

## Factsheet

# Chilling Effect on Freedom of Expression: Regional Human Rights Courts Perspective

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This Factsheet is meant to complement our upcoming book chapter *Global Standards on the Chilling Effect: A Comparative Analysis of Case Law from the African, European, and Inter-American Human Rights Systems*, by highlighting how regional human rights courts have understood and addressed the chilling effect. The jurisprudence included here is not exhaustive; rather, it presents a selection of exemplary cases that illustrate key issues on chilling effect. These decisions—drawn from the Columbia Global Freedom of Expression [Case Law Database](#)—cover the African Court on Human and Peoples’ Rights (ACtHR), the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR) as well as selected decisions from the African Commission on Human and People’s Rights (ACmHPR), the Community Court of Justice of the Economic Community of West African States (ECOWAS) and the East African Court of Justice (EACJ).<sup>2</sup> Readers can access further case analysis and learn more about how chilling effect concerns manifest globally by consulting our database.

State authorities, public officials, and private actors can create a chilling effect on freedom of expression through legal measures, threats, or violence. This effect discourages journalists, human rights defenders, academics, artists, whistleblowers, and ordinary citizens from speaking on matters of public interest. While explicit censorship is well-known, subtle and indirect forms of repression—including vague or overbroad laws, disproportionate penalties, or the failure to punish violence—can deter debate and critical reporting. Regional human rights courts have recognised that such measures undermine democratic debate and violate the right to seek, receive, and impart information. This Factsheet sets out how these courts define the chilling effect, and illustrates its main elements through selected case excerpts.

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<sup>2</sup> Although primarily established to address issues of regional integration, both the ECOWAS Court and the East African Court of Justice have developed a human rights jurisprudence. Their evolving mandates allow them to interpret and apply human rights provisions, including those related to freedom of expression, thus justifying their inclusion in this analysis.

# Global Freedom of Expression

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## What is the Chilling Effect?

The “chilling effect” describes deterrence mechanisms that undermine freedom of expression by creating fear and uncertainty, leading to self-censorship. State actions or laws that impose vague restrictions, excessive costs, or disproportionate penalties can discourage individuals and groups from speaking out—even on matters of public interest.

### A. Concepts / Definitions

#### [Altuğ Taner Akçam v. Turkey \(ECtHR\)](#)<sup>3</sup>

[81] The Court further observes that thought and opinions on public matters are of a vulnerable nature. Therefore the very possibility of interference by the authorities or by private parties acting without proper control or even with the support of the authorities may impose a serious burden on the free formation of ideas and democratic debate and have a chilling effect.

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<sup>3</sup> The ECtHR held that the right to freedom of expression of a Turkish historian had been violated by the permanent threat of prosecution caused by repeated laying of criminal charges against him.

### Leguizamón v. Paraguay (IACtHR)<sup>4</sup>

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[56] However, Santiago Leguizamón’s murder and the violations of his freedom of thought and expression as an individual had an impact not only on him, but also on Paraguayan society and on his fellow journalists, on whom it had a chilling effect. It was a violation of the collective right to freedom of expression, as it impacted society’s possibility of being made aware of the stories and news that Mr. Leguizamón reported and the opinions he expressed, because of his murder, and those of other journalists who were investigating.

### Baraona Bray Sosa v. Chile (IACtHR)<sup>5</sup>

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[121] The Court notes with concern that the sanction imposed on Mr. Baraona had a chilling effect on him and was disproportionate to the objective pursued. The Court finds that the application of the criminal offense of serious insults in this case constituted an indirect means of restricting freedom of expression by affecting him both personally and socially.

### Herrera-Ulloa v. Costa Rica (IACtHR)<sup>6</sup>

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[133] The effect of the standard of proof required in the judgment is to restrict freedom of expression in a manner incompatible with Article 13 of the American Convention, as it has a deterrent, chilling and inhibiting effect on all those who practice journalism. This, in turn, obstructs public debate on issues of interest to society.

### M.D. and others v. Spain (ECtHR)<sup>7</sup>

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[82] The Court carries out a case-by-case examination of situations that may have a restrictive impact on the enjoyment of freedom of expression. It considers that mere allegations that any contested measures had a “chilling effect”, without clarifying in which specific situation such an effect occurred, is not sufficient to constitute interference for the purposes of Article 10 of the Convention (see *Schweizerische Radio- und Fernsehgesellschaft and Others v. Switzerland*, (dec.), no. [68995/13](#), § 72, 12 November 2019).

