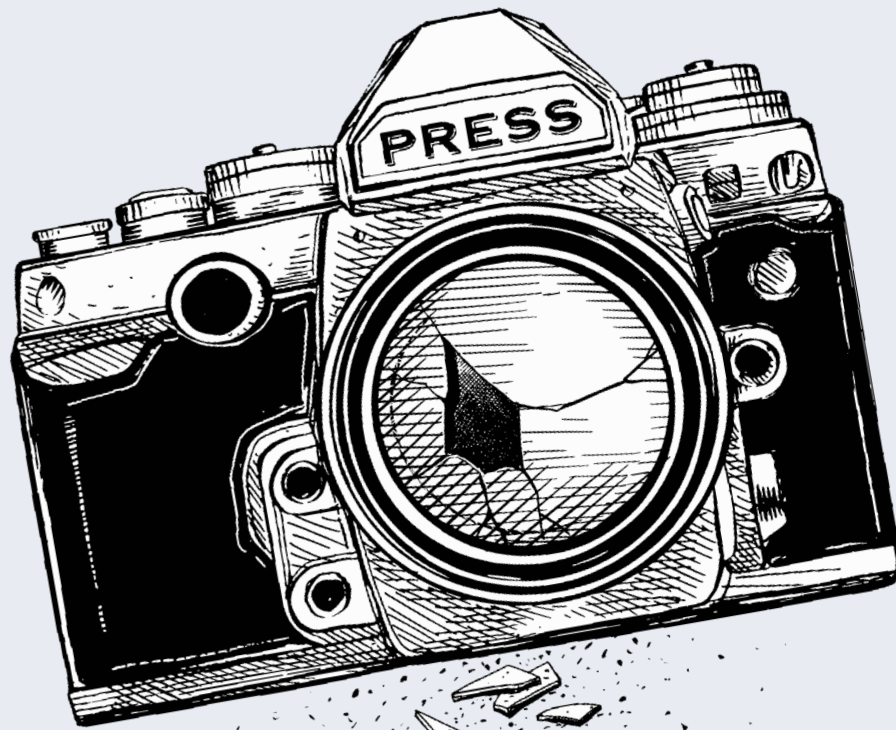


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SPECIAL COLLECTION OF THE CASE LAW ON FREEDOM OF EXPRESSION



# Global Case-law on Violence Against Journalists

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Global Case-law on  
Violence Against Journalists

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*Part I*

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Violence Against Journalists Around the World:  
An Inquiry Through Case-Law

*Ramiro Álvarez Ugarte*

# Violence Against Journalists Around the World

## An Inquiry Through Case-Law

Violence against journalists is the most extreme form of censorship.<sup>1</sup> As the Inter-American Court of Human Rights (hereinafter IACtHR) has put it, journalism “can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment.”<sup>2</sup> The European Court of Human Rights (hereinafter ECtHR) famously stated that states have positive duties to guarantee “an environment which allows full participation in open debates, enabling everyone to express their opinions and ideas without fear....”<sup>3</sup> Both human rights bodies, as well as other well-settled international human rights standards, have identified those positive obligations as including the duty to prevent violence, the duty to protect life and persons at risk, and the duty to investigate, prosecute and punish those crimes<sup>4</sup>. These positive obligations stand next to the general duty states have to respect human rights<sup>5</sup>. This paper addresses violence against journalists and human rights defenders within a global research project that sought to document judicial trends in the adjudication of cases involving this particular form of harm against freedom of expression within a given time frame and limited geographical scope. It proceeds in the following way.

The first section discusses the conceptual and methodological approach to our research, and the challenges and lessons gathered in the process. The second section introduces the international human rights standards against which judicial trends are—or should be—bench-marked. The third section presents the main findings in the different regions covered, with a focus on the trends that can be identified from the cases identified and the decisions reviewed. The fourth and final section offers a brief conclusion.

### I. Methodology

This research initiative has sought to expand the case-law database of the *Global Freedom of Expression Project* (GFOE) at Columbia University in order to gather judicial decisions on violence

1 IACHR, “Violence Against Journalists and Media Workers: Inter-American Standards and National Practices in Prevention, Protection and Prosecution of Perpetrators.” Inter American Commission of Human Rights, Washington, DC. OEA/Ser.L/V/II. CIDH/RELE/INF. 12/13. 12/31/2013, par. 1.

2 IACtHR, Case of Vélez Restrepo v. Colombia. Application No. 248 (Sep. 3, 2012).

3 ECtHR, Dink v. Turkey, HUDOC. Application No. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09 (Sep. 14, 2010). Available at: [https://hudoc.ECtHR.coe.int/eng-press#%22itemid%22:\[%22003-3262169-3640194%22\]](https://hudoc.ECtHR.coe.int/eng-press#%22itemid%22:[%22003-3262169-3640194%22]).

4 One of the first systematic approaches to the issue was produced by the Office of the Special Rapporteur on Freedom of Expression of the Inter-American Commission of Human Rights. See IACHR, “Violence Against Journalists and Media Workers: Inter-American Standards and National Practices in Prevention, Protection and Prosecution of Perpetrators,” cit, par. 33.

5 See e.g. European Convention of Human Rights, Article 1; American Convention of Human Rights, Article 1; International Covenant on Civil and Political Rights, Article 2.1.

against journalists and human rights defenders, specially of the last five years and in order to uncover general trends<sup>6</sup>. One of the objectives was to expand the database so it could reach regions of the world that are often difficult to research from afar (e.g., because there are no systematic databases of case-law available, because documents must be procured in print form, and so on). In order to do so, we brought together a team of six senior regional researchers who either coordinated a group of junior researchers working in their region or who worked by themselves to identify decisions that matched the project's description of cases of interest. The project defined violence against journalists and human rights defenders broadly, including murder, physical aggression, incarceration, threats and other forms of harassment. But we also sought to uncover cases that dealt with what we see as new forms of violence, such as e.g. online harassment and surveillance, specially against women. While we are aware of the difficulties involved in distinguishing between reproachable harassment and legitimate-but-harsh criticism, we nevertheless included within the scope of this report cases that followed such factual patterns. Today, online harassment specially against women journalists can have—under certain circumstances—a chilling effect that may push some of them away from public debate (as well as engagement through social media). This warrants careful scrutiny at the judicial adjudicative stage (as well as further research). Similarly, the illegal surveillance of journalists may be considered as a form of violence in and of itself (as in e.g. harassment) but—in the past—it has also led to other forms of physical violence, including kidnapping and murder. That is why this study has looked at judicial decisions involving illegal surveillance as well.

We sought to look specially at cases decided by high courts, but we were willing to look at courts of first instance and appellate decisions if they were particularly meaningful for the kind of case involved, the legal reasoning used, or the impact they had. The question that inspired our research was simple and straightforward: How are judges around the world standing up to the demanding international human rights standards on violence against journalists?

Research presented specific challenges in different regions. Access to official court documents was easy in regions where case-law databases are generally available, such as in Europe and the Americas. However, in certain regions such as the Middle East and North Africa (MENA), as well as in specific European countries, access to court documents proved extremely difficult<sup>7</sup>. Similarly, our researcher in the MENA region identified over thirty cases based on reputable secondary sources but was unable to access official court records except for one case. In many of those countries, decisions would have to be requested at the Court in person, which makes access to those documents a burdensome endeavor that was made even more difficult by restrictions on access to bureaucratic offices established as a consequence of the pandemic.

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<sup>6</sup> It was coordinated from the Global Freedom of Expression Project (GFOE) at Columbia University, and was possible by a grant of the WellSpring Foundation for Education.

<sup>7</sup> This was the experience of researchers working in this project. For instance, our MENA researcher identified several cases in Algeria, Bahrein, Egypt and Morocco, but access to those decisions was very difficult. Something similar happened with regard to cases identified in Serbia & Montenegro, Slovakia, Croatia and Bosnia & Herzegovina, where many cases were identified but access to court documents could not be produced in time for this project, which research phase had to be finished by September 2021.

After assessing the facts of the cases identified, the courts involved and—when available—the legal reasoning behind the decision, we settled for 74 decisions we sought to find and analyze. We have been unable to produce case-analyses for all, for many decisions remain—at the time of writing—still missing or unavailable. But in assessing the trends, we considered all the information gathered by our researchers within the scope of the project as well as important precedents that have shaped the case-law on violence against journalists and were already covered in GFOE’s database. Despite these difficulties, 43 new case summaries were produced in the context of this research.

## **II. Overview of International Standards on Violence Against Journalists**

As previously stated, violence against journalists is an extreme form of censorship.<sup>8</sup> It seeks to silence individuals in the most brutal fashion, by either inflicting upon them physical harm or threatening them with it. The goal of violence is to push them into silence through fear, exerted upon themselves and the others who might be chilled by the violence directed at their colleagues. Violence is, then, a mechanism for censoring those who ask inconvenient questions, who look into facts that some want to keep secret and who generally question the states of affairs which those in power want to keep unchanged.

Journalists are usual victims of the most extreme form of violence where organized crime thrives and state institutions are unable or unwilling to combat it. The Committee to Protect Journalists (CPJ) has documented that in 2022 at least 45 journalists were killed.<sup>9</sup> The trends captured by the CPJ in their last annual survey are telling of the extent of the problem, the emergence of new forms of violence and the geographical regions where violence against journalists seem to be thriving. Generally, it is safe to affirm that some countries are riskier than others. In 2021, India and Mexico topped “the list of countries with the most media worker deaths, according to the Committee to Protect Journalists’ final data for the year”<sup>10</sup>. For the last two years, social unrest and police repression has been a major driver of violence against journalists.<sup>11</sup> But in many regions of the world, violence seems more pervasive and permanent. For instance, the 2008 special study conducted by the Office of the Special Rapporteur on Freedom of Expression of the Inter-American Commission of Human Rights (hereinafter IACHR) has found that in Colombia violence against journalists was related to the internal conflict, in Mexico with organized crime and drug trafficking, in Brazil with death squads and organized crime and in Guatemala with cases of corruption.<sup>12</sup> Similarly, a 2010 report found that

8 IACHR, “Violence Against Journalists and Media Workers: Inter-American Standards and National Practices in Prevention, Protection and Prosecution of Perpetrators,” cit., par. 1.

9 CPJ, latest data available at <https://cpj.org/data/>.

10 CPJ, Attacks on the press: The deadliest countries in 2021. Committee to Protect Journalists, January 19, 2022. Available at: <https://cpj.org/reports/2022/01/attacks-on-the-press-the-deadliest-countries-in-2021/>

11 CPJ, Annual Report 2021. Available at: <https://cpj.org/wp-content/uploads/2021/11/CPJ.2021.Annual.Report.pdf>

12 IACHR, “Estudio Especial sobre la Situación de las Investigaciones sobre el Asesinato de Periodistas por motivos que pudieran estar relacionados con la Actividad Periodística (período 1995-2005).” Inter American



in Mexico cases happened mainly in states where organized crime was rampant.<sup>13</sup> Context thus explains why journalists working certain beats or in certain regions suffer from a kind of risk that can be labeled as structural.<sup>14</sup> These crimes are often linked to powerful state and non-state actors<sup>15</sup> and often occur within a failed or captured state, where formal institutional structures are unable to perform basic functions or are captured by private interests, whether these are legal or illegal.<sup>16</sup>

The duty of the state to protect journalists at risk arise from the general obligations states have regarding the protection of life. As the ECtHR has put it, the state has a “primary duty ... to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions” but it “also extends, in appropriate circumstances, to a positive obligation on the authorities to take preventive operational measures to protect an individual or individuals whose lives are at risk from the criminal acts of another individual.”<sup>17</sup> This obligation arises if authorities “knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party, and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk...”<sup>18</sup> As the European case-law shows, this duty arises if the state is or should be aware of risks posed to journalists in a given set of circumstances.<sup>19</sup> The IACtHR in the case of *Vélez Restrepo v. Colombia* clarified that in assessing the risk journalist face authorities should consider the kind of issues that journalists cover, the public interest nature of their work, the region in which they operate, as well as the specific threats they may be subjected to.<sup>20</sup>

As the UN Action Plan on the Safety of Journalists and the Issue of Impunity establishes (hereinafter, “The UN Action Plan”), States have the duty to adopt “prevention mechanisms and actions to address some of the root causes of violence against journalists and of impunity.”<sup>21</sup> These duties and obligations stem not only from the general obligation to protect life

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Commission of Human Rights, Washington, DC. OEA/Ser.L/V/II.131. Doc. 35. 03/8/2008.

13 IACHR, “Violence Against Journalists and Media Workers: Inter-American Standards and National Practices n Prevention, Protection and Prosecution of Perpetrators,” cit., par. 18.

14 S. Hincapié Jiménez, “Estados Débiles O Conceptos Fallidos. Por Una Definición Teórica Del Orden Estatal,” *ESPIRAL, ESTUDIOS SOBRE ESTADO Y SOCIEDAD*, vol. XXI, 61, 2014.

15 IACHR, “Violence Against Journalists and Media Workers: Inter-American Standards and National Practices n Prevention, Protection and Prosecution of Perpetrators,” cit., par. 20; DEFEND, “Defending Human Rights. A Resource Book for Human Rights Defenders.” East and Horn of Africa Human Rights Defenders. 2012; E. Eguren; M. Caraj, “New Protection Manual For Human Rights Defenders.” Protection International. 2017. P. 9; E. Guerra, “Voces silenciadas. Las formas de morir de los periodistas en México en el contexto del crimen organizado.” CIDE, México. 16. 2016.

16 S. Hincapié Jiménez, “Estados débiles o conceptos fallidos. Por una definición teórica del orden estatal,” cit.

17 ECtHR, *Gongadze v. Ukraine*, HUDOC. Application No. 34056/02 (Nov. 8, 2005). Available at: <https://hudoc.ECtHR.coe.int/fre#%7B%22itemid%22:%5B%22001-70853%22%7D>], par. 164.

18 ECtHR, *Kilic v. Turkey*, HUDOC. Application No. 22492/93 (Mar. 16, 2000), par. 68 (adopted by the IACtHR in IACtHR, *Case of Massacre of Pueblo Bello v. Colombia*, Series C 140. (Jan. 31, 2006), par. 124).

