqchikel of Sumpango indigenous people and others v. Guatemala (2021)***

The case concerns the violation of the rights to freedom of expression, equal protection of the law, and participation in the cultural life of four Guatemalan indigenous peoples, which lacked institutional channels to express their ideas and opinions due to their historical situation of poverty, social exclusion and discrimination. Considering the collective dimension of indigenous peoples' right to freedom of expression, the Court recognized that community radio stations were paramount for the conservation, transmission and development of indigenous languages and culture. For the Court, Guatemala's national law indirectly favored commercial broadcasters, thereby almost completely preventing indigenous peoples from exercising their rights to freedom of expression and participation in their own cultural life. The court further ruled that the criminal process followed against two radio stations operated by indigenous peoples was disproportional and contravened the peoples' freedom of expression and right to participate in their own cultural life. More info [here](#).



***López Álvarez v. Honduras (2006)***. This case concerned a member of the Garífuna indigenous people of Honduras who was prevented from communicating in his own language after the director of the prison where he was being held imposed a ban on speaking in the Garífuna language. The Court found that such a ban constituted a violation of the freedom of expression protected by the American Convention and, at the same time, amounted to an act of discrimination against him. For the Court, this restriction of freedom of expression, in addition to being unnecessary and unjustified, was particularly serious because the language is one of the most important elements of a person's identity, precisely because it guarantees the expression, dissemination, and transmission of its culture. More info [here](#).

***Hernández v. Honduras (2021)***. The Inter-American Court of Human Rights declared the State of Honduras responsible for the violation of Vicky Hernández's right to freedom of expression, under article 13 of the American Convention on Human Rights. The Court found there was enough evidence to consider that Hernández was murdered because of her gender identity as a trans woman and because she was a sex worker. Similarly, the Court asserted that the State failed to conduct a proper investigation into her murder taking into account her work as a human rights' defender of the LGBTI community. The Court argued that identity and its manifestation were protected under article 13 of the American Convention, thus in light of the events surrounding the death of Hernández, Honduras breached her right to freedom of expression, along with other rights. More info [here](#).

# Appendix

List of all the cases examined and included in this paper:

Decisions of the Inter-American Court		Decisions of the Inter-American Commission	
1	<i>Claude Reyes v. Chile</i> (2006)	1	<i>Manoel Leal de Oliveira v. Brazil</i> (2010)
2	<i>Omar Humberto Maldonado v. Chile</i> (2015)	2	<i>Víctor Manuel Oropeza v. Mexico</i> (1999)
3	<i>Álvarez et al. (Diario Militar) v. Guatemala</i> (2012)	3	<i>Héctor Félix Miranda v. Mexico</i> (1999)
4	<i>Gomes Lund v. Brazil</i> (2010)	4	<i>Francisco Martorell v. Chile</i> (1996)
5	<i>Poblete Vilches and others v. Chile</i> (2018)	5	<i>Adriana Beatriz Gallo v. Argentina</i> (2015)
6	<i>I.V. v. Bolivia</i> (2016)	6	<i>Miguel Ángel Millar Silva and others (Estrella del Mar de Melinka Radio) v. Chile</i> (2015)
7	<i>Pueblos Kallina and Lokono v. Surinam</i> (2015)		
8	<i>Bedoya Lima v. Colombia</i> (2021)		
9	<i>Carvajal Carvajal v. Colombia</i> (2018)		
10	<i>Luis Gonzálo "Richard" Vélez Restrepo v. Colombia</i> (2012)		
11	<i>González Medina and family v. Dominican Republic</i> (2012)		
12	<i>Ríos v. Venezuela</i> (2009)		
13	<i>Perozo et al. v. Venezuela</i> (2009)		
14	<i>Lagos del Campo v. Peru</i> (2017)		
15	<i>Yarce v. Colombia</i> (2016)		
16	<i>Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism</i> (1985)		
17	<i>Grijalva Bueno v. Ecuador</i> (2021)		
18	<i>Urrutia Laubreaux v. Chile</i> (2020)		
19	<i>San Miguel Sosa v. Venezuela</i> (2018)		
20	<i>López Lone and others v. Honduras</i> (2015)		
21	<i>Manuel Cepeda Vargas v. Colombia</i> (2010)		
22	<i>Apitz Barbera and others v. Venezuela</i> (2008)		
23	<i>Granier (Radio Caracas Television) v. Venezuela</i> (2015)		
24	<i>Ivcher Bronstein v. Peru</i> (2001)		