[90] Therefore, no type of sanction or chilling effect can be discerned from the mere fact that disciplinary proceedings took place, given their outcome and also the fact that they were not initiated *ex officio* by the General Council of the Judiciary but rather as a consequence of a complaint having been lodged by a third party.

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<sup>4</sup> The IACtHR found that the State of Paraguay was responsible for the murder of journalist Santiago Leguizamón Zaván and violated the personal and collective right to freedom of thought and expression, as enshrined in Article 13 of the American Convention of Human Rights.

<sup>5</sup> The IACtHR found that Chile violated the right to freedom of expression, under Article 13 of the American Convention on Human Rights, of Mr Carlos Baraona Bray —an advocate for environmental causes who was convicted by national courts for accusing a politician of supporting deforestation.

<sup>6</sup> IACtHR held that Costa Rica’s criminal defamation law violated Article 13 of the American Convention on Human Rights, which guarantees freedom of expression. Journalist Mauricio Herrera-Ulloa published seven articles exposing the corruption of a Costa Rican public official, for which he was convicted of criminal defamation.

<sup>7</sup> The ECtHR held that the compiling of files by the police in Catalonia on judges who had expressed views on that region’s independence from Spain infringed the judges’ right to privacy. The case concerned the compiling of files by the police in Catalonia on judges who participated in the authorship of a manifesto expressing that under the Constitution and international law, Catalan people should have a say on the region’s independence.

### B. Different terms to describe similar phenomena

#### Ricardo Canese v. Paraguay (IACtHR)<sup>8</sup>

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[206] To establish compensation for non-pecuniary damage, the Court will take into account that the criminal proceedings filed against Mr. Canese, the criminal conviction imposed by the competent courts, and the restriction of his right to leave the country during almost eight years and four months affected his professional activities and had an inhibiting effect on his exercise of freedom of expression. It should be recalled that the violations of Mr. Canese's rights established in this judgment originated from the dissemination of statements he made as a candidate to the presidency of the Republic, in the context of an electoral campaign, when he referred to matters of public interest concerning another candidate.

#### Perozo v. Venezuela (IACtHR)<sup>9</sup>

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[361] Therefore, the set of proven facts that affected the alleged victims occurred when they were trying to perform their jobs. At least in most of the facts that were proven (*supra* para. 279) on several occasions and in certain situations or events, which could have been of public interest or important for the news in order to be eventually imparted, the possibilities of the alleged victims to seek and receive information, as news team, were restricted or eliminated by the acts of private individuals who attacked, intimidated or threatened them. Furthermore, it is clear for the Tribunal the intimidating or frightening effect that such incidents, as other addressed to the television station Globovisión, like the setting off of explosives or tear-gas canisters at the headquarters of the television station, could have caused to the people who were present there and who were working at that moment in such media.

#### Grijalva Bueno v. Ecuador (IACtHR)<sup>10</sup>

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[161] The State should ensure that appropriate conditions are in place so that public officials can freely denounce such matters without being subjected to threats or other types of harassment. Therefore, as the Court has pointed out with respect to human rights defenders, *mutatis mutandis*, reprisals produce a social effect of harassment and fear, resulting in intimidation, since they silence and inhibit the work of these persons. In this sense, it is essential that the State does not misuse punitive or criminal proceedings - or military proceedings - such as in the instant case, to subject public officials to groundless trials and it must also safeguard judicial guarantees. Therefore, in the instant case, the State should have provided proper protection so that Mr. Grijalva could freely report the human rights violations of which he was aware without retaliation.

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<sup>8</sup> The IACtHR found the eight-year-long criminal defamation proceedings brought against a Paraguayan presidential candidate, Ricardo Canese, to be a violation of his right to freedom of expression under Article 13 of the American Convention on Human Rights.

<sup>9</sup> The case concerned the Venezuelan government's failure to protect journalists and media workers of RCTV from threats, harassment, and physical attacks by private actors, violating their rights to personal integrity, freedom of expression, and judicial protection.

<sup>10</sup> The case concerned the State's failure to protect journalist Grijalva Bueno from threats and violence due to his work, and its failure to investigate the attacks, violating his rights to personal integrity, freedom of expression, and judicial protection.