19 ECtHR, *Gongadze v. Ukraine*, cit., par. 168.

20 IACtHR, *Case of Vélez Restrepo v. Colombia*, cit., par. 194.

21 UN, “UN Plan of Action on the Safety of Journalists and the Issue of Impunity,” ONU. CI-12/CONF.202/6. 2011. P. 16.

previously recalled, but also from the important role journalists play in democratic societies. As the IACtHR has put it, “journalism is the primary and principal manifestation of freedom of expression of thought” and is thus inescapable “linked with freedom of expression”.<sup>22</sup> It is that instrumental link between the trade and the fundamental right that triggers the state’s intensified duties to assess risks, to prevent and protect journalists at risk of violence, and to bring those responsible to justice.

The IACHR has even considered that a failure to adopt specific measures may result in the State international liability on the matter.<sup>23</sup> The IACtHR has included within the duty to prevent violence specific duties that fall on public officials, such as to adopt a public discourse that contributes to prevent violence<sup>24</sup> and to train security forces in the need to respect media and journalists.<sup>25</sup> The IACHR has also highlighted the need for states to keep adequate data on the phenomenon,<sup>26</sup> and the IACtHR has recently and explicitly considered “necessary” to collect information on gender-based violence against women journalists, that should be the foundation of strategies to prevent and eliminate acts of violence.<sup>27</sup>

Some countries that suffer from specially hazardous conditions for the practice of journalism have developed public policies aimed at protecting them from violence, and this has ushered a set of good practices, lessons, and mandates that have been gathered by all sorts of organizations and that should be considered by judges when assessing how states fulfill this obligation.<sup>28</sup> The IACHR has considered that the duty to protect arises at an individual level when the state knows of a specific risk with regard to a specific person, but also arises when structural conditions of risk require states to develop “special programs” designed to protect the groups at risk.<sup>29</sup> In

22 IACtHR, *Compulsory Membership in an Association prescribed by Law for the Practice Of Journalism*, Series A 5, (Nov 13, 1985), par. 71.

23 IACHR, “Violence Against Journalists and Media Workers: Inter-American Standards and National Practices n Prevention, Protection and Prosecution of Perpetrators,” cit., par. 33.

24 *Ibid.*, par. 34; IACtHR, *Case of Ríos v. Venezuela*. Application No. 194 (2009), *Case of Perozo v. Venezuela*. Application No. 195 (Jan. 28, 2009).

25 IACHR, “Violence Against Journalists and Media Workers: Inter-American Standards and National Practices n Prevention, Protection and Prosecution of Perpetrators,” cit., par. 47.

26 *Ibid.*, par. 59.

27 IACtHR, *Bedoya Lima v. Colombia*, Series C 431. (Aug. 26, 2021), par. 193.

28 See e.g. DEFEND, “Defending Human Rights. A Resource Book for Human Rights Defenders,” cit.; E. Eguren; M. Caraj, “New Protection Manual For Human Rights Defenders,” cit.; HIVOS, “Safety and protection of kenyan journalists: Is it common sense or common cents?” HIVOS. 04/2013; W. Horsley, “OSCE Safety of Journalists Guidebook.” OSCE. 2012; IACHR, “Silenced Zones: Highly Dangerous Areas for the Exercise of Freedom of Expression.” Inter American Commission of Human Rights, Washington D.C. OEA/Ser.L/V/II CIDH/RELE/INF.16/17. 03/17/2017; IMS, “Defending Journalism. How National Mechanisms Can Protect Journalists and Address the Issue of Impunity. A Comparative Analysis of Practices in Seven Countries.” International Media Support. 2017; OSCE, “Vilnius Recommendations on Safety of Journalists.” OSCE. 06/8/2011; UNESCO, “Resolution 196/EX. Safety of Journalists and the Issue of Impunity.” UNESCO. 05/22/2015, “Resolution 201/EX. Safety of Journalists and the Issue of Impunity.” UNESCO. 06/5/2017; UNHRC, “Resolution 23/2. Safety of Journalists.” United Nations Human Rights Council. A/HRC/RES/33/2. 10/6/2016.

29 IACHR, “Violence Against Journalists and Media Workers: Inter-American Standards and National Practices n Prevention, Protection and Prosecution of Perpetrators,” cit., par. 62.

all cases, the measures adopted must adapt to the peculiar circumstances of the person at risk, including her gender, her need or desire to keep working, as well as her social and economic circumstances.<sup>30</sup>

The IACHR has specially considered the scope of these programs, that arise from the positive obligations of states to develop active measures of protection when they knew or ought to know the risk under which certain individuals are.<sup>31</sup>

The duty to prevent violence and to protect journalists at risk is followed by the duty to investigate, prosecute and punish those crimes.<sup>32</sup> This principle of international human rights law is particularly important in contexts where the violence and risk are structural, for impunity reinforces violence as a mechanism of censorship. The UN Action Plan establishes that states have the duty to “effectively investigate and prosecute crimes against freedom of expression.”<sup>33</sup> The ECtHR has on the other hand considered that the state must act *ex officio*, and should not wait for the victim or her relatives to push the prosecution forward.<sup>34</sup> Furthermore, the investigation must be *effective*, which means that “any deficiency in the investigation which undermines its ability to establish the cause of death or the persons responsible, whether the direct offenders or those who ordered or organized the crime, will risk falling foul of this standard.”<sup>35</sup> The special rapporteurs of the UN, OAS, OSCE and ACHPR considered in 2012 that criminal law should include “crimes against free expression” as a special category or an aggravating circumstance that derive in the harshest penalties for these crimes.<sup>36</sup>

There are other duties that arise from international human rights case-law. For instance, journalists covering demonstrations that may turn violent must be protected by the police forces. In the *Najafi v. Azerbaijan* case, the ECtHR considered that the violence inflicted upon a journalist covering a protest was “unnecessary, excessive and unacceptable.”<sup>37</sup> In that sense, state officials have a special duty to take care of journalists doing their job in such hazardous contexts.<sup>38</sup> On the other hand, the state has a duty to foster a climate that is friendly towards the exercise of freedom of expression, including not subjecting journalists to arbitrary requirements

30 *Ibid.*, par. 62.

31 IACtHR, *Case of Massacre of Pueblo Bello v. Colombia*, cit., par. 124.

32 IACHR, “Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators,” cit.

33 UN, “UN Plan of Action on the Safety of Journalists and the Issue of Impunity,” cit., p. 5.6.

34 ECtHR, *Yasa v. Turkey*, HUDOC. Application No. 22495/93 (Sep. 2, 1998), par. 100.

35 ECtHR, *Gongadze v. Ukraine*, cit., par. 176.

36 OAS, OSCE, UN y ACHPR, “Joint declaration on violence against journalists and media workers in the context of protests,” 9/13/2013, available at <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=951&IID=2> Accessed: 12/12/2021.

37 ECtHR, *Najafli v. Azerbaijan*, HUDOC. Application No. 2594/07 (Oct. 2, 2012), par. 39.

38 European Commission, “Commission Recommendation on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union.” European Commission, Brussels. C(2021) 6650 final. 09/16/2021, par. 21 (“Journalists and other media professionals are experiencing a growing number of attacks and harassment during protests and demonstrations”).

that hamper their work.<sup>39</sup> Furthermore, the state has a duty to protect the sources journalists use to do their job, including their anonymity.<sup>40</sup> From this right enjoyed by journalists derives the need to be specially vigilant on the use of surveillance against them.<sup>41</sup> “The ECtHR has recently recalled that inquiries that have the potential of revealing the identity of journalistic sources should be strictly scrutinized”<sup>42</sup>. On the other hand, the existence of an adequate general framework for the exercise of freedom of expression is also an essential precondition that may be helpful in preventing violence.<sup>43</sup>

In the last few years, new threats have forcefully emerged. For instance, the European Commission has called attention to the rise in online violence against journalists,<sup>44</sup> specially women. As the Commission put it, “female journalists are subjected to more threats than their male counterparts, in particular in the form of online harassment, rape and death threats as well as incitement to hatred based on grounds of gender.”<sup>45</sup> Similarly, the seemingly expanding use of illegal surveillance on journalists puts them at risk and are an unquestionable source of censorship that chills freedom of expression.<sup>46</sup>

These international human rights standards are clearly related to a global concern regarding this issue. Many international organizations—and, in particular, human rights bodies—have called attention to the problem in the last few years. The IACHR for instance has recently recalled that “an increasing number of journalists are forced to stop investigating and disseminating information significantly in the public interest to their local communities in order to avoid retaliation against their lives or physical safety or that of their relatives.”<sup>47</sup>

For instance, the General Assembly of the UN passed—in 2014—resolution 68/163,<sup>48</sup> in

39 ECtHR, *Gsell v. Switzerland*, HUDOC. Application No. 12675/05 (Oct. 8, 2009), par. 49.

40 ECtHR, *Goodwin v. United Kingdom*, HUDOC. Application No. 17488/90 (Mar. 27, 1996).

41 ECtHR, *Weber and Saravia v. Germany*, HUDOC. Application No. 54934/00 (Jun. 29, 2006).

42 ECtHR, *Weber and Saravia v. Germany*, HUDOC. Application No. 54934/00 (Jun. 29, 2006).

43 CHR, *Sergey Sorokin v. Russia*, HUDOC. Application No. 52808/09 (Aug. 30, 2022). See summary at: <https://globalfreedomofexpression.columbia.edu/cases/sergey-sorokin-v-russia/>.

44 European Commission, “Commission Recommendation on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union”, cit, par. 16-17.

45 *Ibid.*, par. 22 (“Synchronised attacks on journalists by trolls and bots, e-mail hacking, internet restrictions or cyberbullying are some examples of online attacks against journalists and their sources. The safety of female journalists is of particular concern. Journalists and other media professionals are not only targets of online incitement to hatred and threats of physical violence, but can also be subject to illegal surveillance, including in the context of police investigations which may compromise the protection of journalistic sources. Ensuring the cybersecurity of mobile communication devices and that journalists and other media professionals are not subject to illegal online tracking or surveillance is therefore paramount in protecting the confidentiality of journalists’ communications”).

46 *Ibid.*, par. 25.

47 OAS, OSCE, UN y ACHPR, “Joint Declaration on surveillance programs and their impact on freedom of expression,” 6/21/2013, available at <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=926&IID=2> Accessed: 12/12/2021.

48 IACHR, “Silenced Zones: Highly Dangerous Areas for the Exercise of Freedom of Expression”, cit, par. 333.

which the body established November the 2nd as the International Day to End Impunity for Crimes Against Journalists. The Assembly called all members states to prevent violence, to secure accountability through proper and effective investigations, and to bring criminals to justice.<sup>49</sup> The UNGA recalled the duties of states to create a friendly environment,<sup>50</sup> including through the allocation of appropriate funds to investigative bodies.<sup>51</sup> The Assembly ratified its concern in 2014,<sup>52</sup> with a special focus on the matter of impunity and the special risks journalists face. The Assembly insisted in 2015 and 2017,<sup>53</sup> when it introduced concerns for the gender dimension of the problem.<sup>54</sup>

The Human Rights Council (hereinafter, HRC) had raised the issue in 2012, when it noted the increasing violence against journalists.<sup>55</sup> The HRC identified with precision some actors with special responsibilities, such as belligerent parties in armed conflicts.<sup>56</sup> The Council ratified that fighting impunity is an essential part of the state's response to this problematic,<sup>57</sup> something that was ratified in upcoming years<sup>58</sup>. The UNESCO, on the other hand, also expressed concern,<sup>59</sup> and was in charge of coordinating the UN Action Plan, that recalled an extremely worrisome piece of information: nine in every ten cases of violence against journalists authors are never prosecuted.<sup>60</sup>

The General Assembly of the Organization of American States (OAS) has also considered the issue.<sup>61</sup> In a resolution, the Assembly condemned violence against journalists, not only because they harm the right to life and physical well-being as well as freedom of expression, but also because it attacks the right of every individual to receive public interest information.<sup>62</sup> The Assembly recalled that journalism is a profession that should be exercised “free of threats,

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49 UNGA, "Resolution 68/163. Safety of Journalists and the Issue of Impunity," 2/12/2014, available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/68/163&Lang=S](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/68/163&Lang=S) Accessed: 12/12/2021.

50 Ibid., no. 5.

51 Ibid., no. 6.

52 Ibid.

53 UNGA, Resolution 68/163. Safety of Journalists and the Issue of Impunity, cit.

54 UNGA, "Resolution 70/162. Safety of Journalists and the Issue of Impunity," 12/17/2015, available at <https://undocs.org/es/A/RES/72/175> Accessed: 12/12/2021, "Resolution 72/175. Safety of Journalists and the Issue of Impunity," 12/19/2017, available at <https://undocs.org/es/A/RES/72/175> Accessed: 12/12/2021.

55 UNGA, Resolution 72/175. Safety of Journalists and the Issue of Impunity, cit., p. 6.

56 UNHRC, "Resolution 21/12. Safety of Journalists." United Nations Human Rights Council. A/HRC/RES/21/12. 10/9/2012. P. 2.

57 Ibid., p. 3.

58 Ibid.

59 Cf. UNHRC, "Resolution 25/5. Safety of Journalists." United Nations Human Rights Council. A/HRC/RES/27/5. 10/2/2014, "Resolution 23/2. Safety of Journalists," cit.

60 UNESCO, "Resolution 196/EX. Safety of Journalists and the Issue of Impunity," cit, "Resolution 201/EX. Safety of Journalists and the Issue of Impunity," cit.

61 UN, "UN Plan of Action on the Safety of Journalists and the Issue of Impunity," cit., p. 1.3.

62 AG/OEA, "Resolución. Promoción y Protección de los Derechos Humanos." Asamblea General de la OEA. OEA/Ser.P/AG/doc.5580/17. 06/14/2017.