25	<i>Palamara Iribarne v. Chile</i> (2005)
26	<i>The Last Temptation of Christ v. Chile</i> (2001)
27	<i>Palacio Urrutia and others v. Ecuador</i> (2021)
28	<i>Álvarez Ramos v. Venezuela</i> (2019)
29	<i>Norín Catrimán v. Chile</i> (2014)
30	<i>Mémoli v. Argentina</i> (2013)
31	<i>Uzcátegui and others v. Venezuela</i> (2012)
32	<i>Fontev ecchia and D'amico v. Argentina</i> (2011)
33	<i>Usón Ramírez v. Venezuela</i> (2009)
34	<i>Tristán Donoso v. Panama</i> (2009)
35	<i>Kimel v. Argentina</i> (2008)
36	<i>Ricardo Canese v. Paraguay</i> (2004)
37	<i>Herrera-Ulloa v. Costa Rica</i> (2004)
38	<i>Maya Kaqchikel of Sumpango indigenous people and others v. Guatemala</i> (2021)
39	<i>López Álvarez v. Honduras</i> (2006)
40	<i>Hernández v. Honduras</i> (2021)

# Endnotes

1. ECtHR, *The Sunday Times v. United Kingdom*, App. No. 6538/74 (1979).
2. Other cases cited in this decision are: ECtHR, *Kudeshkina v. Russia*, App. No. 29492/95 (2009), ECtHR, *Kayasu v. Turkey*, App. No. 64119/00 and 76292/01 (November 13, 2008), ECtHR, *Pitkevich v. Russia*, App. No. 47936/99 (Feb. 8, 2001).
3. ECtHR, *Vogt v. Germany* [GC], App. No. 17851/91 (1995).
4. ECtHR, *Wille v. Liechtenstein*, App. No. 28396/95 (1999).
5. ECtHR, *Ahmed and Others v. United Kingdom*, App. Nos. 65/1997/849/1056 (1998).
6. Other decisions referred in this case are: ECtHR, *United Christian Broadcasters v. the United Kingdom* (Application no. 44802/98) (2000); ECtHR, *Özgür Gündem v. Turkey*, App. No. 23144/93 (2000); ECtHR, *Novaya Gazeta and Borodyanskiy v. Russia*, App. No. 14087/08 (2013); ECtHR, *Glas Nadezhda Eood and Anatoliy Elenkov v. Bulgaria*, App. No. 14134/02 (2007); ECtHR, *Groppera Radio AG v. Switzerland*, App. No. 10890/84 (1990).
7. UNHRC, *Singer v. Canada*, Communication No. 455/1991 (1994).
8. UNHCR Comm., *Aduayom v. Togo*, UN Doc. No. CCPR/C/51/D/422/1990, 423/1990, and 424/1990 (07/12/1996).
9. Other cases cited in this decision are: ECtHR, *Barthold v. Germany*, App. No. 8734/79 (1985); ECtHR, *Bowman v. United Kingdom*, App. No. 141/1996/760/961 (1998); ECtHR, *Castells v. Spain*, App. No. 11798/85 (1992); ECtHR, *Dichand v. Austria*, App. No. 29271/95 (2002); ECtHR, *Handyside v. United Kingdom*, App. No. 5493/72 (1976); ECtHR, *Incal v. Turkey*, App. No. 41/1997/825/1031 (1998); ECtHR, *Lehideux v. France*, App. No. 24662/94 (1998); ECtHR, *Lingens v. Austria*, App. No. 9815/82 (1986); ECtHR, *Müller and Others v. Switzerland*, Series A, App. No. 133 (1988); ECtHR, *Oberschlick v. Austria*, App. No. 11662/85 (1991); ECtHR, *Otto-Preminger-Institut v. Austria*, App. No. 13470/87 (1994); ECtHR, *Perna v. Italy*, App. No. 48898/99 (2003); ECtHR, *Scharsach v. Austria*, App. No. 39394/98 (2003); ECtHR, *Sürek and Özdemir v. Turkey*, App. No. 23927/94 (1999); ECtHR, *The Sunday Times v. United Kingdom*, App. No. 6538/74 (1979); ACmHPR, Media Rights Agenda, *Constitutional Rights Project v. Nigeria*, Comm. No. 105/93-128/94-130/94-152/96 (Oct. 1998).
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16. ECtHR, *Wille v. Liechtenstein*, App. No. 28396/95 (1999); cited in: *López Lone v. Honduras* and *Urrutia Laubreaux v. Chile*.
17. ECtHR, *Sürek and Özdemir v. Turkey*, App. No. 23927/94 (1999); cited in: *Ricardo Canese v. Paraguay*, *Herrera-Ulloa v. Costa Rica*, *Ivcher Bronstein v. Peru*, *Palamara Iribarne v. Chile*, and *Claude Reyes v. Chile*.
18. ECtHR, *Mamère v. France*, App. No. 12697/03 (2006); cited in: *Kimel v. Argentina* and *Usón Ramírez v. Venezuela*.
19. Other cases cited in this decision are: ECtHR, *The Sunday Times v. United Kingdom*, App. No. 6538/74 (1979); ECtHR, *Barthold v. Germany*, App. No. 8734/79 (1985).
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