## Chilling effect by category: State Actions and Acts restricting Freedom of Expression

### A. Criminal defamation/civil defamation

#### Agnes Uwimana-Nkusi v. Rwanda (ACmHPR)<sup>11</sup>

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[217] [...] The Commission has recognized the serious abuses perpetrated under the colour of the criminal defamation laws and has called for their repeal, concluding that criminal defamation laws are an affront to the right to freedom of expression. This position is consistent with international jurisprudence and reflects the growing recognition that laws imposing criminal penalties for defaming or insulting public figures reflect the policy of governments to stifle opposition and limit public debate. It is the Commission's view that criminal defamation and insult laws not only violate Article 9 of the African Charter but impede development in open and democratic societies. As such, laws of such a nature, *inter alia*, constitute a serious interference with freedom of expression, impeding the public's right to access information, and the role of the media as a watchdog, preventing journalists and media practitioners from practicing their profession in good faith, without fear or censorship.

#### Nikula v. Finland (ECtHR)<sup>12</sup>

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[43] The Government conceded that the threat of an action for defamation, whether in the form of a private prosecution initiated by a civil servant or on behalf of the public, could have an inhibiting effect on the freedom of expression of counsel, who might be inclined not to voice even appropriate criticism. In the specific circumstances, however, the interference in question had not been disproportionate to the legitimate aim pursued, having ultimately taken the form of a mere conviction without any resultant criminal penalty, and the domestic courts had not therefore exceeded their margin of appreciation.

#### Eon v. France (ECtHR)<sup>13</sup>

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[60] The Court further notes that by adopting an abrupt phrase that had been used by the President himself and had attracted extensive media coverage and widespread public comment, much of it humorous in tone, the applicant chose to express his criticism through the medium of irreverent satire. The Court has observed on several occasions that satire is a form of artistic expression and social commentary which, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate. Accordingly, any interference with the right of an artist – or anyone else – to use this means of expression should be examined with particular care [...].

[61] The Court considers that criminal penalties for conduct such as that of the applicant in the present case are likely to have a chilling effect on satirical forms of expression relating to topical issues. Such forms of expression

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<sup>11</sup> The case concerned the conviction and further sentencing of journalists Agnes Uwimana-Nkusi and Saidati Mukakibibi following the publication of three articles reporting, *inter alia*, on Rwanda's government's shortcomings, alleged corruption charges among high ranking government officials, and the ethnic division occurring at the time of the events.

<sup>12</sup> The case concerned the criminal conviction of a defense lawyer for defamation after she criticized a public prosecutor in court, which the ECtHR found violated her right to freedom of expression under Article 10 of the Convention.

<sup>13</sup> The case concerned the criminal conviction of a protester for insulting the President of France by holding a satirical sign, which the ECtHR found violated his right to freedom of expression under Article 10 of the Convention.

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can themselves play a very important role in open discussion of matters of public concern, an indispensable feature of a democratic society [...].

### OOO Memo v. Russia (ECtHR)<sup>14</sup>

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[45] Allowing executive bodies to bring defamation proceedings against members of the media places an excessive and disproportionate burden on the media and could have an inevitable chilling effect on the media in the performance of their task as a purveyor of information and public watchdog (see, *mutatis mutandis*, *Dyuldin and Kislov v. Russia*, no. 25968/02, § 43, 31 July 2007).

### Moya Chacón v. Costa Rica (IACtHR)<sup>15</sup>

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[83] However, this Court notes with concern the existence in Costa Rica of criminal laws directed exclusively at the exercise of journalistic activity, as is the case with the aforementioned Press Law. Although the State reported that, in a ruling dated December 18, 2009, the Third Chamber of the Supreme Court of Justice declared that Article 7 of the aforementioned law had been tacitly repealed, the validity of this type of criminal law could have had an intimidating effect on the dissemination of information of public interest. [Our translation]

### Fontevicchia and D'Amico v. Argentina (IACtHR)<sup>16</sup>

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[74] Finally, the Court has established that the measure of further liability imposed domestically, did not satisfy the requirement that it be necessary in a democratic society and therefore it will not consider whether the amount of the civil penalty in this case was disproportionate or not. Notwithstanding the foregoing, the Court considers it appropriate to reiterate that the fear of a disproportionate civil sanction may clearly be as or more intimidating and inhibiting for the exercise of freedom of expression than a criminal sanction, as it has the potential to compromise the personal and family life of those who complain, or as in the present case, those who publish information about a public official, with the obvious and unmerited result of self-censorship for the affected and for other potential critics of the performance of a public official.