63 Ibid., p. 3.

physical and psychological aggression and others forms of harassment”, and called on States to adopt comprehensive prevention, protection, prosecuting and punishing measures against those responsible, as well as to adopt “strategies” to end impunity.<sup>63</sup>

Recently, the European Commission has issued a recommendation on “ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union.”<sup>64</sup> It stemmed from “the growing number of physical, legal and online threats to and attacks on journalists and other media professionals over the past years and documented, inter alia, in the Commission’s 2020 and 2021 Rule of Law Reports constitute a worrying trend.”<sup>65</sup> The recommendation includes—significantly—a broader look at violence, and identifies the new trends that we ourselves also sought to find, including gender-based violence and surveillance.<sup>66</sup> In terms of new recommendations, the need to encourage dialogue between journalists and law enforcement agencies, as part of a necessary support mechanism for journalists at risk.<sup>67</sup>

### **III. Judges and Violence Against Journalists: Commitments and Shortcomings**

International human rights standards become powerful when judges use them to adjudicate cases or when legislators rely on them to draft statutes. These standards play a truly legal function when they are accepted by others as authoritative, and when individuals—whether they are rank-and-file persons trying to decide what to do or public officials in charge of drafting or applying legal rules—deem them as mandatory and binding. Judges who enforce the law are a fundamental part of that collective endeavor. How are judges around the world standing up to the challenge?

Our survey of recent decisions reveals patterns of violence, and common problems and issues that all major reports on violence against journalists of the last few years captured eloquently<sup>68</sup>. These patterns include state-sponsored and structural violence; systematic harassment of journalists who report on certain beats, regions, or issues; prosecution of expression that happened on social media; and cases in which aggressors are punished. Overall, our inquiry into recent decisions suggests different regional trends—for instance, the use of international law and a heightened awareness in Europe or Latin America on the special duties and obligations that befall on states with regard to violence against journalists. In other cases involving physical violence or threats these behaviors are not considered under the light of freedom of expression, but simply as an ordinary criminal matter.

63 Ibid.

64 European Commission, “Commission Recommendation on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union”, cit.

65 Ibid., par. 3.

66 Ibid., par. 13.

67 Ibid., pars. 14-15.

68 To recall, we analyzed seventy cases, of which we were able to produce 46 new case summaries to enrich the GFOE’s database.

## 1. Murder

There is no harsher form of violence against journalists than murder. Recently, the IACtHR has reaffirmed the duty of the state to investigate, prosecute and punish those crimes and judges harshly the failure of Brazil to do so in the case of Vladimir Herzog, a journalist kidnapped and murdered during the military regime in 1975.<sup>69</sup> In this case, the Court applied its case-law on crimes against humanity during military regimes to the facts of the cases, involving the forced disappearance of Mr. Herzog. This case-law—that is regularly applied e.g. by Argentinean courts dealing with crimes of its own military regime—was also embraced by the Supreme Court of Perú to assess the state’s response to the murder of a journalist in 1988, in *The Case of Peruvian Journalist Hugo Bustíos*. The Court affirmed that the judicial inquiry into the matter had been deficient, and affirmed the state’s duty to address impunity for crimes against journalists.<sup>70</sup>

Recent decisions have highlighted the importance of judicial officers and other public officials to be duly diligent in investigating these sorts of crimes, for they are closely connected to the use of violence as a mechanism of censorship that engenders the right to freedom of expression<sup>71</sup>. The ECtHR has contributed extensively to this jurisprudence. For instance, in *Adali v. Turkey*—the Court considered that a journalist’s freedom of expression rights had been violated in part due to the lack of an effective criminal investigation into his murder.<sup>72</sup>

Much of this case-law involves not the murder of journalists but gruesome acts of aggression against them. For instance, in *Özgür Gündem v. Turkey*, the ECtHR stated that the state had failed to take adequate measures to protect a newspaper and its journalists at risk, and recalled that state allegations regarding the participation of a newspaper in illegal activities is not enough to set aside its positive obligations to protect journalists.<sup>73</sup> In *Gongadze v. Ukraine*, the ECtHR laid the groundwork for identifying when the positive duty of the state to protect persons at risk—including journalists—arise.<sup>74</sup> In *Uzeyir Jafarov v. Azerbaijan*, the Court reiterated its criteria on the need for effective investigations on crimes against journalists.<sup>75</sup>

In other cases, the murder of a journalist has been punished but without specific reference to the freedom of expression interests and rights involved. For instance, in *The case of Ayub Khattak*, a Pakistani journalist was murdered because of a news item he had published in the *Karak Times*, accusing certain people of drug-smuggling. The accused were displeased that the journalist had published statements in the press against them. A few hours later, while the deceased and his son were on their land known as “Marra”, both the accused appeared with

69 IACtHR, Case of Herzog vs. Brasil. Application No. 353 (Mar. 15, 2018).

70 Supreme Court of Justice, *The Case of Peruvian Journalist Hugo Bustíos* (Apr. 4, 2019).

71 See e.g. IACtHR, *Bedoya Lima v. Colombia*, Series C 431. (Aug. 26, 2021), par. 90 (highlighting specifically the issue of violence against women).

72 ECtHR, *Adali v Turkey* (Mar. 31, 2005).

73 ECtHR, *Özgür Gündem v Turkey*.

74 ECtHR, *Gongadze v. Ukraine*.

75 ECtHR, *Uzeyir Jafarov v. Azerbaijan* (Jan. 29, 2015).

Kalashnikovs, and began firing at the journalist. The Court punished the person accused with imprisonment for life, but failed to consider the freedom of expression dimension of the crime.<sup>76</sup>

In *Asif Imran v. State*, a court from Bangladesh convicted five of the nine persons accused for the murder of journalist Goutam Das. He was murdered by the contractors who were renovating a road in Faridapur, Bangladesh called “Mujib Sarak”, for his reporting on the corruption allegations with regard to the commissioned work. Out of the nine accused, three were found guilty on the basis of their confessional statements and two accused were found guilty on circumstantial evidence. Four accused were acquitted because the prosecution could not fulfill the burden of proof.<sup>77</sup>

Finally, in *People of the Philippines v. Datu Andal “Unsay” Ampatuan Jr.*, the Regional Trial Court, National Capital Judicial Region Branch 221, Quezon City of the Philippines, convicted twenty-eight persons for the murder of 58 persons, including 28 journalists in 2009, what came to be known as the Maguindanao massacre. The decision does not dwell on the fact that many of the victims were journalists, but producing a clear conviction in such a complex case contributes against impunity.

## 2. Aggression

The IACtHR has condemned acts of aggression against journalists, for they also imply a form of censorship. In the case of *Vélez Restrepo v. Colombia*, the Court considered that impunity on acts of violence against journalists may have a chilling effect on other journalists.<sup>78</sup> The Court ratified this case-law in the case of Jineth Bedoya, a journalist who was investigating paramilitary groups. While she was waiting to enter a Bogotá prison to interview one of the imprisoned paramilitary leaders, she was abducted, kidnapped and taken to a warehouse where she was sexually abused and assaulted by several men.<sup>79</sup> In its decision, the Court underscored how the state—which was well aware of the extraordinary risk Bedoya was under—had failed to protect the victim. The Court also emphasized the specific risks faced by women journalists as a result of gender-based violence.<sup>80</sup> This landmark decision sets an important precedent, that expands traditional international human rights standards to develop specific gender-sensitive perspectives. In that sense, violence against women journalists is currently a special concern of many human rights organizations<sup>81</sup>.

76 First Instance Court, The Case of Ayub Khattak (Mar. 16, 2016).

77 Dakha High Court, Ariful Islam (Feb. 23, 2020).

78 IACtHR, Case of Vélez Restrepo v. Colombia, cit., par. 212.

79 IACtHR, Bedoya Lima v. Colombia, cit.

80 Ibid., par. 91.

81 See e.g. the project on Safety of Women Journalists at UNESCO, at <https://en.unesco.org/themes/safety-journalists/women-journalists>. See also J. Posetti; N. Aboulez; K. Bontcheva; J. Harrison; S. Waisbord, “Online violence against women journalists: A global snapshot of incidence and impacts.” ICJF & UNESCO, Paris, France. 2020; HRC, “Combating violence against women journalists.” UN General Assembly, New York. A/HRC/44/52. 05/6/2020.



While the UN complaint system has not been used extensively to litigate cases of violence against journalists,<sup>82</sup> in *Njaru v. Cameroon* the UN Human Rights Committee decided a case involving a journalist and a well-known human rights activist who between 1997 and 2003, had been repeatedly arrested, assaulted and subjected to various other forms of physical mistreatment and threats in the hands of state agents, mainly the police.<sup>83</sup> The UN Human Rights Committee held that these acts breached the victim's right to freedom of expression since they were clearly linked to his published articles and could never be justified as restrictions on this right. The Committee ordered Cameroon to prosecute those responsible for crimes against the victim, and to provide him with protection in future and compensation.

Less brutal acts of aggression have also been regularly condemned, often within a framework concerned for freedom of expression. For instance, the Chilean Supreme Court found that the right to freedom of expression of a journalist who had been punched and pressed to the ground when trying to interview a Bishop of the First Methodist Pentecostal Church had been violated.<sup>84</sup> In *The Case of an Arson Attack on the Editorial Offices of De Telegraaf*, an Amsterdam court took into special consideration the importance of the press for a democratic society when judging two men who had set fire to the editorial offices of Dutch newspaper *De Telegraaf*.<sup>85</sup> In *The case of Tarik Z.*, the criminal law section of the Court of Appeals of Arnhem-Leeuwarden sentenced to 40 months in prison a person who kidnapped a security guard of a TV channel in order to broadcast a message.<sup>86</sup> The Court considered the impact this crime had on society as a whole and considered specially the situation of the press, recalling the attack on *Charlie Hebdo*'s offices in Paris a couple of weeks before the incident being judged. In all these cases, international human rights standards played a role in judges' reasoning. An exception to this trend can be found in *The case of Dragoljub Simonovic* in Serbia, where the Second Basic Court of Belgrade—a court of first instance—found Mr. Simonovic guilty of setting fire the house of journalist Milan Jovanovic. While the arson attack was punished, the Court did not consider the condition of the victim as particularly important, even though the decision explicitly argued on grounds of the European Convention of Human Rights.<sup>87</sup>

### 3. Imprisonment

Nobody is free from being investigated by law enforcement officials when a wrongdoing is suspected, nor from being imprisoned if found guilty. However, the imprisonment of journalists

82 See SG, "The Safety of Journalists and the Issue of Impunity," UN General Assembly, New York. A/70/290. 08/15/2015, par. 27 ("The Human Rights Committee and other human rights treaty bodies also have competence to receive and examine individual communications. However, these complaint mechanisms, which allow for interim measures, are not frequently used for cases concerning the safety of journalists or media workers").

83 UNHRC, *Njaru v. Cameroon* (Mar. 19, 2007).

84 Supreme Court of Justice, *The Case of Chilean Journalist Oscar Caceres* (Mar. 14, 2019).

85 Criminal Law Section of the District Court Amsterdam, *The Case of An Arson Attack on the Editorial Offices of De Telegraaf* (Sep. 28, 2020).

86 Rb. Midden-Nederland, *The Case of Tarik Z.* (Jul. 3, 2015).

87 *Milan Jovanovic and Dragoljub Simonovic*.

is a form of violence when it is based on laws that clearly fall out of the scope of legitimacy that derives from international human rights law. Sadly, this is a common practice, not only in authoritarian countries but also where democracies are not fully consolidated. For instance, our researchers in Asia found several instances of cases in which journalists in India and Hong Kong had been imprisoned in this manner. In some occasions, Courts did set some sort of limit to these practices—in others, they did not.

For instance, in *HKSAR v. Mo Man Ching Claudia*, the High Court of the Hong Kong Special Administrative Region (HKSAR), Court of First Instance, dismissed the bail application of journalist and former legislator Mo Man Ching Claudia (alias Claudia Mo). The journalist had been accused of “conspiracy to commit subversion” for publicizing the 2020 Hong-Kong pro-democracy primaries. The decision explicitly considered Claudia Mo’s journalistic and political activities as a reason to deny bail, thus denying her freedom of expression rights and the relevance of international human rights standards.<sup>88</sup> In *Gautam Navlakha v. National Investigation Agency*, the Supreme Court of India refused to grant bail to a journalist who had been accused of instigation of violence. The Court resorted to a highly technical reading of the maximum acceptable period of pre-trial detention and failed to consider the freedom of expression interests involved in the case.<sup>89</sup>

In *Kishorchandra Wangkhem v. District Magistrate, Imphal West*, the High Court of Manipur in India released on bail a journalist who had been detained under Section 3(2) the National Security Act, 1980 (NSA). The Court strictly assessed the government claims and found them lacking on procedural grounds, thus somewhat limiting the possibility of authorities harassing journalists based on that legal framework.<sup>90</sup>

In *HKSAR v. Lai Chee Ying*, the Court of Final Appeal of the Hong Kong Special Administrative Region (HKSAR) overturned the severe conditions for granting bail imposed on the founder and owner of pro-democracy tabloid *Apple Daily*, Lai Chee Ying, popularly known as Jimmy Lai, who was charged with an offense under the National Security Law, 2020 (NSL). These conditions included prohibitions on publishing any articles, writing any posts on social media or attending or hosting any interviews, television, radio or online programmes. The Court of Final Appeal affirmed that the stringent threshold requirements created by NSL, section 42(2) in order to grant bail have to operate in tandem with the guarantees of constitutional human rights, freedoms and the rule of law, which includes freedom of speech, of the press, of publication, of association, of assembly, of procession and demonstration. However, it also granted a lot of discretionary power to courts, which may result in journalists being detained for long periods of time in the future.<sup>91</sup>

88 First Instance Court, *HKSAR v. Mo Man Ching Claudia* (Apr. 21, 2021).

89 Supreme Court, *Gautam Navlakha vs National Investigation Agency* (Jun. 11, 2019).

90 Manipur High Court, *Kishorchandra Wangkhem v. District Magistrate Imphal* (2019) and *Elangbam Ranjita v. State of Manipur & Anr* (2021) (Jul. 21, 2021).