## B. Violence against journalists/activists/human rights defenders

### Abdoulaye Nikiema (Norbert Zongo) v. The Republic of Burkina Faso – Joint Declaration of Judges (ACHPR)<sup>17</sup>

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<sup>14</sup> The case concerned the arbitrary blocking of the online media outlet Memo.ru by Russian authorities without proper judicial oversight, which the ECtHR found violated the right to freedom of expression and access to information under Article 10 of the Convention.

<sup>15</sup> The IACtHR found the State of Costa Rica responsible for violating the right to freedom of expression of two journalists, resulting from the imposition of a civil sanction on the journalist for disseminating inaccurate information.

<sup>16</sup> Mr. Jorge Fontevicchia and Mr. Hector D'Amico, the director and editor of a magazine, respectively, were held civilly liable over a series of publications. The published information concerned the unrecognized son of the then president of Argentina, Carlos Saul Menem, with a congresswoman, Menem's relationship with the congresswoman and the relationship between the president with his son

<sup>17</sup> The court held that by failing to investigate a journalist's murder, Burkina Faso chilled the freedom of expression of other journalists.



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[2] The Court indeed considered that "the Respondent State's failure to identify and send for trial the assassins of Norbert Zongo has provoked fear and anxiety within the media circles" (para. 186 of the judgment), and that for this reason, "the Respondent State has violated the right to freedom of expression of journalists" as guaranteed by the two above-mentioned provisions (para. 187 of the judgment).

[3] We do admit that this failure by the Respondent State could have indeed generated a certain degree of fear and anxiety within the media profession in general, and somehow produced an "intimidating effect" on the freedom of expression of journalists (see paragraphs 173 and 176 of the judgment).<sup>18</sup>

### Leguizamón v. Paraguay (IACtHR)<sup>19</sup>

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[56] However, Santiago Leguizamón's murder and the violations of his freedom of thought and expression as an individual had an impact not only on him, but also on Paraguayan society and on his fellow journalists, on whom it had a chilling effect. It was a violation of the collective right to freedom of expression, as it impacted society's possibility of being made aware of the stories and news that Mr. Leguizamón reported and the opinions he expressed, because of his murder, and those of other journalists who were investigating.

### C. Whistleblowers

### Halet v. Luxembourg (ECtHR)<sup>20</sup>

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[149] The Court notes at the outset that sanctions against whistle-blowers may take different forms, whether professional, disciplinary or criminal. In this regard, it has already had occasion to recognize that an applicant's removal or dismissal without notice constituted the heaviest sanction possible under labor law (see *Gawlik*, cited above, § 84, and the case-law references therein). It has also emphasized that a sanction of this type not only had negative repercussions on the applicant's career but could also have a chilling effect on other employees and discourage them from reporting any improper conduct, a chilling effect which was amplified in view of the widespread media coverage which certain cases could attract (see *Guja*, cited above, § 95, and *Heinisch*, cited above, § 91). It has also pointed out that this chilling effect works to the detriment of society as a whole (see *Heinisch*, cited above, § 91).

### D. Media regulations/licensing

### Media Rights Agenda and others v. Nigeria (ACmHPR)<sup>21</sup>

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<sup>18</sup> Joint Declaration of Judges Gérard Niyungeko, Fatsah Ouguergouz, El Hadji Guisse and Kimelabalou Aba

<sup>19</sup> The IACtHR found that the State of Paraguay was responsible for the murder of journalist Santiago Leguizamón Zaván and violated the personal and collective right to freedom of thought and expression, as enshrined in Article 13 of the American Convention of Human Rights.

<sup>20</sup> The Grand Chamber of the ECtHR that Luxembourg violated the freedom of expression of Raphaël Halet, a former employee of PricewaterhouseCoopers—and a whistleblower involved in the Luxleaks scandal—who faced criminal convictions for disclosing tax-related documents to the media, exposing favorable tax agreements between the Company and Luxembourg authorities.

<sup>21</sup> The ACmHPR held that Nigeria violated the rights to receive information and freedom of expression by issuing a Decree that granted the Newspaper Registration Board broad discretionary powers when deciding whether to register a newspaper

[56] [...] the amount of the registration fee should not be more than necessary to ensure administrative expenses of the registration, and the pre-registration fee should not exceed the amount necessary to secure against penalties or damages against the owner, printer or publisher of the newspaper. Excessively high fees are essentially a restriction on the publication of news media. In this case, the fees required for registration, while high, are not so clearly excessive that they constitute a serious restriction.

[57] Of more concern is the total discretion and finality of the decision of the registration board, which effectively gives the government the power to prohibit publication of any newspapers or magazines they choose. This invites censorship and seriously endangers the rights of the public to receive information, protected by Article 9.1. There has thus been a violation of Article 9.1.

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### Granier (Radio Caracas Televisión) v. Venezuela (IACtHR)<sup>22</sup>

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[162] In this regard, the Court indicates that the purpose of this paragraph is to provide examples of more subtle forms of restriction of the right to freedom of expression by State authorities or individuals. Indeed, in previous cases, this Court has had the opportunity to declare the indirect restriction produced, for example, by a decision that “annulled the citizenship” of the majority shareholder of a television channel, or by “criminal proceedings, the consequent sentence imposed [...] for more than eight years and the restrictions to leave the country for eight years” against a presidential candidate.

#### E. Detention and criminal proceedings

### Taranenko v. Russia (ECtHR)<sup>23</sup>

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[95] The Court therefore concludes that, although a sanction for the applicant’s actions might have been warranted by the demands of public order, the lengthy period of detention pending trial and the long suspended prison sentence imposed on her were not proportionate to the legitimate aim pursued. The Court considers that the unusually severe sanction imposed in the present case must have had a chilling effect on the applicant and other persons taking part in protest actions [...].

#### F. Disciplinary proceedings

### López Lone v. Honduras (IACtHR)<sup>24</sup>

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<sup>22</sup> The IACtHR determined that the government of Venezuela denied RCTV’s license because of their critical views towards the government. The Court concluded that the state’s action was in contravention of Article 13 of the American Convention of Human Rights that guarantees the right to freedom of expression.

<sup>23</sup> The ECtHR held that a year’s pre-trial detention and a three-year suspended prison sentence for a criminal charge of mass disorder in Russia was a violation of the rights to freedom of expression and assembly.

<sup>24</sup> During the military coup of 2009 in Honduras, four sitting justices from the Association of Judges for Democracy expressed their opposition against the overthrow of President Manuel Zelaya. In part, they participated in adopting a legal position on behalf of the association that publicly criticized the role of Honduras’ Supreme Court in ousting the president and paving the way for a military coup. On May 12, 2010, following an investigation against the judges by the Inspector of Tribunals, the Plenary of the Supreme Court ordered their dismissal, and later denied their petition for reconsideration



[176] Additionally, this Court has indicated that criminal proceedings may have “an intimidating or inhibiting effect on the exercise of freedom of expression, contrary to the state obligation to ensure the free and full exercise of this right in a democratic society.” The application of this consideration depends on the specific facts of each case. In the instant case, even though criminal proceedings are not involved, the Court considers that the mere fact of instituting disciplinary proceedings against the judges and the justice based on their actions against the coup d’état and in favor of the rule of law could have had this intimidating effect and, therefore, constituted an undue restriction of their rights.

## Wille v. Liechtenstein (ECtHR)<sup>25</sup>

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[50] The announcement by the Prince of his intention not to reappoint the applicant to a public post constituted a reprimand for the previous exercise by the applicant of his right to freedom of expression and, moreover, had a chilling effect on the exercise by the applicant of his freedom of expression, as it was likely to discourage him from making statements of that kind in the future.

## Chilling effect by its targets: categorizing common trends

### A. Journalists

## Federation of African Journalists and Others v Republic of Gambia (ECOWAS)<sup>26</sup>

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[43] The Court therefore concludes that, although a sanction for the applicant’s actions might have been warranted by the demands of public order, the lengthy period of detention pending trial and the long suspended prison sentence imposed on her were not proportionate to the legitimate aim pursued. The Court considers that the unusually severe sanction imposed in the present case must have had a chilling effect on the applicant and other persons taking part in protest actions [...].

## Sanoma Uitgevers B.V. v. Netherlands (ECtHR)<sup>27</sup>

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[71] While it is true that no search or seizure took place in the present case, the Court emphasises that a chilling effect will arise wherever journalists are seen to assist in the identification of anonymous sources.

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<sup>25</sup> The applicant, a Liechtenstein national was the President of the Administrative Court. In a public lecture, he presented his personal views that the constitutional court has a right to interpret the constitution in case of disagreement between the Prince and the Diet. Unhappy and in disagreement with this comment, the Prince sent the applicant a series of letters expressing his intention to not re-appoint the applicant, should he be proposed by the Diet. In 1997, when the applicant was re-nominated for the position, the Prince refused re-appointment.