91 Hong Kong Court of Appeals, *HKSAR v. Lai Chee Ying* (Feb. 8, 2021).

Finally, in *Jagisha Arora v. Uttar Pradesh*, the Supreme Court of India released on bail the journalist, Prashant Kanojia who was arrested by the Uttar Pradesh Police for a tweet he posted about a woman who professed her love for the Chief Minister of Uttar Pradesh, Yogi Adityanath and claimed they had been communicating. On an habeas corpus petition filed by the journalist's wife, the Court held that the right to life and to freedom of expression guaranteed by India's Constitution are "non-negotiable rights" and that keeping Mr. Kanojia in custody for about 13-14 days for his impugned speech was impermissible.<sup>92</sup>

When looking at the situation in Africa and MENA the pervasiveness of the problem emerges. In Algeria, for instance, journalist Khaled Drareni was convicted to three years in prison for reporting on public demonstrations.<sup>93</sup> Several other cases, in different African and MENA countries, suggest a pattern linked to demonstrations and social unrest, often related to expression on social media.<sup>94</sup> In Egypt, similar imprisonments happened through the Supreme State Security Prosecution (SSSP) is a special branch of the Public Prosecution that is responsible for investigating and prosecuting cases that constitute a threat to state security. According to Amnesty International, the SSSP "functions as a tool of repression by misusing recently enacted counter-terrorism legislation to detain individuals for acts that should not even be criminalized, such as peacefully expressing critical views of the authorities, engaging in human rights work or waving a rainbow flag."<sup>95</sup> Another case involved the punishment of a human rights activist for criticizing judicial authorities.<sup>96</sup>

International human rights standards—analyzed in a following document within this series—have condemned the use of criminal law to punish alleged abuses of freedom of expression. The IACtHR for instance has found in many cases that specific criminal statutes were in conflict with the American Convention of Human Rights.<sup>97</sup> The ECtHR, on the other hand, has found that

92 Supreme Court, Prashant Kanojia (Jun. 11, 2021).

93 CPJ, Record Number of Journalists Jailed Worldwide, COMMITTEE TO PROTECT JOURNALISTS, 12/15/2020, available at <https://cpj.org/reports/2020/12/record-number-journalists-jailed-imprisoned/> Accessed: 06/12/2021.

94 Tunisia: Prosecutions for Online Commentary, HUMAN RIGHTS WATCH, 10/15/2019, available at <https://www.hrw.org/news/2019/10/15/tunisia-prosecutions-online-commentary> Accessed: 12/3/2021; HRW, Algeria: Journalist Jailed for Corruption Report, HUMAN RIGHTS WATCH, 12/15/2016, available at <https://www.hrw.org/news/2016/12/15/algeria-journalist-jailed-corruption-report> Accessed: 12/3/2021, Algeria: Escalating Repression of Protesters, HUMAN RIGHTS WATCH, 11/14/2019, available at <https://www.hrw.org/news/2019/11/14/algeria-escalating-repression-protesters> Accessed: 12/3/2021.

95 Amnesty International, "Egypt: Permanent State of Exception: Abuses by the Supreme State Security Prosecution." Amnesty International, London. MDE 12/1399/20. 11/27/2019. P. 7. See in particular the case of journalist Hossam Moanes, discussed in page 8 of the report.

96 Amnesty International, Egypt: Human rights defender Bahey el-Din Hassan handed outrageous 15-year prison sentence, AMNESTY INTERNATIONAL, 08/25/2020, available at <https://www.amnesty.org/en/latest/press-release/2020/08/egypt-human-rights-defender-bahey-eldin-hassan-handed-outrageous-15-year-prison-sentence/> Accessed: 12/3/2021.

97 IACtHR, Caso Usón Ramírez c. Venezuela, Serie C Excepción Preliminar, Fondo, Reparaciones y Costas. Docket No. 207 (Nov. 20, 2009), IACtHR Caso Uzcátegui v. Venezuela, Serie C Fondo y Reparaciones. Docket No. 249 (Sep. 3, 2012), IACtHR Palacio Urrutia v. Ecuador, Serie C Fondo, Reparaciones y Costas. Docket No. 446 (Nov. 24, 2021).

“the assessment of the proportionality of an interference with the rights protected thereby will in many cases depend on whether the authorities could have resorted to means other than a criminal penalty, such as civil and disciplinary remedies”.<sup>98</sup> Hence, the trends seen in recent decisions are troublesome from the standpoint of those precedents, which are more deeply analyzed in a different document within the series and that can be fully explored in GFOE’s database.

Recently, in the case of *Ilker Deniz Yücel v. Turkey* the ECtHR held that the pre-trial detention of journalist Ilker Deniz Yücel for over a year was a violation his rights, including freedom of expression. The Court considered that this detention produced numerous adverse effects on both Mr. Yücel and society as a whole because imposing a measure that resulted in deprivation of liberty of the applicant inevitably prompted a chilling effect on freedom of expression by intimidating civil society and reducing dissident voices to silence

#### 4. Harassment

The harassment of journalists, either by private individuals or public officials, is a usual form of violence that states have the duty to prevent. Unlike more explicit forms of violence that are often punished in criminal law, some forms of harassment may slip through the cracks of what is permissible and not. Thus, harassment may go unpunished. (We see this as particularly true with regard to the harassment that happens online, specially against women journalists). On the other hand, sometimes harassment happens through the actions of state institutions in a presumably neutral fashion, as when e.g. tax authorities launch an audit against a journalist or a media company motivated by their coverage, and as a form of indirect censorship. Our study of recent decisions found several cases that reflect the diversity implied in this particular form of violence.

For instance, in *Rana Muhammad Arshad v. Pakistan*, the Islamabad High Court, a constitutional court in Pakistan, held that the investigation initiated against journalist Rana Muhammed Arshad by the Federal Investigating Agency (FIA) by means of an undated notice was an abuse of the procedure established by law, and that the journalist was in fact being “targeted as retaliation for his work”. For the Court, such an action by the FIA violated Mr. Arshad’s freedom of expression. The Court stated that freedom of press will be elusive “if journalists lose their independence and function under fear of being exposed to harm or retaliation because of their reporting.”<sup>99</sup> The Court valued the role of the press as a watchdog of democratic institutions, affirmed that journalists must be free from fear in exercising their function, and that freedom of expression is the “the most cherished human right and fortifies the other constitutionally guaranteed rights.”<sup>100</sup> In *The Case of Shahidul Alam*, the Supreme Court of Bangladesh ordered a stay on a pending investigation upon a photojournalist and human rights activist, Dr. Shahidul Alam, under the (now repealed) Section 57 of the Information and Communication and Technology

98 ECtHR, *Raichinov v. Bulgaria*. Docket No. 47479/99 (Apr. 20, 2006).

99 Islamabad High Court, *The Case of Rana Mohammed Arshad* (Nov. 3, 2020), par. 7.

100 *Ibid.*, par. 6.

Act, 2006 (ICT).<sup>101</sup> He was accused of violating Section 57(2) of that act, that punishes “publishing fake, obscene or defaming information in electronic form”. The High Court suspended the investigation on him and issued a ruling asking the government why the investigation against him should not be declared illegal and contrary to the Constitution of Bangladesh. While the case is pending a final decision, the decision to stay the investigation sets an important precedent in preventing abuses of the judicial process as a form of harassing speakers.

The illegal surveillance of journalism can also be a form of harassment. In the case of *Telegraaf Media Nederland Landelijke Media B.V. and Others v The Netherlands* the ECtHR found a violation of Article 10 in the surveillance of journalists directed by state institutions in an effort to uncover their sources.<sup>102</sup> In Morocco, a journalist who has been sentenced to six years in jail under contested charges and through a decision we were unable to analyze was, according to Amnesty International, subjected to illegal surveillance of his phone, a practice that in many countries seem to be increasingly embedded within broader patterns of harassment.<sup>103</sup> Other speakers who were voiceful and critical of public authorities suffered similar consequences.<sup>104</sup> In *Regina (David Miranda) v. Secretary of State for the Home Department and Commissioner of Police for the Metropolis*, the Civil Division of the Court of Appeal of England and Wales (EWCA) considered that the police power to stop, question and/or detain a person at a port to determine whether he is on has been ‘concerned in the commission, preparation or instigation of acts of terrorism’ was exercised lawfully against the appellant, who was at the time the spouse of journalist Glenn Greenwald and who was—on the trip where he was inquired—carrying relevant journalistic materials related to the revelations made in 2013 by Edward Snowden. The case, in which a regular administrative authority exercised a lawful but largely discretionary power, under Section 7 of the Terrorism Act of 2000, show how these can be abused in ways that result in the harassment of journalists and the consequential violation of their freedom of expression. The Court considered so: it argued that this power was incompatible with Article 10 of the European Convention on Human Rights (ECtHR) in relation to journalistic material since it lacked adequate safeguards.<sup>105</sup> The EWCA argued that journalist activities require a higher degree of protection and concluded that the regulation allowing authorities to act in this manner did not provide adequate protection against the disclosure of journalistic material.<sup>106</sup>

Other forms of harassment are—however—more elusive. For instance, an Appellate Court in Argentina judged that the printing of posters with the face of a famous journalist accusing him of being an “squeezer and extortionist of judges and prosecutors” did not amount to a threat, for

101 Supreme Court of Bangladesh, Shahidul Alam Mukul (Mar. 15, 2019).

102 ECtHR, *Telegraaf Media Nederland Landelijke Media BV. and Others v The Netherlands* (Nov. 22, 2012).

103 Amnesty International, Moroccan journalist Omar Radi refuses to be silenced, AMNESTY INTERNATIONAL, 06/22/2020, available at <https://www.amnesty.org/en/latest/news/2020/06/omar-radi-moroccan-journalist-refuses-to-be-silenced/> Accessed: 12/3/2021.

104 HRW, “Morocco: Crackdown on Social Media Critics.” Human Rights Watch. 02/5/2020.

105 EWCA, *Regina (David Miranda) v. Secretary of State for the Home Department and Commissioner of Police for the Metropolis*. Application No. C1/2014/0607 (Jan. 19, 2016).

106 Ibid.

it did not contain “the future announcement of a certain and clear harm, an unavoidable requirement of the criminal qualification proposed by the plaintiff in his appeal.”<sup>107</sup>

Finally, an important precedent in the Netherlands shows one of the new forms of violence against journalists that this project sought to capture. In *The case of the online harassment of Dutch NRC columnist C. Gargard*, the Criminal Law Section of the District Court Amsterdam convicted 24 defendants for the online harassment of columnist C. Gargard of the Dutch newspaper *NRC*. The harassment was directed towards the columnist after she posted a live stream of demonstrations against a traditional Christmas-time parade of in which *Sinterklaas* (a Dutch amalgamation of Saint Nicholas and Santa) arrives with gifts and with *Zwarte Piet* (Black Pete), one of his “helpers” who is traditionally represented as a blackface character with large gold earrings, curly wigs and exaggerated red lips. The character has caused much controversy, for it is experienced by many as a vestige of slavery. After the journalist posted the video, she received 7,600 messages, many of which were—she complained—“racist, sexist, insulting and threatening messages.”<sup>108</sup> The Court convicted 24 defendants. It found 18 guilty of inciting assault, murder or manslaughter. Three defendants were found to have discriminated against C. Gargard and two defendants were found to have incited discrimination. The court held that one defendant was guilty of defamation, breaching Article 266 of the Dutch Criminal Code. To prove incitement to a criminal offense, the Court applied the following standard: (a) the defendant must incite an offense that is criminal under Dutch law; (b) there has to be (conditional) intent; (c) the statement must be public; (d) the statement must be made verbally, in text or via images. For the Court, the messages received by Miss Gargard under scrutiny made her feel threatened. It should be noted that, when deciding these cases, the Court expressly considered the defendants’ freedom of expression rights under Article 10 of the European Convention on Human Rights.

The case of C. Gargard highlights a dimension of violence against journalists that is increasingly problematic. Many cases of online harassment against journalists—which may have a chilling effect and produce self-censorship—are directed, encouraged, or made possible by public officials who, under the guise of criticizing critical coverage of their activities, place journalists under undue risk of violence by their sympathizers. The IACtHR has highlighted this pattern as contrary to the American Convention in the cases of *Ríos* and *Perozo*, both against Venezuela. In those cases, the systematic harassment of critical journalists and media outlets by high-ranking public officials leads to situations of physical violence. The Court affirmed a positive duty of “special care” that state officials have to respect the right of others, including the right of critics to participate in “public deliberation through the expression and diffusion of their thoughts”. The Court considered that this duty is “specifically true in situations of greater social conflict, alterations of public order or social or political polarization, precisely because of the set of risks they may imply for certain people or groups at a given time”.<sup>109</sup>

107 Appellate Court, *Majul v. Moyano* (Oct. 16, 2020).

108 Criminal Law Section of the District Court Amsterdam, *The Case of the online harassment of Dutch NRC columnist C. Gargard* (Nov. 2, 2020).

109 IACtHR, *Case of Ríos v. Venezuela*. Docket No. 194 (2009); IACtHR, *Case of Perozo v. Venezuela*. Docket

## 5. Demonstrations

Journalists covering demonstrations that turn violent are often victims of police officers seeking to control the situation. The IACtHR has discussed the matter in the *Vélez Restrepo* case, a cameraman that was physically assaulted by military officials in charge of controlling the demonstrations and was later threatened.<sup>110</sup> The ECtHR also considered the issue. In *Najafli v Azerbaijan*, for instance, the Court found that the lack of a timely investigation into the violence suffered by a journalist at the hands of police officers during a demonstration was a violation of his human rights, including his right to freedom of expression guaranteed by Article 10 of the European Convention of Human Rights.<sup>111</sup> The Court recalled the importance of protecting journalists covering public demonstrations.<sup>112</sup>

In *Hong Kong Journalists Ass'n v. Commissioner of Police*, the Court of First Instance in the High Court of the Hong Kong Special Administrative Region (HKSAR) dismissed the substantive application for judicial review filed by Hong Kong Journalist Association (HKJA), seeking preemptive redress to prevent abuse by security forces against journalists covering the pro-democracy demonstrations on the Island. Sadly, the Court refrained from laying down any “guidelines on the legal limits and scope of the Police’s duty to facilitate, and not to hinder, lawful journalist activities with the hope of minimizing unnecessary conflicts between the Police and journalists in public order events” since it “would be misleading to make declarations of legal duties in unqualified terms without identifying the possible limits or qualifications of the relevant duties.”<sup>113</sup>

## 6. Duty to protect

Some national courts have embraced the protective framework of international human rights standards, specially in contexts where structural violence puts journalists routinely at risk and protective schemes exist. For instance, the Constitutional Court of Colombia has resorted to international human rights standards to assess the state’s duties and public officials’ actions with regard to violence against journalists and human rights defenders.<sup>114</sup> In the last few years the Court has advanced its case-law. For instance, in the case of *Carrillo and Barreto v. the National Protection Unit (UNP)* the Court has granted protection to the rights to life, integrity and security of Saúl David Carrillo and Francisco Barreto, human rights activists, following the decision of the National Protection Department to remove or reduce their security arrangements.<sup>115</sup> The Court found that the irregularities and omissions of the authorities created a reasonable doubt as to the real risk

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No. 195 (Jan. 28, 2009).

110 IACtHR, Case of Vélez Restrepo v. Colombia, cit.

111 ECtHR, *Najafli v Azerbaijan* (Oct. 2, 2012).

112 *Ibid.*, par. 66.

113 Quezon City Regional Trial Court, *The Case of the Maguindanao Massacre* (Dec. 2019).

114 See e.g. Constitutional Court of Colombia, Decision T-719/2003. Application No. 719 (Aug. 20, 2003). Available at: <http://www.corteConstitucional.gov.co/relatoria/2001/C-760-01.htm>.

115 Constitutional Court of Colombia, *Carrillo and Barreto v. the National Protection Unit (UNP)* (Nov. 3, 2021).

of the plaintiffs. It also evidenced a structural problem regarding the security of social leaders in Colombia.<sup>116</sup> In the case of *Restrepo v. El Colombiano*, the Court framed the sexual harassment suffered by a female journalist in a private newspaper as a case of violence.<sup>117</sup>

Another important precedent where this duty was highlighted was the case of *Shahid Akbar Abbasi v. Chief Commissioner*, in Pakistan, where the Islamabad High Court decided a habeas corpus petition filed in connection with the abduction of journalist Matiullah Jan. The Court directed the Federal Government to carry out an investigation into the abduction, with transparency and diligence so as to apprehend those who “attempted to terrorize journalists as a class.”<sup>118</sup> Jan, who was a forceful critic of Pakistan’s military on social media, was abducted in broad daylight, by a group of men— some in uniform and some in plain clothes—and his abduction was caught by a CCTV camera. He was tortured and threatened for about nine hours, and then released. The Court noted the role of the press as a watchdog and held that the State must “demonstrably show that there is a political will to put an end to impunity for crimes against citizens and to protect journalists from harm from exercising the right to free speech.”<sup>119</sup>

## 7. Final Thoughts

Violence against media workers, bloggers, journalists and activists is a moving target: it constantly changes in terms of strategies, modalities and state’s responses. Sometimes, the problem grows and shrinks in specific countries from one year to the other, because violence is tied to special circumstances, such as e.g. waves of public demonstrations, social unrest, or internal conflicts, among other examples. Our survey of recent decisions is useful for identifying emerging trends that seem important for the future, and might be useful specially for those men and women who combat violence against journalists and human rights defenders in the trenches, where access to courts is an important part of the battle. In that sense, the report has identified that international human rights standards often guide judges’ decisions—even if these are not specifically mentioned or invoked. But it has also been found that, in many cases, judges do not consider these standards and, as a consequence, may be prone to disregard the freedom of expression interests involved in cases of violence against journalists.

A forthcoming document in this series will expound on case-law and soft law that are the foundation of the international standards this paper has introduced. Furthermore, a fuller picture of the case-law can be found in the ever-expanding GFOE database. These are valuable resources that lawyers, journalists, and human rights defenders should use at the national level to combat violence against journalists.

116 Ibid.

117 Constitutional Court of Colombia, *Restrepo Barrientos v. El Colombiano newspaper* (May 14, 2021).

118 High Court, *The Case of Matiullah Jan* (Jul. 15, 2020), par. 6.

119 Ibid., para 5.



Both Europe and Latin America seem to be the regions where judges have robustly contributed to the case-law on violence against journalists. Under the leadership of the ECtHR, the IACtHR and the Office of the Special Rapporteur on Freedom of Expression at the IACHR, both regional systems have developed international standards that—along with materials produced within the UN system—form important building blocks of this jurisprudence. It is not fortuitous that these courts have developed these standards in the context of cases dealing with specific countries. In that sense, these regional courts seem to be responding to specific contexts of violence, such as e.g. Turkey and Azerbaijan in the case of Europe, or Colombia in the case of Latin America. It is difficult to tell whether this jurisprudential leadership has trickle-down effects in national courts, but our research on recent decisions has found national courts in both regions that either explicitly invoke this regional jurisprudence or consider the freedom of expression interests in cases of violence. On the contrary, in regions such as MENA and Asia those international standards are not generally used, and often the freedom of expression interest involved in cases of violence is ignored. The cases of Pakistan previously discussed provide notable exceptions. In *Rana Muhammad Arshad v. Pakistan*, the Islamabad High Court explicitly considered the freedom of expression side of cases of violence and delivered a very forceful and powerful decision. The decision could be used as inspiration for judges and practitioners across the region.

One of the most note-worthy findings is the relative lack of use, by journalists themselves, of the petition system in the UN, in order to reach the Human Rights Council (HRC)<sup>120</sup>. We found very few cases in that instance, which suggests problems or obstacles that call for further research. Absent strong and well-settled regional bodies, the HRC could be a space where international standards could be developed and remedies may be imposed, specially in countries where standards on violence against journalists and human rights defenders are not adequately enforced.

We also sense that there might be a gap between what courts do and what practitioners dealing with the problem identify as the most troubling trends on this issue. This phenomenon would be theoretically sound: by definition, courts deal with old cases of violence. If there are new forms of violence—such as e.g. illegal surveillance or online harassment—the decisions dealing with those matters could emerge in the future. But some of the decisions uncovered in our inquiry into recent cases do deal with those matters. In that sense, *the Telegraaf Media Nederland Landelijke Media B.V. and Others v The Netherlands* seem to be an important precedents on the extent to which authorities can harass a journalists through the supposedly neutral use of broad investigatory powers.<sup>121</sup> Similarly, we see worrying trends on surveillance on journalists, specially in MENA. In many of these cases, illegal surveillance measures often precede other forms of violence.

From a substantive point of view, violence against journalists and human rights defenders expresses itself in different modalities, with specific challenges to be considered. In the cases of murder, the most important point that emerges from international standards is the need for a time-

<sup>120</sup> See supra note 78.

<sup>121</sup> ECtHR, *Telegraaf Media Nederland Landelijke Media B.V. and Others v The Netherlands*, cit.

ly and effective criminal investigation that considers as a hypothesis that the victim was targeted because of her work as a journalist. Impunity fosters violence, by making potential perpetrators more likely to resort to violence as a form of censorship. The cases previously discussed on this matter show this consciousness among courts, specially in Europe and Latin America. Something similar happens with other acts of aggression that do not result in the death of the victim. Violence against journalists covering public demonstrations and other forms of social unrest are still a pressing problem. In our survey of recent cases, some courts appear as well aware of it, while others do not.<sup>122</sup> It still is a fundamental aspect of violence against journalists that needs to be addressed more forcefully. International standards on how police should protect journalists in such contexts would be helpful in expanding this case-law forward.<sup>123</sup> Online harassment of journalists is a particularly challenging form of violence, for it is often difficult to distinguish between the kind of harsh criticism of public figures that is legitimate within a democratic society from the coordinated attacks which goal is to engender fear and self-censorship on victims. We believe, however, that there is room for developing adequate standards and tests that may help courts in striking the right balance. In that sense, in *The case of the online harassment of Dutch NRC columnist C. Gargard*, the Criminal Law Section of the District Court Amsterdam carefully scrutinized the messages received by a journalist and distinguished those that fell within a scope protected by freedom of expression from those that did not. That decision presents a good path forward.

Finally, we must reiterate the importance that independent judicial institutions have for fighting violence against journalists and protecting them from state-sponsored or non-state violence. The *duty to protect*, that international courts have persistently affirmed, also falls upon courts, prosecutors, and judicial officers. Without independent courts willing to protect journalists at risk and to ask public authorities to step up their game, specially in contexts of structural violence, the problem will persist. They are a fundamental piece of the puzzle, and an essential component of the solution to this problem. Without their involvement, violence against journalists and human rights defenders will persist and democracy will suffer as a consequence.

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122 See e.g. Quezon City Regional Trial Court, *The Case of the Maguindanao Massacre*, cit.

123 AMNESTY INTERNATIONAL, *Use Of Force: Guidelines For Implementation Of The Un Basic Principles On The Use Of Force And Firearms By Law Enforcement Officials*, 2015 Available at [www.omegaresearchfoundation.org/assets/downloads/publications/amnesty\\_use\\_of\\_force\\_final\\_web\\_0.pdf](http://www.omegaresearchfoundation.org/assets/downloads/publications/amnesty_use_of_force_final_web_0.pdf); See e.g. N. BELYAEVA; ORGANISATION FÜR SICHERHEIT UND ZUSAMMENARBEIT IN EUROPA; OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS; EUROPARAT; BULL, THOMAS (EDS.), *Guidelines on Freedom of Peaceful Assembly*, OSCE/ODIHR, Warsaw/Strasbourg, 2010.

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*Part II*

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## Violence against journalists

*Carlo Carvajal and José Ignacio Michaus*  
*Editors*

### Special thanks

*The Directors and Editors of the present collection would like to recognize and express their gratitude to all the people whose efforts and talents made the collection a reality. These publications were only possible thanks to the analysis and selection of cases for the database by a wide number of [experts](#) and [contributors](#) collaborating with Columbia Global Freedom of Expression. The case briefs presented in this collection reproduce the analysis of the cases published in our database, which was only possible due to their invaluable contribution.*

## I. Introduction

The use of violence through different means and as a form of censorship to the free exercise of journalism continues to be a prevailing practice in various jurisdictions around the world. According to [one of the latest reports](#) of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, “*Three major contemporary threats to the safe and free practice of journalism in the digital age are [...]: impunity for crimes against journalists; gender-based online attacks; and targeted digital surveillance*”. Furthermore, as shown in the report “Violence Against Journalists Around the World. An Inquiry Through Case-Law” written by Ramiro Alvarez Ugarte and published by [Columbia Global Freedom of Expression](#), cases of violence against journalists and speakers are still part of domestic and international courts’ dockets in almost every region of the world. Therefore, although many of the necessary measures to ensure a safe and free exercise of journalism must be undertaken by executive and legislative authorities, adjudicative bodies can play an important role in developing standards to ensure the protection of journalists and speakers.

The main objective of this paper is to provide a systematization of good practices in judicial decisions that have advanced the case-law regarding the protection of journalists and speakers around the world. It aims to show how courts have understood the obligations of States when it comes to ensuring the free exercise of journalism, while also serving as a guide to illustrate the different types of measures the courts have issued in favor of those who have been attacked for expressing themselves. This paper seeks to complement Alvarez Ugarte’s comprehensive report by providing both a summary of the facts of specific cases, along with the main conclusions and protection measures issued by the courts. It is the Global Freedom of Expression Initiative’s contention to continue providing freedom of expression practitioners and academics with additional tools that serve them in their efforts to protect free journalism and speech for democratic societies.

## II. Overview

This paper contains a total of thirty-two cases, each with a summary of the facts and a brief explanation of some key points of the decision or judgment. The chosen cases are part of the [Columbia Global Freedom of Expression Database](#), classified under the tab labeled “Violence Against Speakers/Impunity”, which can be found under the “Main themes” category. The aim is not to present a comprehensive outlook of the entire case-law regarding the protection of journalists but rather to showcase good practices that have been developed by courts in various jurisdictions through particular judgments. The reader is encouraged to explore the database, where even more cases on this and many other topics on freedom of expression are currently available.

The case-law here presented contains cases from international judicial and quasi-judicial bodies, such as the Inter-American Commission of Human Rights (IACHR), the Inter-American Court of Human Rights (IACtHR), the European Court of Human Rights (ECtHR), the African

Commission on Human and Peoples' Rights (ACmHPR), the African Court of Human and Peoples' Rights (ACtHPR), and the United Nations Human Rights Committee (UNHRC). It also contains judgments rendered by different national courts from various jurisdictions and legal traditions.

The majority of adjudicative bodies whose decisions are analyzed in this paper share a common view that States have an obligation to ensure a climate where journalism can be freely exercised without fear of reprimands or retaliation. Although not all courts use the same language, many of them recognize that States must not only avoid interfering with the work of journalists but also take actions to ensure that such a profession can be freely and safely exercised.

Additionally, it must be noted that the Inter-American System of Human Rights, which includes the IACHR and the IACtHR, is the regional system with the majority of cases presented in this paper. Both the Commission and the Court, but mainly the latter, have developed interesting case-law on the matter. Many of their decisions have strengthened the understanding of those human rights standards that investigations related to violence against journalists should comply with (including cases regarding women journalists or in the context of crimes against humanity), as well as the obligation of States to undertake preventive measures for the protection of journalists.

The case-law has been systematized under four main categories, reflecting some of the key obligations and measures that Courts have issued for the protection of journalists or speakers from violence in its different modalities. The sections are the following: A. Obligation to investigate and provide judicial protection; B. Limiting unreasonable restrictions on free journalism; C. Obligation to undertake preventive measures; and D. Award of damages to victims. Category A is also divided into smaller subcategories with the purpose of highlighting some specific themes that courts have focused on when analyzing the general obligation to investigate and provide judicial protection. These categories include military jurisdiction, journalism in the context of crimes against humanity, violence against women journalists, investigation of intellectual perpetrators, and the prevention of impunity.