<sup>26</sup> The Community Court of Justice of the Economic Community of West African States (ECOWAS Court) held that the offences of sedition, false news and criminal defamation in The Gambia Criminal Code violated the right to freedom of expression under international law. The case was taken by one representative organisation, the Federation of African Journalists, and four other Gambian journalists living in exile who had been prosecuted and detained under The Gambia’s oppressive media laws. Two of the individual journalists had also been tortured while in detention.

<sup>27</sup> The ECtHR held that the order issued to a magazine by the public prosecutor of Amsterdam to hand over photographs was a violation of the journalists’ rights to protect their sources.

### Khadija Ismayilova v. Azerbaijan (ECtHR)<sup>28</sup>

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[259] Moreover, the Court has repeatedly stressed that interference with freedom of expression may have a “chilling effect” on the exercise of that freedom (see, among other authorities, *Baka v. Hungary* [GC], no. 20261/12, § 160, 23 June 2016), and this is more so in cases of serious crimes committed against journalists, making it of utmost importance for the authorities to check a possible connection between the crime and the journalist’s professional activity (see *Huseynova*, cited above, § 115, and *Mazepa and Others*, cited above, § 73).

### Palacio Urrutia v. Ecuador (IACtHR)<sup>29</sup>

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[124] Thus, the Court considers that the sanction imposed on the directors of *El Universo* affected their ability to exercise their freedom of expression, also affecting the staff of the newspaper. In this regard, the statements of the alleged victims and witnesses show that the lawsuit and the conviction modified the content of the articles published by the newspaper, the editorial work, the work environment, generating fear in the face of the potential loss of jobs from the possible bankruptcy of the newspaper due to the amount of the imposed sanction. In this sense, the Court also considers that the imposition of the sentence on the publisher *El Universo*, in which the article “NO to lies” was disseminated, on Mr. Palacio Urrutia and his directors, generated a chilling effect that inhibited the circulation of ideas, opinions and information by third parties, constituting an infringement of the right to freedom of expression.

#### B. Female journalist

### Bedoya Lima v. Colombia (IACtHR)<sup>30</sup>

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[113] In sum, another consequence of the intimidating effect of the facts described in this section is that the public loses relevant voices and points of view, women's voices and points of view in particular, which, in turn, leads to a widening of the gender gap in the journalism profession and attacks pluralism as an essential element of freedom of expression and democracy.

#### C. Politician

### Article 19 v. Eritrea (ACmHPR)<sup>31</sup>

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<sup>28</sup> The ECtHR 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.

<sup>29</sup> The case concerned the criminal and civil sanctions imposed on journalists for publishing an opinion article critical of President Rafael Correa, which the IACtHR found violated their right to freedom of expression under Article 13 of the American Convention, emphasizing the chilling effect of disproportionate penalties on public interest speech.

<sup>30</sup> The case was initiated by a lawsuit against a non-profit corporation, Pointes Protection, because its president had testified before the Ontario Municipal Board against a company’s development plan, due to its negative impact. The Court held that the proceedings lacked substantial merit with no real prospect of success and highlighted that the expression of Pointes Protection related to matters of public interest and deserved protection.

<sup>31</sup> The case concerned 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.

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[108] No political situation justifies the wholesale violation of human rights; indeed general restrictions on rights such as the right to free expression and to freedom from arbitrary arrest and detention serve only to undermine public confidence in the rule of law and will often increase, rather than prevent, agitation within a State. The Commission draws on the findings of the UN Human Rights Committee: The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights.

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### D. Activist

#### Lagos del Campo v. Peru (IACtHR)<sup>32</sup>

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[160] Similarly, it has been interpreted that the representatives of the workers of an undertaking should enjoy effective protection against any act that could prejudice them, including dismissal based on their condition as workers' representatives, or on their activities arising from this representation. Also, the national authorities must ensure that disproportionate penalties do not dissuade the representatives from seeking to express and defend the workers' interests.

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### E. Whistleblower

#### Viteri v. Ecuador (IACtHR)<sup>33</sup>

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[96] Likewise, States must establish protection mechanisms for whistleblowers in such a way that their identity and the confidentiality of the report are protected, measures are taken to preserve their personal integrity, they are prevented from being punished or unjustifiably dismissed because of the reports, provide them with legal advice in relation to the report, protect them from subsequent civil or criminal liability when the report was made under a reasonable belief that the irregularity had occurred, and provide for corrective measures to respond to acts of retaliation. This protection should include preventive measures in the event of a real and immediate risk to the whistleblower. The Court emphasizes the importance of protection against retaliation for acts of corruption in order to promote a culture of public accountability and integrity and to avoid an intimidating effect on potential future whistleblowers. [Our translation]

*See also on this issue Halet v. Luxembourg (ECtHR) included above.*

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### F. Human Rights Defender

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<sup>32</sup> The IACtHR found a violation of a union organizer's freedom of expression after he was fired for criticizing his employer in a magazine article. Alfredo Lagos del Campo brought the case after an appellate court found his dismissal "lawful and justified" for harming the reputation of the company he worked for by alleging management interference into the union's election process.