It should be noted that, while each of these cases is presented under a specific category, this does not mean that they lack elements of other categories. For instance, the cases categorized under "awarding damages to victims", also contain elements regarding the obligation to investigate and provide judicial protections. The classification merely serves to highlight how specific cases provide different approaches or how courts have come up with new measures to protect journalists from violence. However, as mentioned above, most courts agree that States are under the obligation to take measures to ensure a climate where free journalism can be exercised. The former includes the obligation to diligently investigate and prosecute those responsible for having committed violent actions against journalists, speakers, or their families.

Another commonplace that courts refer to when assessing cases of violence against speak-

ers is the “chilling effect” that attacks on journalists provoke in freedom of expression. Courts agree that violent attacks against the media, as well as high levels of impunity surrounding those attacks, produce an environment leading to self-censorship, where relevant voices to society are silenced given their fear of retaliation. In this regard, courts have also insisted upon both the individual and social dimensions of freedom of expression; the latter being also jeopardized by violence against speakers.

Finally, while this might seem obvious, it is relevant to note that, when addressing cases of violent attacks against speakers, adjudicative bodies have not only found violations of the victim’s rights to life and personal integrity but also of their right –and society’s right– to freedom of expression.

### **III. Case-law on the protection of journalists against violence**

#### **1. Obligation to investigate and provide judicial protection**

The obligation of States to investigate actions of violence against journalists and provide them with judicial protection has been widely recognized by national courts and international human rights bodies around the world. This duty is considered as part of the obligations of the States necessary to ensure a climate for the free exercise of journalism and, more generally, freedom of expression. However, each adjudicative body has provided different views that complement each other and have strengthened the content of such a general obligation.

Firstly, the Inter-American System of Human Rights, through both of its organs, has provided relevant decisions that elaborate on the States’ obligation to bring justice for cases where speakers have been (or are threatened of being) silenced. In *Victor Manuel Oropeza v. México (1999)*, the IACHR found that the Mexican State violated “the right to freedom of expression in respect of Victor Manuel Oropeza and every citizen”, and the rights to a fair trial and to judicial protection in respect of his family [para. 3]. The journalist Víctor Manuel Oropeza was murdered on July 3, 1991, in Ciudad Juárez, Mexico. More than eight years after his murder, neither the material perpetrators nor the masterminds were held into account and the investigation on the crime was still open. According to the IACHR, even when the judiciary was unable to determine who was responsible for the murder or their motives, it stated that Oropeza’s murder was linked to his role as a journalist. In this regard, it held that both the murder and the lack of a complete and thorough investigation of the events, constituted a violation to the right of freedom of expression. It also added that these crimes have a “chilling effect” over other journalists, and over society. Accordingly, the Commission ruled that the State had the obligation to conduct a thorough, impartial and effective investigation on the murder of Mr. Oropeza, and on the possible blocking of the investigation by judicial authorities. More info [here](#).

Furthermore, in *Héctor Félix Miranda v. México (1999)*, the IACHR decided that Mexico violated the right to freedom of expression of Héctor Félix Miranda based on his murder and the

fact that the investigation of the crime was still open after 10 years. The IACHR also determined that the murder of the journalist had an impact on the public's right to receive information, therefore violating the right to freedom of expression in its social dimension. It was also established that the longstanding impunity for the murder violated Mr. Miranda's family's right to a fair trial and to judicial protection. Particularly, the Commission considered that, in this specific case "effective judicial protection must include a full investigation into the murder of Héctor Félix Miranda so as to determine, conclusively and definitively, who the masterminds behind the murder were, under the rules of due process". More info [here](#).

Additionally, the Court has also analyzed said obligation in several cases. First, in *Perozo and others v. Venezuela (2009)*, several people working in the television station Globovision suffered acts of harassment, as well as physical and verbal attacks between 2001 and 2005. Additionally, several Venezuelan government officials made intimidating statements about these individuals' and the television station's journalistic activities. The IACtHR considered that said actions constituted an interference against the professional activities by Globovision journalists. In its arguments, the Court emphasized that States have the obligation to minimize restrictions to freedom of expression and should try to balance the diverse political voices and views that participate in the public debate. In addition, the Court considered a public official's statement can increase the risk that would normally affect a journalist. The Court highlighted the obligations of States to investigate these kinds of actions against journalists and considered there are different ways to comply with such obligations as a form to guarantee human rights. Regarding the use of criminal law and prosecution as a form of protection for journalists, the Court considered "the appropriateness of criminal proceedings as the adequate and effective resource to guarantee freedom of expression] will depend on the act of omission that violated said right. If the freedom of expression of a person has been affected by an act that has also violated other rights, such as personal freedom, personal integrity, or life, the criminal investigation may be an adequate resource to protect that situation. Under other circumstances, it is possible that criminal proceedings are not the necessary means to guarantee the due protection of the freedom of expression [...]". (This decision is very similar to [Ríos et al. v. Venezuela](#).) More info [here](#).

What is more, in *Manuel Cepeda Vargas v. Colombia (2010)*, the IACtHR held Colombia responsible for the violation of the rights to freedom of expression, freedom of association, and the political rights of Mr. Manuel Cepeda Vargas, following his assassination. The Court also found that Mr. Cepeda Vargas' death had threatening and intimidating effects on the members of his political party, the readers of his column in *Voz*, and the members and voters of the Unión Patriótica. Mr. Manuel Cepeda Vargas, a senator and political leader who belonged to an opposition coalition persecuted by paramilitary and state armed forces, was murdered in 1994. Prior to his murder, he was also harassed for his publications in the newspaper *Voz*. The facts of the case were not diligently, effectively, or thoroughly investigated by Colombian authorities and not every perpetrator was ultimately punished. The IACtHR emphasized the importance of exploring the different logical lines of investigation related to the exercise of freedom of expression to determine who were the masterminds behind these crimes. It also held that hearing different



voices is essential for democracy and leads to reaching agreements that take into consideration different perspectives existing within society. Particularly, the Court ruled established that “freedom of expression may be illegitimately restricted by *de facto* conditions that place, directly or indirectly, those who exercise it in a situation of risk or greater vulnerability. Therefore, the State must refrain from acting in a manner that favors, stimulates, encourages, promotes, or deepens such vulnerability and must adopt, where appropriate, necessary and reasonable measures to prevent violations or protect the rights of those who are in such a situation.” More info [here](#).

Finally, in *Grijalva Bueno v. Ecuador (2021)*, the IACtHR found that the State of Ecuador violated the right to freedom of expression of lieutenant Anibal Grijalva as enshrined in article 13.1 of the American Convention of Human Rights (ACHR). After denouncing arbitrary detentions, tortures, enforced disappearances and killings committed by members of the Ecuadorian Navy, Grijalva was subjected to administrative and criminal proceedings. Said proceedings, the Court noted, violated Grijalva’s right to a fair trial and had a retaliatory intent against the lieutenant. According to the Court, this could have produced a chilling effect on the freedom of expression of Grijalva and other public officials willing to disclose human rights’ violations. Although the petitioner in this case was not a journalist, the IACtHR established certain obligations that can be important for activities intrinsically related to journalistic activities. The Court considered that the violations against due process and judicial guarantees in the criminal and administrative proceedings could have a chilling effect on freedom of expression, which in turn affects the social dimension of the right to freedom of expression. The Court reiterated the idea that “regarding human rights’ defenders, reprisals produce a social effect of frightening and fear, whose result is intimidation that silences and inhibits the work of these people” [par. 161]. The Court also considered “the State has a duty to guarantee the proper conditions so its public officials can freely report or denounce irregularities without being threatened or harassed” [para. 161]. More info [here](#).

In the European context, the ECtHR has been explicit regarding the positive obligations States have to ensure free journalism and protect them from violent attacks committed both by State and private actors. In *Khadija Ismayilova v. Azerbaijan (2019)*, the ECtHR unanimously held that Azerbaijan violated the right to privacy and freedom of expression of journalist Khadija Ismayilova. The case concerned the online dissemination of two intimate videos recorded covertly in her bedroom, receipt of a threatening letter, and disclosure of sensitive personal information in an investigation report, all allegedly part of an intimidation campaign. The Court found that the Azerbaijan authorities ran an ineffective and flawed investigation into crimes against Ismayilova and therefore the State failed in its positive obligations to protect her journalistic freedom of expression and her private life. Regarding article 10, the Court considered it included not only a requirement to protect journalists but also to create a “favorable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear, even if they run counter to those defended by the authorities or by a significant part of public opinion, or even irritating or shocking to the latter.” [para. 158] The Court further stated that interferences with freedom of expression, such as those

experienced by Ismayilova, can cause a significant “chilling effect,” and therefore under the circumstances of the present case, it was imperative to investigate whether there was a connection between those interferences and her reporting. More info [here](#).

In *Ilker Deniz Yücel v. Turkey*, the ECtHR found the State of Turkey responsible for the pre-trial detention of journalist İlker Deniz Yücel. The case arose after Mr. Yücel—a Turkish and German binational correspondent for the German daily newspaper Die Welt—was detained from February 14, 2017, to February 16, 2018, for allegedly disseminating propaganda in favor of a terrorist organization and inciting hatred and hostility. Particularly, the Istanbul 9th Magistrate’s Court alleged that Mr. Yücel was one of the individuals responsible for leaking personal emails from Mr. Berat Albayrak, the then Turkish Energy Minister, that were later published on the Wikileaks site. As a result of the public prosecutor presenting a bill of indictment, Mr. Yücel was released. In 2019, the Turkish Constitutional Court ruled that because of his pre-trial detention, Mr. Yücel had suffered a violation of his rights to liberty and security, freedom of expression, and of the press, mainly because there was no substantial evidence of his participation in the alleged offense and awarded the journalist a sum of approximately 4,100 euros in compensation for non-pecuniary damage, costs, and expenses. However, in 2020, the Istanbul Assise Court convicted Mr. Yücel to two years and nine months imprisonment for allegedly spreading propaganda for the Kurdistan Workers’ Party, an armed terrorist organization. More info [here](#).

In its decision, the European Court of Human Rights held that Mr. Yücel’s pre-trial detention amounted to a violation of his right to liberty and security, compensation for unlawful detention, and freedom of expression as respectively established in Articles 5(1), 5(5) and 10 of the European Convention on Human Rights, specifically since there was no evidence of for suspecting him of having committed a criminal offense. Regarding the interference with Mr. Yücel’s right to freedom of expression, the Court remarked that holding Mr. Yücel in preventive detention for expressing critical opinions produced numerous adverse effects on both him and society as a whole because imposing a measure that resulted in deprivation of liberty of the applicant inevitably prompted a chilling effect on freedom of expression by intimidating civil society and reducing dissident voices to silence. Moreover, the Court found that in light of the length of the applicant’s pre-trial detention and the circumstances surrounding the case, the sum awarded by the Constitutional Court was manifestly insufficient and highlighted that Mr. Yücel could still claim to be a victim within the meaning of Article 34 of the Convention. Thus, the Court ordered the State to pay the applicant 12,300 euros for non-pecuniary damage and 1,000 euros for costs and expenses.

In that sense, the UNHRC has also contributed to the development of investigation standards. In *Basnet and Basnet v. Nepal (2014)*, the UNHRC unanimously found that journalist Jit Man Basnet suffered the most egregious breaches of his human rights under the International Covenant on Civil and Political Rights (ICCPR). In 2004, Basnet (first Author) who is also human rights lawyer and founder of a newspaper, was unlawfully detained, beaten, and held with inadequate housing, sustenance and incommunicado in a military barracks for over eight

months. Although the complaint did not argue a violation to freedom of speech, the UNHRC considered a violation to such right existed amongst several others. Particularly, the Committee reiterated the importance it attaches to States parties establishing appropriate judicial and administrative mechanisms for addressing alleged violations of rights under domestic law. It also ruled that States must provide victims with an effective remedy, including by: (a) conducting a thorough and effective investigation into the facts; (b) providing detailed information about the investigation; (c) providing adequate compensation for the violations suffered; (d) ensuring that the necessary and adequate psychological rehabilitation and medical treatment is provided to the victims; (e) and providing appropriate measures of satisfaction. More info [here](#).

In the domestic context, the Constitutional Court of Montenegro in the case *Softić v. Montenegro* held that the right to life of an investigative journalist, Tufik Softić, had been violated by the Montenegrin authorities' failure to conduct a proper and timely investigation into violent attacks against him. In 2007, Mr. Softić was brutally beaten by two masked men with baseball bats. In 2013, he was targeted again after an explosive device was planted outside his home. These attacks were carried out at a time when he was investigating criminal activities. The Constitutional Court of Montenegro, for the first time, recognized that it had jurisdiction to award damages for the moral harm caused by a violation of human rights. The Constitutional Court of Montenegro quoted extensively from the case law of the ECtHR, noting that the authorities were under a positive obligation to carry out an independent, thorough, timely and open investigation into murders or attempted murders. Particularly, citing *Mc Kerr v. the United Kingdom*, the Court criticized the lack of timely access to the case-file that deprived Mr. Softić's lawyer of effective participation in the investigation. When considering the thoroughness of the investigation, the Court also cited *Jasar v. Former Yugoslav Republic of Macedonia* to emphasize the duty that is placed on authorities to undertake all reasonable measures to secure evidence such as witness statements and forensic evidence. Finally, the Constitutional Court concluded that, on this occasion, this obligation had not been met and awarded Mr. Softić 7,000 Euros for the violation of his right to life. More info [here](#).

Also, in the case *Shahid Akbar Abbasi v. Chief Commissioner (2020)*, the Islamabad High Court of Pakistan, in a Habeas Corpus petition filed in connection with the abduction of journalist Matiullah Jan, directed the Federal Government to carry out the investigation into the abduction, with transparency and diligence so as to apprehend those who "attempted to terrorize journalists as a class" [para 6]. The High Court stated that the perpetrators of his abduction should be dealt with "in a manner so that no journalist in the country fears to be harmed for exposing the truth" [para. 6]. The case concerned the abduction of Matiullah Jan, a vocal critic of the Pakistan government before he was scheduled to appear before the Supreme Court in a contempt of court case regarding a tweet he posted on social media. He was abducted in broad daylight, by a group of men – some in uniform, and his abduction was caught on CCTV camera. He was tortured and threatened for about nine hours. Following Matiullah Jan's release, the matter came up before the High Court on July 22, 2020. Noting the importance of Matiullah Jan's profession as a journalist, and the role of the press as a watchdog, the High Court held that the

State must “demonstrably show that there is a political will to put an end to impunity for crimes against citizens and to protect journalists from harm from exercising the right to free speech” [para. 5]. More info [here](#).

Finally, it is worth noting the decision of *Hydara v. Gambia (2014)* by the Sub-regional African Courts of Gambia. Here, Deyda Hyadra, an advocate of media freedom who was critical of the government, was one of Gambia’s most important journalists. He was assassinated on December 16, 2004. His family members and the International Federation of Journalists filed an application in the Economic Community of West African States Court (“ECOWAS”) against Gambia on the grounds that the Gambian Government failed to effectively investigate the crime, and in doing so, it allowed impunity, violated the right to freedom of expression, and failed to provide redress. The Gambian Government denied all claims. The ECOWAS determined that, indeed, Gambia did not properly investigate the crime, allowed impunity, and violated the right to freedom of expression. The Court also determined that the Gambian Government was obligated to provide redress to the Hydra’s family because of its failure to effectively investigate the crime. For the ECOWAS, Article 66 of the Revised Treaty of ECOWAS “imposes an obligation on Member States to assure a safe and conducive atmosphere in the practice of journalism”. More info [here](#).

In addition to the above-mentioned case-law, there are several cases which further explain the obligation to investigate and provide judicial protection for journalists. The following subsections contain cases from tribunals in countries like Colombia, Paraguay, as well as from the Inter-American System of Human Rights and the African System of Human and Peoples’ Rights.

#### ***a. Military Jurisdiction***

In *Vélez Restrepo v. Colombia (2012)*, the IACtHR held that Colombia violated, amongst other articles, Article 13 of the ACHR when military officers assaulted a journalist who was covering an anti-government demonstration. The court wrote 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. Further, the Court found that the attack was meant to silence the journalist which could have a chilling effect on other journalists. In its arguments, the Court considered that States are under the obligation to guarantee the conditions for a free exercise of journalism by providing protection and investigation when violent acts take place. The Court emphasized the obligation to adopt special measures for the protection of journalists given the particular risk of the profession, as well as the duty to investigate and prosecute threats against their family members. Additionally, as it happened in this case, the Court considered that conducting the investigation and prosecution under the military jurisdiction did not satisfy the obligation to protect and investigate. More info [here](#).

#### ***b. Crimes against humanity***

Whenever certain crimes against speakers, as a civilian population, are committed as part of a wide-

spread or systematic attack in furtherance of a State or organizational policy to commit such crimes, they may constitute crimes against humanity. As one of the most serious crimes of concern to the international community as a whole, there is a special interest in their investigation and repression by national and international tribunals. On that note, certain courts have qualified crimes committed against speakers as crimes against humanity, with the consequence that these crimes –being international crimes– are not subject to amnesties or statute of limitations.

For instance, in the *Case of Herzog et al. vs. Brasil (2018)*, the IACtHR found that Brazil was responsible for the violations to the rights to judicial guarantees and judicial protection, to know the truth and to personal integrity of Mr. Herzog’s wife, sons, and mother. According to the IACtHR, the State failed to investigate and prosecute the crimes (murder, torture, and others) committed by State officials against the journalist Vladimir Herzog, who was persecuted by reason of his political preferences in the 70’s. The IACtHR in its judgment recalled that crimes against humanity are imprescriptible and therefore, Brazil’s obligation to investigate and clarify the circumstances in which the journalist was murdered and tortured had never ceased; nonetheless, the State did not comply with it. Moreover, the Court stated that the amnesty law in this case had been used to deprive the victims from their legitimate right to be involved in a trial. Thus, the Court ordered Brazil to: i) re-open the investigation held to clarify Mr. Herzog’s death and torture, ii) establish appropriate measures and provisions to recognize the imprescriptibility of actions filed grounded on crimes against humanity and crimes under international law; iii) organize a public act to acknowledge international responsibility for the facts of this case, and iv) to publish the judgment. Additionally, the Court awarded the victims monetary compensations. More info [here](#).

Also, it is worth mentioning *The Case on Assassination of Colombian Journalist José Emeterio Rivas (2013)*, adjudged by a First Instance Court of Colombia. In April 2003, Colombian radio host José Emeterio Rivas at Calor Estéreo station was murdered by a member of a paramilitary group in retaliation for publicly condemning the group’s activities in the Northern part of Colombia. In August 2013, the Superior Tribunal of Bogotá convicted Rodrigo Pérez Alzate and sentenced him to 8 years in prison pursuant to Act 975 of 2005, commonly known as “Justice and Peace Act,” designed to conduct criminal proceedings against members of paramilitary groups who have met a series of conditions, including demobilization. The Court held that the killing of José Emeterio Rivas was both a serious violation of international humanitarian law, as it occurred during the country’s internal armed conflict, and a crime against humanity. Particularly, the judgment establishes the State’s obligation to protect the free flow of ideas and journalists in the context of armed conflicts, given the vital importance of their activities. The declaration of the crime committed against the journalist as a crime against humanity sets a precedent with a ripple effect that is extremely useful in the fight against impunity for this type of crime. More info [here](#).

### *c. Violence against women journalist*

In the landmark decision *Bedoya Lima v. Colombia (2021)*, the IACtHR declared the Colombian State responsible for the violation of the right to personal integrity, personal liberty, honor and dignity, and freedom of thought and expression of Colombian journalist, Jineth Bedoya. On May 25, 2000, the reporter visited “La Modelo” prison in Bogotá, Colombia to conduct an interview, but before entering

the prison she was abducted, kidnapped and taken to a warehouse where she was sexually abused and assaulted by several men. The IACtHR considered that the State violated its obligation to guarantee Bedoya's safety because it did not implement effective protection measures for the victim, even when it was aware of the risk she faced because of the issues she covered as a female journalist. It is worth highlighting, that the Court argued that States are under a positive obligation to “a) identify and investigate with due diligence the special risks they face as women journalists, as well as the factors that increase the possibility of them being victims of violence, and b) implement a gender-based approach when adopting measures to guarantee the safety of women journalists, including those of a preventive nature, when requested, as well as those aimed at protecting them against reprisals”. Furthermore, the Court considered that the duty of due diligence mentioned must be subjected to strict scrutiny, which encompasses the positive obligation to guarantee the exercise of the journalistic profession, as well as to prevent violence against women. More info [here](#).

#### ***d. Investigation of intellectual perpetrators***

In addition to direct perpetrators of crimes committed against speakers, masterminds or intellectual perpetrators are commonly involved in these heinous acts. Given the special interest that certain State or non-State actors have in silencing dissident voices, whistleblowers, or protestors, these types of crimes are rarely committed by a person without others' aiding and abetting. In this sense, different tribunals have insisted on the obligation that States have to investigate all those who might have been involved in crimes committed against journalists and speakers.

An important decision regarding the obligation to consider—in the context of criminal investigations—an intellectual perpetrator comes from a First Instance Court in Paraguay. In the *Decision on the case of the murder of journalist Pablo Medina (2017)* a Paraguayan Collegiate Court of Judgment found Vilmar “Neneco” Acosta, the former mayor of the district of Ypejhú in the Department of Canindeyú, guilty of ordering the assassination of journalist Pablo Medina. On December 19, 2017, Acosta was sentenced to 29 years in prison and 10 years of security measures. Before his death, Medina published articles on the alleged participation of the Acosta Clan in homicides and drug trafficking in the area. These allegations have also been investigated by the Office of the Public Prosecutor. Leveraging international standards, specifically the IACHR, and the rights enshrined in the Paraguayan National Constitution, the Court reasoned that it was not only a crime against a journalist's right to life, but also a violation of freedom of expression and the right of all citizens to access information. Moreover, States have a fundamental and primary obligation to investigate and punish those responsible for the killing of journalists, including those who instigated it. The unprecedented ruling marked a milestone in Paraguayan jurisprudence on the protection of the right to freedom of expression and the free exercise of journalism. It is the first judgment in Paraguay that sought criminal punishment for the mastermind of a murder against a journalist. More info [here](#).

Additionally, an Appellate Court from Colombia issued a relevant decision in *The Case of Orlando Sierra Hernández (2015)*, where the Criminal Chamber of the Manizales Superior Tribunal convicted political boss Francisco Ferney Tapasco Gonzalez—in addition to all the other co-conspirators and prin-

cipals—as the mastermind of the homicide of journalist Orlando Sierra Hernández 13 years after the crime. The Court noted that the reason for his killing was the publication of a column where he criticized political leaders, and that such political leaders were the mastermind of the crime, the Tribunal overturned the first instance ruling that acquitted them. More info [here](#).

### *e. Impunity*

As noted previously, impunity of cases related to violence against journalists also provokes a chilling effect on other speakers, as well as on society in general. Democratic societies require safe environments where crimes against speakers are duly investigated and prosecuted, and where no tolerance exists for those who pretend to silence their voices through violent means. On these issues, certain tribunals have ruled on the importance that States end impunity for journalists to exercise their profession in a safe environment.

For instance, in the case *Carvajal Carvajal v. Colombia (2018)*, the IACtHR issued a Judgment declaring the State of Colombia internationally responsible for the death of journalist Nelson Carvajal Carvajal and for the failure to guarantee his right to freedom of expression. Carvajal was murdered on April 16, 1998 amid a general atmosphere of impunity for the murders of journalists in Colombia at that time. 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. The Court also held the State responsible for the violation of the right to judicial guarantees for the investigations into the murder, for the violation of the right to personal integrity and right to protection of the family of Carvajal’s relatives. The Court also held that the rights to freedom of movement and residence of some of Nelson Carvajal’s relatives were violated because they were forced to leave their permanent residence out of fear for their safety. Particularly, the Court indicated that “the absence of effective mechanisms to investigate violations of the right to life and the weakness of the justice systems to deal with such violations may lead to a climate of impunity in the States, and in certain contexts and circumstances, could prompt widespread situations or serious patterns of impunity, thus encouraging and perpetuating the recurrence of violations. More info [here](#).”

Similarly, the case *Abdoulaye Nikiema (Norbert Zongo) v. The Republic of Burkina Faso (2014)* by the ACtHPR should also be highlighted. Therein, the ACtHPR held that Burkina Faso violated Articles 1 and 7 of the African Charter on Human and Peoples’ Rights, as well as Article 9(2) (read together with Article 66(2)(c)) of the Revised Economic Community of West African States (ECOWAS) treaty. The Court held that by failing to investigate a journalist’s murder, Burkina Faso chilled the freedom of expression of other journalists. In particular, the Court ruled that allowing those who had committed the murder to escape justice invoked fear in media members and circles, thus paralyzing the free flow of information. In the words of the Court, “under the African human rights system, the state has a duty to ensure remedies where there is a human rights violation” and thus ordered Burkina Faso to reopen the investigation of the journalist’s assassination, locate, prosecute and try the perpetrators. More info [here](#).

## 2. Limiting unreasonable restrictions on free journalism

Procedural abuses, human rights' restraints, and prior censorship are just some of the unreasonable restrictions that States impose on free speech and journalism. Though probably perceived as less violent, these limits heavily interfere with the exercise of the right to freedom of expression by those voices which are essential to democratic societies. [Columbia Global Freedom of Expression Database](#) contains certain cases where different tribunals have identified unreasonable restrictions that States impose on journalists, thereby compromising freedom of expression.

For instance, in *Emin Huseynov v. Azerbaijan (2015)*, the ECtHR held that Azerbaijan violated the prohibition on inhuman or degrading treatment, the right to liberty and security, as well as the right to freedom of assembly and association of Emin Huseynov, an independent journalist. Huseynov had been detained by the police when he identified himself as a journalist during the dispersal of a small gathering held at a privately owned café. On the way to the police station and at the station, Huseynov was threatened and beaten. He brought criminal and civil actions against the police but were not successful at the national level. Particularly, the Court reiterated the fundamental nature of the right to freedom of assembly and freedom of expression in a democratic society, and ruled that “States must not only safeguard the right to assemble peacefully, but must also refrain from applying unreasonable indirect restrictions upon that right.” More info [here](#).

At the national level, an instance worth noting is the *Article 19 v. Eritrea (2007)* case, where the ACmHPR held Eritrea responsible for the violation of Articles 1, 5, 6, 7, 9, and 18 of the African Charter on Human and Peoples' Rights. The case related to the incommunicado detention and ill-treatment of 18 journalists since September 2001, following a public letter published by a dozen senior officials and other members of the ruling elite criticizing the government. The publication of the letter triggered public outrage against the government which led to the retaliatory dismissal of public officials, the arrest of journalists, and a temporary ban of all private newspapers. The victims were never brought before a judge, allowed communication with their respective families, or provided with legal counsel. Particularly, the Respondent State argued that the apprehension of journalists and the restrictions imposed over private newspapers intended to protect and preserve national security and public order. In this respect, the Commission observed that “no political situation justifies the wholesale violation of human rights” and the imposition of such restrictions often inflames tensions. Hence, according to the Commission, international standards and maxims of law must be accorded hierarchy over domestic legal frameworks. In conclusion, the Commission found that Eritrea's domestic laws on the right to freedom of expression did not conform to the Charter, resulting in a violation of Article 9 of The Charter. Importantly, the Commission ruled that the State did not afford due process of law for the protection of the applicant's rights, including their right to equality before the law and to a fair trial. More info [here](#).