<sup>33</sup> The case was initiated by a lawsuit against a non-profit corporation, Pointes Protection, because its president had testified before the Ontario Municipal Board against a company's development plan, due to its negative impact. The Court held that the proceedings lacked substantial merit with no real prospect of success and highlighted that the expression of Pointes Protection related to matters of public interest and deserved protection.

**Granier (Radio Caracas Televisión) v. Venezuela** (IACtHR)<sup>34</sup>

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[164] The Court also recalls that, to result in a violation of Article 13(3) of the Convention, the means or method must effectively indirectly restrict the communication and circulation of ideas and opinions. In addition, the Court reiterates that Article 13(3) of the Convention imposes obligations of guarantee on the State, even as regards relations between private individuals, because it not only covers indirect government restrictions, but also private controls that produce the same result. In this regard, the Court underlines that indirect restriction may have a dissuasive, frightening and inhibiting effect on all those who exercise the right to freedom of expression, which, in turn, prevents public debate on issues of interest to society.

**Miembros de la Corporación Colectivo de Abogados "José Alvear Restrepo" v. Colombia** (IACtHR)<sup>35</sup>

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[744] Finally, the Court emphasizes that violence against defenders has a chilling effect, especially when crimes go unpunished. In this regard, case law has emphasized that threats and attacks against the integrity and lives of defenders, and the impunity of those responsible for these acts, are particularly serious because they have not only an individual but also a collective effect, insofar as society is prevented from knowing the truth about the situation of respect for or violation of the rights of persons under the jurisdiction of a given State. [Our translation]

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G. Protesters

**Taranenko v. Russia** (ECtHR)<sup>36</sup>

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[95] The Court therefore concludes that, although a sanction for the applicant's actions might have been warranted by the demands of public order, the lengthy period of detention pending trial and the long suspended prison sentence imposed on her were not proportionate to the legitimate aim pursued. The Court considers that the unusually severe sanction imposed in the present case must have had a chilling effect on the applicant and other persons taking part in protest actions [...].

*This case has also been included under E. Detention and criminal proceedings*

**Mehmet Hasan Altan v. Turkey** (ECtHR)<sup>37</sup>

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<sup>34</sup> The IACtHR determined that the government of Venezuela denied RCTV's license because of their critical views towards the government. The Court concluded that the state's action was in contravention of Article 13 of the American Convention of Human Rights that guarantees the right to freedom of expression.

<sup>35</sup> The IACtHR declared Colombia internationally responsible for human rights violations, including the right to freedom of expression and the right to privacy, committed against members of the Corporación Colectivo de Abogados "José Alvear Restrepo" (hereinafter "CAJAR"), a non-governmental organization dedicated to the defense of human rights in Colombia. Over several decades, CAJAR members faced arbitrary intelligence operations, harassment, defamation, and threats, including some acts involving direct state participation. These actions formed part of a broader pattern of persecution against human rights defenders in Colombia, which severely disrupted CAJAR's work.

<sup>36</sup> The ECtHR held that a year's pre-trial detention and a three-year suspended prison sentence for a criminal charge of mass disorder in Russia was a violation of the rights to freedom of expression and assembly.

<sup>37</sup> The ECtHR found that Turkey had violated journalist Mehmet Hasan Altan's freedom of expression after continuing to detain him despite a January 11, 2018 order of Turkey's Constitutional Court for his release. Mr. Altan hosted a political talk show on Can Erzincaan TV that discussed current political topics in Turkey. The Turkish government shut down the news

[212] The Court further notes that the pre-trial detention of anyone expressing critical views produces a range of adverse effects, both for the detainees themselves and for society as a whole, since the imposition of a measure entailing deprivation of liberty, as in the present case, will inevitably have a chilling effect on freedom of expression by intimidating civil society and silencing dissenting voices. The Court further notes that a chilling effect of this kind may be produced even when the detainee is subsequently acquitted.