With respect to arbitrary anti-terrorism legislation, which also jeopardizes the right to freedom of expression, a case worth noting is *R (on application of Miranda) v. Secretary of State for the Home Department (2016)*. In such case, the England and Wales Court of Appeal ruled that paragraph 2(1) of Schedule 7 to the Terrorism Act 2000 (“TACT”) was not compatible with Article 10 of the European Convention on Human Rights (“ECtHR” or “Convention”) because it did not provide adequate safeguards against its arbitrary exercise. David Miranda, the partner of Glenn Greenwald, the journalist renowned for breaking the Edward Snowden story, was questioned at Heathrow airport and items, including encrypted storage devices, were seized under paragraph 2(1) of Schedule 7 to the Terrorism Act 2000 (“TACT”). Miranda filed a complaint arguing that this action was unlawful. The Court’s main concern was that disclosure of journalistic material undermines the confidentiality that is inherent in such material and which is necessary to avoid the chilling effect of disclosure and to protect Article 10 rights. It said that Schedule 7 powers must be exercised rationally, proportionately and in good faith which provides a degree of protection but that the only safeguard against the powers not being so exercised is the possibility of judicial review proceedings which gives little protection against the damage that is done if journalistic material is disclosed and used in circumstances where this should not happen. More info [here](#).

Similarly, the Islamabad High Court, a constitutional court in Pakistan, held in *Rana Muhammad Arshad v. Pakistan (2020)* that the investigation initiated against journalist Rana Muhammad Arshad, by the Federal Investigating Agency (FIA) by means of an undated notice was an abuse of the procedure established by law, and that the journalist was in fact being “targeted as retaliation for his work.” The Court held that such action was violative of the fundamental right to freedom of speech and expression, free press and a citizen’s right to access information of public importance enshrined in Articles 19 and 19A of the Constitution of the Islamic Republic of Pakistan, 1973. The Court further held that when an investigative agency abuses its coercive powers, it profoundly affects the freedom of press and independence of a journalist, and gives rise to a perception of retaliation to professional functions. With these observations, the Court directed the FIA to frame special guidelines regarding proceedings against persons engaged in the profession of journalism. More info [here](#).

Finally, with respect to prior censorship and violence against journalists, in *The Case of Chilean Journalist Oscar Caceres (2019)*, the Chilean Supreme Court granted protection to journalist Oscar Caceres due to a violation to his right to inform without prior censorship. The journalist was attacked by Jose Ancan, a security guard, when he tried to interview Bishop Eduardo Duran at the Evangelical Cathedral of Santiago. Caceres intended to ask the Bishop his opinion on an investigation conducted by the Public Prosecutor’s Office for an alleged money laundering offense affecting some authorities of the Evangelical Church. The Supreme Court considered Article 19, paragraph 12 of the Chilean Constitution, as well as Article 13 of the ACHR and other international provisions, and found that the journalist’s rights had been violated. Although the Court did not order any specific measures of protection in this case, it highlighted the importance of press conferences in a democratic society and the obligation of States

to facilitate the free exercise of journalism More info [here](#).

### 3. Obligation to take preventive measures

In many situations, journalists and other speakers face constant threats given the risky nature of their work in contexts of widespread violence. As a good practice, some States have adopted mechanisms that aim at providing protection measures for these voices, which are fundamental for democratic societies. But not only at the executive or legislative level have standards advanced for the protection of this guild. National and international courts have also rendered judgments that clarify the obligations of States to take preventive measures that safeguard journalists' and other speakers' safety.

At the European level, the ECtHR has established that journalists' right to life places a positive obligation on the authorities to take preventive measures to protect them from criminal acts. For instance, in *Huseynova v. Azerbaijan (2017)*, the Court found that the Azerbaijani Government had violated a journalist's right to life under Article 2 of the ECtHR by failing to conduct an effective investigation into his murder. Elmar Huseynov, a prominent journalist in Azerbaijan who was known for being critical of the Government, was shot dead in March 2005. The authorities in Azerbaijan instituted a criminal investigation into his murder that lasted over twelve years. Mr. Huseynov's wife filed a complaint to the ECtHR, which subsequently found that the investigation had not been effective, adequate or prompt. The ECtHR was particularly critical of the authorities' refusal to provide Mr. Huseynov's wife with access to the case file, and the fact the authorities did not take all reasonable measures to secure the prosecution of those suspected of being responsible for the murder. It ordered the Azerbaijani Government to pay compensation of 20,000 EUR for moral damage to Mr. Huseynov's wife. Particularly, the Court noted that in appropriate cases Article 2 of the Convention will place a "positive obligation on the authorities to take preventative operational measures to protect an individual or individuals whose lives are at risk from the criminal acts of another individual." For such an obligation to arise, it must be proven that "that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of a particular individual or individuals from the criminal acts of a third party, and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk." The Court also observed that Article 2 also required that there should be some form of effective official investigation following the killing of an individual from the use of force. It noted that an investigation must be effective in the sense that it is capable of identifying and eventually punishing those who are responsible for the crime and that "[t]his is an obligation not of result, but of means." More info [here](#).

Similarly, in *Dink v. Turkey (2010)*, the ECtHR held that the Turkish Government violated Articles 2 (Right to Life), 10 (Freedom of Expression), and 13 (Right to an effective remedy) of the ECtHR when authorities failed to protect journalist Firat Dink, resulting in his murder. Dink was an outspoken member of the Armenian minority in Turkey and was murdered for his

writings. Turkish authorities were aware of an assassination plot preceding Dink's murder and did not act on the information to prevent such crime. Further, the Court found that states have a positive obligation to create a favorable environment for participation in public debate. In particular, the Court considered that States must not only refrain from any interference with an individual's freedom of expression but are also under a "positive obligation" to protect the right to freedom of expression against attack, including by private individuals. This obligation also requires the creation of "an enabling environment by allowing for everyone to take part in public debate and express their thoughts and opinions free from fear even if such thoughts and opinions are contrary to those held by official authorities or a significant segment of the public and even if such opinions shock or disturb the public." More info [here](#).

In *Sergey Sorokin v. Russia*, the ECtHR held the State of Russia responsible for searching a journalist's home and authorizing a seizure of his electronic devices as a direct interference with his right to freedom of expression under Article 10 of the Convention. The case arose after a journalist published an interview on the website of his weekly newspaper, "Zyryanskaya zhizn" with a high-ranking police officer regarding a scandal. A criminal case was subsequently opened against the police officer for disclosing State secrets, and the Syktyvkar Town Court of the Republic of Komi authorized a search of the applicant's flat and the seizure of devices containing information relating to the interview. The journalist's computer, four hard drives, and an audio cassette were seized during the search. As a result, the applicant appealed to the Supreme Court of the Republic of Komi; however, his plea was unsuccessful on grounds that the judicial search and seizure authorization were reasoned and corroborated by materials submitted by the investigator. The ECtHR held that while the search and seizure measures had had a general legal basis in domestic law, there was a lack of procedural safeguards protecting journalistic sources and addressing the seizure and examination of data carriers.

At the Interamerican level, the IACtHR has clarified the content and extent of special protection measures for speakers. For instance, in *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 case arose in the context of an armed conflict in Colombia, during which five women were subjected to harassment and intimidation for their human rights work. One of these women, Mrs. Yarce, was assassinated. The IACtHR examined the case submitted on behalf of the five women, concluding that Colombia had failed to guarantee the necessary means for four of the women to exercise freely their work as human rights defenders. In relation to Mrs. Yarce, the IACtHR held that Colombia failed to guarantee her right to life. Particularly, with respect to human rights defenders, the Court recalled that special protection measures must be: i) in accordance with the functions performed by human rights defenders; ii) assessed depending on the level of risk, in order to adopt and oversee measures in force; and iii) subject to modification in case the intensity of the risk varies. More info [here](#).

Nationally, the Constitutional Court of Colombia decided, in *Carrillo and Barreto v. the National Protection Unit (UNP) (2020)*, to grant protection to the rights to life, integrity and secu-

rity of Saúl David Carrillo and Francisco Barreto, human rights activists, following the decision of the National Protection Department to remove or reduce their security arrangements. The Court found that the irregularities and omissions of the authorities created a reasonable doubt as to the real risk of the plaintiffs. It also evidenced a structural problem regarding the security of social leaders in Colombia. The Court concluded that the National Protection Unit had not properly protected the rights argued by the claimants due to: “(i) [its] failure to comply with the duty to periodically qualify the risk; (ii) the lack of sufficient, clear and specific motivation of the administrative acts; (iii) the absence of objective parameters to adjust a security scheme; and (iv) the disproportionate value given to the lack of results in the criminal process” [para. 111]. Additionally, the Court identified structural problems regarding the security of social leaders that require a comprehensive policy, rather than “disjointed and partial efforts of the State” [para. 196]. Consequently, the Court ordered the National Protection Unit to conduct a new risk level study taking into account the contextual elements of the plaintiffs and the recent patterns of victimization against social leaders. Regarding the structural problem, the Court ordered the National Protection Unit to review and update the criteria for the identification of social leaders, as well as urged different government entities to issue a policy for the protection of social leaders. More info [here](#).

The same Court decided, in *Duque v. Ministry of the Interior and Justice (2008)*, a writ of amparo (acción de tutela) brought by a journalist to protect her right to life and personal integrity, after the state canceled the special protective measures it had previously assigned to her (consisting of an armored car and a driver/bodyguard) although she had been the subject of repeated threats. The measures were canceled when the journalist decided to personally drive the armored vehicle and dispense of the driver/bodyguard service’s alleging she was under surveillance. The Constitutional Court decided to protect the petitioner’s rights and ordered the state agency to determine, together with the journalist, the adequate measures to protect her security. In particular, the Court recalled public officials’ special duties with respect to individuals at extraordinary risk due to their professional activity, which include acknowledging their circumstances and “act with particular care to avoid increasing the risk” and abstaining from making “reckless accusations”. Moreover, the Court considered that if, despite the threats, a journalist decides to continue his or her investigation, it is necessary to design special protection schemes that guarantee “both their security and their work, and the important rights associated with freedom of expression [including] not only every person’s right to free development of personality but also the right to free expression and protection of sources”. More info [here](#).

Finally, in *South African National Editors Forum v. Black First Land First (2017)*, the High Court of South Africa granted a number of orders forbidding the Black First Land First organization from engaging in, among other things, acts of intimidation, harassment, and threats directed at certain journalists. The High Court also ordered that the organization not use social media in an intimidating and threatening way. The case was taken after protesters affiliated with the Black First Land First organization gathered in front of a journalist’s home. They had golf clubs, sticks, and turned off the water supply to the house. They also assaulted two journalists, and sent

tweets targeting certain journalists. Eleven journalists, represented by the South African National Editors Forum, filed an application before the High Court requesting urgent protective orders. The High Court determined that the journalists had a right to the protection of their bodily and physical integrity and to dignity, and to carry out their profession according to their freedom of expression. The Court also determined that a protest that amounts to harassment and intimidation, including following journalists to their places of worship, cannot amount to a peaceful protest. Having determined that there was no alternative remedy available than an injunction, the High Court ordered the Respondents to: (i) refrain from acts that constitute intimidation, harassment, assault, and threats; (ii) refrain from threatening or intimidating “gestures” on social media, including on the website of Black First Land First and their individual Twitter pages; (iii) issue a public statement to all members of the Black First Land First organization expressing that they do not condone acts of intimidation or harassment against any journalist; (iv) and pay the costs of the application. More info [here](#).

#### 4. Award of damages to victims

Full reparation includes restitution, compensation, and satisfaction, either singly or in combination. Regardless of the nature of actors who commit violent attacks against journalists, victims of human rights violations are entitled to reparations. In line with this basic rule, courts have awarded damages to direct and indirect victims of crimes committed against speakers.

For instance, in *Public Prosecutor v. Francesco De Carolis (2018)*, the court of first instance in Syracuse (Italy) sentenced a mafia member to two years and eight months in prison for his death threats to investigative journalist Paolo Borrrometi. In November 2017, De Carolis had sent threatening messages via Facebook Messenger to the journalist who had published several stories about his brother, Luciano, considered to be an important figure in the mafia clan Bottaro-Attanasio. The Court held that the threats had constituted an attempt to commit private violence and had the specific purpose to stop the journalist from reporting. The way used to intimidate him was the one used by the mafia affiliates claiming that their attacks would have remained unpunished. The Court took into account the mafia method of intimidation as an aggravating factor. Non-pecuniary damages were awarded not only to the journalist but also to the Italian Association of Journalists (Ordine dei Giornalisti) and the Federation of the Press (FNSI) in the light of their fight to defend freedom of expression and ensure the safety of journalists reporting about the mafia. More info [here](#).

Moreover, in *Public Prosecutor v. Roberto Spada (2018)*, the court of first-instance in Rome, Italy, sentenced an alleged mafia member to six years in prison for assaulting an investigative journalist during an interview. In November 2017, an Italian broadcast journalist, Daniele Piervincenzi, had gone to a gym in Ostia, Rome, to interview a supposed local mafioso about his support for a neo-fascist political party, Casapound, which had made considerable gains in the area during the municipal elections. While Mr. Piervincenzi was asking about Mr. Spada’s connections with the local mafia, Mr. Spada headbutted the journalist and beat him with a club.

Mr. Spada was subsequently charged with having caused personal injury and private violence. The first-instance court held that the attack was intended to stop Mr. Piervincenzi from carrying out his journalistic activities. The court also found that the methods used to intimidate Mr. Piervincenzi were associated with typical acts of aggression used by the mafia, and they were an aggravating factor mandating a higher penalty. In addition to the prison sentence, the court also awarded damages to the journalist, two journalism NGOs, and two NGOs working on stopping the mafia. For the Region of Lazio and the City of Rome, the court found that Mr. Spada's behavior had created a climate of fear for citizens and awarded them damages also. More info [here](#).

A final example on this note is the *Central Bureau of Investigation v. Tangappan Joseph (2018)* case, before a specialized court of India. The Maharashtra Control of Organized Crime in India sentenced nine persons to life imprisonment and hefty fines for conspiring to murder senior journalist Jyoti Kumar Dey. The Court had to decide whether it was proved beyond reasonable doubt that the accused persons acted in concert to assassinate Mr. Dey. The Court reasoned that “all conspirators are liable for the acts of each other of the crime or crimes which have been committed as a result of the conspiracy” and “that it was not necessary that each member of the conspiracy must know all the details of the conspiracy”. The Court held nine of the accused persons guilty of murdering Mr. Jyoti Dey and sentenced them to imprisonment for life along with hefty fines of Rs. 500,000 (\$7, 500 approx.) each to be paid to the sister of the deceased person who relied solely on the deceased person for her survival. More info [here](#).

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