#### Norín Catrimán v. Chile (IACtHR)<sup>38</sup>

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[375] The Court has found that, as traditional authorities of the Mapuche indigenous people, Norín Catrimán, Pichún Paillalao, and Ancalaf Llaupe play a decisive role in communicating the interests and in the political, spiritual, and social direction of their respective communities (*supra* para. 78). The imposition of the aforementioned accessory penalty has restricted their ability to participate in the dissemination of opinions, ideas, and information through their work in the media, which could limit the scope of their right to freedom of thought and expression in the exercise of their functions as leaders or representatives of their communities. This, in turn, has a negative impact on the social dimension of the right to freedom of thought and expression, which, according to the Court's jurisprudence, implies the right of all to know the opinions, stories, and news reported by third parties. [Our translation]

#### Case of Women Victims of Sexual Torture in Atenco v. Mexico (IACtHR)<sup>39</sup>

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[172] (...) In addition, as in the case of other rights with a social dimension, he underscored that the violation by the authorities of the rights of the participants in a meeting or assembly, “has a seriously chilling effect on future meetings or assemblies,” because people may choose to abstain in order to protect themselves from these abuses; in addition to being contrary to the State obligation to facilitate and to create favorable environments for people to be able to enjoy their right of assembly.

#### H. Judges/prosecutor/Lawyers

#### Kyprianou v. Cyprus (ECtHR)<sup>40</sup>

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[181] Accordingly, it is the Court's assessment that such a penalty was disproportionately severe on the applicant and was capable of having a “chilling effect” on the performance by lawyers of their duties as defence counsel (see *Nikula*, cited above, § 49, and *Steur*, cited above, § 44). The Court's finding of procedural unfairness in the

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channel and a special prosecutor brought terrorism charges against Mr. Altan for allegedly supporting the 2016 attempted military coup.

<sup>38</sup> The IACtHR decided that a conviction of members of the indigenous Mapuche community in Chile – including the prohibition to own, direct or manage social media – violated the right to freedom of thought and expression.

<sup>39</sup> The IACtHR found that Mexico had violated the human rights of eleven women who, on May 3 and 4 of 2006 had been arrested in the context of a public demonstration. The women were subjected to physical and sexual abuse, were beaten, threatened, and tortured while they were being arrested, and when they were being transferred to a detention facility and in the facility itself. They were sexually assaulted and many of them were raped.

<sup>40</sup> The ECtHR held Cyprus responsible for violating the European Convention on Human Rights after convicting a lawyer for contempt of court. The lawyer was sentenced to five days' imprisonment after a court found that his cross-examination of a witness was contemptuous. After challenging the conviction in the domestic courts, the lawyer approached the European Court, which held that the conviction was disproportionate.

summary proceedings for contempt (see paragraphs 122-35 above) serves to compound this lack of proportionality (see paragraph 171 above).

### López Lone v. Honduras (IACtHR)<sup>41</sup>

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[176] Additionally, this Court has indicated that criminal proceedings may have “an intimidating or inhibiting effect on the exercise of freedom of expression, contrary to the state obligation to ensure the free and full exercise of this right in a democratic society.” The application of this consideration depends on the specific facts of each case. In the instant case, even though criminal proceedings are not involved, the Court considers that the mere fact of instituting disciplinary proceedings against the judges and the justice based on their actions against the coup d’état and in favor of the rule of law could have had this intimidating effect and, therefore, constituted an undue restriction of their rights.

*This case has also been included under F. Disciplinary Proceedings*

#### I. Authors

### Macatè v. Lithuania (ECtHR)<sup>42</sup>

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[182] The Court is of the view that the restrictions imposed on a children’s book depicting various minorities, in particular its labelling as harmful to minors under the age of 14, affected the applicant’s reputation as an established children’s author and were liable to discourage her and other authors from publishing similar literature, thereby creating a chilling effect (see, *mutatis mutandis*, *Godlevskiy*, cited above, § 36).

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<sup>41</sup> During the military coup of 2009 in Honduras, four sitting justices from the Association of Judges for Democracy expressed their opposition against the overthrow of President Manuel Zelaya. In part, they participated in adopting a legal position on behalf of the association that publicly criticized the role of Honduras’ Supreme Court in ousting the president and paving the way for a military coup. On May 12, 2010, following an investigation against the judges by the Inspector of Tribunals, the Plenary of the Supreme Court ordered their dismissal, and later denied their petition for reconsideration.

<sup>42</sup> The case concerned the State’s restriction on the distribution of a children’s book featuring same-sex relationships, which the European Court of Human Rights found violated the author’s right to freedom of expression under Article 10 of the Convention.